Applications for interim injunctions for breaches of privacy

Produced in partnership with **Ben Gallop** and **Lily Walker-Parr of 5RB** and **Daniel Bishop**

This Practice Note should be read in conjunction with Practice Notes: **Privacy law—misuse of private information** and **Privacy law—remedies**.

Coronavirus (COVID-19): The guidance detailing normal practice set out in this Practice Note may be affected by measures concerning process and procedure in the civil courts that have been introduced as a result of the coronavirus (COVID-19) pandemic. For further information, see Practice Note: **Coronavirus (COVID-19) implications for dispute resolution**.

Brexit

This Practice Note makes several references to the **European Convention on Human Rights** (ECHR), incorporated into UK law by the **Human Rights Act 1998 (HRA 1998)**. Brexit has had no automatic impact on either the **HRA 1998** or the incorporation of the ECHR provided for by the **HRA 1998**. The ECHR is an international treaty that protects the human rights of people in countries that belong to the Council of Europe, which is an entirely separate body from the EU. The UK continues to be a member of the Council of Europe.

Note that the **EU-UK Trade and Cooperation Agreement** provides that the deal does not alter the UK's obligations under the ECHR and that the deal can be terminated in the event of either side denouncing the ECHR.

For more information, see:

- Q&A: **What does Brexit mean for the Human Rights Act 1998?**
- **LNB News 07/01/2021 77:** Comment—EU-UK Trade and Cooperation Agreement provisions on human rights

See also Practice Note: **What does IP completion day mean for Information Law?**

Guidance

For guidance on the correct procedure for applications for interim injunctions and a model order, see the **Practice Guidance: Interim Non-Disclosure Orders**. The procedure is governed by **CPR 25**.

Applications

Pursuant to **CPR 23.2**, an application for an order for an injunction must be made to the court where the claim was started or is likely to be started. For claims issued in Queen's Bench Division proceedings, where a claim has been started, an application on notice for an urgent injunction should be filed on CE file by a represented party or in the QB Judges' Listing Office, Room WG08 at the Royal Courts of Justice for a litigant in person who is not using **CE file**. Applications without notice are heard in Court 37. In respect of out-of-hours applications, see: **The Queen's Bench Guide 2021**, paragraphs 11.18–11.21.

References:
The Queen's Bench Guide 2021, para 12.2

The rules relating to electronic filing (CE file) are set out in **CPR PD 51O**. For further guidance, see Practice Note: **Electronic working and CE-file—when and where is CE-file applicable?** For information on the updated **Queen's Bench Guide 2021**, see News Analysis: **Queen's Bench Guide updated—January 2021**.

The claimant should file:

- an application notice
- a claim form (if the application is made before commencement of a claim)
- a witness statement or statements justifying the need for an order
- legal submissions
- a draft order, and
- an explanatory note (see **Explanatory note** below)

References:
Practice Guidance: Interim Non-Disclosure Orders, para 17

CPR PD 25A

Ideally, any injunction application will be fully documented and served not less than three days before the hearing. However, speed is usually essential where an interim injunction is being sought and time will often be short, as the publication will be imminent. Delay may mean that the respondent can argue that the information is already in the public domain to such an extent that an injunction would make little practical difference.

As of 1 October 2019, changes to the CPR mean that any High Court claim for defamation, misuse of private information, data protection or harassment by publication (media and communications claims) must be issued in the Media and Communications List. This is designated a specialist list of the High Court by **CPR 53.2(1)**. For information on the amended rules for media and communications claims, see News Analysis: **New rules for media and communications claims from 1 October 2019**.

References:
CPR 53

CPR PD 53A

CPR PD 53B

Applications for interim injunctions will generally be made to the High Court and issued in the Queen's Bench Division of the Royal Courts of Justice, marked for inclusion within the specialist list. Save for cases where the urgency of the application means that no specialist judge is available, the application will be heard by a designated Media and Communications Judge.

Urgent applications

References:
CPR PD 25A, paras 2.4, 4.3(1)

The application notice, supporting evidence and a draft order should wherever possible be filed two hours before the hearing.

The draft order is the key document and should always be prepared save in the most exceptional circumstances. If an application needs to be made before an application notice can be issued, a draft order should be provided at the hearing. The application notice and evidence should then be filed at the earliest practicable opportunity setting out the information placed orally before the court, or as ordered by the court. If the claim form has not been issued, the claimant must undertake to the court to issue the claim form immediately or the court will give directions as to the commencement of the claim. The court can only grant an interim remedy before commencement of a claim if the matter is urgent or it is otherwise desirable in the interests of justice. If the court grants an interim remedy before commencement of a claim, it should give directions for commencement of a claim (unless the claimant undertakes to the court to issue the claim form immediately).

Goldsmith v BCD; Khan v BCD [2011] EWHC 674 (QB), [2011] All ER (D) 243 (Mar)

CPR 25.2(2)(b)

CPR 25.2(3)

CPR PD 25A, para 4.4(1)

CPR 25.3

Where it is not possible to arrange a hearing, the application can be made by telephone (see **CPR PD 25A, para 4.5**, which sets out the relevant contact details).

In urgent 'without notice' hearings for any form of interim injunction, there is a high duty to make full, fair and accurate disclosure of material information to the court, to draw the court's attention to significant factual, legal and procedural aspects of the case and to see that the correct legal procedures and forms are used *(G v Wikimedia Foundation; Memory Corporation v Sidhu; X v Persons Unknown)*.

G v Wikimedia Foundation [2009] EWHC 3148 (QB) at para [25], [2009] All ER (D) 92 (Dec)

Memory Corporation v Sidhu [2000] 1 WLR 1443 at 1459H–1460B, [2000] All ER (D) 46

X v Persons Unknown [2006] EWHC 2783 (QB) at paras [55]–[59]

Claimants who fail to discharge their duties of full and frank disclosure risk losing protection that they might otherwise have been granted *(Linklaters LLP v Mellish)*. See *YXB v TNO* for a useful consideration of the obligation in the context of a privacy claim: the interim non-disclosure order obtained without notice was set aside because of material non-disclosure and fresh relief refused for the same reason.

Linklaters LLP v Mellish [2019] EWHC 177 (QB) at para [22]

YXB v TNO [2015] EWHC 826 (QB), [2015] All ER (D) 285 (Mar)

Notice of application

A claimant should give advance notice to any respondent and non-party on whom the claimant intends to serve the order so as to bind that non-party by application of the Spycatcher principle (see below), unless there are compelling reasons why the non-party should not be served. This is in order that the non-party should have an opportunity to be heard on the appropriateness of the order and upon the scope of its terms *(X v Persons Unknown)*.

Applications without notice are only for where:

- there is a real prospect that were a respondent or non-party to be notified they would take steps to defeat the order's purpose *(RST v UVW)*
- there is convincing evidence that the respondent is seeking to blackmail the claimant
- there has been literally no time to give notice—however, even in this latter category of cases, the claimant should give informal notice at least by telephone or email

No relief will be granted unless the court is satisfied that the claimant has taken all practicable steps to notify the respondent and any non-parties who are to be served or that there are compelling reasons, supported by clear and cogent evidence, why notice should not be given.

Where the respondent or non-party that the applicant is intending to serve is a media organisation, only rarely will there be compelling reasons why advance notification is or was not possible on grounds of either urgency or secrecy.

Claims for an injunction against publication are sometimes made against non-media respondents but with a view to serving any injunction granted on media publishers or other non-parties and binding them under the Spycatcher principle. In such a case, the claimant is bound to give the media prior notice of the application for relief.

References:
X v Persons Unknown [2006] EWHC 2783 (QB)

Practice Guidance: Interim Non-Disclosure Orders, para 20

RST v UVW [2009] EWHC 2448 (QB) at paras [7] and [13], [2009] All ER (D) 222 (Oct)

ASG v GSA [2009] EWCA Civ 1574 at para [3], [2009] All ER (D) 238 (Dec)

DFT v TFD [2010] EWHC 2335 (QB) at para [7], [2010] All ER (D) 103 (Oct)

CPR 25.3(1), (3)

CPR PD 25A, paras 3.4 and 4.3(3)

Practice Guidance: Interim Non-Disclosure Orders, paras 18–28

Practice Guidance: Interim Non-Disclosure Orders, paras 37–41

Practice Guidance: Interim Non-Disclosure Orders, paras 22–23

Practice Guidance: Interim Non-Disclosure Orders, para 22

CPR PD 25A, para 5.3

Relief sought

The interim injunction sought must be worded so that the person injuncted knows precisely what they are to be prevented from doing. No injunction will be granted when there is inadequate particularity as to what material is confidential or private or the injunction is uncertain in scope. A loosely-worded injunction is no use to a claimant since the court will be reluctant to enforce by process of contempt if it cannot be established that its terms have been infringed *(X v Persons Unknown)*.

The specific information or categories of information, said to be private and confidential in character, should be set out in a confidential schedule to the order (see the Model Order to the **Practice Guidance: Interim Non-Disclosure Orders**, para 6).

X v Persons Unknown [2006] EWHC 2783 (QB) at paras [81]–[84]

NPV v QEL and ZED [2018] EWHC 703 (QB) at para [17]

Anonymised and super-injunctions

The principle of open justice usually requires that hearings are carried out in public and the parties to the action are named in orders and judgments of the court. There is no general exception for cases where private matters are in issue. The court can order that a party (or more than one party) remain anonymous in appropriate cases, such as where the claimant is being blackmailed *(NPV v QEL)*. This is called an anonymised injunction.

This is to be contrasted with a super-injunction, which is the most draconian form of interim injunction and restrains a person from:

- publishing information which concerns the claimant and is said to be confidential or private, and
- publicising or informing others of the existence of the interim injunction and the proceedings

If the proceedings are anonymised, and an injunction is granted restraining disclosure or publication of the private information, there is generally no reason in principle to grant a super-injunction, ie to prohibit, in addition, any reporting of the fact that an order has been made *(Donald v Ntuli)*. It will only be in the rarest cases that an interim injunction containing a prohibition on reporting the fact of proceedings (ie a super-injunction) will be justified on grounds of strict necessity *(Terry v Persons Unknown)*.

A super-injunction is only likely to be necessary to prevent the respondent or a third party being tipped-off before an injunction could be served on the alleged wrongdoer, possibly precipitating

References:
Donald v Ntuli [2010] EWCA Civ 1276, [2010] All ER (D) 170 (Nov)

Terry (formerly LNS) v Persons Unknown [2010] EWHC 119 (QB) at para [141], [2010] All ER (D) 197 (Jan)

Practice Guidance: Interim Non-Disclosure Orders, para 15

disclosure of the information or destruction of evidence (*Terry v Persons Unknown; G v Wikimedia; DFT v TFD*).

In light of the Court of Appeal's decision in *Donald v Ntuli*, 'super-injunctions' should almost always only be granted for a short period, in order to facilitate effective service of the injunction or to maintain secrecy pending an on-notice hearing of the interim injunction application. The circumstances in which they will be granted for a longer period will be extremely limited.

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

Where the court orders the name of a party to be revealed, that will mean that significantly less information about the proceedings can be published than if the proceedings had been anonymised. Conversely, if the claimant is granted anonymity, it will be almost always appropriate to publish more details of the proceedings than if the claimant is identified (*JIH v News Group Newspapers*).

While the judgment in *JIH* emphasises the fact-sensitive nature of the issue, Lord Neuberger appeared to consider that the court would generally prefer to disclose details of the proceedings and the nature of the information and anonymise the claimant's name. However, in *YXB v TNO*, Warby J observed that there was no rule that one approach was to be preferred over another and each case turns on its own facts.

Respondent unknown

In cases where the claimant does not know the name of the respondent, the claimant can obtain relief against 'unknown persons' identified by description and/or reference to the acts they may perform (*X v Persons Unknown*, *Bloomsbury Publishing Group v News Group Newspapers*). Such an order is known as a 'John Doe' order. It is essential that the description is precise and apt so as to cover adequately and only those against whom the application is targeted. For example, 'persons unknown who have threatened to reveal private information about the claimant' or 'persons unknown who have disclosed confidential information about the state of the claimants' personal relationship and any marital difficulties' or, in a harassment context, 'persons unknown responsible for taking photographs of the claimants outside their home and in the street on [date]'. The court also has a power to include within an injunction a requirement that the party threatening unlawful publication 'hiding behind anonymity' identifies themselves and provides an address for service (known as a self-identification order) (*PML v Persons Unknown* and *NPV v QEL*).

Injunctions against the world

It is rare for such an order, known as an injunction contra mundum, to be justified. An example is where the threatened wrong poses a risk to life and/or the threat is widespread. In such a case, the order will be framed in terms which prohibit 'any person with notice of this order' from doing the prohibited acts. *See Carr v News Group Newspapers* [2005] EWHC 971 (QB) (not reported by LexisNexis®).

Causes of action

The law relating to harassment may also provide a remedy for invasion of privacy in certain circumstances. The courts commonly grant injunctions to prevent harassment, in tandem with injunctions to prohibit the disclosure of information which is said to be private and confidential. See, for example, *SKA v CRH*, *EWQ v GFD* and *Brand v Berki*.

The inclusion of a claim in copyright, where available, may sometimes offer advantages. For example, it may be easier to demonstrate a probability of success at trial (see *Rocknroll v News Group Newspapers*). The disclosure may involve defamatory imputations on the claimant giving rise to a potential claim in libel. However, claimants need to exercise caution to avoid the contention that a claim in privacy is being advanced to disguise what is in substance a claim to protect reputation, in order to evade the more restrictive rules that apply to interim injunctions for defamation (see *Terry v Persons Unknown* and *McKennitt v Ash*).

References:
Terry (formerly LNS) v Persons Unknown [2010] EWHC 119 (QB) at paras [138]–[141], [2010] All ER (D) 197 (Jan)

G v Wikimedia Foundation [2009] EWHC 3148 (QB) at para [41], [2009] All ER (D) 92 (Dec)

DFT v TFD [2010] EWHC 2335 (QB), [2010] All ER (D) 103 (Oct)

Donald v Ntuli [2010] EWCA Civ 1276 at para [54], [2010] All ER (D) 170 (Nov)

JIH v News Group Newspapers [2011] EWCA Civ 42 at paras [25], [33]-[35], [39], [2011] 2 All ER 324

YXB v TNO [2015] EWHC 826 (QB) at para [15], [2015] All ER (D) 285 (Mar)

X v Persons Unknown [2006] EWHC 2783 (QB)

Bloomsbury Publishing Group v News Group Newspapers [2003] EWHC 1205 (Ch), [2003] 3 All ER 736

PML v Persons Unknown [2018] EWHC 838 (QB) at para [17]

NPV v QEL [2018] EWHC 703 (QB)

OPQ v BJM [2011] EWHC 1059 (QB), [2011] All ER (D) 226 (Apr)

SKA v CRH [2012] EWHC 2236 (QB), [2012] All ER (D) 20 (Aug)

EWQ v GFD [2012] EWHC 2182 (QB), [2012] All ER (D) 48 (Aug)

Brand v Berki [2014] EWHC 2979 (QB), [2014] All ER (D) 99 (Sep)

Rocknroll v News Group Newspapers [2013] EWHC 24 (Ch), [2013] All ER (D) 98 (Jan)

Terry (formerly LNS) v Persons Unknown [2010] EWHC 119 (QB) at paras [95] and [123]

McKennitt v Ash [2006] EWCA Civ 1714, [2008] QB 73 at para [79]

For more information about claims for copyright infringement and defamation, see Practice Notes:

- **Copyright infringement**, and
- **Defamation**

Undertakings by the claimant

A claimant will need to be advised of the undertakings that will be required of them, namely to issue proceedings (if not already issued), to give a cross-undertaking in damages to the respondent and any person notified of the order, to verify factual assertions relied on in support of the application and to serve the application documents and order. These will need to be incorporated in the draft order placed before the judge.

Public domain proviso

Any order restricting freedom of expression should generally contain a public domain proviso directed to matters already in the public domain, ie a statement that nothing in the order should of itself prevent any person publishing 'any information or image already lawfully in the public domain'. Orders will not usually, but may sometimes in cases of private information, prohibit publication of material which is already in the public domain *(Terry v Persons Unknown)*.

Where personal or intrusive photographs are concerned, a public domain proviso will usually be inappropriate, save where the material is in the public domain to such an extent that an injunction would make little practical difference *(Mosley v News Group Newspapers)*. A public domain proviso may also be inapplicable in circumstances where publication is restrained despite a substantial amount of material having been in the public domain; in other words, where the interim injunction was granted to prevent further intrusion from further disclosures of the personal information (see *PJS v News Group Newspapers* for a decision where that was the case).

Family and friends proviso

What has become known as a 'family and friends' proviso, although not contained in the Model Order annexed to the **Practice Guidance: Interim Non-Disclosure Orders**, is now commonly inserted into orders permitting disclosure on a confidential basis to professional advisers, family and close friends or individuals named in a confidential schedule (see, for example, *BUQ v HRE* and *EWQ v GFD*).

Consent orders

Interim injunctions which contain derogations from the principle of open justice cannot be granted by consent of the parties as the parties cannot waive or give up the rights of the public at large to open justice.

Where the parties are in agreement regarding the strict necessity to derogate from the general principle, as is sometimes the case where injunctive relief is sought to protect private and confidential information pending trial, it is incumbent on the court to assess necessity and to do so with as much scrutiny as it would on a contested application.

The parties to an application for a consent order must ensure that they provide the court with any material it needs to be satisfied that it is appropriate to make the order. A letter will generally be acceptable for this purpose.

Return date and active case management

Unless the court orders otherwise, the order must provide for a specific return date if the application was made without notice to ensure that the court can monitor the claim's progress.

The return date can be dealt with by the court on the papers, provided that sufficient material is before the court to enable effective case management to take place.

The **Practice Guidance: Interim Non-Disclosure Orders** stresses the importance of active case management, particularly as non-disclosure orders restrict the exercise of Article 10 of the ECHR. This includes:

References:
Practice Guidance: Interim Non-Disclosure Orders, Model Order, Sch B

CPR PD 25A, para 5.1

Terry (formerly LNS) v Persons Unknown [2010] EWHC 119 (QB) at para [50]

Mosley v News Group Newspapers [2008] EWHC 687 (QB) at para [36], [2008] All ER (D) 135 (Apr)

PJS v News Group Newspapers [2016] UKSC 26

BUQ v HRE [2012] EWHC 774 (QB), [2012] All ER (D) 78 (Apr)

EWQ v GFD [2012] EWHC 2182 (QB), [2012] All ER (D) 48 (Aug)

Practice Guidance: Interim Non-Disclosure Orders, para 16

References:
CPR PD 23A, para 10.4

References:
CPR PD 25A, para 5

Practice Guidance: Interim Non-Disclosure Orders, paras 37–41

Practice Guidance: Interim Non-Disclosure Orders, para 39

Practice Guidance: Interim Non-Disclosure Orders, para 41

- ensuring that a return date is specified in the order
- maintaining the return date wherever possible
- requiring the applicant to inform the court at the return date which, if any, non-parties have been served with any order granted at an earlier, without notice hearing
- dismissing the substantive action or proceeding to summary judgment if circumstances warrant it

The court has declined to make an interim non-disclosure order where the order sought did not provide for case management to bring the matter either to trial or to final determination by agreement.

Where a case is not progressed in accordance with the CPR, the parties will need to show the court why the injunction should continue (*JIH*). This point was emphasised by Tugendhat J in *AVB*, where he declined to make an order on the basis that there was no provision in the draft order for directions, or any time limit for the undertakings which the parties were to give. The parties submitted a further draft order containing directions to progress the case and a date for expiry of the undertakings, if not renewed or discharged prior to that date.

Evidence

The onus is on the claimant to satisfy the court that an interim injunction is justified. Any injunction to restrain publication engages Article 10 of the ECHR. The claimant must therefore satisfy the court:

- that there is a threat of publication sufficient to justify the court's intervention
- (looking ahead to the trial) that the claimant is 'likely to establish that publication should not be allowed', with the word 'likely' meaning 'more likely than not'. However, this is flexible when the adverse consequences of publication might be extremely serious or where the only way of doing justice is to grant an injunction for a short period so that the application can be argued on better evidence

The evidence must set out the facts on which the claimant relies for the claim being made against the respondent, including all material facts of which the court should be aware. Evidence should be given directly by the claimant or should be collected and verified by a solicitor. If the claim turns on the impact on third parties (eg the claimant's family), they should, if practicable, give evidence for themselves (see *Terry v Persons Unknown*, *Hutcheson v News Group Newspapers*, *BUQ v HRE*).

If, for example, there was insufficient time to obtain direct evidence from the claimant or those whose rights are relied upon for a without notice application, the Court will expect an undertaking to provide it at the return date; and if it is not adduced, will expect an explanation *(YXB v TNO)*.

The evidence must also set out the justification for any other subsidiary orders sought, in addition to the substantive relief, such as anonymity, hearing in private or restricting access to the court file *(G v Wikimedia)*. Where the application is made urgently, the evidence must also explain why notice could or should not be given (see **Urgent applications** and **Notice of application** above).

Access to the court file

A wide order to seal the court file under **CPR 5.4C** is not always necessary. Often sufficient protection to the claimant can be given if there is an order for the anonymity of the claimant, and for statements of case and witness statements to include any private or confidential information in a separate confidential schedule. The order under **CPR 5.4C** can then be confined to the confidential schedule. If the statements of case and witness statements cannot be made anodyne by use of a confidential schedule, the court will restrict access to the court file (*Terry v Persons Unknown*, *ABC v Y*, and the Model Order in the **Practice Guidance: Interim Non-Disclosure Orders**, para 4).

References:
Practice Guidance: Interim Non-Disclosure Orders, paras 37 and 41

JIH v News Group Newspapers [2011] EWCA Civ 42, [2011] All ER (D) 234 (Jan)

AVB v TDD [2013] EWHC 1705 (QB)

BUQ v HRE [2012] EWHC 774 (QB), [2012] All ER (D) 78 (Apr)

Hutcheson v News Group Newspapers [2011] EWCA Civ 808, [2011] All ER (D) 172 (Jul)

Terry (formerly LNS) v Persons Unknown [2010] EWHC 119 (QB), [2010] 2 FLR 1306

YXB v TNO [2015] EWHC 826 (QB), [2015] All ER (D) 285 (Mar)

HRA 1998, s 12(3)

Cream Holdings Ltd v Banerjee [2005] 1 AC 253

ABC v Telegraph Media Group Ltd [2018] EWCA Civ 2329

NPV v QEL [2018] EWHC 703 (QB)

CPR PD 25A, para 3.3

Terry (formerly LNS) v Persons Unknown [2010] EWHC 119 (QB) at para [66]

Hutcheson v News Group Newspapers [2011] EWCA Civ 808 at para [47], [2011] All ER (D) 172 (Jul)

BUQ v HRE [2012] EWHC 774 (QB) at para [67], [2012] All ER (D) 78 (Apr)

YXB v TNO [2015] EWHC 826 (QB) at para [18], [2015] All ER (D) 285 (Mar)

G v Wikimedia Foundation [2009] EWHC 3148 (QB) at para [19], [2009] All ER (D) 92 (Dec)

Terry (formerly LNS) v Persons Unknown [2010] EWHC 119 (QB) at para [16]

ABC v Y [2010] EWHC 3176 (Ch) at paras [8]–[10]

Binding non-parties

The injunction should be served on any third parties the claimant wishes to restrain so that they are on notice of its terms (see: **Notice of application** above). A third party, on notice of the terms of an interim injunction, is bound by the terms of the injunction and would be guilty of contempt were it to perform any act that undermined the purpose of the order, known as 'the Spycatcher principle' *(Attorney-General v Times Newspapers; Attorney-General v Newspaper Publishing)*.

The Spycatcher principle does not apply to final injunctions (ie one made at trial following the final determination of the parties' substantive rights), which only bind those against whom they are made, and therefore any person the claimant wishes to permanently injunct must be joined to the application as a respondent (*Jockey Club v Buffham*, but see also *Hutcheson v Popdog* in which it was said that it cannot be safely assumed that the *Jockey Club* decision would be approved by the Court of Appeal if it fell to consider the issue).

References:
Attorney-General v Times Newspapers [1992] 1 AC 191

Attorney-General v Newspaper Publishing [1988] Ch 333

Jockey Club v Buffham [2002] EWHC 1866 (QB), [2003] QB 462, [2002] All ER (D) 65 (Sep)

Hutcheson v Popdog [2011] EWCA Civ 1580 at para [26]

Practice Guidance: Interim Non-Disclosure Orders, para 36

Explanatory note

In order to protect the claimant's privacy interests, where a claimant is to provide a non-party with advance notice of an application (or notifies a non-party of an order), the claimant should first provide the non-party with a copy of an explanatory note (see the Model Order in the **Practice Guidance: Interim Non-Disclosure Orders**).

Then, provided the non-party is willing to provide an irrevocable written undertaking to limit use of the materials for the purpose of considering whether to contest the order, the claimant can supply the application and supporting documentation specified in **CPR PD 25A, para 9** (see **Practice Guidance: Interim Non-Disclosure Orders**, paras 24–28 and the Model Order, which provides a standard form wording for the undertaking).

Continuing duty

The **Practice Guidance: Interim Non-Disclosure Orders** emphasises the continuing duty of the applicant to keep the respondent and all non-parties bound by the order informed of developments in the proceedings which affect the status of the order. This is to satisfy **CPR 1.3** as well as any specific obligations which may have been imposed by the court. If the order ceases to have effect, the applicant must notify any non-parties served of that fact.

Hearing of application in private

The general rule is that hearings are carried out in public.

Applications for interim injunctions will only be heard in private if and to the extent that the court is satisfied that by nothing short of exclusion of the public can justice be done. When considering the imposition of any derogation from open justice, the court will have regard to the respective competing rights of the parties under the ECHR as well as the general public interest in open justice and in the public reporting of court proceedings. Excluding the public and any reporting restrictions must be no more than the minimum strictly necessary and proportionate. Circumstances where it has been held necessary include where publicity would defeat the object of the hearing, the hearing involves confidential information and publicity would damage that confidentiality, and where serious allegations are made against a respondent who has not previously been identified publicly and it would be unjust for there to be a public hearing (**CPR 39.2(2)** (a) and (e)).

The correct approach to be applied is set out in *JIH v News Group Newspapers*. See also **Practice Guidance: Interim Non-Disclosure Orders**, paras 9–15.

Parties are expected to consider before applying for a hearing in private whether something short of exclusion can meet their concerns *(Ambrosiadou v Coward)*.

References:
CPR 39.2(1)

Hemsworth (formerly SWS) v DWP [2018] EWHC 1998 (QB)

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

JIH v News Group Newspapers [2011] EWCA Civ 42 at para [21]

Ambrosiadou v Coward [2011] EWCA Civ 409 at paras [50]–[54], [2011] All ER (D) 108 (Apr)

Restraint on reporting of hearing

References:
Brand v Berki [2014] EWHC 2979 (QB), [2014] All ER (D) 99 (Sep)

The fact that a hearing takes place in private does not of itself make disclosure of information about the hearing a contempt of court. Often the injunction sought will have that effect but not always. If the injunction is refused there may nevertheless be other private information deployed at the hearing which deserves protection. See, for example *Brand v Berki*, where an order was made pursuant to **section 11** of the Contempt of Court Act 1981 that, until further order, there should be no publication in connection with these proceedings of matters identified in a Confidential Schedule.

Protection of hearing papers

An order prohibiting the use or disclosure of information contained in the hearing papers is usually appropriate. The principal injunction sought may cover the sensitive information but a claimant often has to reveal further private information to support the application and it may be prudent to seek protection in respect of the claimant's own evidence and submissions (see the Model Order, clause 10, in the **Practice Guidance: Interim Non-Disclosure Orders**).

Hearing notes

References:
G v Wikimedia Foundation [2009] EWHC 3148 (QB), [2009] All ER (D) 92 (Dec)

The applicant must ensure that a full and accurate note is taken of a without-notice hearing. The note should be drafted so that anyone supplied with a copy of it is properly informed of:

- what documents were put before the court at the hearing
- which legal authorities were relied on by the applicant, and
- what the court was told in the course of the hearing

Order for speedy trial

Where time is of the essence, there may be an order for a 'speedy trial' (an expedited trial) to determine whether the injunction should be discharged or made permanent.

Non-disclosure orders information scheme

CPR PD 40F provides that the Ministry of Justice must be provided with certain data in relation to injunctive relief in civil proceedings (whether in the High Court or Court of Appeal) to restrain the publication of private or confidential information. The Ministry of Justice will collate and publish (in anonymised form) information about applications for non-disclosure orders where **section 12** of the HRA 1998 is engaged.

The legal representatives for the claimant and defendant will agree the information to be included in the **Privacy Injunctions Statistics Form** in the Annex to the **CPR PD 40F**. The information required to be recorded on the form is listed in **CPR PD 40F, para 4**.

This should then be sent by the claimant's legal representatives to the judge or judge's clerk. The judge will review and record the above information in a final version of the form, which they will send or cause to be sent to the Chief Statistician to the Ministry of Justice for analysis and publication in an anonymous form.

The scheme does not apply to proceedings in which the Family Procedure Rules 2010, **SI 2010/2955** or the Court of Protection Rules 2017, **SI 2017/1035** apply, to immigration or asylum proceedings, to proceedings raising issues of national security or to proceedings to which Part 21 applies.

For more information, see Practice Note: **Non-disclosure orders information scheme**.

Appeal

References:
Practice Guidance: Interim Non-Disclosure Orders, para 46

Any appeal from an interim injunction may be expedited.