



Neutral Citation Number: [2021] EWHC 339 (Admin)

Case No: CO/3253/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 February 2021

Before :

LORD JUSTICE STUART-SMITH
MR JUSTICE NICKLIN

Between :

R (on the Application of Babita Rai)

Claimant

- and -

The Crown Court at Winchester

Defendant

- and -

(1) PA Media
(2) The Director of Public Prosecutions

Interested
Parties

Philip Rule (instructed by **Instalaw Limited**) for the **Claimant**
Jude Bunting (instructed under **direct access**) for the **First Interested Party**
Adam Feest QC (instructed by the **Crown Prosecution Service**) for the **Second Interested Party**
The Defendant did not attend and was not represented

Hearing date: 15 February 2021

**Covid-19 Protocol: This judgment was handed down by the judges remotely
by circulation to the parties' representatives and BAILII by email.
The date of hand-down is deemed to be as shown above.**

Approved Judgment

Mr Justice Nicklin :

1. This is the judgment of the Court to which we both have contributed.
2. In this claim for judicial review, the Claimant challenges a decision to discharge a reporting restriction order made under s.11 Contempt of Court Act 1981 that prohibited publication of her address. The Claimant has been charged with murder of her unnamed baby between 14-17 May 2017. She was charged with the alleged offence in July 2020. She is due to stand trial at Winchester Crown Court in May 2021.
3. At the end of the hearing on 15 February 2021, we indicated that we would dismiss the claim for judicial review and give our reasons in writing. We imposed a reporting restriction, under s.4(2) Contempt of Court Act 1981 postponing reports of these proceedings, and the content of this judgment, until the jury has returned a verdict in the criminal proceedings or the order is otherwise discharged. The purpose of doing so is to avoid a substantial risk of prejudice to the administration of justice in those proceedings.

History of the Criminal Proceedings

4. The Claimant first appeared at the North Hampshire Magistrates' Court sitting at Basingstoke on 7 July 2020 charged with the offence of murder. On that occasion, she was represented by her solicitor advocate, James Foster. Mr Foster applied for reporting restrictions, which were apparently granted. The entry in the Magistrates' Court register for the hearing includes the following:

“Press directions: Order made under section 11 of the Contempt of Court Act 1981 prohibiting publication of name and address of defendant. This order lasts until further order. The purpose of this order is if her name is reported at this time, it could prejudice a trial, it could give advance warning to the perpetrator of the charge.”

5. The Claimant was remanded in custody to appear at the Winchester Crown Court on 8 July 2020.
6. The Claimant duly appeared at the Crown Court, on 8 July 2020, before HHJ Miller QC. The issue of reporting restrictions was considered again. Following representations on behalf of the Claimant, the prosecution and a representative of the media, the Judge varied the reporting restriction order to lift the restriction on identifying the Claimant by name as the defendant in the proceedings. The Order drawn up by the Court stated the following:

“The court makes an order under section 11 of the Contempt of Court Act 1981 as follows:

- (1) The publication of any report of the following part of the proceedings, namely the address of the Defendant;
- (2) The order shall have effect until further order.
- (3) The court shall serve a copy of this order as soon as practicable on: all parties to the proceedings;

The specific purpose of making this order is to avoid a substantial risk of prejudice to the administration of justice in the proceedings, namely that reports of the address of the defendant will prejudice a fair trial of proceedings and risk the safety of the defendant's family."

The terms of that order are unsatisfactory. Firstly, it does not actually contain any prohibition of the matters identified in paragraph (1). Secondly, the reference, in the concluding paragraph, to the purpose being to avoid a substantial risk of prejudice, whilst that might have been relevant to the making of a postponement order under s.4(2), was not relevant or material to an order made under s.11 Contempt of Court Act 1981.

7. The First Interested Party ("PA Media") applied to set aside the s.11 Order as varied by HHJ Miller QC. Written submissions in support of the application were submitted on 9 July 2020. In summary, PA Media advanced two principal arguments:
 - i) first, that as the Claimant's address had not been withheld in the open court proceedings in the Magistrates' Court on 7 July 2020, and had in fact been read out in open court, there was no power to grant reporting restrictions under s.11 Contempt of Court Act 1981; and, in any event
 - ii) second, even if the Claimant's address had been withheld, so providing jurisdiction to grant an order under s.11 Contempt of Court Act 1981, the Court should not make such an order as the derogation from open justice that such an order would represent was neither necessary nor justified.
8. The application to discharge the s.11 Order came before the Recorder of Winchester, HHJ Cutler CBE, on 23 July 2020. The Judge had the benefit of full written submissions on behalf of PA Media in support of the application to discharge and written submissions on behalf of the Claimant resisting the application. The only evidence before the Court was a statement from the Claimant's solicitor, Mr Foster, dated 21 July 2020, which stated that, on 8 July 2020 when the reporting restriction had been varied to permit reports of her name, the Claimant was "*very upset and [was] crying*", was "*anxious and disappointed*" and "*in a dejected condition and... exhibiting visible signs of distress*" about publication of her personal details "*including the threat of publication of her home address*".
9. In his written submissions, Mike Dodd who appeared on behalf of PA Media, contended that any derogation from open justice must be established by clear and cogent evidence (relying upon the Court of Appeal decision in *In re BBC [2018] 1 WLR 6023* [29(vii)]) and that the Claimant had failed to produce such evidence. Mr Rule argued that, when assessing the Article 8 rights, the Court should have regard, first, to the adverse effects that publication of the Claimant's address may have by "*causing unnecessary distress to a participant in the trial process*" and second, to the privacy rights of other occupants of the address and the impact upon them.
10. Following further oral submissions on behalf of the Claimant and PA Media (which have been transcribed and which we have read in full), the Recorder discharged the s.11 Order. Relying upon the Judicial College guide *Reporting Restrictions in the Criminal Courts* ("the Judicial College Guidance"), the Recorder took, as his starting point, the principle of open justice and held that the Claimant had failed to demonstrate

a sufficient countervailing justification for an order preventing her address from being published. The Judge accepted PA Media's submission, relying upon §5.4 of the Judicial College Guidance, that the address of a defendant in criminal proceedings plays an important part in accurately identifying the relevant defendant. The Judge held:

“My starting point in this case is, and I accept what Mr Dodd says, that there is a presumption here in favour of publicity and ... [there] should be a real reason why that should be restricted...

We in the Crown Court now are much helped by the guidance given [in the Judicial College Guidance] and Mr Dodd rightly quotes from that guidance which we receive that the media is particularly concerned that accurate information of those involved in court proceedings, the announcement in open court of names and addresses enables precise identification vital to distinguish the Defendant from someone in the locality who bears the same name and avoids inadvertent defamation.

I say that because no one has actually mentioned but there is a concern here that in Aldershot there is a large community of Nepalese, many of them have very similar surnames... and there is an importance here for the Defendant, if she is to be named publicly, is for the press to understand that they have the right person here. Indeed, the Home Office circular mentioned in that extract [§5.4 of the Judicial College Guidance -set out in [32] below] says that a person's address is as much a part of his description as his name. [There is] a strong public interest in facilitating press reports that have correctly described the persons involved.

I accept what Mr Rule has said ... that there is always a balancing that the Court may and must do if Article 8 rights are engaged, and I find that there is that engagement of Article 8 rights, which I have to balance, but balancing from that start point and, as Mr Dodd says, there is no evidence in this case of danger to the Defendant from publication of her home address...”

Claim for Judicial Review

11. Challenges to decisions in relation to reporting restrictions in the Crown Court are made by different routes, depending upon whether the reporting restrictions were granted, or refused/discharged. This is because s.159 Criminal Justice Act 1988 provides a specific route of appeal to the Court of Appeal Criminal Division against the imposition of reporting restrictions. A challenge to a refusal to grant, or the discharge of, a reporting restriction order must be made by way of judicial review: ***R -v- Marine A [2014] 1 WLR 3326*** [47].
12. The Claim for judicial review was commenced on 30 September 2020. Following an urgent without notice application for interim relief on 1 October 2020, Robin Knowles J granted an injunction restraining publication of details of the Claimant's home address in any report of the Crown Court proceedings, pending determination of the claim for judicial review. The Claimant was granted permission to bring her claim for judicial review, on the papers, by Sir Duncan Ouseley on 3 December 2020.
13. The Claimant's grounds for judicial review are as follows:

- i) the publication of the address of the Claimant “violates” Article 8 of the ECHR, and permitting it is therefore prohibited by s.6 Human Rights Act 1998;
 - ii) the correct starting point to the assessment of the lawfulness of a proposed publication of private personal detail that engages Article 8 is not to presume in favour of publication but to balance the competing interests between Articles 8 and 10: *In re S* [2005] 1 AC 593; and
 - iii) the decision to permit the publication of the Claimant’s address is not a lawful exercise of discretion at common law and/or failed to have regard to relevant matters and/or had regard to immaterial or factually unproven matters, in particular the presumption of innocence, and/or the necessity for a safe bail address avoiding unnecessary fears extraneous to the stress of the proceedings, was given insufficient regard, and/or the suggestion of a need for ‘clear evidence of a threat to the accused’ is incorrect.
14. The Claimant contends that Judge Cutler fell into error by relying upon the Judicial College Guidance when this guidance is “*inaccurate and fails to reflect the dicta of the Supreme Court*” - principally the Supreme Court’s decision in *A -v- BBC* [2015] AC 588 – and “*precludes a proper approach to the Article 8 ECHR interference and balancing exercise necessary and lawfully required to be undertaken*”.
15. Mr Rule argues that the Judicial College Guidance must be read subject to the Supreme Court decision in *A -v- BBC*. He submits that the decision confirms that “*Article 8 must be considered in a section 11 CCA 1981 matter*”. He relies, in particular, on the following two paragraphs from Lord Reed’s decision:
- [48] ... Where there is a conflict between the right of the media to report legal proceedings and the rights of litigants or others under a guarantee which is itself qualified, such as article 8, a balance must be struck, so as to ensure that any restriction on the rights of the media, on the one hand, or of the litigants or third parties, on the other hand, is proportionate in the circumstances. The approach which should be adopted was considered in detail by Lord Steyn in *In re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593, and by Lord Rodger JSC in *In re Guardian News and Media Ltd* [2010] 2 AC 697.
- ...
- [60] It was submitted on behalf of the BBC that section 11 does not enable an order to be made for the purpose of protecting an individual’s Convention rights: such an order can only be made, it was argued, in order to protect the public interest in the administration of justice. That submission is of limited significance in the present case since, as I shall explain, one of the purposes of the order was to protect the administration of justice. Section 11 does not in any event contain any such limitation; and, where the courts are required under the Human Rights Act 1998 to impose reporting restrictions in order to protect Convention rights, they must use the means which are available to them.
16. In the Facts and Grounds filed on behalf of the Claimant, Mr Rule has submitted the following about the Judicial College Guidance:

“It should be immediately noted that it is guidance which was prepared in collaboration with the Media Lawyers Association, the News Media Association and the Society of Editors. It does not appear to have engaged with those representing individuals subjected to media attention or human rights bodies. The foreword thanks the industry. It is notably not a source of law, and its accuracy is not established...

It is surprising and concerning that such a modern and accurate statement of the law by the Supreme Court as Lord Reed delivered in *A -v- BBC*... does not feature anywhere in the guidance that post-dates it... Nor does the correct approach to balancing competing interests that Article 8 requires. As to Article 8 there are only two mentions of this within the guidance in the context of adults and neither mention (sic) correctly identifies the balancing exercise nor the fact that there is no precedence or presumption for Article 10 over Article 8.”

17. The suggestion that the Judicial College Guidance is a partisan publication prepared by pro-media bodies is misplaced. As made clear in the Foreword, written by the then Lord Chief Justice, it is a guide produced by the Judicial College in conjunction with three bodies who have a direct interest in ensuring that the difficult area of reporting restrictions is made intelligible and accessible. The Judicial College Guide summarises the law relating to applications for reporting restrictions under s.11 Contempt of Court Act 1981 in §§1 and 4.4, the relevant parts of which we set out at [51] below.
18. We asked Mr Rule to identify what he claimed was inaccurate in its summary of the law. He submitted that it failed properly to identify the need to carry out the balancing between competing convention rights mandated by *In re S*. In following the Judicial College Guidance, Judge Cutler had, by taking as his starting point what he described as a “presumption” in favour of publicity, fallen into error by giving a presumptive priority to the Article 10 rights over the Claimant’s Article 8 rights.
19. Further, the Claimant argues that the authorities of *Richard -v- BBC [2019] Ch 169* and the decision of the ECtHR in *Khadija Ismayilova -v- Azerbaijan* (Applications nos. 65286/13 and 57270/14) demonstrate the correct approach to the assessment of the Claimant’s Article 8 rights. *Richard*, Mr Rule argues, is authority for the proposition that “*there remains a legitimate interest in and expectation of privacy for a criminal suspect*”. And the *Ismayilova* case is an example of the ECtHR finding that the release of the address of the complainant in a criminal investigation was an unjustifiable interference with her Article 8 rights.
20. Mr Rule argued that the Claimant’s address is not germane to reports of the criminal proceedings; it does not “*add to the story*’ in any meaningful public interest way”. It is not the location of the offence and it was not the address at which she resided at the time of the events. The media, he contends, will be able fully to report the trial and that a restriction prohibiting reports of her address would have no adverse effect on those reports. There is no risk, in this case, of the Claimant being confused with anyone else and the address, which was not her address at the time of the offence, will not in this case assist in her identification.
21. The Claimant has filed a witness statement dated 28 January 2021. In it, she states that she was born and raised in Nepal. She came to England at the start of 2017. She lives with her father, mother and two siblings. When she was arrested in March 2020, she was

working in a care home. She lost her job as a result of her arrest. The Claimant states that she has never before been alleged to have committed an offence and that she finds the whole process “terrifying”. When she was first remanded in custody, she states that she did not wish to eat and wanted to be able to die. She has been upset by the details of her case that have appeared in the media since her first Court hearing and she is upset and unhappy that details of her case are discussed by others in custody. The address is the address of her family. It is the only place that would be available to her if she were to be released from custody. She states that, on 4 September 2020, she was assessed by a forensic psychologist and states that the psychologist has concluded that she is suffering from post-traumatic stress disorder caused by a traumatic event in her life. She states that she has been assessed to be at risk of suicide or serious self-harm. As to her fears if her address is published, she said this:

“The thought of my address being shared with the public causes me a lot of stress and makes me feel very unhappy. It is something I think about almost every day. My family have had a lot of problems with the Nepalese community because of the information that has been shared about me in the media. I am concerned that if my address is released to the public, this will result in people going to their house and saying things to them. I am scared for their safety. I would also be very concerned about other people (not from the Nepalese community) going to my house and threatening my family because of the nature of the allegations against me. I do not know what these people would be capable of and I would be very worried about what they might do to my family and their home.

My family have told me that they are feeling very stressed about the situation and they tell me they are constantly having people approach them to talk about me. If my address was released to the public, I think things would be much worse for them as people might come to the house.

My mental health is really suffering because I am so concerned about what is happening to my family and what might happen if my address is released. I am constantly thinking about this and I am feeling very stressed and upset. I do still cry often when speaking about the case with my lawyers, or thinking about things on my own. It is worse to think of having nowhere safe to go. With all the information about me already made public, I do not understand why my home should also be published and the fear of this is causing me distress and anxiety.”

22. No report from any forensic psychologist has been filed. The Claimant’s witness statement was not before Judge Cutler when he made his decision. An Application Notice seeking permission to adduce this evidence was issued on 4 February 2021. Mr Bunting objects to the admissibility of this evidence. Leaving aside the lateness of the application to adduce this evidence (Sir Duncan Ouseley’s order of 3 December 2020 required any application to rely on further evidence to be filed by 8 January 2021), he contends that evidence that was not before the Court below cannot be relevant to the question whether Judge Cutler’s decision was lawful.
23. PA Media has submitted detailed written grounds in response to the claim for judicial review and Mr Bunting has provided written submissions. In his oral submissions, adopted by Mr Feest QC, Mr Bunting made three broad points, which he developed in argument:

- i) Whether Mr Rule’s submissions on the law are right or wrong, it is clear that Judge Cutler was required to carry out a balance between the Claimant’s Article 8 rights in relation to the publication of her address and the Article 10 interests in open justice. It is clear from his judgment that he carried out precisely that exercise. Mr Rule has not demonstrated that the balance he carried out was flawed.
- ii) As to the legal test, Mr Rule’s fundamental submission - that a court dealing with an application to withhold information in criminal proceedings (with a corresponding reporting restriction under s.11) was required to carry out the balancing exercise by reference to the particular information which the Claimant sought to be withheld (and publication prohibited) and to consider, with the required intense focus, the harm to the Article 8 rights if publication of the address were allowed, against the harm to the Article 10 rights if the address were withheld from public proceedings and publication of it prohibited – was wrong, gave insufficient weight to the principle of open justice and had been rejected by the Court in both *Khuja -v- Times Newspapers Ltd* [2019] AC 161 and *RXG -v- Ministry of Justice* [2020] QB 703.
- iii) Finally, Mr Rule has not established – as a matter of fact – that the Claimant’s address was actually withheld by the Magistrates at the hearing on 7 July 2020. Without that, he cannot establish the jurisdiction to impose an order under s.11 Contempt of Court Act 1981.

Decision

24. The central issue in this claim is whether the Judge was wrong to discharge a reporting restriction order prohibiting reports of the criminal proceedings against the Claimant from identifying her address. We have concluded that he was not.
25. There is no doubt that the Court has the power to direct that the address of a party or witness should be withheld from the public in criminal proceedings, if such an order is necessary for the administration of justice. Thereafter, s.11 Contempt of Court Act 1981 – headed “publication of matters exempted from disclosure in court” – enables a Court to impose reporting restrictions on the withheld information. s.11 provides:

“In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld.”
26. The first thing to note, about s.11, is that it does not itself confer a power to permit “*a name or other matter to be withheld from the public in proceedings before the court*”. When the court has *independently* exercised a power it has to withhold information from public in proceedings, s.11 provides an ancillary statutory power to impose reporting restrictions prohibiting publication of the withheld information: *In re Guardian News and Media Ltd* [2010] 2 AC 697 [31]; *A -v- BBC* [59]. The passage from Lord Reed’s judgment upon which Mr Rule relied – that Courts must use such means as are available to them to impose reporting restrictions to protect Convention rights – has to be seen as being subject to the important jurisdictional limits of an order

made under s.11 that Lord Reed had set out in the previous passage. The powers of the Crown Court to impose reporting restrictions on what takes place in open court are limited to those provided expressly by statute: *In re Trinity Mirror plc* [2008] QB 770 [30]; *Khuja -v- Times Newspapers Ltd* [2019] AC 161 [18].

27. In consequence, a court can only exercise its powers under s.11 to give directions prohibiting the publication of a name (or other information) in connection with the proceedings if it first deliberately exercises its power to direct that the name (or other information) is to be withheld from the public in those proceedings: *In re Trinity Mirror plc* [19]. If the name (or information) has not been withheld, *a fortiori* if it has been read out in open court, then there is no jurisdiction to make an order under s.11: *R -v- Arundel Justices ex p Westminster Press Ltd* [1985] 1 WLR 708, 710H-711C.
28. The evidence we have as to what happened at the Magistrates' Court hearing on 7 July 2020 is far from satisfactory. On the one hand, although the evidence of the solicitor-advocate who represented the Claimant, Mr Foster, confirms that the Magistrates imposed an order under s.11, his witness evidence does not address whether, before they did so, they made a direction that the address of the Claimant should be withheld. Against that, PA Media have filed a witness statement, dated 18 December 2020, from Ben Mitchell, who is a regional reporter for PA Media for the south east of England, which provides evidence that suggests that the address was not withheld, but in fact was read out in open court. On 8 July 2020, he attended Winchester Crown Court in order to cover the Claimant's case. That day, he inquired by email with the Magistrates' Court whether the Claimant's address had been read out in open court when she appeared the day before. In an email sent at 13.56. he asked: "*Could the court clerk confirm if the address of [the Claimant] was given in open court during the hearing on Tuesday, June 7, please.*" He received a response from one of the Administration Officers at 15.32: "*The address given was [address stated]*". Mr Mitchell followed up at 15.48: "*To be clear, was the address given in open court?*". The response was: "*This is the only address we have for this person and would have been confirmed in an open court. Please note that we are not in the court room and this is not a court of record in the respect of recordings or transcripts*". The entry in the register of the Magistrates' Court hearing on 7 July 2020, provided to the media after the hearing, strongly suggests that the Claimant's name was not withheld, but records the Magistrates as having nevertheless purported to impose a s.11 Order prohibiting publication of her name. In the light of that, there must be some doubt whether they also actually withheld the Claimant's address.
29. Mr Bunting submitted that the factual issue as to whether the Claimant's address was read out in open Court on 7 July 2020, which is fundamental to whether the Court had any jurisdiction to impose reporting restrictions under s.11, has been challenged consistently by PA Media ever since Mr Dodd's original written submissions in support of PA Media's application to discharge the s.11 Order in July 2020. Although the Claimant has recently filed further evidence before the hearing, absent from it is a further statement from her solicitor, Mr Foster, confirming (if it be the case) that the Claimant's address was withheld by the Magistrates' Court on 7 July 2020.
30. It is not necessary for us to attempt to resolve this factual issue as to whether the Magistrates actually withheld the Claimant's address at the hearing on 7 July 2020 because, even assuming they did, for the reasons we will explain, we are satisfied that HHJ Cutler CBE was right to discharge the s.11 Order. In the discussion which follows,

we assume in the Claimant's favour, without deciding, that her address was withheld at the hearing on 7 July 2020 so that the Courts below had jurisdiction to consider the making of an order pursuant to s.11.

The importance and availability of address of the defendant in criminal proceedings

31. Central to Mr Bunting's submissions is his contention that the address of a defendant in criminal proceedings is established to be part of his/her identity. He has relied upon two Home Office Circulars as demonstrating this.

i) The Home Office Circular No.78/1967 included the following:

“A person's address is as much part of his description as his name. There is, therefore, a strong public interest in facilitating press report that correctly describe persons involved”

It therefore recommended that the name and address of defendants in criminal proceedings should be stated in open court. It also recognised – and encouraged – the practice of supplying in advance to the media copies of lists of the cases to be heard.

ii) The Home Office Circular No.80/1989, encouraged the provision of copies of the court lists and the register of decisions in magistrates' courts, and included the following:

“... copies of court lists should be available to the media in court on the day of the hearings and as a minimum should contain each defendant's name, age, address, and, where known his profession and the alleged offence.”

32. The Judicial College Guidance refers to the first Home Office Circular in §5.4:

“... The media is particularly concerned about accurate identification of those involved in court proceedings. Announcement in open court of names and addresses enables the precise identification vital to distinguish a defendant from someone in the locality who bears the same name and avoids inadvertent defamation. The Home Secretary issued Circular No 78/1967 in response to press concern. In addition to recommending that courts supply the press with advance copies of court lists, the circular encouraged courts to ensure the announcement in open court of both the names and the addresses of defendants. The circular acknowledges that a person's address is as much a part of his description as his name. It states that there is therefore a strong public interest in facilitating press reports that correctly describe persons involved. Statutory reporting restrictions, even when automatic, provide for the lawful publication of magistrates' identities and names and addresses of defendants and others appearing before the courts...”

33. In this case, we have been provided with a copy of the court lists provided to the media by the Magistrates' Court before the Claimant's first appearance on 7 July 2020 and the register of the proceedings that was provided after the hearing. Both set out the charge and included the Claimant's name, address, date of birth (and age), nationality and details of her solicitors. These are typical of the documents that are routinely provided to the media to provide information about those who appear in the Magistrates' Court.

34. Mr Bunting has also referred to and relied upon various statutory provisions which, he argues, recognise the importance of a defendant's address in reports of criminal proceedings. Automatic reporting restrictions are imposed by s.52A Crime and Disorder Act 1998 (hearing in Magistrates' Courts before sending to the Crown Court); s.8C Magistrates' Court Act 1980 (pre-trial hearings of summary matters in the Magistrates' Court); ss.37 and 41 Criminal Procedure and Investigations Act 1996; and s.11 Criminal Justice Act 1987 (preparatory and pre-trial hearings in the Crown Court). Whenever these automatic reporting restrictions apply, the relevant sections nevertheless permit reports to include the name, age, home address and occupation of the accused, a point made in the extract we have quoted from §5.4 of the Judicial College Guidance ([32] above).
35. The default position in criminal proceedings in England & Wales is that, unless the court exceptionally otherwise orders, the name and address of the defendant will be stated in open court. That uniformity of practice also secures equality of treatment for those appearing in a criminal court. As with anything else that is said or done in open court, and subject again to any exceptional order prohibiting it, this information will be available to be included in media reports of the proceedings. The starting point of the consideration of whether, and in what circumstances, the Court should depart from this standard procedure and direct that the defendant's address should be withheld is the principle of open justice.
36. Mr Rule realistically accepts that, had it not been for the Claimant's application for reporting restrictions to prohibit publication of her address, the address would have been provided in open Court at the first hearing on 7 July 2020. In that respect, the anterior withholding order is inexorably bound up with the application for the reporting restrictions. Although, strictly, the focus of PA Media's challenge has to be to the original withholding order, because a defendant's address would usually be provided, the real issue at the heart of this claim is whether the Court should prohibit publication of the Claimant's address in reports of her criminal proceedings. That is the way the parties to the case have proceeded, and, as we say, it represents the real substance of the dispute.

Open justice

37. There are a great many authorities which explain the history and importance of open justice to the administration of justice in our courts: see *In re S* [30]; *In re Trinity Mirror plc* [32]-[33]; *Khuja* [12]-[30]; *RXG -v- Ministry of Justice* [26]-[31]. Open justice has both an enduring symbolic importance and a continuing practical significance. The principle was firmly embedded in the common law for centuries before the arrival of the European Convention on Human Rights, in which it finds its expression both as an aspect of Article 6 and Article 10.
38. A modern statement of the principles of open justice can be found in the judgment of the Lord Chief Justice in *In re BBC* [2018] 1 WLR 6023 [29]:

“When dealing with applications for reporting restrictions, the default position is the general principle that all proceedings in courts and tribunals are conducted in public. This is the principle of open justice. Media reports of legal proceedings are an extension of the concept of open justice.

- (i) In one of the first cases decided under the [Contempt of Court Act 1981], Lord Denning MR noted that open justice and freedom of the press are ‘two of our most fundamental principles’: *R -v- Horsham Justices ex p Farquharson* [1982] QB 762, 793H. At common law, the court has no power to make an order postponing the publication of a report of proceedings conducted in open court; any such power must be conferred by legislation: *Independent Publishing Co Ltd -v- Attorney General of Trinidad and Tobago* [2005] 1 AC 190 [67] *per* Lord Brown of Eaton-under-Heywood.
 - (ii) Attending court in person is not practical for any but a handful of people, and live-streaming and broadcasting of court proceedings remain restricted. The only way that citizens can be informed about what takes place in most of our courts is through media reports. In that way the media serve both as the eyes and ears of the wider public and also as a watchdog: *In re S* [2005] 1 AC 593 [18] *per* Lord Steyn.
 - (iii) Full contemporaneous reporting of criminal trials (and other legal proceedings) promotes public confidence in the administration of justice and the rule of law: *In re S* [30].
 - (iv) On a practical level, the public nature of court hearings (and media reports of them) fulfils several objectives: (1) it enables the public to know that justice is being administered impartially; (2) it can lead to evidence becoming available which would not have been forthcoming if reports are not published until after the trial has completed or not at all; (3) it reduces the likelihood of uninformed or inaccurate comment about the proceedings, and (4) it deters inappropriate behaviour on the part of the court (and, we would add, others participating in the proceedings): *R -v- Legal Aid Board ex p Kaim Todner* [1999] QB 966, 977E-G *per* Lord Woolf MR.
 - (v) On the rare occasions when a court is justified in sitting in private, both the public and media are prevented from accessing the proceedings altogether. Reporting restrictions are different. The proceedings are there to be seen and heard by those who attend court, but they cannot be reported. Reporting restriction orders, albeit not as great a departure from open justice as the court sitting in private, are nevertheless ‘direct press censorship’: *Khuja -v- Times Newspapers Ltd* [2019] AC 161, [16] *per* Lord Sumption JSC.
 - (vi) Reporting restrictions orders are therefore derogations from the general principle of open justice. They are exceptional, require clear justification and should be made only when they are strictly necessary to secure the proper administration of justice: *Practice Guidance (Interim Non-disclosure Orders)* [2012] 1 WLR 1003 [10]; they are measures of last resort: *In re Press Association* [2013] 1 WLR 1979 [13] *per* Lord Judge CJ.
 - (vii) Any derogation from open justice must be established by clear and cogent evidence: *Scott -v- Scott* [1913] AC 417, 438—439 *per* Viscount Haldane LC; *Practice Guidance (Interim Non-disclosure Orders)* [2012] 1 WLR 1003 [13].
39. Derogations from open justice, can be justified as necessary on two principal grounds: maintenance of the administration of justice and harm to other legitimate interests.

40. The first category of case is where, without the relevant order being made, the administration of justice would be frustrated: *Attorney-General -v- Leveller Magazine Ltd* [1979] AC 440, 457E. This principle was derived from *Scott -v- Scott* in which Viscount Haldane LC made it clear (pp.437-439):

“... the exceptions [to the principle of open justice] are themselves the outcome of a yet more fundamental principle that the chief object of courts of justice must be to secure that justice is done ... As the paramount object must always be to do justice, the general rule as to publicity, after all only the means to an end, must accordingly yield. But the burden lies on those seeking to displace its application in the particular case to make out that the ordinary rule must as of necessity be superseded by this paramount consideration ... I think that to justify an order for hearing in camera it must be shown that the paramount object of securing that justice is done would really be rendered doubtful of attainment if the order were not made.”

41. The second category – protection of the legitimate interests of others – was recognised in *In re S, A Local Authority -v- W* [2006] 1 FLR 1 and *A -v- BBC*, and explained by Lord Sumption in *Khuja*:

[29] In most of the recent decisions of this court the question has arisen whether the open justice principle may be satisfied without adversely affecting the claimant’s Convention rights by permitting proceedings in court to be reported but without disclosing his name. The test which has been applied in answering it is whether the public interest served by publishing the facts extended to publishing the name. In practice, where the court is satisfied that there is a real public interest in publication, that interest has generally extended to publication of the name. This is because the anonymised reporting of issues of legitimate public concern are less likely to interest the public and therefore to provoke discussion. As Lord Steyn observed in *In re S* [2005] 1 AC 593 [34]:

“... from a newspaper's point of view a report of a sensational trial without revealing the identity of the defendant would be a very much disembodied trial. If the newspapers choose not to contest such an injunction, they are less likely to give prominence to reports of the trial. Certainly, readers will be less interested and editors will act accordingly. Informed debate about criminal justice will suffer.”

“What's in a name?”, Lord Rodger memorably asked in *In re Guardian News and Media Ltd* before answering his own question, at [63] ... The public interest in the administration of justice may be sufficiently served as far as lawyers are concerned by a discussion which focusses on the issues and ignores the personalities, but ([57]):

“... the target audience of the press is likely to be different and to have a different interest in the proceedings, which will not be satisfied by an anonymised version of the judgment. In the general run of cases there is nothing to stop the press from supplying the more full-blooded account which their readers want”.

cf. *In re BBC; In re Attorney General's Reference (No.3 of 1999)* [2010] 1 AC 145 [25]–[26] (Lord Hope of Craighead) and [56], [66] (Lord Brown of Eaton-under-Heywood).

[30] None of this means that if there is a sufficient public interest in reporting the proceedings there must necessarily be a sufficient public interest in identifying the individual involved. The identity of those involved may be wholly marginal to the public interest engaged. Thus Lord Reed JSC remarked of the Scottish case *Devine -v- Secretary of State for Scotland* (unreported) 22 January 1993, in which soldiers who had been deployed to end a prison siege were allowed to give evidence from behind a screen, that “*their appearance and identities were of such peripheral, if any, relevance to the judicial process that it would have been disproportionate to require their disclosure*”: *A -v- BBC* [39]. In other cases, the identity of the person involved may be more central to the point of public interest, but outweighed by the public interest in the administration of justice. This was why publication of the name was prohibited in *A -v- BBC*. Another example in a rather different context is *R (C) -v- Secretary of State for Justice (Media Lawyers Association intervening)* [2016] 1 WLR 444, a difficult case involving the disclosure via judicial proceedings of highly personal clinical data concerning psychiatric patients serving sentences of imprisonment, which would have undermined confidential clinical relationships and thereby reduced the efficacy of the system for judicial oversight of the Home Secretary’s decisions.”

42. Media reports of proceedings in open court can have an adverse impact (sometimes seriously so) on those involved in proceedings as well as third parties:

i) In *R -v- Evesham Justices ex p McDonagh* [1988] QB 553, 562A-C, Tasker Watkins LJ, when considering reporting restrictions that had been imposed by Magistrates under s.11 Contempt of Court Act 1981, noted

“... There are undoubtedly many people who find themselves defending criminal charges who for all manner of reasons would like to keep unrevealed their identity, their home address in particular. Indeed, I go so far as to say that in the vast majority of cases, in magistrates’ courts anyway, defendants would like their identity to be unrevealed and would be capable of advancing seemingly plausible reasons why that should be so. But, section 11 was not enacted for the benefit of the comfort and feelings of defendants. The general rule enunciated in the passage I have quoted from *Attorney-General -v- Leveller Magazine Ltd* [1979] AC 440, 450, may not, as is there stated, be departed from save where the nature or the circumstances of proceedings are such that the application of the general rule in its entirety would frustrate or render impracticable the administration of justice ...”

ii) In *In re Trinity Mirror plc*, the Court of Appeal discharged a reporting restriction order imposed to prevent the media from identifying a defendant convicted of child pornography offences which had been made to protect the defendant’s children. In disagreement of the weighing of the Article 8 rights of the children against the Article 10 rights of the media and public, Lord Judge CJ said:

[32] In our judgment it is impossible to over emphasise the importance to be attached to the ability of the media to report criminal trials. In simple terms this represents the embodiment of the principle of open justice in a free country. An important aspect of the public interest in the administration of criminal justice is that the identity of those convicted and sentenced for criminal offences should not be concealed. Uncomfortable though it may frequently be for the defendant that is a normal consequence of his crime. Moreover the principle protects his interests too, by helping to secure the fair trial which, in Lord Bingham of Cornhill's memorable epithet, is the defendant's "birthright". From time to time occasions will arise where restrictions on this principle are considered appropriate, but they depend on express legislation, and, where the court is vested with a discretion to exercise such powers, on the absolute necessity for doing so in the individual case.

[33] It is sad, but true, that the criminal activities of a parent can bring misery, shame, and disadvantage to their innocent children. Innocent parents suffer from the criminal activities of their sons and daughters. Husbands and wives and partners all suffer in the same way. All this represents the further consequences of crime, adding to the list of its victims. Everyone appreciates the risk that innocent children may suffer prejudice and damage when a parent is convicted of a serious offence. Among the consequences, the parent will disappear from home when he or she is sentenced to imprisonment, and indeed, depending on the crime but as happened in this case, there is always a possibility of the breakdown of the relationship between their parents. However we accept the validity of the simple but telling proposition put by the court reporter to Judge McKinnon on 2 April 2007, that there is nothing in this case to distinguish the plight of the defendant's children from that of a massive group of children of persons convicted of offences relating to child pornography. If the court were to uphold this ruling so as to protect the rights of the defendant's children under article 8, it would be countenancing a substantial erosion of the principle of open justice, to the overwhelming disadvantage of public confidence in the criminal justice system, the free reporting of criminal trials and the proper identification of those convicted and sentenced in them. Such an order cannot begin to be contemplated unless the circumstances are indeed properly to be described as exceptional."

43. Ordinarily, however, "*the collateral impact that this process has on those affected is part of the price to be paid for open justice and the freedom of the press to report fairly and accurately on judicial proceedings held in public*": ***Khuja*** [34(2)] *per* Lord Sumption.
44. Mr Rule's argument is that the Court should carry out a simple balancing exercise on the facts of the case in hand, weighing, on the one hand, the limited harm that he suggests would be occasioned by prohibiting reports of the Claimant's address in the context of the criminal proceedings against the harm he contends will be caused to the Claimant if such reports are permitted. This submission necessarily means that the clear statements of principle that derogations from open justice are exceptional, require clear

justification and should be made only when they are strictly necessary to secure the proper administration of justice are wrong, and have erroneously appeared to give a presumptive priority to Article 10 which cannot be justified.

45. Relying on *A -v- BBC*, Mr Rule's submission is that the correct starting point is that the Court should, from the starting point of presumptive parity mandated by *In re S*, assess the relative importance of protecting the Claimant's address as part of her Article 8 rights against permitting publication of the address as part of the Article 10 rights of the media (and public).
46. Similar arguments were advanced – and rejected – in a consistent line of authorities.
 - i) In *In re S* itself, Lord Steyn rejected the claimant's argument –accepted in the Court of Appeal – that the court had to balance the public interest, in the freedom of the press and in knowing the names of those who had committed grave criminal offences, against the Article 8 rights of the defendant's child:

[30] Dealing with the relative importance of the freedom of the press to report the proceedings in a criminal trial Hale LJ drew a distinction. She observed [2004] Fam 43 [56]:

“The court must consider what restriction, if any, is needed to meet the legitimate aim of protecting the rights of CS. If prohibiting publication of the family name and photographs is needed, the court must consider how great an impact that will in fact have upon the freedom protected by article 10. It is relevant here that restrictions on the identification of defendants before conviction are by no means unprecedented. The situation may well change if and when the mother is convicted. There is a much greater public interest in knowing the names of persons convicted of serious crime than of those who are merely suspected or charged. These considerations are also relevant to the extent of the interference with CS's rights.”

I cannot accept these observations without substantial qualification. A criminal trial is a public event. The principle of open justice puts, as has often been said, the judge and all who participate in the trial under intense scrutiny. The glare of contemporaneous publicity ensures that trials are properly conducted. It is a valuable check on the criminal process. Moreover, the public interest may be as much involved in the circumstances of a remarkable acquittal as in a surprising conviction. Informed public debate is necessary about all such matters. Full contemporaneous reporting of criminal trials in progress promotes public confidence in the administration of justice. It promotes the values of the rule of law.

[31] For these reasons I would, therefore, attribute greater importance to the freedom of the press to report the progress of a criminal trial without any restraint than Hale LJ did.

- ii) *A Local Authority -v- W* is a rare example, in the authorities, of a case in which the court granted an injunction prohibiting identification of a mother (who had pleaded guilty to a charge that she had knowingly infected the father of one of

her children with HIV) in connection with her criminal proceedings in order to protect the Article 8 rights of her children. Sir Mark Potter P explained how the parallel analysis between conflicting convention rights should be approached in the particular context of derogations from open justice:

[39] In the House of Lords, having set out the relevant European Convention provisions and referred to the ‘general and strong rule in favour of unrestricted publicity of any proceedings in a criminal trial both at common law and under decisions of the European Court of Human Rights in relation to the European Convention’, Lord Steyn adopted the approach articulated in the House of Lords in *Campbell -v- MGN Ltd* [2004] 2 AC 457. He stated:

[17] The interplay between Arts 8 and 10 has been illuminated by the opinions in the House of Lords in *Campbell -v- MGN* ... for present purposes the decisions of the House on the facts of *Campbell -v- MGN Limited* and the differences between the majority and the minority are not material. What does, however, emerge clearly from the opinions are four propositions. First, neither Article has *as such* precedence over the other. Secondly, where the values under the two Articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience, I will call this the ultimate balancing test. This is how I will approach the present case.’

[40] By framing his first proposition as he did, Lord Steyn affirmed the rejection in *Campbell -v- MGN Ltd* of a ‘presumptive priority’ for Art 10 over Art 8. At the same time he nuanced that rejection by use of the words ‘*as such*’, thus signalling the subsequent burden of his judgment, which was that, in cases involving limitations upon press freedom to report everything that takes place in a criminal court, the ultimate balancing test in relation to proportionality is generally likely be resolved in favour of Art 10. Under the heading ‘The general rule’ Lord Steyn stated:

[18] In oral argument it was accepted by both sides that the ordinary rule is that the press, as the watchdog of the public, may report everything that takes place in a criminal court. I would add that in European jurisprudence and in domestic practice this is a strong rule. It can only be displaced by unusual or exceptional circumstances. It is, however, not a mechanical rule. The duty of the court is to examine with care each application for a departure from the rule for reasons of rights under Art 8.’

And then a little later in the judgment:

[53] Paras 17 and 23 of the judgment [in *In re S*] are clear as to the approach to be followed in a case of this kind. There is express approval of the methodology in *Campbell -v- MGN Ltd* in which it was made clear that each article propounds a fundamental right which there is a pressing social need to protect. Equally, each article qualifies the right it propounds so far as it may be lawful, necessary and proportionate to do so in order to accommodate the other. The exercise to be performed is one of parallel analysis in which the starting point is presumptive parity, in that neither article has precedence over or ‘trumps’ the other. The exercise of parallel analysis requires the court to examine the justification for interfering with each right and the issue of proportionality is to be considered in respect of each. It is not a mechanical exercise to be decided upon the basis of rival generalities. An intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary before the ultimate balancing test in terms of proportionality is carried out. Having so stated, Lord Steyn strongly emphasised the interest in open justice as a factor to be accorded great weight in both the parallel analysis and the ultimate balancing test and stated that, at first instance, the judge had rightly so treated it. However, nowhere did he indicate that the weight to be accorded to the right freely to report criminal proceedings would invariably be determinative of the outcome. Indeed, he acknowledged that although it was the ‘ordinary’ rule that the press, as public watchdog, may report everything that takes place in a criminal court, that rule might nonetheless be displaced in unusual or exceptional circumstances.”

- iii) In *Khuja*, a police investigation led to the arrest of several men on suspicion of serious sexual offences against children. One of them, the claimant, had been arrested simply because one of the complainants had told the police that she had been abused by a man with the same, very common, first name as the claimant. The complainant failed to identify the claimant at an identification procedure. Other men were charged and, at their criminal trial, which was conducted throughout in open court, several references were made incriminating the claimant, who was neither a witness nor a party. During the trial, an order made under s.4(2) Contempt of Court Act 1981 postponed publication of reports of the trial identifying the claimant as someone against whom allegations had been made by the complainant. That reporting restriction would come to an end once the proceedings against the defendants were concluded. Consequently, the claimant applied for a civil injunction to continue restrictions on his identification. The injunction was refused by the High Court. The claimant’s appeal against the refusal was rejected by the Court of Appeal and finally, by a majority, the Supreme Court. As is clear from the report of the argument (see p.166E-F), a similar argument to that advanced to us by Mr Rule was presented to the Supreme Court. Rejecting the contention that *A -v- BBC* suggested a recalibrated approach to balancing competing interests against open justice, Lord Sumption stated in [23]:

“These two decisions [*Campbell -v- MGN Ltd* [2004] 2 AC 457 and *In re S* [2005] 1 AC 593] are the principal English authorities for an approach to the balancing exercise which is fact-specific rather than being dependent on any *a priori* hierarchy of rights. On some facts, the claimant’s article 8 rights

may be entitled to very little weight. On some facts, the public interest in the publication in the media may be slight or non-existent. None the less, in deciding what weight to give to the right of the press to publish proceedings in open court, the courts cannot, simply because the issues arise under the heading “private and family life”, part company with principles governing the pre-emptive restraint of media publication which have been accepted by the common law for many years in the cognate areas of contempt of court and defamation, and are reflected in a substantial and consistent body of statute law as well as in the jurisprudence on article 10 of the Human Rights Convention.”

Then, dealing with the particular facts of the claimant’s case, referred to as “PNM”, Lord Sumption added [34(4)-(5)]:

“I would not 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. But in relation to the reporting of public court proceedings such cases are likely to be rare...

Does the public interest extend to PNM’s identity? This case differs from earlier cases in which the same question has arisen because the order sought by PNM would not prevent the identification of a party to the criminal proceedings or even of a witness. To my mind that makes it even more difficult to justify an injunction, for reasons which I have given. But in any event I do not think it can be a relevant distinction. The policy which permits media reporting of judicial proceedings does not depend on the person adversely affected by the publicity being a participant in the proceedings. It 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, within the limits imposed by the law of defamation, the way in which the story is presented is a matter of editorial judgment, in which the desire to increase the interest of the story by giving it a human face is a legitimate consideration. PNM’s identity is not a peripheral or irrelevant feature of this particular story.”

47. In our judgment, those authorities explain clearly why Mr Rule’s argument is wrong and must be rejected. As we have set out above, the common law authorities on open justice state, consistently, that any restriction on reporting of open court proceedings is exceptional, requires clear justification, established by clear and cogent evidence, and should be imposed only when strictly necessary. Looked at through the prism of Convention rights, the ability of the media to impart, and the public to receive, the fullest information about what takes place in court proceedings is recognised as engaging weighty Article 10 considerations. The starting point is that *any* restriction on publication of information from open court proceedings is a significant interference with the Article 10 right that requires justification. That is not to apply any presumptive priority; it is simply a recognition that – without any assessment of the value of individual pieces of information that are disclosed in open court proceedings (and therefore liable to be reported) – there is an inherent and significant value in uninhibited reporting of everything that takes place in court proceedings held in public.
48. Neither Convention jurisprudence, nor any domestic authority, requires the Court to weigh the value of a particular piece of information that is disclosed in open court proceedings and assess the contribution it makes to a debate of public interest.

By definition, everything that is disclosed in open court proceedings (and the subsequent reporting of it) is a matter of public interest. Mr Bunting made a telling submission when he asked how the value of information disclosed in court proceedings was to be judged: was it the value put on it by lawyers; the parties, editors of newspapers, or the public generally? The answer is that, with accurate reporting of court proceedings, no justification is required as to what is selected for publication (subject to a requirement of fairness if what is published is defamatory); the value is for the individual publisher to assess. This principle is more important now than ever. Today, citizens have access to platforms of mass communication that thirty years ago were available only to a limited number of media organisations.

49. Mr Rule's further points can be disposed of shortly. *Richard -v- BBC* – and the later decisions of *ZXC -v- Bloomberg* [2021] QB 28 and *Sicri -v- Associated Newspapers Ltd* [2021] 4 WLR 9 – are authority for the proposition that, in general, a suspect in a criminal investigation has an expectation of privacy up to the point of charge; not thereafter. At the point of charge, or shortly thereafter, the suspect (now defendant) will appear in a criminal court and the open justice principle will lead to the public identification of the defendant as having been charged with a criminal offence: see *Mosley -v- Associated Newspapers Ltd* [2020] EWHC 3545 (QB) [57]-[59].
50. The ECtHR case of *Ismayilova* does not assist Mr Rule's argument. That was a case where the Prosecutor General's Office and the Baku City Prosecutor's Office published a status report on a criminal investigation. Criminal proceedings had not been instituted before a Court and the applicant was the complainant in the investigation, not a suspect: [49]. The status report included, *inter alia*, the complainant's home address. The applicant's civil claim against the Prosecutor General's Office and the Baku City Prosecutor's Office was dismissed on the grounds that the purpose of publishing the status report had been to counter negative public opinion about the investigating authorities: [57]. Appeals in the domestic courts were refused. The ECtHR found a violation of Article 8. The home address of a person constitutes personal information that is a matter of private life and enjoys the protection of Article 8: [140]. The publication of the information in the status report was an interference with that Article 8 right, which was not justified: [148]. It would have been possible to inform the public about the status of the investigation without publishing the applicant's address: [146]-[147]. The Court found a violation of Article 8. The decision is not of assistance in determining the position where the Article 8 right conflicts with the Article 10 rights attaching to open justice and the reporting of criminal proceedings.
51. We turn finally, to Mr Rule's criticisms of the summary of the law in §§1 and 4.4 in the Judicial College Guide. For the reasons we have explained, the submission that it does not accurately state the law is not correct. The publication does not state that judges, considering applications for reporting restrictions, are required to carry out the *Re S* balance starting from a position of presumptive parity because that is not the law. In the section on "*The open justice principle*", the Judicial College Guide states this:

“As public authorities under the Human Rights Act, courts must act compatibly with Convention rights, including the right to freedom of expression under Article 10 ECHR and the right to a public hearing under Article 6 ECHR. While Article 10 and Article 6 are both qualified rights and permit of exceptions. In some cases, the right to privacy under Article 8 may be engaged and need to be weighed in the balance. However, any restriction on the public's right to attend court proceedings

and the media's ability to report them must fulfil a legitimate aim under these provisions and be necessary, proportionate and convincingly established. It is for the party seeking to derogate from the principle of open justice to produce clear and cogent evidence in support of the derogation."

Printed underneath this paragraph is a box, which contains the following summary of the open justice principle:

- “• The general rule is that the administration of justice must be done in public. The public and the media have the right to attend all court hearings and the media is able to report those proceedings fully and contemporaneously
- Any restriction on these usual rules will be exceptional. It must be based on necessity
- The burden is on the party seeking the restriction to establish it is necessary on the basis of clear and cogent evidence
- The terms of any order must be proportionate – going no further than is necessary to meet the relevant objective”

52. The Judicial College Guide correctly states the law and gives proper guidance as to the engagement of Article 8 rights. The summary is accurate and fair. It digests a complex and specialised area of law and presents it clearly and intelligibly in an accessible format. In short, it gives appropriate guidance to Judges in criminal courts as to the circumstances in which reporting restrictions can be imposed and how Judges should approach applications for such restrictions. Specifically, while recognising that Article 10 does not “as such” have priority, it reflects the fact that the principle of open justice will be given substantial weight and that a party seeking to restrict it will be required to justify the derogation by providing clear and cogent evidence. We can only endorse Lord Thomas CJ’s words in the foreword that it is an “*impressive and useful guide*”.
53. We return to the decision that is challenged. In our judgment, for the reasons we have set out, Judge Cutler CBE did not wrongly apply the law. We accept Mr Bunting’s submission that he carried out the balancing exercise he was required to do. Mr Rule has placed great emphasis on the Judge’s use of the word “presumption” when referring to open justice and suggested that it indicates an error of approach. Understood, in context, however the Judge’s use of that word is understandable, and reflects the fundamental starting point when a court is considering reporting restrictions. It is also clear that he correctly identified that the Claimant’s Article 8 rights were engaged by the disclosure of her address, but the starting point was that the principle of open justice. In the balancing exercise, the Claimant needed to demonstrate a sufficiently weighty justification to derogate from open justice. The provision of a defendant’s address in criminal proceedings is the standard procedure to enable the defendant to be properly identified. The Judge’s conclusion, on the evidence available to him, that there was no evidence of danger to the Claimant from publication of her address was plainly correct. The Claimant has failed to demonstrate any error of law in the Judge’s decision to discharge the s.11 Order.
54. The further evidence provided by the Claimant, is very general and in several areas – particularly the suggestion that provision of her address might lead to unwanted visits from third parties - highly speculative. Much of the evidence could be advanced,

credibly, by any defendant facing a serious criminal charge as a basis for prohibiting publication of his/her address. There is no medical report and the evidence of the Claimant that she has been diagnosed with PTSD does not link that with the threat that her home address will be published. On the contrary, the PTSD appears to be a product of other incidents that have happened to the Claimant.

55. Put shortly, the Claimant's evidence does not come close to demonstrating convincingly an interference with her Article 8 rights of a sufficient weight or seriousness that displaces the Article 10 interest in open justice. In other words, that balance falls clearly on the side of publication rather than restraint. It would have made no difference to the decision of Judge Cutler even had the new evidence been available to him. Inevitably, standing trial on a serious charge is likely to lead to publicity and attention that a defendant may find unwelcome, even upsetting and distressing. The impact may spread to others, including members of the defendant's family, and it is likely to add to the burdens and stresses that are already faced by those the subject of criminal proceedings. However, as stated by Lord Sumption (see [43] above), *"the collateral impact that this process has on those affected is part of the price to be paid for open justice and the freedom of the press to report fairly and accurately on judicial proceedings held in public"*.
56. For these reasons, we dismiss the claim for judicial review, and we discharge the interim injunction that was granted by Robin Knowles J.