

Neutral Citation No. [2014] NIQB 35

Ref: GIL9203

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

Delivered: 13/03/2014

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

BETWEEN:

COLIN FULTON

Plaintiff;

-and-

SUNDAY NEWSPAPERS LIMITED

Defendant.

GILLEN J

Introduction

[1] In this matter the plaintiff seeks an interim injunction restraining the defendant from publishing in any of its newspapers allegations that the plaintiff was associated with the Ulster Volunteer Force (UVF) or any information that might lead to an inference that he is associated with the UVF.

[2] The plaintiff has issued a writ in January 2014, which was by consent before me amended today, seeking an injunction restraining the defendant from harassing the plaintiff by publishing such allegations which allegedly constitute harassment contrary to the Protection from Harassment (Northern Ireland) Order 1997 and from continuing with publications given the material risk to the life of the plaintiff caused by such publications contrary to Article 2 of the European Convention for the Protection of Human Rights and Fundamental Freedoms 1950 ("the Convention"). Damages are sought by reason of the campaign of harassment between September 2012 and January 2014 by reason of the publications which are alleged to be false insofar as they allege that he is a member or associated with or a leader of the UVF.

[3] Before me today, Mr O'Donoghue QC, who appeared with Mr Heraghty for the plaintiff, clarified that the ground of interim injunction application was confined to the issue of article 2 of the Convention.

Background

The plaintiff's affidavits

[4] The plaintiff has sworn four affidavits in this matter namely 15 January 2014, 4 February 2014, 21 February 2014 and 3 March 2014. He complained of 26 newspaper articles published by the Sunday World of and concerning him between September 2012 and January 2014 ("the impugned articles"). Helpfully, in the course of a well-structured skeleton argument augmented by skilfully produced oral submissions, Mr O'Donoghue cited a series of newspaper articles in the Sunday World, accompanied by photographs of the plaintiff. I have extracted these almost verbatim from the skeleton argument as follows:

- "(a) September 9 2012 - *'Goon Show'* Plaintiff described as a UVF heavy (fourth paragraph). Later in same article reference to the Plaintiff - reference to him being 'believed' to be closely associated with Winston Irvine and of being tipped to take over as 'top dog' in South Belfast UVF figure.
- (b) September 16 2012 - Picture of Plaintiff with caption 'UVF thug Colin Meerkat Fulton marches with banned YCV Band'.
- (c) September 23 2012 - *'Village Idiot'* - *'Dopey UVF Commander Meerkat could kick off bloody UDA Turf War'*. - Narrative in the article reads ... *'This is the UVF so called Commanding Officer called Meerkat who would put loyalism back in a hole ...'* ... *'Our sources say that Meerkat and his mob are trying to steal from still occupied houses in Soudan Street and Broadway Parade ...'*.
- (d) December 16 2012 - *"Get on Street - Or Else"* ... *"Stoking Flames"* ... Narrative ... *"Nicknamed the Meerkat he's the so called Commanding Officer of the UVF in the Village Area of South Belfast."*
- (e) December 30 2012 - *"UVF Drummed up a Sectarian Squabble"* - (Photograph reprinted from

editions of August 26, September 9, September 23 and December 16) – Not mentioned in Narrative.

- (f) *January 27 2013 – “Doing the Splits” – Photograph – “Stirring it up ... UVF gangster Colin Meerkat Fulton is agitating against the South Belfast UVF ...” Narrative – “Prominent among city centre protestors was South Belfast UVF thug Colin The Meerkat Fulton”.*

- (g) *March 3 2013 – “Punishment Squad uses taser on teenager’s privates” Photograph “Under Fire: Colin Meerkat Fulton has been linked to the attacks which families are reporting to Bunter Graham .Narrative “A UVF mob used a taser gun on a teenager’s privates in a so called punishment attack... We can reveal the families were given personal assurances by UVF goon Colin Meerkat Fulton that they would only be spoken to... Wearing his Progressive Unionist Party hat Fulton pledged if they went with him they’d be safe and be allowed home after answering a few questions. The boys were ordered into a room one by one. First was a 12 year old boy, confronted by five men he was, according to well placed loyalist sources, thrown about a bit... The first 15 year old was beaten and ordered home but it was the third victim, also 15, who suffered most at the hands of the UVF mob...”*

- (h) *March 17 2013 – “UVF Sex Torture Boss”. “This is the UVF godfather who ordered a teenager to be tortured by being tasered on his private parts. Cops are now probing the vile sex crime. And Colin The Meerkat Fulton is the focus of their investigation... A UVF punishment squad is facing child sex charges after using a taser gun on a teenager’s privates. The Sunday World can reveal up to half a dozen UVF men are under investigation over an alleged punishment attack in which three teenagers were beaten over allegations of anti-social behaviour...”*

- (i) *April 7 2013 – “Taser Gang beats up Boy Victim ... Photograph “UVF Boss. Cohn Meerkat Fulton...”*

- (j) April 14 2013 – *UDA tries to sign up UVF taser victims* Photograph “Orders: Colin Fulton”.
- (k) April 21 2013 – *Meerkat fired by UVF bosses over warped sex attack on teen’s privates*.
- (l) April 28 2013 – “*Stool Pigeon*”. Reference to Fulton and his UVF associations.
- (m) May 12 2013 – “*Meerkat Mob Bloody Attack on Three Young Girls*” – Photograph of Plaintiff superimposed on picture of what appears to be 1st Belfast Rangers Club... Names the Plaintiff as one of a mob that attacked three girls at 1st Belfast Rangers Club.
- (n) July 21 2013 – “*Scaredy Meerkat told to give up his arms*” – “*UVF Blogger scarpered abroad after chickening out of 12th battles*”.
- (o) August 11 2013---*UVF’s Blood Riots*”. Photograph – *UVF boss Cohn Meerkat Fulton is arrested ...“Kat Nabbed – Mob boss Meerkat arrested as UVF fuel hate attacks on cops*”.
- (p) September 22 2103 – *Scaredy Cat – 8 holidays away in 13 for Fulton*”.
- (q) December 8 2013 – “*UVF now working for invaders after they lose turf war*”.
- (r) January 5 2014 – “*Breaking Mad in Belfast*”. – Reference to Plaintiff being second in command to Eddie Rainey in LTVF in context of illegal drinking clubs from which drugs are sold.
- (s) January 5 2014 – *UVF Mob Beats Prods* – Photograph “*Thugs: Cohn Fulton beat up girls in the Rangers Club*.”

[5] It is common case that the plaintiff has received from the police a number of threat messages (termed “TM1”). They are as follows:

- In June 2012 the police received information that a Republican group was targeting him.

- On 4 September 2012 he received a further TM1 that “police have received information that you may be shot by Dissident Republicans some time this week. You are advised to take precautions in relation to your personal security”.
- On 1 March 2013 a similar threat appeared.
- On 24 June 2013 a similar threat was passed on by the police.
- On 3 November 2013 police advised him that “police have received anonymous information that a Republican group may be targeting you”.
- On 13 January 2014 police advised Colin Fulton that “police have received information that you are going to be attacked tonight by criminal elements that may be armed”.

[6] In the course of his affidavits the plaintiff makes the case that –

1. There was no evidence of a continuing threat to the plaintiff from Dissident Republicans in the period immediately following June 2012 prior to the defendant commencing the publication of the allegations relating to the allegation that he was associated with the UVF.
2. Since September 2012 there had been relentless publication by the defendant of the allegation that he was associated with the UVF either as a member or leader. During the period of the publications he received five TM1s or direct communications from the PSNI relating to the targeting of the plaintiff by Dissident Republicans.
3. Whilst he is a member of the Progressive Unionist Party, he denies any paramilitary connection of any kind stressing that he has a clear criminal record. Initially he asserted that he had never been arrested but, in face of a counter allegation by Mr Sullivan on behalf of the defendant, in a second affidavit he concedes that he had been arrested in 2013 and charged with disorderly behaviour, a charge which is still pending.
4. He lives by himself but has a partner and five children. He claims he rarely stays at home because of the threats and has difficulty picking his eldest son up from school. He has received, allegedly, verbal abuse from complete strangers in the street due to the photographs of him appearing.
5. He has confined his proceedings to breach of privacy and breach of his right pursuant to Article 2 of the Convention and has not brought defamation proceedings because he does not have the finances to do so.
6. He lives in the village area of Belfast and had over the summer months displayed a flag commemorating the founding of the Ulster Volunteer Force in 1912. This reflected his interest in the creation of a Northern Ireland state.

7. He has attended recent flag protests which, he avers, have attracted many members of the Protestant community who felt strongly about the removal of the flag from the City Hall.
8. He asserts that the only source of the untrue stories about him appearing in the Sunday World "come from Republican websites and within the general media, the Sunday World". As far as the former is concerned, he illustrates certain blogs which make it clear that the authors have used the Sunday World as their source to disseminate information along the same lines about him. He assumes these blogs are from Dissident Republican sources.
9. Dealing with the death threat which came in June 2012, three months prior to the publications appearing in the Sunday World, he avers that he has no idea as to why Dissident Republicans would have targeted him at that time. He believed that the threat at that time must have come as a result of his involvement with the Progressive Unionist Party. That threat did not resurface over the course of the summer of 2012 and he believes that were it not for the publications in the Sunday World he would not have had to face further and sustained threats to his life.

The defendant's affidavits

[7] The defendant relied on two affidavits of Richard Sullivan, the Northern Ireland Deputy Editor of the Sunday World newspaper. In the course of those affidavits dated 10 February 2014 and 24 February 2014, he makes the case that -

- (i) He cannot disclose who his sources are as to do so would betray the confidence that the sources have in him, would defeat the public interest in protecting those who can confide in him as a journalist and would put at risk the lives of his sources. He avers that the Sunday newspaper articles concern serious matters of public interest in the exposure of serious crime and reporting upon paramilitaries in Northern Ireland.
- (ii) Whilst the plaintiff through his solicitor in initial correspondence alleged defamation, he considers it significant that the proceedings issued do not include such a claim in tort.
- (iii) The defendant will rely upon Article 10 of the European Convention, responsible journalism as set out in the defence of qualified privilege, the extent of the material already in the public domain and overriding public interest.
- (iv) The plaintiff's address has never been published and the defendant has never considered it necessary to do so.

- (v) A Google images search using the criterion "Colin Fulton UVF" and "Fulton UVF" revealed Republican blogs describing the plaintiff as a "mob boss, Meerkat, commanding officer and UVF member".
- (vi) The articles complained of by the plaintiff are true. None of the information pertaining to the plaintiff can be considered private or confidential. There is a public interest against a recent backdrop of heightened Loyalist paramilitary activity e.g. on 13 October it was reported that Policing Board announced that the UVF was still heavily involved in gangsterism despite its ceasefire and in November 2013 the Police Federation Chairman declared that the UVF ceasefire was no longer active.
- (vii) The plaintiff's own conduct has voluntarily invited media attention by associating himself with high profile public disorder incidents which have been widely reported upon in the mainstream media. Mr Sullivan avers "these flag riots have been associated with members of paramilitary organisations".
- (viii) The plaintiff has been photographed at numerous Belfast city centre flat protests "most of which have involved paramilitary riots". "For instance on 11 August 2013 the plaintiff was photographed at a public event he attended alongside notorious convicted terrorists such as Clifford Peeples and Eddie Wray and at which time he was arrested during violent riots. It is not surprising that he had received threats from paramilitaries".
- (ix) The dates of the articles and the dates of the threats the plaintiff received are illustrative of the fact that the threats do not relate to and are not caused by the Sunday World reports. They are more indicative of a response to his own conduct and associations.
- (x) In his solicitor's e-mail of 2 November 2013 to the defendant's Dublin solicitor, he claimed that he had never received a threat prior to being named in the Sunday World newspapers articles whereas in fact he had received a threat in June 2012. The first reference to the plaintiff in the impugned articles was a photograph of him in the edition of 9 September 2012 when he was marching at a public parade alongside the Young Citizens Volunteers Band which took place outside St Patrick's Catholic Church and received widespread reporting in the media according to Mr Sullivan. He avers that the parade involved a number of prominent Loyalist figures, was recorded by broadcast media organisations and was available to watch on You Tube.

[8] I observe at this stage that Mr Lockhart QC, who appeared on behalf of the defendant, drew my attention to a Sunday World article of 26 August 2012 which displayed a number of men allegedly filmed “walking in circles outside St Patrick’s Church on Belfast’s Donegall Street on twelfth morning whilst playing the notorious sectarian Famine Song”. However the plaintiff was not named in this article and counsel therefore argued that it is unlikely to be connected with the threat which emanated to him through the TM1 of 4 September 2012.

The plaintiff’s case

[9] Mr O’Donoghue, with characteristic clarity and proficiency, advanced the following arguments in the course of a skeleton argument and oral submissions.

- (1) There is a real and immediate threat to the life of the plaintiff objectively verified by the TM1s.
- (2) Since September 2012 the relentless pursuit of the plaintiff by the defendant alleging his association with the UVF either as a member or a leader has resulted in a further five death threats after the first of June 2012, the last of which was in January 2014. There is a probable causal connection between the publication of the allegations and the existence of this continuing real and immediate threat from Dissident Republicans. It is self-evident that the more often allegations are repeated the greater the chance people will come to believe them.
- (3) The websites from Dissident Republicans exhibiting this material contained evidence that these people have read the Sunday World and use it as a source of their information. The allegations come from no other identifiable publishing or other source since for example the plaintiff has never been convicted or admitted to having an association with a paramilitary organisation.
- (4) Whilst the threshold is high for the plaintiff to prove to the court that publication does materially increase the risk to his life so that he will be at a real and immediate risk, he is likely to prove this at trial.
- (5) The continued publication by the defendant will continue to be read by Dissident Republicans who will as a matter of high probability repeat the threats to the life of the plaintiff.
- (6) If a court is satisfied that continued publication of the allegations materially increase the risk to the plaintiff’s life, the unconditional nature of Article 2 of the Convention invokes the court’s obligation to protect the life of the plaintiff. Once the threshold is reached, the court

is obliged to take all reasonable and proportionate steps necessary to minimise or avoid the material increase and risk to the plaintiff's life.

- (7) If it shown that there is a material increase in risk to life caused by reference to the publication of the allegations, the truth of the allegation is irrelevant to the obligation cast on the State to take measures to protect him from the threats.
- (8) To grant the injunction will at least stem the risk until trial.

The defendant's case

[10] Mr Lockhart in the course of his skeleton argument and oral submissions probed this matter with his usual thoroughness and economy and made the following points.

- (1) There is a large amount of material concerning the plaintiff already in the public domain including numerous photographs of him.
- (2) The plaintiff has voluntarily put himself at risk by identifying himself prominently with the flag protests alongside notorious other members of the UVF and flying a flag commonly associated with the UVF prominently outside his house even after threats to his life were disclosed to him by the police. None of the TM1s makes any mention of the Sunday World articles.
- (3) He has been guilty of lack of candour in his first affidavit by denying that he had been charged with any offence whereas he has now been obliged to admit that he has been so charged.
- (4) There is no up-to-date information objectively verifying that the immediate and real risk to his life remains. A distinction has to be drawn between a proper risk assessment by the police (which is absent in this case) and TM1s.
- (5) There is a public interest in highlighting allegations of criminality.
- (6) The first threat came several months before the initial publication and there is therefore no direct link or mention of the publications in the threats received.
- (7) The plaintiff has not sued for libel so the plaintiff does not have to investigate the truth of the allegations.
- (8) The articles are not concerned with the plaintiff's address or his family.

- (9) The articles involving the allegations against the plaintiff commenced in August 2012 but no step was taken by the plaintiff to challenge them until November 2013 by which time over 20 such articles had been published and “the horse had bolted”. The plaintiff has left it too late to ask the court to intervene.

Principles governing this application

[11] I have very recently in Conway v Sunday Newspapers t/as The Sunday World (unreported GIL9159) set out in some detail the principles I had harvested from the authorities governing cases of this genre. It renders it only necessary for me therefore to briefly touch upon such principles again in this judgment in the following terms:

- (1) Article 2 of the Convention provides that everyone’s right to life shall be protected by law.
- (2) Cases where Article 2 is invoked require close scrutiny on the part of the courts.
- (3) Article 2 has a negative aspect whereby the State must refrain from the unlawful taking of life and a positive aspect in that the State must take appropriate steps to safeguard the lives of those for whom it is responsible. The positive obligation arises where the authorities know or ought reasonably to have known of the existence of a real and immediate threat to the life of the individual objectively verified. There is a general duty to put in place a legislative and administrative framework designed to provide effective deterrence against threats to the right of life. Secondly there is an operational duty which requires a State in well-defined circumstances to take reasonable and appropriate steps including preventative operational measures to protect an individual whose life is at risk from criminal acts of another. This latter duty requires the State in well-defined circumstances to act and asks whether it is a risk that “individuals in the relevant categories should reasonably be expected to take or is at an exceptional risk.” (See Re Officer L and Others [2007] UKHL36 at [21], Rabone v Pennie Kare NHS Trust [2012] QC 72, Re Officers C and Others [2012] NICA 47 at [38], E v Chief Constable of the RUC and Another [2008] UKHL at [48] and Conway’s case at [47] et seq.
- (4) The idea underpinning the Osman duty dictates that it makes no difference that the risk has already arisen. The duty to take reasonable measures to avert *further* risk still applies (see Sarjanston v Chief Constable of Humberside Police [2014]1 All ER 960 at [31]).

- (5) Article 10 of the Convention provides that everyone has the right to freedom of expression. The exercise of these freedoms carries with it duties and responsibilities and may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society in the interests of public safety for the protection of the reputation or rights of others.
- (6) Section 12 of the Human Rights Act 1998 (HRA) provides that if a court is considering whether to grant any relief, which, if granted, might affect the exercise of the Convention right to freedom of expression, no such relief is to be granted to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed. The court should have particular regard to the extent to which the material has, or is about to, become available to the public or it is, or would be, in the public interest for the material to be published.
- (7) Cream Holdings v Banerjee [2005] 1 AC 253 is authority for the proposition that where the potential seriousness of the adverse consequences of disclosure would constitute grave risk of personal injury to a particular person, “likely” is not to be necessarily construed as “more probable than not” in every case. The probability of success at the eventual trial is not an inflexible standard in all cases.
- (8) It is clear that Section 12(3) of HRA dealing with the interlocutory stage of the proceedings requires the court to look at the merits of the case and not merely to apply the American Cyanamid test. Thus the court has to look ahead to the ultimate stage having particular regard to the importance of the right to freedom of expression whilst, simultaneously, giving effect to countervailing Convention rights.

Discussion

[12] I commence by adverting to the duty of applicants in interim injunctions to make full and frank disclosure to the Court of material facts. That duty of candour requires an applicant to be analytically focused if these applications are to find favour with the court. This applicant has some difficulties with the boundaries between truth and fiction. Why did he deny ever being arrested or being charged in his first affidavit notwithstanding that he had been arrested and charged with disorderly behaviour some months prior to that affidavit, a fact to which he confessed in his second affidavit? Why did he fail to disclose the first TM1 in June 2012 which clearly emerged before these newspaper articles? Obviously acting on

his client's instructions, the plaintiff's solicitors had emailed the defendant's Dublin solicitors on 2 November 2013 asserting, inter alia, that he had never received a death threat until he was named by the Sunday World articles. In his first affidavit of 15 January 2014 he averred:

"It was in or around the time of the publication of these articles that the police began to advise me of threats to my life."

This clearly deliberately ignored at least the TM1 of June 2012.

[13] Serious non-disclosure may result in the application being dismissed on that ground alone. Future applicants should be well aware of this. In the present case I have decided not to take this into account because the defendant became aware of these deficits well before the hearing.

[14] I am satisfied that on the probabilities there is a real and immediate risk to the life of this plaintiff verified objectively by the presence of the numerous TM1s issued by the police. Whilst they do not amount to police risk assessments the sheer number of them persuades me that there is a real and immediate risk.

[15] I am not satisfied however that there is a link between that real and immediate threat and the impugned publications of the defendant's newspaper. I am of this view for the following reasons:

- (1) It is quite clear that the first threat to the plaintiff emanated three months prior to the first published article. Such was the nature of the threat that the police issued a TM1 to him. The threat apparently was from Dissident Republicans.
- (2) The second TM1 was issued on 4 September 2012. At this time the defendant had never mentioned the name of the plaintiff or made any allegations against him. There had been an article published on 26 August 2012 but this had not named him albeit his photograph had appeared. I find this an inadequate explanation of the TM1 being issued on 4 September 2012. In short, it appears that it was not until the article of 9 September 2012 when he was first identified by name and said to be closely associated with UVF members. Thus it appears to me that two of the six TM1s were issued before there is any feasible basis for connecting him to the impugned articles.
- (3) As I indicated in Conway's case, the grim truth and the dispiriting reality is that in the context of the situation in Northern Ireland those who persistently associate with known paramilitary members allowing themselves to be photographed in their company and who identify

themselves prominently with protest groups appearing with members of the UVF, even after a threat to his life had been disclosed to him by the police in June 2012, lay themselves open to discussion in opposing paramilitary blogs and websites and expose themselves to the risk of a real and immediate risk to life. I fear that is what has happened in this instance. This background accords ill with a submission by counsel that the threat emanates from these impugned publications. It is all part of the disfiguring legacy of the continuing presence of paramilitaries in our communities. Fretful backward glances at this newspaper are misplaced in that they ignore the real cause of his problem.

[16] I find no evidence that he has taken any steps to distance himself from those activities which have probably triggered the threat to his life. The 18th century German compound *Ruinenlust* describes the curious psychopathology of being drawn to that which we most fear. This plaintiff probably has grounds for fearing a real and immediate threat to this life-- tragically he has become a prey to the flames of paramilitary violence--- but his continued association with alleged notorious UVF members and his consequent public exposure notwithstanding the early threats to his life suggests that he may be drawn inexorably to activity which generates the threat to his life which he most fears. Moreover there is some weight in Mr Lockhart's argument that he has allowed 15 months and over 20 articles to pass before taking any step to arrest the flow of allegations against him in this newspaper.

[17] As in the Conway case, even I had determined that there was some measure of a link between the later TM1s (evidencing continuing real and immediate threats to his life) and the risk to his life, the publications would have represented such an exiguous addendum to an existing state of affairs that they or their repetition would have been insufficient to persuade me that there was a sufficiently material addition to the risk to grant the injunction on the basis of an article 2 infringement for the following reasons.

[18] First, clearly there was sufficient information about this plaintiff readily available to the public in one form or another due to his activities which caused a threat to arise triggering the TM1 of June 2012 and again on 4 September 2012. The response of the court must be reasonable and proportionate to these facts. The plaintiff has, I fear, created his own risk and on this basis it is not an exceptional risk which the State must now intervene to address.

[19] Secondly, it is in the public interest that investigative journalism should not be impeded where it is publishing legitimate information concerning serious criminal activity. Quite apart from the UVF association, which is the gravamen of this application, the newspaper has published allegations of deeply troubling criminal activity on the part of this plaintiff associated with the UVF. The court has a duty to protect the doctrine of freedom of expression. This is an objective value to

which the courts must remain committed. The law must be infused with both value and principle. The principle of freedom of expression must be protected. Its value is that it is in the public interest that investigative journalism be free to reveal the full nature of criminal activity that it contends is unfolding in a community bedevilled by paramilitary activities. Serious allegations have been made about this man including thefts from occupied houses, punishment attacks on teenagers of a particularly pernicious nature, an attack on three girls, and participation in illegal drinking clubs in which drugs are sold in addition to serious involvement in the UVF. These allegations seethe with the brutality of paramilitary involvement. Apart from the issue of freedom of expression and the right to investigate paramilitary and other criminal activities in the community, it seems to me it would be logistically extremely difficult to separate his alleged involvement in these crimes (which Mr O'Donohue concedes would be difficult to attack in this application if shorn of the UVF connection) from his alleged participation in the UVF and his association with leading members. It would be neither proportionate nor practical for such a division to be made in the event. As King v Sunday Newspapers Limited [2012] NI 1 made clear, his failure in this instance to invoke the laws of defamation to challenge the truth of the allegations, notwithstanding his plea that this is only because of financial restraints, is not without significance.

Balance of convenience

[20] I am satisfied that the balance of convenience in the circumstances which I have set out is in favour of the refusal of the injunctive relief. This conclusion is founded on my belief that the greater damage would be inflicted on the public interest and the right of the press to a freedom of expression by granting such relief at this stage than would be inflicted on any rights of the plaintiff given the amount of material in the public domain clearly unconnected with the articles. Moreover as the evidence currently stands - and I recognise this may change at a full hearing - I do not believe that the applicant is likely to establish at trial that further publications of these or similar matters should not be allowed even bearing in mind the admonition of the court in the Cream Holdings case to approach such a "likely" outcome on a flexible basis.

Conclusions

[21] In the circumstances of this case I consider this is not an appropriate instance for the grant of an interim injunction. I therefore refuse the application.