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IN THE CROWN COURT
SITTING AT SOUTHWARK
T20227145

Date: 26/10/2022

Before :
MR JUSTICE FRASER

Between :

SERIOUS FRAUD OFFICE	**Applicant**
- and -	
GLENCORE ENERGY UK LIMITED	**Respondent**

Hearing date : 24 October 2022
Ms Healy KC and Mr Baloch (instructed by the **Serious Fraud Office**) for the **Applicant**
Ms Montgomery KC and Ms Hardcastle (instructed by **Wilmer Cutler Pickering Hale and Dorr LLP**) for the **Respondent**
Mr Swan (instructed by **Greenberg Traurig LLP**) on behalf of **GE1**
Kingsley Napley LLP written submissions on behalf of **GE2 and GE4**
Mr Allen KC (instructed by **Howard Kennedy LLP**) on behalf of **GE3**
Ms Pinto KC (instructed by **Arnold & Porter Kaye Scholer LLP**) on behalf of **GE5**
Mr Bailin KC and Mr Craven (instructed by **Boutique Law LLP**) on behalf of **GE6**
Mr FitzGerald (and written submissions by **Mr Kelsey-Fry KC)** (instructed by **Corker Binning**) on behalf of **GE7**
Mrs Sibson KC (instructed by **Kingsley Napley LLP**) on behalf of **GE8**
Written submissions only by **Mr Barnard KC** (instructed by **Mayer Brown International LLP**) on behalf of **GE9**
Mr Jeremy KC and Mr Aldred (instructed by **Paul Hastings LLP**) on behalf of **GE10**
Mr Whittam KC (instructed by **Arnold & Porter Kaye Scholer LLP**) on behalf of **GE11**

Judgment on
Reporting Restrictions Application

Mr Justice Fraser:

Introduction

1. This is an application by the prosecuting authority, the Serious Fraud Office ("SFO") for an order imposing certain reporting restrictions in circumstances that will be further explained below. The defendant in the prosecution brought by the SFO is Glencore Energy UK Ltd ("Glencore"), a UK domiciled company that has worldwide trading interests including oil trading. It is a subsidiary of the well-known international group headed by the ultimate parent, Glencore plc.

2. Glencore pleaded guilty on 21 June 2022 before the Honorary Recorder of Westminster to a number of different charges under the Bribery Act 2010 ("the Bribery Act"). There are seven counts on the indictment, and guilty pleas were entered in respect of all of them. Five of the counts are of bribery, contrary to section 1 of the Bribery Act; the other two are of failure of a commercial organisation to prevent bribery, which is contrary to section 7 of the same Act. Glencore is to be sentenced for these offences in the Crown Court at Southwark on 2 and 3 November 2022.

3. The dates on the indictment in relation to the criminal conduct range from July 2011 to April 2016. Essentially in this application the SFO seeks the imposition of reporting restrictions in respect of 17 different named individuals, who are said to have had some degree of involvement in the criminal activity over approximately that period of time.

4. These individuals are all identified in an anonymised case summary that the SFO intends to use at the sentencing hearing, but using initials and not their actual names. The SFO has adopted ciphers based on the individuals' general sphere of involvement, so for example there are GE1 to GE11 (individuals associated with, or employed by, Glencore), two others identified as OT1 and OT2 connected with a company identified in count 2 called Ontario Trading SA Ltd, and so on. Altogether there are 17 such individuals. I shall refer to these as "the Anonymised Individuals". The ciphers have been chosen so that it is not possible to identify the individuals from the descriptions or combination of letters.

5. The order that the SFO sought, which was provided to the court in draft, had two main operative paragraphs. They were drafted as follows:

> "1. The names of individuals whose ciphers appear in the anonymised case summary be withheld from the public at the hearing before Mr Justice Fraser on 24 October 2022 and at the sentencing hearing on 2-3 November 2022.
>
> 2. The publication of the names of such individuals and any other such matter that might lead to their identification is prohibited pursuant to s.11 of the Contempt of Court Act 1981 ("CCA 1981")."

6. It can immediately be seen that the application and the accompanying order only deal with individuals, and not limited companies, of whom there were three in the anonymised case summary. In that summary these companies were also identified by similar ciphers, such as (and I choose these letters randomly) GXD Ltd. It can also be seen that the

proposed order is one that is not limited by time or duration, and is therefore an order which, on its terms, would last indefinitely. I shall return to both of those points below.

7. The application was not opposed by Glencore, which expressed itself as being broadly neutral. Each of GE1 to GE10 lodged written submissions, and the majority of the individuals appeared by counsel who also made oral submissions. Overall, the collective approach of each of the individuals was to the effect that not only did they not oppose the making of the order, but they actively supported the application. Each of them, in different terms, urged the making of such an order upon the court.

8. However, because the making of an order for reporting restrictions impacts upon press freedom and freedom of expression, and because such an order is a derogation from the fundamental principle of open justice, the fact that all the involved parties in any particular case wish to have such an order, does not mean that it will be granted. Further, representatives of the press are entitled to know of the application in advance, and are to be given the opportunity to make representations before such an order is made. It is important that they are given notice of such an application. After this was done, submissions were received from the press. These were from the following organisations. The Financial Times lodged written submissions from Mr Hanson, the Senior Legal Counsel of FT Ltd, but did not seek to add to these orally. Four organisations - Global Investigation Review, Spotlight on Corruption, MLex and Law360 UK – lodged joint written submissions, and Mr Fry, the News Editor of Global Investigations Review, made oral submissions supplementing these too. All of the submissions from the media were opposed to the making of the order.

9. Due to the imminent nature of the sentencing hearing, I explained the outcome of the application at the hearing itself, and said that I would provide more detailed written reasons for my decision, which this judgment constitutes. I also amended the draft of the order, a point addressed at [42] below.

The relevant background

10. The investigation undertaken by the SFO has its origins in an investigation commenced in the United States by the Federal Bureau of Investigation, usually known simply as the FBI, into Glencore plc. This is a public company incorporated in Jersey in the Channel Islands, and it is domiciled in Baar, Switzerland. The FBI investigation was opened in 2017, and was into potential violations of a US statute called the Foreign and Corrupt Practices Act 1977. The Department of Justice in the US ("the DOJ") issued a number of subpoenas against Glencore plc and its assorted subsidiaries as part of the FBI investigation.

11. Glencore plc has a wholly owned subsidiary called Glencore International AG ("GIAG"), and that entity has another wholly owned subsidiary, Glencore UK Limited, which is the parent of Glencore Energy UK Ltd. This latter entity is the defendant in the prosecution by the SFO and was incorporated in England and Wales in September 2002. Its registered office is Hanover Square, London W1 and it deals primarily in oil trading. The oil trading business deals both in oil products, and crude oil. There are a number of different desks at Glencore, which are referred to by names based upon the geographical areas of those desks' business interests. These are different depending upon the origin of the oil in question. These are called (for example) the North Sea Desk, the Russian Desk and the West Africa Desk.

12. Some of the subpoenas issued by the DOJ in the US concerned potential bribery at what is called the West Africa Desk, or WAF, of the defendant Glencore. On 12 June 2019 the Director of the SFO exercised the power under section 1(3) of the Criminal Justice Act 1987 and commenced a criminal investigation in the UK into Glencore. The subject matter included the use of an agent acting for Glencore (who is not yet named publicly) who was said to have paid bribes to officials in a number of jurisdictions in West Africa, such as Nigeria, Cameroon, Ivory Coast, Equatorial Guinea and the Republic of Congo. He is said to have done this through a company that he operated. There are other similar issues.

13. An agreement was reached between the SFO and the DOJ concerning the scope of the two different investigations. This agreement was that the agent's conduct from 1 March 2012 onwards in Nigeria and Cameroon would be proceeded with by the SFO, with the DOJ in the US taking responsibility for the investigation into activities in the period of time before that. His conduct in the date range from March 2012 is therefore covered by some of the counts on the indictment before the court currently.

14. Glencore also engaged and instructed its own legal advisors to perform detailed investigations of its own, in conjunction with data collection and forensic assistance by PriceWaterhouseCoopers ("PWC"). Glencore shared some of the results of the review, including material from PWC, with the SFO. Glencore also produced to the SFO some internal documents that contained the results of internal interviews held with some of its own personnel, which involved (to a limited extent) waiving privilege in those internal documents. All of this has led to certain admissions being made by Glencore, and the indication of guilty pleas being made by Glencore in May 2022. This led to the formal pleas of guilty to which I have already referred at [2] above.

15. An important point, and one which was emphasised to the court a number of times on this application, is that all of the individuals covered by the intended draft order are currently under investigation by the SFO. The SFO has not yet made final charging decisions in respect of any of the Anonymised Individuals. Additionally, none of them is named in any of the counts on the indictment.

16. The SFO wishes to obtain the order for reporting restrictions so that the Anonymised Individuals are not, at this stage of the investigation, publicly associated with the admitted criminal activity of Glencore. The SFO accepts that there is a significant public interest both in understanding the full scope of Glencore's offending, with the corruption being carried out across multiple jurisdictions over a prolonged period, and that reporting of such matters is highly important. However, given that a suspect in a criminal investigation has a reasonable expectation of privacy up to the point of charge, an issue discussed further below, the SFO submits that the order is both necessary and proportionate in the particular circumstances of this case generally, and the Anonymised Individuals in particular.

17. The submissions on behalf of the Anonymised Individuals themselves are to the same effect. The involvement of each of them is, for obvious reasons, somewhat different, and some of the submissions on behalf of some of them made reference to what is said to be their relatively limited involvement as particular individuals, rather than as a generic group of individuals who are being investigated. However, given the nature of the

investigation and the fact that this judgment is to be public, it is not appropriate to expand upon those submissions here, or to repeat them. Indeed, it would be positively undesirable to do so. It is therefore sufficient to summarise that all of the Anonymised Individuals are currently under investigation by the SFO and no final charging decisions have been made regarding any of them.

18. The submissions from the press, in summary, point to the fact that an order for reporting restrictions is an exceptional derogation from the principle of open justice, and that this is not justified in this case. It is said that anonymisation would go beyond what is required to protect any legitimate interests relating to possible future prosecution of the Anonymised Individuals. Orally, Mr Fry also drew the court's attention to the fact that the draft order as submitted was open-ended in terms of time, and he described this as "perpetual" in its effect.

The legal principles

19. The Contempt of Court Act 1981 ("CCA 1981") states at section 11:
"In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld."

20. The court has an inherent jurisdiction to sit in private where that is necessary for the proper administration of justice. It therefore has the power to do this under common law. Section 11 of the CCA 1981 provides that the court is permitted to give such directions as it considers necessary for the purpose for which the power is exercised. This demonstrates that although the starting point is the fundamental principle of open justice, there are exceptions.

21. For an explanation of the general principles, the best place to start is the Judicial College publication entitled "Reporting Restrictions in the Criminal Courts", which is now in its 4th edition which was published in September 2022. The foreword by the Lord Chief Justice states:
"It is a central principle of criminal justice that the court sits in public so that the proceedings can be observed by members of the public and reported on by the media. Transparency improves the quality of justice, enhances public understanding of the process, and bolsters public confidence in the justice system. Media reporting is critical to all these public interest functions. There are occasions, however when it is necessary to make an exception to these principles, to protect the rights of children or the identities of some adult complainants for example."
(emphasis added)

22. The general principle is that justice is to be administered by the courts in public, so that they are open to scrutiny. This has been described by the Supreme Court in ***A v British Broadcasting Corporation*** [2014] UKSC 25 as an aspect of the rule of law in a democracy and a constitutional principle which is to be found in the common law. The freedom of the media to report on court proceedings is inextricably linked to the principle of open justice.

23. At [32] in that case, Lord Reed stated:

"It has also been recognised in the English case law, consistently with Lord Neuberger's requirement [in ***Bank Mellat v Her Majesty's Treasury*** [2013] UKSC 38] of the degree of privacy being kept to a minimum, that where the interests of justice require some qualification of the principle of open justice, it may not be necessary to exclude the public or the press from the hearing: it may suffice that particular information is withheld. In ***Attorney General v Leveller Magazine Ltd***, for example, Lord Diplock accepted at p 451 that, where the court might sit in camera in order to preserve the anonymity of a witness in the interests of national security, it could instead allow "a much less drastic derogation from the principle of open justice", namely that the witness should give evidence in public but should be permitted to withhold his name from the public and the press. Viscount Dilhorne and Lord Edmund-Davies agreed that the court could do so, in the exercise of its inherent jurisdiction to control its own procedure: pp 458 and 464 respectively. Viscount Dilhorne gave as an example the practice of allowing a witness complaining of blackmail to withhold his identity from public disclosure in court, judicially approved in ***R v Socialist Worker Printers and Publishers Ltd, Ex p Attorney General*** [1975] QB 637. The proposition that the court had no power to allow a witness's name to be withheld from the public had been roundly rejected in that case: such a direction, it was held, was clearly preferable to an order for trial in camera where "the entire supervision by the public is gone""
(emphasis added)

24. At [38], he also stated that "as I have explained, it has long been recognised that the courts have the power to permit the identity of a party or a witness to be withheld from public disclosure where that is necessary in the interests of justice".
(emphasis added)

25. That there are measures available to the court, short of sitting entirely in private (or *in camera* as it used to be called) is not in doubt. This power is used sparingly but in a wide variety of cases, including those in the civil rather than criminal jurisdiction.

26. For example, in procurement challenges, often highly confidential commercial information and the details of rivals' tenders are contained in the evidence. That evidence (but not the wider trial) can therefore sometimes be heard in private, although the findings are part of the judgment. In ***EnergySolutions EU Ltd v Nuclear Decommissioning Authority*** [2016] EWHC 1988 (TCC) this was contained in a confidential appendix to the judgment. In ***Depp II v News Group Newspapers Ltd*** [2020] EWHC 2911 (QB), Nicol J gave judgment in a libel action by the claimant actor, usually known as Johnny Depp, against the publishers of The Sun newspaper. The background to the proceedings is well known, and certain of the allegations of abuse against the claimant's wife, Amber Heard, were also contained in the judgment, but the detail of them was again contained in a confidential annex. Restricting the principle of open justice in this way, and thereby preserving confidential information, passed without adverse comment by the Court of Appeal in Mr Depp's unsuccessful appeal at [2021] EWCA Civ 423 (per Underhill and Dingemans LJJ).

27. In ***Khuja v Times Newspapers and others*** [2017] UKSC 49 the claimant had been arrested, together with a number of others, on suspicion of serious offences of child sexual abuse. Others were convicted but he was not charged. He sought an order from the High Court for a non-disclosure order, the media having applied to the trial judge for discharge of an order that the trial judge had previously made. The High Court refused

to make such a non-disclosure order, and the appeal of Khuja both to the Court of Appeal and the Supreme Court failed.

28. Lord Sumption at [14] stated:
"The principle of open justice has, however, never been absolute. There have been highly specific historic exceptions, such as the matrimonial jurisdiction inherited from the ecclesiastical courts, the old jurisdiction in lunacy and wardship and interlocutory hearings in chambers, where private hearings had become traditional. Some of these exceptions persist. Others have been superseded by statute, notably in cases involving children. More generally, the courts have an inherent power to sit in private where it is necessary for the proper administration of justice: *Scott v Scott*, supra, at p 446 (Lord Loreburn); *Attorney General v Leveller Magazine Ltd* [1979] AC 440, 457 (Viscount Dilhorne). Traditionally, the power was exercised mainly in cases where open justice would have been no justice at all, for example because the dispute related to trade secrets or some other subject-matter which would have been destroyed by a public hearing, or where the physical or other risks to a party or a witness might make it impossible for the proceedings to be held at all. The inherent power of the courts extends to making orders for the conduct of the proceedings in a way which will prevent the disclosure in open court of the names of parties or witnesses or of other matters, and it is well established that this may be a preferable alternative to the more drastic course of sitting in private: see *R v Socialist Worker Printers and Publishers Ltd, Ex p Attorney General* [1975] QB 637, 652; *Attorney General v Leveller Magazine Ltd* [1979] AC 440, 451-452 (Lord Diplock), 458 (Viscount Dilhorne), 464 (Lord Edmund-Davies). Orders controlling the conduct of proceedings in court in this way remain available in civil proceedings whenever the court "considers non-disclosure necessary in order to protect the interests of that party or witness": CPR rule 39.2(4). In criminal proceedings, the common law power to withhold the identity of witnesses from a defendant was abolished by section 1(2) of the Criminal Evidence (Witness Anonymity) Act 2008, and replaced by rules now contained in sections 86-90 of the Coroners and Justice Act 2009. But the court retains the power which it has always possessed to allow evidence to be given in such a way that the identity of a witness or other matters is not more widely disclosed in open court, if the interests of justice require it. Where a court directs that proceedings before it are to be conducted in such a way as to withhold any matter, section 11 of the Contempt of Court Act 1981 allows it to make ancillary orders preventing their disclosure out of court. Measures of this kind have consistently been treated by the European Court of Human Rights as consistent with article 6 of the Convention if they are necessary to protect the interests of the proper administration of justice: Doorson v The Netherlands (1996) 22 EHRR 330, para 71; V v United Kingdom (2000) 30 EHRR 121, para 87; cf A v British Broadcasting Corpn [2015] AC 588, paras 44-45 (Lord Reed). But necessity remains the touchstone of this jurisdiction."
(emphasis added)

29. However, that passage continues with a warning against allowing the jurisdiction to be used on an increasingly wide basis:
"In *R v Legal Aid Board, Ex p Kaim Todner* [1999] QB 966, 977, Lord Woolf MR, delivering the judgment of the Court of Appeal, warned against "the natural tendency for the general principle to be eroded and for exceptions to grow by accretion as exceptions are applied by analogy to existing cases". Lord Woolf's warning was endorsed by the House of Lords in In *re S (Identification: Restrictions on Publication)* [2005] 1 AC 593, para 29 (Lord Steyn)."

30. That is a warning which must be heeded. It must not become routine for anonymity to be used in legal proceedings. Recently in ***Lu v Solicitors Regulation Authority*** [2022] EWHC 1729 (Admin) Kerr J heard an appeal from a decision of the Solicitors Disciplinary Tribunal. He disapproved of the tribunal's decision to sit in private, and to have anonymised in its decision two complainant firms of solicitors, relevant employed individuals and, to use his words in [2] "for some reason, a barrister and an expert witness whose roles were not particularly controversial". Kerr J observed that the principle of open justice was being "increasingly undermined by the creeping march of anonymity and redaction". I share those views, and bear Lord Woolf's warning very much in mind.

31. It is therefore clear that necessity is the essential requirement or condition that must be satisfied; that the measures adopted to impose restrictions must be proportionate to achieve the purpose intended; and that great care must be taken that the important general principle is not eroded, and the class of exceptions not be allowed to grow increasingly wide. The court must, here, consider whether it is necessary to grant the application and impose an order of the type sought by the SFO, and if it is so necessary, whether the order is proportionate or disproportionally wide.

32. Here, the necessity arises because of the particular current status of the Anonymised Individuals, as persons under investigation by the SFO, in respect of the same or similar behaviour that has led to the guilty pleas by Glencore. They are being investigated for potential corruption offences. The SFO wishes to preserve their anonymity whilst that investigation continues. The Anonymised Individuals wish to preserve their anonymity for a range of reasons. These include the stigma of being associated with the subject matter of Glencore's offending encompassed with the guilty pleas; the danger of their reputations being irredeemably damaged through guilt by association, even though they may never be charged; and the risk of widespread assumption of guilt by the public who read such reporting. Far greater prominence may be given to the facts of the Glencore sentencing next week, say, than a decision in a few months by the SFO not to charge any or some of them. Unfairly damaged reputations may never recover.

33. There is increasing judicial awareness of the impact upon individuals suspected of offending, but in respect of whom no charges are brought. One example is that of the well-known singer Cliff Richard, who in ***Richard v British Broadcasting Corp and the Chief Constable of South Yorkshire Police*** [2018] EWHC 1837 (Ch) was awarded damages for infringement of his rights to privacy. The Chief Constable had accepted liability and paid an agreed sum of £400,000 as damages; Mann J awarded Mr Richard a further sum of £210,000 (although that was apportioned 65:35 between the BBC and the Chief Constable). He also received a declaration of causation having been established, entitling him to special damages. Mr Richard had been suspected of historic sex abuse and the police, in effect, tipped off the BBC about an impending search of his house, which was filmed and broadcast, some of it live, on television. This was in August 2014; in June 2016 it was announced that he would not be charged. The events of August 2014 were described by Mann J as receiving "very wide currency, first on the BBC and then, very rapidly, via other media outlets world-wide".

34. Publication or reporting that someone is being investigated for certain types of criminal conduct can be very damaging to that person's reputation, both business and personal. The issue of the rights of a person under criminal investigation to a reasonable

expectation of privacy in respect of information relating to that investigation has been considered very recently by the Supreme Court in ***Bloomberg LP v ZXC*** [2022] UKSC 5. That case concerned the following, as set out by Lord Hamblen and Lord Stephens (with whom the other three Justices of the Supreme Court agreed):

"[2] The appellant, Bloomberg LP ("Bloomberg"), is an international financial software, data and media organisation headquartered in New York. Bloomberg News is well-known for its financial journalism and reporting.
[3] The respondent, ZXC ("the claimant"), is a citizen of the United States but has had indefinite leave to remain in the UK since 2014. He worked for a publicly listed company which operated overseas in several foreign countries ("X Ltd") and became the chief executive of one of its regional divisions but was not a director.
[4] The claimant brought a claim for misuse of private information arising out of an article ("the Article") published by Bloomberg in 2016 relating to the activities of X Ltd in a particular country for which the claimant's division was responsible (the "foreign state"). These activities had been the subject of a criminal investigation by a UK law enforcement body (the "UKLEB") since 2013. The information in the Article was almost exclusively drawn from a confidential Letter of Request sent by the UKLEB to the foreign state.
[5] The claimant claims that he had a reasonable expectation of privacy in information published in the Article and in particular the details of the UKLEB investigation into the claimant, its assessment of the evidence, the fact that it believed that the claimant had committed specified criminal offences and its explanation of how the evidence it sought would assist its investigation into that suspected offending."

35. I consider and apply the following analysis, summarised later in the judgment. It appears in its own section, headed in the judgment "The negative effects of publishing information that a person is under criminal investigation and a resulting uniform general practice."

"[80] For some time, judges have voiced concerns as to the negative effect on an innocent person's reputation of the publication that he or she is being investigated by the police or an organ of the state. These concerns are echoed in the Leveson Inquiry Report, and have the support of the senior judiciary, the College of Policing, the Metropolitan Police Service, the Independent Office of Police Conduct, the Director of Public Prosecutions, the Home Affairs Select Committee and the Government.

[81] Several themes emerge from the material articulating those concerns. First, the growing recognition that as a matter of public policy the identity of those arrested or suspected of a crime should not be revealed to the public has now resulted in a uniform general practice by state investigatory bodies not to identify those under investigation prior to charge. Second, the rationale for this uniform general practice is the risk of unfair damage to reputation, together with other damage. Third, the practice applies regardless of the nature of the suspected offence or the public characteristics of the suspect. To be suspected by the police or other state body of a crime is damaging whatever the nature of the crime. The damage occurs whatever the characteristic or status of the individual. Fourth, there is uniformity of judicial approach, at first instance in a series of cases and in the Court of Appeal in this case, based on judicial knowledge that publication of information that a person is under criminal investigation will cause damage to reputation together with other damage, irrespective of the presumption of innocence. This has led

to a general rule or legitimate starting point that such information is generally characterised as private at stage one.

[82] *Attorney General v MGN Ltd* [2011] EWHC 2074 (Admin); [2012] 1 WLR 2408, which was referred to at Part F, Chapter 1, para 3.25 and Part F, Chapter 5, paras 4.1-4.21 by Leveson LJ in the second volume of the report of his *Inquiry into the Culture, Practices and Ethics of the Press* dated 29 November 2012, HC 780-II, addressed the case of Mr Christopher Jefferies. Mr Jefferies was exposed as having been arrested on suspicion of murder. He was later demonstrated to have been innocent of it but meanwhile he had been subjected to a protracted campaign of vilification in the press, leading him to leave his home and to change his appearance. Although in that case the press had committed contempt of court and had published actionable libels about Mr Jefferies, the significance of the case for present purposes lies in the ease with which arrest may generally be associated with guilt. In the event Leveson LJ recommended at Part G, Chapter 3, para 2.39 that:
"save in exceptional and clearly identified circumstances (for example, where there may be an immediate risk to the public), the names or identifying details of those who are arrested or suspected of a crime should not be released to the press nor the public."

[83] That recommendation was taken up by the College of Policing which is the professional body whose purpose is to provide those working in policing with the skills and knowledge necessary for effective policing. The College is a company limited by guarantee wholly owned by the Secretary of State for the Home Department. It has various statutory functions in relation to the issuing of guidance and the giving of advice deriving predominantly from the Police Act 1996: see *R (Miller) v College of Policing* [2020] EWHC 255 (Admin); [2020] HRLR 10, para 102 and *R (Officer W80) v Director General of the Independent Office for Police Conduct* [2020] EWCA Civ 1301; [2021] 1 WLR 418, para 30. In 2013 the College of Policing published *Guidance on Relationships with the Media* which, at para 3.5.2, stated:
"Police forces must balance an individual's right to respect for a private and family life, the rights of publishers to freedom of expression and the rights of defendants to a fair trial. Decisions must be made on a case-by-case basis *but, save in clearly identified circumstances, or where legal restrictions apply, the names or identifying details of those who are arrested or suspected of a crime should not be released by police forces to the press or the public*. Such circumstances include a threat to life, the prevention or detection of crime or a matter of public interest and confidence." (Emphasis added)

[84] In 2017 the College of Policing published further guidance on *Media Relations* (which was subsequently updated again in 2019) which expressly recognises that reputational risks are the reason for not disclosing the names prior to the point of charge. The further guidance states at 3.2:

> "Respecting suspects' rights to privacy
> *Suspects should not be identified to the media (by disclosing names or other identifying information) prior to the point of charge* except where justified by clear circumstances eg a threat to life, the prevention or detection of crime or a matter of public interest and confidence."
> (Emphasis present in the judgment itself)

Application of the principles to the instant case

36. The five themes set out at [81] by the Supreme Court in ***Bloomberg*** can be addressed in the context of this case. I shall deal with them one by one.

37. First, this application by the SFO is consistent with what the Supreme Court has explained as the "uniform general practice by state investigatory bodies not to identify those under investigation prior to charge". This practice would be supported by the grant of the order sought by the SFO (or a variation thereupon), but undermined were I to refuse the application. Although, it is a matter for the SFO how it opens its case at the sentencing hearing, what is said and what is not, sufficient detail will be provided publicly that absent an order, a media organisation may well be able to identify some, or all, of the Anonymised Individuals. The SFO wishes to give full details of the offending, with the sole exception of providing the names of the Anonymised Individuals. That is consistent with the principle of open justice, as absent details of the offending, the world will not know the substance of the behaviour encompassed by the seven counts on the indictment.

38. Second, the rationale for this uniform general practice is the risk of unfair damage to the reputations of the Anonymised Individuals, together with other damage. In my judgment in this case, absent this order, there would be a high risk of such damage. Bribery Act convictions or pleas of guilty are rare, and Glencore has a notable worldwide company name. The value of the harm assessed by the SFO is approximately £100 million. The news story, and associated publicity, of the guilty pleas and sentence will be of worldwide interest. The point is also made by the Anonymised Individuals in support of the application to the effect that, if they are identified now and their reputations are thereby damaged, there is a risk of unfairness to those individuals in subsequent proceedings were they to be charged.

39. Third and in any event, as explained by the Supreme Court, "the practice applies regardless of the nature of the suspected offence or the public characteristics of the suspect. To be suspected by the police or other state body of a crime is damaging whatever the nature of the crime. The damage occurs whatever the characteristic or status of the individual." Therefore, in a sense, the assessment of the risk and level of publicity that I have made in the preceding paragraph does not impact upon application of the practice. However, were I to be wrong about that, the high risk that I have identified makes the granting of the application for restrictions more, rather than less, important. Consideration of the issues at the second and third stages takes into account the Anonymised Individuals' legitimate Article 8 rights.

40. Fourth, the grant of the application is consistent with the "uniformity of judicial approach" referred to by the Supreme Court. There is general judicial knowledge that publication of information that a person is under criminal investigation causes damage to that person's reputation, together with other damage. This damage arises irrespective of the presumption of innocence. This has led to a general rule, or legitimate starting point, that such information is generally characterised as private, as the Supreme Court puts it, "at stage one". Another way of expressing the same concept is that, if someone is named in circumstances such as these as being involved in the offending, or associated with it sufficiently closely, the fact that there is a formal presumption of innocence does not avoid or reduce damage to that person. Therefore, by making the application, the

SFO is acting consistently with the College of Policing guidance, and seeking to maintain the presumption of innocence.

41. Finally, the measures sought are, with one exception, proportionate. All that the SFO wishes to achieve is an order imposing reporting restrictions on the names of the Anonymised Individuals. This is preferable to other more stringent measures available, and are far short of the "drastic alternative" of the court sitting in private. There is, however, one element of the order sought that is too wide, and in my judgment, disproportionate. That is that the terms of the order are unlimited in time.

An order without limit of time

42. The rationale of this judgment, and the decision to grant the order, are both founded upon the fact that all of the Anonymised Individuals are currently under active investigation by the SFO. That is a situation that will not last indefinitely, yet the draft order provided with the application was drafted in terms that meant that the order would endure in perpetuity. That is disproportionately wide in terms of its effect.

43. When the court explored this at the hearing with Ms Healy KC for the SFO, she explained that the SFO hoped and expected that the charging decisions would be taken by April 2023, or within about 6 months from now.

44. In my judgment the correct and proportionate course is to make this order now, but not in the wide unlimited terms so far as its duration is concerned. Rather, the order will provide that a further hearing will be held in late June 2023. This allows for some flexibility in the decision making of the SFO, and avoids the risk of all the parties attending (in some numbers) in April or May 2023, only for the court to be told that a few weeks more are required by the SFO prior to charging decisions being taken. It may be – and I express no view either way – that there will be some of the Anonymised Individuals, who by then will have been charged, and/or some who will have been told that they will not be charged. Further argument can be heard at that point about continuation, amendment or discharge of the order.

An order that purports to include limited companies

45. As explained at [6] above, the application, draft order and the accompanying submissions were all in respect of individuals. No separate consideration was made in respect of the small number of limited companies – three in total - that the SFO also wished to have anonymised and covered by similar restrictions contained in an order.

46. I consider that the derogation from the principle of open justice is so important that consideration has to be given to each group – individuals, and limited companies – separately. Ms Healy KC sought to persuade me that including the limited companies was the obvious consequence of making the order in respect of the Anonymised Individuals, but I do not accept that submission. Even if it were correct, the point must be separately addressed and there were no written submissions at all from any party that suggested that it had been. Further, the companies themselves have to be served with the application, and the media too have a prior right to be notified, so that representations can be made if so advised. Legal submissions must be addressed to the position of limited companies specifically and an order justified in respect of them in terms of necessity and proportionality. In my judgment, orders such as this one have to be approached with some care, and ought not to be given the impression of having been "waved through".

47. I therefore gave directions for this to be done, including for service and abrogation of usual time limits. The hearing of that separate application must also be accommodated before the sentencing hearing, so abrogation of time limits was necessary, as well as permission to serve the application out of the jurisdiction, which is an important point.

Conclusion

48. Due to the nature of the ongoing investigation by the SFO into the Anonymised Individuals' conduct, it is both necessary and proportionate to grant an order in the terms sought by the SFO (as amended) imposing reporting restrictions, until further order, with a further hearing on 30 June 2022. Liberty to apply will also be granted within that order both for the individuals affected, and also for the media. It will also be necessary to have an additional and separate hearing, before the sentencing hearing on 2 and 3 November 2022, to consider the position in respect of the three limited companies referred to by initials in the anonymised case summary. The order made at the hearing only encompassed the 17 Anonymised Individuals, who were to be listed on a confidential schedule, so that there could be no doubt which individuals are covered by the order.