



MASTER OF
THE ROLLS

Practice Guidance: Interim Non-Disclosure Orders

(1) GUIDANCE

1. This Guidance sets out recommended practice regarding any application for interim injunctive relief in civil proceedings to restrain the publication of information: an interim non-disclosure order. It is issued as guidance (not as a Practice Direction) by the Master of the Rolls, as Head of Civil Justice. Such applications may be founded on rights guaranteed by the European Convention on Human Rights (the Convention), or on grounds of privacy or confidentiality. They may also be made in respect of a threatened contempt of court, a threatened libel or malicious falsehood, harassment, or a Norwich Pharmacal application in support of such actions. All such orders will seek to restrict the exercise of the Article 10 Convention right of freedom of expression through prohibiting the disclosure of information.
2. It also provides guidance concerning the proper approach to the general principle of open justice in respect of such applications and explains the proper approach to the model interim non-disclosure order a copy of which is attached to this Guidance.
3. The law set out in this Guidance is correct as at 1 August 2011.

Statutory Provisions

4. Applications which seek to restrain publication of information engage Article 10 of the Convention and s12 of the Human Rights Act 1998 (HRA). In some, but not all, cases they will also engage Article 8 of the Convention. Articles 8 and 10 of the Convention have equal status and, when both have to be considered, neither has automatic precedence over the other. The court's approach is set out in *Re S (a child)* [2004] UKHL 47, [2005] 1 AC 593 at [17].
5. HRA s12 applies whenever the court is considering whether to grant relief which might affect the exercise of the Article 10 Convention right. HRA s12(2) requires advance notice to be given to persons against whom the application is made, except in the exceptional circumstances set out in HRA s12(2)(a) and (b).
6. HRA s12(3) requires the applicant to satisfy the court that they are likely to establish, at trial, that publication should not be allowed. Guidance on the application of s12(3) is set out in *Cream Holdings Ltd v Banerjee* [2005] 1 AC 253 at [22] – [23].

7. HRA s12(4) requires that court to have particular regard to the fundamental importance of the Article 10 Convention right of freedom of expression, where proceedings relate to material which a respondent claims, or which appears to the court, to be journalistic, literary or artistic material, or conduct connected with such material, 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 it to be published. It also requires the court to have regard to any relevant privacy code. The code of the Press Complaints Commission is one such code.

Civil Procedure Rules

8. CPR 25.3 and CPR PD25A (1) – (5) apply to all interim injunction applications, including those for interim non-disclosure orders.

Open Justice

9. Open justice is a fundamental principle. The general rule is that hearings are carried out in, and judgments and orders, are public: see Article 6(1) of the Convention, CPR 39.2 and *Scott v Scott* [1913] AC 417. This applies to applications for interim non-disclosure orders: *Micallef v Malta* (17056/06) [2009] ECHR 1571 at [75]ff; *Ntuli v Donald* [2010] EWCA Civ 1276 (*Ntuli*) at [50].
10. Derogations from the general principle can only be justified in exceptional circumstances, when they are strictly necessary as measures to secure the proper administration of justice. They are wholly exceptional: *R v Chief Registrar of Friendly Societies, ex parte New Cross Building Society* [1984] Q.B. 227 at 235; *Nutuli* at [52] – [53]. Derogations should, where justified, be no more than strictly necessary to achieve their purpose.
11. The grant of derogations is not a question of discretion. It is a matter of obligation and the court is under a duty to either grant the derogation or refuse it when it has applied the relevant test: *AMM v HXW* [2010] EWHC 2457 (QB) at [34].
12. There is no general exception to open justice where privacy or confidentiality is in issue. Applications will only be heard in private if and to the extent that the court is satisfied that by nothing short of the exclusion of the public can justice be done. Exclusions must be no more than the minimum strictly necessary to ensure justice is done and parties are expected to consider before applying for such an exclusion whether something short of exclusion can meet their concerns, as will normally be the case: *Ambrosiadou v Coward* [2011] EWCA Civ 409 at [50] – [54]. Anonymity will only be granted where it is strictly necessary, and then only to that extent.
13. The burden of establishing any derogation from the general principle lies on the person seeking it. It must be established by clear and cogent evidence: *Scott v Scott* [1913] AC 417 at 438 – 439, 463 and 477; *Lord Browne of Madingley v Associated Newspapers Ltd* [2008] 1 QB 103 at [2] – [3]; *Secretary of State for Home Department v AP (No2)* [2010] 1 WLR 1652 at [7]; *Gray v UVW* [2010] EWHC 2367 at [6] – [8]; and *JIH v News Group Newspapers* [2011] EWCA Civ 42 (*JIH*) at [21].

14. When considering the imposition of any derogation from open justice, the court will have regard to the respective and sometimes competing Convention rights of the parties as well as the general public interest in open justice and in the public reporting of court proceedings. It will also adopt procedures which seek to ensure that any ultimate vindication of Article 8 of the Convention, where that is engaged, is not undermined by the way in which the court has processed an interim application. On the other hand, the principle of open justice requires that any restrictions are the least that can be imposed consistent with the protection to which the party relying on their Article 8 Convention right is entitled. The proper approach is set out in *JIH*.
15. It will only be in the rarest cases that an interim non-disclosure order containing a prohibition on reporting the fact of proceedings (a super-injunction) will be justified on grounds of strict necessity, i.e., anti-tipping-off situations, where short-term secrecy is required to ensure the applicant can notify the respondent that the order is made: *DFT v TFD* [2010] EWHC 2335 (*DFT*). It is then only in truly exceptional circumstances that such an order should be granted for a longer period: *Terry v Persons Unknown* [2010] 1 FCR 659 (*Terry*) at [141].

Consent Orders

16. Interim non-disclosure orders which contain derogations from the principle of open justice cannot be granted by consent of the parties. Such orders affect the Article 10 Convention rights of the public at large. Parties cannot waive or give up the rights of the public. The court's approach is set out in *JIH* at [21].

Application

17. The applicant should prepare (a) the application/claim form; (b) a witness statement or statements justifying the need for an order; (c) legal submissions; (d) a draft order; and (e) an Explanatory Note (see paragraph 33 below). In the rare or urgent case where it is not possible to prepare such documentation prior to the hearing, the applicant should file a statement at the earliest practicable opportunity, setting out the information placed orally before the court.

Notice of Application

18. Applicants must comply with the requirements set out in HRA s12(2), CPR 25.3(2) and (3), and CPR PD 25A 4.3(3).
19. HRA s12(2) applies in respect of both (a) respondents to the proceedings and (b) any non-parties who are to be served with or otherwise notified of the order, because they have an existing interest in the information which is to be protected by an injunction (*X & Y v Persons Unknown* [2007] EMLR 290 at [10] – [12]). Both respondents and any non-parties to be served with the order are therefore entitled to advance notice of the application hearing and should be served with a copy of the Application Notice and any supporting documentation before that hearing.
20. Applicants will need to satisfy the court that all reasonable and practical steps have been taken to provide advance notice of the application. At the hearing they should inform the court of any non-party which they intend to notify of the order as the court is required to ensure that the requirements of HRA s12(2) are fulfilled

in respect of each of them. A schedule to any interim non-disclosure order granted should provide details of all such non-parties.

21. Failure to provide advance notice can only be justified, on clear and cogent evidence, by compelling reasons. Examples which may amount to compelling reasons, depending on the facts of the case, are: that there is a real prospect that were a respondent or non-party to be notified they would take steps to defeat the order's purpose (*RST v UVW* [2009] EWHC 24 at [7] and [13]), for instance, where there is convincing evidence that the respondent is seeking to blackmail the applicant (*ASG v GSA* [2009] EWCA Civ 1574 at [3]; *DFT* at [7]).
22. Where a respondent, or non-party, is a media organisation only rarely will there be compelling reasons why advance notification is or was not possible on grounds of either urgency or secrecy. It will only be in truly exceptional circumstances that failure to give a media organisation advance notice will be justifiable on the ground that it would defeat the purpose of an interim non-disclosure order. Different considerations may however arise where a respondent or non-party is an internet-based organisation, tweeter or blogger, or where, for instance, there are allegations of blackmail.
23. Where notice of the application is to be given to a media organisation it should be effected on the organisation's legal adviser, where it has one. The court will bear in mind that such legal advisers are: (i) used to participating in hearings at short notice where necessary; and ii) able to differentiate between information provided for legal purposes and information for editorial use.

Notice and Undertakings to the Court – Non-Parties

24. In order to provide effective protection of private and/or confidential information and information contained in private and/or confidential documents provided by applicants to non-parties:
 - (i) where an applicant is to provide advance notice of an application to a non-party; or
 - (ii) where an applicant notifies a non-party of an order,

material supplied to the non-party by the applicant shall be supplied upon the applicant receiving an irrevocable written undertaking to the court that the material and the information contained within it, or derived from such material or information, will only be used for the purpose of the proceedings. A standard form of wording for the undertaking is set out in the notes to clause 13 of the Model Order, contained in the Model Order guidelines.

25. Where an applicant is to provide advance notice of an application to a non-party they should first provide the non-party with a copy of the Explanatory Note, which may where strictly necessary refer to the applicant and/or respondent by three anonymised initials. If, the non-party is willing to provide the irrevocable written undertaking, the applicant should then supply the materials, including the applicant's and respondent's names, to the non-party upon receipt of the undertaking. Where the non-party is unwilling to provide the undertaking, no further information need be supplied by the applicant. (Information concerning

when and where the application is to be heard should be set out in the Explanatory Note.)

26. Where an applicant notifies a non-party of an order, which should contain the provision set out in clause 13 of the Model Order, provision of material to a non-party shall be effected promptly by the applicant upon request, and upon receipt of the irrevocable written undertaking. Prior to notifying the non-party of the order and where urgency does not preclude it, the applicant should ascertain whether the non-party will require a copy of any materials referred to in clause 13 of the Model Order. Where the non-party indicates it will do so, it should at that stage provide the applicant with the written irrevocable undertaking. The applicant will then be in a position to, and should, serve a copy of the order and the relevant materials together. Where the non-party is unwilling to give the undertaking in advance of service of the order, the applicant will not be required to supply any relevant materials to the non-party until such time as the undertaking is given or further order of the court.
27. The undertaking should be provided on behalf of the non-party by its legal adviser where it has one. It should be provided by the non-party itself where it has no legal adviser. Breach of the undertaking may be held to be a contempt of court, which would render the non-party liable to imprisonment, a fine or having their assets seized.
28. For the purpose of paragraph 24, material includes: the application and any supporting documentation; and a copy of any materials specified under CPR PD 25A 9.

Hearing – Scrutiny of Application

29. The onus is on the applicant to satisfy the court that an interim non-disclosure order is justified. Where the applicant seeks derogations from open justice reference should be made to paragraphs 8 – 13 of this Guidance.
30. Particular care should be taken in every application for an interim non-disclosure order, and especially where an application is made without-notice, by applicants to comply with the high duty to make full, fair and accurate disclosure of all material information to the court and to draw the court's attention to significant factual, legal and procedural aspects of the case. The applicant's advocate, so far as it is consistent with the urgency of the application, has a particular duty to see that the correct legal procedures and forms are used; that a written skeleton argument and a properly drafted order are prepared personally by her or him and lodged with the court before the oral hearing; and that, at the hearing, the court's attention is drawn to unusual features of the evidence adduced, to the applicable law and to the formalities and procedure to be observed including how, if at all, the order submitted departs from the model order.
31. Applications, especially those which seek derogations from open justice, must be supported with clear and cogent evidence which demonstrates that without the specific exception, justice could not be done.

32. Each application shall be subject to intense scrutiny. The need for intense scrutiny is particularly acute on without-notice applications, or where non-parties are or have been served with orders containing restrictions on access to documents, because, for instance, the order contains derogations from CPR PD 25A 9.

Explanatory Notes

33. It is helpful if applications and orders are accompanied by an Explanatory Note, from which persons served can (a) readily understand the nature of the case, (b) ascertain whether they wish to attend the application hearing, and/or be legally represented at it, or, (c) where the application was heard without-notice, whether they wish to challenge the order.
34. Where an interim non-disclosure order contains restrictions on access to documents it must be accompanied by an Explanatory Note when served on any non-party who was not present at the hearing of the application.
35. An example of an Explanatory Note is attached to this Guidance.

Applicant's Continuing Duty

36. Where an interim non-disclosure order is granted applicants are required to keep any respondent or non-party subject to the order, informed of any developments in the progress of proceedings which affect the status of the order. They are required to do so in order to satisfy the court that there has been compliance with the obligation imposed by CPR 1.3 and any requirements specified in any order or directions given by the court. Applicants are particularly required to inform any non-parties whom they have served with the order when it ceases to have effect.

Active Case Management

37. Interim non-disclosure orders, as they restrict the exercise of the Article 10 Convention right and, whether or not they contain any derogation from the principle of open justice, require the court to take particular care to provide active case management.
38. Active case management requires the court to ensure that a return date is specified in such orders and that, as a general rule, the return date is kept. The applicant is required to inform the court at the return date which, if any, non-parties have been served with any interim non-disclosure order granted at an earlier, without-notice, hearing.
39. It will not always be necessary for any parties to attend court on the return date: the hearing could be dealt with by the court on the papers, provided that sufficient material is before the court to enable scrutiny and effective case management to take place: see *BCD v Goldsmith* [2011] EWHC 674 (QB) at [60] – [62]. Any order should however be given in public and be publicly available.
40. A return date is particularly important where an order contains derogations from the principle of open justice. It is the means by which the court ensures that those derogations are in place for no longer than strictly necessary. It is also the means by which the court ensures that the interim non-disclosure order does not become

a substitute for a full and fair adjudication (*X & Y v Persons Unknown* [2007] EMLR 290 at [78]).

41. Where an interim non-disclosure order, whether or not it contains derogations from open justice, is made, and return dates are adjourned for valid reasons on one or more occasions, or it is apparent, for whatever reason, that a trial is unlikely to take place between the parties to proceedings, the court should either dismiss the substantive action, proceed to summary judgment, enter judgment by consent, substitute or add an alternative defendant, or direct that the claim and trial proceed in the absence of a third party (*XJA v News Group Newspapers* [2010] EWHC 3174 (QB) at [13]; *Gray v UVW* [2010] EWHC 2367 (QB) at [37]; *Terry* at [134] – [136]).

Hearing Notes and Judgments

42. The court's approach to judgments and hearing notes is set out in: *Terry* at [4]; *JIH* at [21(9)] & [35].
43. It is of particular importance that a full and accurate note of the hearing is taken of a without-notice hearing: *G & G v Wikimedia* [2010] EMLR 14 at [28] – [32]. It is the duty of counsel and solicitors to ensure that such a note is taken during the hearing, or, if that is not possible, to prepare such a note after the hearing is over. The note should be drafted so that anyone supplied with a copy of it is properly informed of: what documents were put before the court at the hearing; which legal authorities were relied on by the applicant; and what the court was told in the course of the hearing.
44. Where, and to the extent strictly necessary hearing notes may be redacted, if they are to be supplied under CPR PD 25A 9.2, to a non-party who is served with an order but who is unwilling or unable to provide a written irrevocable undertaking.
45. The court should wherever possible give a reasoned, necessarily redacted, judgment. Where a judgment of the type given in *Terry* or *JIH* would be disproportionate in terms of time or cost a short note or judgment should be given setting out any points of general interest, the reason why those points were raised and brief reasons for the decision: see *POI v The Person known as 'Lina'* [2011] EWHC 25 (QB).

Appeals

46. Any appeal from an interim non-disclosure order may be expedited: *Unilever plc v Chefaro Proprietaries Ltd (Practice Note)* [1995] 1 WLR 243 at 246 - 247. It will depend on the circumstances of each case whether, and to what extent, expedition is necessary.

(2) MODEL ORDER – GUIDELINES

The following guidelines should be read in conjunction with the model interim non-disclosure order.

Penal Notice

The penal notice should make clear that where the intended defendant or respondent is an individual they may be imprisoned as well as being liable to a fine or asset seizure. Where the intended defendant or respondent is a corporate defendant or respondent it should make clear that they can be fined or have their assets seized.

The penal notice should also make clear the effect it may have on non-parties who know of the order under the *Spycatcher* principle. The order will only bind non-parties who are notified of it while it is in force: *Jockey Club v Buffham* [2003] QB 462.

Clause 2(b)

Reference should be made to paragraphs 18 – 28 of the Practice Guidance.

Clause 3 (Anonymity)

This clause is **optional**. Reference should be made to paragraphs 9 – 14 of the Practice Guidance. Anonymity is an exception to the principle of open justice. It can only be ordered where it is strictly necessary. Guidance is set out in *JIH* at [21].

Clause 4(a)(ii) (Access to documents)

The court may need to decide which documents, e.g., statements of case, should not be available for public inspection. This decision may be prospective since there may be little if any opportunity to apply to court before some documents are served. While it may be the case that the claim form could be made anodyne by reference to a confidential schedule (subject to anonymity), subsequent statements of case or other documents in a case are unlikely to be dealt with so easily given that the purpose of the action, amongst other things, will be to seek a permanent injunction relating to the material protected on an interim basis under the order, and will involve a specific explanation of the material, how it is said to engage the applicant's Article 8 Convention rights and the effect such threatened disclosure would have if it is not so restrained (*Terry* at [23]; *G & G v Wikimedia* [2010] EMLR 14 at [14], [17] and [20]; *ABC Ltd v Y* [2010] EWHC 3176 (Ch) at [8] – [10].

(In respect of any non-party notified or served with the order CPR PD 25A 9.2 applies: see clause 13 of the Model Order.)

Clause 5(a) (Service of the claim form where defendant is not known or whereabouts unknown)

Where the respondent or defendant's identity is not known, or their whereabouts are unknown, there may be considerable problems in locating them in order to serve the claim form. This may necessitate an extension of time for service beyond the four month period. The court, by way of active case management, is required to ensure that the action is pursued with expedition. Indefinite extensions of time for service cannot be granted: *Terry* at [143]. A long-stop date may be inserted instead.

Clause 6 (Injunction)

CPR PD 25A 5 states that unless the court orders otherwise, the order must provide for a *return date* if the application was made without-notice. The need for, and importance of, a return date as a means to ensure the court can monitor the claim's progress and ensure it progresses properly was considered *G & G v Wikimedia* [2010] EMLR 14 at [21] – [27]; and in *Terry* at [134] – [136]. Reference should be made to paragraphs 37 – 41 of the Practice Guidance.

While there may be considerable practical and costs reasons which might render a return date in a claim against persons unknown unnecessary, especially given the safeguard of the liberty to vary or discharge provisions (*X & Y v Persons Unknown* [2007] EMLR 290 at [73]), the court should ensure that the order contains provision for periodical review by the court to ensure that the claim progresses, for instance, to default judgment, summary judgment, or to a trial in the absence of the persons unknown.

Clause 6(b)

This clause is **optional**. See clause 3 above. This provides a possible solution to the problem which arises from a jigsaw identification of the Claimant if the fact of the injunction is not prevented from being published: *DFT* at [36] – [39]. There should be a clear delineation in the order of what information can be released as to the fact of an order having been made.

Clause 7 (Reporting Restriction)

This is the super-injunction element. It is an **optional** clause. It is only likely to be necessary for example to prevent the respondent or a third party being tipped-off before the order is served, possibly precipitating disclosure of the information or destruction of evidence: see *Terry* at [138]; *G & G v Wikimedia* [2010] EMLR 14 at [41].

If the proceedings are anonymised, and an injunction is granted restraining disclosure or publication of the private information, there is generally no reason in principle to prohibit in addition any report of the fact that an order has been made: *Ntuli*. Consideration should be given to the risk of jigsaw identification if no reporting restriction is imposed: *DFT*.

Clause 13 (Provision of documents and information to third parties)

CPR PD 25A 9 requires any person served with the order not present at the application hearing to be provided with the order and supporting material read by the judge, and a note of the hearing.

This is the norm. Such notice is an elementary principle of natural justice:

Kelly v BBC [2001] Fam. 59 at 94 – 95, ‘. . . if one party wishes to place evidence or other persuasive material before the court the other parties must have an opportunity to see that material and to address the court about it. One party may not make secret communications to the court. It follows that it is wrong for a judge to be given material at an *ex parte*, or without notice, hearing which is not at a later stage revealed to the persons affected by the result of the application.’;

G & G v Wikimedia [2009] EWHC 3148 (QB) at [30], ‘. . . where an order relates to freedom of expression, or may have the effect of interfering with freedom of expression, those applying for interim relief at a hearing at which the respondent or defendant is not present should generally provide the respondent with a full note, whether or not the respondent asks for it.’

Exceptions to the norm are exceptions to the principle of open justice, and natural justice, and are therefore only permissible where strictly necessary. If there is concern that information is particularly sensitive or confidential, it can be included in a separate witness statement which the court may agree should be specifically exempted from having to be provided under the CPR 25A PD 9, thus enabling as much information as possible to be provided to those, such as non-parties who request a hearing note under PD 9.2(2), not present at the application hearing.

Clause 13 Irrevocable written undertaking

The following standard wording should be used by third parties in respect of the irrevocable undertaking to be given to the Court under paragraph 24 of the Practice Guidance and in respect of clause 13 of the Model Order. Breach of the undertaking may amount to contempt of court. The wording provides for a Claimant to agree to information and material subject to the undertaking provided by the third party to be supplied, by the third party, to other parties in order, for instance, to ensure that the prohibition on disclosure is not inadvertently breached by that other party.

Undertaking to the Claimant and to the Court

The title of action or intended action is

1. I, [insert name, occupation] [for and on behalf of] (hereinafter “the receiver”) promise that in consideration of the Claimant disclosing the material to the receiver, the receiver: will preserve the material in a secure place; use any material or information contained therein, or derived from such material or information, only for the purposes of the Proceedings except where:

(a) the information has been read to or by the court, or referred to, at a hearing which has been held in public;

(b) the court gives permission; or

(c) there is agreement in writing by the Claimant and by any other person who claims to be entitled to rights of property, privacy or confidentiality in respect of the information or the documents in which it is recorded;

and will only copy, disclose or deliver the material, or information contained therein or derived from such material or information, to the receiver’s legal advisers, or as required by law, by order of the court or by agreement of the Claimant and by any other person who claims to be entitled to rights of property, privacy or confidentiality in respect of the information or the documents in which it is recorded.

2. Save as provided in para 1, this undertaking is irrevocable, and shall continue in force both before and after the conclusion of the Proceedings.

3. The receiver will give to the court an undertaking in writing in the same terms as herein, as soon as a judge is available to receive that undertaking.

4. For the purpose of this undertaking,

“Material” refers to: i) any claim form or application notice or statement of case (whether in draft or final form); ii) any evidence, whether in the form of witness statements or otherwise, in support of the proceedings, and any exhibits thereto; iii) and the material specified in CPR PD 25A para 9.2;

“Claimant” includes an intended claimant;

“Proceedings” means the proceedings identified above.

5. For the avoidance of doubt this promise only applies to those parts of the Material which contain the information alleged by the Claimant to be private and does not preclude the receiver (or anyone else) from making lawful use of any information that was already known to them prior to it being disclosed to the receiver pursuant to this undertaking, or of any information which is, or shall have come into, the public domain.

Clause 14 (Hearing in private)

This clause is **optional**. Reference should be made to paragraphs 9 - 14 of the Practice Guidance.

Private hearings can be reported without fear of contempt unless the material comes within the protection of the Administration of Justice Act 1960 s12. A specific order is required to prevent reporting under the Contempt of Court Act 1981 s11: *Clibbery v Allan* [2002] 2 WLR 151; *McKennitt v Ash* [2008] QB 73. Section 11 orders should only be made when strictly necessary.

This also incorporates the proviso, referred to in *JIH* at [42], regarding disclosure of material etc referred to in open court or in open judgments.

Clause 15 (Public Domain)

Orders will not usually, but may sometimes in cases of private information, prohibit publication of material which is already in the public domain. See *Terry* at [50].

Confidential schedule 2, paragraph 2

See the notes to **Clause 13 (Provision of documents and information to third parties)**.

(3) MODEL EXPLANATORY NOTE

Smith v Jones

or

AAA v BBB¹

Application for an Interim Non-Disclosure Order

EXPLANATORY NOTE

1. The applicant is a well known professional sportsperson who has been in a long-term relationship with another person [XX]. A person [BBB/YY as appropriate] [or persons unknown] have threatened to take a story to the media about a relationship the applicant is alleged to have had with another person [YY], since the relationship with XX commenced.
2. An Interim Non-Disclosure Order has been [applied for/made] to protect the applicant's [right to privacy and/confidentiality] in respect of the information referred to in paragraph 1. This does not [will not] restrict publication of information which was in the public domain in England and Wales prior to this application being made or which is permitted by any order of the court to the extent permitted by the court
3. The [applicant applies for the application to be heard/the application was heard] in private. Judgment [will be/was] given in [public/private]. [The proceedings were anonymised.] [A private hearing/anonymity was applied for/granted on the grounds of strict necessity because . . .].
4. On [insert date] the application [will be heard by/was heard by] [Mr/Mrs Justice] in the High Court of Justice, [Queen's Bench Division/Chancery Division].

¹ Where the application is made or is intended to be made in anonymised form, three initials should be used.

Model Order

IN THE HIGH COURT OF JUSTICE
]]
[QUEEN'S BENCH/CHANCERY] DIVISION

Claim No: [

BEFORE THE HONOURABLE [MR][MRS] JUSTICE [] [(IN PRIVATE)]
Dated: []

B E T W E E N :

“AAA”

Intended Claimant/Applicant

- and -

(1) “BBB”

(2) [] NEWSPAPERS LIMITED

(3) THE PERSON OR PERSONS UNKNOWN

who has or have appropriated, obtained and/or offered or
intend to offer for sale and/or publication the material
referred to in Confidential Schedule 2 to this Order

Intended Defendant(s)/Respondent(s)

PENAL NOTICE

IF YOU THE RESPONDENT DISOBEY THIS ORDER YOU MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED (IN THE CASE OF THE FIRST AND THIRD DEFENDANTS) OR FINED OR HAVE YOUR ASSETS SEIZED.

ANY PERSON WHO KNOWS OF THIS ORDER AND DISOBEYS THIS ORDER OR DOES ANYTHING WHICH HELPS OR PERMITS ANY PERSON TO WHOM THIS ORDER APPLIES TO BREACH THE TERMS OF THIS ORDER MAY BE HELD TO BE IN CONTEMPT OF COURT AND MAY BE IMPRISONED, FINED OR HAVE THEIR ASSETS SEIZED.

NOTICE TO ANYONE WHO KNOWS OF THIS ORDER

You should read the terms of the Order and the Practice Guidance on Interim Non-Disclosure Orders very carefully. You are advised to consult a solicitor as soon as possible. This Order prohibits you from doing the acts set out in Paragraphs 6 [, 7] and 10 of the Order and obliges you to do the acts set out in Paragraphs 8, 9, and 11 of the Order. You have the right to ask the Court to vary or discharge the Order. If you disobey this Order you may be found guilty of contempt of court and you may be sent to prison or fined or your assets may be seized.

THIS ORDER

1. This is an Injunction, with other orders as set out below, made against the Defendants on [insert date] by the Judge identified above (the **Judge**) on the application (the **Application**) of the Claimant. The Judge:
 - (a) read the witness statements referred to in Schedule A at the end of this Order, as well as the witness statements referred to in Confidential Schedule 1 [or “was given information orally by Counsel on behalf of the Claimant”];
 - (b) accepted the undertakings set out in Schedule B at the end of this Order; and
 - (c) considered the provisions of the Human Rights Act 1998 (**HRA**), section 12.
2. *[This Order was made at a hearing without-notice to those affected by it, the Court having considered section 12(2) HRA and being satisfied:*
 - (a) *that the Claimant has taken all practicable steps to notify persons affected; and/or*
 - (b) *that there are compelling reasons for notice not being given, namely: [set out in full the Court’s reasons for making the order without-notice]. The Defendants (and anyone served with or notified of this Order) have a right to apply to the Court to vary or discharge the Order (or so much of it as affects them): see clause 17 below.]*

[ONLY TO BE GRANTED IN AN EXCEPTIONAL CASE WHERE ANONYMITY IS STRICTLY NECESSARY]

ANONYMITY

3. Pursuant to section 6 HRA, and/or CPR 39.2 the Judge, being satisfied that it is strictly necessary, ordered that:
 - (a) *the Claimant be permitted to issue these proceedings naming the Claimant as “AAA” and giving an address c/o the Claimant’s solicitors;*
 - (b) *the Claimant be permitted to issue these proceedings naming the [First] Defendant as “BBB” [and the Third Defendant as “Person or Persons Unknown” and, once it is known to the Claimant, notifying the Defendant’s home address by filing the same in a sealed letter which must remain sealed and held with the Court office subject only to the further order of a Judge or the Senior Master of the Queen’s Bench Division/Chief Chancery Master];*
 - (c) *there be substituted for all purposes in these proceedings in place of references to the Claimant by name, and whether orally or in writing, references to the letters “AAA”; and*
 - (d) *if necessary, there be substituted for all purposes in these proceedings in place of references to the Defendant[s] by name once identified and whether orally or in writing, references to the letters “BBB” [and any subsequent letters of the alphabet].*

[ONLY TO BE GRANTED IN AN EXCEPTIONAL CASE WHERE A RESTRICTION ON ACCESS TO DOCUMENTS IS STRICTLY NECESSARY]

ACCESS TO DOCUMENTS

4. Upon the Judge being satisfied that it is strictly necessary:

- (a) (i) no copies of the statements of case; and
- (ii) no copies of the witness statements and the applications,

will be provided to a non-party without further order of the Court.
- (b) Any non-party other than a person notified or served with this Order seeking access to, or copies of the abovementioned documents, must make an application to the Court, proper notice of which must be given to the other parties.

SERVICE OF CLAIM FORM WHERE DEFENDANT NOT KNOWN OR WHEREABOUTS NOT KNOWN

5.

- (a) The Claim Form should be served as soon as reasonably practicable and in any event by [] at the latest, save that there shall be liberty for the Claimant to apply to the Court in the event that an extension is necessary; and
- (b) Any such application referred to in 5(a) must be supported by a witness statement. Such application may be made by letter, the Court having dispensed with the need for an application notice.

INJUNCTION

6. Until [] (the return date) / the trial of this claim or further Order of the Court, the Defendants must not:

- (a) use, publish or communicate or disclose to any other person (other than (i) by way of disclosure to legal advisers instructed in relation to these proceedings (the **Defendants' legal advisers**) for the purpose of obtaining legal advice in relation to these proceedings or (ii) for the purpose of carrying this Order into effect) all or any part of the the information referred to in Confidential Schedule 2 to this Order (the **Information**);
- (b) publish any information which is liable to or might identify the Claimant as a party to the proceedings and/or as the subject of the Information or which otherwise contains material (including but not limited to the profession [or age or nationality of the Claimant]) which is liable to, or might lead to, the Claimant's identification in any such respect, provided that nothing in this Order shall prevent the publication, disclosure or communication of any information which is contained in [this Order other than in the Confidential Schedules] or in the public judgments of the Court in this action given on [insert date].

[ONLY TO BE GRANTED IN AN EXCEPTIONAL CASE WHERE A REPORTING RESTRICTION IS STRICTLY NECESSARY]

REPORTING RESTRICTION/SUPER-INJUNCTION

7. *Until service of the Order/ the return date/ [] the Defendants must not use, publish or communicate or disclose to any other person the fact or existence of this Order or these proceedings and the Claimant's interest in them, other than:*

- (a) by way of disclosure to the Defendants' legal advisers for the purpose of obtaining legal advice in relation to these proceedings; or*
- (b) for the purpose of carrying this Order into effect.*

INFORMATION TO BE DISCLOSED

8. The Defendants shall within [24] hours of service of this Order disclose to the Claimant's solicitors the following:

- (a) the identity of each and every journalist, press or media organisation, press agent or publicist or any other third party with a view to publication in the press or media, to whom the Defendants have disclosed all or any part of the Information [since [insert date]]; and
- (b) the date upon which such disclosure took place and the nature of the information disclosed.

9. The Defendants shall confirm the information supplied in paragraph 8 above in a witness statement containing a statement of truth within 7 days of complying with paragraph 8 and serve the same on the Claimant's solicitors and the other parties.

PROTECTION OF HEARING PAPERS

10. The Defendants [, and any third party given advance notice of the Application,] must not publish or communicate or disclose or copy or cause to be published or communicated or disclosed or copied any witness statements and any exhibits thereto and information contained therein that are made, or may subsequently be made, in support of the Application or the Claimant's solicitors' notes of the hearing of the Application (the **Hearing Papers**), provided that the Defendants[, and any third party,] shall be permitted to copy, disclose and deliver the Hearing Papers to the Defendants' [and third party's/parties'] legal advisers for the purpose of these proceedings .

11. The Hearing Papers must be preserved in a secure place by the Defendants' [and third party's/parties'] legal advisers on the Defendants' [and third party's/parties'] behalf.

12. The Defendants [, and any third party given advance notice of the Application,] shall be permitted to use the Hearing Papers for the purpose of these proceedings provided that the Defendants' [third party's/parties'] legal advisers shall first inform anyone, to whom the said documents are disclosed, of the terms of this Order and, so far as is practicable, obtain their written confirmation that they understand and accept that they are bound by the same.

PROVISION OF DOCUMENTS AND INFORMATION TO THIRD PARTIES

13. The Claimant shall be required to provide the legal advisers of any third party [where unrepresented, the third party] served with advance notice of the application, or a copy of this Order promptly upon request, and receipt of their written irrevocable

undertaking to the Court to use those documents and the information contained in those documents only for the purpose of these proceedings:

(a) a copy of any material read by the Judge, including material read after the hearing at the direction of the Judge or in compliance with this Order [save for the witness statements referred to in Confidential Schedule 1 at the end of this Order] [the witness statements]; and/or

(b) a copy of the Hearing Papers.

**[ONLY TO BE GRANTED IN AN EXCEPTIONAL CASE WHERE HEARING THE APPLICATION IN PRIVATE IS STRICTLY NECESSARY]
HEARING IN PRIVATE**

14. *The Judge considered that it was strictly necessary, pursuant to CPR 39.2(3)(a),(c) and (g), to order that the hearing of the Application be in private and there shall be no reporting of the same.*

PUBLIC DOMAIN

15. For the avoidance of doubt, nothing in this Order shall prevent the Defendants from publishing, communicating or disclosing such of the Information, or any part thereof, as was already in, or that thereafter comes into, the public domain in England and Wales [as a result of publication in the national media] (other than as a result of breach of this Order [or a breach of confidence or privacy]).

COSTS

16. The costs of and occasioned by the Application are reserved.

VARIATION OR DISCHARGE OF THIS ORDER

17. The parties or anyone affected by any of the restrictions in this Order may apply to the Court at any time to vary or discharge this Order (or so much of it as affects that person), but they must first give written notice to the Claimant's solicitors. If any evidence is to be relied upon in support of the application, the substance of it must be communicated in writing to the Claimant's solicitors in advance. The Defendants may agree with the Claimant's solicitors and any other person who is, or may be bound by this Order, that this Order should be varied or discharged, but any agreement must be in writing.

INTERPRETATION OF THIS ORDER

18. A Defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.

19. A Defendant which is not an individual which is ordered not to do something must not do it itself or by its directors, officers, partners, employees or agents or in any other way.

[In the case of an Order the effect of which may extend outside the jurisdiction]

PERSONS OUTSIDE ENGLAND AND WALES

20. (1) *Except as provided in paragraph (2) below, the terms of this Order do not affect or concern anyone outside the jurisdiction of this Court.*

(2) *The terms of this Order will affect the following persons in a country or state outside the jurisdiction of this Court –*

(a) *the Defendant or his officer or agent appointed by power of attorney;*

(b) *any person who –*

(i) is subject to the jurisdiction of this Court;
(ii) has been given written notice of this Order at his residence or place of business within the jurisdiction of this Court; and
(iii) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this Order; and

(c) any other person, only to the extent that this Order is declared enforceable by or is enforced by a court in that country or state.

PARTIES OTHER THAN THE CLAIMANT AND THE DEFENDANT

21. Effect of this Order

It is a contempt of court for any person notified of this Order knowingly to assist in or permit a breach of this Order. Any person doing so may be imprisoned, fined or have their assets seized.

NAME AND ADDRESS OF THE CLAIMANT'S LEGAL REPRESENTATIVES

22. The Claimant's solicitors are -

[Name, address, reference, fax and telephone numbers both in and out of office hours and e-mail]

COMMUNICATIONS WITH THE COURT

23. All communications to the Court about this Order should be sent to:

Room WG08, Royal Courts of Justice, Strand, London, WC2A 2LL, quoting the case number. The telephone number is 020 7947 6010.

The offices are open between 10 a.m. and 4.30 p.m. Monday to Friday.

SCHEDULE A

The Claimant relied on the following witness statements:

1.
2.

SCHEDULE B

UNDERTAKINGS GIVEN TO THE COURT BY THE CLAIMANT

(1) If the Court later finds that this Order has caused loss to the Defendants, and decides that the Defendants should be compensated for that loss, the Claimant will comply with any order the Court may make.

(2) If the Court later finds that this Order has caused loss to any person or company (other than the Defendants) to whom the Claimant has given notice of this Order, and decides that such person should be compensated for that loss, the Claimant will comply with any Order the Court may make.

[(3) By 4.30pm on [] the Claimant will (a) issue a Claim Form and an Application Notice claiming the appropriate relief [and (b) cause a witness statement or witness statements to be made and filed confirming the substance of what was said to the Court by the Claimant's Counsel and exhibiting a copy of the Hearing Papers].

[(4) The Claimant will use all reasonable endeavours to identify and serve the Defendants within four months of the date of this Order and in any event will do so by [] at the latest. Once identified the Claimant will serve upon the Defendant together with this Order copies of the documents provided to the Court on the making of the Application and as soon as practicable the documents referred to in (3) above.]

(5) On the return date the Claimant will inform the Court of the identity of all third parties that have been notified of this Order. The Claimant will use all reasonable endeavours to keep such third parties informed of the progress of the action [insofar as it may affect them], including, but not limited to, advance notice of any applications, the outcome of which may affect the status of the Order.

(6) If this Order ceases to have effect or is varied, the Claimant will immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this Order, or whom he has reasonable grounds for supposing may act upon this Order, that it has ceased to have effect in this form.

SCHEDULE C

This should contain details of who the Claimant has given advance notice of the application to, including how and when and by what means this was done.

SCHEDULE D

The detail required by paragraph 20 of the Guidance Note should go in here.

SCHEDULE E

The detail required by paragraph 38 of the Guidance Note should go in here.

CONFIDENTIAL SCHEDULE 1

The Claimant also relied on the following confidential witness statements:

1.
2.

CONFIDENTIAL SCHEDULE 2

Information referred to in the Order

Any information or purported information concerning:

- (1) [Set out the material sought to be protected]
- (2) [Any information liable to or which might lead to the identification of the Claimant (whether directly or indirectly) as the subject of the proceedings or the material referred to above, [the fact that he has commenced these proceedings or made the application herein].]