

Neutral Citation No. [2010] NIQB 107

Ref: **WEA7948**

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

Delivered: **22/09/2010**

**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**QUEEN'S BENCH DIVISION**

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**DREW ROBERT KING**

**Plaintiff;**

**-v-**

**SUNDAY NEWSPAPERS LIMITED**

**Defendant.**

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**WEATHERUP J**

[1] The plaintiff's claim is for damages and an injunction against the defendant, as publisher of the Sunday World newspaper, concerning a series of articles published in the Sunday World since 2002 alleging criminality against the plaintiff relating to membership of the Loyalist Volunteer Force (LVF), the murder of Martin O'Hagan a journalist with the Sunday World and drug dealing. Ms Quinlivan and Mr Moriarty appeared for the plaintiff and Mr Hanna QC and Mr Dunlop appeared for the defendant.

[2] The LVF is a loyalist terrorist organisation which is proscribed as an illegal organisation. Billy Wright was reputedly the leader of that terrorist organisation for a number of years and he was eventually imprisoned in the Maze Prison where he was murdered in 1997. The Sunday World has been involved in the investigation of paramilitary crime and that has included the activities of the LVF in the mid Ulster area over the years. Martin O'Hagan was murdered by that organisation in 2001. Jim McDowell is the Northern editor of the Sunday World and it is his belief and that of the defendant newspaper, as appears in the articles published in the Sunday World, that the plaintiff and his brother were involved in the murder of Martin O'Hagan.

The plaintiff's brother is known as Billy King and he is alleged to have shot Martin O'Hagan and the plaintiff is alleged to have driven his brother in a motor vehicle to and from the scene of the murder. The Sunday World articles have described the plaintiff as an LVF godfather and drug dealer. He has also been described in the articles as "the Piper" by reason of having played the bagpipes at the funeral of Billy Wright in 1997.

[3] For the last three and a half years the plaintiff has been in a relationship and a child was born from that relationship in 2008. The Sunday World has also published material about the plaintiff's partner and members of her family and their child.

[4] In these proceedings the plaintiff has not sued for libel. The plaintiff's claims are threefold.

In the first place the plaintiff claims an injunction to prevent publication of the plaintiff's address because of threats to his life which have placed him at real and immediate risk for the purposes of the right to life provision in Article 2 of the European Convention on Human Rights. The plaintiff has received a number of police messages over the years containing warnings of threats to his life from both loyalist and republican paramilitaries, has also been informed of a threat from loyalist paramilitaries through the articles in the Sunday World and further one of his partner's family members has received a written threat against the plaintiff from republican paramilitaries.

Secondly the plaintiff claims for misuse of private information whereby the plaintiff objects to the publication of information which he says involves lack of respect for his private and family life under Article 8 of the European Convention. The matters complained of concern certain details about the plaintiff, addresses, wedding plans, photographs, details about his partner, her home, work and family members and details about the child and the christening and religious affiliation of the child.

Thirdly the plaintiff claims that the series of articles that have been published by the defendant and the private information that is included within them constitutes harassment under the Prevention of Harassment (Northern Ireland) Order 1997.

[5] The plaintiff focuses on a number of articles that were published in 2009 but refers overall to 29 articles that have been published by the Sunday World since 2002 and identifies 13 articles that are said to contain private information that the plaintiff contends should not have been published. The articles commenced on 29 September 2002 when the Sunday World published an article under the title "Police Seek Marty Suspect" and the article began "This is the missing suspect police want to question about our reporter Martin

O'Hagan. He is Lurgan LVF man Drew King who was the piper at LVF godfather Billy Wright's funeral." The article was accompanied by a photograph of the plaintiff in piping regalia and which appears to have been taken from a larger photograph that is available in the papers and which showed the plaintiff leading the procession at the funeral of Billy Wright. A further article of 6 October 2002 under the title "Cops Trace Marty Suspect to Scotland" contained the photograph of the plaintiff in his piping regalia and repeated the allegation against him.

[6] In 2003 it was reported that the plaintiff gave himself up for questioning by the police in relation to the murder and the LVF ordered him to stay in Scotland but that he had slipped back and was living in Belfast. In 2004 the Sunday World was reporting an LVF/UVF feud and that the plaintiff was being targeted at that time. In 2005 it was reported that the plaintiff was being questioned by police and that his then girlfriend, who had been a prison officer, was the subject of searches of her house. In 2006 it was stated that the Assets Recovery Agency was interested in the plaintiff's assets from crime, that the Police Ombudsman was being urged to consider the character of the police investigation into the murder of Martin O'Hagan, that the police were questioning the plaintiff but he had absconded to Spain and that there was then an LVF split because of the plaintiff's involvement in drug dealing. In 2007 it was being reported that the plaintiff was holidaying in the Canary Islands and that he may be called upon to give evidence to the Billy Wright Inquiry. In 2008 it was reported that the plaintiff had escaped arrest and that his partner had had a child and a twin had been lost. Reference was also made to the then former girlfriend, the former prison officer. The plaintiff was charged with the murder and detained in custody on remand. In 2009 he appeared in Court and the Sunday World reported an attack on their reporter's motor vehicle which had been parked at the Court and there were also reports about the plaintiff's applications for bail.

[7] Particular focus was applied to two articles in November 2009. On 22 November under the title "King Size Loophole Lets Piper Roam Free", accompanied by a photograph of the plaintiff and his partner, an article reported information about the partner and her child with the plaintiff, a Sunday World car having been smashed, a threat by loyalist paramilitaries having been made to the plaintiff and the plaintiff having been involved in the murder of Martin O'Hagan. A further article on 29 November carried the headings "LVF's King Christens New Child a Catholic" and "Exclusive: Protestant Terror Pals In Shock As Their Chief Lets His Baby Become An R.C. Member" and "Loyalist thug boss in Catholic church to baptise wee girl". The article referred to the partner, to the child, to the christening of the child in a Catholic church, to information about the partner and where she was living, where she was working, details about her family and her grandmother and about the proposed wedding of the couple at Ashford Castle in County Mayo the following summer. Further information about Catholic associations of the

plaintiff and his family were reported. The article was accompanied by a photograph of the plaintiff and his partner, a photograph of Ashford Castle and a photograph of the church where the christening was reported to have occurred.

[8] A Writ was issued by the plaintiff on 11 December 2009. At the same time an application was made for an interim injunction and on 11 December 2009 Hart J granted an interim injunction by which he restrained the defendant from publishing any information identifying the location at which the plaintiff was resident and making any reference to the existence of and in particular the religious denomination of the child.

[9] The charges against the plaintiff were withdrawn in July 2010. There were a number of articles published in the Sunday World in 2010 to which the plaintiff took exception. The articles referred to the plaintiff being in Portugal while on bail, to him as having been the subject of the murder charges, to him as having been beaten up on one occasion and later to the charges being withdrawn. It was reported that there may be new charges brought against the plaintiff.

[10] The plaintiff's first claim concerns the threats to the life of the plaintiff and seeks an injunction to restrain the publication of his address. A schedule of police messages sets out the history of what are known as PM1s that have been issued to the plaintiff. There are five on the list, two in 2003 refer to threats from loyalist paramilitaries, two in 2005 refer to threats from loyalist paramilitaries and one in 2008 refers to a threat from dissident republicans. There was a further PM1 issued in the course of these proceedings and dated 16 November 2009. The message is stated to be anonymous and uncorroborated and it has been received by police to the effect that the north Antrim brigade of the Continuity IRA are planning an attack on the man who was on the front of the Sunday World and it is believed this refers to you.

[11] Apart from the police messages there was the reporting of a further threat to the plaintiff in the article published in the Sunday World on 22 November 2009. It is there stated that a source of the Sunday World stated that there was a threat from a former UVF member once based in east Belfast who was worried about the plaintiff and those charged in connection with Martin O'Hagan's murder incriminating others. Finally there was evidence about a letter that had been received by a member of the plaintiff's partner's family which had indicated that there was a threat to the plaintiff.

[12] The Sunday World policy on publication of information about those charged with offences, as stated by Mr McDowell, is that the information published is usually their name and address and age, the address usually referring to the street and the town but not to the number of the house. The reason for that detail is to ensure that the newspaper is identifying the intended

person and not leading the readers to believe the article might be referring to someone else with the same name.

[13] Addresses have been published in relation to the plaintiff in other publications including the plaintiff's solicitor's website. The publications of the plaintiff's addresses at different times are said by the plaintiff to have been wrongly stated or have been former addresses. Thus while addresses for the plaintiff have on occasions been in the public arena, they may all now be former addresses of the plaintiff. It would be futile to restrict publication of the current address of the plaintiff if that address had already been published. However I proceed on the basis that the plaintiff's present location has not been made public and the issue is whether publication of a present or future address should be restricted.

[14] The issue is concerned with the applicant's right to life. Article 2 of the European Convention on Human Rights provides for the protection of the right to life. The substantive obligation arising under Article 2 contains a negative aspect whereby the State must refrain from the unlawful taking of life. But it also contains a positive aspect in that the State must take appropriate steps to safeguard the lives of those for whom it is responsible. This positive obligation arises where the authorities know or ought reasonably to have known of the existence of a real and immediate risk to the life of the individual concerned, as stated by the European Court of Human Rights in Osman v. The United Kingdom [1998] 29 EHRR 245. Thus the positive obligation arises only where the risk is real and immediate and a real risk is one that is objectively verified and an immediate risk is one that is present or continuing. Lord Carswell stated in Officer L [2007] UKHL 36 that -

"It is in my opinion clear that the criterion is and should be one that is not readily satisfied, in other words the threshold is high."

[15] The question is whether there is a real and immediate risk to the life of the plaintiff. The obligation that arises applies in the context of publishing information about the plaintiff that might place him at a real and immediate risk. The defendant objects to any restraint being imposed on publication because it is said that it has not been established that there is such a real and immediate risk to the plaintiff. The defendant raises a question mark over the credibility of the last PM1 and refers to the ease with which a target of such a notice might manufacture such a notice.

[16] Further, the defendant refers to JR20's Application [2010] NIQB 11 where it was stated that the issue of a PM1 does not itself establish that an applicant is at a real and immediate risk. In that case a PM1 had been issued by the police but the Secretary of State, in considering whether the applicant should be issued with a firearms certificate and having received the relevant

information from the police, was satisfied that the applicant was not at a real and immediate risk. Thus the evidence did not establish that there was a real and immediate risk to the applicant.

[17] I am satisfied that there have been threats against this plaintiff for a number of years from loyalist paramilitaries and from dissident republican paramilitaries. Considering the allegations made against the plaintiff in the articles published in the Sunday World it is not difficult to understand how both loyalist and republican paramilitaries might pose a threat to the plaintiff.

[18] I am satisfied that there is a real and immediate risk to the applicant. I consider that the evidence is such that the threat to the plaintiff has been objectively verified in that a number of sources have identified a number of risks to the applicant from the police sources and from the Sunday World's sources. I am satisfied that the risk must be considered to be present and continuing. While the last PM1 was issued a year ago and a more recent threat was issued through a member of the partner's family, I am satisfied, given the nature of the plaintiff's alleged involvement in this organisation, which Sunday World reports to be continuing, and given the nature of the threats to the plaintiff, that the paramilitary threats continue and that there is a real and immediate risk to the plaintiff.

[19] I am not satisfied that his current address has been published and it is his current address with which I am concerned. I am satisfied that, in considering the plaintiff's right to life and the real and immediate risk to that life, his current address or any future address should not be published. An injunction will issue to prevent the defendant from publishing the present or future addresses of the plaintiff until further Order.

[20] The plaintiff's second claim concerns the misuse of private information. This claim raises issues in relation to Article 8 and Article 10 of the European Convention. Article 8 provides -

- "1. Everyone has the right to respect for his private and family life ....
2. There shall be no interference by a public authority with the exercise of this right except such as is accordance with law and is necessary in a democratic society .... for the prevention of disorder or crime .... or the protection of the rights and freedoms of others."

Article 10 provides -

1. Everyone has the right to freedom of expression....

2. The exercise of these freedoms .... May be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society .... for the prevention of disorder or crime .... for the protection of the reputation or rights of others.”

There is a balance to be achieved between two competing rights, being the plaintiff’s right to respect for private and family life on the one hand and the defendants right to freedom of expression on the other hand.

[21] Murray v Big Pictures UK Limited [2008] EWCA Civ 446 concerned a complaint by the novelist J K Rowling that the newspapers were intruding into her child’s privacy by taking photographs of the child in the street. At paragraph 24 a number of principles were set out as follows –

1) The right to freedom of expression enshrined in Article 10 of the Convention and the right to respect for a person’s privacy enshrined in Article 8 are vitally important rights. Both lie at the heart of liberty in a modern state and neither has precedence over the other.

2) Although the origin of the cause of action relied upon is breach of confidence, since information about an individual’s private life would not in the ordinary usage be called ‘confidential’, the more natural description of the position today is that such information is private and the essence of the tort is better encapsulated now as misuse of private information.

3) The values enshrined in Articles 8 and 10 are now part of the cause of action and should be treated as a general application and is being as much applicable to disputes between individuals as to disputes between individuals and a public authority.

4) Essentially the touchstone of private life is whether in respect of the disclosed facts the person in question had a reasonable expectation of privacy.

5) In deciding whether there is in principle an invasion of privacy, it is important to distinguish between that question, which seems to us to be a question which is often described as whether Article 8 is engaged, and the subsequent question whether, if it is, the individual’s rights are nevertheless not infringed because of the combined effect of the qualifications in Article 8(2) and Article 10.

[22] There are two stages to the inquiry into misuse of private information. First of all the plaintiff must have a reasonable expectation of privacy. When does that arise? In paragraph 36 of Murray it was stated –

“As we see it, the question whether there is a reasonable expectation of privacy is a broad one, which takes account of all the circumstances of the case. They include the attributes of the claimant, the nature of the activity in which the claimant was engaged, the place at which it was happening, the nature and purpose of the intrusion, the absence of consent and whether it was known or could be inferred, the effect on the claimant and the circumstances in which and the purposes for which the information came into the hands of the publisher.”

[23] If there is a reasonable expectation of privacy in the circumstances of the case one moves to the second question, which is the balance between the right to privacy and the right to freedom of expression. That balance includes consideration of a public interest that justifies publication of the material in question and whether the degree of intrusion generated by the publication is proportionate to the public interest.

[24] Account must be taken of section 12(4) of the Human Rights Act 1998 which requires that particular regard be had to Article 10 of the Convention when considering whether or not restraint should be imposed on publication. That requires particular account to be taken of both parts of Article 10, namely the right to freedom of expression and also the qualifications in relation to the detection of crime and disorder and the reputation and rights of others. Section 12(4) further requires that where the proceedings relate to material that appears to be journalistic, which is clearly the present case, the Court must have particular regard to –

“(a) the extent to which –

- (i) the material has, or is about to, become available to the public: or
- (ii) it is, or would be, in the public interest for the material to be published;

(b) any relevant privacy code.”

[25] The particulars of private information, the publication of which are objected to by the plaintiff, are the following. First of all the address of the plaintiff. Secondly, the wedding plans of the plaintiff and his partner. Thirdly,



the partner's details which include her identification and her workplace and her family members. Fourthly, the child's details which concern the identification, the religion and the christening of the child. Fifthly, the photograph of the plaintiff and his partner.

[26] I repeat that the plaintiff has not sued for libel so I am not required to determine the truth or otherwise of the allegations that have been made against the plaintiff. The plaintiff denies the allegations made by the defendant. The plaintiff claims that there is a financial basis for not pursuing an action for libel in that that he could not secure legal aid or other funding in order to pursue that action and therefore has by circumstances been limited to proceeding with this challenge to the defendant on the three grounds that I have specified. I make or imply no judgment on the truth or otherwise of these allegations which might have to be determined in other proceedings whether civil or criminal. However I proceed in the absence of challenge to the allegations being made in this action.

[27] The defendant's justification for publishing the particulars for which the plaintiff claims misuse of private information is that the nature of the allegations made against the plaintiff, which concern murder and membership of a proscribed organisation and drug dealing in the context of engagement in paramilitary criminality, result in the plaintiff having no reasonable expectation of privacy and as he has forfeited any expectation of privacy. Further, the defendant contends that those who associate voluntarily with the plaintiff, such as his partner, also can have no reasonable expectation of privacy. The defendant is engaged in the detection and exposure of criminality in the public interest. It is said on behalf of the Sunday World that the public interest in the investigation of crime, including murder and membership of the LVF and drug dealing and the lifestyle of the plaintiff as a result of those paramilitary activities, are all legitimate public interest issues warranting publication by the newspaper.

[28] In relation to the first matter, which is the address of the plaintiff, it is not necessary to say anything further under this heading as I have already imposed a restriction based on the right to life of the plaintiff.

[29] The second matter concerns the wedding plans of the plaintiff. I assume a reasonable expectation of privacy in relation to particulars of the wedding. There has not been any right to life issue raised in relation to the disclosure of the plaintiff's whereabouts at a particular place and time so that is not an aspect of the plaintiff's complaint. The justification for the publication of the wedding particulars concerns the plaintiff's drug dealing lifestyle and the ability to adopt expensive plans for his wedding. That justification I accept as being a public interest issue in relation to the investigation of crime and the lifestyle of the criminal. The proportionality aspect concerns whether or not the private details that were given were necessary for the purposes of the story

in relation to the investigation of the crime. I accept that the details were proportionate. The balance of interests falls in favour of publication.

[30] The third matter concerns the details published in relation to the partner. There is information about her identity, her work and family. The defendant emphasises that the plaintiff's partner is not a plaintiff in the action and that what must be considered are allegations of misuse of private information in relation to the plaintiff. The plaintiff relies on the right to respect for private and family life and that includes his life with his partner. I accept that the publication of details of family members of a particular person may engage the Article 8 rights of that person so that publication of details about the family, family connections or private life of those associated with the plaintiff or the partner of the plaintiff may engage the plaintiff's Article 8 rights.

[31] The Editor's Code of Practice at paragraph 9 on 'Reporting of Crime' states that relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story. The Editors' Code of Practice Committee Guidance Notes in relation to 'Reporting on people accused of crime' state under the heading 'Privacy' that editors must bear in mind that the Code affords everyone, including those who have been accused or convicted of crime, the right to respect for his or her private life, home, health and correspondence and editors should not rely on the fact that someone has been accused of a criminal offence as justification for publishing material that would otherwise be held to be intrusive, unless the material ought to be published in the public interest or is in some way relevant. Further, the Guidance Notes state under the heading 'Innocent Relatives' that editors should bear in mind at all times that the innocent relatives of people who have been accused of crime have special protection under the Code and they should not be identified, unless it is in the public interest or the relationship is in the public domain, without their consent. The provisions on privacy and harassment are stated to be especially important for such people who may be particularly vulnerable at such times.

[32] The Editors Code provides that there may be exceptions in relation to the sections on 'Privacy' and 'Reporting of Crime' and 'Children' where they can be demonstrated to be in the public interest. The 'public interest' is stated to include 'Detecting or exposing crime or serious impropriety'. There is also stated to be a public interest in freedom of expression itself.

[33] The published information in issue relates to the identity of the partner, references to the work place of the partner and various other particulars about family members of the partner. Is there a reasonable expectation of privacy in respect of that material? Undoubtedly there is. What is the public interest that the defendant asserts as justification for publication of the material? The defendant relies on a number of matters. First of all the lifestyle of the plaintiff arising from the proceeds of his criminal conduct is said to be of public interest

in the exposure of crime. Secondly it is said that the plaintiff is a womaniser and there have been three women named in connection with the plaintiff throughout the series of articles, although the present objections relate to the present partner. Third it is said that the plaintiff's association with his partner is an instance of hypocrisy. The plaintiff's partner is said to be Catholic and therefore the defendant contends that it is hypocritical of the plaintiff, as a member of the LVF, which has targeted Catholics, to be the partner of a Catholic.

[34] In relation to the objection to the publication of the identity of the plaintiff's partner, the articles are concerned not only with criminal activity by the plaintiff but also, by reason of the nature of that criminal activity, with his criminal lifestyle. I am satisfied that this is a legitimate public interest aspect of the exposure and detection of crime. It is almost inevitable that a spouse or partner who shares such a plaintiff's lifestyle will be drawn into any reporting of that lifestyle. I am satisfied that there is a legitimate public interest in the identity of such a spouse or partner of the primary subject of such an article who is said to profit from crime, subject to any particular circumstances that would render their inclusion in the publication inappropriate. I am satisfied that there are no circumstances in the present case that would lead to the non disclosure of the identity of the partner.

[35] As to proportionality in relation to the details that have been published about the partner's workplace and the members of the partner's family, I am satisfied that publication of those details was not warranted on any of the grounds relied on by the defendant. Information was published about the identity of her workplace that was intrusive and unnecessary for the purposes of the article. Information was published about her parents, their occupations, their separation and their new partners, all of which had nothing at all to do with any of the justification for publishing the other information about the plaintiff.

[36] Further there was reference in the articles to the Catholicism of the partner. The defendant justifies this as being an indication of the plaintiff's hypocrisy. This approach by the defendant is to imply that the loyalist targeting of Catholics has some basis in religious belief, either of the loyalists who undertake the targeting or of the victims who are targeted, or both. I am not satisfied that the conduct of loyalist paramilitaries or the LVF in particular could be said to be motivated by any religious belief or that the disclosure of the religious persuasion of the plaintiff's partner is relevant to the articles or to the conduct of the plaintiff as described in the articles.

[37] Overall in relation to the plaintiff's partner, I have accepted that the balance of interests favours publication of her identity as an aspect of the reporting of the plaintiff's lifestyle. However I am also satisfied that the balance of interests does not support publication of details in relation to her workplace,

her family members or her religious background as these details are irrelevant to the justification for the identification of the plaintiff.

[38] The fourth item that the plaintiff complains about is the information about the child. The child is clearly a family member of the plaintiff and the plaintiff's Article 8 rights to respect for his private and family life are engaged. There is undoubtedly a reasonable expectation of privacy for the child's details including the identification and religion of the child and the christening of the child. The defendant relies on the plaintiff's hypocrisy in having the child christened a Catholic as justification for the publication. I refer again to the Code of Practice. Paragraph 6(v) deals with children and states that editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life. Under the heading 'Public Interest' the Code states that in cases involving children under 16 editors must demonstrate an exceptional public interest to override the normally paramount interest of the child. I reject the justification advanced by the defendant for the same reason as the rejection in respect of the mother. I am satisfied that there was no justification for publishing the information about the child's identity, about the child's religious belief or about the christening of the child.

[39] The fifth item concerns the photograph of the plaintiff and his partner. There were photographs published of the plaintiff alone and to those there has been no objection. The objection is to a photograph of the plaintiff and his partner that was taken in private at her parents' home when they were going to a wedding and this photograph appeared in the Sunday World in November 2009. I am mindful of the observation that photographs have the potential to be particularly intrusive. The plaintiff says the photographs were improperly obtained, no consent having been given for the publication of the photographs. The circumstances in which the defendant came by the photograph are not known. The photograph was not taken by press photographers with long lens into private property. In respect of the photograph there is a reasonable expectation of privacy. The justification for publication is that the photograph accompanies the articles and shares their justification. I have found that the identification of the plaintiff and his partner was justified. I am satisfied that their identification by photograph as equally justified. In the context of the articles is the nature of the photograph proportionate? While it is not a photograph taken in a public place it is not a photograph showing any embarrassing picture or inappropriate conduct on the part of the plaintiff or his partner. It was clearly an occasion on which they intended to be photographed, although not for viewing by the general public. The balance of interests falls in favour of publication. I do not propose to restrict the publication of the photograph.

[40] The third cause of action concerns harassment under Article 3 of the Protection from Harassment (Northern Ireland) Order 1997. Article 3 provides

that a person shall not pursue a course of conduct which amounts to harassment of another and which he knows or ought to know amounts to harassment of the other. 'Harassing' a person includes alarming the person or causing the person distress. Paragraph 3(3) provides that this does not apply to a course of conduct if the person who pursued it shows -

- (a) that it was pursued for the purposes of preventing or detecting crime; or
- (c) that in the particular circumstances the pursuit of the course of conduct was reasonable.

[41] The issue of harassment in the context of a press campaign against an individual was considered in relation to the equivalent legislation in England and Wales in Thomas v Newsgroup Newspapers Ltd [2001] EWCA Civ 1233. First of all the provisions of the Harassment Order are capable of applying to a series of newspaper articles. Secondly, as the Court stated in paragraph 29 of the judgment, the legislation is dealing with the effects of the conduct in question rather than the types of conduct that produce those effects. Thirdly, as stated in paragraph 30 of the judgment, harassment is a word which has a meaning that is generally understood. It describes conduct targeted at an individual, it is conduct that is calculated to produce the consequences described in the legislation (causing harassment, which includes alarm or distress) and it is oppressive and unreasonable.

[42] The conduct must be targeted at an individual. In the present case the articles were targeted at the plaintiff. The conduct must be calculated to produce the consequences described, that is harassment, which includes causing alarm or distress. In the present case the articles have undoubtedly had that effect and must be said to have been calculated to have that effect. The conduct must be oppressive and unreasonable. The issue is whether the series of articles amounted to reasonable conduct. So what is reasonable conduct? In Thomas it was stated -

“32. Whether conduct is reasonable will depend on the circumstances of a particular case. When considering whether the conduct of the press in publishing articles is reasonable the answer does not turn on whether opinions expressed in the articles are reasonably held. The question must be answered by reference to the right of the press to freedom of expression which has been so emphatically recognised by the jurisprudence both of Strasbourg and of this country.

33. Prior to the [Order] the freedom with which the press could publish facts or opinions about individuals was circumscribed by the law of defamation. Protection of reputation is a legitimate reason to restrict freedom of expression. Subject to the law of defamation the press was entitled to publish an article or series of articles about an individual notwithstanding that it could be foreseen that such conduct was likely to cause distress at the subject of the article.

34. The [Order] has not rendered such conduct unlawful. In general press criticism, even if robust, does not constitute unreasonable conduct and does not fall within the natural meaning of harassment. A pleading that does no more than allege that the defendant newspaper has published a number of articles which have foreseeably caused distress to an individual will be susceptible to a strike out on the grounds that it has not disclosed as an arguable case of harassment.

35. It is common ground between the parties to this appeal, and properly so, that before press publications are capable of constituting harassment they must be attended by some exceptional circumstance which justifies sanctions and the restriction on the freedom of expression that they involve. It is also common ground but such circumstances will be rare.”

[In Thomas the Court was satisfied that there was such harassment because the parties agreed that the publication of the press articles had been calculated to incite racial hatred of an individual and that was an example of harassment.]

“50. On my analysis the test of reasonableness requires the publisher to consider whether a proposed series of articles which is likely to cause distress to an individual will constitute an abuse of the freedom of press which the pressing social needs of a democratic society require should be curbed. This is a familiar test and not one which offends against Strasbourg’s requirement of certainty.”

[43] In the present case the plaintiff complains that all the matters reported in the articles, and not just the material relied on by the plaintiff as private

information, constituted a campaign against him that qualifies as harassment under the Order. The central theme of the articles reflects the reporting of matters of legitimate public interest concerning criminal activity and criminal lifestyle. The truth of the central theme of the articles was not an issue in these proceedings. I am satisfied as to the bona fides of the defendant in advancing the central theme of the articles.

[44] There were inaccuracies in the articles. The Editors' Code at paragraph 1 under the heading 'Accuracy' states that the press must take care not to publish inaccurate, misleading or distorted information, including pictures. The plaintiff relied on a number of inaccuracies in the articles, for example concerning addresses, the christening of the child, the plaintiff's whereabouts from time to time, the residence of the plaintiff's former girlfriend, whether the plaintiff was present when a police raid occurred. Some of the claimed inaccuracies were disputed and some were not. The Code requires care in relation to the accuracy of the publications. I am satisfied that some of the material published was inaccurate, including the details of the christening of the child. I take this into account in assessing the reasonableness of the defendant's conduct.

[45] The publication of some of the material was unwarranted, as set out above, whether relating to the plaintiff's right to life or the misuse of private information. I take this into account in assessing the reasonableness of the defendant's conduct.

[46] The present case is not attended by some exceptional circumstance which justifies sanctions and the restriction on the freedom of expression that they involve. Nor does the publication of the series of articles constitute an abuse of the freedom of press which the pressing social needs of a democratic society require should be curbed. Overall, on the question as to whether or not this series of articles constituted reasonable conduct, I am satisfied that they did and that they did not amount to harassment of the plaintiff.

[47] Accordingly, in respect of the three claims advanced by the plaintiff, on the first claim in respect of the plaintiff's address, an injunction will be granted to restrain publication of the plaintiff's present and future addresses until further Order, on the second claim in respect of misuse of private information, the publication of the details of the partner's workplace, family members and religion was not justified and the publication of the details about the child was not justified and an injunction will be granted to restrain further publication of those details and on the third claim in respect of harassment the plaintiff's claim is dismissed.