IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/07/2005

Before :

THE HON. MR JUSTICE EADY

- -

Between :

A	**Claimant**
- and -	
1. B	**Defendants**
2. C	
3. D	

- -
- -

Richard Spearman QC (instructed by **Schillings**) for the Claimant
David Sherborne (instructed by **Mishcon de Reya**) for the first Defendant
Andrew Caldecott QC and Catrin Evans (instructed by **Reynolds Porter Chamberlain**) for the second and third Defendants

Hearing dates: 15th and 16th June 2005

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE EADY

Mr Justice Eady :

The Claimant's application

1. The Claimant ("A") seeks an injunction against the publishers of a magazine to restrain publication in this jurisdiction, whether by way of an on-line version of its United States edition or by way of the United Kingdom edition in hard copy, of allegations about his personal life on the ground that they could properly be characterised as confidential information. The publishers of the US edition and of the UK edition are "D" and "C" respectively. The hearing was very much a last minute affair and seemed to develop as it went along. It began as an application for relief against A's wife ("B") to restrain her from communicating such allegations on the basis that she had given an interview to a journalist with a view to publication in the next edition of the magazine, primarily about herself and her business activities, but which apparently touched upon A in certain respects.

2. It is not possible for the Court to know precisely in what respects the article will contain allegations against A because no transcript of the interview is available and, unsurprisingly, the publishers of the magazine were not prepared to reveal what passed between them or, save to a limited extent, the content of the proposed article. On the second day of the hearing Mr Caldecott QC was in a position to pass on instructions from his clients with the intention of allaying some of A's concerns and, in particular, indicating a number of areas of his past activities which were *not* to be covered.

3. At 2 p.m. on 15th June 2005 Mr Spearman QC for the Claimant launched his application by reference to evidence and correspondence primarily directed to the remedy sought against his client's wife, but it gradually emerged that for reasons of time pressure he needed to focus on the publishers because the relevant edition of the magazine was about to go to press. His original intention had apparently been to obtain an injunction against his wife and then to serve copies upon the publishers, hoping thereby to restrict their article 10 rights indirectly by reliance upon the *Spycatcher* principle: see e.g. *Att.-Gen. v Times Newspapers Ltd* [1992] 1 AC 191.

4. Although the application was made without formal notice, the solicitors for B and those representing the publishers had been informed that the hearing was to take place. Accordingly, Mr Sherborne appeared for B and, at very short notice, Mr Caldecott QC and Ms Evans for the publishers.

5. After Mr Spearman had been addressing the Court for about an hour, Mr Sherborne asked for clarification as to the relief sought. It was at this point that it was recognised by Mr Spearman that he needed to concentrate on the publishers; indeed, B had already indicated, through solicitors, that she had no intention of revealing any information which could be classified as confidential. Mr Sherborne therefore chose to remain primarily as an observer. Mr Caldecott, for the publishers, found himself in an unusual position because, although the focus was now upon his clients and their imminent publication, it remained the case that (i) they had not been served with the proceedings or any application notice (even in draft form), and (ii) they had not seen any of the evidence relied upon.

6. Mr Spearman explained his dilemma. The exhibits to his client's witness statement included statements of A and B used in matrimonial proceedings pending between them. Mr Spearman was seeking permission from the Court to rely on those documents in the present proceedings for various reasons, including particularly (a) that he wished to show the nature of the allegations in the matrimonial proceedings in order to illustrate some of the confidential material his client needed to protect, and (b) that some of the allegations he apprehended were to be published in the magazine bore a close resemblance to evidence given by his wife in those proceedings, thus suggesting (he submitted) that she might very well be the source. Mr Spearman was reluctant, however, to pass that information to Mr Caldecott's clients unless suitable undertakings were received. Mr Caldecott made it plain, however, that he would rather not see those documents and, for the time being at least, was content to have the other evidence without those exhibits.

7. By that stage, because of interruptions in connection with a quite different case, it was 4.50 p.m. and the Court adjourned until 11.15 a.m. on 16th June. Meanwhile, Mr Caldecott had obtained information from his clients to the effect that the US edition of the magazine would need to go to press by approximately 5 p.m. that day (UK time) but that the UK edition would probably not need to be printed for another ten days. That apparent leeway, however, was less reassuring than might appear since not only did the publishers wish to have the UK edition correspond to the content of the US edition but also, once the US edition had crystallised, that was the form in which the on-line edition would be made available, including within the United Kingdom.

8. It was thus obvious that the application still had to be made on an urgent basis, which placed the advocates under rather severe time constraints. What is more, the publishers had not been given adequate notice to respond, if they so wished, by evidence. This factor of delay can be important when the court is asked to grant equitable relief, although Mr Caldecott did not seek to place great emphasis upon it. He regarded it simply as one matter to be taken into account. He preferred to rely on objections of more substance.

9. There is also the important consideration that the court was being asked to circumscribe the publishers' freedom of expression. That has always been regarded as a step that the court is reluctant to take and, to justify the making of such an order, evidence is required to demonstrate that it is a necessary step and that it would be effective for the purpose of protecting some countervailing right on the part of the relevant claimant. Obviously, if the order would have only a limited effect in achieving the claimant's objective it is likely to be argued that the relief sought is not going to be proportionate to the restriction upon the defendant's article 10 rights. These principles have been reinforced in recent years by the jurisprudence of the European Court of Human Rights and, in particular, by the requirements of s.12 of the Human Rights Act 1998 which has recently received the attention of appellate courts, including in *Cream Holdings Ltd v Banerjee* [2005] 1 AC 253, *Greene v Associated Newspapers Ltd* [2005] 1 All ER 30 and *Re S (FC)* [2005] 1 AC 593.

10. I am conscious that the step I am invited to take is a very serious one. There is the added complication that the US publishers are not within the jurisdiction of the Court, not only in the geographical sense but also because they have not been served with English process – let alone submitted to the jurisdiction. Nor have they committed any relevant tort within England and Wales. There is an English company within the

jurisdiction (C), but any relief granted against that entity would not necessarily be effective to prevent publication in this jurisdiction, or indeed anywhere else, of the US edition on-line. It is the intention of the Claimant to join both companies nevertheless and, in the case of the foreign corporation, to rely upon the provisions of CPR 6.20(2) which enables the court to order service out of the jurisdiction, in a proper case, where a claim is made for an injunction to restrain an act within the jurisdiction.

11. It is necessary now to focus on the relief sought against the background circumstances in which Mr Spearman came to make his application. By the conclusion of proceedings on the first day, he had still not reduced into writing the terms of the injunction he was seeking against the publishers, but merely indicated that it was broadly analogous to that hitherto formulated in the application against B. Mr Caldecott pointed out that this was hardly apt for the purposes of a claim against his clients for a number of reasons. It was, in part, drafted by reference to information obtained by B by virtue of her marriage and was, in any event, cast in very broad and what purported to be "catch all" terms. It is elementary that any defendant is entitled to know with as much precision as possible what it is that he or she is restrained from doing. More specifically, it was Mr Caldecott's submission that to purport to restrain the publication of information merely as "confidential" or as "having been obtained by virtue of marriage", or words to that effect, is simply too vague to be effective.

What does the Claimant need to establish?

12. It is also elementary that the court must be persuaded before granting *quia timet* relief (by way of what Blackstone called "previous restraint") that there is evidence, at least in general terms, of what it is that the defendant is likely to publish. In this instance, it would be necessary to show that the publishers of the magazine are intending to publish information falling within the scope of confidential information, as that notion is currently interpreted in England and Wales in the rapidly developing jurisprudence on how to give effect to rights of privacy protected under article 8 of the European Convention on Human Rights: see e.g. *Campbell v MGN Ltd* [2004] 2 AC 457 and *Douglas v Hello! Ltd* [2005] EWCA Civ 595. At the risk of over-simplification, it would be necessary here that the Claimant demonstrate at the outset that the publishers are about to reveal in their magazine personal information in respect of which he has a reasonable expectation that it should remain private. The burden is squarely upon the Claimant to establish those matters to the required standard. It is not for the Defendants to reveal anything about their plans beyond what they wish to reveal. As Lord Donaldson MR observed in *Leary v BBC*, 29th September 1989, CA (unreported):

> "I am very concerned that no-one should think that on a speculative basis you can go to the courts and call upon the publisher of printed material or television or radio material to come forward and tell the court exactly what it is proposed to do, and invite the court to act as censor. That is not the function of the court."

13. It is also necessary, in the light of *Cream Holdings*, that the Claimant should persuade the Court that it is more likely than not that he would succeed at trial in obtaining a remedy in respect of the relevant information or that the circumstances fall within one of the exceptional categories contemplated by Lord Nicholls at [22]:

> "… There will be cases where it is necessary for a court to depart from this general approach and a lesser degree of likelihood will suffice as a prerequisite. Circumstances where this may be so include those mentioned above: where the potential adverse consequences of disclosure are particularly grave, or where a short-lived injunction is needed to enable the court to hear and give proper consideration to an application for interim relief pending the trial or any relevant appeal".

Mr Spearman submits that, if he has to, the Claimant can demonstrate in the light of his evidence that "the potential adverse consequences of disclosure are particularly grave". I shall return to this factor in due course.

14. Important though these considerations are, they need to be addressed, as a matter of logic, a little further down the line. As a preliminary step, it is for the Claimant to demonstrate that an actionable publication is about to take place. That is to say, in the present context, that he has a reasonable expectation of privacy in respect of personal information which the publishers are about to include in their magazine.

15. The application takes place against a particular background which is not exactly reflected in any of the earlier cases. That does not necessarily matter because it is increasingly the trend, in the light of European jurisprudence, to apply (in a phrase of Lord Steyn's from *Re S*) "an intense focus" to the facts of the particular case when considering "the ultimate balancing exercise" between competing Convention rights, such as those enshrined in articles 8 and 10. While recognising this, Mr Caldecott makes the important point that it is for the Claimant first to establish that there is such a tension – in other words, that the publishers' undoubted article 10 rights do come into conflict with an identifiable article 8 right on the part of the Claimant. Mr Caldecott submits that A is unable to pass that threshold test.

The relevance of the Claimant's own revelations of personal information

16. An important consideration when assessing the background of this case is that the Claimant has himself made public through the media a great deal of information that might usually be considered as falling within the protection afforded to private or personal information, including matters concerning B and the child of the marriage. Mr Caldecott submits that this conduct is highly material to the question of whether the Claimant has a reasonable expectation of privacy in relation to any proposed publication touching upon the subject-matter in respect of which he has already revealed such information. It is also material to the closely related question of what is, and what is not, in the public domain. That is of immediate concern because it is clear, as Mr Spearman acknowledges, that any order the court grants should have incorporated within what is now called a "public domain proviso": see e.g. *Kelly v BBC* [2001] Fam 59 at 93 (Munby J); *Att.-Gen. v Times Newspapers Ltd* [2001] 1 WLR 885, CA, and *Harris v Harris; Att.-Gen. v Harris* [2001] 2 FLR at [208] (Munby J).

17. It was in this context that Mr Spearman drew my attention to two principles which seem to have emerged in the recent authorities:

i) In the context of personal information, which is treated differently in this respect from confidential information of a commercial nature, the fact that something has been published does not necessarily mean that further revelation cannot itself infringe the claimant's right to protect his privacy. That is especially the case perhaps where it is the defendant who has himself put the information into the public domain in the first place and would otherwise be enabling himself to profit from his own wrong: see e.g. *Att.-Gen. v Guardian Newspapers (No. 2)* [1990] 1 AC 109.

ii) Where it is the claimant who has chosen to put personal information into the public domain, even though it may be such as to attract *prima facie* the protection of the law, it does not necessarily follow that it is open season for the media to publish any other information pertaining to the same subject-matter: see e.g. *Douglas v Hello!* [2005] EWCA Civ 595. Individuals are permitted some degree of control over how much they choose to reveal.

Those are important matters which I need to bear in mind.

18. It emerges from the correspondence which I have been shown that the relevant journalist contacted the Claimant on 8th June in order to ask questions in relation to certain specific areas. Undertakings were sought not to publish matters in those categories, on the basis that it was anticipated that, whether he answered the queries or not, there would be publications of some kind on that subject-matter. It was at that stage assumed that the information came from B. Some of it, however, appeared to relate to earlier material revealed by the Claimant in published articles in the *Evening Standard* and *The Tatler*.

19. Mr Caldecott highlighted at the outset of his submissions the importance of keeping clearly in mind throughout the two separate questions of (i) whether article 8 is engaged at all and, if so, (ii) whether an interim injunction should be granted to protect A's rights having regard to proportionality. The two stages are quite distinct: see e.g. the observations of Lord Nicholls in *Campbell* at [20]-[21].

20. A major difference of principle between the parties was whether the Claimant's incursions into the public domain in respect of his private affairs were relevant to the first stage or only to the second. Mr Spearman submitted that the subject-matter of the proposed article was clearly such as to fall within the category of information which the Claimant was reasonably entitled to expect would be afforded protection by the developing law of privacy and confidence. His client's article 8 rights were, he submitted, plainly engaged.

21. Mr Caldecott, on the other hand, argued that the Claimant's own intimate revelations should be taken into account in determining whether it was reasonable for him to expect information of the relevant kind *still* to be protected. It would not suffice to pass the stage one threshold that the information fell, in general terms, in certain categories. That would mean that everyone would pass that test automatically and the only scope for differentiation between individual applicants would arise at the stage of assessing proportionality. No one doubts that at any rate most of the categories which give rise to the Claimant's concern in this case would be such as to attract *prima facie* the protection of the law. The critical question for stage one appears to me to be whether *the Claimant* has a reasonable expectation that such information should be

protected. That depends to a large extent upon his own circumstances and conduct. I agree therefore with the thrust of Mr Caldecott's submission.

22. I do not take the argument to entail that article 8 is not engaged at all. I would rather construe Mr Caldecott's submission as being directed towards whether the Claimant's *prima facie* right to the protection of such information has been displaced by his own conduct, in the sense that it has rendered it no longer reasonable for that protection to be maintained by legal process. It is by no means clear that this should necessarily be analysed in terms of a doctrine of waiver: see e.g. the discussion in Tugendhat and Christie, *The Law of Privacy and the Media* (OUP), 2002, at 9.29–9.37. Such authority as there is rather suggests that the situation is to be judged not by out and out waiver but according to the particular circumstances of the case. It was observed, for example, in *A v B plc* [2003] QB 195 that "if you have courted public attention then you have less ground to object to the intrusion that follows". As a general statement, that is surely unobjectionable, but I would not accept that the law supports the proposition sometimes advanced by journalists, for obvious reasons, to the effect that those who live in the spotlight of publicity, or actively seek it out, are thereby automatically deprived of the protection of privacy accorded to other citizens. As was also noted in *A v B plc* at [11(xii)], "a public figure is entitled to a private life".

23. It is consistent with European jurisprudence and with more recent decisions within this jurisdiction, such as *Douglas v Hello! Ltd* (cited above), to take into account the voluntary revelations on a case by case basis in determining whether any particular information is such that the claimant can any longer *reasonably* expect to keep it private. This question is likely to involve considerations such as whether, for example, the particular piece of information has itself already been published, whether similar instances of behaviour have already been out in the public domain, whether the claimant has made allegations involving other persons and, in particular, their personal lives so that it would be reasonable for such other persons to give another side of the story.

The precise terms of the order sought against C and D

24. On the morning of 16th June Mr Spearman presented Mr Caldecott with the wording of the primary order he was seeking against his clients:

> "2. Until Trial or further Order in the meantime the Second and Third Defendants and each of them must not publish any details relating to the Claimant's health, medical history, past or present medical condition or treatments, sexual life, finances, drug use, drug rehabilitation, alleged involvement in telephone bugging or computer hacking, childhood, relationship with and marriage to the First Defendant, relationship with the child of his marriage to the First Defendant, and the divorce proceedings between the First Defendant and the claims made in those proceedings (save details which have already been published in the news media) and must not cause or authorise any other person, firm or company to do any of those acts".

Mr Caldecott's first submission was that this was hopelessly wide.

The applicable principles of law

25. He said that his clients were now presented with "the devil" rather than, as on the first day, "the deep blue sea". He emphasised that the protection of article 8 does not extend to everything that is not in the public domain. There must be something which has the quality of confidence about it in order to give rise to a reasonable expectation of privacy for personal information. Before even needing to address the second (or "proportionality") stage, the Claimant needed to pass the threshold test. This he was unable to do. In order to satisfy the "reasonable expectation" test, Mr Spearman needed to focus not merely on the subject-matter of the proposed revelation, in broad terms, but had rather to demonstrate that he had a reasonable expectation in the circumstances confronting the court.

26. Mr Caldecott relied particularly in this context upon the following passage in the speech of Lord Nicholls in *Campbell v MGN Ltd* at [25]-[26]:

> "… it is important to note this is a highly unusual case. On any view of the matter, this information related closely to the fact, which admittedly could be published, that Miss Campbell was receiving treatment for drug addiction. Thus when considering whether Miss Campbell had a reasonable expectation of privacy in respect of information relating to her attendance at Narcotics Anonymous meetings the relevant question can be framed along the following lines: Miss Campbell having put her addiction and treatment into the public domain, did the further information relating to her attendance at Narcotics Anonymous meetings retain its character of private information sufficiently to engage the protection afforded by article 8?
>
> I doubt whether it did. Treatment by attendance at Narcotics Anonymous meetings is a form of therapy for drug addiction which is well known, widely used and much respected. Disclosure that Miss Campbell had opted for this form of treatment was not a disclosure of any more significance than saying that a person who had fractured a limb has his limb in plaster or that a person suffering from cancer is undergoing a course of chemotherapy. Given the extent of the information, otherwise of a highly private character, which admittedly could properly be disclosed, the additional information was of such an unremarkable and [in]consequential nature that to divide the one from the other would be to apply altogether too fine a toothcomb. Human rights are concerned with substance, not with such fine distinctions".

27. My attention was also drawn to the following passages in the speech of Lord Hoffmann at [57] and [66]:

> "A person may attract or seek publicity about some aspects of his or her life without creating any public interest in the publication of personal information about other matters. I think that the history about Ms Campbell's relationship with the

> media does have some relevance to this case, … but that would not without more justify publication of confidential personal information.
>
> … It is only in connection with the degree of latitude which must be allowed to the press in the way it chooses to present its story that I think it is relevant to consider Ms Campbell's relationship with the media. She and they have for many years both fed upon each other. She has given them stories to sell their papers and they have given her publicity to promote her career. That does not deprive Ms Campbell of the right to privacy in respect of areas of her life which she has not chosen to make public. But I think it means that when a newspaper publishes what is in substance a legitimate story, she cannot insist upon too great a nicety of judgment in the circumstantial detail with which the story is presented".

28. In the light of these statements, Mr Caldecott submits first that, once a claimant has chosen to exercise his own article 10 rights, so as to introduce potentially private or personal information into the public domain, the reasonableness of his expectation of continuing protection must be judged in that particular context. Secondly, in identifying the scope of material within the public domain, once such a claimant has chosen to lift the veil on his personal affairs, the test will be "zonal"; that is to say, the court's characterisation of what is truly in the public domain will not be tied specifically to the details revealed in the past but rather focus upon the general area or zone of the claimant's personal life (e.g. drug addiction) which he has chosen to expose. Both these considerations are germane to the present case.

29. It so happens that A too, like Miss Campbell, has revealed information through press interviews about his drug addiction and his experiences in connection with that problem. One of the categories of information in respect of which he seeks to impose restraint upon the Defendants concerns drug-related incidents in the past similar to those about which he chose to make revelations. Mr Caldecott was prepared to concede, in principle, that a drug addict, or former addict, who has chosen to speak about his past experiences is not necessarily precluded thereafter, on a once for all basis, from seeking protection in respect of other experiences. Suppose he had chosen to speak about his addiction and the unpleasant experiences he had suffered in the past, and recounted how he had overcome his addiction. If he were later to lapse, it would not necessarily follow that his new health problems would also automatically be open to media intrusion. On those hypothetical facts, his revelations would have related to a particular period in his life and would thus not cover the later lapse; nor, for that matter, would there be any question, on the facts I have posited, of the public being in any way misled by the information he had supplied.

30. Nevertheless, Mr Caldecott argues that on the facts of the present case the categories of information which his clients wish to be free to publish fall squarely within the area of A's earlier revelations; they are merely "more of the same". Moreover, if the court were to prevent publication of the new information, notwithstanding the revelations on the earlier occasions, this would involve the application of "altogether too fine a toothcomb". All these factors are relevant, submits Mr Caldecott, at the threshold

stage of determining to what extent there still remains a reasonable expectation on the Claimant's part of concealing information of this kind.

31. One has to recognise in this context that it is inherent in any communication of personal information to the public through the media that it may invite discussion. It would thus be unrealistic to confine future coverage to the precise details in the original revelations. People might wish to debate, for example, whether the revelations were accurate or whether they were so selective as to be misleading. It would be difficult to envisage circumstances in which this could be prevented on grounds of privacy.

32. Another important consideration (which is also relevant to the present case, but not determinative) is that for public policy reasons there would be powerful arguments against concealing, with the assistance of the court, information about one's criminal activities. This could not be an inflexible rule, as there *might* be circumstances in which the court would think it right for spent convictions or past acquittals not to be revealed to the general public. One example might be where the defendant was blackmailing the claimant. Nevertheless, it would be hard to justify the concealment of information about (say) domestic violence or tax evasion simply because it has taken place behind closed doors. It could hardly be categorised as information in respect of which there would be a reasonable expectation of confidentiality. Nor would the law generally imply a duty of confidence. As it used to be said, "there is no confidence in iniquity": see e.g. *Gartside v Outram* (1857) 26 L.J. Ch. 113. The courts might well baulk at assisting in the concealment of Class A drug consumption, especially if it has taken place in public. On the other hand, as Mr Spearman pointed out, the law is prepared to acknowledge in some circumstances, as the *Campbell* case illustrates, that problems of addiction may be kept private – notwithstanding that it will often be implicit in such information that illegal supply must have occurred or other offences under the misuse of drugs legislation.

33. As Lord Nicholls observed in the passage cited above, human rights are concerned with matters of substance. A similar point was made by Lord Goff in *Att.-Gen. v Guardian Newspapers (No. 2)* [1990] 1 AC 109 at 282 to the effect that the law of confidence is not concerned with the protection of useless information or trivia. This too is potentially relevant to some of the matters raised by this Claimant. Specifically in the context of health, it has been recognised that it is not every statement that will carry the badge of confidentiality or risk doing harm to the person's physical or moral integrity. To publish that someone in the public eye has a bout of flu or a broken wrist is generally likely to do no harm: by contrast, for the media to "blunder in" when treatment for drug addiction is at a fragile stage may do great harm: see e.g. *Campbell v MGN* at [157] *per* Baroness Hale. The potential to cause harm is likely to be "an important factor" for the court to weigh here, as it was in *Campbell*: *ibid.* at [118] *per* Lord Hope.

The particular categories of information the Claimant wishes to protect

34. There is no doubt that the Claimant's problems with drug addiction would constitute the most significant aspect of the material he wishes to keep secret, but Mr Caldecott went on to address all the parts of the Claimant's personal life with regard to which he seeks to restrain publication – as variously identified at different stages. He turned first to paragraph 3 of the Claimant's witness statement and contrasted the

comparative specificity of that evidence with the breadth of the injunction sought. I shall turn to consider these categories, while taking such steps as I reasonably can to minimise the risk, at least for the time being, of any parties being identified from the contents of my judgment.

35. The "type of confidential and private information" identified by the Claimant was as follows:

a) "*Medical information*": He described a particular disorder from which he was suffering and the medication he was prescribed. The Defendants, however, indicated that they did not wish to publish any of this material.

b) "*Childhood*": Reference was made to particular childhood experiences but, again, the Defendants confirmed that there was no intention to publish any information in this category. They wished, however, to reserve the right to include within the article general information relating to his childhood period which was already in the public domain.

c) "*My use of drugs during our marriage and rehabilitation process*": As I have already made clear, this was the central area of dispute between the parties for the purposes of the present application. The Claimant acknowledges certain lapses into drug use during the period of his marriage but contends, despite the coverage to which I have already referred, that "a lot of information including the effect of drugs upon me, my conduct when using drugs and details of my rehabilitation and use of N.A. meetings is not publicly known". This is the context in which Mr Caldecott urges me not to apply "too fine a toothcomb".

d) "*Sexual life*": A referred to intimate aspects of his relationship with his wife, but Mr Caldecott indicated that his clients have no wish to cover this area at all.

e) "*Financial*": The Claimant was concerned to protect information relating to his income, trust funds, general financial standing and the financial aspects of the pending divorce proceedings. Again, however, save in the most general terms, the Defendants made it clear they had no wish to go into such matters.

f) "*Matrimonial proceedings*": Save in certain very limited respects, previously identified in correspondence, and to which I shall return briefly in due course, there was no wish on the Defendants' part to include material within this category.

36. There was a "catch all" paragraph in the Claimant's statement as follows:

> "I also claim to be entitled to protect any other confidential and private information that my wife is aware of arising out of my first meeting with her … , our subsequent relationship, marriage and divorce".

This was unsatisfactory from the Defendants' point of view, since it would be impossible for them to govern their conduct by reference to an order couched in such general and vague terms. The Defendants would need to know, apart from anything else, what exactly B was "aware of". That would be impractical from their point of view.

37. In the letter of 14th June 2005, the same day on which his witness statement was signed, the Claimant's solicitors sent a letter marked "extremely urgent" to the publishers' solicitors, in which they identified a list of concerns as to information which the Defendants might be about to publish. This to some extent overlapped with the material in paragraph 3 of the Claimant's witness statement but also listed some rather more specific points. Mr Caldecott addressed each of these in turn:

    i) *The Claimant's "frequent disappearances*": The Claimant spoke extensively in earlier articles about his drug taking, where it took place, and consequent absences from his family. He also addressed the impact of these disappearances on them. Information was supplied about attendances for treatment, the identity of those treating him, and how he responded to it. Mr Caldecott made the following submissions:

        a) Drug taking in a social context could not sensibly be regarded as being personal or confidential information or as falling within the notion of marital confidence.

        b) The Claimant had already chosen to speak publicly about the impact of his drug related problems on his marriage.

        c) Information the Defendants wished to cover in the course of the article belonged to the same period of time about which the Claimant had apparently chosen to speak freely.

        d) The Claimant's position was to be contrasted to that adopted by Princess Caroline of Monaco (the subject of a recent case in the European Court of Human Rights: *Von Hannover v Germany* (2005) 40 EHRR 1) and by Mr and Mrs Michael Douglas, who had striven to keep the subject-matter of the relevant articles private. He could not thus expect reasonably to maintain the same degree of protection which the law would otherwise afford.

    ii) *The details of a particular "drug binge" in a specific location*: For the Defendants it was argued that this was not, as such, about the Claimant's addiction but about a "specific and rather disgraceful episode of drug-taking". It was merely a particular instance of his behaviour about which the Claimant had spoken in general terms.

    iii) "*Details of paranoid fantasies" in particular locations*: The Defendants did wish to publish the fact that the Claimant had paranoid fantasies, but without any description of the fantasies themselves. Since the Claimant has publicly admitted large scale drug abuse, it would hardly come as a surprise to readers that he would be likely to suffer from such fantasies. It was accepted in

argument, without any formal concession, that descriptions of his particular fantasies might be too intrusive.

iv) *The "first relapse during the marriage" on a specific trip*: Reference was made to the *Evening Standard* article, in the light of which it was submitted that the Claimant could no longer have a reasonable expectation of privacy in relation to any similar "chapter of drug-taking in the same historic period".

v) *The allegation that the Claimant "freebased and disappeared for several days at a time in different cities using [a pseudonym]" and visited a crack den*: The Defendants resist any restriction on a similar basis; namely, the information was confined to the same historic period and, furthermore, "crack" is not so qualitatively different from cocaine as to be still covered by a reasonable expectation of privacy.

vi) "*Details concerning our client's divorce proceedings*": The Defendants had no wish to go into these matters.

vii) *A promise made to his wife that he would "stay clean" during his marriage*: The Defendants submit that this cannot be the subject of protection in the light of the fact that he had himself referred to private arrangements and promises made to his wife in connection with drug taking in the course of the earlier article. This could be categorised simply as "more of the same".

viii) *Certain problems the Claimant had with his trustees and to the use of his wife's funds*: The Defendants made clear there was no intention to refer to the trustees in the article; moreover, it was submitted that there could be no objection to B referring in the article to the Claimant having used some of her money. He himself had already chosen in one of the earlier articles to go into some detail as to his personal wealth.

ix) *An incident concerning the child of the marriage*: The Defendants have no intention of referring to this.

x) *The subject of ancillary relief in the current matrimonial proceedings*: The Defendants will not be referring to the merits of the dispute but wish to reserve the right to identify in general terms the nature of the relief sought.

xi) *An allegation relating to the seizure of the Claimant's computer system*: This is said to be in the public domain, and the Defendants accordingly reserve their right to refer to it.

xii) *The subject of the Claimant's current sobriety and the fact that he visits the child of the marriage regularly*: This is said to be anodyne and complimentary and thus a matter which, in all the circumstances, could not be said to be covered by any reasonable expectation of keeping the subject-matter private.

Conclusion

38. I came to the conclusion that in the light of the evidence the Claimant had failed to establish:

i) that the second and third Defendants were proposing to publish anything in respect of which he had a reasonable and continuing expectation of privacy;

ii) that an injunction would be likely to be effective in protecting any of his rights (whether at common law or under the European Convention) or in preventing significant harm;

iii) that any of the criteria identified in *Cream Holdings* could be fulfilled.

39. It was for these reasons that I informed the parties at the close of the hearing on 16th June that the application against the relevant Defendants would be refused. Unfortunately, it was not possible for the parties to reassemble for the handing down of my reasons until today.