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*Judgment: approved by the court for handing down
(subject to editorial corrections)**

ICOS No: 21/004377

Delivered: 11/04/2025

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

KING'S BENCH DIVISION

BETWEEN:

CDP

Plaintiff

and

SNAP GROUP LTD and KBE

Defendants

**Mr Peter Girvan (instructed by Swift Solicitors) appeared on behalf
of the Plaintiff**

**Mr Peter Hopkins KC (instructed by Johns Elliott Solicitors) appeared on behalf of the
First Defendant**

**Mr Sean Mullan (instructed by Millar McCall Wylie Solicitors) appeared on behalf of the
Second Defendant**

COLTON J

Introduction

[1] By these proceedings the plaintiff seeks damages and injunctive relief against each of the defendants in respect of material allegedly posted by the second defendant who operated a pseudonymous Snapchat account. The first defendant is responsible for the platform, Snapchat, upon which it is alleged the material was published. The plaintiff's causes of action are founded on invasion of privacy, breach of data protection rights, allegations of harassment, abuse and/or blackmail perpetrated by the second defendant upon the first defendant's social media platform including by the publication of naked and disembodied digital images of the plaintiff.

History of proceedings

[2] The plaintiff has engaged in a lengthy and difficult legal process to date. A summary of the relevant chronology follows:

- 5 February 2021. The plaintiff obtains an anonymity order, reporting restrictions and a disclosure order against the first defendant.
- 15 February 2021. Writ of Summons issued in anonymised form against the first defendant and “person or persons unknown operating under the pseudonym ‘jamespatt 212’”.
- March 2021 – June 2021. The first defendant provides documents pursuant to the disclosure order. The plaintiff writes to the service providers hosting the IP address as identified in advance of a Norwich Pharmacal Order (NPO) application.
- 19 January 2022. NPOs granted against BT Group plc and UK-2 Ltd to obtain identifying information concerning the operator of the Snapchat account “jamespatt 212”. Material obtained pursuant to the orders was provided to the PSNI.
- 22 March 2022. The second defendant was arrested, interviewed under caution and released on police bail in connection with the plaintiff's criminal complaint relating to alleged unlawful activity via the Snapchat account “jamespatt 212”.
- 12 September 2022. The plaintiff was granted an order for extending the time for service of writ on the second defendant.
- 16 September 2022. Correspondence sent effecting service of the Writ of Summons on the second defendant.
- 29 September 2022. Correspondence from Millar McCall Wylie on behalf of the second defendant denying that he is the individual behind the Snapchat account.
- 31 March 2023. The plaintiff's legal aid certificate was revoked and formally suspended as she was assessed as exceeding the financial threshold for legal aid.
- 2 May 2024. An order substituting “persons unknown” with the second defendant, granting anonymity to the second defendant and permitting amendments to the Writ to include claims of negligence and personal injury pursuant to applications lodged on 24 February 2024.
- 23 August 2024. Amended Writ issued pursuant to the order of 2 May 2024.
- 3 September 2024. Amended Writ of Summons served on both defendants.

- 1 October 2024. Publication of a Police Ombudsman of Northern Ireland report arising from the plaintiff's complaint regarding the PSNI investigation.
- 8 January 2025. Statement of Claim served on both defendants.

The application

[3] On 11 February 2025 the second defendant made an application to the court seeking an order under section 86(3) of the Judicature (Northern Ireland) Act 1978 staying these proceedings pending the outcome of related criminal proceedings. This judgment deals with that application.

[4] The court is obliged to counsel for their helpful written and oral submissions and the further material submitted after the oral hearing of the application.

[5] The application is supported by an affidavit sworn by the second defendant's solicitors. There is no affidavit from the second defendant. Nor does the court have an affidavit from the solicitors representing the second defendant in the criminal investigation.

[6] The affidavit confirms that the second defendant was arrested by the PSNI on 22 March 2022. After interview he was released on bail with a series of reviews occurring throughout 2023 and 2024.

[7] The second defendant is represented by different solicitors in his criminal proceedings. He currently has been charged with offences not relating to the plaintiff.

[8] In relation to the investigation of the plaintiff's complaint it is averred that the PSNI has now completed its investigation and has reported the second defendant to the PPS. A decision is currently awaited from the PPS as to whether the second defendant will be prosecuted.

[9] I interpose to say that after the hearing the court sought information from the PPS as to the status of the investigation. The court has been informed by the PPS that "this case remains under active consideration by the PPS and no decision has yet been taken. Further evidence has been requested from the PSNI. It is hoped that a decision will be made in the next four weeks."

[10] Continuing with the affidavit sworn by the second defendant's solicitors it is pointed out that in the event of a decision to prosecute there will be a significant, if not complete, overlap between the criminal and civil proceedings.

[11] It is averred that should the civil proceedings proceed there is a risk of real prejudice to the second defendant as he would be required to reveal a defence in the civil proceedings before he is required to do so in the criminal proceedings. It is

pointed out that should the criminal case proceed first then any decision arising from the criminal trial will thus “likely” be determinative of the civil proceedings. It is argued that allowing the criminal matter to proceed first would avoid the need for the second defendant, the plaintiff and expert witnesses to give evidence twice.

[12] In response to the application the plaintiff says that a stay would be premature and ill-conceived. The plaintiff points to her right to have her civil claim determined justly and expeditiously within a reasonable time as required by article 6 of the ECHR. Importantly it is argued that the second defendant has failed to demonstrate any real prejudice should the civil proceedings continue and that the court has already put in place measures to protect him.

Legal principles

[13] There is no dispute between the parties that the High Court has a discretion to stay an action as part of its inherent jurisdiction and under section 86(3) of the Judicature Act (Northern Ireland) 1978. The court’s power has been considered in a number of reported cases.

[14] In *Jefferson Ltd v Bhetcha* [1979] 1 WLR 898 the Court of Appeal in England and Wales considered the issue of the granting of a stay of proceedings in circumstances where there were concurrent civil and criminal proceedings relating to the same subject matter.

[15] In that case the plaintiffs issued civil proceedings against the defendant for £29,190 in respect of alleged misappropriation of funds. The defendant was employed by the plaintiff as a general accounts clerk. The defendant, who was being prosecuted under the Theft Act 1968 for offences in connection with the misappropriation, filed an affidavit asking the court to stay the proceedings. She denied committing the offences or that she was liable to the plaintiffs and stated that if she were required to swear an affidavit for the purposes of defending the civil proceedings she would necessarily disclose her defence in the criminal proceedings. The first instance judge held that the defendant had a right to keep silent and that it would not be right to require her to disclose her defence. He therefore ordered that the civil proceedings be adjourned until the conclusion of the criminal proceedings.

[16] The Court of Appeal allowed the plaintiff’s appeal holding that there was no principle of law that a plaintiff in a civil action was to be debarred from pursuing his action in accordance with the normal rules merely because so to do would or might result in the defendant, if he wished to defend the action, having to disclose his defence by taking some necessary procedural step, and so give an indication of what his defence was likely to be in contemporaneous criminal proceedings. Megaw LJ in delivering the judgment of the court said at page 904:

“As I understand it, the judge based his decision on the view that there is an established principle of law that, if

criminal proceedings are pending against the defendant in respect of the same subject matter, he, the defendant is entitled to be excused from taking in the civil action any procedural step, which step would in the ordinary way, be necessary or desirable for him to take in furtherance of his defence in the civil action, that step would or might have the result of disclosing, in whole or in part, what his defence is, or is likely to be, in the criminal proceedings. Mr Owen in this court submitted that that is the general rule which ought to be followed. He did not, as I understand it, submit that it was an invariable or inflexible rule which would deprive the court of any discretion if the matters which I have mentioned were established. With the view, if it were put forward, that this is an established principle of law, I would respectfully but firmly disagree. There is no such principle of law. There is no authority which begins to support it, other than, to a limited extent, *Wonder Heat Pty Ltd v Bishop* [1968] VR 489 which, with great respect I should not be prepared to follow, if indeed it does purport to lay down such a principle. I do not think that it does.

I should be prepared to accept that the court which is competent to control the proceedings in the civil action, whether it be a master, a judge, or this court, would have a discretion under section 41 of the Supreme Court of Judicature (Consolidation) Act 1925 to stay the proceedings, if it appeared to the court that justice – the balancing of justice between the parties – so required, having regard to the concurrent criminal proceedings, and taking into account the principle, which applies in the criminal proceeding itself, of what is sometimes referred to as the ‘right of silence’ and the reason why that right under the law as it stands, is a right of a defendant in criminal proceedings. But in the civil court it would be a matter of discretion, and not of right. There is, I say again, in my judgment, no principle of law that a plaintiff in a civil action is to be debarred from pursuing that action in accordance with the normal rules for the conduct of civil actions merely because so to do would, or might, result in the defendant, if he wished to defend the action, having to disclose, by an affidavit under Order 14, or in the pleading of his defence, or by way of discovery or otherwise, what his defence is or may be, in whole or in part, with the result that he might be giving an

indication of what his defence was likely to be in the contemporaneous criminal proceedings. The protection which is present given to one facing a criminal charge – the so-called ‘right of silence’ – does not extend to give the defendant as a matter of right the same protection in contemporaneous civil proceedings.”

[17] The judgment in *Jefferson Ltd* predates the many significant developments in the law, not least the introduction of the Human Rights Act 1998 incorporating the European Convention on Human Rights (“ECHR”) into our domestic law.

[18] There have been some more recent decisions in this jurisdiction where the courts have grappled with the issue of applications to stay civil proceedings.

[19] Two provisions are relevant namely Order 1A of the Rules of the Court of Judicature and article 6 ECHR:

“1A(1) The overriding objective of these Rules is to enable the Court to deal with cases justly.

(2) Dealing with a case justly includes, so far as is practicable –

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate to –
 - (i) the amount of money involved;
 - (ii) the importance of the case;
 - (iii) the complexity of the issues; and
 - (iv) the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the Court's resources, while taking into account the need to allot resources to other cases.

- (3) The Court must seek to give effect to the overriding objective when it –
 - (a) exercises any power given to it by the Rules;
or
 - (b) interprets any rule.”

Article 6 ECHR where relevant provides:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time.”

[20] In *Keeley & Ors: Re Scappaticci* [2021] NIQB 81 Horner J dealt with applications to stay civil proceedings which had been brought by plaintiffs seeking compensation in respect of losses allegedly suffered as a result of the activities of *Scappaticci*, a prominent member of the Provisional IRA who it was alleged was acting as a double agent of the Chief Constable of the Police Service of Northern Ireland or the Ministry of Defence.

[21] The defendants had brought applications to stay the proceedings pending the completion of an inquiry which was being carried out by Jon Boutcher, the former Chief Constable of Bedfordshire known as Operation Kenova which was tasked to investigate the actions of Scappaticci and his relationship with the security forces.

[22] Horner J refused the application and focussed on the plaintiffs’ rights under article 6 of the ECHR and also what is described as the “overriding objectives of the Rules of Judicature”. In relation to the potential of the civil proceedings causing prejudice to any criminal proceedings arising from the Kenova Report Horner J consistent with the relevant principles, held that civil proceedings should not be stayed unless there was a serious risk that those in jeopardy of prosecution would not receive a fair trial.

[23] In *Gallagher v Chief Constable of the PSNI* [2025] NI Master 3, Master Bell refused an application for the stay of civil proceedings brought by the plaintiff in respect of alleged failings by the defendant arising from the notorious Omagh bomb in August 1998. The defendant sought a stay pending the completion of the ongoing public inquiry in respect of that bombing.

[24] The Master carried out a careful analysis of the competing arguments and concluded that a stay should not be ordered.

[25] In doing so he recognised that the circumstances in which applications for stay arise are “almost infinitely variable”. He recognised that not all applications for

stays of civil proceedings are granted even in the face of possible criminal proceedings.

[26] He summarised the legal principles set out by Horner J in *Keeley & Ors* emphasising again the overriding objective of the Rules of the Court of Judicature and the rights of a plaintiff to have a civil claim determined within a reasonable time. Importantly he also noted that the right protected under article 6 in respect of civil claims also involves the guarantee of an effective right of access to a court.

[27] In para [28] of his judgment he summarised the principles which he applied in deciding the stay application as follows:

- “(i) The power to stay an action is an aspect of the inherent jurisdiction of the High Court.
- (ii) This power is unfettered and depends only on the exercise of the court’s discretion in the interests of justice.
- (iii) It is not enough that overlapping proceedings arise from the same factual matrix.
- (iv) The factors for and against granting a stay must be weighed against each other and the burden of proof is upon the defendant to satisfy the court that the ends of justice would be better served by granting a stay.
- (v) The factors set out in the Overriding Objective must be firmly borne in mind.
- (vi) The court should not lightly interfere with the exercise by the plaintiff of his right to pursue proceedings.
- (vii) The staying of proceedings will be unlawful if it results in a breach of the reasonable time requirement of article 6 of the ECHR.”

[28] Returning to the decision in *Jefferson Ltd* which expressly dealt with the issue of concurrent civil and criminal proceedings although it predated the Human Rights Act by 20 years ultimately the court, consistent with the more recent jurisprudence, concluded that it should stay the proceedings “if it appeared to the court that justice – the balancing of justice between the parties, so required ..”

[29] What then does the balancing of justice between the parties require in this case?

[30] The overriding objective and the provisions of article 6 clearly support the plaintiff's right to continue with these proceedings in accordance with the Rules.

[31] If a court is to grant the stay, then the onus is on the second defendant to satisfy the court that the balancing of justice between the parties requires that a stay be granted.

[32] In the context of this case the second defendant needs to establish a real risk of prejudice to him in respect of the criminal investigation.

[33] In this regard there was some debate between the parties as to whether the second defendant's article 6 ECHR rights were engaged as a result of the investigation.

[34] Mr Girvan points out that there is no criminal charge in this case. There are no criminal proceedings.

[35] Mr Mullan replies that the concept of a charge has a broader meaning in a Convention context. He relies on the judgment of Stephens J in *Cushnahan v British Broadcasting Corporation & Anor* [2017] NIQB 30.

[36] Stephens J addressed the issue in the following way at paras [18]-[20] of his judgment:

“[18] In *Attorney General's Reference No 2 of 2001* [2003] UKHL 68 Lord Bingham of Cornhill addressed the question as to when, for purposes of Article 6(1) of the Convention, does a person become subject to a criminal charge. The case concerned the requirement that a criminal charge be heard within a reasonable time but the question as to when a person becomes subject to a criminal charge does not depend on which Article 6 right is being considered. Lord Bingham stated that:

‘In seeking to give an autonomous definition of ‘criminal charge’ for Convention purposes the European Court has had to confront the problem that procedural regimes vary widely in different member states and a specific rule appropriate in one might be quite inappropriate in another. Mindful of this problem, but doubtless seeking some uniformity of outcome in different member states, the Court has drawn

on earlier authority to formulate a test in general terms.'

He went on to state that the test was to be found in paragraph 73 of the Court's judgment in *Eckle v Federal Republic of Germany* (1982) 5 EHRR 1, 27 and then also stated that the formulation which gives effect to the Strasbourg jurisprudence was that as a general rule, a person becomes subject to a criminal charge 'at the earliest time at which a person is officially alerted to the likelihood of criminal proceedings against him.' He added that as the Court of Appeal correctly held (at p 1872, para 10 of its judgment in that case) 'that the period will ordinarily begin when a defendant is formally charged or served with a summons, but it wisely forbore (pp 1872-1873, paras 11-13) to lay down any inflexible rule'.

[19] In *Ambrose v Harris* [2011] UKSC 2435 and at paragraph [62] Lord Hope stated that "the test is whether the situation of the individual was substantially affected". That in addressing that test 'a substantive approach, rather than a formal approach, should be adopted'. That such an approach "should look behind the appearances and investigate the realities of the procedure in question". This suggests that the words 'official notification' should not be taken literally, and that events that happened after the moment when the test is to be taken to have been satisfied may inform the answer to the question whether the position of the individual has been substantially affected.

[20] The test which I seek to apply substantively is that a person becomes subject to a criminal charge whenever the situation of the individual is substantially affected."

[37] Later in his judgment at para [99] he considered the questions as to whether the plaintiff was subject to a criminal charge within Article 6(1) EHCR. On that issue he said:

"[99] ...The issue is not straightforward. The plaintiff is and remains a suspect. He has been arrested and detained. The criminal investigation has not concluded and will not conclude for some time. On the basis of the qualified evidence of Mr Rice I am not persuaded that the plaintiff has been officially alerted to the likelihood of

criminal proceedings against him but I am persuaded that there has been an official notification to the plaintiff by the competent authority, the NCA, of an allegation that he has committed a criminal offence. Approaching the matter substantively I consider that the position of the plaintiff has been substantially affected and that he has been charged within the meaning of Article 6."

[38] In *Cushnahan* Stephens J went on to consider the circumstances in which the court could make an order under section 4(2) of the Contempt of Court Act 1981 which only applies in circumstances where criminal proceedings are "pending or imminent" which is a slightly different issue than the question as to whether article 6 is engaged.

[39] Applying the test of whether the second defendant has been "substantially affected" I determine for the purposes of this application that he has been charged within the meaning of article 6. The second defendant has been arrested by the PSNI on suspicion of having committed a serious criminal offence. He has been subject to a formal police interview. The PPS is considering whether to refer charges against him.

[40] In coming to a conclusion as to whether a stay should be granted in the circumstances of this case I take into account the following factors.

[41] Clearly, there is an overlap between the civil proceedings and the criminal investigation.

[42] The allegations being investigated are serious, particularly if the second defendant is charged with blackmail. That said I am not satisfied that the second defendant has established a risk of real prejudice in respect of the criminal investigation. I say so for a number of reasons.

[43] It is relevant that the second defendant has not yet been formally charged.

[44] I note that in the course of his interviews I am told that the second defendant gave a "no comment" interview.

[45] In respect of the civil proceedings he has confirmed in open correspondence that he denies that he is the person responsible for posting the material about which the plaintiff complains.

[46] In those circumstances I do not consider there is any risk of prejudice arising from the civil proceedings at this stage. What is required at this stage in the proceedings is that he serves a defence. A defence consistent with his no comment interview and a denial that he is the person responsible in my view could not be seen

to prejudice the second defendant in any potential criminal trial. In the circumstances of this case it does not undermine his right against self-incrimination.

[47] The second defendant has already been granted significant protections in the form of reporting restrictions and the granting of anonymity.

[48] Should it become necessary to prevent any risk of prejudice the court has further powers in respect of reporting restrictions.

[49] The court can keep this matter under review. The second defendant may not be prosecuted at all. If he is prosecuted it is open to him to make a further application for a stay if he can point to specific prejudice.

[50] There has already been very significant delay in this case. That has been partly due to what the plaintiff says is the second defendant's attempt to conceal his identity. The delay has also had the impact of preventing the plaintiff from pursuing her claim against the first defendant.

[51] There is likely to be a very lengthy delay in the conclusion of any criminal proceedings should the second defendant be charged. There is no certainty as to when a decision will be made by the PPS.

[52] The application for a stay is refused. What is required at this stage in the civil proceedings is for the defendants to serve their defences. I direct that this should be done within 21 days of this ruling.

[53] The court will continue to case manage the civil proceedings and will be in a position to reconsider the issue of a stay should the second defendant point to any real prejudice arising from any criminal proceedings which may result in charges against him.