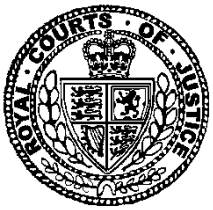

Neutral citation number: [2025] EWHC 1952 (Ch)

Claim No: IL-2025-000064

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS
OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)

Rolls Building
7 Rolls Building,
Fetter Lane
London EC4A 1NL

Friday, 25 July 2025

Before

HIS HONOUR JUDGE HODGE KC
Sitting as a Judge of the High Court

BETWEEN:

(1) Braunford LLP
(2) Corbiere Limited
(a company incorporated under the laws of the Marshall Islands)

Claimants

-v-

Pierre Allain

Defendant

Mr DAVID CRAIG KC, **Mr CHARLES CIUMEI KC**, and **Mr CHRISTIAN DAVIES** (instructed by **Allen Overy Shearman Sterling LLP**) appeared on behalf of the **Claimants**

Mr ARNOLD AYOO and **Mr BENN SHERIDAN** (instructed by **Rakasons Limited**) appeared on behalf of the **Defendant**

APPROVED JUDGMENT

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(Official Shorthand Writers to the Court)

EMPLOYMENT *– Confidential information – Application by defendant for anonymity order – Open justice principle*

The follow authorities are referred to in this extemporary judgment:

A v British Broadcasting Corporation [2014] UKSC 25, [2015] AC 588
Abbasi v Newcastle upon Tyne Hospitals NHS Foundation Trust [2025] UKSC 15, [2025] 2 WLR 815
British Broadcasting Corporation v Roden [2015] ICR 985
Braunford LLP v Allain [2025] EWHC 1934 (Ch)
Re Guardian News and Media Limited [2010] UKSC 1, [2010] 2 AC 697
R v Legal Aid Board (ex parte Kaim Todner) [1999] QB 966
R(C) v Secretary of State for Justice [2016] UKSC 2, [2016] 1 WLR 444

JUDGE HODGE KC:

1. This is my extemporary judgment on a further aspect of claim number IL-2025-000064.

2. Yesterday afternoon, I delivered an extemporary judgment granting an application by the claimants for an expedited trial of this claim, and also granting a limited extension of the defendant's time for filing and serving his defence. That judgment has already been transcribed, and approved by me, and bears the neutral citation number [**2025] EWHC 1934 (Ch)**. Reference should be made to that judgment for the background to the present application.

3. This present application is one issued by the defendant on 30 May 2025, seeking an anonymity order under CPR 39.2(4). That provision of the Civil Procedure Rules states that *"the court must order that the identity of any person 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 person"*. I consider that the emphatic direction *"must order"* directs the court's attention to the strict, and limited, pre-conditions required for a non-disclosure order, rather than focussing upon the court's exceptional power to make such an order.

4. The defendant seeks, in addition, appropriate reporting restrictions to prevent the reporting of any material that might disclose his identity. During the course of this hearing, it became apparent that the defendant also seeks that relief in relation to a public hearing that took place before Mr Justice Michael Green on 20 June 2025. During the course of this hearing, I was taken to two short passages in the transcript of that hearing where reference was made by junior counsel then appearing for the defendant (Mr Benn Sheridan) first to the defendant's first name (at page 11H), and then to his second name (at page 12 between letters C and D). So any reporting restrictions and anonymity order would have to extend also to that part of that transcript.

5. The reasons for seeking an anonymity order are essentially set out at paragraphs 78 through to 80 of the joint skeleton argument prepared for the purposes of this hearing by Mr Arnold Ayoo and Mr Benn Sheridan (of counsel). It was junior counsel, Mr Sheridan, who addressed me orally today on the anonymity application. Mr Sheridan

expanded upon the written arguments cited in support of the anonymity application during the course of his oral submissions to the court this morning. Mr Sheridan made it clear in opening that there is no real issue as to the essential nature of the applicable legal test. In their supporting skeleton argument, Mr Ayoo and Mr Sheridan refer to the summary to be found at paragraph 11-09 of the 20th edition of ***Phipson on Evidence***:

> *… when considering an application for anonymity, the court must carry out a balancing exercise of the relevant interests under CPR 39.2. In carrying out that balancing exercise, the court must have regard to: (i) the importance of freedom of expression, protected by article 10 of the European Convention on Human Rights and Fundamental Freedoms; (ii) the fundamental rule of the common law that proceedings must be heard in public (subject to certain specified classes of exceptions); (iii) the need to be careful to prevent extensions of exceptions by analogy; and (iv) giving rights to parties who may have their private life affected by court proceedings, among other things. The threshold for an anonymity order is a high threshold.*

6. Mr Sheridan indicates that the defendant recognises that derogation from this principle is not to be made lightly. Nevertheless, he seeks anonymisation on the following basis:

7. First, that publicity would imperil his rights to a private life in the form of his professional autonomy. He is likely to lose his contractual right to commence work for a particular employer should his name be publicised. He is presently on gardening leave until 24 March 2026; but he is contracted to start work for that employer, in Miami, on 6 April 2026. As well as damaging his right to work in the financial services industry, with no guarantee that he would obtain any similar job, the loss of future employment would stifle the source of income he will be using to fund this claim (should every aspect of it not have been concluded before the termination of his future employment). This would therefore imperil the proper administration of justice.

8. In his oral submissions, Mr Sheridan emphasised that the defendant has an objectively-held belief that, should it become known to his employer that he has been subjected to an imaging and inspection order, and to interim injunctive relief, there is a significant risk that that employer will withdraw the defendant's existing job offer.

That will stifle his ability to defend this claim, because this depends upon his future employment. That is one of the purposes which anonymity is intended to serve.

9. The second basis upon which Mr Sheridan relies is that, because of the confidentiality restrictions to which he is presently subject, the defendant does not have the same opportunity as other defendants would have to convey to any prospective employer, including his present proposed employer, precisely what allegations the claimants are making against him, or what his defence to those allegations is. He would therefore be subject to a prejudice that he could not mitigate. The room for adverse inference could damage any prospects of his present, or any future alternative, employment. It is said that that makes this an exceptional case, which justifies a departure from the open justice principle. The fair balance between the claimants seeking higher levels of confidentiality in respect of the documents which are material to this claim (which itself involves a derogation from the open justice principle) and the defendant is sufficient ground for granting anonymity to the defendant.

10. In his oral submissions, Mr Sheridan made the point that the effect of extensive redactions to the several documents which the claimants have already secured prevents him from mounting an effective defence to any present, or prospective, employer of his conduct in this litigation. He cannot properly explain or defend his actions to third parties, including present and future employers in the financial services industry. They are able to draw adverse inferences against the defendant, which he can do nothing to mitigate.

11. Mr Sheridan advanced two further arguments in support of his anonymity application during the course of his oral submissions this morning. His third argument is that, unless anonymity is ordered, the principled basis upon which the court ordered an expedited trial yesterday would disappear. The expedited trial has resulted in an element of queue-jumping, because the court accepted that the present uncertainty over what the defendant would be able to do in any future employment needed to be resolved before he was due to take up his present role with his future employer on 6 April 2026. Were the defendant to lose his job in the meantime, the leapfrogging of this claim to trial, and the consequent compressed trial timetable, which will inevitably put strains on the parties, and particularly the less well-resourced defendant, will prove to have been to no avail. It

would be entirely consistent with the reasons that led the court to order an expedited trial to extend anonymity up to the end of that trial. The way Mr Sheridan put it was that the defendant may well vindicate his rights at trial, but that will be too late for him if he has lost his job in the meantime. Mr Sheridan emphasised that well-remunerated jobs of the kind that the defendant has secured are hard to get. He also emphasised the need for the defendant to keep his skill-set sharp by continuing employment.

12. The fourth reason advanced by Mr Sheridan is that, if the court is in any doubt as to where the balance falls, then the appropriate course would be to preserve the present status quo, and to continue the existing state of anonymisation until after the trial.

13. During the course of his oral submissions, Mr Sheridan took me to the recent decision of the Supreme Court in the case of *Abbasi v Newcastle upon Tyne Hospitals NHS Foundation Trust* [2025] UKSC 15, reported at [2025] 2 WLR 815.

14. I agree with the submissions of Mr David Craig KC, who appears for the claimants, that that case is not entirely in point. It concerned the bringing of injunctive proceedings by an NHS Foundation Trust under the inherent jurisdiction of the High Court for a declaration that the withdrawal of life-sustaining treatment was in the best interests of a child. The question for the court was whether it had jurisdiction to grant injunctive relief prohibiting the naming of the clinicians involved in the child's care, and the extent to which the court had jurisdiction to continue any such injunction after the termination of legal proceedings, following the death of the child. It was really concerned with the rights of the clinicians, who were not themselves parties to litigation. I consider it to be of marginal, if any, relevance to the present application.

15. I was taken to a number of other authorities, including the decision of the Supreme Court in *Re Guardian News and Media Limited* [2010] UKSC 1, reported at [2010] 2 AC 697. I was also taken to the decision of Mrs Justice Simler, sitting in the Employment Appeal Tribunal, in *British Broadcasting Corporation v Roden* [2015] ICR 985.

16. Mr Sheridan sought to distinguish the *Guardian News* case on the footing that that authority concerned suspected terrorists who were engaged in challenging their designation, as such. Mr Sheridan emphasised that, inevitably, designation as

a suspected terrorist had a public interest attaching to it which is entirely absent from the circumstances of the present case.

17. As far as *British Broadcasting Corporation v Roden* was concerned, it was the party seeking anonymity in that case who had initiated the relevant litigation (which was a claim of unfair dismissal). Here, as Mr Sheridan rightly emphasised, it is the defendant who is seeking an anonymity order. He has not chosen to embark upon the instant litigation; far from it.

18. Mr Sheridan submitted that, due to shortness of available court time (due to an over-optimistic time estimate from the parties), the defendant has effectively been denied any opportunity of challenging the propriety of the initial imaging order, which had been made on a without notice basis. That application for discharge has effectively been adjourned to the start of the substantive trial. Therefore, the anonymity, which Mr Sheridan submits has applied thus far, should continue until the defendant's rights have been adjudicated upon, and, in Mr Sheridan's submission, vindicated at that trial. Essentially, he says that anonymity of the defendant should be preserved until there can be an effective challenge to the injunction; and, in the circumstances of the present case, that can only be achieved at trial.

19. For the claimants, Mr Craig KC submits there are no good reasons for continuing anonymity. His reasons for that are developed at considerable length in the joint skeleton argument of the claimants' counsel (at paragraphs 43 through to 45). Mr Craig emphasises that the principles of open justice require that, so far as possible, hearings should be conducted in public, should be fully reportable, and that parties to proceedings should be named, and not anonymised. The naming of parties is a fundamental aspect of open justice, and is not some sort of optional extra.

20. He referred me to a helpful summary of the principles set out by Mrs Justice Simler in *British Broadcasting Corporation v Roden*. He referred me also to observations of Lord Woolf MR, speaking for the Court of Appeal, in *R v Legal Aid Board (ex parte Kaim Todner)* [1999] QB 966, at 977E-H. Mr Craig submitted that, in the light of the authorities, the defendant has not come even close to surmounting the very high hurdle

that he needs to pass before the court will be prepared to make an anonymity order. He submits that his evidence in support of this application is neither clear nor cogent.

21. Mr Craig emphasised four matters: The first is that open justice is a principle of paramount importance. The second is that there are two aspects to that principle. The first of these two aspects is that justice should be done, and should be seen to be done, in open court, so that everyone should know what is going on. The second aspect is that the names of the parties, and others involved in litigation, should be public knowledge. Third, any derogation from open justice can be justified only if it is strictly necessary, and then only so as to promote the proper administration of justice. That is clear from the terms of CPR 39.2(4) itself, whereby the court may order that the identity of any person shall not be disclosed if, and only if, it considers such non-disclosure necessary, both to secure the proper administration of justice, and in order to protect the interests of that person. Fourth, the burden of establishing the justification for an anonymity order, or any other derogation from the open justice principle, lies firmly on the party who seeks it; and it must be based on clear and cogent evidence.

22. Mr Craig referred me to observations of Lord Reed in the case of *A v British Broadcasting Corporation* [2014] UKSC 25, reported at [2015] AC 588 at [23]. He also took me to the *Practice Guidance* issued by the then Master of the Rolls on Interim Non-Disclosure Orders (with effect from 1 August 2011) which remains in force. Mr Craig also referred me to observations of Baroness Hale in the case of *R(C) v Secretary of State for Justice* [2016] UKSC 2, reported at [2016] 1 WLR 444.

23. By reference to the *Guardian News* case, Mr Craig emphasised that the fact that some people might think that there was a proper basis for the order made in this case is no proper basis for granting anonymity. Right-thinking, and well-informed, members of the public will appreciate that the imaging order was made at a without notice hearing, at which the defendant had no opportunity to raise any points by way of defence. Unlike the *Guardian News* case, this is a case where the defendant will be able to challenge the propriety of the without notice relief at trial. Mr Craig made the point that many criminal trials proceed against named defendants who may, as a result of the existence of those criminal proceedings, lose their employment; but that is no proper basis for making

an anonymity order. The fact that in civil litigation serious allegations may be made against a defendant is no proper basis for the making of an anonymity order.

24. At one point, Mr Craig submitted that the potential loss of the defendant's employment opportunity does not engage his article 8 rights at all. I agree with this submissions of Mr Sheridan that article 8 may well extend to the right to choose. and follow, a profession. Therefore I would not accept that aspect of Mr Craig's submissions. But I do accept his submission that the principles that fall to be applied in cases of the present kind do not depend upon whether the party seeking anonymity is the party bringing the case, or the one against whom proceedings are brought; indeed, inevitably, it is likely to be the defendant, facing serious allegations, who has the greatest interest in seeking anonymity.

25. In the course of his reply, Mr Sheridan made the point that the defendant has produced evidence to the degree of cogency that is available to him. Clearly, he could not ask his future employer if he would withdraw his offer of employment as a result of the interim relief granted in this case because that would inevitably involve him in having to disclose the existence of that relief. I accept Mr Sheridan's point that the evidence available to the defendant to put before the court is, to that extent, necessarily limited.

26. Mr Sheridan also made the point, in reply, that he is simply seeking a very limited derogation from the open justice principle on behalf of the defendant. The defendant accepts that the court should sit in public. He is merely seeking a continuation of an order, which Mr Sheridan says has already effectively been made, conferring anonymity on the defendant. That is a little difficult to reconcile with the way in which the matter proceeded at the hearing before Mr Justice Michael Green on 20 June; nevertheless, I put that difficulty on one side.

27. Mr Sheridan also told me, in reference to the email to which I made reference yesterday of (I think) 22 July, that the defendant has told the head-hunter, or recruiter, nothing about this litigation, but he had simply inquired about the implications of not being able to start his employment with his new employer on the scheduled start date of 6 April next year.

28. Those essentially are the submissions. I am particularly impressed with the observations made by Mrs Justice Simler in her judgment in *BBC v Roden*, in particular at paragraph 27. There, she made reference to the rejection, in an earlier Court of Appeal case, of the submission that there should be a lower threshold for interference with the open justice principle at an interlocutory stage of litigation. It was held in the earlier Court of Appeal case that the open justice principles have universal application, except where it is strictly necessary to depart from them in the interests of justice. One example of that would be to protect a party against blackmail. In such a case, there might, on the particular facts, be a need for anonymisation so as to avoid the full application of the open justice principle exposing a victim of blackmail to the very detriment which his cause of action was designed to prevent. But in a case where (if appropriate) an individual's rights are liable to be vindicated in the trial process, the extension of such an approach could equally be applied to countless commercial and other cases in which allegations of serious misconduct are being, or have been, made. To allow too ready an extension of the anonymisation of a litigant would result in a serious erosion of the open justice principle. Indeed, Mr Craig pointed out that if the submissions being made to the court in this case were to be accepted, cause lists in every court, every day, would have the appearance of *"alphabetti spaghetti"*.

29. Taking the defendant's evidence even at face value, I am not at all satisfied that the defendant has made out a sufficiently clear and cogent case for anonymisation of his identity, going forward. The authorities make it clear that persons in the position of the defendant's present prospective employer, and any future potential employers, can be treated as approaching cases of the present kind with an appropriate degree of circumspection and common sense. I do not accept that the defendant is hampered by the confidentiality restrictions and redactions from explaining his position accurately to an employer. Should enquiries ever be directed to him about the present litigation, it will be open to him to explain that he strongly rejects the allegations of misconduct, and that he hopes, and expects, to be vindicated at a forthcoming trial that will, as a result of my expedition order yesterday, take place before his employment is presently scheduled to start.

30. I am troubled by the fact that, if I grant an anonymisation order in this case, then it would open the gates to applications for such orders in many other cases. This is not a case of

sufficient concern to the defendant to justify making an anonymity order. I accept the submissions to the contrary advanced by the claimants.

31. So, for those reasons, balancing the points made on behalf of the defendant by Mr Sheridan, and his article 8 rights to pursue his profession, and the risks of reputational damage, against the requirements of the open justice principle, which extends to the naming of the parties to litigation, I have no hesitation in coming down in favour of the conclusion that anonymisation is not justified in the present case.

32. So for those reason, I dismiss the anonymisation application.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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