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Appleton & Gallagher v News Group Newspapers and PA [2015] *EWHC 2689 (Fam)*

The court granted permission to NGN Ltd to appeal to the Court of Appeal to resolve the "unhappy divergence of judicial approach" to privacy and reporting restrictions in ancillary relief cases.

On 28 September 2015 Mostyn J handed down judgment following his earlier holding order made on 15 September 2015.

On Monday 14 September 2015 Nicole Appleton and Liam Gallagher had presented His Honour Judge O'Dwyer with a joint application, pursuant to FPR 27.11(3), to exclude the press from the ancillary relief hearing upon which they were about to embark at the Central Family Court.

By the time Mostyn J came to hear the matter, the case had been heard by HHJ O'Dwyer, who had reserved judgment. It was heard in private in the presence of members of the press.

Although HHJ O'Dwyer had wondered whether only the High Court could make a reporting restriction, the "clear opinion" of Mostyn J was that the court of trial had that power, because the proceedings were not children proceedings within the terms of FPR 25.2(1) (§ 4).

It was a "serious understatement" .. "to say that the law about the ability of the press to report ancillary relief proceedings which they are allowed to observe is a mess" (§6).

The implied undertaking

Mostyn J expressed approval of the decision of the Court of Appeal, in Clibbery v Allan (No 2) [2002] EWCA Civ 45 which provided the rationale for the "long-accepted prohibition on publication of private ancillary relief proceedings held in chambers". Ancillary relief proceedings are subject to a "far wider" scope of disclosure than in a civil dispute: "you basically have to disclose everything about your economic life" (§ 8). But "information compulsorily extracted by one party from the other is subject to an implied undertaking that it will not be used for any purpose other than the proceedings" (§ 14). A party telling the press what the other

party had said in the witness box would be in contempt of court, as would a third party who subsequently published what had been said.

Section 12 of the Administration of Justice Act 1960 did not prohibit the reporting of ancillary relief proceedings held in private per se, but the existence of the implied undertaking had the same collateral effect (§ 9 – 10).

27 April 2009: impact of the new Rules (FPR 2010)
The current rules were implemented on 27 April 2009 when the FPR 2010 came into force. FPR 27.11 permits the admission of the press, but not the public, as the proceedings are held in private. Parliament had specifically maintained these proceedings as private (§ 14). However, "the press are not allowed any access to documents whatsoever" (§ 13). The continuation of reporting restrictions which existed prior to the FPR 2010 was confirmed by PD27B § 2.4 and 5.2 (b).

"It is inconceivable that Parliament could have intended to destroy the effect of the implied undertaking when it allowed the press to observe these private proceedings as a watchdog" (§ 15).

The balancing exercise
Mostyn J considered the balancing exercise in Re S [2004] UKHL 47, between the right to privacy and the right to unfettered freedom of expression: "the press have to justify why the core privacy maintained and endorsed by Parliament should be breached". In ancillary relief proceedings "the privacy side of the scales starts with heavy weights on it" (§ 16). But a judgment would be made public in at least two situations: firstly where there has been "proof of iniquity" as in Lykiardopulo v Lykiardopulo [2010] EWCA Civ 1315, and secondly "the McCartney situation" (§ 16). The latter was best explained by Ryder J in Blunkett v Quinn [2004] EWHC 2816, as "the ability to correct false impressions and misconceived facts will go further to help secure the Art 6 and Art 8 rights of all involved than would the court's silence" (citing Ryder J, at § 22).

Cases where the balancing exercise would lead to the proceedings being allowed to be published might be either where "the parties have both played out their matrimonial collapse through the press", or "where there had already been hearings in open court giving much financial information" as "in the tragic case of Young v Young" [2013] EWHC 3637.

The resulting legal framework

Mostyn J stated "I may be wrong about the collateral effect of the implied undertaking on third party journalists in the new era" (§ 18). However, he expressed his view that comments of Munby J (as he then was) in Norfolk County Council v Webster & Ors [2006] EWHC 2733 (Fam), where journalists were permitted to enter court and observe, could not survive the opening words of FPR 27.11 because "a hearing cannot be in private and not in private at the same time" (§ 18).

If the court were to be wrong, then it "ha[d] to conduct a pure, fact-specific Re S balancing exercise. In such a situation the implied undertaking will still be fully operative as between the parties" (§ 19). Restrictions on reporting divorce in the Judicial Proceedings (Regulation of Reports) Act 1926, and the exception of matrimonial cases from the requirement of public judgment in the 1966 International Covenant on Civil and Political Rights, added weight to the "privacy" side of the scales. The relevance of the 1926 Act was that "the privacy factor has, up to a point, already been strongly recognised by Parliament even for those cases heard in public" (§ 22).

Application to the facts

With respect to the current restriction on identification of anyone but the parties and their lawyers, Mostyn could "see no reason why the press should not be able to name not only those parties but also their partners, past and present. After all, those names are to be found all over the internet" (§ 26). An order preventing only the naming of the children would remain.

As regard the parties' financial information, neither had "manipulatively invoked the press to fight their causes", and nor had the financial information been aired in previous open court proceedings (§ 27). Most of the financial information was subject to the implied undertaking –

"the bedrock of the right to privacy" – with the collateral bind on observing journalists (§ 27), and consequently the reporting restriction, to continue.

If the court were wrong about the continuing applicability of Clibbery v Allan, then the court reached the same conclusion as a result of conducting the Re S balancing exercise: "neither party has sought to yoke the press to his or her cause. Neither has spoken about this divorce. Press comments thus far have been limited. It is not a case where there has been extensive inaccurate speculation. [But on] the freedom of expression side of the scales is the fact that some of the comments have been factually and legally incorrect" (§ 28).
It would be for HHJ O'Dwyer to decide whether a full judgment should be published (§ 5, 28).

NGN Ltd was granted permission to appeal on both limbs of CPR 52.3 (6) so that "the Court of Appeal will resolve the unhappy divergence of judicial approach to which I referred at § 13 – 16 of DL v SL" [2015] EWHC 2621 (Fam) (i.e. "ordering pursuant to FPR 27.10 that every ancillary relief case … should be heard in open court" (DL v SL, supra, § 13).

Summary by Gwyn Evans, Barrister, Tanfield Chambers

Neutral Citation Number: [2015] EWHC 2689 (Fam)
Case No: FD13D04383

IN THE HIGH COURT OF JUSTICE
FAMILY DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 28/09/2015

Before :

MR JUSTICE MOSTYN

- -

Between :

Nicole Appleton Petitioner
and
Liam Gallagher Respondent
and
(1) News Group Newspapers Ltd
(2) The Press Association Interested parties

- -

Patrick Chamberlayne QC (instructed by Sears Tooth) for the Petitioner and (in effect) for the Respondent
Jacob Dean (instructed by NGN Legal) for the First Interested Party
Brian Farmer lay representative for the Second Interested Party

Hearing date: 22 September 2015

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Approved Judgment
I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.
.....

MR JUSTICE MOSTYN
This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.

Mr Justice Mostyn:

1. On Tuesday 15 September 2015 I made an order restricting the reporting by the press of the ancillary relief proceedings between Nicole Appleton and Liam Gallagher. My order was in the same terms as that made by me in the case of DL v SL [2015] EWHC 2621 (Fam), save that I allowed the fact that the parties were engaged in those proceedings to be made public. I also made clear that the press could photograph them arriving and leaving court. My order provided that I would reconsider the matter on Tuesday 22 September 2015, which I duly did. On that occasion I heard detailed submissions from Mr Patrick Chamberlayne QC (in effect representing the interests of both of the parties) and from Mr Jacob Dean representing NGN, the publishers of the Sun newspaper. I also heard from Mr Brian Farmer of the Press Association.

2. The matter came before me in the following circumstances. On Monday 14 September 2015 I was contacted by Judge O'Dwyer who was about to embark on the ancillary relief hearing at the Central Family Court and who had been presented with a joint application by the parties for exclusion of the press pursuant to FPR 27.11(3). The terms of that rule and of PD27B make clear that the power to exclude is vested in the court of trial. However PD27B para 5.2(b) obliges the court to consider lesser measures such as a reporting restriction order before making an exclusion order. PD12I states that only the High Court can make orders restricting the publication of information about children or incapacitated adults. In this case the parties have a child, and Liam Gallagher has three other children, and any reporting restriction order would cover details about them, although its scope would be wider than that and would focus mainly on adult matters. In such circumstances Judge O'Dwyer wondered if only the High Court could make a reporting restriction order in this case, and it was thus that the matter came before me on Tuesday 15 September 2015. There was insufficient time to consider the arguments which Mr Dean wished to advance and I therefore made a holding order until I could reconsider the matter.

3. The parties returned to Judge O'Dwyer's court and between Wednesday 16 September and Friday 19 September 2015 the case was heard in private but in the presence of a number of members of the press. Judge O'Dwyer has reserved judgment.

4. It is my clear opinion that the court of trial has full power to make a reporting restriction order in proceedings which are not "children proceedings" within the terms of FPR25.2(1). The only financial remedy proceedings which qualify as children proceedings are those which relate "wholly or mainly to the maintenance or upbringing of a minor". Children proceedings fall squarely within PD12I and so any reporting restriction order in such proceedings can only be made by the High Court. Otherwise, so it seems to me, the court of trial is fully vested with the power to control the reporting of the proceedings before it. It would be strange, to say the least, if the court of trial could exercise the power to exclude the press, and to decide whether to anonymise or redact its judgment, but not to control what could be reported about the case as it proceeded. Plainly, should the court of trial be minded to make a reporting restriction order the notice procedure in PD12I should be followed to the letter.

5. All I am being asked to decide today is whether the existing order, which restricts the reporting of the proceedings, should be lifted, or modified, at this point. I am not being asked to decide whether Judge O'Dwyer should publish his judgment or, if he does, whether it should be anonymised or redacted, and if so, how. That is matter solely for him. It is highly important that I should exercise my powers very carefully and cautiously so as not to pre-empt his decision about publication, anonymisation or redaction of his judgment. I should also make clear that it will be for him, in the light of his decision about what to do with the judgment, to revisit the reporting restriction order which I will now make.

6. This judgment follows hard on the heels of my judgment in the case of DL v SL. To say that the law about the ability of the press to report ancillary relief proceedings which they are allowed to observe is a mess would be a serious understatement. The chaotic state of the law has been fully set out by me in W v M (TOLATA proceedings: anonymity) [2012] EWHC 1679 (Fam) and by Roberts J in Cooper-Hohn v. Hohn [2014] EWHC 2314 (Fam).

7. At the risk of repeating what I and Roberts J have said about the history it is worth recalling what the position was before the rule change on 27 April 2009. Proceedings for ancillary relief were heard in chambers and no-one apart from the parties or their representatives could attend. In Clibbery v Allan (No 2) [2002] EWCA Civ 45, [2002] 1 FLR 565 Thorpe LJ stated at para 90

that "it was never doubted that publication of such private proceedings was prohibited". At para 93 he continued:

"It therefore seems to me that Parliament has been sparse in its contribution to unravelling the question of what, if anything, may be extracted from family proceedings in private for subsequent publication. That may be because there seemed to be little need for Parliament to legislate. In the family justice system the designation 'in chambers' has always been accepted to mean strictly private. Judges, practitioners and court staff are vigilant to ensure that no one crosses the threshold of the court who has not got a direct involvement in the business of the day. ... This strict boundary has always been scrupulously observed by the press. Of course the judge always retains a residual discretion and, accordingly, a hearing in chambers may culminate in a judgment in open court. Alternatively the judge may make an abbreviated statement in order that the public interest in the proceedings may be at least partially satisfied."

8. In Clibbery v Allan the Court of Appeal provided the rationale for this long-accepted prohibition on publication of private ancillary relief proceedings held in chambers. It was not based on the terms of the Judicial Proceedings (Regulation of Reports) Act 1926. Rather, it concentrated on the very fierce demands made of the parties by the process. There is an absolute duty of full frank and clear disclosure. The court exercises an inquisitorial function. The information provided by the parties is made under compulsion and extends to all aspects of their economic existence, past, present and future. The scope of disclosure is far wider than in a civil dispute. There the disclosure will only be of those particular documents which relate to the subject matter of the dispute. In contrast, in ancillary relief proceedings you basically have to disclose everything about your economic life.

9. Information compulsorily extracted by one party from the other is subject to an implied undertaking that it will not be published or used for any purpose other than the proceedings. Although section 12 of the Administration of Justice Act 1960 does not prohibit the reporting of proceedings held in private per se (unless they wholly or mainly concern children) the existence of the implied undertaking in relation to confidential information compulsorily extracted has the same effect. If a party were to walk out of court and tell the press what the other had said in the witness box then he or she would be in contempt; and, if the press were to

publish it, they would be equally guilty by their complicity. Thus Dame Elizabeth Butler-Sloss P stated at para 72:

"It would make a nonsense of the use of an implied undertaking if information about the means of a party, in some cases sensitive information, could be made public as soon as the substantive hearing commenced. Information disclosed under the compulsion of ancillary relief proceedings is, in my judgment, protected by the implied undertaking, before, during and after the proceedings are completed."

10. The President was clear as to the collateral effect of the undertaking. At para 75 she stated: "I am satisfied that all cases involving issues of ancillary relief are also protected from publication by anyone without the leave of the court." At para 106 Thorpe LJ said:

"in the important area of ancillary relief … all the evidence (whether written, oral or disclosed documents) and all the pronouncements of the court are prohibited from reporting and from ulterior use unless derived from any part of the proceedings conducted in open court or otherwise released by the judge."

11. That judgment has stood for 13½ years. Yet Mr Dean in effect asks me to depart from it. That would be very bold, even if I disagreed with it, which I do not.

12. It is quite clear to me that the rule change which came into effect on 27 April 2009 was not intended to abrogate this core privacy provided by the implied undertaking and the hearing of the proceedings in chambers. That rule change was to enable the world to understand how children proceedings, especially public law care proceedings, were conducted. This is clear from the White Paper Family Justice in View (Cm 7502) of 16 December 2008, which actually announced an intention to pass legislation to stiffen the existing reporting restriction rules. In Re Child X (Residence & Contact - Rights of Media Attendance) [2009] EWHC 1728 (Fam) published on 14 July 2009, shortly after the rule change, Sir Mark Potter P explained the scope of the new scheme, as applicable to children proceedings, at para 97 in these terms:

"The net result of all this is that, while the press are entitled to report on the nature of the

dispute in the proceedings, and to identify the issues in the case and the identity of the participating witnesses (save those whose published identity would reveal the identity of the child in the case), they are not entitled to set out the content of the evidence or the details of matters investigated by the Court. Thus the position has been created that, whereas the media are now enabled to exercise a role of "watchdog" on the part of the public at large and to observe family justice at work for the purpose of informed comment upon its workings and the behaviour of its judges, they are unable to report in their newspapers or programmes the identity of the parties or the details of the evidence which are likely to catch the eye and engage the interest of the average reader or viewer."

13. This strict "watchdog" role is confirmed by the terms of the rules themselves. FPR 27.11, which permits the admission of the press, confirms that the proceedings are held in private. The public themselves are not allowed in. It would have been the easiest thing to have rewritten FPR 27.10 and 11 to say that the proceedings are to be held in public, but that step, by design, was not taken. Further the press are not allowed any access to documents whatsoever – see FPR 29.12. This is only consistent with a watchdog role, because without the documents the press can hardly be expected to be able to report the case intelligibly or even-handedly. Further still, PD 27B paras 2.4 and 5.2(b) confirm the "unaffected" continuance of the existing reporting restrictions for such proceedings held in private. So I do not agree with Mr Dean when he says that I have over-emphasised in my previous decision the watchdog role given to the press by the rule change. On the contrary it is clear to me that that is exactly the role that the rule change was intended to achieve.

14. It would be the most startling example of the law of unintended consequences if the result of the rule change was that the press could report everything they heard in an ancillary relief hearing they were allowed to attend. It is not a dilution of the principle of open, public and fully reportable justice, the importance of which I naturally recognise, for me to explain that the rule change only granted the press the right, as watchdogs, to observe private business being dealt with by the court, but not to report specific details of the case. As I have explained, Parliament when passing the rules specifically maintained these proceedings as private, and denied members of the public admission to them.

15. In Cooper-Hohn v. Hohn [2014] EWHC 2314 at para 158 and 159 Roberts J recorded a submission by Mr Wolanski of counsel which he described as "crucial". It was that implied undertakings in ancillary relief proceedings prior to the rule change did not bind third parties in the absence of any express contractual arrangements. The implied undertaking created a situation of complete privacy simply because the press were not permitted in the courtroom. There was no practical way they could access the documents and they were not present in court to hear the arguments. Now that the press are permitted into the courtroom they can report whatever they hear in the absence of an injunction or a statutory provision preventing it 1. Roberts J rejected that argument. Mr Dean adopted it in this case and I also reject it. In my opinion the words of the President and of Thorpe LJ apply equally after the rule change. It is inconceivable that Parliament could have intended to destroy the effect of the implied undertaking when it allowed the press to observe these private proceedings as a watchdog. The existence of the implied undertaking in the post rule change era was unambiguously confirmed by the Court of Appeal in Lykiardopulo v Lykiardopulo [2010] EWCA Civ 1315, [2011] 1 FLR 1427, in particular in the judgment of Stanley Burnton LJ at paras 76 and 79. If Mr Dean is correct then Parliament will have thrown the baby of privacy of confidential information out with the bathwater of a supposedly secretive judicial process.

16. In my previous judgment at para 10 I stated "there are some categories of court business, which are so personal and private that in almost every case where anonymisation is sought the right to privacy will trump the right to unfettered freedom of expression." After having heard Mr Dean's excellent submissions I accept that I may have expressed the proposition too strongly. The use of the bridge metaphor may suggest that the Re S [2004] UKHL 47 balancing exercise is not undertaken at all, because the ace of trumps always wins the trick. Even in Clibbery v Allan the President at para 84 accepted that the balancing exercise must be undertaken. It is trite law that in proceedings held in open court the starting point is that the proceedings will be fully public and that any derogation therefrom must be justified. In other words the freedom of expression side of the scales starts with some heavy weights on it. In ancillary relief proceedings it seems to me that the situation is the other way round. The press have to justify why the core privacy maintained and endorsed by Parliament should be breached. Here the privacy side of the scales starts with heavy weights on it. But there are at least two situations where the balancing exercise will lead to a judgment being fully public. One is where there has been proof

of iniquity, as happened in Lykiardopulo. In such a case the delinquent party will lose the benefit of his "pact with the court" (as Stanley Burnton LJ put it). The other is the McCartney situation. That was best explained by Ryder J in Blunkett v Quinn [2004] EWHC 2816 (Fam), [2005]1 FLR 648, at para 22:

"In considering the competing rights [under Articles 6, 8 and 10], I have come to the clear conclusion that having regard to the quantity of material that is in the public domain, some of it even in the most responsible commentaries wholly inaccurate, it is right to give this judgment in public. The ability to correct false impressions and misconceived facts will go further to help secure the Art 6 and Art 8 rights of all involved than would the court's silence which in this case will only promote further speculation and adverse comment that will damage both the interests of those involved and the family justice system itself."

In such a case higher interests justify the overreaching of the confidentiality assured by the implied undertaking.

17. It is harder, but not impossible, to conceive of a case where the balancing exercise would lead to the proceedings being allowed to be published as they went along and in advance of the judgment. One example might be where the parties have both played out their matrimonial collapse through the press with each giving interviews or private briefings about the development of the case. In such a case it could be said that they have waived their privacy rights. Another would be where there had already been hearings in open court giving much financial information, such as was the position in the tragic case of Young v Young [2013] EWHC 3637 (Fam) [2014] 2 FCR 495.

18. I recognise that I may be wrong about the collateral effect of the implied undertaking on third party journalists in the new era. It may be that in this regard Clibbery v Allan is now a dead letter and that Lykiardopulo was wrongly decided. In Norfolk County Council v Webster & Ors [2006] EWHC 2733 (Fam), a case decided in the old era, Munby J, as he then was, at para 121 held that a case where journalists were permitted to enter court and observe the proceedings under an ad hoc arrangement was not one held "in private" for the purposes of section 12 of the 1960 Act. That view cannot, so it seems to me, survive the opening words of FPR 27.11, which

expressly state that the right granted to journalists is to attend a hearing held in private. A hearing cannot be in private and not in private at the same time.

19. But, as I say, I may be wrong. If I am then I agree with Mr Dean that the court has to conduct a pure, fact-specific Re S balancing exercise. In such a situation the implied undertaking will still be fully operative as between the parties. That is a factor to be placed on the privacy side of the scales along with the facts that Parliament has already restricted the reporting of divorce by the 1926 Act and that the 1966 International Covenant excepts matrimonial cases from the requirement of giving judgments in public.

20. Mr Dean has very politely sought to hoist me on my own petard as regards the 1926 Act. In DL v SL I expressed the view that the Act applied not only to the suit for divorce itself, were it to be defended and fought out in open court, but also to proceedings for ancillary relief. The 1926 Act allows a summary of charges and counter-charges to be published as well as the judgment of the court. Those restrictions can be relaxed, or lifted altogether, by an order made under section 1(4): see Rapisarda v Colladon [2014] EWFC 1406 at para 41. By the same token the court can, by making a reporting restriction order, stiffen the existing restrictions.

21. Mr Dean points to my observation in DL v SL at para 11 that the 1926 Act has been amended, and therefore affirmed, by Parliament in 1968, 1996, 2003 and 2004, and that therefore the scope of publication permitted by the Act must be taken to be the default or normal situation. As the 1926 Act applies to ancillary relief proceedings (as I have held) then, he argues, that should be the default or normal position for them.

22. I do not agree with this clever argument. The 1926 Act was intended to cover those divorce or ancillary relief proceedings heard in open court. It would only apply to ancillary relief proceedings if the judge adjourned them from chambers into open court. It was a derogation, democratically enacted, from the principle of open, fully reportable, justice as so resoundingly proclaimed by the House of Lords in Scott v Scott [1913] AC 417. Its relevance to the issue I have to decide, which concerns the ability to report proceedings held in private, is that the privacy factor has, up to a point, already been strongly recognised by Parliament even for those cases heard in public.

23. The privacy factor is further recognised and given weight by the subscription of this country to the 1966 International Covenant which in Article 14(1) specifically excepts a matrimonial case from the requirement of a public judgment. As I have said in DL v SL to allow the proceedings to be reported would make a mockery of that exception.

24. And so I turn to this case. The orders made by me on Tuesday 15 September 2015 were as follows:

"The media is prohibited until further order from publishing any report of this case that:

(a) identifies by name or location any person other than the advocates or the solicitors instructing them save that the press may report (i) that the parties are engaged in ancillary relief proceedings at the Central Family Court and (ii) that the scope of what can be reported in relation to those proceedings will be finally decided at a hearing on 22 September 2015 before Mostyn J (listed below).

(b) refers to or concerns any of the parties' financial information whether of a personal or business nature including, but not limited to, that contained in their voluntary disclosure, answers to questionnaire provided in solicitors' correspondence, in their witness statements, in their oral evidence or referred to in submissions made on their behalf, whether in writing or orally, save to the extent that any such information is already in the public domain."

25. If the parties are well-known it seems to me that the press must be able to identify them and the fact that they are engaged in ancillary relief proceedings. The name of the case will be publicly published in the cause list and the parties will be seen by the public arriving and leaving court. The fact of the divorce and of the impending ancillary relief may well have been the subject of press reports. That has happened in this case. Thus, it would be absurd to ban publication by the press of those facts. On the other hand, if the parties are not well known an order for anonymisation should readily be granted. That order of course would not derive from the implied undertaking but would be in support of the other facets of the right to privacy. It would mirror the standard rubric on a Family Division judgment.

26. I do not think that injunction (a) is very happily drafted at present as it allows the parties to be named but no-one else, which is unreal given the press comment on this marriage and its collapse thus far. In fact as drafted injunction (a) even prevents the naming of me or Judge O'Dwyer. I can see no reason why the press should not be able to name not only the parties but also their partners, past and present. After all, those names are to be found all over the internet. The children's names are also to be found there but in the context of the reporting of this case I consider that it would be contrary to their interests for them to be named. In my judgment in this case (a) should be replaced by an order preventing the naming of the children and no more.

27. The real question is whether the order at (b) should be continued or modified or revoked. At present it is strictly confined to financial information. This is not a case where the parties have manipulatively invoked the press to fight their causes. Nor is it a case where there have been previous proceedings in open court where a lot of financial material has been aired. Most of the financial information will have been compulsorily extracted and is subject to the implied undertaking, which is the bedrock of the right to privacy, and which, as I have explained, collaterally binds the observing journalists, and where I find no good reason to release them from its effect. Therefore in my judgment the order should continue, for the time being.

28. If I am wrong about the collateral effect of the implied undertaking, and the continued validity of the pronouncements of the Court of Appeal in Clibbery v Allan, then I reach the same conclusion in conducting a pure Re S balancing exercise. I place in the privacy side of the scales the fact that the implied undertaking certainly operates between the parties. I place there the fact that neither party has sought to yoke the press to his or her cause. Neither has spoken about this divorce. Press comments thus far have been limited. It is not a case where there has been extensive inaccurate speculation. On the freedom of expression side of the scales is the fact that some of the comments have been factually and legally incorrect. That may militate in favour of publication of a full judgment but does not really explain why the proceedings should be reported. I repeat, however, that whether a full judgment should be published will be a matter solely for Judge O'Dwyer. Performing the pure balancing exercise I conclude that the order should be continued.

29. Under the terms of injunction (b) the press can report evidence or submissions that do not have a financial dimension. It is for the press to take advice as to whether or not a report of the proceedings crosses the line marked "financial information". It is not my role to give advice as to whether something falls on this or that side of the line. Mr Barney Monahan, a solicitor working for NGN, has given me a helpful list of matters of matters which arose during the proceedings which the Sun would wish to report. Some of those matters plainly do not have a financial dimension, so it seems to me. I would like to think that a discussion can take place between Mr Chamberlayne QC and Mr Dean leading to an agreement about which matters do not cross the line and can therefore be reported.

30. Injunction (b) permits, naturally, the reporting of information which is already in the public domain. It is right that I should explain this. Liam Gallagher's 34% interest in the company Pretty Green is available to be seen by the world from the accounts filed at Companies House. Thus the press could certainly have said before the case started that these are ancillary relief proceedings where all aspects of the parties' finances will be examined and that his interest in that company will likely be discussed. And there is nothing objectionable to the press asking an expert what he thinks that is worth based on those published accounts. That has already happened, in fact, in a report in the Independent on 20 April 2015. Given that this information is in the public domain I can see nothing objectionable in the press reporting that testimony was given in court about this company, but it would be quite wrong for it to say what the testimony was. Similarly there is nothing to prevent the press saying that testimony was given about the house in North London owned by Mr Gallagher (where his ownership is recorded at the Land Registry), and seeking and publishing the opinion of an estate agent as to its value. But again, it would be wrong for details of that testimony to be revealed.

31. The orders will therefore continue, as modified and explained by me, until Judge O'Dwyer hands down his judgment. He will then consider whether they should continue in the light of his decision about publication, anonymisation and redaction of the judgment.

32. I grant NGN permission to appeal on both limbs of CPR 52.3(6). I extend the time for the filing of the appellant's notice to 21 days after the giving of the decision by Judge O'Dwyer about publication, anonymisation and redaction of the judgment. Even though the question of the

hearing ancillary relief (and all other family cases) in public has not arisen in this case (and indeed was expressly not supported by Mr Dean in his submissions) I would hope that nonetheless the Court of Appeal will resolve the unhappy divergence of judicial approach to which I referred at paras 13 – 16 of DL v SL.

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1 It has to be said that this argument conflicts with Mr Wolanski's opinion as expressed by him in the July 2011 paper The Family Courts: Media Access & Reporting at paras 74 and 75.