



Neutral Citation Number: [2021] EWHC 736 (Admin)

Case No: CO/889/2020

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**ADMINISTRATIVE COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 26 March 2021

**Before :**

**MATHEW GULLICK QC**  
**(sitting as a Deputy High Court Judge)**

**Between:**

**THE QUEEN (on the application of RUBA IMAM)**  
**- and -**  
**THE LONDON BOROUGH OF CROYDON**

**Claimant**

**Defendant**

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**Martin Westgate QC (instructed by Deighton Pierce Glynn) for the Claimant**  
**Kelvin Rutledge QC (instructed by Browne Jacobson LLP) for the Defendant**

Hearing date: 11 March 2021  
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**Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to BAILII. The date and time for hand-down is deemed to be 10:30 am on Friday 26 March 2021.**

**Approved Judgment**

**Deputy Judge Mathew Gullick QC:**

**Introduction**

1. This is my judgment on the Claimant's application for an order under CPR 39.2(4) that her name be anonymised in these proceedings by the use of a cipher and that restrictions should be imposed on the reporting of her identity. That application was initially made in written submissions filed at 4:08 pm on 3 March 2021, on the afternoon of the day before my reserved judgment on the Claimant's Claim ("the Trial Judgment") was scheduled to be handed down. As a result of the application being made, I deferred handing down the Trial Judgment and invited the Defendant's submissions in response. Having received them, I considered that it was necessary to have the application determined at a hearing.
2. The hearing took place on 11 March 2021 as a remote video hearing using the Microsoft Teams platform, in accordance with the arrangements adopted during the COVID-19 pandemic. Mr Westgate QC represented the Claimant, due to the unavailability of Counsel who had appeared at the trial. Mr Rutledge QC represented the Defendant, as he had at the trial. This judgment is being handed down at the same time as the Trial Judgment, which has the neutral citation [2021] EWHC 739 (Admin) and should be read in conjunction with it.

**Background**

3. The Claimant's claim for judicial review concerns the Defendant's performance of its statutory duties as a local housing authority under Parts 6 and 7 of the Housing Act 1996, and in particular for present purposes that the property in which she is being housed is not suitable accommodation, as required under Part 7 of that Act, something which is accepted by the Defendant. The Claimant is a wheelchair user and is disabled within the meaning of section 6 of the Equality Act 2010. The history of the case is set out in more detail in the Trial Judgment at [3-22].
4. The Claimant has been legally represented throughout. The Claim Form was issued on 5 March 2020. No application for anonymity was made in the Claim Form or in the accompanying Statement of Facts and Grounds, which identified the Claimant by her full name. Permission to apply for judicial review was granted on the papers, in an order also referring to the Claimant by her full name. The claim proceeded to a trial before me on 6 October 2020. That trial was also conducted by way of a remote video hearing using the Microsoft Teams platform in accordance with the arrangements adopted in consequence of the COVID-19 pandemic, which provide for representatives of the media to have access to the video hearing on request. The trial was a public hearing and was not held in private. No issue was then raised in relation to anonymity. Having heard the submissions of the advocates for both parties, I reserved judgment.
5. The draft of the Trial Judgment was circulated by email to the parties' legal representatives on the morning of 1 March 2021, in accordance with Practice Direction E to CPR 40. They were requested to provide proposed corrections to the draft judgment, their draft orders and to make any consequential applications (including in relation to costs and permission to appeal) in writing. I asked that all

these matters should be addressed by 4:00 pm on 3 March, at the latest, so that the Trial Judgment could be handed down on the morning of 4 March.

6. Shortly after 4:00 pm on 3 March, Ms Steinhardt, Counsel who had appeared for the Claimant at the trial, sent her written submissions on a number of issues. These submissions included a request that the Claimant's name should be anonymised in the Trial Judgment and that an order should be made under CPR 39.2(4) in that regard. Ms Steinhardt referred me to the decision of the Court of Appeal in *XXX v London Borough of Camden* [2020] EWCA Civ 1468, [2020] 4 WLR 165 ("*XXX v Camden*") and submitted that the publication of the Claimant's name in the Trial Judgment when handed down would be a disproportionate interference with her rights under Article 8 of the ECHR. Shortly afterwards, Ms Steinhardt informed me in a further email that the Defendant, having seen the Claimant's request, was content to agree that such an order should be made.
7. The application arose from what was set out at [8] of the draft judgment, which read as follows:

"8. The Defendant wrote to the Claimant's Solicitors on 24 February 2015, stating that it was minded to decide that the Property remained suitable and giving its proposed reasons. The Defendant gave the Claimant an opportunity to comment on the proposed findings. On 23 April 2015, the Claimant's Solicitors responded. In that letter they raised an additional argument as to why the Property was not suitable, which was that there was no upstairs toilet and that the Claimant, due to difficulties with continence, was unable to reach the ground floor toilet, located in the bathroom, in time during the night. It was stated that the Claimant had experienced accidents, on an unspecified number of occasions, which she had found humiliating and distressing."

It was and is not suggested, on behalf of the Claimant, that this paragraph in the draft judgment was in any respect inaccurate. Nor, at that stage, did those representing the Claimant propose any amendment to the text of the paragraph.

8. Having considered the Claimant's written submissions on this issue, I did not consider that it was appropriate that I should simply accede to the request for anonymity and an order restricting disclosure of her identity. I decided to defer handing down the Trial Judgment and to request that the Defendant provide a more detailed response to the application. That was provided by Mr Rutledge QC on the afternoon of 5 March. The Defendant maintained its position that it was neutral on the issue.
9. I did not consider that it was possible for me to determine the Claimant's application for anonymity without a hearing, bearing in mind that such an order should not be made simply because the parties to the litigation consent to it. In particular, I considered that a number of potentially relevant issues had either not been addressed, or not sufficiently addressed, in the written submissions that had been made. The hearing was then listed, by agreement, for 11 March. I heard oral argument from Mr Westgate QC for the Claimant and from Mr Rutledge QC for the Defendant. They had

both filed very helpful submissions in writing in advance of the hearing. I am grateful to them for their assistance.

### **The Legal Principles**

10. CPR 39.2(1) provides that the general rule is that hearings are conducted in public. CPR 39.2 also contains provisions regarding hearings in private and, materially for present purposes, the non-disclosure of the identities of parties and witnesses. CPR 39.2(4) and (5) provide:

“(4) The court must order that the identity of any party or witness shall not be disclosed if, and only if, it considers non-disclosure necessary to secure the proper administration of justice and in order to protect the interests of that party or witness.

(5) Unless and to the extent that the court otherwise directs, where the court acts under paragraph (3) or (4), a copy of the court’s order shall be published on the website of the Judiciary of England and Wales (which may be found at [www.judiciary.uk](http://www.judiciary.uk)). Any person who is not a party to the proceedings may apply to attend the hearing and make submissions, or apply to set aside or vary the order.”

11. *XXX v Camden* was also a case involving a challenge in the Administrative Court by way of judicial review to decisions taken by a local authority under the Housing Act 1996. The claimant applied for an anonymity order not only after the trial had taken place in this Court, but after two judgments had been given at public hearings – the first granting her renewed application for permission to apply for judicial review and the second being the substantive decision given after the trial. In her application, she contended that sensitive personal information about her contained in the published judgments should be removed, and that her name should be anonymised. Her application was rejected by Mr Michael Fordham QC, sitting as a Deputy High Court Judge: see [2019] EWHC 2638 (Admin). However, the Deputy Judge did make an order that the claimant should be anonymised in relation to the application for anonymity itself; that order was not challenged by the local authority on appeal. The claimant appealed to the Court of Appeal against the Deputy Judge’s refusal to grant her application in relation to the main proceedings. Her appeal was dismissed.
12. In the Court of Appeal, Dingemans LJ gave the only reasoned judgment, with which McCombe and Moylan LJJ agreed. At [16-21], Dingemans LJ set out the applicable principles:

“16. The Human Rights Act 1998 gives domestic effect to the provisions of the ECHR. Section 12 of the Human Rights Act applies whenever a Court is considering whether to grant any relief which might affect the exercise of the right to freedom of expression. In this case the relief sought is a prohibition on publishing certain material so section 12 of the Human Rights Act is engaged. Section 12(4) of the Human Rights Act directs the Court to have “particular regard” to: the importance of

freedom of expression protected by article 10 of the ECHR; the extent to which material has, or is about, to become public; the public interest in publishing the material; and any privacy code.

17. CPR 39.2 reflects the fundamental rule of the common law that proceedings must be heard in public, subject to certain specified classes of exceptions, see *Scott v Scott* [1913] AC 417. In *Scott v Scott*, which concerned the publication of a transcript containing details about whether a marriage had been consummated, it was stated that:

“The hearing of a case in public may be, and often is, no doubt, painful, humiliating, or deterrent both to parties and witnesses, and in many cases, especially those of a criminal nature, the details may be so indecent as to tend to injure public morals, but all this is tolerated and endured, because it is felt that in public trial is to be found, on the whole, the best security for the pure, impartial, and efficient administration of justice, the best means for winning for it public confidence and respect”.

The passage of time has not undermined the importance of open justice: “The principle of open justice is one of the most precious in our law”, see *R(C) v Justice Secretary* [2016] UKSC 2; [2016] 1 WLR 44.

18. In addition to the exceptions set out in CPR 39.2(3) there are also automatic statutory reporting restrictions, which cover, for example, victims of sexual offences, family law proceedings and the identities of children in certain situations. As Lord Steyn recorded in *In Re S (A Child)* [2004] UKHL 47; [2005] 1 AC 593 at paragraph 20 “the Court has no power to create by a process of analogy, except in the most compelling circumstances, further exceptions to the general principle of open justice”. In *R v Legal Aid Board, ex parte Kaim Todner* [1999] QB 966 at 977 Lord Woolf MR explained why courts needed to be careful to prevent extensions of anonymity by analogy saying:

“the need to be vigilant arises from the natural tendency for the general principle to be eroded and for exceptions to grow by accretion as the exceptions are applied by analogy to existing cases. This is the reason it is so important not to forget why proceedings are required to be subjected to the full glare of a public hearing. It is necessary because the public nature of the proceedings deters inappropriate behaviour on the part of the court. It also maintains the public's confidence in the administration of justice. It enables the public to know that justice is being administered impartially. It can result in evidence becoming available which would not become available if the proceedings were

conducted ... with one or more of the parties' or witnesses' identity concealed. It makes uninformed and inaccurate comment about the proceedings less likely ...”.

19. CPR 39.4 recognises that orders for anonymity of parties and witnesses may be made. The common law has long recognised a duty of fairness towards parties and persons called to give evidence, see *In Re Officer L* [2007] UKHL 36; [2007] 1 WLR 2135, and balanced that against the public interest in open justice in specific cases. Under the common law test subjective fears, even if not based on facts, can be taken into account and balanced against the principle of open justice. This is particularly so if the fears have adverse impacts on health, see *In Re Officer L* at paragraph 22 and *Adebolado v Ministry of Justice* [2017] EWHC 3568 (QB) at paragraph 30.

20. With the advent of the Human Rights Act 1998 the Courts have also been able to give effect to the rights of parties and witnesses who may be at “real and immediate risk of death” or a real risk of inhuman or degrading treatment if their identity is disclosed, engaging articles 2 and 3 of the ECHR. A person's private life may also be affected by court proceedings, engaging article 8 of the ECHR. The common law rights of the public and press to know about court proceedings are also protected by article 10 of the ECHR, see *Yalland v Secretary of State for Exiting the European Union* [2017] EWHC 629 (Admin) at paragraph 20. The importance of the press interest in the names of parties was explained by Lord Rodger in *Re Guardian News and Media Ltd* [2010] UKSC 1; [2010] 2 AC 697 at 723. At paragraph 22 of *In re S (a child)* the House of Lords affirmed that the inherent jurisdiction of the High Court to restrain publicity was the vehicle by which the Court could balance competing rights under articles 8 and 10 of the ECHR.

21. Lord Steyn addressed the way in which competing human rights should be balanced in *In re S (A child)* at paragraph 17. He stated that when considering such a balancing exercise four principles could be identified.

“First, neither article has as such precedence over the other. Second, 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”.

It is also necessary to have particular regard to: the importance of freedom of expression protected by article 10 of the ECHR; the extent to which material has, or is about, to become public;

the public interest in publishing the material; and any privacy code; pursuant to section 12 of the Human Rights Act 1998. Many of these principles were rehearsed by Haddon-Cave LJ in paragraphs 20 to 29 of *Moss v Information Commissioner* [2020] EWCA Civ 580, a case in which issues not dissimilar to those in this case arose.”

13. At [24], Dingemans LJ rejected the argument that there is a threshold of “necessity” to be overcome before the court will consider an application of the present type. He stated:

“... In my judgment it is not helpful to require judges, when confronted with applications for anonymity under CPR 39.2(4) (which often have to be determined at short notice) to ask first whether a threshold of “necessity” has been passed before going on to carry out a balancing exercise of competing interests to determine whether an order for anonymity is “necessary” under CPR 39.2(4). This is because such a two stage test has the potential to create confusion by using “necessity” and “necessary” in different ways at different parts of the test. I agree that a Court may undertake an assessment of whether the application stands any prospect of success before carrying out a balancing exercise, but I do not consider that it is necessary to do so, nor do I consider that any failure to explain in the judgment that any such exercise has been carried out is a ground for setting aside the determination of the judge at first instance. In my judgment, when confronted with an application for anonymity pursuant to CPR 39.2(4), the Court should have regard to the relevant principles set out in the authorities referred to in paragraphs 17 to 21 above, and carry out the balancing exercise of the relevant interests under CPR 39.2 to determine whether “non-disclosure is necessary to secure the proper administration of justice and in order to protect the interests of that party or witness”...”

14. At [25], Dingemans LJ rejected the claimant’s argument that section 166(4) of the Housing Act 1996, which provides that “the fact that a person is an applicant for an allocation of housing accommodation shall not be divulged (without his consent) to any other member of the public”, mandated a different result in housing cases to that arrived at by the application of the principles which he had already discussed. He stated:

“... It may be that there are some cases where it may be necessary to provide anonymity to such a claimant, but that would be on the basis that it was necessary to do so under CPR 39.2 rather than simply because the claimant was an applicant for housing accommodation...”

15. Dingemans LJ’s judgment concluded as follows:

“26. In these circumstances there is, in my judgment, nothing to show that the balancing exercise undertaken by the judge was wrong. Relevant factors considered by the judge included the facts that: the appellant was a party to the proceedings and not just a witness; and the appellant had not applied for anonymity at or before the hearings before the respective judges. In addition it is likely that there would be difficulties for the law reporting organisations in revisiting publications which they have already made in order to comply with an order for anonymity.

27. I should address one specific point made by the appellant, when acting in person, in her “replacement Skeleton Argument” ... I address this point because it demonstrated a misunderstanding about the court's practice when dealing with medical information relating to claimants which seems to have left the appellant feeling she has been singled out for unfair and unfavourable treatment by the court below. The appellant appeared to believe that the courts would not normally publish medical information relating to claimants. This is not the case, as a reading of *Kemp & Kemp: the Quantum of Damages* will show. Such publications of medical information also extend to providing details of mental health illnesses. A recent illustration is *Zeromska-Smith v United Lincolnshire Hospitals NHS Trust* [2019] EWHC 552 (QB); [2019] Med LR 250 where the Court refused to grant an anonymity order to a mother in a clinical negligence case claiming psychiatric injury following the stillbirth of her first child.”

16. I was also referred to the decision of the Court of Appeal in *Moss v Information Commissioner* [2020] EWCA Civ 580, to which Dingemans LJ made reference at [21] of his judgment in *XXX v Camden*. Haddon-Cave LJ gave the only reasoned judgment, with which McCombe and Peter Jackson LJ agreed. At [20-29], Haddon-Cave LJ stated the law to be as follows:

**“THE LAW**

20. Articles 8 and 10 ECHR provide as follows:

“Article 8

**Right to respect for private and family life**

1. Everyone has the right to respect for his private and family life, his home and his correspondence.
2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society 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.”

“Article 10

**Freedom of expression**

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.”

21. Where these qualified rights are in conflict, an “ultimate balancing test” must be undertaken, as was emphasised in *Re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593 (HL). There Lord Steyn at [17] observed that the House of Lords in *Campbell v MGN Ltd* [2004] 2 AC 457 (HL) had illuminated the interplay between Articles 8 and 10 through four propositions:

“17. ... 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”.

(emphasis in original)

22. In *JIH v News Group Newspapers Ltd* [2011] 1 WLR 1645 (CA), Lord Neuberger MR, as he then was, at [21] summarised the principles to be observed in a case where a claimant seeks “an anonymity order or other restraint on publication of details of a case which are normally in the public domain” (I have omitted principles (8) and (10) as they are specific to injunction proceedings):

“(1) The general rule is that the names of the parties to an action are included in orders and judgments of the court.

(2) There is no general exception for cases where private matters are in issue.

(3) An order for anonymity or any other order restraining the publication of the normally reportable details of a case is a derogation from the principle of open justice and an interference with the Article 10 rights of the public at large.

(4) Accordingly, where the court is asked to make any such order, it should only do so after closely scrutinising the application, and considering whether a degree of restraint on publication is necessary, and, if it is, whether there is any less restrictive or more acceptable alternative than that which is sought.

(5) Where the court is asked to restrain the publication of the names of the parties and/or the subject matter of the claim, on the ground that such restraint is necessary under Article 8, the question is whether there is sufficient general, public interest in publishing a report of the proceedings which identifies a party and/or the normally reportable details to justify any resulting curtailment of his right and his family's right to respect for their private and family life.

(6) On any such application, no special treatment should be accorded to public figures or celebrities: in principle, they are entitled to the same protection as others, no more and no less.

(7) An order for anonymity or for reporting restrictions should not be made simply because the parties consent: parties cannot waive the rights of the public.

...

(9) Whether or not an anonymity order or an order restraining publication of normally reportable details is made, then, at least where a judgment is or would normally be given, a publicly available judgment should normally be given, and a copy of the consequential court order should also be publicly available, although some editing of the judgment or order may be necessary.

...”

23. The principle of open justice is also enshrined in Article 6 ECHR, as was emphasised in *JIH* at [19]. The Court of Appeal expanded on this at [4]:

“4. ... public coverage of court proceedings is a fundamental aspect of freedom of expression, with particular importance: the ability of the press freely to observe and report on proceedings in the courts is an essential ingredient of the rule of law. Indeed the right to a "fair and public hearing" and the obligation to pronounce judgment in public, save where it conflicts with "the protection of the private lives of the parties" or "would prejudice the interests of justice", are set out in Article 6 of the Convention". (my emphasis)

24. An anonymity order is therefore a derogation from the principle of open justice, and an interference with that general public interest, protected in Articles 10 and 6.

25. Any derogation from open justice must be “necessary”. As Lord Sumption underscored at [14] in *Khuja*, “necessity remains the touchstone of this jurisdiction”. Several other authorities emphasise a test of necessity: see *JIH* at [21(4)], cited above; Lord Dyson at [11] in *Al-Rawi v Security Service* [2012] 1 AC 531 (SC), citing *Scott v Scott* [1913] AC 417 (HL):

“11. The open justice principle is not a mere procedural rule. It is a fundamental common law principle. In *Scott v Scott* [1913] AC 417, Lord Shaw of Dunfermline (p 476) criticised the decision of the lower court to hold a hearing in camera as “constituting a violation of that publicity in the administration of justice which is one of the surest guarantees of our liberties, and an attack upon the very foundations of public and private security.” Lord Haldane LC (p 438) said that any judge faced with a demand to depart from the general rule must treat the question “as one of principle, and as turning, not on convenience, but on necessity”.”

26. The House of Lords in *Scott v Scott* also gave guidance on when a derogation from open justice is necessary, and on whom the burden should lie for proving it is the case. Viscount Haldane LC made clear (at p 437, 438 and 439) that:

“The exceptions 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 a 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”.  
(my emphasis)

27. The reason for a test of necessity is apparent when one examines the justification for the principle of open justice, summarised by Lord Sumption at [13] in *Khuja* as “the value of public scrutiny as a guarantor of the quality of justice”. Lord Atkinson at p 463 in *Scott v Scott* described that justification in these terms:

“The hearing of a case in public may be, and often is, no doubt, painful, humiliating, or deterrent both to parties and witnesses, and in many cases, especially those of a criminal nature, the details may be so indecent as to tend to injure public morals, but all this is tolerated and endured, because it is felt that in public trial is to found, on the whole, the best security for the pure, impartial, and efficient administration of justice, the best means for winning for it public confidence and respect”. (my emphasis)

28. In *R v Legal Aid Board ex parte Kaim Todner (A firm)* [1999] QB 966 (CA), Lord Woolf MR (at [4]-[5], p 977) warned against the erosion of open justice, and explained the justification for the principle:

“The need to be vigilant arises from the natural tendency for the general principle to be eroded and for exceptions to grow by accretion as the exceptions are applied by analogy to existing cases. This is the reason it is so important not to forget why proceedings are required to be subjected to the full glare of a public hearing. It is necessary because the public nature of proceedings deters inappropriate behaviour on the part of the court. It also maintains the public's confidence in the administration of justice. It enables the public to know that justice is being administered impartially. It can result in evidence becoming available which would not become available if the proceedings were conducted behind closed doors or with one or more of the parties' or witnesses' identity concealed. It makes uninformed and inaccurate comment about the proceedings less likely. ... Any interference with the public nature of court proceedings is therefore to be avoided unless justice requires it. However Parliament has recognised there are situations where interference is necessary”.

This passage was later endorsed by the House of Lords in *Re S* at [29], and the Supreme Court in *Khuja* at [14].

29. This Court in *ex p. Kaim Todner* (at [8], p 978) also highlighted the relevancy of the position of the parties:

“8. A distinction can also be made depending on whether what is being sought is anonymity for a plaintiff, a defendant or a third party. It is not unreasonable to regard the person who initiates the proceedings as having accepted the normal incidence of the public nature of court proceedings. ... If you are a defendant you may have an interest equal to that of the plaintiff in the outcome of the proceedings but you have not chosen to initiate court proceedings which are normally conducted in public. A witness who has no interest in the proceedings has the strongest claim to be protected by the court if he or she will be prejudiced by publicity, since the courts and parties may depend on their co-operation. In general, however parties and witnesses have to accept the embarrassment and damage to their reputation and the possible consequential loss which can be inherent in being involved in litigation. The protection to which they are entitled is normally provided by a judgment delivered in public which will refute unfounded allegations. Any other approach would result in wholly unacceptable inroads on the general rule”. (my emphasis)”

17. The judgments of Dingemans LJ in *XXX v Camden* and of Haddon-Cave LJ in *Moss v Information Commissioner* set out, definitively and by reference to the highest authority, the legal principles which I must apply in determining the Claimant’s application in this case. It is unnecessary for me to attempt to give any further summary of those principles.
18. I was also referred by Mr Westgate QC to Article 3 of the United Nations Convention on the Rights of Persons with Disabilities, to which the United Kingdom is a party, which provides:

**“Article 3 – General principles**

The principles of the present Convention shall be:

1. Respect for inherent dignity, individual autonomy including the freedom to make one’s own choices, and independence of persons;
2. Non-discrimination;
3. Full and effective participation and inclusion in society;
4. Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
5. Equality of opportunity;
6. Accessibility;
7. Equality between men and women;

8. Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.”

19. Reference was also made by Counsel to provisions of the Equality Act 2010 dealing with discrimination arising from disability, materially sections 15 and 29 of, and Schedule 3 to, that Act. These provide, insofar as relevant:

**“15. Discrimination arising from disability**

(1) A person (A) discriminates against a disabled person (B) if—

(a) A treats B unfavourably because of something arising in consequence of B's disability, and

(b) A cannot show that the treatment is a proportionate means of achieving a legitimate aim.”

**“29. Provision of services, etc.**

...

(6) A person must not, in the exercise of a public function that is not the provision of a service to the public or a section of the public, do anything that constitutes discrimination, harassment or victimisation.

...”

**“SCHEDULE 3**

**Services and public functions: exceptions**

...

3 (1) Section 29 does not apply to—

(a) a judicial function;

(b) anything done on behalf of, or on the instructions of, a person exercising a judicial function...”

**The Parties’ Submissions**

20. For the Claimant, Mr Westgate QC submitted that although the application should have been made sooner, it was still open to the Court to make an order under CPR 39.2(4) at this stage, and that one should be made. His primary submission was that the Claimant’s name should be anonymised and that an order should be made

restricting the reporting of her identity. In the alternative, he submitted that the Claimant's name ought to be anonymised in the Trial Judgment even if no order were made restricting the disclosure of her identity. In no circumstances could the balance between the relevant rights be achieved by failing to anonymise the Claimant. The matters set out at [8] of the Trial Judgment were intensely private and personal matters which, if they were published in a judgment naming the Claimant, would be likely to cause a loss of dignity, humiliation and distress. The argument for anonymisation was, he submitted, stronger because of the inseparable connection with the Claimant's disability.

21. Mr Westgate QC submitted that the Court, as a public authority, should ensure that any disadvantage to the Claimant should be brought about only when truly appropriate. The present case was not one in which there had been any media interest and the Court should not proceed on the basis of speculation that there might in the future be some such interest in publicising the proceedings. He submitted that, in any event, any such report of the proceedings would not need to refer to the Claimant by name in order to result in a proper understanding of the issues raised. He accepted that there was, in general terms, a public interest in litigants being named, but contended that the present case was one in which that sort of concern could be, as he put it, "overplayed".
22. Mr Westgate QC also submitted that the publication of the Claimant's name would result in a breach of section 15 of the Equality Act 2010, because it would amount to unfavourable treatment of the Claimant arising from her disability which was not a proportionate means of achieving a legitimate aim. In the further alternative, Mr Westgate raised, for the first time, the suggestion that the Trial Judgment should be redacted to remove some of the material in the relevant paragraph.
23. For the Defendant, Mr Rutledge QC maintained the position of neutrality on the merits of the application that had previously been adopted. He agreed with Mr Westgate that the Court can make an order under CPR 39.2(4) even after publication of a judgment. He reminded me that CPR 39.2(4) refers to an order being made where it is "necessary" to do so and took me to some of the relevant parts of the authorities, including *XXX v Camden*. He drew my attention to the fact that unlike in *XXX v Camden* there was no evidence either from the Claimant herself or from others such as medical professionals about the potential effects of publication of her name in the Trial Judgment, and that the matters now raised as being of concern had been advanced by the Claimant, an adult with full capacity to litigate, during the proceedings in support of her own case. He noted that many claims under the Housing Act 1996 are not anonymised, including those which contain highly personal and sensitive details, and that there are also cases where anonymity has been given at first instance but not thereafter in the Court of Appeal.
24. As to Mr Westgate QC's submissions on section 15 of the Equality Act, Mr Rutledge drew my attention to paragraph 3 of Schedule 3 to the Equality Act which he suggested precluded any reliance by the Claimant on the provisions of section 15. In response to Mr Westgate QC's alternative submission that the Trial Judgment could simply be anonymised without the imposition of any further restriction, he submitted that this would be both illogical and futile, because there would be no anonymisation of the Court's order or of any matter outside the Trial Judgment itself, and no restriction on anyone discovering the Claimant's name from publicly available

sources other than the Trial Judgment and then reporting it. With regard to Mr Westgate QC's submission that the Trial Judgment could, in the event of rejection of all Claimant's the other arguments, be redacted, Mr Rutledge did not raise any particular objection and accepted that this was a matter for the Court.

## **Discussion**

25. I turn first of all to the application for an order under CPR 39.2(4). I accept Mr Westgate QC's submission that it is at least a necessary implication of the judgments of Mr Fordham QC and of the Court of Appeal in *XXX v Camden* that an order under CPR 39.2(4) which anonymises a claimant and imposes restrictions on the disclosure of their identity can be made at any stage of the proceedings, including after a public judgment has been given. The application in *XXX v Camden* was not rejected either by the Deputy Judge or by the Court of Appeal on the basis that it was no longer capable of being made, but after a full balancing exercise had been conducted. A particular factor against the claimant in the balancing exercise in that case was, however, the stage at which proceedings had reached by the time the application was made.
26. The basis of the present Claimant's application is that the publication of her name in the Trial Judgment would breach her rights under Article 8 ECHR, i.e. the right to respect for her private and family life. She does not also rely, as the claimant did in *XXX v Camden*, either on Article 2 ECHR or Article 3 ECHR (see at [9] of Dingemans LJ's judgment). It is contended by Mr Westgate QC that the publication of the Claimant's name would be liable to cause her humiliation and distress because of the personal information set out in the final two sentences that appeared at [8] of the draft Trial Judgment. No issue is raised as to the accuracy of what is set out. The wording used is materially identical to that which appears in the Claimant's Solicitors' letter of 23 April 2015. It also reflects the way in which the Claimant's case was put both in her Statement of Facts and Grounds (at [4] thereof), her skeleton argument for the trial (at [16] thereof) and in her Counsel's oral submissions at the trial. As I set out in the Trial Judgment at [81(i)], this letter contained the only evidence put before the Court about the effects on the Claimant of the unsuitable features of the Property, the Claimant having not adduced any other documentary or witness evidence on that issue.
27. I accept Mr Westgate QC's submission that these matters engage the Claimant's rights under Article 8 ECHR and that they are of an intensely personal nature. The question for me to determine is whether, balancing the Claimant's rights under Article 8 ECHR with those that arise under Article 10 of the ECHR, in particular, it is – to return to the terms of CPR 39.2(4) – necessary to make the order sought to secure the proper administration of justice and in order to protect the interests of the Claimant.
28. I now address the factors relevant to the balancing exercise that I must conduct in this case, in accordance with the principles set out by the Court of Appeal in its judgments in *XXX v Camden* and *Moss v Information Commissioner* which I have already set out. When conducting the balancing exercise, there must be “an intense focus on the comparative importance of the specific rights being claimed” – see *In Re S (A Child)* [2004] UKHL 47, [2005] 1 AC 593 at [17], *per* Lord Steyn. This is very much a case-specific exercise. I did not find Mr Rutledge QC's references to the facts of other cases in which anonymity has either not been applied for or has been refused of



assistance in determining the outcome in the present case. They do no more than illustrate the proposition, which Mr Westgate did not dispute, that there is no general exception of the sort described by Dingemans LJ in *XXX v Camden* at [27].

29. I bear in mind that the burden lies on the party applying for anonymity to justify the displacement of the rule that the proceedings – including for this purpose the names of the parties – are public: see *Moss v Information Commissioner* at [26]. In this regard, no evidence has been relied on in support of the application for anonymisation. There is no statement from the Claimant herself or from anyone else on her behalf. No medical or psychiatric evidence is relied on, expert or otherwise. Nor did the Claimant give any evidence relevant to this issue in her witness statement for the purposes of the trial: see at [21] of the Trial Judgment. That there is no such evidence means that the submissions of Mr Westgate QC on matters about which evidence could have been given do not have the force that they might otherwise have had. Such evidence has been adduced in other cases in support of applications under CPR 39.2(4) – see e.g. at [6] of Dingemans LJ’s judgment in *XXX v Camden* and at [7] of Martin Spencer J’s judgment in *Zeromska-Smith v United Lincolnshire Hospitals NHS Trust* [2019] EWHC 552 (QB), [2019] Med LR 250 (“*Zeromska-Smith*”), the case to which reference was made by Dingemans LJ at the conclusion of his judgment.
30. Mr Westgate QC submits that publication of the matters set out in [8] of the Trial Judgment is likely to cause the Claimant humiliation and distress. As a general proposition, I accept that the publication of personal information of this sort is likely to have an impact on the individual concerned and to cause some level of distress. But there is no indication at all about the level of distress that might be caused in this particular case by the publication of the Trial Judgment, or with which to subject Mr Westgate’s submissions on this issue to the intense focus that is required when conducting the necessary case-specific balancing exercise. There is no evidence about the particular level at which publication of the Trial Judgment would, in the particular context of this case, interfere with the Claimant’s right to respect for her private and family life. Whilst I accept Mr Westgate QC’s submissions at a general level, they can go no further than that given the lack of any specific evidence. I note that in *In Re Guardian News and Media Ltd* [2010] UKSC 1, [2010] 2 AC 697 at [74], Lord Rodger referred to the evidence of the potential effect on private and family life of lifting the anonymity order in one of the cases before the Supreme Court as being “very general and, for that reason, not particularly compelling”. When considering the comparative importance of the specific rights being claimed it is, in my judgment, relevant to consider both what it is contended the level of interference with those rights (here, those under Article 8 ECHR) is, and what is the basis for that contention, bearing in mind that the burden is on the applicant to establish that it is necessary to make the order sought. I note that there is no suggestion (still less any evidence) that publication of the Claimant’s name in the Trial Judgment will give rise to any issue in relation to the Claimant’s health.
31. I also take into account, on this side of the balance, that these matters arise in connection with the Claimant’s disability. I accept Mr Westgate QC’s submission that the Claimant’s arguments under Article 8 ECHR are enhanced, in this regard, by the particular context in which they are advanced, although I should also point out that I have not heard argument to the contrary on that point. I also take into account the general principles set out in Article 3 of the United Nations Convention on the Rights

of Persons with Disabilities; but Mr Westgate – rightly, in my view – did not go so far as to suggest that an application of those principles requires the anonymisation of all disabled litigants in cases where matters relating to their disability are in issue, and the Court is, in any event, able to have due regard to such matters as part of the case-specific balancing exercise that is already mandated by the authorities.

32. It is also relevant to observe that there is no explanation put forward by the Claimant for why the issue of anonymisation is being raised, in connection with the matters referred to in [8] of the Trial Judgment, only at this stage. The relevance of this point is not, for present purposes, the practical difficulties which have arisen (to which I will return at the conclusion of this judgment) but that the Claimant was apparently content, until very recently, for such matters to be referred to in publicly-available documents which included her name (in particular, her statement of case, her trial skeleton argument and the Defendant’s trial skeleton argument), and for reference to be made to them, including as set out in her Solicitors’ letter of 23 April 2015, at a public trial. Not only did both parties’ skeleton arguments make reference to that letter, but Mr Rutledge QC’s skeleton argument for the trial directly quoted the entirety of the relevant part of the letter as being, in his submission, “the only factual evidence which the Claimant puts before the court on the central aspect of her claim”. There are a number of possible explanations for this change of position by the Claimant, about which I do not speculate. But the Claimant has not advanced a positive explanation for her delay in making this application which might be capable of supporting her case that the balance falls in favour of anonymisation.
33. I now turn to the factors on the other side of the balancing exercise. Firstly, the general rule is that litigation is conducted in public and that the names of the parties are included in the orders and judgments of the Court. The principle of open justice is “one of the most precious in our law”: see *R (on the application of C) v Secretary of State for Justice* [2016] UKSC 2; [2016] 1 WLR 44 (“*C v Secretary of State for Justice*”) at [1], *per* Lady Hale. It is protected through the engagement, in this context, of both Article 6 ECHR and Article 10 ECHR and the rights of the public, not just those of the parties, are engaged: see *Moss v Information Commissioner* at [42]. There is no general exception where private matters, or indeed matters relating to an individual’s physical or mental health, are in issue: see *XXX v Camden* at [27]. As Lady Hale also stated in *C v Secretary of State for Justice* at [36]: “The public has a right to know, not only what is going on in our courts, but also who the principal actors are.” Although I accept and take into account Mr Westgate QC’s point that this is not a situation in which there has been or is likely to be any particular media interest in the case, that does not result in the importance of this fundamental principle being significantly diminished.
34. Secondly, as in *XXX v Camden*, the Claimant is not only a party to the Claim but the person who has brought it, the relevance being that it is not unreasonable to regard someone who initiates proceedings (certainly where they are, as the Claimant is, an adult litigant of full capacity) as having accepted the normal incidence of the public nature of court proceedings: see *Moss v Information Commissioner* at [26]. I reject Mr Westgate QC’s submission that it is not a relevant factor in the balancing exercise that it is the Claimant herself who has brought this Claim, because the Defendant is in breach of its statutory duty and it is unrealistic to treat the Claimant as having had any option but to commence these proceedings. The Claimant brought the Claim in order

to secure a mandatory order for the immediate provision to her of new accommodation, a remedy to which it was accepted she was not automatically entitled (Ground 1), to obtain changes to the Defendant's procedures for the provision of housing to disabled applicants (Ground 2) and to require the Defendant to consider her request to be put into a higher priority category under its allocation scheme (Ground 3); she plainly had a choice over whether or not to bring the proceedings and I do not consider that the distinction advanced by Mr Westgate is one properly to be made in the circumstances. Nor do I accept Mr Westgate's submission that reliance on this factor discriminates against disabled claimants or puts them in an impossible position. It is open to disabled claimants, and indeed all claimants, to adduce evidence of matters specific to their individual case sufficient to displace the general rule that the proceedings are public. That is the very purpose of the case-specific balancing exercise required by the authorities to which I have referred.

35. Thirdly, it is, in my judgment, a relevant feature that the application has been made in this case not only at a late stage in the litigation, but after a public trial of the Claim which included reference to the material set out in the Trial Judgment that is now said to necessitate anonymity. This is not, so far as I am aware, a case such as *XXX v Camden* in which there has already been reporting of the case, whether by law reporters or by the media, that would need to be 'undone'; and so this point cannot be taken too far. But there has already been a public hearing in which these matters were raised and, to that extent, the order that is sought would retrospectively affect the reporting of proceedings which took place in public, no application having been made before or at the hearing or indeed until the afternoon before judgment was due to be handed down. That is, on its own, a relevant factor: see [26] of Dingemans LJ's judgment in *XXX v Camden*.
36. Balancing all the features of the case, I do not consider that it is necessary to make the order under CPR 39.2(4) that is now sought. The material before me does not demonstrate that there would be a disproportionate interference with the Claimant's rights under Article 8 ECHR by the Trial Judgment being given without there being anonymisation and reporting restrictions. The concerns that are raised on the Claimant's behalf by Mr Westgate QC about the publication of her name in the Trial Judgment are not supported by evidence and are not, even taking into account the Claimant's disability and having regard to all the issues raised by Mr Westgate in that respect, of such a degree as to necessitate the restriction on the fundamental principle of open justice, and the rights of the public and the media under Article 10 ECHR, that would arise if the proposed order under CPR 39.2(4) were to be made. These are public court proceedings brought by the Claimant, and it would be a disproportionate interference with the principle of open justice and with Article 10 ECHR to make an order preventing the disclosure of her name in all the circumstances.
37. I also agree with Mr Rutledge QC that Mr Westgate QC's alternative approach of anonymising the Claimant in the Trial Judgment, but not making any order restricting the wider disclosure or reporting of her name, would be inappropriate. Such anonymisation would itself be an interference with the principle of open justice and Article 10 ECHR and would prevent anyone reading the Trial Judgment from knowing the Claimant's name notwithstanding there would be no restriction either on them finding it out by other means (e.g. by applying for a transcript of the hearing or by inspecting the parties' statements of case) or on anyone publishing it. It would

create a situation which it would be impossible for the Court to regulate; the anonymisation of the Claimant's name in the Trial Judgment, in circumstances where it has been concluded that an order restricting disclosure of her identity should not be made, would therefore be both unacceptable and unenforceable. In *HMRC v Banerjee* [2009] EWHC 1229 (Ch), [2009] 3 All ER 930 at [39], Henderson J rejected such an approach for the reason that the Court "should never make orders which it cannot police, or which are liable to cause confusion, or which may bring the administration of justice into disrepute."

38. Mr Westgate QC's further alternative submission was that, if the Claimant were not to be anonymised then the relevant paragraph of the Trial Judgment ought to be partially redacted. It is unnecessary to set out the precise terms of Mr Westgate's proposed redactions. Both Mr Westgate and Mr Rutledge recognised that the wording of the Trial Judgment was a matter for the Court. I have, however, considered carefully whether it would be appropriate to accede to Mr Westgate's request to redact the Trial Judgment in the event that the Claimant's request for anonymisation were to fail. I have decided not to do so. Redaction would not, in my view, be compatible with a proper understanding of the Trial Judgment either on the part of the public, or of any appellate court, or of any court that might be called upon to consider the Trial Judgment in the future. As I have already noted both in the Trial Judgment and in this judgment, the relevant paragraph sets out the only evidence put before the Court by the Claimant on the central issue in the Claim. I therefore hand down the Trial Judgment today with the relevant paragraph in the form in which it appeared in the draft judgment that was circulated to the parties on 1 March 2021.
39. I also reject Mr Westgate QC's submission that publication of the Trial Judgment without anonymising the Claimant would result in a breach of section 15 of the Equality Act 2010, when read with section 29 of that Act. That provision is specifically disapplied in the case of judicial functions by paragraph 3(1) of Schedule 3 to the Act. The giving of a judgment in the High Court is clearly a judicial function within the meaning of that paragraph. It is therefore unnecessary to determine whether the publication of the Trial Judgment without anonymisation would amount to unfavourable treatment of the Claimant for the purposes of section 15 – a point about which I expressed some doubt during the course of argument – or the issues that might then have arisen in respect of causation and, if that were established, proportionality. In his submissions in reply, Mr Westgate QC argued that the provisions of section 15, even if not directly applicable, should nonetheless inform the decision of the Court on the Claimant's application. Even if that contention is correct, despite what is said in Schedule 3 to the Act, then I do not see how it takes the Claimant's case any further in circumstances where the Court's decision both takes account of her disability and conducts a balancing exercise considering the proportionality of the restrictions on the competing rights that are involved.

### **Conclusion**

40. For the reasons given above, I dismiss the Claimant's application for an order under CPR 39.2(4) and also reject her proposed alternative courses of action of either anonymising her name in the Trial Judgment or redacting the Trial Judgment.
41. Finally, I should say something about the timing of the application. Mr Rutledge QC was right, in my judgment, to describe the circumstances in which this application

came to be made as highly unsatisfactory. Mr Westgate QC frankly – and properly – accepted that it ought to have been made sooner. Although Mr Rutledge agreed that it was open to the Claimant to raise the matter at this stage, he pointed out that it is usually the case in claims proceeding in the Administrative Court that any application in relation to anonymity is made when the Claim Form is filed and is then considered on the papers either before or at the permission stage. In my judgment, it is of considerable importance that litigants and those who advise them consider this issue at the earliest possible stage in litigation. It is not at all satisfactory, in terms of the conduct of litigation in this Court and the wider interests of justice, for such important questions to be left to the very last minute, as they were in this case. I respectfully agree with what Martin Spencer J had to say on that issue in *Zeromska-Smith* at [21], where he expressed disapproval of the practice of making applications for anonymity at trial. Nor, as Martin Spencer J also observed, should litigants assume that their application will be “nodded through” by the Court when it is not opposed by the other party. As Lady Hale emphasised in *C v Secretary of State for Justice* at [19], when setting out the effect of Lord Rodger’s judgment in *In re Guardian News and Media Limited*: “... the fact that the parties have agreed to anonymity cannot absolve the court from balancing the interests at stake for itself. Indeed that is when there is the greatest need for vigilance...”

42. In the present case, the notification of the Claimant’s request for anonymisation and reporting restrictions came without any warning on the afternoon before the Trial Judgment was due to be handed down. It necessitated the cancellation of the handing down of the Trial Judgment, a further hearing to deal specifically with the matter raised, and the giving of this additional reserved judgment on that issue. All this would have been avoided had it been addressed, as Mr Westgate QC accepted it should have been, at a much earlier stage. It might well have been appropriate to mark what has occurred by way of costs sanction; however, it is unnecessary to address that question in the circumstances of this case because the Claimant and the Defendant have agreed that, in the light of the decisions that I have made, there should be no order as to costs as between the parties in relation to the entirety of the proceedings on the Claim in this Court.