Neutral Citation Number: [2018] EWHC 1998 (QB)

Case No: SIOC18/0720

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

IN THE MATTER OF AN APPLICATION PURSUANT TO PD53 6.1

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/07/2018

Before:

THE HONOURABLE MR JUSTICE WARBY

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Between:

SWS	**Applicant**
- and -	
Department for Work and Pensions	**Respondent**

- -
- -

Ian Helme (instructed by **Brett Wilson LLP**) for the **Applicant**
Aidan Eardley (instructed by **Government Legal Department**) for the **Respondent**

Hearing date: 25 July 2018

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Approved Judgment

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

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THE HONOURABLE MR JUSTICE WARBY

MR JUSTICE WARBY :

1. This is an application pursuant to CPR PD53 para 6, for permission to make a statement in open Court (SIOC) about a privacy claim which has been settled without the issue of proceedings. The text of the SIOC has been agreed between the parties, subject to this important qualification: the applicant wishes to make the statement anonymously; the respondent does not accept that this is justified. The issue for my decision is whether it should be allowed.

2. This is evidently the first occasion on which such an issue has been contested. However, it is common ground that I have jurisdiction to allow it. Mr Helme, for the applicant, tells me it has been done before. But that is based on a *Guardian* article that I have not been shown, and no case has been cited in which the Court has considered the principles by which it should decide whether to allow an anonymous SIOC. To that extent, the case raises a novel issue. However, the applicable principles are largely undisputed. It is agreed that there can be circumstances in which it would be proper to allow a SIOC, where the claimant remains anonymous. My decision on whether to allow it on this occasion must largely turn on the particular facts and circumstances of the case.

Interim protection

3. At the start of the hearing I made orders to secure the anonymity of the applicant until after judgment on the application. The justification for that is obvious: the point of the application would be defeated if identification of the applicant was the price of making it. Anonymity was therefore necessary to do justice, pending my decision.

The facts

4. I base this account on the agreed text. The applicant is a man in his 60s. He has had a varied and productive working life, working in several different industries. In the early years of this century he suffered significant health problems, which impeded his ability to work. But he continued to make a concerted effort to work wherever possible. He has undertaken freelance work, zero hours contract work, and has worked for different employers on different days.

5. From 2010 the applicant was in receipt of disability living allowance (DLA), reflecting the impact of his health problems. At some time before April 2017, the respondent Department (DWP) embarked on an investigation of his claim. In June 2017, the applicant was interviewed by the DWP. By the end of that month the DWP wrote to them, indicating that the investigation had been closed and there would be no action.

6. It later transpired that in the course of the DWP investigation a caseworker had emailed one of the applicant's then employers, and disclosed a substantial amount of information about the applicant's health which he had confided to the DWP at the time of his initial application for DLA in 2010. The DWP had also handed a copy of the same private information to a former employer of the applicant.

7. Shortly after the disclosure, the applicant's relationship with one employer rapidly deteriorated. When he became aware of the DWP's breach of his privacy, he concluded

that his employer's behaviour towards him must have been based on the wrongfully disclosed health information.

The claim

8. The applicant instructed solicitors, Brett Wilson LLP, who sent a letter of claim to the DWP on 3 November 2017, asserting claims for breach of confidence, misuse of private information, breach of duty under the Data Protection Act 1998, and breach of the Human Rights Act 1998. The DWP made a Part 36 offer, which was accepted by the applicant on 12 February 2018.

9. There was then correspondence about the possibility of a SIOC. The applicant's solicitors initially indicated that he might, and then that he did wish to make a SIOC, either by agreement or unilaterally, but that he wanted anonymity. The DWP replied, expressing surprise at the decision "to make a statement in open court whilst at the same time applying for anonymity". It was suggested that "if the objective of making the statement is to obtain public vindication these two courses of action do seem somewhat contradictory." In due course it was made clear that the DWP would oppose anonymity. The DWP otherwise agreed the text.

The application

10. The application has been made by means of a Part 23 application notice. No objection has been taken, nor do I propose to make a point about this for the purposes of the present case. PD53 6 prescribes this, but the use of the Part 23 procedure seems questionable where the case has settled before issue and no proceedings have been issued. It means, at least, that the case has no claim number which is administratively inconvenient. There may be other consequences. The issue was not explored at the hearing, but on the face of things it would seem that the procedure should involve a claim form, whether under Part 7 or (perhaps more appropriately) under Part 8.

11. The supporting witness statements exhibit the agreed draft text. This contains, in addition to the information which I have already set out, very full details of the health problems which were disclosed by the DWP. The statement, as drafted, would set out extensive details of what is, on any view, sensitive and intimate information about a range of health problems suffered by the applicant in 2010. The text includes are other disclosures about the claimant's life which Mr Helme submits are private and sensitive.

12. The agreed text also includes the following further wording:

> "The information had been provided by the Claimant to the DWP in the strictest confidence solely for the purposes of the organisation assessing his Disability Living Allowance claim. The disclosure to the two employers was made without the Claimant's consent or any other lawful authority. The caseworker's apparent reason for the disclosure was to see if either of the employers, or any of their employees, could provide any evidence which might cast doubt on the accuracy of the information.
>
> The Claimant has always sought to ensure that information relating to his health remained strictly private. The actions of the DWP were

> an interference with the Claimant's right to a private life, causing him to lose control and autonomy over this extremely sensitive information.
>
> The damage caused by the unauthorised disclosure was profound.
>
> In addition to the [direct impact on him of the employer's behaviour], the discovery of the disclosure caused the Claimant severe embarrassment and distress. …
>
> The DWP accepts that it is vicariously liable for the acts of its caseworker and that it failed to properly safeguard the Claimant's data. It recognises that private information, particularly medical information should be handled with the utmost care. It acknowledges that the disclosure of the Claimant's personal information to third parties in a fact-finding investigation was and is entirely improper.
>
> The DWP has apologised to the Claimant for the damage and distress he has suffered. It has paid him substantial damages to compensate him, together with his legal costs."

13. The draft statement, being bilateral, also provides for a representative of the DWP to confirm what has been said, and to make a public apology in Court.

The evidence

14. Two witness statements are relied on: one from Mr Max Campbell of the applicant's solicitors, and one from the applicant himself. Mr Campbell sets out the procedural history, some facts about the applicant's stance in relation to the proposed SIOC, and some argument in support of the application. There is a suggestion in the procedural history section of the statement that the DWP performed a volte face at one stage, in relation to the proposed anonymous SIOC. But Mr Helme in the end accepted – rightly, in my view - that I could not and should not base any part of my reasoning on any view about the DWP's motivation, or any alleged inconsistency on the part of the respondent. It is perfectly proper for a government department to raise a point of this kind, on an application of this nature. Nor do I take account of arguments contained in Mr Campbell's witness statement. As Mr Campbell acknowledges, that is for Counsel.

15. But it is important to note what is said by Mr Campbell and the applicant about the reasons for seeking a SIOC in these terms. They give two main reasons:

(1) That there should be "a public acknowledgment" of the fact that the DWP made "unauthorised and otherwise inappropriate disclosures of highly detailed medical information to two previous employers of the applicant" who were small businesses operating in a niche industry in which the applicant himself works (Mr Campbell). The applicant himself says he was "exposed publicly" by the DWP's disclosures and "ought to have something public that I can point to", to demonstrate this, and discourage repetition.

(2) That the applicant "fears that there has been onward public disclosure" and, if he should discover this to be so, "he wishes to have something to point to, to

> demonstrate that his rights were breached, to prove that the information should no longer be in the public domain, and to inhibit any further transmission" (Mr Campbell). The applicant gives evidence to the same effect.

16. The second point is made in the draft SIOC as well, in these terms:

> "Both employers are small companies without formal human resources structures. Whilst the companies have stated that there has been no further disclosure, the Claimant therefore fears it is inevitable that there was onward dissemination of the private information, both within the companies and beyond (both companies being part of a relatively close-knit industry). Offers of work from other companies have been withdrawn."

17. The applicant's evidence about this point includes the following. A letter from the DWP dated 6 September 2017 deals with the disclosure to the applicant's then current employers. That disclosure took place on 16 February 2017. The letter states that the employers (named in the letter) upon being informed of the inadvertent disclosure "have confirmed that no such information has been retained nor has it been shared onwardly with anyone." A letter from the Government Legal Department dated 23 January 2018 addresses the other disclosure, which took place on 30 November 2016. The letter encloses an email from the company to which the disclosure was made. The email, dated 17 January 2018, states "I can confirm that the document discussed has been shredded" and had not been discussed with anyone other than a named director.

18. The applicant adds a third reason for wanting an anonymous SIOC: that he wishes to have something to point to if he should need to establish at a later stage that the DWP's actions were unlawful.

19. I should also record what is said in the evidence about the applicant's position if the Court does not grant permission for the statement he wishes to have made. Mr Campbell says that the applicant "will not" pursue his application for a SIOC if his application for anonymity is refused. The reason given is that naming the applicant would lead to "the widespread publication" of information which was the subject of his claim, to people who had hitherto been unaware, thus causing him substantial damage. The applicant himself gives similar reasons for saying that if anonymity is refused "I do not think I will pursue the SIOC".

The law

20. By common consent, there are two strands of authority that need to be considered.

(A) The open justice principle

21. This must be the starting point, as Mr Helme agreed in his reply submissions. The principle, and its implications, are not in doubt. The well-known authorities cited on this application include *Scott v Scott* [1913] AC 417, *R v Legal Aid Board, ex parte Kaim Todner* [1998] QB 966, 978 (Lord Woolf MR), *Re Guardian News and Media Ltd* [2010] 2 AC 697 [52], *JIH v News Group Newspapers Ltd* [2011] 1 WLR 1645 [21], The Master of the Rolls' *Practice Guidance: Interim Non-disclosure Orders* [2012] 1 WLR 1003 [9]-[15] (White Book 2018 p.2536), *Khuja v Times Newspapers*

Ltd [2017] 3 WLR 351 [15] and *Khan v Khan* [2018] EWHC 241, [81]-[93] (Nicklin J). Also relevant are Parts 5 and 32 of the CPR.

22. Key points to be derived from the CPR and these authorities include the following:

(1) Open justice is a fundamental principle. Any derogation from it requires justification. Derogations "can only be justified in exceptional circumstances, when … strictly necessary as measures to secure the proper administration of justice. They are wholly exceptional [and] should, where justified, be no more than strictly necessary to achieve their purpose" (Practice Guidance [10]).

(2) A derogation from open justice is only strictly necessary to secure the proper administration of justice where "the paramount object of securing that justice is done would really be rendered doubtful of attainment if the order were not made" (*Scott v Scott,* 439 (Viscount Haldane LC)) or, putting the same point another way, "the administration of justice would be rendered impracticable … whether because the case could not be effectively tried, or the parties entitled to justice would be reasonably deterred from seeking it at the hands of the court" (Ibid, 446, Earl Loreburn).

(3) "The burden of establishing any derogation from the principle lies on the person seeking it. It must be established by clear and cogent evidence" (Practice Guidance [13])

(4) Open justice, as a general rule, requires that litigants be identified to the public. Parties' names must be given when proceedings are issued. "The general rule is that the names of the parties to an action are made public when matters come before the court, and included in orders and judgments of the court" (*JIH* [21(1)]). Party anonymity is therefore a derogation from open justice, which requires justification as strictly necessary, and no more than strictly necessary, according to the principles stated above.

(5) "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". (*JIH*, [21(4)])

(6) "Where the court is asked to restrain the publication of the names of the parties … 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": (*JIH*, [21(5)]).

23. As Mr Eardley points out, it would be wrong to read this last proposition as imposing a burden on the respondent to an anonymity application, to identify a public interest in naming a party. That would be at odds with principles (1) to (5). The proposition originates in the Supreme Court's decision in *Re Guardian News and Media.* It is clear from that decision as a whole that the burden is on the party seeking a derogation from open justice. The question of whether there is a specific public interest in naming a party arises only once that party has shown that the application of the usual principle

would result in some interference with their Convention rights going beyond what is generally to be expected by a claimant in litigation.

24. In practice, the application of these principles normally leads to the grant of anonymity to claimants seeking injunctions to prohibit the disclosure of personal information. The court will commonly set out in its judgment the nature of the information at issue, but withhold the identity of the individual to whom it relates. The public interest tends to favour the resolution of the competing considerations in that way: see *JIH* at [33].

25. The reasons given by the Court for reaching that conclusion should be noted. At [35] Lord Neuberger referred to concerns that the Courts may be too readily granting injunctions to prohibit the publication of allegedly private information, without sufficient public scrutiny. He said that these concerns can be met by judgments and orders which "disclose as much as possible about the case". The point, of course, is that transparency supports public confidence in the operations of the Courts. Lord Neuberger went on to say that publication of details of the information at issue will generally be a better means of enabling the media to discover and report on what the courts are doing. This will "normally enable the public to have a much better idea of why the court acted as it did" than an approach which involves naming the claimant but withholding details of the information at stake. This reflects one key underlying rationale of the open justice principle: to keep the operation of the Courts open to public scrutiny.

26. The parties have also referred to the decision of the Court of Appeal in *JX MX (A child) v Dartford and Gravesham NHS Trust* [2015] EWCA Civ 96 [2015] 1 WLR 3647. The Court considered the grant of anonymity in respect of "approval applications": cases where a child or protected party requires the Court's approval of a settlement, typically in a claim for damages for clinical negligence or other personal injury. The Court concluded that, ordinarily, anonymity orders should be made in such cases. But again, it is important to note the reasoning behind that conclusion. The Court accepted that the open justice principle applies equally to post-settlement hearings: [29]. But it held that a derogation is justified because these applications would not be necessary if the parties were adults of full capacity; a Court hearing is only required at all because a settlement by or on behalf of a child or protected party is not effective unless the court approves it (CPR 21.10); to require the applicants for approval to be named, in conjunction with the disclosure of the highly private personal information that such applications necessarily involve, would be an unjustified incursion into their private life rights.

(B) Statements in open court

27. PD53 6.2 provides that "a party may apply for permission to make a statement in open court before or after he accepts the Part 36 offer in accordance with rule 36.9(1) or other offer to settle the claim." Para 6.3 requires the statement to be made to be submitted to the court for its approval.

28. The notes to this part of the White Book (Civil Procedure 2018 n 53PD.41) explain the historical background, saying that "Initially this procedure was confined to claims for libel or slander …" Indeed, as Sharp LJ pointed out in *Murray v Associated Newspapers Ltd* [2015] EWCA Civ 488 [2015] EMLR 21 [25] "The procedure by which a statement in open court is made as an incident of the settlement of a libel action, is one of long standing: see *Gatley on Libel and Slander*, 11th edition, para 31.10. It antedates by many

years the introduction of the offer of amends regime, or its ineffective predecessor, in section 4 of the Defamation Act 1952." The passage cited (para 29.10 in the 12th edition) refers to *Siever v Wootton,* The Times, 13 February 1920. In libel and slander cases, therefore, this is a mature jurisdiction.

29. One of the principal authorities cited on the present application is *Barnet v Crozier* [1987] 1 WLR 272*,* decided by the Court of Appeal in December 1986. As junior Counsel for the second defendant in that case, I remember it well. The key issue was whether the claimant and second defendant should be allowed to read an agreed statement, when the claim against the first defendant remained to be tried by jury. The importance of the case for present purposes lies in a passage from the judgment of Ralph Gibson LJ at 276D-G, where the rationale and importance of the procedure in libel cases were explained. Ralph Gibson LJ referred to the practice "established over many years, when an action for libel or slander has been settled, to permit the plaintiff to say on oath in court that the statements made of him are untrue, or to permit counsel for the parties to make statements in court which have been agreed between the parties and approved by the judge". He went on:

> "Parties to an action do not need the consent of the court to make an effective settlement of their dispute; nor do they need the consent of the court to announce to the world that they have settled it on stated terms. The importance of the making of a statement in open court is, first, that it is likely to come to the attention of the press, who will give to it such attention as its public interest is seen by them to merit and, secondly, since the statement is part of a judicial proceeding, it is made on an occasion of absolute privilege. Thus, the parties to the statement are protected and, moreover, the statement can be reported without the publisher of the report incurring the risk of being sued in respect of it. *Tracy v. Kemsley Newspapers Ltd., The Times, 9 April 1954*, which some of us can vividly recall, is an example of publishers, after an apology by them for statements made in a story published by them, being held liable for those statements in an action brought by the author in respect of the defamatory effect of the apology. The case is referred to in *Gatley on Libel and Slander* , 8th ed. p. 485, para. 1174.
>
> It seems to me that the protection obtained from the fact that the approved statement is made in open court is not to be seen as an unintended and undeserved consequence of the procedure, but as a useful attribute of it which is obtained, of course, only if the court permits it to be used. The daunting burden of the risk in costs in such litigation must weigh intolerably upon most litigants. The procedure offers a means by which settlement can be reached and, when appropriate, announced in appropriate terms between two parties without risk of further litigation arising out of that announcement. It is, in my view, a grievous burden to be sued in a defamation action even if you win it in the end."

30. In *Murray* at [25], Sharp LJ expanded on this:-

> "A statement in open court is often a valuable endpoint to litigation brought to achieve vindication since it provides the means for more publicity to be given to a settlement (and therefore to a claimant's vindication than might otherwise occur."

31. The White Book at 53PD.43 contains what I consider to be an accurate summary of the other authorities on SIOCs in defamation, as follows:

> "When the claimant applies to make a statement, the defendant has the right to be heard and to object to its wording … Subject to a defendant's objections, the court will generally give permission to make a statement, particularly when the libel has been widely publicised, although if the sum offered is very small compared with the gravity of the libel permission may be refused (see for instance *Church of Scientology v North News* (1973) 117 S.J. 566, where the claimant accepted a payment of £50 and was refused leave to make a statement). It would be quite exceptional for the court to refuse permission for the making of a reasonable and proportionate statement: see *PCampbellips v Associated Newspapers Ltd* [2004] EWHC 190 (QB) [2004] 1 WLR 2106 …
>
> Where parties reach a bona fide settlement, and ask for permission to make a statement in court, permission ought to be granted unless, taking into account the interests of all parties affected and the risk of prejudice to the fair trial of any outstanding issue, sufficient reason appears from the material before the judge for it to be refused (ibid.). A claimant who has reached a bona fide settlement can normally expect to be given permission to make a unilateral statement unless that would give rise to unfairness to the other party: *Murray v Associated Newspapers Ltd* [2015] EWCA Civ 488 [2015] EMLR 21. A statement in open court, whether unilateral or joint, must be fair and proportionate, should not misrepresent a party's case or the nature of the settlement reached, and must bear in mind the interests of third parties. The court is unlikely to intervene in the absence of any real or substantial unfairness to the objecting party or a third party, and 'nit-picks' are to be discouraged: *Murray*, above."

32. It was not until 2011 that the SIOC procedure was extended, to cover claims for malicious falsehood and "misuse of private or confidential information". Neither party has been able to identify any materials that shed light on the reasoning behind this extension. The jurisprudence in relation to this aspect of the SIOC jurisdiction is relatively undeveloped, consisting of an unreported *extempore* decision of Nugee J, in *Webb v Lewis Silkin LLP* [2016] EWHC 1225 (Ch), and a decision of Mann J in *Richard v BBC* [2017] EWHC 1648 (Ch) [2017] EMLR 25.

33. In *Webb,* the claimant was a partner in the defendant solicitors' firm, and a substantial number of her private emails had been accessed without consent or justification in the

context of an arbitration between her and other members of the firm. She sued for infringement of her privacy and a Part 36 offer was made and accepted. She sought permission to make a SIOC. Nugee J, having reviewed the authorities in defamation, accepted a submission that a claimant in a privacy case:

> "… can normally expect to be able to make a statement in open court … it must be assumed that the purpose behind the extension of the procedure to cases like this carries with it a similar expectation so that the claimant … can normally be expected to be allowed to make a statement in open court to vindicate her position and say publicly, and in a forum which will provide her with absolute privilege, what she wants to say about the action, the distress she has felt, and her perception of the settlement."

34. Nugee J relied on what Sharp LJ went on to say in *Murray* [25], in a passage following the words cited at [30] above:

> "Such statements often include an explanation of why proceedings were brought, why what was said was particularly hurtful or damaging, and the effect that the publication complained of, and of events associated with it, has had on a claimant."

35. Nugee J went on to say this:-

> "38. It does not seem to me that a case of breach of privacy gives rise to any very different considerations. One would expect, in a case of breach of privacy, that a statement in open court would explain why proceedings were brought, why not what was said, but what was done was particularly hurtful or damaging and the effect that, in this case, not publication, but the breach of privacy complained of and events associated with it has had on claimant. That enables, as she says, "more publicity to be given to a settlement and, therefore, to a claimant's vindication than might otherwise occur."
>
> 39. It is true that in a case where what is at stake is not the claimant's reputation but her privacy, the nature of the vindication that she wants is different and is not a case so much of setting the record straight as a case of being able to point to a public statement that her rights have been infringed and the effect that that has had on her, but I do not see that as giving rise to such a sharp distinction with the case of defamation as to mean that, in a case such as this, it is inappropriate to allow a statement in open court to be made at all. It is true that many defamation cases involve wide publicity, but some defamation cases do not and I do not detect, in the authorities I was shown at any rate, any suggestion that the extent to which the libel has been disseminated is a relevant consideration in deciding whether a claimant should be able to make a statement in open court."

36. *Richard* does not seem to me to take the matter any further. This was one of the decisions in proceedings brought by Sir Cliff Richard over the extensive publicity given on the national public broadcasting channel to a criminal investigation into him, in the course of which he was neither arrested nor charged with any offence. Sir Cliff sued the Chief Constable of Yorkshire Police and the BBC. The claim against the BBC has recently been determined by Mann J, in favour of Sir Cliff: [2018] EWHC 1648 (Ch). At the time of the Judge's 2017 decision, that all remained in the future. The claimant and the Chief Constable had settled and agreed a SIOC. The issue before Mann J was whether they should be permitted to make that statement over the objections of the BBC, with the trial of Sir Cliff's claim against it still pending. Unsurprisingly, the Judge held that they should, reasoning that "if the case of a non-settling party was properly summarised in the statement, the statement was highly unlikely to be unfair". Two cases only appear to have been cited: *Barnet v Crozier,* and *Murray v Associated.* Nor do I find Mr Helme's reference to a short passage in a costs decision of Master Gordon-Saker of any assistance on the issues for decision today.

Discussion

37. The applicant's task is to persuade me that justice demands that I allow him to make a SIOC containing all the intimate detail that features in the agreed draft, whilst derogating from open justice by allowing this to be done anonymously. The applicant has failed to persuade me of that.

38. I am not sure that the justice of this case demands a SIOC at all. The case is one of limited disclosure to two individuals, some time ago. The consequences were serious, but they were not public. The documentary records have been destroyed, and there is no evidence of any further disclosure. To the contrary. The respondent has acknowledged fault, promptly apologised, and satisfactory compensation has been offered and accepted. All of this was achieved privately, through correspondence, without the need for legal proceedings. It would seem that nobody saw the need at the time of settlement for any public statement about the matter, or else that could and would have been part of a negotiated compromise deal. The evidence makes clear that it was only later that the applicant and his lawyers turned their thoughts to the desirability of a SIOC. They then took some time to conclude that a SIOC should be sought. One can see why. The need for one is not plain and obvious, from the applicant's perspective.

39. As Mr Eardley acknowledges, the Court has a duty to ensure that, where Article 8 rights are infringed, the wronged party has a practical and effective remedy. But the fact that no need for this particular procedure was immediately apparent to the applicant himself is a significant factor. Nor is it plain that there is a real and pressing need for the resources of the Court to be devoted to this exercise, at a time when those resources are under ever-increasing pressure. Those who complain of libels with limited publication do not need, and do not often seek, to publicise the success of their claims beyond the limited circulation originally achieved. There may be instances where wider "percolation" of the libel is reasonably feared. But if not, a SIOC will be counter-productive, by giving wider currency to the offending statements. In practice, therefore, it is a rare case of limited publication which calls for, or generates, an application for a SIOC. This may be why authorities refusing a SIOC on that basis were not cited to Nugee J in *Webb*.

40. I can certainly see a public interest argument for publicity in this case. The case involves the misuse by a public authority of private information confided to it by a citizen, for a specific purpose. These are facts that the public is entitled to know. But there is no obstacle to publicity. Mr Helme argues that one function of a SIOC is to provide a "megaphone" for a complainant who secures a settlement of this kind. I am not convinced that the authorities provide any support for so general a proposition. As Mr Eardley points out, the means that people have at their disposal today for reaching the public at large are very different now from what they were. At the time of *Barnet v Crozier,* for instance, a litigant had no way of forcing a newspaper or broadcaster to publish an apology. But the court afforded a means of achieving something similar, with the added security of absolute privilege from suit. Here, the applicant could have demanded a public statement by the DWP. He could have, and still could, take advantage of the monthly newsletter published by his solicitors. He has the same access as anyone else to the internet and social media. Mr Helme submits that a SIOC is required in order to protect the applicant from the risk of litigation over the contents of the proposed statement. That is a submission, not a point made in the evidence. I accept Mr Eardley's contention that, on the facts and evidence in this case, the suggestion is fanciful.

41. *Webb* suggests that, as a general rule, the Court will allow a SIOC in a privacy case. But it does not lay down an invariable policy that this will be so. For my part, I would be uneasy with any such rigid rule. Indeed, I have reservations about the equiparation of defamation and privacy in *Webb*. Misuse of private information and libel are "two very different torts": *Campbell v MGN Ltd* [2002] EWCA Civ 1373 [2003] QB 633 [61] (Lord Phillips MR). *Murray* was a libel action. There is no indication that the court had privacy claims in mind at all. To my eyes, the passage from Sharp LJ's judgment on which Nugee J founded his reasoning is no more than a descriptive account of a typical SIOC in a defamation case. To treat it as an authoritative, normative statement about the functions or purposes of SIOCs generally may go too far, I would suggest. Experience tells us that another aspect of what SIOCs do in practice is that, even when reported fair and accurately, they tend to suggest to the casual lay reader that the claimant and his lawyers have succeeded in securing a favourable adjudication from the Court. This is one thing they *do*, but it by no means follows that this is what they are *for.*

42. This said, Mr Eardley has not invited me to depart from the approach in *Webb.* I therefore deal with this application on the footing that the norm in privacy cases is to permit a SIOC which is fair and proportionate, and on the assumption that this is an appropriate approach. But *Webb* lays down no rule about anonymous SIOCs. It says nothing about them. What it does say is that vindication is a key function of a SIOC. However, as Nugee J points out, this is not vindication as defamation lawyers understand it: the restoration of reputation. A person only needs vindication of that kind if, and to the extent that, their reputation has been harmed. That can only be so if they are identifiable to the publishees of the libel. So, in the defamation context, the notion of anonymous vindication makes no sense.

43. To what extent can anonymous vindication make sense in a privacy action? Most privacy claims are about non-disclosure of private information. A successful claimant might wish the public to know that he or she has succeeded in preventing disclosure – for instance, where the case has been highly publicised, and there are some members of

the public who know the information (as in *PJS v News Group Newspapers Ltd* [2016] UKSC 26 [2016] 1 AC 1081). As acknowledged in argument in this case, a SIOC might be appropriate in such a case. But for the most part claimants in this category are likely to have been uncomfortable with the degree of publicity involved in obtaining an injunction. One could understand if they did not want more. This may be why, 7 years after the CPR were modified, nobody can point to any clear evidence of any anonymous SIOC having been agreed or made, despite the fact that numerous anonymous privacy claims have been pursued in that period. I note that when *PJS* settled, neither party sought publicity for the outcome: see [2016] EWHC 2770 (QB). Where private information about an individual has been widely publicised, in the media or otherwise (as, for instance, in *Mosley v News Group* [2008] EWHC 1777 (QB) [2008] EMLR 20) it would be understandable for a claimant to want publicity for his victory, and one can see that a SIOC would be fitting. See also *Richard* (above). But in such a situation there would obviously be no question of anonymity. There may be cases where private information has been wrongfully disclosed to a limited extent only, which merit a SIOC. *Webb* itself may be such a case. But Ms Webb did not seek an anonymous SIOC.

44. Is anonymous vindication necessary here? I am wholly unpersuaded that is so. The first main objective identified in the evidence, namely a public acknowledgment of the DWP's wrongdoing, does not require anonymity. All the requirements specified by the applicant ([15(1)] above) could be achieved by a public statement which identifies the claimant, and describes the wrongdoing, but does not set out the detail of the private information. A public statement, that is to say, along the lines set out in this judgment, above with the addition of the claimant's name.

45. The same is true of the second stated objective (something to point to, to prove that the information should not be in the public domain etc: [15(2)] above), and of the third objective ([18] above). I am not persuaded that there is any need for any deterrent to onward transmission. I do not doubt that the claimant harbours the fears of which he speaks, but in my judgment the evidence fails to establish an objective basis for such fears. If that is wrong, then I note that the written disclosure made by the DWP was anonymised. In any event, it seems to me – having reviewed the nature of the information – that it would be obvious to anyone who saw it that it was personal and private and should not be used or disclosed without consent. I find it hard to see why a SIOC is needed, or indeed would help, to make or reinforce that message. If that also is wrong, then the most effective method would be a SIOC or other public statement which names the applicant. Indeed, it is not easy to see how an anonymised SIOC would work for this purpose, as the applicant could not point to it as evidence of the wrongfulness of disclosure unless he first identified himself.

46. The peculiarity of the present case is that the applicant wishes to make a SIOC that would publicise to the world in great detail the very information he (rightly) contends is sensitive, private, personal information which ought not to have be disclosed by the DWP at all, and ought not to receive further disclosure or publicity. It is only his desire to make such detailed disclosure of the underlying information that brings in the alleged need for anonymity.

47. In their witness statements, both Mr Campbell and the applicant approach this application on the footing that there are only two alternatives: a SIOC giving exhaustive detail of the health problems in question but anonymising the applicant; or one that gives all the details as well as his name. Neither Mr Campbell nor the applicant

discusses the possibility of a SIOC in which the applicant is named, but the details of his health difficulties are not disclosed. Neither statement sets out to explain why it is that the detail that is contained in the draft SIOC is required if the stated objectives are to be achieved.

48. Mr Helme submits that the nature of the information in question is "critical to an understanding of what has taken place." Without the detail, it would be difficult adequately to explain fully the circumstances of the claim or why it is of significant public interest. The alternative would not come close to adequately conveying the unlawfulness of the DWP's actions. But neither of the witness statements says this. I do not accept it.

49. Nor do I accept Mr Helme's submission that the underlying rationale of the approach to privacy injunctions and the SIOC jurisdiction is to make as much information as possible available to the public. I agree with Mr Eardley that the principles and practice as to anonymity for claimants seeking privacy injunctions provide no support for the present application. In cases of that kind, the claimant is not seeking publicity for his or her case. Quite the contrary. The claimant would invariably prefer that nothing at all was made public. But the claimant in such a case has no choice. Any claimant who wishes to achieve the objective of secrecy for personal information by securing an injunctive remedy from the court, must accept the open justice principle, including the need for a reasoned public judgment. In this situation, the resolution of the conflict between the need for public justice and the claimant's legitimate desire for secrecy lies in anonymising the claimant, whilst revealing details of the information at issue in the judgment of the Court. That is not because of some general rule in favour of freedom of information. It is for the reasons already identified, that have to do with transparency in the operation of the justice system and the reasoning behind for judicial decisions.

50. In the present case, the applicant has already secured his principal remedies before coming to court. He needs no injunctive remedy; he is not at risk of any further publicity, save that which he chooses to seek out. The Court has a supervisory role, to ensure the statement is not inappropriate. But, in contrast to its role when adjudicating on an application for an injunction, it has no need to disclose any of the applicant's personal information in order to perform its role, in conformity with the open justice principle. Indeed, the Court has no need to receive any of his personal information beyond that which he chooses to reveal. The Court facilitates the making of a SIOC in an appropriate case, and would no doubt decline to permit a statement that was misleading by omission. The open justice principle applies, and carries with it the ordinary rules about the naming of parties. But apart from these considerations, it is no part of the Court's function to mandate full disclosure, or anything that goes beyond what the parties wish.

51. The SIOC procedure is not a Court-operated mechanism for freedom of information. It is a process initiated by the parties, in which one or more parties engages by choice, and in which – subject to the control of the court - they convey to the public as much or as little information as they choose to about the underlying claim, the litigation, and the settlement. The parties agree on the appropriate statement. The Court will check the agreed statement, but with a light touch, as the authorities indicate. It does not need to examine the suitability of the settlement. Indeed, it will often know only some of the details of the overall settlement package. It follows that the practice in approval

applications has no bearing on the present application. The situation there is entirely different from that which prevails upon an application for a SIOC.

52. What the applicant is seeking is the vindication that lies in a public announcement or declaration of what has already taken place, and the resolution of the claim, in terms agreed with the respondent. Setting out the detail of the information that has been wrongfully disclosed is not a necessary part of that process. It is no more necessary for this applicant to do that, than it would have been for Ms Webb to lay before public the contents of the hundreds of private emails that had been wrongfully accessed by her ex-partners. If the detail is not necessary, any justification for anonymity falls away.

Conclusion

53. In summary, for the reasons I have set out, I am not persuaded that the derogation from justice which anonymisation of the draft SIOC would involve is a measure that is either necessary to do justice, or proportionate to that or any other legitimate aim pursued by the applicant. A SIOC which names the claimant and explains the facts without going into detail is one that is fair and proportionate.

Next steps

54. I would therefore see no difficulty with a SIOC that contained the same information about the claim and its settlement which is set out in this judgment, or similar information, if that SIOC also contained the applicant's name. He might see no need for such a statement, given the contents of this judgment which – paradoxically perhaps – will have achieved much of what he sought to achieve. But Mr Helme has indicated, knowing of my decision but in advance of seeing the reasons for it, that his client is "likely to seek to appeal the judgment rather than adopt any other course of action".

55. If that remains his position I will have to address the grounds of appeal when these are identified. I also need to address the issue of whether, in the light of my conclusions, the interim anonymity order that I have made should be continued. Mr Eardley, for the DWP, accepts that this may be justified if and for so long as the applicant is an applicant for permission to appeal or (if permission is granted) an appellant. But he submits that further anonymity could not otherwise be justified. I am inclined to agree. I do not presently see any justification for enlarging the scope of the privacy protection granted so far. And the open justice principle would normally lead to the applicant's identification, unless he succeeds in an appeal.

56. The applicant accepts that he should pay the DWP's costs of the application, which I assess in the amount set out in its costs statement.