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Case No: CO/3685/2011

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/07/2011

Before :

THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
LORD JUSTICE THOMAS
and
MR JUSTICE OWEN

Between :

Her Majesty's Attorney-General
- and -
(1) MGN Limited
(2) News Group Newspapers Limited

Claimant

Defendants

Mr Dominic Grieve QC, Her Majesty's Attorney-General and Miss Melanie Cumberland
(instructed by the Treasury Solicitor) for the Claimant

Mr Jonathan Caplan QC (Instructed by Reynolds Porter Chamberlain LLP) for the First
Defendant

Miss Adrienne Page QC and Mr Anthony Hudson (Instructed by Farrer & Co) for the Second
Defendant

Hearing date: 5th July 2011

Approved Judgment

The Lord Chief Justice of England and Wales:

1. In these proceedings Her Majesty's Attorney-General contends that the first defendant, the publisher of the Daily Mirror newspaper, and the second defendant, the publisher of The Sun newspaper, should be committed, or otherwise dealt with for contempt of court. The contempt is said to arise from articles published in the issues of the Daily Mirror dated 31st December 2010 and 1st January 2011 and in the Sun on 1st January 2011 in breach of the strict liability rule as defined in the Contempt of Court Act 1981 (the Act).

The Context

2. The proceedings arise from the killing of a young woman, Joanna Yeates, in Bristol on 17th December 2010. Her landlord, Christopher Jefferies, was arrested on 30th December on suspicion of her murder. He was released from custody on unconditional police bail during the evening of 1st January 2011. On 22nd January another man, Vincent Tabak was charged with the murder of Miss Yeates. On 4th March Mr Jefferies was informed that he was released from police bail. On 5th May Tabak admitted that he was responsible for killing Miss Yeates when, at the Central Criminal Court, he pleaded guilty to her manslaughter. He denied murder on the basis of diminished responsibility. The trial of that issue will take place in the autumn.
3. There is therefore no doubt about the identity of the man who killed Miss Yeates or that Mr Jefferies is innocent of any involvement in it. By way of emphasis, he is not simply presumed in law to be innocent of the killing. As a matter of fact and reality he is innocent. He is not facing trial, and he will never face trial. However at the time when the articles complained of were published, he was under arrest. For the purposes of the Act proceedings against him were active. No one was to know that before very long he would be entirely exonerated. That feature makes this an unusual case. The articles complained of did not have and could not have had any impact whatever on a trial of Mr Jefferies, just because – as we now know - there will never be one. From the point of view of the defendants that was purely adventitious, and as we shall see, it is irrelevant to our decision. It is also irrelevant that the way in which some elements of the media may have treated Mr Jefferies may justify a substantial award of damages for defamation. This is a prosecution for contempt of court, not an analysis of any possible civil claim by him for compensation.

The Articles

4. The disappearance and tragic death of Miss Yeates during the Christmas period last year unsurprisingly commanded huge public interest and concern. She was reported missing on 19th December 2010. Her body was discovered on 25th December. On 28th December it was announced by the team investigating the case that she had been strangled. The public interest in the criminal investigation was very high and the developing story occupied a great deal of media attention, much of it focussed on Mr Jefferies, who was Miss Yeates's landlord and who lived in the same building. As we have noted, on 30 December Mr Jefferies was arrested on suspicion of her murder.

The articles complained of

Daily Mirror – 31 December 2010

5. On the front page of the Daily Mirror, in the context of what were described as the “Jo files” the headline alleged that “Jo suspect is peeping Tom”. It was asserted on the front page in large print:

“Arrest landlord spied on flat couple”, followed immediately below by:

“Friend in jail for paedophile crimes”, followed immediately below by:

“Cops now probe 36 –years old murder.”

In short, while positively asserting that Mr Jefferies was a voyeur, without directly asserting that he was involved in paedophile crimes or a long unresolved murder, the impression conveyed to an objective reader was that he was somehow linked with not one but two awful, additional crimes.

6. For the “full story” attention was directed to pages 4 and 5. The main coverage on page 4 was directed at an allegation that the plea of a young couple “to protect their privacy was apparently refused by the eccentric landlord”. The implication was that Mr Jefferies was a peeping Tom. At the bottom of the page under the headline “Fellow teacher abused boys in flat” it was asserted that a “paedophile colleague of murder suspect Chris Jefferies abused a young boy at the flat where Jo lived”. There was then a reference to the trial and sentence of a man called Stephen Johnston, with an account of how in the early 90s he had abused a pupil in the apartment from which Miss Yeates had disappeared. Johnston was linked with Mr Jefferies, first, by an account of how he bought the flat when the “paedophile moved” out, and second by a reference to the fact that they were teachers at the same school at the time when Johnston’s offences were committed. The fairly lengthy text does include “...although there is no suggestion Jefferies was involved”. On page five the headline in large font reads “We caught him looking in the windows many times... he was strange, always hanging about”. At the bottom of the same page the headline reads “1974 strangler never caught” and the murder of Miss Yeates is said to bear “haunting similarities to the unsolved killing of a student teacher nearby in 1974”. It records that “last night police refused to rule out a link between the two killings”.
7. Then, on page 6 and 7 the bold headline reads “the nutty professor”, with a reference under an exclusive banner to “bizarre past of Joanna Yeates murder suspect”, followed immediately by: “Posh ex-teacher who was “arrogant and rude.”” The main drive of this page is to underline why it was that Mr Jefferies had earned the reputation as “the local oddball”.

The Sun, 1st January 2011

8. On the lower half of the front page of The Sun the headline reads “Obsessed by death” and it is alleged that Mr Jefferies “scared kids” by a macabre fascination. He wanted to show death to his pupils and was obsessed with it. That story was developed on page 5 which referred to his academic obsession with death and his particular fascination with the Victorian murder novel. Page 4 contains a report that a couple who had formerly rented a flat from Mr Jefferies believed that he had let himself into their home while they were out. He could let himself in when he wanted

as he had a key. More significant, was the headline across pages 4 and 5 “Murdered Jo: suspect “followed me” says woman”. And this was followed by a lengthy article under the headline “What do you think I am...a pervert?” describing the “landlord’s outburst at blonde”. This was an “exclusive” story about a “former acquaintance” of Mr Jefferies who felt that she was being followed by him. The thrust of the story was that Mr Jefferies liked blondes – and Miss Yeates, too, was blonde - and she felt as though she was being followed by someone described as “quite a dominant personality”, a “control freak” who made her feel “very uncomfortable”. He tried to question her about her personal life and made inappropriate remarks. There was then a report of speculation among neighbours that Mr Jefferies was gay, although the blonde woman believed that he was “bi-sexual”. The article ends by referring to her “weeping” as she commented, “I tried to say one day that I didn’t think his behaviour was normal, but he got angry and said, “what do you think I am, some kind of pervert?”. That made her “nervous”. Another couple living in the building were said to have described Mr Jefferies as “Hannibal Lecter” but that was said to be a “jokey moniker” given because they found Mr Jefferies to be “posh and a little creepy, but nothing more sinister than that”.

Daily Mirror, 1 January 2001

9. The front page banner headline asks “Was killer waiting in Jo’s flat?”. The story on the front page begins:

“Joanna Yeates’s killer may have been waiting for her inside her basement flat as she returned home. Detectives yesterday sent towels and bedding for DNA tests after finding no signs of a break-in”.

We observe that if entry was not forced, then whoever went into the flat had access to it. The only person with such access referred to in any of the articles in the Daily Mirror was the landlord.

10. On pages 4 and 5 the earlier Clifton murder is given considerable coverage. The account on page 4 is that “Miss Yeates may have been killed after finding an intruder in her flat who did not want to be identified later”. On page 5, in the Jo Files format, side by side, there are photographs of Joanna Yeates “murdered in Clifton in 2010” and Glenys Carruthers, “murdered in Clifton in 1974”, together with a map which “shows how near Miss Yeates’s flat is to the street where murdered Glenys Carruthers went missing in Clifton in 1974”. On the map itself four specific points are identified, the place where the body of Glenys Carruthers was found; Clifton College, where Mr Jefferies worked; the place where Glenys Carruthers went missing; and the address where Miss Yeates and Mr Jefferies lived.
11. The submission on behalf of the Attorney-General in relation to the articles in the Daily Mirror is that the core information on 31 December 2010 is to the effect that Mr Jefferies (a) is a sexually perverted voyeur who spies and spied on his tenants in their bedrooms and elsewhere; (b) that he was a friend of a convicted paedophile guilty of very serious offences; and (c) that the police regarded him as a prime suspect for another murder of a young woman in 1974, whose body was found very close to that of Miss Yeates and in strikingly similar and unusual circumstances. An examination of the text reveals that the murder occurred after the time when Mr Jefferies started

work at Clifton College. The prominence speaks for itself. The presentation fortifies the effect by giving the impression that the police considered all these matters directly relevant to the likelihood of Mr Jefferies' involvement in the murder of Miss Yeates. The second article on 1 January reinforces the association of Mr Jefferies with the 1974 murder.

12. The Attorney-General directs his complaints against the article in The Sun at the allegation that Mr Jefferies had stalked a woman similar in age and appearance to the victim, with particular emphasis on the fact that they were both blondes, and that he did so in a manner which was highly disturbing for the woman in question, and indeed on any objective assessment. The allegation is combined with a suggestion that Mr Jefferies was over-familiar with tenants and given the nickname of a notorious but fictional serial killer.
13. The response on behalf of the Daily Mirror is that neither article included any "seriously prejudicial content". The "Peeping Tom" allegation that Mr Jefferies peered intrusively into the flats he let was in substance "an allegation of eccentricity and strange habits as a "nosey neighbour" rather than an "authoritative assertion of sexual perversion". Reference to the crimes committed by Johnston expressly made clear that there was no suggestion that Mr Jefferies was involved. The reports of the murder of a young woman nearly 36 years earlier should be taken with the observation that police had refused to rule out a link between the two killings. This was logical given that the police had not proved the guilt of anyone for either murder. Reference was also made to quotations from a long-standing friend of Mr Jefferies, reported on 31 December that he did not for one minute believe that Mr Jefferies had committed the crime, and an observation from a former pupil in the article of 1st January that Mr Jefferies was "not an aggressive man and certainly not violent".
14. The response on behalf of The Sun suggested that the article made clear that the alleged "obsession with death" was "an academic obsession", and that the article did not suggest that Mr Jefferies was guilty of the murder, and indeed made it clear that detectives had not found any evidence which linked him to the crime. As to the reference to the efforts of Mr Jefferies to engage a blonde woman in conversation, the entire account was "very far away from containing any suggestion that Mr Jefferies was guilty of the murder", and the reference to the nickname "Hannibal Lecter" read in its context "did not remotely" suggest that a comparison was being made between Mr Jefferies and the serial killer. Indeed on the same page he was described as a "pillar of the community".

Discussion

15. The main focus of the written submissions by the defendants was that the articles did not create substantial risk of serious prejudice to any trial of Mr Jefferies which might take place in the future, probably some 9 months or so after publication. The same approach was adopted by Mr Jonathan Caplan QC and Miss Adrienne Page QC respectively in their oral arguments. They contended that the effect of anything read at the time by anyone who would in due course become a member of the jury which would try Mr Jefferies (assuming that the case had proceeded to trial) would have faded from the memory, and that taken with the appropriate judicial directions, the trial would have proceeded in the usual way and the jury would have returned unbiased verdicts in accordance with the evidence before them. However, in his oral

submissions in particular, the Attorney-General emphasised that the application was based on the risk both that the course of justice in the proceedings would be seriously prejudiced, and that it would be seriously impeded by the publications. This second consideration has not as yet received (because it has not needed to receive) the weight of judicial attention that has been directed towards the issue of prejudice.

16. The Contempt of Court Act 1981 amended the law relating to contempt. The strict liability rule as defined in section 1 of the 1981 Act is subject to the limitations on its scope created by section 2. Provided the proceedings are “active” (and in this case it is not in dispute that at the date of each publication the proceedings against Mr Jefferies were indeed “active”) section 2(2) applies. This provides:

“The strict liability rule applies only to a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.”

Dealing with it briefly, impeding the course of justice and prejudicing the course of justice are not synonymous concepts. If they were, they would not have been identified as distinct features of the strict liability rule.

17. Before the present applications can succeed it must be proved to the criminal standard and separately in relation to each defendant, that the individual publication or publications complained of created the risk specified in section 2(2) of the Act. That risk must be “substantial”, and therefore, neither remote nor theoretical. The risk however is directed to serious impediment or prejudice to the course of justice in the extant proceedings. In other words the question whether the risk to the course of justice is substantial must be assessed at the date of publication. On this basis the test is predictive.
18. One consequence of the legislation is that it is neither here nor there to the Attorney-General’s applications that the proceedings against Mr Jefferies ceased to be “active” within a short time of publication, or that in the result no criminal proceedings involving Mr Jefferies arising from the death of Miss Yeates will ever take place. This means that care is needed in the approach to be taken to the authorities which were decided when the issue (contempt or not) was considered and decided after the relevant criminal proceedings were concluded. In these authorities, while seeking to ascertain what it would have decided about the level of risk posed to the course of justice at the date when the publications took place, in reality the court was simultaneously looking back at the alleged consequences of the publications. None of these considerations arise here. Unusually we are being invited to focus attention on the question whether the criminal proceedings in which Mr Jefferies was involved at the date of the publication were at serious risk not only of being prejudiced but also impeded.
19. It was not suggested that we should consider any of the widespread media coverage of this tragic case before the arrest of Mr Jefferies. Any publicity before that date would not have fallen within the ambit of the Act, which is confined to “active” proceedings. And the application was approached on the basis that each publication should be looked at separately. (See *Attorney-General v MGN Limited* [1997] 1 All ER 456). This approach follows from the principle that where criminal allegations against more

than one defendant are made the defendants cannot be lumped together. The case against each defendant must be considered separately from the cases of any other defendants. This is in marked contrast to submissions that are sometimes made at the start of the trial, that it should not proceed, or, after conviction, that it should not have been allowed to proceed, on the grounds of prejudicial publicity, when the trial judge or the Court of Appeal must make an assessment of the impact of the totality of media coverage, whether before or after any arrest. Whether the same approach should be adopted in contempt proceedings has been questioned. In February 1998 the National Heritage Committee recommended that section 2 of the Act should be strengthened “so that it covers the collective or cumulative effect of pre-trial publicity in risking prejudicing a trial, as well as the effect of individual articles. This means that newspapers could not escape liability, as one case held they could, because a number of them had acted in a similar way and together had caused prejudice”.

20. Although it was stated in the House of Lords that the Government accepted this recommendation, no opportunity has yet been found for introducing it. Until legislation provides to the contrary, the case against each of these defendants must be treated separately. However where the same defendant is responsible for more than one publication there is no reason why the effect of each publication by the same defendant should not be considered as a whole.
21. In deference to the submissions by Mr Caplan and Miss Page, we immediately acknowledge many judicial observations about the responsible way in which juries can be trusted to perform their public duty. The connected feature is judicial understanding of what is described as the “fade factor”, that is, that what people read in their newspapers or watch on their television screens months before trial fades in the memory, and for that reason, too, the risk of conscious or even unconscious prejudice against the defendant will have dissipated when the trial takes place. The group of authorities gathered together in the written submissions by both sides represents the long standing confidence of the judiciary in the process of trial by jury. We shall therefore not recite any of the relevant passages in *Montgomery v HM Advocate and Another* [2003] 1 AC 641; *R v Hamza* [2007] 1 Cr App R 27; *Re B* [2007] EMLR 5; *R v West* [1996] 2 Cr App R 374; *R v Stone* [2001] EWCA Crim 297; *R v George (Barry)* [2002] EWCA Crim 1923; *Re D (acquitted person)*; [2006] 1WLR 1998.
22. These authorities are largely result based decisions when appeals against conviction on the ground of actual or potential jury prejudice have been dismissed. They were not addressing the predictive question whether the course of justice was prejudiced or impeded or indeed put at risk as at the date of publication. Nevertheless it was submitted on behalf of the defendants that the correct approach, or perhaps the consequence of these decisions, is encapsulated in the observations of Sedley LJ sitting in a two judge constitution of the Divisional Court in *Attorney-General v Guardian Newspapers Limited* [1999] EMLR 905 that if:

“...an appeal on the ground of prejudice would not succeed, no more should the publisher be guilty of contempt. The prospective risk of serious prejudice cannot be any greater than the actual possibility, in the assumed situation, that it has occurred. By parity of reasoning, a case in which an appeal

would in the assumed events succeed will ordinarily be a case where contempt is made out.”

23. Sedley LJ himself recognised that his formulation was not consistent with the approach of Simon Brown LJ (as he then was) in *Attorney-General v Unger and others* [1998] 1 Cr App R 308. The defendant pleaded guilty to theft at the magistrates’ court after she had been interviewed by a newspaper, which published her statement that she would not be denying the charges. The contempt proceedings proceeded on the basis that at the date of publication there was a real chance that the defendant might have elected trial by jury, in which case there was a substantial risk that her trial would be seriously prejudiced, and second, at the invitation of the court, that the publication could have impacted on the defendant in such a way that she might see no point in seeking to deny the allegation which otherwise she might have contested. In the context of potential prejudice, (rather than possible impeding of the course of justice, to which we shall come in due course) Simon Brown LJ recorded his concern that the courts should not speak

“with two voices, one used to dismiss criminal appeals with the Court roundly rejecting any suggestion that prejudice resulted from media publications, the other holding comparable publications to be in contempt, the Courts on these occasions expressing grave doubts as to the jury’s ability to forget or put aside what they had heard or read. I am certainly not saying that in respect of one and the same publication there cannot be both a contempt...and a safe conviction. Plainly there can, most obviously perhaps in cases where the trial has had to be moved or delayed to minimise the prejudice occasioned by some publication. But generally speaking it seems to me that unless a publication materially affects the course of the trial in that kind of way, or requires directions from the court well beyond those ordinarily required and routinely given to juries to focus their attention on evidence called before them..., or creates at the very least a seriously arguable ground for an appeal on the basis of prejudice, it is unlikely to be vulnerable to contempt proceedings under the strict liability rule”.

24. Simon Brown LJ returned to the issue in *Attorney-General v Birmingham Post and Mail Limited* [1999] 1 WLR 361. Again in a case involving alleged prejudice, he observed:

“It seems to me necessarily to follow...that one and the same publication may well constitute a contempt and yet, even though not substantially mitigated in its effect by a temporary stay and/or change of venue, not so prejudice the trial as to undermine the safety of any subsequent conviction. To my mind that can only be because section 2(2) postulates a lesser degree of prejudice than is required to make good an appeal against conviction...In short section 2(2) is designed to avoid (and where necessary punish) publications even if they merely risk prejudicing proceedings, whereas a stay will generally only be granted where it is recognised that any subsequent

conviction would otherwise be imperilled, and a conviction will only be set aside...if it is actually unsafe.”

25. Referring to what he had said in *Unger*, he continued:

“I still think that to create a seriously arguable ground of appeal is a sufficient basis for finding strict liability contempt. Clearly it is a relevant consideration too that when a judge at first instance is deciding whether or not to grant a temporary stay. But more particularly the trial judge will ask himself: “is there a real danger that the jury cannot reach a just verdict, or the defendant have a fair trial?” The judge will have to form a view as to just how seriously prejudicial the publication is, to what extent it can be mitigated by special directions, how desirable it is to avert a possible risk of a successful appeal on that ground, and how inconvenient and costly in the particular circumstances a stay would be (depending in large part no doubt on how far into the trial the problem arises).”

He went on to examine judicial confidence in the jury system. Juries can be trusted to fulfil their responsibilities with integrity, according to the evidence before them. He suggested that perhaps too much weight should not be attached to this consideration because he agreed with the submission by counsel for the Attorney-General that carried too far, “there would be no need for a law of contempt in the first place”.

26. In subsequent decisions the formulation of the test advanced by Sedley LJ has not been followed (see *Attorney-General v Random House Group Limited* [2010] EMLR 9 and *Attorney-General v Associated Newspapers Limited* [2011] EMLR 17, where Moses LJ observed:

“The statutory question for this court...is whether the publication created a substantial risk that the course of justice will be substantially impeded or prejudiced. It is not the statutory question posed by section 2(1)(a) of the Criminal Appeal Act 1968, namely whether the conviction was unsafe...the trust which is placed on juries...cannot always be relied upon by those whose publications put the prospects of a fair trial at substantial risk.”

27. With these considerations in mind we must return to *Attorney-General v Guardian Newspapers Limited*. Sedley LJ’s approach to the problem did not attract Collins J who, recognising “the desirability” of uniformity of approach to the question of appeals against conviction and applications arising from alleged contempt nevertheless continued:

“It must always be remembered that the law of contempt is concerned with preventing a publication because it creates a substantial risk of serious prejudice whereas the Court of Appeal will be concerned with whether there has been such prejudice as renders the conviction unsafe. The fact that no actual prejudice has resulted from the publication cannot

prevent it being a contempt within the meaning of section 2(2), although no doubt the lack of actual prejudice may be relevant in deciding whether there really was a substantial risk of serious prejudice.”

28. This problem has now been considered in a number of different constitutions of this court. Sedley LJ’s formulation of principle has not been followed. To the extent that the views of a single member of a two judge constitution of a Divisional Court may be treated as authoritative for the purposes of identifying a principle, such authority has wholly evaporated.
29. The issue of impeding the course of justice outside the trial processes has been less well trodden. However, as Oliver LJ observed in *Attorney-General v Times Newspapers Limited*, *The Times*, 1983, cited by Simon Brown LJ in *Attorney-General v Unger* [1998] 1 Cr App R 308:

“The course of justice is not just concerned with the outcome of proceedings. It is concerned with the whole process of the law, including the freedom of a person accused of a crime to elect, so far as the law permits him to do so, the mode of trial which he prefers and to conduct his defence in the way which seems best to him and to his advisers. Any extraneous factor or external pressure which impedes or restricts that election or that conduct, or which impels a person so accused to adopt the course in the conduct of his own defence which he does not wish to adopt, deprives him to an extent of the freedom of choice which the law confers upon him and is, in my judgment, not only a prejudice but a serious prejudice.”

Although Oliver LJ, at the end of this passage, referred to prejudice, these are examples, but not a comprehensive list, of occasions when the course of justice would be impeded. Another such risk may well be found in a well justified submission that the trial should be stayed on the basis of the contents of the article in question, or the trial moved (see for example, *Attorney-General v British Broadcasting Corporation* [1992] COD 254 and *Attorney-General v Birmingham Post and Mail Limited* [1999] 1WLR 361).

30. At common law material which would deter a witness from coming forward to give evidence was capable of constituting contempt of court (see *Greenwood v The Leather Shod Wheel Co Limited* [1898] 14 TLR 241). More recently, in civil proceedings, in *Re Lonrho Plc* [1990] 2 AC 154 at 208, Lord Bridge addressed the question whether the course of justice in particular proceedings would be impeded or prejudiced by publication:

(This) “must depend primarily on whether the publication will bring influence to bear which is likely to divert the proceedings in some way from the course which they would otherwise have followed. The influence may affect the conduct of witnesses, the parties or the court. Before proceedings have come to trial and before the facts have been found, it is easy to see how critical public discussion of the issues and criticism of the

conduct of the parties, particularly if a party is held up to public obloquy, may impede or prejudice the course of the proceedings by influencing the conduct of witnesses or parties in relation to the proceedings”.

31. In our judgment, as a matter of principle, the vilification of a suspect under arrest readily falls within the protective ambit of section 2(2) of the Act as a potential impediment to the course of justice. At the simplest level publication of such material may deter or discourage witnesses from coming forward and providing information helpful to the suspect, which may, (depending on the circumstances) help immediately to clear him of suspicion or enable his defence to be fully developed at trial. This may arise, for example, because witnesses may be reluctant to be associated with or perceived to be a supporter of the suspect, or, again, because they may begin to doubt whether information apparently favourable to the suspect could possibly be correct. Adverse publicity may impede the course of justice in a variety of different ways, but in the context we are now considering, it is not an answer that on the evidence actually available, the combination of the directions of the judge and the integrity of the jury would ensure a fair trial. The problem is that the evidence at trial may be incomplete just because its existence may never be known, or indeed may only come to light after conviction.
32. Our attention was drawn to article 10 of the European Convention on Human Rights. As is well understood this confirms the right to freedom of expression, and to receive and impart information and ideas without interference. It is however subject to express limitations and such restrictions as may be prescribed by law and necessary in a democratic society “for the protection of ...the rights of others” and “for maintaining the authority and impartiality of the judiciary” which for present purposes includes the jury. The right to a fair trial is of course encapsulated in article 6 which declares the entitlement to a fair hearing. The 1981 Act represents the system provided in this jurisdiction to ensure that the right to a fair trial is protected. In the present context any interference with the article 10 rights of the defendants depends on proof to the criminal standard that the publications in question have created a substantial risk of serious impediment or prejudice to the course of justice. This falls comfortably within the limitations acknowledged in the Convention itself.
33. With these considerations in mind we must return to the articles of which complaint is made. We begin by reminding ourselves of the passages in all three publications which purport to provide a measure of support for Mr Jefferies. We regard them as makeweight, and in the overall context of each article the observations supportive of Mr Jefferies do nothing to lessen the impact of the adverse reporting.
34. The material in the two publications of the Daily Mirror is extreme. True, it does not positively assert that Mr Jefferies was guilty of involvement in paedophile crimes, or the unsolved murdered many years earlier. It is submitted that the articles were unflattering, suggesting that he was an eccentric loner. So they were. But they went very much further. It was asserted, in effect directly, that his standard of behaviour, so far as sexual matters were concerned was unacceptable, and he was linked to both the paedophile offences and the much earlier murder offence. That indeed was the point of the articles. The juxtaposition of the photographs of two murdered women, together with the layout of the places where they died in proximity to Mr Jefferies home, was stark. And in the context of the murder of Miss Yeates herself, the second

article implied that Mr Jefferies was in a particularly convenient position, as her landlord, to have gained access to her premises to commit a murder, according to the article, committed by an intruder. Taken on their own these articles would have provided Mr Jefferies with a serious argument that a fair trial would have been impossible. The argument would probably have been rejected on the familiar grounds of jury integrity and the fade factor. If he had been convicted, he would have argued on appeal that the trial was unfair because of this publicity. Again, we anticipate that any such appeal on this ground alone would have failed. We have no doubt, however, that these arguments would have been justified, and that the courts would have had to address them with care. To that extent the criminal justice process would have been held up and delayed.

35. As we have indicated, we are also concerned at a different additional aspect of this publicity, which is not one which has previously been subjected to any analysis in the authorities. As these articles vilified Mr Jefferies long before the fade factor could have begun to operate, the risks to the preparation of his defence would have been serious. Of course we expect witnesses to do their duty, and come forward, but we are also perfectly familiar with the fact that many do not, often when the Crown wishes them to do so. The impact of these articles on potential defence witnesses would have been extremely damaging to Mr Jefferies. In brief, reluctant witnesses would have been even more reluctant to come forward, and witnesses who might have been prepared to come forward may very well have assumed that anything helpful or supportive they might have said about Mr Jefferies could not be right.
36. In our judgment the two publications in the Daily Mirror created substantial risks to the course of justice. They constituted contempt under the strict liability rule.
37. The articles in the one issue of The Sun were written and laid out in such a way that they would have conveyed to the reader of the front page and the two inside pages over which the stories were spread that he was a stalker, with an obsession with death, who let himself into the flats of other occupants of the building where Miss Yeates lived, and that he had an unhealthy interest in blonde young women. The paragraphs about “jokey moniker” as applied to him by two of the other occupants was introduced by the words, “yesterday, as forensic officers continued to comb the Victorian building where Jefferies lives, ...”. Although the articles contain statements or words which could be said to have been favourable to Mr Jefferies, these were quite insufficient to counter the way in which the spread of the articles, and their content, associated Mr Jefferies with this murder. These articles would have certainly justified an abuse of process argument, and although their effect is not as grave as that of two series of articles contained in the Mirror, the vilification of Mr Jefferies created a very serious risk that the preparation of his defence would be damaged. At the time when this edition of the Sun was published it created substantial risks to the course of justice. It therefore constituted a contempt under the strict liability rule.
38. One feature of this case, and the publicity surrounding it, which, the Attorney-General conceded did not fall within the ambit of the 1981 Act, would be the possible impact of adverse publicity directed at one individual, who in the end is not prosecuted, in the context of a later prosecution against someone else. If, unlike the present case, this defendant denies the offence and any involvement in it, by definition his denial carries with it the assertion that someone else was responsible for the crime. There is, we put it no higher for present purposes, at least a risk that adverse publicity against the first

individual may be used in the course of the trial of the defendant to divert attention away from him back to the first individual. To the extent that the publicity is fair and reasonable, no complaint can be made. But if the publicity has resulted in vilification of an innocent man, this too might constitute serious prejudice to the administration of justice by assisting in a process by which a guilty man might escape justice. However as the proceedings against the defendant would not have been “active” when the publicity directed at the innocent man was published, the provisions of the Act do not appear to apply. Whether this is desirable or not is a question for the legislature.

39. We shall invite submissions from the Attorney-General and counsel for the two newspapers on penalty.