



19 July 2017

## PRESS SUMMARY

**Khuja (Appellant) v Times Newspapers Limited and others (Respondents) (formerly knowns as PNM (Appellant) v Times Newspapers Limited and others (Respondents)) [2017] UKSC 49**  
*On appeal from [2014] EWCA Civ 1132*

**JUSTICES:** Lord Neuberger (President), Lady Hale (Deputy President), Lord Kerr, Lord Clarke, Lord Wilson, Lord Sumption, Lord Reed

### BACKGROUND TO THE APPEAL

This appeal arises out of the trial of nine men on charges involving organised child sex grooming and child prostitution in the Oxford area as part of Thames Valley Police’s “Operation Bullfinch”. On 14 May 2013 seven of the men were convicted.

The appellant is a prominent figure in the Oxford area, who was arrested at about the same time as the nine and was released on bail. The reason for his arrest was that one of the complainants had told the police that she had been abused by a man with the same, very common, first name. She failed, however, to pick him out at an identity parade. He was later told by police that he would be released from arrest without charge, but that the case would be kept under review. That remains the position.

*The Times* and the *Oxford Mail* wish to publish information identifying the appellant as someone who had been arrested, bailed, his passport impounded and then de-arrested in connection with Operation Bullfinch, or as someone suspected by the police of being involved in sexual offences against children. Magistrates originally granted an injunction shortly after the appellant’s arrest, prohibiting the disclosure of any information which might identify the appellant until such time as he was charged with an offence. At trial the judge made an order which ultimately prohibited the publication of any report which referred to evidence which might identify or tend to identify the appellant until a decision had been made whether or not to charge him. A significant part of the relevant complainant’s evidence related to a man who shares the appellant’s first name. The appellant was also referred to a number of times in the course of the trial: in a police officer’s evidence of his attendance at an identity parade; in the evidence of at least one of the defendants; and in the closing speeches of prosecuting and defence counsel.

After the police released the appellant from arrest without charge, the newspapers applied to lift the order on the ground that there were now no “pending or imminent” proceedings against the appellant which might be prejudiced by publication. The judge circulated a draft ruling stating that he proposed to lift the order, but never formally did so. The matter moved to the High Court where the appellant applied for an interim injunction restraining publication, on the basis that it was necessary to protect him against the misuse of private information and the infringement of his right to private and family life protected by article 8 of the European Convention on Human Rights (ECHR). The judge dismissed the application, and the Court of Appeal dismissed the appellant’s subsequent appeal.

### JUDGMENT

By a majority of 5 to 2, the Supreme Court dismisses the appeal. Lord Sumption gives the judgment, with which Lord Neuberger, Lady Hale, Lord Clarke and Lord Reed agree. Lord Kerr and Lord Wilson write a joint dissenting judgment.

## REASONS FOR THE JUDGMENT

With limited exceptions, the English courts administer judgments in public, at hearings which any member of the public may attend and which the press may report [12]. The limits on permissible reporting of public legal proceedings are set by the law of contempt, defamation and the law protecting ECHR rights [17]. The present appeal turns on the last category. In *Campbell v MGN Ltd*, the House of Lords expanded the scope of the equitable action for breach of confidence by absorbing into it the values underlying articles 8 (right to respect for private and family life) and 10 (freedom of expression) of the ECHR. This effectively recognised a qualified common law right of privacy [21].

The legal basis of the judge's analysis was challenged in two respects. Firstly, it was argued that the decision of the Supreme Court in *A v British Broadcasting Corporation* marked a new approach to the balancing test between competing rights laid out in *In re S (Identification: Restrictions on Publication)*. In *A* the Court had dismissed the BBC's application to lift an order prohibiting identification of a deportee who had been convicted of child sex offences because it would not only have violated his article 2 and 3 ECHR rights, but would have also subverted the basis of the decision to authorise his deportation. That argument fails in the present case because while *A* turned on very particular facts, the general approach adopted in Lord Reed's leading judgment was in fact very similar to that of Lord Rodger in *In re Guardian News and Media Ltd* [28, 33]. The second argument was that in adopting Lord Rodger's observations in *In re Guardian News and Media Ltd* about the public's ability to distinguish between suspicion and guilt, the judge had applied a legal presumption which was not warranted. This also fails: Lord Rodger was not presenting this as a legal presumption to be applied irrespective of the circumstances. This part of the judge's reasoning was doing no more than saying that while some members of the public would equate suspicion with guilt, most would not [33].

The judge committed no error of law, and was entitled to reach the conclusion that he did [34]. The appellant seeks to prohibit the reporting of matters discussed at public trial. These are not matters about which he can have had any reasonable expectation of privacy [34(1)]. The impact on the appellant's family life is indirect and incidental: neither he nor his family participated in any capacity at trial, and nothing that was said at trial related to his family. It would be incoherent for the law to refuse an injunction to prevent damage to the appellant's reputation directly, while granting it to prevent the collateral impact on his family life in the same circumstances [34(3)]. Lord Sumption would not, however, rule out the possibility of a pre-emptive injunction in a case where the information was private or there was no sufficiently substantial public interest in publication. Such cases will be rare in relation to the reporting of public court proceedings [34(4)].

The public interest in allowing the press reporting of court proceedings extends to the appellant's identity. The policy which permits media reporting on judicial proceedings depends on (i) the right of the public to be informed about a significant public act of the state, and (ii) the law's recognition that the way in which the story is presented is a matter of editorial judgment. The appellant's identity is not an irrelevant feature of this particular story [34(5)].

In their dissenting judgment, Lord Kerr and Lord Wilson consider that the judge had erred in his approach to balancing the strength of the rival considerations [39]. They take the view that Lord Rodger *was* stating a legal presumption that courts should act on the basis that most people believe that someone charged with an offence is innocent until proven guilty [44-5], but that he had offered no evidence or authority to support such a presumption. Lord Kerr and Lord Wilson conclude that there was no basis for the presumption and, accordingly, the judge erred in dismissing the appellant's application because of it. Their Lordships also indicate that, under article 8, it is likely that the appellant would have established his right to an injunction at full trial [59].

*References in square brackets are to paragraphs in the judgment*

**NOTE:** This summary is provided to assist in understanding the Court's decision. It does not form part of the reasons for the decision. The full judgment of the Court is the only authoritative document.

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