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Case No: QB-2021-001512

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 May 2021

Before :

LORD JUSTICE WARBY

- and -

MR JUSTICE NICKLIN

- -

In the matter of:

The persons formerly known as:
Craig Winch (1)
Debbie Winch (2)
Carol Winch (3) **Claimants**

And in the matter of an application for a *contra mundum* injunction

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Kate Wilson (instructed by **Weightmans LLP**) for the **Claimants**

Hearing date: 7 May 2021

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Approved Judgment

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Lord Justice Warby:

Introduction

1. The first claimant in this case, Craig Winch, used to be involved in serious and organised crime. On 1 April 2021, in the Crown Court at Teesside, Winch was sentenced by HHJ Deborah Sherwin for 23 offences to which he had earlier pleaded guilty. These included a range of Class A drug offences, arson with intent to endanger life, and burglary. The total sentence was one of 15 months imprisonment, suspended for two years. That was far less than the ordinary guidelines would suggest. The main reason is that Winch is also an Assisting Offender under s 73 of the Serious Organised Crime and Police Act 2005 (SOCPA). Colloquially, he is an informer. More than that, he is what is known as a "supergrass". His roles as an Assisting Offender have included giving evidence in five trials and one re-trial which led to some 29 people being convicted and sentenced to a total of some 250 years imprisonment. He also provided the police with the information that led to his own convictions. For that and some other reasons his sentence was considerably discounted from what it would otherwise have been.

2. Everybody knows that informers are unpopular with those they help to bring to justice. Winch is by no means an exception. In her sentencing remarks, HHJ Sherwin referred to violence Winch had suffered in the past at the hands of Organised Crime Groups (OCGs), and assessed his current situation in this way:

> "If your life was not in danger before, I am absolutely certain that it is now. These may be easy words to say but I am certain that, in your case, the risk is genuine and cannot be understated … Wherever you live you will spend your life constantly having to look over your shoulder and in fear.
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> …
>
> I have … no doubt that you are being actively and professionally sought by those who wish you harm and that you will be forced to be vigilant for the remainder of your life. As I have already said, the assistance that you have given has been overwhelming and I am sure that your life will be constantly at risk wherever you are."

3. To protect Winch, he and two female relatives - the second and third claimants in this case – are living under new names, and reporting restriction orders (RROs) were made in the Crown Court under s 4(2) of the Contempt of Court Act 1981 (the 1981 Act), prohibiting reporting of Winch's involvement in the relevant trials, and of anything capable of identifying him or his whereabouts. But the RROs had expiry dates, as they must; s 4(2) only allows a Court to postpone reporting. The most recent order expired on 23 April 2021. On 22 April 2021, the claimants started this action by a claim form under CPR Part 8, using their former names, and giving these details of the claim:

> "The claim is for a permanent injunction, effective against the world at large, to prohibit publication of photographs, images and other material which identifies or purports to identify the Claimants and to prohibit soliciting such information.

> The injunction is necessary to protect the Claimants' Article 2, 3 and/or 8 rights under the European Convention of Human Rights. …
>
> As a consequence, a law enforcement agency has assessed that there is a real risk to his life and, because of their association with the First Claimant, also a real risk to the lives or safety of the Second and Third Claimants. The Claimant is now using a different name. The Second and Third Claimants, because of their connection with the First Claimant, also now use different names."

4. On 23 April 2021, the claimants applied urgently for interim relief. Murray J granted an injunction until a return date of 7 May 2021, when we heard and granted an application to continue the orders until after final judgment in the claim, with some modifications. These are my reasons for those decisions.

The Evidence

5. The evidence at the hearing consisted of seven witness statements, and their exhibits. There was one statement from each of the claimants, two from an officer of a law enforcement agency (LEA) whom we have anonymised as "C", and two from the claimants' solicitor, Mr Forshaw. All of this evidence was given or read in public, save that identifying details in the sentencing remarks of HHJ Sherwin were redacted in the public version and, for the same reason, one of C's witness statements was withheld from the public ("the closed statement"), and an RRO made under s 11 of the 1981 Act.

6. There is powerful evidence to support the claimants' case that they are at risk of death or serious physical harm if they can be identified and found by the OCGs whose members Winch has helped imprison.

7. Winch's statement speaks of "severe violence" inflicted on him by members of OCGs, describing beatings which were "the scariest of my life", with an "everlasting effect" on his mental and physical health. He attests to his belief, based on what he has been told by the LEA, that his assistance in the criminal process has led to "a severe and ongoing threat to my life from multiple individuals and OCGs". He lives in daily fear and is always looking over his shoulder, unable to lead a normal life, worried every day that he will be recognised. He says he is aware that OCG members located one of his close relatives, resulting in panic alarms being installed at their property by police.

8. The second claimant corroborates Winch's account, saying she was aware of the violence to which he was subjected, when he was hospitalised. She was and is scared he would end up dead. She has been told by the LEA that there is, by extension, a severe and ongoing threat to her life. She suffers fear and "paranoia of being recognised", and has had to give up on previous relationships and work due to the threat against her. The third claimant's statement is on similar lines. She reports that the LEA has told her that her life is at risk by extension. She speaks of being "terrified that harm will come to me or my family and that we will be found" and of "living a life of terror."

9. Witness C, in her open statement, describes the role of Winch in an OCG in the North East of England, as the conduit for the supply of significant quantities of controlled drugs, taking an active role. He ran up drug debts, and was subjected to violence to

secure repayment, which led to him undergoing surgery for "a life altering injury". He was taken on as an Assisting Offender in 2016. The LEA assessed Winch, and the second and third claimants as being at high risk of harm at that time. The level of risk was assessed as "severe".

10. Witness C provides a summary of the trials in which Winch gave evidence, and the convictions and sentences in those cases. By way of illustration, the earliest led to a life sentence for arson with intent to endanger life. That was after a re-trial due to jury intimidation. In the third, eight offenders received sentences for drug offences ranging from 14 years to 18 months suspended. In the fourth case, four offenders were convicted of conspiracies to possess a firearm and to supply Class A drugs. The two lead offenders were sentenced to terms of 30 years and 28 years. Following Winch's assistance in securing these results, the risk to Winch and his family has increased. The LEA now assess "that the threat to him and his family is now considered to be extreme". Should they be located by the OCGs this would "likely result in the infliction of serious harm or death".

11. Witness C states that the LEA has identified a total of 12 OCGs, consisting of some 174 members, that are considered capable of posing a significant threat to the claimants. Of these 12, 8 are assessed as "having a high violence capacity" with access to firearms. She gives details of the OCGs, and the network of which they are part. She states, persuasively, that the potential footprint of the OCG network is "vast" and presents a threat to the claimants in multiple locations across the UK. The LEA's assessment is that "various OCGs are actively seeking the First claimant and his family, in order to cause them serious harm or kill them." All of this is supplemented by further detail in the closed statement of Witness C. I would refer in particular to paragraphs 10, 11(b), 11(c) and 15. Taken as a whole, the evidence amply bears out the assessment of the sentencing Judge, that I have quoted already.

12. There was concern, of which Witness C gives evidence, that unless an order was made by the Court the commercial news media might publish something that enabled the OCGs to identify and locate the claimants such as (for instance) photographs of Winch, or descriptions of his physical appearance. It seems that at one stage, at least, one or more media representatives showed an interest in publishing a photograph. There was certainly extensive reporting of the case, and the previous trials, when the s 4(2) orders expired on 23 April 2021. But the risk to Winch and his family is clear from the sentencing remarks, and acknowledged in many of the published reports. The *Daily Mail*, for instance referred to Winch as having "A target on his back for life". Most papers referred to him being "in hiding". There is no suggestion that any of these reports had any pictures or physical descriptions in them or otherwise identified the claimants.

13. By this time, of course, the order of Murray J was in place. But this claim has not been brought against any media organisation or any other named defendant. Ms Wilson has been at pains to make clear that she accepts that it is fair for reporters to ask questions, and she does not suggest that any media organisation has threatened to publish, or behaved in any other way that would justify a targeted injunction. The claim, and this application, are brought on the footing that unless there is an order against the world, there will be a real risk that, in one way or another, a picture, description or other identifying information will be communicated to one of the large number of individuals

who wish death or serious injury on Winch and his family members, and who are willing to inflict death or serious injury.

The Legal Context

14. The jurisdiction invoked in this case was first recognised and exercised by Butler-Sloss, P, in *Venables v News Group Newspapers Ltd* [2001] Fam 430. The claimants in that case had murdered a child, James Bulger, when they themselves were children. The crime was profoundly shocking, and is well-remembered to this day. But lifetime anonymity was granted on the basis of cogent evidence of threats of death or serious injury. In the 20 years since, the jurisdiction has been exercised on only a handful of further occasions. The majority have been on similar lines.

15. In *X (formerly Bell) v O'Brien* [2003] EMLR 37 the claimant, Mary Bell, had killed two children; in *Carr v News Group Newspapers Ltd* [2005] EWHC 971 (QB), Maxine Carr had provided a false alibi for the murderer of two children; in *A v Persons Unknown* [2017] EMLR 11, two brothers had inflicted grievous bodily harm on three children; in *RXG v Ministry of Justice* [2019] EWHC 2026 (QB), [2020] QB 703, the claimant had been convicted of terrorism offences; in *D v Persons Unknown* [2021] EWHC 157 (QB), the claimants were the murderers of Angela Wrightson. These were all notorious crimes. All these claimants, except for Carr, were children when they committed their offences. They enjoyed anonymity until they reached 18. The orders were designed to continue that protection.

16. In all but one of these cases the court found that the claimants would be exposed to a risk of death or serious injury by way of retribution for their crimes. In such cases, the *Venables* jurisdiction gives effect to civilised values and the rule of law. As Lord Burnett CJ observed in *Attorney General v McKeag* [2019] EWHC 241 (QB) [8]:

> "Those guilty of heinous crimes do not forfeit their civil rights. It is many centuries since the concept of being an outlaw, literally forfeiting the protection of the law, passed into history in this country. The punishment of offenders is the task of the courts, not of vigilantes. So when those who are known to have committed serious crimes are themselves attacked or threatened with death or serious violence, they may seek the protection of the courts."

17. These cases also engage fundamental human rights. Four such rights are engaged by the application here: the rights to life, protection from torture, respect for private life, and – on the other hand - freedom of expression. These are rights protected by Articles 2, 3, 8 and 10 of the European Convention on Human Rights. The Human Rights Act 1998 requires us to make a decision which is compatible with all these rights. The decision in *Bell* rested on the Article 8 rights of the claimants.

18. The principles that govern the exercise of the *Venables* jurisdiction were examined in detail in *RXG*. At [35], the Divisional Court identified ten principles as follows (omitting internal citations):

> "(i) Restrictions upon freedom of expression must be (a) in accordance with the law; (b) justifiable as necessary to satisfy a

strong and pressing social need, convincingly demonstrated, to protect the rights of others; and (c) proportionate to the legitimate aim pursued …

(ii) The strong and pressing social needs which may justify a restriction upon freedom of expression, in principle, include: (a) the right to life and prohibition of torture under articles 2 and 3 …; and (b) the right to a private and family life under article 8.

(iii) The threshold at which article 2 and/or 3 is engaged has been described variously as: "the real possibility of serious physical harm and possible death" … "a continuing danger of serious physical and psychological harm to the applicant"; an "extremely serious risk of physical harm"

(iv) … the test is not a balance of probabilities but rather that the evidence must "demonstrate convincingly the seriousness of the risk" and raise a real possibility of significant harm: a possibility that cannot sensibly be ignored having regard to the nature and gravity of the feared harm.

(v) Where an applicant demonstrates, by cogent evidence, that there is a real and immediate risk of serious physical harm or death, then there is no question of that risk being balanced against the article 10 interests:

(vi) In cases where articles 2 and 3 are not engaged and the conflict is between the article 8 and article 10 rights, neither right has precedence over the other. What is necessary is an intense focus on the comparative importance of the rights being claimed in the individual case. The justifications for interfering with or restricting each right must be taken into account and a proportionality test must be applied.

(vii) The rights guaranteed by articles 2 and 3 are unqualified. Where the evidence demonstrates that there is a real and immediate risk of serious harm or death this cannot be balanced against any article 10 right, no matter how weighty.

(viii) However, where evidence of a threat to a person's physical safety does not reach the standard that engages articles 2 and/or 3, then the evidence as to risk of harm will usually fall to be considered in the assessment of the person's article 8rights and balanced against the engaged article 10 rights. Whilst the level of threat may not be sufficient to engage articles 2 or 3, living in fear of such an attack may very well engage the article 8rights of the person concerned.

(ix) Article 8 rights may, depending on the facts of a particular case, justify a contra mundum injunction. …

(x) … The cases in which contra mundum orders have been granted have been exceptional. In three of them, the court found that article 2 was engaged and, in *Bell*, the combination of the article 8 rights engaged outweighed those engaged by article 10."

19. These principles were applied by Tipples J, DBE, in *D v Persons Unknown.* In *Re: Al Maktoum (Reporting Restrictions Order)* [2020] EWHC 702 (Fam), [2020] EMLR 17, the principles identified in *RXG* at [35(vii)] were considered by Sir Andrew McFarlane P, in a different context. Protection was sought for an adult witness ("XX") who had given evidence during the fact-finding stage of wardship proceedings concerning the welfare of two children. It was said that identification of XX as that witness would risk very serious harm or death. The media argued, and the President acknowledged, that XX might already have faced such a risk but he concluded on the evidence that publicly identifying XX as the person who had given the relevant evidence would add significantly to that risk. He granted an order for witness anonymity. He did so on the basis that, even if the Divisional Court were wrong on the question of whether a balancing process should be undertaken, the balance would favour such an order.

20. As this is not the trial of the claim but an application for an interim injunction pending trial, the claimants do not have to prove their case finally and conclusively. The threshold is however more demanding than the ordinary test for an interim injunction. The application seeks relief that "might affect the exercise of the Convention right to freedom of expression" within the meaning of s 12(1) HRA. By s 12(3) of the HRA, "No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed." Ordinarily, this means that the applicant must persuade the Court that success is more likely than not: *Cream Holdings Ltd v Banerjee* [2004] UKHL 44, [2005] 1 AC 253 [22] (Lord Nicholls). In some cases a lesser degree of likelihood may suffice, as where "the potential adverse consequences of disclosure are particularly grave" (ibid.).

Discussion

21. I am satisfied that the Court would be likely after a trial to conclude that the facts of this case place it within the narrow band of exceptional circumstances in which the *Venables* jurisdiction should be exercised.

22. In my judgment, success for the claimants is more likely than not. The evidence before us is cogent and powerful. It demonstrates a significant and weighty risk that the claimants would be subjected to death or very serious violence if members of the OCGs or their associates were able to locate and identify them. The evidence satisfies me that the OCGs are actively trying to find the claimants, and that there is a real and appreciable risk that they could succeed, if no restrictions are placed on the distribution of identifying information. Our order will significantly mitigate any such risk.

23. I do not consider that these grave risks to the claimants' fundamental human rights fall to be balanced against the free speech rights with which such an order will interfere. I would apply the principles identified in *RXG,* including those at paragraph [35(iv)]. As Lord Rodger has said *"…* a newspaper does not have the right to publish information at the known potential cost of an individual being killed or maimed": *In re Guardian News and Media Ltd* [2010] UKSC 1, [2010] 2 AC 697 [27]. To be fair, no media representative has suggested that this is the position. The media have been notified of this application and it is uncontested. But if there were a balance to be struck, I would reach the same conclusion as Sir Andrew McFarlane in *Al Maktoum.*

24. I acknowledge that our order will have some impact on the ability of the media and others to report the legal proceedings in which Winch has been a witness and a

defendant. The prohibition on the publication of photographs will not have that effect; court reporters are not entitled to take or publish photographs of what takes place in court. But our order will restrict what can be reported about the sentencing remarks of HHJ Sherwin. It will also disable the media from publishing sketches or descriptions of the physical attributes of Winch in his capacity as a witness and a defendant in criminal proceedings held in public. It might also impinge to a degree on media freedom to report and comment on his role as a participant and as an informer and as a witness and defendant in the criminal proceedings. To this extent, our order does involve some derogations from the ordinary rule that the media may report everything that takes place in court. That is a strong rule, and any exceptions need clear and cogent justification. All of this is clear from the authorities examined in *RXG* including, in particular, the case cited to us by Ms Wilson: *Khuja v Times Newspapers Ltd* [2017] UKSC 49, [2019] AC 161.

25. On this occasion, however, the degree of restriction is relatively modest; there is no restriction on reporting any of the details of what Craig Winch has done, or using his former name in the process. The information which is the subject of our order is not central to the court reporting function. Reporting of that information has been prohibited throughout. The importance of continuing to withhold it comfortably outweighs the importance of reporting it in connection with the criminal proceedings. On the facts of this case, there is an additional factor that would go into the balance in favour of an order, were there any balancing process to be done.

26. As the authorities show, the fact that the claimant invoking the *Venables* jurisdiction is a criminal is not a bar to the exercise of the jurisdiction. Indeed, it is normally the starting point for the claim. The gravity of the claimant's offending is commonly the trigger for the threats relied on as justifying the claim to anonymity. The critical factor, normally, is the existence and nature of the threat of a breach of Article 2 or Article 3. If a real threat is present, the court cannot ignore it or downplay it just because the claimant is a notorious murderer, or terrorist. This point applies in this case as it has in those that have gone before.

27. But this case differs from the earlier cases in some significant respects. First, the threat does not arise from the first claimant's crimes, but from his conduct as an informer and a witness. The threat is not that misguided vigilantes will impose additional punishment on Winch for his criminal acts. The risk is that all the claimants will be punished by organised criminals because of the good that Winch has done by helping to convict them. The threat is one of violent and indiscriminate revenge for an act of public service. Secondly, as a consequence, the grant of such an order will tend to support and incentivise informers, to the benefit of the criminal justice system and the welfare of the community. Those differences make the present case a stronger one than the cases discussed above.

28. I have considered whether it might be said that the prospects of success are less favourable, because there is no clear evidence of any immediate or imminent threat that identifying information will be disclosed. I do not think that is the case on the facts. I refer in particular to paragraph 11(b) of Witness C's closed witness statement. Even if I thought the evidence of immediate or imminent risk was thin, I would not withhold an interim order. That is for two reasons. At trial, these claimants will not have to establish on the balance of probabilities that without an injunction they will suffer the consequences they fear. The test is less exacting: see *RXG* [35(iv)]. And for all the

reasons I have given, if ever there were a case for the application of the lower standard of likelihood referred to by Lord Nicholls in *Cream*, this would be it.

29. I also agree with and associate myself with what is said about jurisdictional and procedural issues in the judgment of Nicklin J, which I have read in draft.

Mr Justice Nicklin:-

30. I agree with the reasons Warby LJ has given for granting the interim injunction that has been imposed.

31. The Claim Form in these proceedings was issued naming the defendants as "Persons Unknown". There may be cases in which the claimant seeks to invoke the *Venables* jurisdiction against identifiable defendants. In *Venables* itself, for example, one of the defendants was News Group Newspapers. However, whether or not *inter partes* relief is sought, the *Venables* jurisdiction is principally invoked to obtain an injunction *contra mundum*; an order that binds everyone regardless of whether or not they are a party to the proceedings. In civil litigation in England & Wales, *contra mundum* orders are an exception to the general rule that the Court acts *in personam*, and that final injunctions bind only the parties to the proceedings: *Cameron v Liverpool Victoria Insurance Co Ltd* [2019] UKSC 6, [2019] 1 WLR 1471 [14]; *Canada Goose UK Retail Ltd v Persons Unknown* [2020] EWCA Civ 303, [2020] 1 WLR 2802 [89]. "Persons Unknown" should not be used as a synonym for "Everyone". In a claim brought *contra mundum* it is not necessary to name a defendant: *London Borough of Barking & Dagenham v Persons Unknown* [2021] EWHC 1201 (QB) [232]. Indeed, it would be impossible to name as defendants, and serve the Claim Form upon, every person who would be bound by a *contra mundum* order (cf. the observations in *McKeag* (above) at [17] and *Attorney General v Yaxley-Lennon* [2019] EWHC 1791 (QB) [55]). In consequence, claims seeking *contra mundum* relief fall into an exceptional category where the Court is justified in granting an order under CPR 6.16 dispensing with service of the Claim Form. We have granted such an order in this case.

32. For similar reasons, on an application for an interim injunction *contra mundum*, there is no respondent to the application and so s.12(2) Human Rights Act 1998 is not engaged. Nevertheless, a claimant seeking a *contra mundum* order which, if granted, would affect the right of freedom of expression would usually be expected to have notified the media of the application. A convenient method of doing so is via the Press Association's Injunctions Alert Service (https://www.medialawyer.press.net/courtapplications/practicedirection.jsp): see *NT1 v Google LLC* [2018] EWHC 261 (QB) [5].

33. In this case, the claimants have utilised the Injunctions Alert Service and have also individually served a significant number of UK publishers and broadcasters. I am satisfied that, as a result of these steps, the fullest information has been provided about this claim to a very large number of media organisations and they have been given every opportunity to make any representations that they wished the Court to consider in relation to the claimants' claim. No person or organisation has indicated any opposition to the claimants' application for a *contra mundum* order.

34. Finally, as noted by Warby LJ ([5] above), directions were made at the hearing withholding from the public the identity of C and the evidence contained C's closed

statement. A corresponding reporting restriction has been made under s.11 Contempt of Court Act 1981 prohibiting the publication of C's name and the contents of the closed statement. The Court's power to anonymise a witness is contained in CPR 39.2(4) and the principles to be applied are set out in *XXX v Camden London Borough Council* [2020] EWCA Civ 1468, [2020] 4 WLR 165 [17-21]. The purpose and justification for these orders was that there is a risk that if C's name and the contents of the closed statement are published that this may lead to (or assist in) the identification of the claimants.

35. Directions have been made for the service of further evidence and for the final hearing of the claimants' claim to be listed on the first available date after 8 November 2021.