

Privacy and misuse of private information

Overview

Almost everyone would consider their privacy to be of fundamental importance to their life. The introduction into this country of the Human Rights Act which incorporated the European Convention on Human Rights into our legislation ensured that the law reflects the entitlement of every person, from every walk of life, to enjoy a private life.

Article 8 of the European Convention on Human Rights states that: 'Everyone has the right to respect for his private and family life, his home and his correspondence.'

If your privacy is interfered with then you may have a legal claim. If you have reason to believe there will be an invasion of your privacy it may be possible to get a Court order restraining this (an injunction).



Do I have a claim?

When deciding whether there has been an actionable invasion of privacy, the Court's task is to embark on a two stage process:

- The Threshold Test- The Court must identify whether there is a reasonable expectation of privacy such as to engage Article 8 at all. This question must be considered objectively from the standpoint of the person who is affected by the publicity.
- The Balancing Test- There may be a countervailing public interest, such as the right to freedom of expression, which displaces the right of reasonable expectation of privacy altogether or tips the balance in favour of disclosure.

Claims against public authorities, such as police forces, may be defended on the basis that the interference with your privacy was necessary in the interests of national security, public safety, economic wellbeing of the country, prevention of disorder or crime and the protection of health and moral rights and freedoms of others. These countervailing interests are particularly relevant to police officers, and are often the grounds raised in response to claims by officers against their own forces, for example, where there has been covert surveillance in a professional standards investigation or exposure of misconduct in the media.

A claim against a public authority under the Human Rights Act must be brought within 1 year. The time limit against other defendants may be up to 6 years, but if in doubt act within 1 year.

Available defences?

Public Interest

What is of public interest, rather than merely of interest to the public is something the Court often has to consider. An example occurred in the well known case brought by Max Mosley against The News of The World.

It was held that there was no public interest in knowing details of his personal sexual practices but the judge indicated that if The News of The World had in fact been correct in reporting that his activities involved re-enactment of Nazi practices, then this would have been a matter of public interest because of his prominent public role in Formula 1 motor racing.

Triviality

Information which is trivial and of little or no consequence will not clear the threshold such as to engage Article 8.

Public Domain

Information which is already in the public domain or accessible to the public will not be deemed private.

Can I stop my privacy being invaded?

If you have notice of a potential invasion of privacy you might be able to obtain an injunction from the Court. It is vital that you act quickly and seek specialist legal advice. It is also possible to obtain an injunction to stop an ongoing invasion of privacy where the Court accepts the information has only been disclosed to a limited audience and is not therefore in the public domain. It should be noted that an injunction is just an interim remedy in Court proceedings. In other words, the injunction just holds the position until the trial of the main issues has taken place. It is not an end in itself.

Continue overleaf >

What might I recover?

- An injunction may be obtained to prevent future publication of the private information
- Damages, which may include compensation for distress, hurt feelings and loss of dignity
- Legal costs are usually recoverable from the losing party.

If you think that you may have a claim please contact one of our specialist lawyers who will be able to help you.

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If you need further assistance, in the first instance please contact your local Joint Branch Board.

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