

# THE HIGH COURT

[2010 No. 4661 P]

BETWEEN

MICHAEL MURRAY

PLAINTIFF

AND

NEWSGROUP NEWSPAPERS LIMITED, INDEPENDENT NEWSPAPERS  
(IRELAND) LIMITED, INDEPENDENT STAR LIMITED, COMMISSIONER,  
COMMISSIONER OF AN GARDA SÍOCHÁNA, MINISTER FOR JUSTICE,  
EQUALITY AND LAW REFORM, IRELAND, AND ATTORNEY GENERAL

DEFENDANTS

## JUDGMENT of Ms. Justice Irvine delivered on 18<sup>th</sup> day of June, 2010

1. In this application, the plaintiff seeks an interlocutory injunction against the first, second and third named defendants. The plaintiff in these proceedings is Mr. Michael Murray who has a number of convictions for serious sexual offences in this jurisdiction and in England.
2. The first three defendants are the publishers of the Irish Daily Star, the Star Sunday, the Irish Sun, the Irish News of the World and the Evening Press newspapers.
3. The plaintiff has instituted these proceedings by way of plenary summons dated 14<sup>th</sup> of May 2010, wherein he seeks, inter alia, damages for mental pain, distress and anguish caused by an alleged interference with his right to privacy, as well as his other rights such as his right to earn a living, his right to life and to have and maintain a

permanent dwelling, as protected by the Constitution and the European Convention on Human Rights. He also seeks injunctive relief, including interlocutory relief restraining the further publication of photographs of him and details of his whereabouts.

4. By notice of motion dated 14<sup>th</sup> May, 2010, the plaintiff seeks a number of wide-ranging interlocutory reliefs against the defendant newspapers as a result of the publication by them of a significant number of articles and accompanying photographs relating to him. He seeks orders prohibiting the defendants from further publishing any of the following:-

- Any photographic image of him from which he might be identified.
- Information identifying his address or the village, town, town land or city in which he lives.
- Information identifying any location at which he stays or which he frequents.
- Information identifying his place of work, specifying his travel arrangements or specifying other details that would enable members of public to ascertain his presence at a particular location at a particular time.
- Information supplied by the plaintiff to An Garda Síochána in confidence pursuant to the Sex Offenders Act 2001.

5. The aforementioned reliefs are sought by way of permanent injunction in his substantive proceedings.

6. The plaintiff also seeks orders against the fourth named defendant in the main proceedings in circumstances where he maintains that the information he is required to supply to An Garda Síochána pursuant to the Sex Offenders Act 2001, has been

unlawfully disclosed by its members to the newspapers. However, the plaintiff seeks no interlocutory relief against the Commissioner of An Garda Síochána apparently on the basis that it has been acknowledged on the present application that any such actions as those complained of by the plaintiff against the Gardaí, if true, and which are denied would offend the provisions of s. 62 of the Garda Síochána Act 2005.

7. The plaintiff has sworn a lengthy affidavit grounding his application for the interlocutory relief sought. His application is also supported by a number of affidavits sworn by his solicitor Mr. Robert Eager. These affidavits exhibit the newspaper articles relied upon by the plaintiff in support of the relief sought.

#### **The plaintiff's background**

8. On 17<sup>th</sup> October, 1996, the plaintiff pleaded guilty in the Central Criminal Court to charges of aggravated sexual assault, false imprisonment and four counts of rape in relation to offences committed in September of 1995. He was sentenced to eighteen years imprisonment with the final year suspended. He served his sentence at Mountjoy Prison, Arbour Hill Prison, Wheatfield Prison and Castlerea Prison. The plaintiff was released from Castlerea Prison on 16<sup>th</sup> July, 2009, having been afforded the usual statutory period of remission for good behaviour. Prior to the commission of the offences of September of 1995, the plaintiff had in 1989 previously been convicted of rape in the United Kingdom, an offence in respect of which he received a lengthy sentence. In addition, it appears from the Voluntary Supervision Contract entered into by the plaintiff with the probation service following his release from prison that he has also been convicted of other offences not mentioned in his grounding affidavit including offences in respect of causing actual bodily harm and indecent exposure to children. The plaintiff

is subject to the notification requirements of the Sex Offenders Act 2001 and he maintains that he has at all times complied with those requirements since his release from prison although no supporting documentary evidence of this fact has been produced.

**The plaintiff's accommodation since release from prison**

9. With the aid of the Probation Service and a project within that service known as New Directions, the plaintiff was initially able to secure accommodation in Dublin. The plaintiff deposes to the fact that following his release from prison on 16<sup>th</sup> July, 2009, he travelled to Dublin by train to meet his probation officer. On arrival at Heuston Station, he states that he was met by a reporter and a photographer who photographed him along with his probation officer. These photographs were subsequently published in articles in the Star and Evening Herald newspapers and are exhibited in the affidavit of Mr. Eager.

10. The plaintiff maintains that he lived at an address in Blackhall Square North between 16<sup>th</sup> July and 30<sup>th</sup> November, 2009. However, as a result of certain publications in the newspapers on 18<sup>th</sup> July, 2009, he maintains that he was advised by his key worker in the Probation Service to stay indoors and keep a low profile. The accommodation in Blackhall Square appears to have been a temporary arrangement and in November 2009, unrelated to any acts of the defendants, he moved to an address in Findlater Street with the assistance of the Probation Service and New Directions. On 10<sup>th</sup> January, 2010, photographs of the plaintiff were published in the Star Sunday, under the headline "Beast in the snow". This article is exhibited in Mr. Eager's affidavit. Thereafter, the plaintiff maintains that his landlady served a notice to quit giving him one month's notice to leave. He maintains that he was later informed by the gardaí that his landlady had come under

pressure from the local residents committee to get him out of his accommodation and that he accordingly left that accommodation on 19<sup>th</sup> January, 2010.

11. Between 19<sup>th</sup> January, 2010 and 5<sup>th</sup> February, 2010, the plaintiff lived at an address in the Metropolitan Apartments in Kilmainham, Dublin. Again, this accommodation was obtained with the assistance of his key worker in the Probation Service and the New Direction Project. The plaintiff claims that the gardaí called to this address numerous times everyday in stark contrast to the once daily visits which he received when living at Findlater Street.

12. On 3<sup>rd</sup> February, 2010, the plaintiff states that a reporter called to his front door as a result of which he contacted his key worker and the gardaí. The gardaí arrived and ordered the reporter to leave. However, later that day the plaintiff maintains that two gardaí called to his home and banged on the door loudly. When he opened the door, someone photographed him in his apartment and this photograph together with accompanying articles subsequently appeared in the Star and Evening Herald newspapers on 4<sup>th</sup> February, 2010. These articles are also exhibited in Mr. Eager's affidavit. The plaintiff states that shortly after the publication of this photograph he was contacted by a member of Sherry Fitzgerald, Estate Agents, who advised him that he was "all over the paper" and that his landlord wanted the apartment back. The plaintiff believes that the Estate Agent was referring to the photographs of him published in the newspaper on 4<sup>th</sup> February, 2010. The plaintiff states that accordingly he left that address on 5<sup>th</sup> February, 2010 as he no longer felt safe there.

13. As he had nowhere else to go, the plaintiff maintains that he moved back to his previous address at Blackhall Square where he stayed for a number of days. He states

that a photographer again took his photograph in that locality and that this photograph and an accompanying article appeared in the Sun newspaper on 12<sup>th</sup> February, 2010. As a result of this publication, the plaintiff maintains that he felt compelled to leave the area and thereafter stayed for a while at hotels in Castleknock, City West and Portlaoise.

14. For the month of March 2010, the plaintiff lived at an address in Thurles. However, on 3<sup>rd</sup> April, 2010, he was once again photographed and this photograph appeared the following day in the News of the World who published yet another article about him. Shortly thereafter the plaintiff's landlord allegedly phoned him and told him he wanted him out of his apartment "because of what was in the paper". Accordingly, the plaintiff left Thurles on 4<sup>th</sup> April, 2010 following which he booked into the Tara Towers Hotel in Ballsbridge, Dublin for one week. Since that time he has stayed in a number of hotels and bed and breakfast accommodation in Dublin, Laois and Kildare.

#### **The plaintiff's efforts at rehabilitation and his relationship with the Probation**

##### **Service**

15. The plaintiff refers to a number of matters in his affidavit concerning his efforts at rehabilitation in prison and his relationship with the Probation Service since his release. The plaintiff has deposed to the fact that whilst he was in Wheatfield Prison, he attended a psychologist for between eighteen months and two years on a weekly basis for therapy surrounding his offending behaviour and his addiction to drugs and alcohol. He deposes to the fact that during his incarceration he stopped using drugs and alcohol and that he remained "clean" since his release from prison. The plaintiff states that he asked to be moved from Wheatfield Prison to Castlerea Prison because of the prevalence of drugs in Wheatfield Prison and his desire to be in a drug free environment

16. The plaintiff maintains that he worked in the kitchens in Castlrea Prison for nine and a half years and that this was a position of trust. He says he also completed a business studies course over sixteen weeks and was awarded a diploma. He states that he met with another prison psychologist in Castlrea Prison and met with him for counselling once a week during the two years prior to his release. He also deposes to the fact that he met a prison psychiatrist as part of his pre-release case conference. Towards the end of his imprisonment, the plaintiff deposes to the fact that he contacted the Probation Service with a view to obtaining their assistance to find accommodation following his release. He states that he visited with a probation officer who carried out a risk assessment, that he co-operated fully with the Probation Service and that he received assistance from the New Directions Project which is funded by the Department of Justice through the Probation Service for the provision of accommodation and support to sex offenders.

17. The plaintiff states that on 16<sup>th</sup> July, 2009, he entered into a voluntary supervision contract with the Probation Service and a copy of the contract is exhibited in his affidavit. The contract is signed and dated 3<sup>rd</sup> July, 2009. A probation officer was nominated as a contact and counsellor. The plaintiff states that he visited this person twice a week following his release from prison and that he provided swabs for urine and drug analysis. The plaintiff deposes to the fact that his contract with the Probation Service required him to remain at a permanent address but that due to his inability to keep a permanent address, he felt compelled to end his voluntary supervision contract. That contract provided that the plaintiff would reside each night at the agreed accommodation for the duration of the contract and abide by a 10pm curfew and also attend and co-operate with twice weekly appointments with the Probation Service.

18. The plaintiff maintains that as a result of the efforts on the part of the Probation Service, he applied for and obtained voluntary employment at St. Mary's Hospital in Dublin. The hospital were made aware of his previous convictions and he started working there in October, 2009. He maintains that as result of media publicity regarding his position at the hospital that he was forced to resign from his job there, which he did in February 2010.

19. The plaintiff states that he has no family or friends for support and is entirely dependent upon the Probation Service.

**The media publicity surrounding the plaintiff following his release from prison**

20. Mr. Robert Eager, in his various affidavits exhibits the articles complained of by the plaintiff. All of them refer to the plaintiff by name, discuss his previous convictions and state that the gardaí believe that he is at risk of re-offending. The articles refer to the numerous addresses where he has lived since his release from prison including those at Blackhall Square, the Metropolitan Apartments in Kilmainham and his address in Thurles. The tone of the articles is illustrated by the headlines in which the plaintiff is referred to as "beast" and a "monster". In one article he is referred to as "Ireland's most dangerous serial rapist". The articles are relied upon by the plaintiff in support of his assertions that he was hounded out of the areas where he resided due to pressure from local residents when his identity and the fact that he was living in these areas were disclosed and his further claim that he was forced to quit his job at St. Mary's Hospital.

The following is a list of the articles exhibited in the affidavits of Mr. Eager:-

- (i) The Star, 18<sup>th</sup> July, 2010
- (ii) The Star Sunday, 10<sup>th</sup> January, 2010



- (iii) The Star, 4<sup>th</sup> February, 2010
- (iv) The Star, 5<sup>th</sup> February, 2010
- (v) The Star, 6<sup>th</sup> February, 2010
- (vi) The Evening Herald, 4<sup>th</sup> February, 2010
- (vii) The Evening Herald, 5<sup>th</sup> February, 2010
- (viii) The Evening Herald, 6<sup>th</sup> February, 2010
- (ix) The Evening Herald, undisclosed date
- (x) The Evening Herald, 12<sup>th</sup> February, 2010
- (xi) The Sun, 12<sup>th</sup> February, 2010
- (xii) The News of the World, 4<sup>th</sup> April, 2010
- (xiii) The Irish News of the World, 9<sup>th</sup> May, 2010
- (xiv) The Evening Herald, 7<sup>th</sup> May, 2010
- (xv) The Star, undisclosed date

**21.** By letter dated 5<sup>th</sup> May, 2010, Mr. Eager wrote to the editors of the Irish Star, the Evening Herald, the News of the World and the Sun, requesting each of them to furnish an undertaking by Friday, 7<sup>th</sup> May, 2010 that they would desist from further publishing information identifying the plaintiff and his whereabouts. No response was received to these letters.

**22.** In a supplemental affidavit dated 17<sup>th</sup> May, 2010, Mr. Eager deposes to the fact that as a result of the defendants ongoing conduct that the plaintiff has had to attend a doctor for medical treatment. A medical report dated 13<sup>th</sup> May, 2010 exhibited in that affidavit states that the plaintiff has been suffering from panic attacks, has been diagnosed with depression and anxiety and has been prescribed anti-depressants.

**The defendant's response**

23. The editors of the relevant newspapers have sworn replying affidavits which, in terms of their content, are similar to each other. A number of points are made in these affidavits. The defendants claim they have reason to believe that the plaintiff presently constitutes a danger members of the public who may come into contact with him and they are not persuaded that the plaintiff will not re-offend. They state that the plaintiff re-offended in the past and that the evidence at the time of his sentencing was that there was no way of insuring that he would not re-offend in the future. They also rely upon a review carried out by the Department of Psychology at Broadmoor Hospital of literature on sex offender treatments which reports on the risk of those convicted of sexual crimes re-offending. Finally, they refer to a number of statements attributed to a former Assistant Garda Commissioner whom is alleged has described the plaintiff as a significantly dangerous criminal.

24. Relying, *inter alia*, on the aforementioned matters and the plaintiff's history of convictions, the defendants maintain that they are *bona fide* of the view that the public interest is best served by information regarding the plaintiff being brought into the public domain and that their right to freedom of expression outweighs any rights that the plaintiff asserts are being breached. They maintain that the case raises fundamental issues as regards freedom of the press and the right of the public to be protected from a serious sex offender including the rights of citizens to their right to life and bodily integrity and that in this regard they have a full defence.

25. The defendants also make a number of subsidiary points including an assertion that the balance of convenience is not in favour of the relief sought being granted, that the

delay of the plaintiff pursuing his claim to interlocutory relief should preclude the success of that application, that the relief sought is unique in terms of the scope of order demanded and that an early trial would meet the best interests of both parties. Finally, the defendants maintain that any interference with their rights to freedom of expression, if upheld at the trial of the action, are not such as can be compensated for in damages.

**The legal basis for the plaintiff's claim for damages and injunctive relief**

26. The plaintiff's claim is for damages for mental pain, distress and anguish caused by interference with his rights to privacy, to have and maintain a permanent dwelling, to the inviolability of that dwelling, to continue his rehabilitation, to seek and maintain the means of earning of living, to life, and to bodily integrity. The plaintiff claims these rights are protected by the Constitution and the European Convention on Human Rights. He also submits that the conduct of the defendant newspapers amounts to incitement to hatred contrary to s. 2 of the Prevention of Incitement to Hatred Act 1989, and harassment contrary to s. 10 of the Non Fatal Offences Against the Person Act 1997. The plaintiff further claims injunctive relief, both on a permanent and interlocutory basis.

27. Counsel for both parties delivered helpful written legal submissions and these have been of significant assistance to the court. From those submissions and from the arguments made by counsel on his behalf, the plaintiffs claim at this interlocutory stage is one principally based upon his alleged continued right to privacy, albeit that Mr O'Higgins S.C. accepts that the plaintiff's right in this regard must be somewhat attenuated by reason of his previous criminal record. He also bases the plaintiff's right to interlocutory relief on his rights to life, bodily integrity and to the inviolability of his dwelling.

**The constitutional right to privacy**

28. The right to privacy is an unremunerated constitutional right. This was recognised in the well known case of *Kennedy v. Ireland* [1987] I.R. 587, as well as in cases such as *McGee v. Attorney General* [1974] I.R. 284 and *Norris v. Attorney General* [1984] I.R.

36. Hamilton P. (as he then was) in his judgment in *Kennedy v. Ireland* at p. 592 said the right to privacy is not an unqualified right and that its exercise may be restricted “by the constitutional rights of others, by the requirements of the common good and is subject to the requirements of public order and morality”.

29. In the recent case of *Herrity v. Associated Newspapers (Ireland) Ltd.* [2009] 1 I.R. 316 Dunne J. expressly held that actions for damages for breach of the constitutional right to privacy were not confined to actions against the State or state bodies but could also be maintained against a private person or entity. She reviewed the relevant authorities on the right to privacy and at p. 337 of her judgment summarised the relevant principles as follows:-

- “(1) there is a constitutional right to privacy;
- (2) the right to privacy is not an unqualified right;
- (3) the right to privacy may have to be balanced against other competing rights or interests;
- (4) the right to privacy may be derived from the nature of the information at issue - that is, matters which are entirely private to an individual and which it may be validly contended that there is no proper basis for the disclosure either to third parties or to the public generally;

- (5) there may be circumstances in which an individual may not be able to maintain that the information concerned must always be kept private, having regard to the competing interests which may be involved but may make complaint in relation to the manner in which the information was obtained;
- (6) the right to sue for damages for breach of the constitutional right to privacy is not confined to actions against the State or State bodies or institutions.”

**The European Convention on Human Rights and the right to privacy**

30. The right to privacy is also protected by Article 8 of the European Convention on Human Rights. This right is not unqualified and Article 8(2) provides that the right to private and family life may be interfered with by a public authority “in accordance with law”, in a manner which is “necessary in a democratic society” and in the “interests of national security, public safety, or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others”.

31. The plaintiff relied on a number of decisions of the European Court of Human Rights including *Von Hannover v. Germany* (2005) 40 E.H.R.R. 1 and *Sciacca v. Italy* (2006) 43 E.H.R.R. 20. In *Sciacca* the applicant was under investigation by the Revenue authorities in Italy and her photograph was published in newspapers on four occasions. The photograph published was an identity photograph that had been taken by the Revenue Police at the time of the applicant’s arrest, and subsequently released by them to the press. The applicant complained that the release of her photograph at the press

conference organised by the public prosecutor's office and the Revenue Police had infringed her right to respect for her private life. The court held there had been a violation of Article 8. At para. 29 of its judgment the court said:-

“29. Regarding whether there has been an interference, the Court reiterates that the concept of private life includes elements relating to a person's right to their picture and that the publication of a photograph falls within the scope of private life. It has also given guidelines regarding the scope of private life and found that there is:

‘a zone of interaction of a person with others, even in a public context, which may fall within the scope of “private life”.’

In the instant case the applicant's status as an ‘ordinary person’ enlarges the zone of interaction which may fall within the scope of private life, and the fact that the applicant was the subject of criminal proceedings cannot curtail the scope of such protection.

Accordingly, the Court concludes that there has been interference.”

The court held the release of the applicant's photograph by the state authorities was not “in accordance with law” and therefore there was a breach of Article 8. The court did not find it necessary “to determine whether the interference in question pursued a ‘legitimate aim’ or was ‘necessary in a democratic society’ to achieve that aim.”

**32.** In *Von Hannover v Germany* (2005) 40 E.H.R.R. 1 Princess Caroline of Monaco and Hanover had made a number of applications for injunctions restraining the further publication of photographs of her which had appeared in German magazines. These applications were refused by the German courts on the grounds that she was a public

figure. The Princess complained to the European Court of Human Rights which held that Germany was in violation of her rights under Article 8. At paras. 57 ff. of its judgment the court explained the reasons for its decisions:-

- “57. The Court reiterates that although the object of Art.8 is essentially that of protecting the individual against arbitrary interference by the public authorities, it does not merely compel the State to abstain from such interference: in addition to this primarily negative undertaking, there may be positive obligations inherent in an effective respect for private or family life. These obligations may involve the adoption of measures designed to secure respect for private life even in the sphere of the relations of individuals between themselves. That also applies to the protection of a person’s picture against abuse by others. The boundary between the State’s positive and negative obligations under this provision does not lend itself to precise definition. The applicable principles are, nonetheless, similar. In both contexts regard must be had to the fair balance that has to be struck between the competing interests of the individual and of the community as a whole; and in both contexts the State enjoys a certain margin of appreciation.
58. That protection of private life has to be balanced against the freedom of expression guaranteed by Art.10 of the Convention. In that context the Court reiterates that the freedom of expression constitutes one of the essential foundations of a democratic society. Subject to para. 2 of Art.10, it is applicable not only to ‘information’ or ‘ideas’ that are favourably

received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of that pluralism, tolerance and broad-mindedness without which there is no 'democratic society'. In that connection the press plays an essential role in a democratic society. Although it must not overstep certain bounds, in particular in respect of the reputation and rights of others, its duty is nevertheless to impart—in a manner consistent with its obligations and responsibilities—information and ideas on all matters of public interest. Journalistic freedom also covers possible recourse to a degree of exaggeration, or even provocation.

59. Although freedom of expression also extends to the publication of photos, this is an area in which the protection of the rights and reputation of others takes on particular importance. The present case does not concern the dissemination of 'ideas', but of images containing very personal or even intimate 'information' about an individual. Furthermore, photos appearing in the tabloid press are often taken in a climate of continual harassment that induces in the persons concerned a very strong sense of intrusion into their private life or even of persecution.
60. In the cases in which the Court has had to balance the protection of private life against the freedom of expression it has always stressed the contribution made by photos or articles in the press to a debate of general interest. The Court thus found, in one case, that the use of certain terms in relation to an individual's private life was not 'justified by considerations



of public concern' and that those terms did not '[bear] on a matter of general importance' and went on to hold that there had not been a violation of Art.10. In another case, however, the Court attached particular importance to the fact that the subject in question was a news item of 'major public concern' and that the published photographs 'did not disclose any details of [the] private life' of the person in question and held that there had been a violation of Art.10. ...."

33. The court went on to hold that whilst the Princess was a public figure she performed no official public role and this case did not "come within the sphere of any political or public debate because the published photos and accompanying commentaries relate exclusively to details of the applicant's private life."

34. At paras. 76 ff. of its judgment the court explained the complex balancing exercise that a court must perform where a person's right to privacy is at stake, on the one hand, and the media's freedom of expression is sought to be restricted, on the other hand. The balance in that case favoured the applicant's right to privacy as the court explained:-

"76. As the Court has stated above, it considers that the decisive factor in balancing the protection of private life against freedom of expression should lie in the contribution that the published photos and articles make to a debate of general interest. It is clear in the instant case that they made no such contribution since the applicant exercises no official function and the photos and articles related exclusively to details of her private life."

35. It is clear from these decisions that, *prima facie*, a member of the public customarily enjoys a right to have their private life protected and that this right may

afford protection to ones photograph and /or address. The extent of that right and the zone of privacy to be afforded to an individual's own actions and/or their interactions with others will depend on the prevailing circumstances. At times the right to privacy contended for may be in conflict the competing interests of those who seek to exercise their right to freedom of expression. In such circumstances, whether protection for private life can be sustained will be resolved by the court carrying out an assessment of the competing interests and rights of the respective protagonists bearing in mind the public interest. At times an individual's right to privacy as provided for in Article 8 may have to give way to the competing rights of others to exercise their right of freedom of expression under Article 10

#### **Decisions of the High Court of Northern Ireland**

36. The applicant relied heavily on the decision of the High Court of Northern Ireland in *Callaghan v. Independent News and Media Ltd* [2008] NIQB 15. In that case the plaintiff was convicted of a brutal sexual murder in 1987. He sought an injunction restraining the defendant from publishing photographs from which he could be identified as well as orders restraining the publishing of any information identifying his address, his place of work or his whereabouts. The defendant had published a number of articles, not only in relation to the plaintiff, but also in relation to a number of other life sentence prisoners due for release back into the community. The articles also concerned "the general policy question as to whether there should be publication of all details in relation to sex offenders upon their release into the community so that members of the public can identify the offenders and take precautions in relation to the risks that they pose."

37. The plaintiff's application was supported by the Northern Ireland Office which also sought a declaration that the defendant could not lawfully publish photographs of the plaintiff without obscuring his identity nor any photograph of any serving prisoner who was being assessed at the Prisoner Assessment Unit unless all identifying features were obscured.

38. The plaintiff in that case had been sentenced to life imprisonment for a brutal sexual murder. The tariff in respect of the retribution and deterrence element of his sentence was set by the Lord Chief Justice at 21 years.

39. The plaintiff was due to become eligible for release on licence in October 2008. In advance of that date, namely in October 2007, when he was serving the last year of the tariff element of his sentence, the plaintiff was moved to what is described as the Prisoner Assessment Unit. That transfer occurred following extensive assessments carried out by a multidisciplinary team at the prison and also by the Life Sentence Review Commissioners who are the independent government body responsible for deciding when, if at all, and subject to what conditions a life sentence prisoner will be released into the community. In the Prisoner Assessment Unit, the plaintiff remained under the supervision of the prison service whilst being supported and evaluated in accordance with a plan for his potential phased reintegration into the community. As part of that plan he had been approved for occasional day release from the unit.

40. The articles published by the defendant had referred to the plaintiff by name, detailed the offence for which he had been convicted and reported that he had been moved to the Prisoner Assessment Unit. A photograph had been published of the plaintiff in a public place but his face was obscured by the hat he was wearing. In these articles

the plaintiff had been depicted as someone that other prisoners and prison staff were afraid of. He was portrayed at that time as a sick individual who was a psychopath, a killer and an evil sex beast and as someone who, in the opinion of those in charge of his care, constituted a substantial risk to public safety. The articles had made no mention of the rehabilitation that the plaintiff had undertaken in prison nor of the fact that following continuous assessment by multi disciplinary teams that he had been deemed to have been rehabilitated to the point that he was no longer considered to constitute a risk to the public. Neither was there any mention of the fact that his release, if ultimately sanctioned, would be on the basis of a very limited license or subject to other precautions that would be implemented to ensure compliance with the terms of that licence. The defendant proposed to publish another photograph of the plaintiff in a Sunday newspaper with an accompanying article entitled "Killers on the Loose" and the plaintiff brought the interlocutory application to restrain that publication.

41. At the interlocutory application the defendant gave an undertaking not to publish the address of the Prisoner Assessment Unit at which the plaintiff resided or the address of the plaintiff's parents at which he might reside in the future. No undertaking was given, however, not to publish photographs identifying the plaintiff.

42. The Prison Service, whilst not a party to the proceedings, was permitted to make submissions at the interlocutory hearing and did so in support of the plaintiff's application. In its affidavit the Prison Service set out in detail how life prisoners, in the final year of the tariff period of their sentence are assessed on an ongoing basis by a multi disciplinary team which includes prison officers known to the prisoner, psychologists, medical staff, probation workers, police and welfare officers. It is only when this team and also the Life

Sentence Review Commissioners conclude that a prisoner is ready that they are transferred to the Prisoner Assessment Unit where their preparation for release on licence is monitored and progressed. The role of the Prisoner Assessment Unit was explained and it was stated that research “has demonstrated that phased release and home leave contributes to an increased chance that prisoners are safely re-integrated into society”. A detailed explanation was given as to the ongoing assessments carried out within the Prisoner Assessment Unit before a prisoner might ultimately be deemed ready for release on licence. The affidavit stated that the Prison Service “is of the firm view that the Prisoner Assessment Unit system is very valuable not simply to prisoners, but also to the public in allowing the safe re-integration of prisoners”.

43. The plaintiff in *Callaghan* contended there was a risk to his life in having his photograph published in the newspaper identifying him as a sex offender. At para. 9 of his judgment at the full hearing ([2009] NIQB 1) Stephens J. said:-

“[9] The first plaintiff is not a person deserving of sympathy when it comes to the question of obscuring photographs of him so as to prevent his recognition by that means by members of the public. However the existence of a general risk of harm to sex offenders was expressly accepted by the defendant at the trial of these actions and indeed it was accepted implicitly by it prior to the trial. The extent of that risk remained to be decided and particularly as to whether it included an increased risk to the life of the first plaintiff by reason of the publication of unpixelated photographs of him when taken in conjunction with the tone and content of the articles that have been published by the defendant.”

44. In relation to the alleged threat to his life, the plaintiff adduced, at the interlocutory application, statistical evidence of the rate of attacks on convicted sex offenders in Northern Ireland. Stephens J. at para. 11 of his judgment noted it was “significant” there had been three murders of persons suspected of being convicted of sexual offences and two attempted murders, although there was no evidence as to the motivation for the attacks or whether there had been publicity attached to the individuals concerned. The plaintiff’s assertion there was a risk to his life was also supported by the Prison Service in the affidavit filed on its behalf which noted that there had been cases of serious assaults and murder in respect of convicted sex offenders and that “the risk of attack also will apply to those with whom the prisoner is residing, flatmates, other hostel residents, members of his family etc.” There was no evidence that threats had actually been made to the plaintiff. On the evidence before him, Stephens J., at the interlocutory application, expressed himself satisfied that “there is a risk of a real and immediate threat to the life of the plaintiff and also a risk of a real and immediate threat of inhuman and degrading treatment in relation to him”. Stephens J. noted the test was whether there was evidence of a real risk, “there does not have to be evidence that the risk will actually materialise”.

45. In deciding whether to grant the interlocutory injunction, Stephens J. considered the defendant’s right to freedom of expression. At para. 19 of his judgment he noted that there was no evidence that a photograph capable of identifying the plaintiff had already become available to the public. In the only published photograph produced to the court the plaintiff’s face was obscured by the hat he was wearing. The court noted there was a public interest “in the press debate about the release of life prisoners”. However, the

