Neutral Citation No: [2025] NICA 62	*Ref:* **McC12875**
	ICOS No: **24/89868**
*Judgment: approved by the court for handing down (subject to editorial corrections)**	*Delivered:* **05/12/2025**

IN HIS MAJESTY'S COURT OF APPEAL IN NORTHERN IRELAND

_____

MASUD RANA (TRADING AS DEE INDIAN LIMITED)

v

ALLEYAH CHAMBERS BOULIACH

_____

Appellant appeared as Litigant in Person
Tim Warnock (instructed by the Equality Commission) for the Respondent

_____

ANONYMITY

_____

Before: Keegan LCJ, McCloskey LJ and Kinney J

_____

McCLOSKEY LJ (*delivering the judgment of the court)*

[1] This is the unanimous decision of the court on the issue of whether the appellant should be granted the facility of anonymising the names of both parties. We shall describe the parties as the "appellant" and the "claimant" respectively.

The tribunal proceedings

[2] The background can be ascertained from the substantive judgment of this court delivered orally on 7 January 2025, transcribed subsequently and then transmitted to the parties. In short, the appellant appealed to this court against a decision of the Industrial Tribunal (the "tribunal") acceding to the complainant's claim of sexual harassment. His appeal was dismissed, being described by this court as "entirely without merit."

[3] This separate ruling on the issue of the appellant's anonymity comes about in the following way. The tribunal promulgated two separate judgments, dealing with liability and remedy respectively. In the first judgment, the relevant provision of the Tribunal Rules of Procedure (rule 44) relating to anonymity is rehearsed in [32], followed by a recitation of the open justice principles. At [127] of the liability

judgment it is recorded that Dr Mangan was called for the purpose of proving two reports compiled by him. This is followed by, at [131]:

> "In relation to the issue of anonymity, he stated that the claimant was a vulnerable young adult. If anonymity were to be removed, this would cause her significant long-term stress and he advised against the removal of anonymity."

At [136] of the liability judgment one finds the following:

> "The claimant had earlier applied for anonymity to be lifted. However, that application was not pursued by the claimant in the hearing. Given the clear evidence given by Dr Mangan in relation to the risk posed to the clamant if anonymity was lifted, the tribunal determined that the judgment should be anonymised."

[4] This judgment has the following noteworthy features:

(i) There is no indication of any application for anonymity by either party.

(ii) There is a statement in a later passage that the claimant should retain an earlier grant of anonymity: this was not be "removed" or "lifted."

Commented [HB1]: Should this be 'it should not be' or 'it was not'

(iii) There is no engagement with the open justice principles and no balancing exercise.

(iv) The parties are described fully by name.

(v) The judgment was "issued to the parties" on 16 April 2025.

(vi) The judgment contained a statement that it would be "… entered in the register within 7 days."

[5] Next, on 26 September 2024, the tribunal conducted a remedies hearing. This gave rise to a second judgment, issued to the parties on 16 January 2025 (nine days after the hearing in this court). It contains the statement that it would be "… entered in the register within 14 days." In common with its predecessor it rehearses rule 44 of the Rules of Procedure. In the penultimate section of the judgment it is stated:

> "The liability judgment was anonymised following the evidence of Dr Mangan in the liability hearing. During the remedy hearing the claimant applied for that anonymity order to be lifted and Dr Mangan, given the improvement in the claimant's mental health, supported that application. The respondents objected to the application. **As indicated**

> **above,** the default position is that judgment should be public and should not be anonymised. Given the clear wishes of the claimant and the evidence of Dr Mangan, the unanimous decision of the tribunal is that anonymity should be lifted."
> [Emphasis added.]

[6] We would observe:

(a) There is nothing "above" in the judgment which can be related to this passage.

(b) The statement that anonymity was first ordered at the stage of the liability hearing is contradicted by the judgment itself: see [3](ii) above.

[7] At [127] of the liability judgment it is recorded that Dr Mangan was called for the purpose of proving to reports compiled by him. This is followed by, at [131]:

> "In relation to the issue of anonymity, he stated that the claimant was a vulnerable young adult. If anonymity were to be removed, this would cause her significant long-term stress and he advised against the removal of anonymity."

[8] We draw attention to the following:

(a) Neither party has provided this court with any anonymity order made by the tribunal.

(b) There is an obvious and unexplained incongruity before this court: while the liability judgment of the tribunal purported to affirm an "*earlier*" (undisclosed) anonymity order the same judgment identifies both parties in full and was, presumptively, entered in the Register within 7 days of transmission to the parties.

(c) The second "remedies" judgment similarly identifies both parties and was, presumptively, entered on the Register before the end of January 2025.

(d) This court was informed that both judgments have been on the tribunal's Register ever since.

(e) The Register is an open source accessible by everyone.

(f) The website Legal Island contains a short article, published on 30 January 2025, making reference to both judgments.

[9] As appears from the analyses undertaken above, as regards the anonymity of the claimant the picture emerging from the tribunal proceedings is, to say the least, confused. Unfortunately, counsel for the ECNI was unable to provide any illumination. All in all, this is quite unsatisfactory.

The appellant's application for anonymity

[10] This court withheld publication of its judgment to enable the appellant to make representations about this course. In response the appellant, in substance, requested that the judgment be published in a form excluding his identity and that of the claimant. The appellant was permitted to make written representations supplement by certain documentary materials. Furthermore, two successive hearings of this court were convened for this purpose, the first being adjourned to provide the appellant with the assistance of an interpreter, who attended the second. The hearings were undertaken in open court. It would not be appropriate for this court to detail in an open judgment the representations made and information provided by the appellant. It suffices to say, in anodyne terms, that the appellant has concerns about the safety of his family and his safety and health. This court has considered with care everything put forward by the appellant, both orally and in writing.

The open justice principle

[11] The principles governing this court's determination of the anonymity request made by the appellant were comprehensively rehearsed in *A Police Officer's Application (Leave Stage)* [2012] NIQB 3, beginning at [4]:

> "[4] In my opinion, the anonymisation of any litigant in any judicial forum engages the principle of open justice. The leading authorities on this topic, *Scott v Scott* [1913] AC 417 and *Attorney General v The Leveller Magazine* [1979] AC 440, are well known. These authorities clearly establish a strong general rule that court proceedings should be conducted in public. In *The Leveller*, Lord Scarman formulated the principle in these terms:
>
> > 'In *Scott v Scott*… Your Lordships' House affirmed the general rule of the common law that justice must be administered in public. Certain exceptions were, however, recognised …
> >
> > The House was divided as to whether protection of the administration of justice from interference was an exception. A majority held that it was – though their respective

> formulations of the exception differed markedly in emphasis.'

Lord Scarman considered it "… plain that the basis of the modern law is as Viscount Haldane LC declared it was." The Lord Chancellor had stated [at p. 439]:

> 'To justify an order for hearing in camera it must be shown that the paramount object of securing that justice is done would really be rendered doubtful of attainment if the order were not made.'

[Pp. 470-471]. Continuing, Lord Scarman observed that "… there must be material (not necessarily formally adduced evidence) made known to the court on which it can reasonably reach its conclusion." While the principle of open justice is properly described as one of cardinal importance, it is not formulated as an absolute rule. This is expressed with particular clarity by Lord Diplock in ***The Leveller:***

> "However, since the purpose of the general rule is to serve the ends of justice it may be necessary to depart from it where the nature or circumstances of the particular proceedings are such that the application of the general rule in its entirety would frustrate or render impracticable the administration of justice or would damage some other public interest for whose protection Parliament has made some statutory derogation from the rule. Apart from statutory exceptions, however, where a court in the exercise of its inherent power to control the conduct of proceedings before it departs in any way from the general rule, **the departure is justified to the extent and to no more than the extent that the court reasonably believes it to be necessary in order to serve the ends of justice."** [My emphasis]

[12] In the more recent jurisprudence a resounding reaffirmation of the principle of open justice is found in *R (Mohammed) v Secretary of State for Foreign and Commonwealth Affairs* [2010] 3 WLR 554, at paras [38]–[42], per Lord Judge CJ."

[13] At [5]ff the judgment began its consideration of the human rights dimension:

> "[5] The court's approach to resolving applications of the present kind may also be informed through the prism of Section 6(1) of the Human Rights Act 1998 and article 6(1) ECHR. The latter provides, so far as material:

> 'In the determination of his civil rights and obligations … everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial … where the … protection of the private life of the parties so requires, **or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.'"** [My emphasis]

[14] I would add that in *Hakansson v Sweden* [1990] 13 EHRR 1 the European Court held that a public hearing is not required where the litigants waive their right to such a hearing, provided that the waiver is unequivocal and there is no important public interest consideration rendering desirable the opportunity for the public to be present: see especially para [66] of the judgment. More recently, in *Pauger v Austria* [1997] 25 EHRR 105, the court stated:

> "[58] The court recalls that the public character of court hearings constitutes a fundamental principle enshrined in article 6(1), but that neither the letter nor the spirit of that provision prevents a person from waiving of his own free will, either expressly or tacitly, the entitlement to have his case heard in public. Any such waiver must be made in an unequivocal manner and must not run counter to any public interest."

[15] In a later decision, *Diennet v France* [1995] 21 EHRR 554, the European Court described the conduct of court hearings in public as "a fundamental principle enshrined in article 6" and continued:

> "[33] … This public character protects litigants against the administration of justice in secret with no public scrutiny; it is also one of the means whereby confidence in the courts can be maintained. By rendering the administration of justice transparent, publicity contributes to the achievement of the aim of article 6(1), namely a fair trial, the guarantee of which is one of the fundamental principles of any democratic society."

[16] Statements of this kind form a constant thread in the jurisprudence of the European Court. If applying the article 6 ECHR test, the question for the court, having regard to the terms of article 6, will be whether the conferral of anonymity on the litigant concerned is strictly necessary in special circumstances where to publish the

litigant's identity would prejudice the interests of justice. The close association between the article 6 test and its kindred common law principle is striking. Duly analysed, there is no discernible difference of substance between the two principles.

[17] The judgment next turns to the article 2 ECHR issues which may arise:

> "[6] Where applications of this kind are based on the need to protect fundamental human rights – such as those safeguarded by articles 2 and 3 ECHR – it will be incumbent on the court to act in accordance with its duty under Section 6 of the Human Rights Act 1998. Furthermore, the application of the strict rules of evidence is unlikely to be necessary, as recognised by Lord Scarman in ***Scott***. This issue was considered in the decision of the House of Lords in *Re Officer L* [2007] UKHL 36, where the factual matrix was somewhat different. This case concerned the exercise of an inquiry panel's power to compel the attendance of certain witnesses at a public inquiry investigating a controversial and sensitive death. The witnesses in question were serving and retired police officers and, in response to the subpoenae served on them, they contended for the grant of protection by anonymity on the basis that, absent this measure, they would be exposed to an increased risk of terrorist attack. If one pauses at this juncture, some analogy, perhaps tenuous, with the present case emerges. In support of their claim, they asserted their rights under article 2 ECHR, together with the common law duty of fairness to witnesses. The unanimous decision of the House of Lords is contained in the opinion of Lord Carswell. Having noted that the appeal engaged the positive dimension of article 2 ECHR, his Lordship rehearsed *Osman v United Kingdom* [1998] 5 BHRC 293, paragraphs 115-116, before formulating two basic principles, at paragraph [20]:
>
> (a) The positive obligation arises only when the risk asserted is real and immediate: this denotes a risk that is objectively verified, present and continuing. To establish such a risk a high threshold must be overcome.
>
> (b) Secondly, the principle of proportionality arises in this context. This involves "*… striking a fair balance between the general rights of the community and the personal rights of the individual, to be found in the degree of stringency imposed upon the state authorities in the level*

of precautions which they have to take to avoid being in breach of article 2": see paragraph [21]. This entails assessing the acts and omissions of the relevant state authorities by reference to the standard of reasonableness. Thus the undertaking of an unduly burdensome obligation is not demanded: see paragraph [21].

[7] In ***Re Officer L,*** the appellants were in a position to establish that two separate duties were owed to them by the tribunal. The first was the duty owed as a public authority under Section 6 of the Human Rights Act 1998, with article 2 of the Convention engaged. The second was the tribunal's Common law duty of fairness towards persons whom it proposed to call to give evidence. As regards the first of these duties, their Lordships endorsed the correctness of the tribunal's approach, which had adopted as its starting point the premise that while there was some pre-existing risk to the witnesses in question this was not sufficiently severe to reach the article 2 level of a real and immediate risk to their lives, followed by posing the question whether in respect of any of the witnesses the risk to life would be materially increased by giving evidence without anonymity. The tribunal had also been correct in applying the same test in the application of its common law duty. This exercise permitted the intrusion of a greater range of factors, including the witnesses' professed subjective fears. Having considered all the evidence, the tribunal conducted a balancing exercise, concluding – unassailably – that the balance favoured the withholding of anonymity.

[8] Applications of the present kind, in which a litigant invokes article 2 ECHR, should, in my view, be determined by reference to the decision in *Officer L.* Accordingly, the first question for the court is whether there exists an objectively verified, present and continuing risk to the life of the litigant concerned. If the court answers this question in the affirmative, it will then have to consider whether, in the particular circumstances, this gives rise to a positive obligation on the part of the court as a public authority under Section 6 of the 1998 Act. This exercise will, predictably, involve consideration of whether there is any nexus between the existence or possible escalation of the risk to the life of the litigant and his pursuit of the proceedings concerned without the protection of

anonymity. If this test is determined in the litigant's favour, it will be incumbent on the court to apply the ***Osman*** reasonableness test. In *Officer L*, the only protective measure requested of the tribunal was the conferral of anonymity on the witnesses in question. Anonymity is not the only protective measure which could conceivably arise in a litigation context – others include hearings in chambers or in camera and reporting restrictions. Self-evidently, there is no resource element in acceding to an application to confer anonymity on a litigant. In this respect, there is a clear distinction between the court and other public authorities such as the Police Service (as the decision in *Osman* makes clear)."

[18] The next section of the judgment draws attention to the potency of the public interest which must be weighed in cases of the present kind:

"[9] A notable contribution to the jurisprudence belonging to this field, in a litigation context involving no article 2 issues, is found in *Revenue and Customs Commissioners v Banerjee* [2009] EWHC 1229 (Ch), a decision of the Chancery Division in an appeal to the High Court by the Inland Revenue against a determination of the General Commissioners. While the appeal was heard in public, a question later arose as to whether the taxpayer's identity should be concealed by the conferral of anonymity. As appears particularly from the passages reproduced below, the rights invoked by the litigant under article 8 ECHR featured prominently in this decision. The starting point adopted by Henderson J was the principle that "*… a person's financial and tax affairs are private and confidential in nature*", giving rise to a duty of confidence on the part of public authorities such as the Inland Revenue: see paragraph [13]. Under the regime of the Human Rights Act 1998, this may now be viewed through the prism of article 8. His Lordship suggested that one distils from the jurisprudence of the European Court of Human Rights a principle that the court is obliged to strike a fair balance between the interest of publicity of court proceedings and the interest of a party or third person in maintaining the confidentiality of personal data: see paragraph [15] and the decision in ***Z v Finland*** [1997] 25 EHRR 371. His Lordship noted with approval the test of whether publicity (or further publicity) of the confidential information concerned would cause harm: see paragraph [18]. He considered the main countervailing factor to be the general

> principle of English law that justice must be administered in public - see paragraph [21] - while noting the acknowledged principle that an exception can be justified only if necessary in the interests of the proper administration of justice: see, for example, *R v Legal Aid Board, ex parte Kaim Todner* [1999] QB 966, at p. 976 (per Lord Woolf MR)."

[19] The judgment next considers the reasoning of Henderson J regarding cases where, invoking article 8 ECHR, a litigant seeks the protection of anonymity. These, the judge observed typically raise issues of the privacy of confidential information relating to the party, or, through the article 8 lens the extent to which the party's right to respect for their private life would be impaired; the test of whether in respect of the disclosed facts the person in question had a reasonable expectation of privacy; in cases involving the media, the competing of the right to freedom of expression under article 10 ECHR; and in cases of the present type, the competing interest the general imperative for justice to be done in public, as confirmed by article 6(1) ECHR. The core of the judge's ruling against the application for anonymisation of the taxpayer is in para [35]. While there is no substitute for reading this in full, its central theme is that the public interests in open justice and in the resolution of taxation disputes trumped the plaintiff's private article 8 rights. While a judgment at first instance, this contains valuable guidance on the approach to be adopted by a court in article 8 based anonymisation applications by litigants.

[20] In cases concerning the principle of open justice, the familiar article 8/article 10 interface has featured. This too is addressed in the next section of the *Police Officer* judgment:

> "[10] The context of the recent decision of the English Court of Appeal in *JIH v News Group Newspapers* [2011] EWCA Civ 42 was one involving a familiar collision between the assertion of article 8 ECHR rights by a citizen and the invocation of article 10 ECHR rights by a newspaper organisation. At first instance, the trial judge was disposed to approve a draft consent order whereby the Defendant submitted to an injunction preventing publication of any of the information contained in a confidential schedule, but rejected the agreement of the parties that, pending the substantive trial, the claimant should be granted anonymity. This decision was reversed on appeal. In thus deciding, the Court of Appeal formulated the following governing principles:
>
> (1) The general rule is that the names of the parties to an action are included in orders and judgments of the court.

(2) There is no general exception for cases where private matters are in issue.

(3) An order for anonymity or any other order restraining the publication of the normally reportable details of a case is a derogation from the principle of open justice and an interference with the article 10 rights of the public at large.

(4) Accordingly, where the court is asked to make any such order, it should only do so after closely scrutinising the application and considering whether a degree of restraint on publication is necessary, and, if it is, whether there is any less restrictive or more acceptable alternative than that which is sought.

(5) 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, 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 his right and his family's right to respect for their private and family life.

(6) On any such application, no special treatment should be accorded to public figures or celebrities: in principle, they are entitled to the same protection as others, no more and no less.

(7) An order for anonymity or for reporting restrictions should not be made simply because the parties consent: parties cannot waive the rights of the public.

(8) An anonymity order or any other order restraining publication made by a Judge at an interlocutory stage of an injunction application does not last for the duration of the proceedings but must be reviewed at the return date.

(9) Whether or not an anonymity order or an order restraining publication of normally reportable details is made, then, at least where a judgment is or would normally be given, a publicly available judgment should normally be given, and a copy of the consequential court order

should also be publicly available, although some editing of the judgment or order may be necessary.

(10) Notice of any hearing should be given to the defendant unless there is a good reason not to do so, in which case the court should be told of the absence of notice and the reason for it, and should be satisfied that the reason is a good one."

This is valuable guidance of general application.

[21] The Court of Appeal emphasized that the judge must be satisfied that the facts and circumstances of the case are sufficiently strong to justify an encroachment on the principle of open justice: where thus satisfied, any approved restrictions on publication must be formulated so as to minimise the extent of the encroachment. *JIH* (English Court of Appeal) was adopted without qualification in the *Police Officer* case (NI High Court). While decisions of the English Court of Appeal are not binding on the courts in Northern Ireland, they are, by well established principle, accorded appropriate deference: *Re McKiernan's Application* [1985] NI 385, p. 389C, per Lord Lowry LCJ. We are unaware of any decision of this court with which *JIH* conflicts. Adopting this approach, there is no apparent reason why the comprehensive guidance promulgated in *JIH* should be observed in this jurisdiction. This approach is entirely consistent with the recent Supreme Court decision in *Jwanczuk v Secretary of State for Work and Pensions* [2025] UKSC 42, with its emphasis on judicial comity and good sense, rather than precedent, while reserving questions of weight and judgement to the appellate court concerned: see [59]-[61] and [92]–[93].

[22] Given the matrix before the court, we consider that three of the Convention rights protected by the Human Rights Act are in play: articles 2, 8 and 10. The court will consider each in turn. In doing so we adopt, without repeating, *Re A Police Officer*.

[23] Having regard to the representations made to this court by the appellant and the written materials supplied by him we recognise that there is an article 2 ECHR issue, albeit at a relatively low level, to be addressed. Applying *Re Officer L*, the first question for this court is whether there exists an objectively verified, present and continuing risk to the life of the appellant or any family member in the event of the judgment of this court being published unmodified. Given the extent of the publication of the tribunal's two judgments to date (see above), insofar as there is any demonstrated risk of this kind the question might be more accurately phrased as whether publication of the judgment of this court unmodified could materially increase any such risk. Both questions invite a negative answer, for the following reasons.

[24] As emphasised in *Re Officer L*, the threshold for establishing a risk to life that is real and immediate is an elevated one. We consider that the representations of, and supporting materials provided by, the appellant fall well short of overcoming this

threshold. This conclusion reflects this court's evaluative assessment of all of the foregoing, considered in conjunction with all of the other information and materials assembled. As indicated in para [8] above, we consider it prudent to enunciate this conclusion without reference to the appellant's representations and supporting materials (an issue to be revisited *infra*). In short, we are satisfied that there is no duty on this court, as a public authority subject to section 6 of the Human Rights Act, to accede to the appellant's request for anonymisation of the parties. We would add that the common law duty owed to witnesses, which featured in *Re Officer L*, does not arise in the present context.

[25] We have also considered the right to respect for private and family life enjoyed by both the appellant and his family members under article 8 ECHR, via the Human Rights Act. It could be said that a refusal to anonymise our judgments would infringe the private life dimension with regard to all members of the family. In the present context, the relevant limitations on this right to be considered are, in the language of article 8(2), "… the protection of health …. [and] … the protection of the rights and freedoms of others." We consider the first of these two limitations to be in play for the reason that the publication of the main judgment of this court may serve to deter others from engaging in reprehensible conduct of the kind (or comparable to) which gave rise to the claimant's successful tribunal claim. As the present case demonstrates, such conduct can have significantly adversely consequences for the injured party's health.

[26] As regards the second of the two article 8(2) limitations in play, we take cognisance of the test formulated in *JIH (supra)*:

> "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, 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 his right and his family's right to respect for their private and family life. "

[27] As the passages which follow make clear, there is a close association between the principle of open justice and the rights of the public. Indeed, it may be said that the principle is rooted in the public interest. This is a fundamental, long established principle of the common law of incontestable pedigree and is, therefore, a potent factor in the scales. It is also necessary to weigh the rights and interests of the claimant. She has waived the anonymity accorded to her in the tribunal proceedings and wishes the main judgment of this court to follow suit. This gives rise to the analysis that, as a litigant, she has an interest in full publication which this court should take into account. Furthermore, given the principles highlighted above, the claimant has an expectation of full publication, subject to any justifiable derogation from the principle of open justice. While her expectation and interest are strong, as the immediately

preceding formulations make clear, the claimant is unable to assert a right to full publication.

[28] We are prepared to assume in the appellant's favour that to refuse his application would give rise to an interference with the right to respect for private life enjoyed by him and his family members. However, we are satisfied that, in the balancing exercise which must follow, the limitations on the enjoyment of this right examined above must prevail, comfortably so. There is no issue as regards the "in accordance with the law" requirement. Furthermore, we consider that the proportionality principle is satisfied, having regard particularly to (a) the extent to which and period during which both tribunal judgments have been in the public domain, without any anonymisation or comparable restriction and (b) the absence of any evidence that there is likely to be a strong interest in widespread publication of the first judgment of this court. There is no issue as regards the "in accordance with the law" requirement, given that article 8(2) forms part of the Human Rights Act.

[29] The immediately preceding analysis also highlights the interplay between article 8 and article 10 ECHR in the matrix before this court. article 10 protects the right to freedom of expression. To grant the anonymisation measure sought by the appellant would encroach upon this right. In opposing the appellant's application, the claimant is in substance asserting her article 10 rights. Admittedly more indirectly, the article 10 rights of persons and agencies who may have a legitimate interest in publishing our main judgment unmodified, whether by reporting or commentary or otherwise, also arise. One of those agencies is the Equality Commission for Northern Ireland ("ECNI"), which has supported the claimant's case from its inception. Press agencies must also be reckoned.

[30] Reflecting on some of the leading pronouncements on the importance and rationale of article 10 ECHR illuminates the path to resolving this discrete issue. In *R v Shayler* [2002] UKHL 11, Lord Bingham, taking his cue from the judgment of the ECtHR in *Sunday Times v United Kingdom* [1979] 2 EHRR 245 at [62], stated at [23]:

> "It is plain from the language of article 10(2), and the European Court has repeatedly held, that any national restriction on freedom of expression can be consistent with article 10(2) only if it is prescribed by law, is directed to one or more of the objectives specified in the article and is shown by the state concerned to be necessary in a democratic society. "Necessary" has been strongly interpreted: it is not synonymous with "indispensable", neither has it the flexibility of such expressions as "admissible", "ordinary", "useful", "reasonable" or "desirable": *Handyside v United Kingdom* (1976) 1 EHRR 737, 754, para 48. One must consider whether the interference complained of corresponded to a pressing social need, whether it was proportionate to the legitimate

> aim pursued and whether the reasons given by the national authority to justify it are relevant and sufficient under article 10(2): *The Sunday Times v United Kingdom* (1979) 2 EHRR 245, 277-278, para 62."

[31] Lord Steyn made the following notable contribution in *Reynolds v Times Newspapers* [2001] 2 AC 127, at 208A-B:

> "The starting point is now the right to freedom of expression, a right based on a constitutional or higher legal order foundation. **The existence and width of any exception can only be justified if it is underpinned by a pressing social need**."
> [Emphasis added.]

[32] With specific reference to the article 10(2) exceptions, the ECtHR stated in *Sunday Times*, at [65]:

> "The court is faced not with a choice between two conflicting principles, but with a principle of freedom of expression that is subject to **a number of exceptions which must be narrowly interpreted**."
> [Emphasis added.]

[33] The pre-eminent importance of a free press in a democracy has also been repeatedly emphasised in the jurisprudence. In *McCartan Turkington Breen v Times Newspapers* [2001] 2 AC 277, at 290G–291A, Lord Bingham explained:

> "The proper functioning of a modern participatory democracy requires that the media be free, active, professional and enquiring. For this reason the courts, here and elsewhere, have recognised the cardinal importance of press freedom and the need for any restriction on that freedom to be proportionate and no more than is necessary to promote the legitimate object of the restriction."

[34] Other leading judicial pronouncements are to like effect. In *Barthold v Germany* [1985] 7 EHRR 383, the ECtHR at [58], described the function of the press as that of "purveyor of information and public watchdog." This is linked to another consistent theme in the jurisprudence, namely that of publishing information of legitimate public interest. This has been recognised as attracting the highest degree of protection in the notional article 10 hierarchy: see for example *R v Secretary of State for the Home Department, ex parte Simms* [2000] 2 AC 115 at 127A.

[35] There is one further dimension of article 10 which should be recognised in he present context, namely the protection which it accords to receiving information. This

has long been recognised as an intrinsic ingredient of the right to freedom of expression: see for example *The Observer and the Guardian v United Kingdom* [1991] 14 EHRR 153 at [59] (the celebrated "Spycatcher" case). This court must, therefore, take into account the article 10 rights of members of this discrete audience.

[36] The last mentioned reflection has the utility of the reminding this court of the breadth of the audience of which we must be aware in our consideration of the article 10 issues. There is but one person positively asserting their right to freedom of expression, namely the claimant. However, the potential audience is, in reality, one of some size. Its members include press and media organisations, ECNI and any institution or agency which, or person who, may potentially have an interest in publishing information about this case. That includes agencies and persons who may have no present interest in doing so but may acquire such an interest in the future. Those who study, teach, practice and administer the law all belong to this broader audience.

[37] We consider the correct analysis to be the following. To anonymise the parties to these proceedings would interfere with the right to freedom of expression of both the appellant and the others identified above. The only article 10(2) exception which might conceivably arise is the "protection of the reputation or rights of others" which, in this context, must denote the protection of the reputation or rights of the appellant. We consider that the protection of his reputation does not arise having regard to the finding of sexual harassment against him in the tribunal's first judgment and the availability of both of the tribunal's judgments in the public domain during a lengthy period. In this respect, *Weber v Switzerland* [1990] 12 EHRR 508 demonstrates the importance which the 'already in the public domain' factor can acquire. As regards protecting the appellant's rights, the only possible rights which we can identify are those which he can invoke under articles 2 and 8 ECHR. article 2 avails him nothing, for the reasons explained above. Equally, his invocation of article 8 has also been dismissed for the reasons given. We consider, therefore, that no restriction based on article 10(2) is appropriate. It follows that article 10 presents no obstacle to the publication of the main judgment of this court in full.

[38] There is one further salient consideration relating to both article 8 and article 10. By virtue of the principle of open justice, all litigants in whatsoever litigious forum in the jurisdiction of Northern Ireland occupy a situation where a potent public interest overrides their private interests, subject to the limited exceptions discussed above. While this has several consequences we draw attention to three in particular.

[39] The first is that every hearing in the litigation concerned is accessible by any member of the public as of right. The second is that all of the formal documents pertaining to the litigation will be in the parties' names and will similarly be in the public domain, again subject to limited exceptions. The third is that the outcome of the litigation, namely the judgment or decision of the court or tribunal concerned, will similarly be in the parties' names and will be published.

[40] It follows that every assertion of rights under article 8 and/or article 10 ECHR by a litigant must be calibrated by reference to these cornerstone principles and practices. Furthermore, these principles and practices also provide the touchstone for measuring the expectations and interests of all members of the broader audience discussed above. They may also be influential in the evaluation of the article 10(2) permitted interferences.

[41] Reverting to the present context, any inclination towards resolving the appellant's anonymity application on the ground that to accede thereto would entail a limited encroachment only on the principle of open justice – ie the entire judgment would be published with the exception of the parties' names – must be resisted for the reasons explained.

[42] Finally, this court has considered whether outwith the ambit of the ECHR rights concerned, there are any other facts or factors which it should, in the exercise of its discretion, take into account. This exercise is appropriate because in any case of this kind where the court is not required to act as a matter of duty under section 6 of the Human Rights Act, its discretionary power to adopt anonymity measures is engaged and, in principle, the evaluation of a broader range of facts and factors may be appropriate. Nothing of this kind has been positively brought to our attention. Furthermore, we can identify nothing of this kind in the materials assembled.

Conclusion

[43] Accordingly, the appellant's application for anonymity of the main judgment of this court is refused. This further judgment will follow suit.

[44] That, however, is not the end of the matter. We consider that there is no public interest or other justification favouring publication of any of the appellant's representations to this court or the supporting materials provided by him. This is a freestanding article 8 ECHR matter. The right to respect for the family and private lives of the appellant and his family members would be infringed by the publication of these materials. We are satisfied that there is no conceivable justification under article 8(2) for interference with these rights by such publication. We are further satisfied that insofar as this must additionally be examined through the prism of article 10 (1) ECHR, the limitation enshrined in para [2], namely the protection of the rights and freedoms of the appellant and his family members conferred by article 8(1), clearly applies. While kindred common law rights may also arise, the court received no argument on this issue. Finally, through the article 10(2) prism, given the modest nature of the restriction we are proposing, the principle of proportionality is comfortably satisfied, while there is no issue as to legality ("in accordance with the law").

Summary of conclusions

[45] To summarise:

(a) The appellant's application for anonymisation of the parties in the main judgment of this court is refused.

(b) It follows that there will be no anonymisation of this further judgment either.

(c) There will be no publication of any of the appellant's representations to or communications with this court and/or with the claimant's legal representatives in connection with his anonymisation application, both oral and written, or any of the supporting materials in his application for anonymity.

[46] The court will deal separately with any issue of costs.