Neutral Citation Number: [2026] EWHC 675 (KB)

Case No: KB-2025-004496

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/03/2026

Before :

THE HON. MRS JUSTICE STEYN DBE

- -

Between :

CYNTHIA NKIRUKA TOOLEY MBE	**Claimant**
- and -	
TIMES MEDIA LIMITED	**Defendant**

- -
- -

The **Claimant appeared in person**
Katya Pereira (instructed by **Bristows LLP**) for the **Defendant**

Hearing dates: 19 March 2026

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Approved Judgment

This judgment was handed down remotely at 14.30 on 23 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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THE HON. MRS JUSTICE STEYN DBE

Mrs Justice Steyn :

Introduction

1. On 1 December 2025, the claimant issued a claim against the defendant, Times Media Ltd ('TML'), for libel and malicious falsehood arising from an article published in *The Times* in print and online on 8 February 2025, bearing the headline "*Wife of anti-woke professor says she was 'bullied' by police*" ('the Article'). Prior to service, she amended the claim form to identify the causes of action as (i) misuse of private information, (ii) breach of confidence, (iii) defamation and (iv) malicious falsehood.

2. This judgment determines three applications issued by the claimant, namely:

    i) An application for an interim injunction filed on 6 January 2026 ('the Interim Injunction Application');

    ii) An application for a Norwich Pharmacal order filed on 8 January 2026 ('the NPO Application'); and

    iii) An application filed on 21 January 2026 to amend both the aforesaid applications to "clarify that relief is sought primarily for misuse of private information and breach of confidence, alternatively defamation" ('the Amendment Application').

3. I shall address the part of the Amendment Application relevant to each of the other applications when determining those applications.

4. The claimant has also brought claims against Associated Newspapers Ltd and Telegraph Media Group Ltd which were the subject of a joint directions hearing with this claim. In the event, to accommodate the parties' availability, the applications in those claims were heard separately on 12 March 2026.

The history of proceedings

5. The Article was published on 8 February 2025. A source of the Article was a video recording that the claimant had made two days earlier which came into the possession of TML. At the outset of the recording, the claimant said, "If you're receiving this, you're obviously a very close friend of mine."

6. Nine months later the claimant sent a letter of claim to TML, dated 6 November 2025 but sent on 17 November and received the next day. The claimant alleged that the Article "*contains false, misleading, and defamatory statements*" and that it caused "*serious reputational, emotional and financial harm*". She identified what she contended the defamatory meaning to be, that it was untrue and that she had suffered serious harm within the meaning of s.1 of the Defamation Act 2013. Among other matters, she objected to the publication of reader comments. Under the heading "*Other Causes of Action*", the claimant wrote:

> "12. Malicious Falsehood: the Defendant published fabricated quotations and mischaracterisations maliciously or recklessly, causing foreseeable loss and damage to me/my interests.

> 13. Misuse of Private Information & Copyright Infringement: The Defendant used private, non-press photographs without my consent. This constitutes both misuse of private information and copyright infringement. I will invoice The Times shortly for the unauthorised use of my images."

The letter of claim made no mention of any claim for misuse of private information (or breach of confidence) other than in respect of photographs.

7. On 18 November 2025, TML removed the reader comments and, the following day, they informed the claimant they had done so, and that they would respond substantively to the letter of claim in due course.

8. On 1 December 2025, the claimant issued the claim. The original claim form gave the brief details of claim as:

> "Claim for defamation (libel) and malicious falsehood arising from the publication of [the Article].
>
> The article contained fabricated quotations, misleading attributions, and false descriptions of the Claimant's actions and character, giving the impression of criminality, instability, and hostility towards the police.
>
> The publication caused serious harm to reputation and distress to the Claimant and her children supported by extensive hostile reader comments.
>
> Value
>
> Damages for defamation and/or malicious falsehood not exceeding £150,000, together with other relief as the court deems fit."

9. On 2 December 2025, unaware that the claimant had issued a claim, TML responded substantively to the letter of claim disputing the proposed meaning, contending the Article was accurate, non-defamatory, and was not published maliciously; the images were taken in a public place; and no basis for a copyright claim had been put forward.

10. The claimant informed TML on 5 December 2025 that she had issued a claim. Addressing what she described as the "*absence of reasonable verification*", the claimant wrote, "*Your publication relied on private material obtained indirectly and published without giving me an opportunity to respond*". She also referred to the use of "*private material obtained indirectly and mischaracterised by selective quotation*" as one of several bases for claiming aggravated damages. But the allegation remained one of publication of a defamatory statement.

11. On 6 January 2026 the claimant filed the Interim Injunction Application, seeking to restrain TML from publishing or continuing to publish "*defamatory Articles & any similar meanings*", and ancillary orders. The claimant's draft order included a preamble recording that "*the application concerns the continued publication of material alleged*

to be defamatory" and paragraph 1 of the claimant's draft order contains a proposed order prohibiting TML from publishing, republishing or causing to be published the Article "*or any words or meanings to the same or similar effect, insofar as such publication conveys the defamatory meanings complained of in these proceedings*".

12. On 7 January 2026, at 11.33am the claimant served the application notice on the defendant. At 1.46pm she provided TML with her witness statement, exhibits and draft order and informed TML that a hearing was listed for 3pm. Both parties attended the hearing before Bright J. Counsel for TML indicated that there were significant issues with the Interim Injunction Application, including the rules on prior restraint. Bright J adjourned the application until 13 January 2026 as TML had not had sufficient notice of it.

13. On the evening of 7 January 2026, after the hearing, the claimant wrote to TML addressing what she described as "*additional matters which go to the lawfulness and defensibility of the publication itself*" and referring to the publication of "*private material*" which was disclosed without her consent. However, she did not at that stage indicate any intention to rely on additional causes of action.

14. On 8 January 2026, the claimant provided TML with an unsealed copy of her NPO application which was issued that day. In the NPO application she sought disclosure of the identity of the person who supplied the video recording to TML ('the source') and related information.

15. In accordance with the order of Bright J, the claimant served what is described as her "*consolidated*" first witness statement on 9 January 2026. In this statement, she asserted that the publication by TML "*also involved the misuse of my private information*".

16. On 10 January 2026, the claimant provided TML with an unsealed amended version of the claim form dated 8 January 2026 ('the draft amended claim form'). The causes of action were in the same terms as in the original claim form (i.e. defamation and malicious falsehood), but the name of the defendant was corrected. However, that amended version was never sealed or served.

17. On 12 January 2026, TML served the first witness statement of Julian Darrall, a partner in the firm of solicitors, Bristows LLP, with conduct of this matter for TML. In his statement, having noted that TML had not yet been served with the claim, and was not aware of the particulars of claim against it, he said:

> "However, at this stage I can confirm that, in the event the Amended Claim Form [referring to the draft amended claim form] is served on TML and the claim substantially corresponds with the grounds set out in the Letter of Claim, it intends to defend this claim (i) on the basis that the Article is not defamatory of the Claimant, and/or (ii) in reliance on the defence of truth under s.2 Defamation Act 2013."

18. There was a further hearing before Heather Williams J on 13 January 2026. She disposed of a separate application for Norwich Pharmacal relief made against the Guardian News & Media Ltd, and gave directions in respect of the applications in the claims against TML (as well as the claims against Associated Newspapers Ltd and

Telegraph Media Group Ltd). At the hearing, given the reference to a misuse of private information claim in the claimant's consolidated first witness statement, Heather Williams J asked the claimant to clarify the nature of her claims against TML, and the claim or claims she intended to bring against a third party. The claimant confirmed that her claim against TML was solely in defamation and malicious falsehood, whereas her potential claim against a third party was in misuse of private information and/or breach of confidence. This was reflected in a preamble to Heather Williams J's order which states:

> "AND UPON the Claimant confirming that both the underlying claim in claim no.004496 (the TML Claim) and the TML Injunction Application are brought in defamation and malicious falsehood, whereas the alleged underlying wrongdoing in the TML NPO Application is misuse of private information by a third party as well as defamatory meanings."

19. On 21 January 2026:

    i) The claimant filed an Amended Claim Form introducing misuse of private information and breach of confidence as the first and second identified causes of action, with defamation and malicious falsehood identified as the third and fourth causes of action ('the Amended Claim Form'). The Amended Claim Form incorporates particulars of claim. The amendment was made prior to service of the claim form, pursuant to CPR 17.1(1). The claimant sent the Amended Claim Form to TML two days later, and the deemed date of service is 27 January 2026.

    ii) The claimant filed and served her Amendment Application seeking permission to amend the Interim Injunction Application and NPO Application "*to clarify that relief is sought primarily for misuse of private information and breach of confidence, alternatively defamation*".

    iii) The Claimant filed her second consolidated witness statement and exhibits, pursuant to Heather Williams J's order.

20. The second statement of Mr Darrall was served, on behalf of TML and in accordance with Heather Williams J's order, on 4 February 2026.

The Interim Injunction Application

The Amendment Application (injunction)

21. In the Amendment Application, the claimant states:

> "The purpose of the amendments is to clarify that the relief is sought primarily on the grounds of misuse of private information and breach of confidence, and in the alternative defamation, in line with the Claim Form and Particulars of Claim now filed. … The amendments are necessary to align the applications with the pleaded case and to enable the Court to determine them on their proper legal footing."

22. The amendments the claimant seeks are, first, to section 3 of the application notice, to remove the wording indicating that relief is sought to restrain publication of "*defamatory* Articles" and substitute wording indicating that relief is sought primarily on grounds of misuse of private information and breach of confidence, and in the alternative defamation.

23. The claimant seeks to amend her original draft order as follows (the proposed deletions are shown struck through and proposed additions are underlined):

> "**AND UPON** the Court being satisfied that the application ~~concerns the continued publication of material alleged to be defamatory and that interim relief is sought pending trial~~ is brought primarily on the grounds of misuse of private information and breach of confidence, and in the alternative defamation
>
> **IT IS ORDERED THAT**:
>
> 1. Until trial or further order, the Defendant shall not publish, republish, or cause or permit to be published [**the Article**] **or any words or meanings to the same or similar effect**, insofar as such publication misuses the Claimant's private information or breaches confidence and in the alternative conveys the defamatory meanings complained of ~~in these proceedings~~.
>
> 2. The Defendant shall remove the Article from all websites, platforms, archives, and digital repositories under its control within **24 hours** of service of this order.
>
> 3. The Defendant shall not republish the Article, or any substantially similar article, including by hyperlinking, syndication, search optimisation, or promotion, pending trial or further order.
>
> 4. The Defendant shall ensure that all reader comments associated with the Article remain removed or disabled on any platforms under its control pending trial or further order.
>
> 5. The Defendant shall preserve all documents, data, communications, metadata, drafts, notes, recordings, editorial messages, moderation logs, and correspondence (whether internal or external) relating to:
>
> a. the commissioning, drafting, verification, and publication of the Article;
>
> b. the decision to maintain publication after notice of complaint;
>
> c. the moderation, retention, or removal of reader comments; and

d. the proposed amendments and clarification,

pending trial or further order.

…"

24. The claimant submitted that originally the issue she had with the Article was the narrative which she considered presented a false picture, misquoted her, and was defamatory. She said that she subsequently learned more about potential causes of action and realised that there was another, perhaps more significant wrong that had been committed, namely misuse of her private information. The claimant noted that she had properly amended the claim form before it was served, and within the limitation period, to add causes of action in misuse of private information and breach of confidence. She contended that the Amendment Application is not an abuse or cause of action shopping. She has not invented a case relying on those additional causes of action: it was always present, but as a non-lawyer she had not been sufficiently aware to apply the correct labels. The claimant relied on her correspondence as showing that she had been identifying TML's use of her private information from an early stage (see paragraphs 10 and 13 above), as well as on her first consolidated witness statement in which she directly relied on misuse of private information by TML (see paragraph 15 above).

25. TML submits that in view of the higher threshold that applies where an interim injunction is sought to restrain publication in a case based on defamation and/or malicious falsehood, rather than misuse of private information and/or breach of confidence, the courts are alive to attempts to reframe cases with a view to benefitting from the lower threshold.

26. In *LJY v Persons Unknown* [2017] EWHC 3230 (QB), [2018] EMLR 19, Warby J observed at [42]:

> "As a matter of legal policy, the Court applies the more demanding defamation rule if it detects 'cause of action shopping'. By that I mean that the rule will be applied in cases where, although another cause of action is relied on, the Court concludes that the claimant's true purpose is to prevent damage to reputation. The policy was described in this way in the breach of confidence case, McKennit v Ash [2006] EWCA Civ 1714; [2008] QB 73 [79] (Buxton LJ):
>
> > 'If it could be shown that a claim in breach of confidence was brought where the nub of the case was a complaint of the falsity of the allegations, and that that was done in order to avoid the rules of the tort of defamation, then objections could be raised in terms of abuse of process.'"

27. In fairness to the claimant, Ms Pereira, Counsel for TML, drew my attention to HHJ Richard Parkes KC's discussion of "*what is the 'nub' of a complaint?*" in *Pacini v Dow Jones* [2024] EWHC 1709 (KB) at [76]-[91]. In particular, the judge referred at [80] to *Hannon v News Group Newspapers Ltd* [2015] EMLR 1, and said:

> "Mann J found that although there was a heavy reputational element to the claims, that did not describe the essence of the claims: there were other claims as well (in privacy and confidence), which were not *de minimis*. The judge was unable to find that the 'nub' or reality of the claims was based on damage to reputation only."

Both *Pacini* and *Hannon* were cases in which strike out on abuse of process grounds was sought as opposed to an interim injunction.

28. In my judgment, it is clear that where an applicant seeks to restrain publication at an interim stage, the court has to ask itself what is the essential purpose of the application. Where the purpose of the application is the protection of reputation, and the gravamen of the underlying complaint concerns damage to reputation, then the application for interim relief must be assessed by reference to the defamation rule. See *Dixon v North Bristol NHS Trust* [2022] EWHC 3127 (KB), [62] (Nicklin J); and *Khan v Khan* [2018] EWHC 241 (QB), [72] (Nicklin J).

29. It is clear, in my view, that the purpose of the Interim Injunction Application is to restrain publication of an article which the claimant considers to be defamatory, presenting a false narrative, with a view to protecting her from further reputational damage. I reach this view for the following reasons:

i) The original claim was for defamation and malicious falsehood only. The claimant alleged serious harm to her reputation and claimed damages not exceeding £150,000 (paragraph 8 above). That accorded with the causes of action threatened in the letter of claim (paragraph 6 above).

ii) The original application was for an interim injunction to restrain continued publication of material alleged to be defamatory (paragraph 11 above). In her supporting witness statement, the claimant contended the Article contains "*inaccuracies*" and the framing of events as a whole is misleading, and she stated:

> "I am a public figure whose professional, charitable, and mentoring work depends upon public trust. The Article has caused, and continues to cause, serious reputational harm to me and distress to my family …
>
> I am the public face, founder, and head of fundraising of the charity I established Jedidiah UK. My personal reputation is inextricably linked to donor confidence, safeguarding trust, and the charity's ability to function effectively. Damage to my reputation directly and foreseeably damages the charity's income and operations.
>
> …
>
> The harm caused by the Article is not confined to the United Kingdom. Members of my family abroad have been

> confronted with the allegations, evidencing cross-border reputational damage. …
>
> The damage caused by the Defendant's continued publication is ongoing and cumulative. Each day the Article remains available causes fresh harm. The defamatory narrative appears prominently in online search results associated with my name, compounding reputational injury and making the damage increasingly difficult to reverse.
>
> Damages would not be an adequate remedy. Once a defamatory narrative of this nature becomes embedded … the reputational harm is effectively irreversible without injunctive relief."

It remains her position that the Article is defamatory, presents a false narrative, and that it has and continues to cause her reputational harm.

iii) It was only after the first hearing that the claimant began to re-frame her claim as one also brought in misuse of private information. However, even then, the claimant expressly confirmed at the hearing on 13 January 2026 that she was only pursuing a claim against TML in defamation and malicious falsehood. I do not accept that the shift reflects the claimant's growing understanding of the available causes of action. Her letter of claim shows that she was aware, at that time, of the cause of action for misuse of private information as she expressly referred to it, albeit only in connection with alleged misuse of her photographs. She also appreciated the availability of that cause of action, as well as breach of confidence, when framing her Norwich Pharmacal application.

iv) In the Amended Claim Form, the claimant continues to rely on defamation and malicious falsehood, albeit she has added claims for misuse of private information and breach of confidence. In the particulars of claim, the claimant has pleaded:

> "It caused loss of contracts, reputational damage, and financial loss to the Claimant's associated entities, including her charity."

In addition to damages (which she continues to claim in a sum "not exceeding £150,000) and an injunction, she seeks a "*prominent apology and correction*". Such relief is plainly directed at damage to reputation. A prominent apology and correction would not assist in ensuring the story receives no further attention which would ordinarily be the aim where the gravamen of the complaint concerns misuse of private information.

v) The terms of the order sought are, in substance, precisely the same as they were when the Interim Injunction Application was initially sought. The claimant continues to seek to restrain publication of any words or meanings to the same or similar effect to the defamatory meaning that she alleges the Article conveys.

30. As I do not accept that the interim injunction is "*primarily sought for misuse of private information and breach of confidence*", I refuse the Amendment Application insofar as it concerns the Interim Injunction Application. I accept that those are pleaded causes of action in the Amended Claim but the claimant's essential purpose in seeking to restrain publication is to protect her reputation, not to protect private information.

The applicable principles

31. When considering whether to grant an interim injunction, the Court will usually apply the well-established test from *American Cyanamid -v- Ethicon Ltd (No.1)* [1975] AC 396. However, a more exacting test is required in certain types of case. Where the injunction sought may interfere with freedom of expression s.12 of the Human Rights Act 1998 applies. In accordance with s.12(3) (read with 12(1)), "*relief which, if granted, might affect the exercise of the Convention right to freedom of expression*" must not be granted "*so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed*". "*Likely*" in s.12(3) means "*more likely than not*": *Cream Holdings Ltd v Banerjee* [2005] 1 AC 253.

32. Interim injunctions to restrain defamatory publications are subject to an even higher threshold than s.12(3) Human Rights Act 1998, known as the rule in *Bonnard v Perryman* or the defamation rule: *Bonnard v Perryman* [1891] 2 Ch 269; *Greene v Associated Newspapers Ltd* [2004] EWCA Civ 1462, [2005] QB 972.

33. As summarised by the authors of *Gatley on Libel and Slander* (13th ed., 2022) at 27-002, and adopted by Tugendhat J in *Coys Ltd v Autocherish Ltd* [2004 EMLR 25 at [37] (with reference to the 10th edition of *Gatley*), where the defamation rule applies, the court will only grant an interim injunction where each of the following conditions is met:

> "(1) the statement is unarguably defamatory;
>
> (2) there are no grounds for concluding the statement may be true;
>
> (3) there is no other defence which might succeed;
>
> (4) there is evidence of an intention to repeat or publish the defamatory statement."

34. In short, the court will not grant an interim injunction, where the defamation rule applies, "*if there appears to be any real prospect that the claim might fail*" (*LJY*, [42]). In other words, the defamation rule "*requires an applicant to show that the claim is bound to succeed*": *Birmingham City Council v Afsar* [2019] EWHC 1560 (QB), [2019] ELR 373 [62] per Warby J.

Decision on the Interim Injunction Application

35. If I had allowed the Amendment Application, the claimant would have to show that her claim is more likely than not to succeed at trial. That is the test on which the claimant

focused her submissions. As I have not allowed the Amendment Application, the defamation rule applies.

36. A preliminary matter, irrespective of the applicable test, is that the terms of order sought are, on any view, too wide. The claimant seeks removal of the entire Article rather than any identified words complained of. She seeks an order prohibiting publication of reader comments in circumstances where those were removed immediately on receipt of the letter of claim and there is no threat of republication. And she seeks a preservation order in circumstances where there is no reason to believe that TML is failing to comply with its obligations.

37. Applying the defamation rule, it is clear that the application must fail. The first question is whether the statement complained of is unarguably defamatory. The claimant has not identified the words complained in her particulars of claim (or the Amended Claim Form), contrary to the requirement in paragraph 4.2(1) of Practice Direction 53B. In those circumstances, TML has made submissions, and adduced evidence, by reference to the words complained of in the letter of claim.

38. In his first witness statement, Mr Darrall stated:

> "The Letter of Claim states that the Applicant complains of the following statements in defamation:
>
> i. 'Wife of anti-woke professor says she was 'bullied' by police' ['Statement A']
>
> ii. 'Cynthia Tooley, 42, … told friends she was detained by four officers on Tuesday.'
>
> iii. 'Mrs Tooley told friends she was 'intimidated' by police and felt 'bullied and harassed'' ['Statement B']
>
> iv. 'The documents are understood to be copies of diaries written by a young woman who was a former lover of her husband while he was working in India. The diaries are said to have been given to the academic as a gift.'
>
> … I can confirm that, in the event the Amended Claim [i.e. the draft amended claim form] is served on TML and the claim substantially corresponds with the grounds set out in the Letter of Claim, it intends to defend this claim (i) on the basis that the Article is not defamatory of the Claimant, and/or (ii) in reliance on the defence of truth under s.2 Defamation Act 2013."

39. The claimant's pleaded meaning is that "*the Claimant made false, exaggerated or irresponsible allegations against police, damaging her honesty and credibility*". TML has, therefore, inferred that the only statements complained of are (i) and (iii), which they labelled 'Statement A' and 'Statement B'. The claimant did not take issue with these being the only words complained of.

40. It cannot be said that Statements A or B are unarguably defamatory. The Article does not assert that the statements attributed to her were untrue, exaggerated or irresponsible, and it is at least arguable that a reasonable reader would draw no such inference. On the face of it, the target of any defamatory allegation in both statements is the police rather than the claimant. It follows that the claim is not bound to succeed and interim relief should not be granted.

41. The second question is whether there are no grounds for concluding the statement may be true. TML does not rely on this limb in respect of Statement A, having noted the claimant's objection that her statement in the video that she was "*bullied*" and "*harassed*" was not directed at the police specifically (and having made an offer to amend the headline to remove the words "*by police*"). However, I agree with TML that Statement B is defensible as true in light of what the claimant said in the recording which included the following:

> "Why did four police officers turn up to my house, all dressed in black, wearing boots?"
>
> "… and standing in that police station. I genuinely was scared. I thought what is happening is so unfair and so unjust. And the police had taken away my phone. They'd taken away my laptop. I had no way of telling anyone what was going on."
>
> "And then, two days later, two days ago, the police turned up at my house. … They took away my phone, my laptop. This is what taxpayers money is being used for. To intimidate people. To turn the police into a weapon against innocent people."
>
> "…since then there's been this relentless hunt. To have me silenced, put away. Two days ago was a stark warning. … and the police are used to hunt and chase me."
>
> "I'm being bullied. … I'm being harassed. Everything is being used as a weapon against me."

42. On this additional basis, an interim injunction must be refused in relation to the claim in respect of Statement B.

43. If (contrary to my understanding) the claimant maintains reliance on the statements quoted at (ii) and (iv) above (paragraph 38), the first of those statements (at least) is clearly defensible as true (and I note that the Article expressly stated that she was released without charge), and it is at least arguable that the second of those statements is not defamatory of the claimant.

44. Accordingly, the Interim Injunction Application is refused.

45. I will state the view I would have reached on the alternative basis, applying s.12(3) and *Cream Holdings*, briefly, given my conclusion that the Amendment Application should be dismissed.

46. The claimant has not pleaded the information in the Article that she contends is private/confidential, contrary to paragraphs 8.1-8.2 of Practice Direction 53B. TML has inferred that the information alleged to be private or confidential is that:

    i) The claimant claimed to have been arrested in February 2025 on suspicion of breach of a court order in family proceedings, which she contended was out of date;

    ii) The claimant was released without charge but police had kept her phone and laptop; and

    iii) The claimant felt intimidated, bullied and harassed in relation to the arrest.

47. The claim for breach of confidence, as pleaded, is not more likely than not to succeed. The particulars of claim make a bald assertion that the video was communicated in circumstances importing an obligation of confidence without setting out any of the facts and matters relied on to establish that element of the tort.

48. In relation to misuse of private information, the two stage test is, first, whether the claimant has a reasonable expectation of privacy in the relevant information and, if so, secondly, whether that expectation is outweighed by the countervailing interest of the publisher's right to freedom of expression: *ZXC v Bloomberg LP* [2022] UKSC 5, [2022] AC 1158, [47] (Lord Hamblen and Lord Stephens JJSC). *ZXC* establishes that the starting point is that there is a reasonable expectation of privacy in information that a person who had not yet been charged was under criminal investigation. Whether that is the end point will depend on a consideration of all the facts but, in light of *ZXC*, TML does not contend that the claim would be more likely than not to fail at the first stage.

49. However, the claimant has not established that she is more likely than not to establish that her article 8 right outweighs TML's article 10 right, in circumstances where TML can rely on the public interest in reporting that there were grounds to investigate whether the police were being used as a tool to bully, harass or intimidate the claimant, who at the time was embroiled in a high-profile dispute with her (former) husband.

50. In addition, it is highly material that the Article had been in the public domain for 11 months before the claimant first sought, or even intimated an intention to seek, an interim injunction (see s.12(4)(a)(i) of the Human Rights Act 1998). In addition, broadly the same information has been in the public domain since 13 March 2025, and would remain so even if TML were required to remove the Article, in the form of a judgment given by District Judge Nutley in *Tooley v Tooley* [2025] EWFC 81 (B) which states at [34]:

> "On 5 February 2025, the wife applied for a without notice non-molestation order against the husband. That without notice hearing was listed before me. The wife informed me that she had been arrested by police for an alleged breach of the non-molestation order imposed by Judge Baumohl, and released on bail. She alleged in her application that the actions of the husband and his solicitors were behind the arrest, and those actions amounted to molestations."

51. Notably, before the Family Court, the claimant (unlike Dr Tooley) did not seek anonymisation or object to publication of the judgment, taking the view that "*the horse is well and truly out of the stable*" ([13]). That stance is indicative that, at that time, she saw no purpose in restraining publication of the information to which I have referred.

52. For these reasons, I would in any event have refused the Interim Injunction Application, applying s.12(3), and as a matter of discretion, if I had granted the Amendment Application.

The NPO Application

The Amendment Application (NPO)

53. Paragraph 5 of the Amendment Application states:

> "In relation to the Norwich Pharmacal application, the amendments clarify that the alleged wrongdoing relied upon is misuse of private information and breach of confidence rather than defamation, without expanding the scope of disclosure sought."

54. However, in the NPO Application, the underlying claims (i.e. against a third party / ultimate wrongdoer) were originally identified in section 3 as "*claims for misuse of private information and breach of confidence*" and in section 10 as those two causes of action and also "*unlawful processing and disclosure of personal data*".

55. The proposed amendments are unnecessary. There is no suggestion in the original application that the alleged wrongdoing by the third party is in defamation. On the contrary, the application made clear that the alleged wrongdoing by the third party amounts to misuse of private information and breach of confidence. Accordingly, I refuse the Amendment Application insofar as it relates to the NPO Application. But I make clear that the outcome of the NPO Application would be the same if I had allowed the amendment.

The applicable principles

56. It is common ground that the three basic conditions to be satisfied for the court to exercise Norwich Pharmacal relief are:

> "(1) a wrong must have been carried out, or arguably carried out, by an ultimate wrongdoer;
>
> (2) there must be the need for an order to enable action to be brought against the ultimate wrongdoer; and
>
> (3) the person against whom the order is sought must: (a) be mixed up in, so as to have facilitated, the wrongdoing; and (b) be able or likely to be able to provide the information necessary to enable the ultimate wrongdoer to be pursued."

See *Davidoff v Google LLC* [2024] 4 WLR 6, [16] (Nicklin J); *Mitsui & Co Ld. v Nexen Petroleum UK Ltd* [2005] EWHC 625 (Ch), [2005] 2 All ER 511, [21] (Lightman J).

57. To meet the first condition the applicant has to demonstrate a good arguable case that a form of legally recognised wrong (such as a tort, as alleged here) has been committed against them by an ultimate wrongdoer. This requires more than "*an honest and reasonable belief that there has been wrongdoing*": see *Collier v Bennett* [2020] EWHC 1884 (QB), [38].

58. As to the second condition, the test of necessity does not require the remedy to be one of last resort; the remedy is a flexible one. Nonetheless, the need to order disclosure will be found to exist only if it is a "*necessary and proportionate response in all the circumstances*": *Rugby Football Union v Consolidated Information Ltd (formerly Viagogo Ltd)* [2012] UKSC 55, [2012] 1 WLR 3333, [16] (Lord Kerr JSC); *Ashworth Hospital Authority v MGN Ltd* [2002] UKHL 29, [2002] 1 WLR 2033, [36] (Lord Woolf CJ). In this regard, a relevant factor is whether the information could be obtained from another source.

59. Even if the three threshold conditions are satisfied, at the final stage of the inquiry the court retains a discretion. It is for the applicant to satisfy the court that requiring disclosure from the respondent is an appropriate and proportionate response in all the circumstances of the case, bearing in mind the exceptional but flexible nature of the jurisdiction: see *Collier* [2020] EWHC 1884 (QB), [35]. In the *Rugby Football Union* case the Supreme Court identified, at [17], various factors that may be relevant to the exercise of discretion. It is unnecessary to set them all out but I note that they include the strength of the possible cause of action against the ultimate wrongdoer, whether the information could be obtained from another source, and the public interest in maintaining the confidentiality of journalistic sources, as recognised in section 10 of the Contempt of Court Act 1981 and article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms.

60. Section 10 of the Contempt of Court Act 1981 provides:

> "No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime."

61. Any order of a court which requires disclosure of a confidential journalistic source is an interference with the journalist's right to freedom of expression within the meaning of article 10 of the European Convention on Human Rights. Section 6 of the Human Rights Act 1998 precludes such an order where incompatible with the article 10 right. That is, where it cannot be justified under article 10(2) applying the principles adopted by the Strasbourg Court. Section 10 of the 1981 Act is the domestic vehicle for the application of the Strasbourg principles: see *Ashworth Hospital Authority,* [38].

62. Pursuant to section 10 of the 1981 Act the right may only be overridden on grounds of necessity in the "*interests of justice or national security or for the prevention of disorder or crime*". The principles applicable when determining whether that test is met were addressed by Warby J in *Arcadia Group Ltd v Telegraph Media Group Ltd* [2019] EWHC 96 (QB), [15], and by Floyd LJ in *Various Claimants v MGN Ltd* [2019] EWCA

(Civ) 350, Floyd LJ, at [18]-[23]. Drawing on those authorities (and the authorities cited therein), in summary:

i) The onus lies on the applicant to show that disclosure should be ordered.

ii) The protection of journalistic sources is a matter of high public importance. Encroachments on this protection are capable of having a detrimental effect on the reputation, in the eyes of potential future sources, of the journalist or publisher against whom disclosure is ordered, so reducing the free flow of information to the press and inhibiting the ability of the press to inform the public on matters of public interest.

iii) The protection afforded against disclosure of journalistic sources is not absolute. But nothing less than necessity will serve to override it. That necessity can only arise out of another matter of high public importance, being one of the four legitimate purposes identified in section 10. In *In re An Inquiry under the Co Securities (Insider Dealing) Act 1985* [1988] AC 660, 704, Lord Griffiths gave this guidance as to the meaning of the term 'necessary' in this context:

> "I doubt if it is possible to go further than to say 'necessary' has a meaning that lies somewhere between 'indispensable' on the one hand and 'useful' or 'expedient' on the other, and to leave it to the judge to decide towards which end of the scale of meaning he will place it on the facts of any particular case. The nearest paraphrase I can suggest is 'really needed'."

iv) Where the legitimate purpose relied on is the interests of justice, it is necessary for the applicant to satisfy the court on the basis of cogent evidence that the claim or defence to which the disclosure is relevant is sufficiently important to outweigh the private and public interest of source protection and that disclosure is proportionate. The need for the information in order to bring or defend a particular claim is not to be equated with necessity "*in the interests of justice*". The interests of justice in the context of the case must be so pressing as to require the strong protection against disclosure of journalistic sources to be overridden.

v) The court must be satisfied that there is no reasonable less invasive alternative means of achieving whatever aim is pursued by a source disclosure application.

Decision on the NPO application

63. TML has not contended that conditions (1) and (3) are not met. I accept that the claimant has established these threshold conditions. It is arguable that the claimant had a reasonable expectation of privacy in the information she disclosed in the recording, that its disclosure by a third party was a misuse of private information, and that by publishing the Article drawing on that recording TML is mixed up in the wrongdoing. It has not been suggested that TML is unable to provide the name of the source.

64. The focus of the parties submissions was on the second condition and the discretion, including in particular the impact of s.10 of the 1981 Act.

65. The claimant submits that a Norwich Pharmacal order is necessary because, although she knows the identity of the only person to whom she says that she sent the video recording prior to publication of the Article, she cannot be certain of TML's source. She only has her suspicions. That is because it is possible that the social media of the person to whom she sent the recording was hacked, or the recording may have been provided to TML by an intermediary. The claimant said that the person to whom she disclosed the recording received it in her capacity as a university official. In her oral submissions, the claimant said that she had made a subject access request to the university and received a response that there had been no such disclosure but she considered that may be because any disclosure was not made via a university email account. The claimant said that she had not asked the person to whom she sent the recording whether she had disclosed it, or the information in it, to anyone.

66. The claimant submits that if she were to bring a claim against the third party without the disclosure she seeks, it would be based on her evidence which she anticipates may be challenged. For this reason, she seeks independent confirmation of the source from TML.

67. TML submits that the second criterion is not met because the claimant has already identified the person she asserts is the source (albeit TML makes no admission), and has taken no steps to ask that person whether she disclosed the recording.

68. In my judgment, the necessity requirement has not been met. In a letter dated 7 January 2026, the claimant wrote to TML:

> "1. **No ambiguity as to source**
>
> For the avoidance of doubt, I am not in any uncertainty as to the identity of the individual to whom I shared the private video referred to in [the Article]. That individual is an institutional office holder and acting in that capacity at the time.
>
> Therefore the issue is not one of speculation or journalistic source protection.
>
> …
>
> **3. Institutional knowledge and double indefensibility**
>
> It is also material, and aggravating, that the individual from whom Times obtained the private video was already privy to the original allegations and underlying documents.
>
> **6. Withdrawal or proper amends**
>
> …
>
> Please also be aware that, irrespective of Times' position in this action, I will be pursuing claims arising from the unauthorised institutional disclosure of the private material."

69. In her oral submissions the claimant emphasised that her lack of uncertainty was expressed as being as to the identity of the person to whom she had sent the video. However, it is clear that she was also identifying that person, in this letter, as the individual from whom The Times obtained the video. It was because she asserted that she knew the identity of the source that there was "*no ambiguity as to [the] source*" and the identity of the source was not a matter of "*speculation*".

70. In the Application Notice, the claimant wrote:

> "3. I shared the video only once, by way of confidential FYI in relation to a safeguarding disclosure, with Harriet Dunbar-Morris, who at the material time was acting in an institutional office-holding capacity. I did not authorise or consent to any onward disclosure.
>
> …
>
> 8. The article relies on, and discloses the substance of, the private video, which could only have been obtained via unauthorised onward disclosure by the institutional recipient.
>
> 9. The individual who disclosed the material to the Times was already privy to the original allegations and underlying documents …"

71. Again, it is apparent that the person referred to as the "*institutional recipient*" in paragraph 8 is the person identified in paragraph 3. The claimant asserted that The Times "*could only*" have obtained it as a result of unauthorised disclosure by her.

72. A straightforward step for the claimant to have taken would have been to ask the individual who she asserts is the only person who had received the video at the relevant time whether she disclosed it to anyone and if so to whom. That could have been asked in the form of pre-action correspondence or less formally. No reason for not doing so is apparent on the evidence.

73. In these circumstances, I agree with TML that the claimant has not established that it is necessary to grant the order sought. In any event, I would also refuse to grant the order on the basis that it is not necessary and proportionate to do so in all the circumstances. Those circumstances include, first, the merits of the underlying claim. While I accept that the threshold condition is met in respect of a potential misuse of private information claim against a third party, on the evidence before me it cannot be said that either of the proposed causes of action is particularly strong.

74. The starting point would be that the claimant had a reasonable expectation of privacy in the information regarding her arrest (see paragraph 48 above), but determination of that question demands a fact-specific and contextual inquiry. Among other matters, the court would consider the content of the recording and the circumstances in which it was communicated to the third party.

75. Any person who received the recording from the claimant would have understood that it was being sent to at least a "*handful of people*". The claimant opened the video saying "*If you're receiving this, you're obviously a very close friend of mine*". In evidence she

has said that, in fact, she did not send it to friends, but that is not something the recipient would have known. Moreover, a recipient who received it "*FYI*" and who was "*not a friend*" (as the claimant put it in her letter of 5 December 2025), or at least not a close friend, may have had reason to believe it was being distributed more widely than to a handful of "*very close*" friends.

76. The content would potentially have indicated to a recipient that, at least in some circumstances the claimant wanted it published: "*I'm sending this so that if anything happens to me or my children, you know what to use it for.*" Her expressed view, in the video, that it was "*bizarre*" that she was being told to keep certain communications "*private and confidential, not for publication*" may also have been liable to indicate to a recipient that she did not have an expectation of privacy in the matters she was discussing.

77. As regards a breach of confidence claim, as I have said when addressing the injunction application, the facts and matters relied on to establish that the video was communicated in circumstances importing an obligation of confidence have not been pleaded.

78. Secondly, as I have said, the claimant has asserted that the sole person to whom she says she disclosed the recording must have made an unauthorised disclosure of it. TML cannot be said to be the only practicable source of the information sought. I am not satisfied that there is no reasonable less invasive alternative means of achieving the aim pursued by the application.

79. Thirdly, and most importantly, I am not persuaded that the interests of justice in enabling the claimant to bolster a claim against the third party for misuse of private information and/or breach of confidence is so pressing as to require the strong protection against disclosure of journalistic sources to be overridden. The claimant has offered no compelling reason why that protection should be displaced.

Conclusion

80. The claimant's applications to amend, for an interim injunction and for a Norwich Pharmacal order are refused.