



COUR EUROPÉENNE DES DROITS DE L'HOMME
EUROPEAN COURT OF HUMAN RIGHTS

24 October 2008

FOURTH SECTION

Application no. 39401/04
by MGN LIMITED
against the United Kingdom
lodged on 18 October 2004

STATEMENT OF FACTS

THE FACTS

The applicant, MGN Ltd, is the publisher of the United Kingdom national daily newspaper *The Daily Mirror* (formerly known as the *Mirror*). It is represented before the Court by K. Bays of Davenport Lyons, a solicitor practising in London.

A. The circumstances of the case

The facts of the case, as submitted by the applicant, may be summarised as follows.

1. The impugned publication

On 1 February 2001 the “*Mirror*” newspaper carried as its lead story an article headed “Naomi: I am a drug addict”. It concerned Ms Naomi Campbell who is a famous fashion model. The article was supported on one side by a slightly indistinct picture of a relaxed Ms Campbell over the caption: “Therapy: Naomi outside meeting”.

The article read as follows:

“Supermodel Naomi Campbell is attending Narcotics Anonymous meetings in a courageous bid to beat her addiction to drink and drugs.

The 30-year old has been a regular at counselling sessions for three months, often attending twice a day.

Dressed in jeans and baseball cap, she arrived at one of NA's lunchtime meetings this week. Hours later at a different venue she made a low-key entrance to a women-only gathering of recovered addicts.

Despite her £14million fortune Naomi is treated as just another addict trying to put her life back together. A source close to her said last night: 'She wants to clean up her life for good. She went into modelling when she was very young and it is easy to be led astray. Drink and drugs are unfortunately widely available in the fashion world. But Naomi has realised she has a problem and has bravely vowed to do something about it. Everyone wishes her well.'

Her spokeswoman at Elite Models declined to comment."

The story continued inside, with a longer article spread across two pages. The inside article was headed "Naomi's finally trying to beat the demons that have been haunting her". The opening paragraphs read:

"She's just another face in the crowd, but the gleaming smile is unmistakably Naomi Campbell's. In our picture, the catwalk queen emerges from a gruelling two-hour session at Narcotics Anonymous and gives a friend a loving hug.

This is one of the world's most beautiful women facing up to her drink and drugs addiction - and clearly winning.

The London-born supermodel has been going to NA meetings for the past three months as she tries to change her wild lifestyle.

Such is her commitment to conquering her problem that she regularly goes twice a day to group counselling ...

To the rest of the group she is simply Naomi, the addict. Not the supermodel. Not the style icon."

The article made mention of Ms Campbell's efforts to rehabilitate herself, and that one of her friends said she was still fragile but "getting healthy". The article gave a general description of Narcotics Anonymous ("NA") therapy, and referred to some of Ms Campbell's recent publicised activities. These included an occasion when Ms Campbell was rushed to hospital and had her stomach pumped. She had claimed it was an allergic reaction to antibiotics and that she had never had a drug problem: but "those closest to her knew the truth".

In the middle of the double page spread, between several innocuous pictures of Ms Campbell, was a dominating picture over the caption "Hugs: Naomi, dressed in jeans and baseball hat, arrives for a lunchtime group meeting this week". The picture showed her in the street on the doorstep of a building as the central figure in a small group. She was being embraced by two people whose faces had been pixelated. Standing on the pavement was a board advertising a named café.

The photographs of her attending a meeting were taken by a free-lance photographer specifically employed by the newspaper to do the job. He took the photographs covertly, while concealed some distance away inside a parked car.

2. The further articles

On the same day as the articles were published, Ms Campbell commenced proceedings against the applicant. The newspaper's response was to publish further articles, this time highly critical of Ms Campbell. On

5 February 2001 the newspaper published an article headed, in large letters, “Pathetic”. Below was a photograph of Ms Campbell over the caption “Help: Naomi leaves Narcotics Anonymous meeting last week after receiving therapy in her battle against illegal drugs”. This photograph was similar to the street scene picture published on 1 February. The text of the article was headed “After years of self-publicity and illegal drug abuse, Naomi Campbell whinges about privacy”. The article mentioned that “the Mirror revealed last week how she is attending daily meetings of Narcotics Anonymous”. Elsewhere in the same edition an editorial article, with the heading “No hiding Naomi”, concluded with the words: “If Naomi Campbell wants to live like a nun, let her join a nunnery. If she wants the excitement of a show business life, she must accept what comes with it”.

Two days later, on 7 February, the *Mirror* returned to the attack. Under the heading “Fame on you, Ms Campbell”, an article referred to her plans “to launch a campaign for better rights for celebrities or “artists” as she calls them”. The article included the sentence: “As a campaigner, Naomi’s about as effective as a chocolate soldier”.

3. *The main proceedings*

In the proceedings Ms Campbell claimed damages for breach of confidence and compensation under the Data Protection Act 1998. The article of 7 February formed the main basis of a claim for aggravated damages. Morland J ([2002] EWHC 499 (QB)) upheld Ms Campbell’s claim. The judge held that the information giving details that her treatment was by regular attendance at NA meetings had been clearly confidential. The details were obtained surreptitiously, assisted by covert photography when Ms Campbell was engaged, deliberately “low key and drably dressed”, in the private activity of therapy to advance her recovery from drug addiction. Given the source, they must have been imparted in circumstances importing an obligation of confidence. Publication was to her detriment. It was, viewed objectively, likely to affect adversely her attendance and participation in therapy meetings. Although the disclosure of her addiction and previous lying denial caused her “considerable” distress, publication of the details about her sessions with NA caused her “significant” distress. Article 8 was thus engaged and striking a balance with Article 10 she was entitled to a remedy. He made her a modest award of GBP 2,500 plus GBP 1,000 aggravated damages in respect of both claims.

The applicant appealed. The Court of Appeal, comprising Lord Phillips of Worth Matravers MR, Chadwick and Keene LJ, unanimously allowed the appeal and discharged the judge’s order ([2002] EWCA Civ 1373, [2003] QB 633). The Court of Appeal were not prepared to accept that information that Ms Campbell was receiving therapy from NA was to be equated with disclosure of clinical details of the treatment of a medical condition. The Court of Appeal were also of the view that the publication of this information was not, in its context, sufficiently significant to shock the conscience and thus to amount to a breach of the duty of confidence which was owed to her. They accepted the respondents’ argument that disclosure of these details was peripheral. They had regard too to the fact that some of the additional information that was given in the article was inaccurate.

Ms Campbell then appealed to the House of Lords.

On 6 May 2004 the House of Lords allowed Ms Campbell's appeal by a majority of 3-2 and restored the orders made by the trial judge ([2004]UKHRR 648).

Lord Hope of Craighead in addressing the issue of confidentiality of the disclosed information observed that effective protection of the right to privacy required that the relevant test of whether disclosure would have offended the reasonable man of ordinary susceptibilities had to be applied with reference to the person affected by the publicity. In the present case where the publication concerned a drug addict requiring treatment and given the fact that disclosure of details concerning that treatment together with publication of a covertly taken photograph could endanger that treatment, the disclosure was of private information. The case gave rise to a competition between the rights of free speech and privacy which were of equal value in a democratic society. As such, it was necessary for a balancing exercise to be carried out which would ascertain whether the means chosen to limit the Article 10 right were rational, fair and not arbitrary and impaired the right as minimally as was reasonable possible. Hence, a close examination of the factual justification for the restriction on the freedom of expression was needed. While the impugned publication had the potential to cause harm to Ms Campbell it was hard to see any compelling need for the public to know the name of the organisation that she was attending for therapy or other details set out in the publication. Moreover, the photographs published:

“were not just pictures of a street scene where she happened to be... they were taken deliberately, in secret and with a view to their publication in conjunction with the article. The zoom lens was directed at the doorway of the place where the meeting had been taking place.. The argument that the publication of the photograph added credibility to the story has little weight.”

On this basis, he concluded that any person in Ms Campbell's position would have seen the publication of these photographs as a gross interference with her right to respect for her private life which would outweigh the right to freedom of expression.

Baroness Hale of Richmond observed that the examination of an action for breach of confidence began from the “reasonable expectation of privacy” test inquiring whether the person publishing the information knew or ought to know that there was a reasonable expectation that the information in question would be kept confidential. This was a threshold test which brought the balancing exercise between the rights guaranteed by Articles 8 and 10 of the Convention into play. She considered that the application of the proportionality test, included in the structure of Articles 8 and 10 of the Convention, was much less straightforward when two Convention rights were in play. In accordance with the approach set out by the Court of Appeal in *In re S* [2003] 3 WLR 1425-1452, at paragraphs 54-60, such cases required looking at the comparative importance of the rights being claimed in the individual case; then at the justifications for interfering with or restricting each of those rights; and applying the proportionality test to each.

She considered that essentially the interests at stake were those of a prima donna celebrity against those of a celebrity-exploiting tabloid

newspaper. Nevertheless, the information revealed related to Ms Campbell's health and, as such, had been both private and confidential. As to the nature of the publication at issue, she found that it had certain educational value: the Mirror was entitled to reveal private information about Ms Campbell because she had previously presented herself to the public as someone who was not involved in drugs. Thus the publication of her involvement with drugs together with the fact that she was seeking treatment was justified. However, the publication of further information, especially information that might jeopardise that treatment, was not necessary. The trial judge had been best placed to judge whether the additional information and the photographs had added significantly to both distress and the potential harm to Ms Campbell and he had accepted her evidence that they had done so.

Publication of the photographs *per se* was not objectionable given that unlike France and Quebec, in the United Kingdom the right to one's own image was not recognised. However, the impugned photographs showed Ms Campbell in the company of other members of the group and the venue of the therapy meetings which would have been entirely recognisable to anyone who knew the locality. There was no need to do this: as the editor had accepted even without the photographs, his story would have been a front page story and there was no shortage of photographs of Ms Campbell. She concluded that she would allow the appeal and restore the order of the judge.

Lord Carswell agreed with the opinions of Lord Hope of Craighead and Baroness Hale of Richmond that the appeal should be allowed. He noted that it was not in dispute that the information was of private nature and imparted in confidence to the respondents and that they were justified in publishing the facts that Ms Campbell was a drug addict and that she was receiving treatment. The justification for the publication of these facts in this case consisted in the fact that the appellant was a well known figure who courted rather than shunned publicity, who had consistently lied about her drug addiction and compared herself favourable with others in the fashion business who were regular users of drugs. By these actions she had forfeited the protection to which she would have been entitled and made the information about her addiction and treatment a matter of legitimate public comment on which the Press had been entitled to put the record straight.

He further agreed with Lord Hope that in order to justify limiting the Article 10 right to freedom of expression the restrictions imposed had to be rational, fair and not arbitrary, and they must impair the right no more than necessary. Having examined the weight to be attributed to different relevant factors, he concluded that the publication of the details about the appellant's attendance at therapy by NA, highlighted by the photographs printed, constituted a considerable intrusion in to her private affairs which was capable of causing substantial distress and on her evidence did cause it to her. In her evidence she said that she had not gone back to the particular NA centre and that she had only attended few other NA meetings. It was thus clear, that the publication created a risk of causing a significant setback to her recovery. On this basis, the factors relied upon by the respondents did not suffice to justify such an intrusion into her privacy.

Lord Nicholls of Birkenhead and Lord Hoffman dissented.

Lord Nicholls expressed the view that the proportionality assessment required in cases where Articles 8 and 10 were engaged was distinct from the initial question of whether the published information engaged Article 8 at all. He observed that but for Ms Campbell's conduct the information disclosed would attract the protection of Article 8. However, by repeatedly making assertions in public denying her drug addiction, Ms Campbell could no longer have a reasonable expectation that this aspect of her life could remain private. Therefore disclosure of information concerning her drug addiction together with the fact that she was receiving treatment had been legitimate. As to the further disclosure of the fact that she was attending NA meetings as a form of therapy, it was of such an unremarkable and consequential nature that its disclosure had also been legitimate. The same applied to information concerning how long Ms Campbell was receiving such treatment given that the frequency and nature of NA meetings was common knowledge. Hence, the intrusion into Ms Campbell's private life was comparatively minor. Lastly, as to the publication of Ms Campbell's pictures, Lord Nicholls observed that she did not complain about the taking of the photographs neither did she assert that the taking of the photographs was itself an invasion of privacy. Instead she argued that the information conveyed by the photographs was private information. While in general photographs contain more information than a mere textual description, the particular photographs added nothing of an essentially private nature, they conveyed no private information beyond that discussed in the article, and there was nothing undignified or distraught about Ms Campbell's appearance. He therefore concluded that the appeal should have been dismissed.

Lord Hoffmann noted that the House was unanimous on the statements of general principles about the way in which the law should strike a balance between the right to privacy and the right to freedom of expression. It was clear that there was no question of automatic priority nor a presumption in favour of one rather than the other. The question to be addressed was the extent to which it was necessary to qualify the one right in order to protect the underlying value which is protected by the other. And the extent of the qualification should be proportionate to the need. He noted, however, that often there was no real conflict between the different rights at stake. But where there is a real conflict, the question to be addressed was whether there was sufficient public interest in that particular publication to justify curtailment of the conflicting right. He considered that there was a sufficient public interest in the correction of the impression Ms Campbell had previously given as to whether she took drugs. Therefore, the Mirror was entitled to publish the fact of her drug dependency and the fact that she was seeking treatment. As to the publication of more of the circumstantial detail and photographs, he observed that there was considerable ground of legitimate disagreement in this respect. Given the relatively anodyne nature of the additional details, which was to be distinguished from the publication of salacious details or intimate photographs, the Mirror was entitled to a degree of latitude in respect of the way it chose to present its legitimate story. As to the publication of pictures, he observed that the fact that the pictures were taken without Ms Campbell's consent did not amount to a wrongful invasion of privacy. Moreover, the pictures did not reveal a situation of humiliation or severe embarrassment and had not been taken by

intrusion into a private place. There was nothing demeaning or embarrassing about the pictures showing Ms Campbell dressed and smiling among a number of other people. They added nothing to what was said in the text and carried the message that the Mirror's story was true. Accordingly the decision to publish the pictures was, in Lord Hoffmann's opinion, within the margin of editorial judgment that the Mirror was entitled to. He would also dismiss the appeal.

4. The proceedings concerning legal costs

Pursuant to the order of the House of Lords, Ms Campbell's solicitors served on the applicant three bills of costs: GBP 377,070.07 for the trial, GBP 114, 755.40 for the appeal to the Court of Appeal and GBP 594,470 for the appeal to the House of Lords. Hence, the applicant was requested to pay legal costs, in addition to its own, in the sum of GBP 1,086,295.47 and an award of damages of GBP 3,500.

Ms Campbell retained solicitors and counsel pursuant to a conditional fee agreement ("CFA"). At the trial and in the Court of Appeal they had acted under an ordinary retainer. But the appeal to the House of Lords was conducted pursuant to a CFA which provided that if the appeal succeeded, solicitors and counsel should be entitled to success fees of 95% and 100% of their respective base costs respectively. The terms of the CFA were not disclosed to the applicant until the conclusion of the litigation. The base costs of her legal representative for the two day hearing in the House of Lords were GBP 288,468. The success fees claimed by her lawyers were GBP 279,981.35.

On 21 February 2005 the applicant sought a ruling of the House of Lords Appeal Committee that it should not be liable to pay any part of the success fee on the grounds that, in the circumstances, such a liability was so disproportionate as to infringe their right to freedom of expression under Article 10 of the Convention.

On 2 August 2005 Ms Campbell's solicitors accepted the applicant's offers to pay GBP 290,000 in respect of the costs of the trial in the High Court and GBP 95,000 in respect of the costs of the hearing in the Court of Appeal.

On 20 October 2006 the House of Lords dismissed the applicant's petition ([2005] 4 All ER 793). Lord Hoffmann observed that Section 27 of the Access to Justice Act 1999 reversed the common law rule that it was unlawful for lawyers to charge fees which depended upon the outcome of the case and noted that the Conditional Fee Agreements Order 2000 (SI 2000/823) fixed the maximum success fee at 100%. He observed that the deliberate policy of the 1999 Act was to impose the cost of all CFA litigation, successful or unsuccessful, upon unsuccessful defendants as a class. Losing defendants were to be required to contribute to the funds which would enable lawyers to take on other cases which might not be successful but would provide access to justice for people who could not otherwise have afforded to sue. Therefore the policy shifted the burden of funding from the state to unsuccessful defendants which was a rational social and economic policy.

Lord Hoffmann was concerned about the indirect effect of the threat of heavy liability in terms of costs on the newspaper's decisions as to whether

to publish information which ought to be published but which carried a risk of legal proceedings against it. However, he considered that the newspaper's right could be restricted to protect the rights of Ms Campbell under Article 8 and the right of litigants under Article 6 to access to a court. He considered that the applicant's argument confused two concepts of proportionality: whereas the Civil Procedure Rules on costs were concerned with whether expenditure on litigation was proportionate to the amount at stake, the interests of the parties and other relevant factors, Article 10 was concerned with whether the rule requiring unsuccessful defendants to pay the reasonable and proportionate costs of their adversary and contribute to the funding of other litigation was a proportionate interference given that the aim was to provide those other litigants with access to justice. He considered that it had been open to the legislature to choose to fund access to justice in that way. He also considered that it was desirable to have a general rule in order to enable the scheme to work in a practical and effective way and that concentration on the individual case and the particularities of Ms Campbell's circumstances would undermine that scheme. Hence, the success fee should not be disallowed simply on the ground that the applicant's liability would be inconsistent with its rights under Article 10.

Lord Hoffmann referred to certain problems arising in recent defamation cases with CFAs that led to substantial costs incurred by newspapers that were irrecoverable due to impecunious claimants who did not take out insurance. He further noted the blackmailing effect of such litigation and the fact that faced with a free-spending claimant's solicitor and being at risk not only as to liability but also as to twice the claimant's costs, the defendant was faced with an arms race which increased the costs of litigation. He noted that the Department of Constitutional Affairs, in a consultation paper of June 2004, discussed the problem but did not propose any legislative intervention in the hope that an agreement could be reached by the parties concerned. He concluded that "in the end... it may be that a legislative solution will be needed to comply with Article 10".

Lord Hope of Craighead agreed with Lord Hoffmann's proposed order, emphasised the question of proportionality and noted that the court should ensure that the right of access to court to vindicate the right to privacy under Article 8 should be properly balanced against the losing party's Article 10 free speech right. Baroness Hale agreed that the petition ought to be dismissed but preferred to express no opinion on the delicate balance involved in this part of the proceedings. Lord Carswell agreed with the speeches of Lord Hoffmann and Lord Hope and noted that the regimen of CFAs and the imposition of these charges upon the losing party was legislative policy which the courts should accept. He observed that the House had only been asked to rule on the matter of principle whether success fees could be charged at all in cases brought against the media involving issues such as breach of confidence or defamation. He recognised that such fees constituted a "chill factor" but considered that it was not really in dispute whether the legislature could in principle adopt this method of funding access to justice. He concluded, with regret, that an examination of whether the parties could afford to finance the litigation themselves when entering into CFAs was unworkable. He noted that:

“While I am far from convinced about the wisdom or justice of the CFA system as it is presently constituted, it has to be accepted as legislative policy. It has not been shown to be incompatible with the Convention and the objections in principle advanced by MGN cannot be sustained.”

On 28 November 2005 the applicant was ordered to pay Ms Campbell’s costs of the second petition of appeal. They were served with an additional bill of costs of GBP 255,535.60 in respect of a one day hearing at the House of Lords. The bill included a success fee of 95% (GBP 85,095.78) in respect of the solicitors’ profit costs.

On 3 March 2006 the applicant agreed with Ms Campbell’s solicitors to pay the sum of GBP 735,000, exclusive of interest at 8% per annum, in respect of the costs claimed as to the trial, the appeal to the Court of Appeal and the first petition to the House of Lords including the success fee that was applicable in respect of the two day hearing at the House of Lords.

At a hearing on 8 March 2006, before the Judicial Taxing Officers of the House of Lords, the applicant sought to challenge the level of the 95% success fee claimed by Ms Campbell in respect of their profit costs on the second petition.

On 3 April 2006 the Taxing Officers held that it was clear that the statutory regime did not permit the court to direct that a success fee in a CFA was recoverable at different rates for different period of the proceedings. They held that:

“In these proceedings, which have been hard fought throughout, and which were ultimately decided in the Appellant’s favour on a split decision of the House, there can be no doubt that the success fees claimed of 95% and 100% were appropriate. Given our finding that the second petition was not an appeal but was part and parcel of the original appeal, it follows that the same success fees must apply throughout. The effect of this is, of course, that the Respondents face a greatly increased bill of costs, but this is the issue in respect of which the second petition was lodged and in respect of which the Respondent’s lost”.

As to the issue of proportionality and taking an overall view of the claim for base costs they concluded that the costs claimed “did have the appearance of disproportionality”. While it was accepted that the rates set out in the bill were the rates normally charged to privately paying clients, both solicitors and counsel fees were reduced.

On 5 May 2006 the applicant presented a petition to the House of Lords in respect of the decision of the Taxing Officers of 3 April 2006. No further information was provided in this respect.

B. Relevant domestic law and practice

Section 12(4) of the Human Rights Act 1998 provides:

“The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to -

- (a) the extent to which -
 - (i) the material has, or is about to, become available to the public; or
 - (ii) it is, or would be, in the public interest for the material to be published;
- (b) any relevant privacy code.”

The Press Complaints Commission Code of Practice, as it then stood, provided the following:

“3. Privacy

i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence. A publication will be expected to justify intrusions into any individual’s private life without consent.

ii) The use of long lens photography to take pictures of people in private places without their consent is unacceptable.

Note - Private places are public or private property where there is a reasonable expectation of privacy

The public interest

There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.

1. The public interest includes:

i) Detecting or exposing crime or a serious misdemeanour.

ii) Protecting public health and safety.

iii) Preventing the public from being misled by some statement or action of an individual or organisation. . . .”

Conditional fees were introduced by section 58 of the Courts and Legal Services Act 1990. A Conditional Fee Agreement (CFA) is an agreement with a person providing advocacy or litigation services which provides for his fees and expenses, or any part of them, to be payable only in specified circumstances. A CFA provides for a success fee if it provides for the amount of any fees to which it applies to be increased, in specified circumstances, above the amount which would be payable if it were not payable only in specified circumstances.

Section 58 A of the Courts and Legal Services Act 1990 provides that a costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring payment of any fees payable under a conditional fee agreement which provides for a success fee.

Section 27 of the Access to Justice Act 1999 provides that a CFA which satisfies all the specified statutory conditions shall not be unenforceable by reason only of its being a CFA.

Subsections (6) and (7) of section 58A of the Courts and Legal Services Act 1990 provide as follows:

“(6) A costs order made in any proceedings may, subject in the case of court proceedings to rules of court, include provision requiring the payment of any fees payable under a conditional fee agreement which provides for a success fee.

(7) Rules of court may make provision with respect to the assessment of any costs which include fees payable under a conditional fee agreement (including one which provides for a success fee).”

Rule 44.4 paragraph 2 of the Civil Procedure Rules provides that where the amount of costs is to be assessed on the standard basis, the court will only allow costs which are proportionate to the matters in issue and that it will resolve any doubt which it may have as to whether costs were reasonably incurred or reasonable and proportionate in amount in favour of the paying party.

Part 11.5 of the Costs Practice Directions to Civil Procedure Rule 44 provides the following:

“In deciding whether the costs are reasonable and (on a standard basis assessment) proportionate, the court will consider the amount of any additional liability separately from the base costs.”

Part 11.8 of the Practice Directions deals with the assessment of the success fee:

“(1) In deciding whether a percentage increase is reasonable relevant factors to be taken into account may include:

- (a) the risk that the circumstances in which the costs, fees and expenses would be payable might or might not occur;
- (b) the legal representative’s liability for any disbursements;
- (c) what other methods of financing the costs were available to the receiving party.

(2) The court has the power, when considering whether a percentage increase is reasonable, to allow different percentages for different items of costs or for different periods during which the costs were incurred.”

Part 11.9 of the Practice Directions provides as follows:

“A percentage increase will not be reduced simply on the ground that, when added to the base costs which are reasonable and (where relevant) proportionate, the total appears disproportionate.”

Section 27 of the Practice Directions applicable to judicial taxations in the House of Lords (March 2007) provides the following:

“CONDITIONAL FEE AGREEMENTS

27.1 Notification should be given to the opposing parties and to the Judicial Office as soon as practicable after a conditional fee agreement has been entered into. The Taxing Officers decide questions of percentage uplift in accordance with the principles set out in *Designers’ Guild Limited v. Russell Williams (Textiles) Limited (Trading as Washington D.C.)* [2003] 2 Costs LR 204.”

COMPLAINTS

1. In its original application the applicant complained that it had suffered a disproportionate interference with its rights protected by Article 10 of the Convention given that it was in the public interest to publish the fact of Ms Campbell’s drug addiction in light of her previous false statements and that it was for the editor to decide how much detail to publish to ensure the credibility of the story especially as he was publishing information on issues of public interest, was acting in good faith and on an accurate factual basis.

2. By its further submissions of 18 April 2006 the applicant also complained under Article 10 of the Convention that the requirement to pay success fees to Ms Campbell resulting in its having to pay Ms Campbell excessive costs of double the reasonable and proportionate costs incurred by her in protecting her right to respect for her private life did not, in the circumstances, pursue a legitimate aim and the success fees were neither necessary nor proportionate.

QUESTION TO THE PARTIES

Has there been a violation of the applicant's right to freedom of expression, contrary to Article 10 of the Convention?

In particular:

(a) did the award of damages for breach of confidentiality due to the publication of details concerning Ms Campbell's treatment for drug addiction, together with the impugned photographs, constitute a disproportionate interference with the applicant's right to freedom of expression?

(b) did the award of costs, including the success fees, constitute a disproportionate interference with the applicant's right to freedom of expression?