

Privacy in criminal investigations

Gavin Costelloe considers the judgment in *ERY v Associated Newspapers Limited*.

A potentially significant judgment, *ERY v Associated Newspapers Limited*, was handed down by the English High Court on 4 November 2016, upholding the claimant's right to privacy and preventing the publication of the fact that the claimant was subject to a police investigation concerning allegations of financial crime.

During the course of a criminal investigation, the claimant was invited to attend an interview under caution, on a voluntary basis, following a search of the claimant's company premises. The claimant was not arrested and received an assurance that his involvement in the investigation would remain confidential.

The fact of the claimant's involvement was leaked and the Mail on Sunday advised the claimant of their intention to publish certain personal details. The claimant sought injunctive relief. In a short *ex tempore* judgment, the judge was satisfied that an injunction, prohibiting publication of the claimant's personal involvement in the criminal investigation, should be granted. At the return date, the injunction was upheld, independent of factors personal to the claimant (such as health and children), and notwithstanding the fact that the police's investigation into the claimant's company was a matter of public record.

In light of numerous examples of the press reporting the identity of individuals subject to pre-charge police investigation, this is a welcome development in the contentious debate regarding anonymity. College of Policing guidance on media relationships and the Leveson report agree that, save in exceptional and clearly identified circumstances, the names and identifying details of those **arrested** or **suspected** of a crime should not be released to the press or public.

Whilst each matter must be considered on its merits, this judgment is a positive and potentially wide-reaching decision in relation to protecting the rights of individuals under criminal investigation.

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