Ministry of Justice

Statistics on privacy injunctions January to June 2013

Ministry of Justice
Statistics bulletin

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Introduction

Key Finding

In the period January to June 2013, the number of privacy injunctions proceedings dealt with by Royal Courts of Justice (RCJ) in London was 9, the same number as in the period July to December 2012.

This bulletin presents statistics on privacy injunctions dealt with at hearings at the High Court or Court of Appeal at the Royal Courts of Justice (RCJ) in London during the period January to June 2013. It is the fourth bulletin in the series and includes comparison figures for the periods August to December 2011, January to June 2012 and July to December 2012 as presented in the first three bulletins.

In April 2010, a committee chaired by the Master of the Rolls was formed to examine legal and procedural issues relating to privacy injunctions, in the light of concerns raised following several high-profile court cases. The concerns centred around the perceived growth in the use of so-called "super-injunctions" and the increasing frequency with which High Court proceedings concerning the misuse of private information were being anonymised.

The Committee published its report, "Super-Injunctions, Anonymised Injunctions and Open Justice" in May 2011. It noted that no statistics on anonymised injunctions and super-injunctions were collected at that time. Therefore one of its recommendations was that the Ministry of Justice, with the assistance of HM Courts and Tribunals Service, should collect data about injunctions containing publicity restrictions, including super-injunctions, which are applied for and granted. The Committee's report can be found on the judiciary website at www.judiciary.gov.uk/media/media-releases/2011/committee-reports-findings-super-injunctions-20052011. Data subsequently began being collected by the Ministry of Justice in August 2011.

The scope of these statistics

In general terms, the injunctions covered by these statistics are those dealt with in any civil proceedings in the High Court or Court of Appeal where the court considers either:

- an application for an injunction prohibiting the publication of private or confidential information;
- the continuation of such an injunction; or
- an appeal against the grant or refusal of such an injunction.

The injunctions covered by these statistics will be termed "**privacy injunctions**" throughout this report. **They include, but do not exclusively relate to, super-injunctions.**

Specifically, the statistics relate to applications concerned with data protection and rights to respect for private and family life protected by Article 8 of the European Convention on Human Rights (ECHR), whether the injunction is sought by an individual, a public authority, or a company. When an injunction is sought, section 12 of the Human Rights Act is engaged, meaning that the injunction might, if granted, affect the exercise of the right to freedom of expression contained in Article 10 of the ECHR.

The ECHR can be found on the following website:

human-rights-convention.org/

The statistics do not cover injunctions arising from proceedings dealing with family issues, immigration or asylum issues, those which raise issues of national security, or most proceedings dealing with intellectual property and employment issues. The statistics also relate only to those injunctions dealt with at the RCJ in London. They exclude, for example, cases dealt with at District Registries of the High Court. In practice, however, the vast majority, if not all applications for such injunctions will be dealt with at the RCJ.

Data have been collected via statistical returns completed by the hearing judge and forwarded to the Ministry of Justice statistics team. The judge in the case therefore determines whether an injunction has met the criteria for inclusion in these statistics. See Explanatory Notes for more details.

Other related statistics published by the Ministry of Justice

Quarterly and annual statistics on the work of the courts in England and Wales are published by the Ministry of Justice in the statistics reports “Court Statistics Quarterly” and “Judicial and Court Statistics”. The latter contains statistics on the wider work of the High Court, Court of Appeal and other courts which operate at the RCJ in London. These are available from the Ministry of Justice website at

www.gov.uk/government/publications/court-statistics-quarterly-jan-mar-2013

www.gov.uk/government/publications/judicial-and-court-statistics-annual

Commentary

Background

A person or organisation who wishes to prevent the publication or dissemination of private or confidential information can apply to the High Court for an injunction to stop this from occurring. These are called **privacy injunctions**.

In a court case (whether or not the claim relates to personal information), the court may, exceptionally, rule that the identities of one or both of the parties involved in the case cannot be revealed. When it does this in an injunction case, it is called an anonymised injunction. A privacy injunction may be, but is not always, anonymised.

In all privacy injunction cases, the person or organisation applying for a privacy injunction – called the claimant – may initially seek an interim injunction. The court may issue an interim injunction at the start of a case, to prohibit publication before the matter is resolved, if this could thwart any subsequent injunction it may decide to grant.

If an interim injunction is granted, it will normally only last for a short period of time initially. The court will usually set a date by which a second hearing will take place. At that second hearing the court will decide whether or not to continue the interim injunction (perhaps with some variation in its terms). The defendant – the person or organisation against whom the privacy injunction is directed – may oppose the continuation of the injunction, or agree to adhere to it. If the court continues the injunction after this second hearing, it will normally last until a full trial can take place. Interim injunctions are granted only on the basis of witness statements, without oral evidence or disclosure of documents.

After then hearing all the evidence and arguments at the full trial, the court can decide to:

- continue (or vary) the interim injunction as a final injunction – which makes the injunction permanent; or

- cancel it (also termed “discharge”) – which means the injunction no longer exists so there is no restriction on the publication or dissemination of the information in question.

Whether an injunction is appropriate or justified depends on the specific circumstances of an individual case.

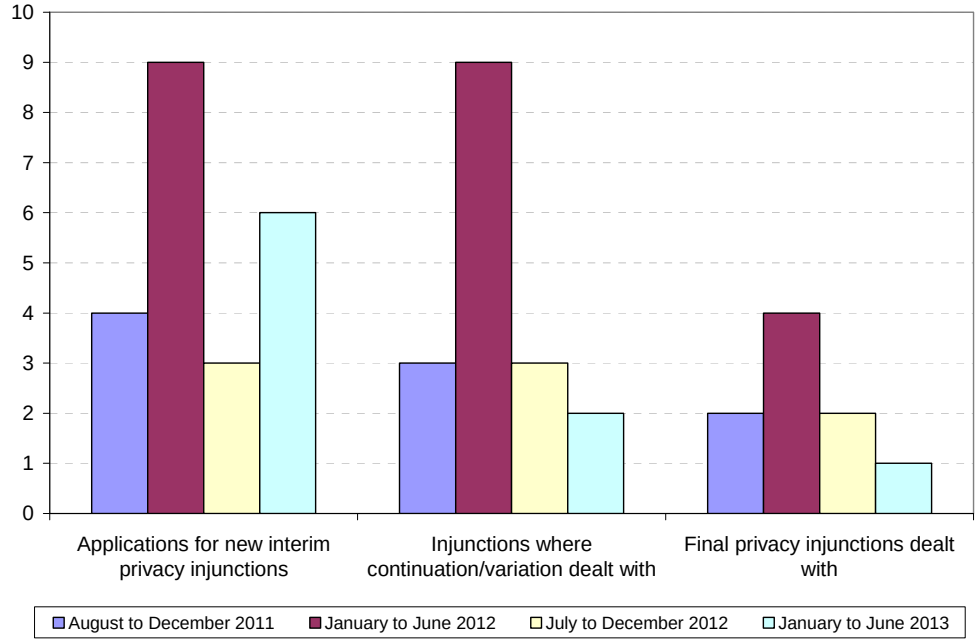
If, at the trial, the court decides that the claimant was wrong to apply for the injunction, they may be ordered to pay compensation for any damage caused. Third parties affected by an injunction may apply to the court for an injunction to be discharged, and in some cases for compensation.

Proceedings where applications for privacy injunctions were considered

During the period January to June 2013, the fourth period for which these statistics have been collected (see Explanatory notes), there were:

- Six proceedings in which the High Court in London considered an application for a **new** interim injunction prohibiting the publication of private or confidential information.
- Two proceedings in which the High Court considered whether to **continue** or amend an interim injunction.
- One proceeding in which the High Court considered whether to issue a **final** permanent injunction.
- No proceedings in which the Court of Appeal heard an **appeal** against a grant or refusal of an interim or final injunction. The Court of Appeal has heard only one such proceeding since these statistics began to be collected – this was during the period August to December 2011.

Figure 1: Number of privacy injunction proceedings



New interim privacy injunctions (Table 1)

Four of the six new interim injunctions were sought by a male, one by a female, and one by more than one claimant. Considering all reporting periods, a total of ten injunctions were sought by males, six by females, two by a company or other organisation and four by more than one claimant.

In line with the previous (July to December 2012) period, the majority of the new interim injunctions were applied for “on-notice” (four of the six applied for in January to June 2013). This means that other parties –for example, a

newspaper intending to publish a story – were notified that the injunction was being sought. This enabled them, if they wished, to oppose the application for the injunction before any injunction was made. The remaining interim injunctions were applied for “without-notice”, meaning that the parties the injunctions were aimed at were not notified that the injunction was being sought. All new interim injunctions sought were granted by the court, as was the case for those sought during the previous reporting periods.

All six new interim injunctions granted during the period January to June 2013 involved derogations from open justice. In particular:

- Three provided for the hearings in the case to be held in private;
- Three gave anonymity to one or more of the parties involved;
- All placed restrictions on access to court documents;
- Five placed restrictions on the provision of court documents to third parties;
- None had a super-injunction or reporting restriction clause, which prevented publication of the fact that court proceedings had taken place or that an injunction was in existence.

Note that the court may grant several types of derogation from open justice in a case.

Continuation of existing interim injunctions (Table 2)

As noted above, there were two proceedings at the High Court during the period January to June 2013 in which the court considered whether to continue or vary an existing interim injunction.

Both related to interim injunctions initially granted in the same period. This compares with two of the three proceedings to continue or amend an interim injunction between August and December 2011, eight out of nine for the period January to June 2012 and none between July and December 2012.

One injunction was sought by a male and one by a female. Considering all reporting periods, a total of ten injunctions were sought by males, four by females, two by a company or other organisation and one by more than one claimant.

Both applications to continue or amend injunctions were applied for “on-notice” and were granted by the court (either under their existing terms or with some variation). The two injunctions also involved derogations from open justice.

Final privacy injunctions (Table 3)

As noted above, there was one proceeding at the High Court during the period January to June 2013 in which the court considered an application for a final privacy injunction.

This proceeding did not relate to interim injunctions initially granted in the same period, but initiated during a previous period. This compares with neither of the two proceedings to issue a final injunction between August and December 2011, two out of four for the period January to June 2012 and none for July to December 2012.

It was sought by more than one claimant and was applied for “on-notice”.

This final injunction was granted by the court (either under the terms of the existing interim injunction or with some variation). This compared with all applications for final injunctions between August and December 2011, three out of four for the period January to June 2012 and all for July to December 2012.

As for all other reporting periods, the final injunction granted during the period January to June 2013 involved derogations from open justice. In particular:

- It provided for the hearings in the case to be held in private;
- It gave anonymity to one or more of the parties involved;
- It made restrictions on access to court documents;
- It made restrictions on the provision of court documents to third parties.
- It had a super-injunction or reporting restriction clause, which prevented publication of the fact that court proceedings had taken place or that an injunction was in existence

Table 1: Applications at the High Court in London for new interim privacy injunctions, January 2013 to June 2013

Category	August to December 2011	January to June 2012	July to December 2012	January to June 2013
Total applications for new interim privacy injunctions[1]	**4**	**9**	**3**	**6**
Type of claimant				
Individual - male	1	4	1	4
Individual - female	3	1	1	1
Company or other organisation	0	2	0	0
More than one claimant	0	2	1	1
Notice given of the application				
On-notice to defendants or third parties	1	3	2	4
Without-notice to defendants or third parties	3	6	1	2
Outcome of application				
Injunction granted	4	9	3	6
Injunction refused	0	0	0	0
Parties consented to the injunction[2]				
Yes	1	1	2	0
No	3	8	1	6
For injunctions granted (or varied), derogations from open justice provided[3]				
Private hearing	3	6	2	3
Party anonymity	4	3	1	3
Restrictions on access to documents[4]	4	7	2	6
Restriction on provision of documents to third parties[5]	1	6	2	5
Super-injunction clause: Prohibition on disclosing proceedings or injunction	1	0	0	0
Other	1	0	0	0
No derogations from open justice provided	0	2	0	0

Notes

1 - As defined by the scope of these statistics - please see the Introduction section.

2 - Whether parties involved in the case consented to the substantive injunction being granted. Parties may have consent to the overall injunction but not to some of the derogations from open justice it imposed. Applications made without-notice to defendants or third parties cannot be consented to.

3 - An individual injunction may grant more than one type of derogation from open justice.

4 - Restricting the application of Civil Procedure Rules Practice Direction 5.4C.

5 - Restricting the application of Civil Procedure Rules Practice Direction 25A 9.2.

Table 2: Proceedings dealing with the continuation or variation of interim injunctions at the High Court in London, January 2013 to June 2013

Category	August to December 2011	January to June 2012	July to December 2012	January to June 2013
Total injunctions where continuation/variation dealt with[1]	**3**	**9**	**3**	**2**
Relate to interim injunctions initially granted in the same period				
Yes	2	8	0	2
No	1	1	3	0
Type of claimant				
Individual - male	2	5	2	1
Individual - female	1	2	0	1
Company or other organisation	0	2	0	0
More than one claimant	0	0	1	0
Notice given of the application				
On-notice to defendants or third parties	3	8	3	2
Without-notice to defendants or third parties	0	1	0	0
Outcome of application				
Injunction granted (or varied)	3	7	3	2
Injunction discharged	0	2	0	0
Parties consented to the injunction[2]				
Yes	1	2	1	1
No	2	7	2	1
For injunctions granted (or varied), derogations from open justice provided[3]				
Private hearing	3	4	1	1
Party anonymity	2	2	1	2
Restrictions on access to documents[4]	1	7	1	2
Restriction on provision of documents to third parties[5]	1	7	1	2
Super-injunction clause: Prohibition on disclosing proceedings or injunction	0	0	0	0
Other	0	0	0	0
No derogations from open justice provided	0	2	2	0

Notes

1 - As defined by the scope of these statistics - please see the Introduction section.

2 - Whether parties involved in the case consented to the substantive injunction being granted. Parties may have consent to the overall injunction but not to some of the derogations from open justice it imposed. Applications made without-notice to defendants or third parties cannot be consented to.

3 - An individual injunction may grant more than one type of derogation from open justice.

4 - Restricting the application of Civil Procedure Rules Practice Direction 5.4C.

5 - Restricting the application of Civil Procedure Rules Practice Direction 25A 9.2.

Table 3: Final privacy injunctions dealt with at the High Court in London, January 2013 to June 2013

Category	August to December 2011	January to June 2012	July to December 2012	January to June 2013
Total final privacy injunctions dealt with[1]	**2**	**4**	**2**	**1**
Relate to interim injunctions initially granted in the same period				
Yes	0	2	0	0
No	2	2	2	1
Type of claimant				
Individual - male	0	0	0	0
Individual - female	0	3	1	0
Company or other organisation	0	0	0	0
More than one claimant	2	1	1	1
Notice given of the application				
On-notice to defendants or third parties	2	4	1	1
Without-notice to defendants or third parties	0	0	1	0
Outcome of application				
Injunction granted	2	3	2	1
Injunction refused	0	1	0	0
Parties consented to the injunction[2]				
Yes	0	2	0	0
No	2	2	2	1
For injunctions granted (or varied), derogations from open justice provided[3]				
Private hearing	2	3	2	1
Party anonymity	0	3	2	1
Restrictions on access to documents[4]	2	2	2	1
Restriction on provision of documents to third parties[5]	0	2	1	1
Super-injunction clause: Prohibition on disclosing proceedings or injunction	0	0	0	1
Other	1	0	0	0
No derogations from open justice provided	0	0	0	0

Notes

1 - As defined by the scope of these statistics - please see the Introduction section.

2 - Whether parties involved in the case consented to the substantive injunction being granted. Parties may have consent to the overall injunction but not to some of the derogations from open justice it imposed. Applications made without-notice to defendants or third parties cannot be consented to.

3 - An individual injunction may grant more than one type of derogation from open justice.

4 - Restricting the application of Civil Procedure Rules Practice Direction 5.4C.

5 - Restricting the application of Civil Procedure Rules Practice Direction 25A 9.2.

Explanatory notes

1. This is the fourth statistics bulletin on privacy injunctions dealt with at hearings at the High Court or Court of Appeal at the Royal Courts of Justice (RCJ) in London published by the Ministry of Justice. The figures relate to proceedings which took place during the period January to June 2013. It also includes comparisons with figures relating to August to December 2011, January to June 2012 and July to December 2012 as presented in the first three statistics bulletins.

2. Data have been collected via statistical returns filled out at court hearings and returned securely to the Ministry of Justice statistics team. The forms are completed by judges, who with their full understanding of the circumstances of the case thus determine whether an injunction has met the criteria for inclusion in the statistics (see **Introduction**). This means, therefore, that only an injunction deemed by the judge to meet these criteria is included.

3. UK courts have long operated under a fundamental principle of "open justice". This means, in general terms, that all aspects of court proceedings should be open to the press and the public. Exceptions are only permitted in limited circumstances, where the law requires it (for example dealing with the care of children in the family courts). In proceedings where an injunction is sought to protect or enforce privacy, the judge may decide that some deviation (or "derogation") from the principle of open justice may be needed for the proper administration of justice.

4. The statistics presented in this bulletin are designated as Official Statistics. They have been produced in accordance with the Code of Practice for Official Statistics.

5. Practice Direction 51F of the Civil Procedure Rules described the scheme under which these statistics are used to be collected. Following the successful implementation of the pilot the provisions were made permanent by inclusion in the Civil Procedure Rules with effect from 1 October 2012. The material is contained in Practice Direction PD40F which supplements Part 40 of the Civil Procedure Rules: Judgments, Orders, Sale of Land etc. Practice Direction 51F has ceased to exist.

6. The information collected by the Ministry of Justice on the statistical returns filled out by judges gives only the broad details about each injunction which are presented in this report. No information is collected by the Ministry of Justice statistics team which provides any further indication about the circumstances or nature of the case or allows any party to be identified.

7. The statistics are, by necessity, based on the completed data collection forms returned to the Ministry of Justice by judges, their clerks or court associates at the Royal Courts of Justice in London. It is possible that the figures presented here constitute an undercount, if any relevant

statistical returns have not yet been completed by a judge or forwarded to the statistics team (see Revisions). Validation is carried out on the returns received to resolve any apparent inconsistencies in the information provided on a form.

8. Public judgments can be found on the British and Irish Legal Information Institute website at www.bailii.org/.

Revisions

9. Once published, the statistics for a particular period will not normally be subject to revision. Revisions may occur if data are received late from the court, or if an error is identified. Where a revision has been made, the revised figure is accompanied by the (r) symbol in the appropriate table.

Glossary

Claimant

The person or organisation applying for a privacy injunction.

Court of Appeal of England and Wales

The second most senior court in the country (after the Supreme Court). It hears appeals relating to both criminal and civil matters.

Defendant

The person or organisation against whom a privacy injunction is directed.

Derogations from open justice

UK courts have long operated under a fundamental principle of “open justice”. This means, in general terms, that all aspects of court proceedings should be open to the press and public. In proceedings where an injunction is sought to protect or enforce privacy, the judge may decide that some deviation (or “derogation”) from the principle of open justice may be necessary for the proper administration of justice. Possible derogations can include, for example, a hearing taking place in private, granting anonymity to one or more of the parties involved, or restricting access to court documents.

European Convention on Human Rights (ECHR)

A treaty, signed in November 1950, which protects human rights and fundamental freedoms in Europe. All member states of the Council of Europe are signatories to the ECHR. Article 8 of the ECHR provides for the right to respect for private and family life. Article 10 provides for the right to freedom of expression.

Human Rights Act 1998

Gives further legal effect in the UK to the fundamental rights and freedoms contained in the European Convention on Human Rights.

Interim privacy injunctions and final privacy injunctions

In all privacy injunction cases, the person or organisation applying for a privacy injunction – called the claimant – may initially seek an interim injunction. The court may issue an interim injunction at the outset of a case if, without this, any subsequent injunction it may grant to prohibit publication would have already been thwarted.

If an interim injunction is granted, it will normally only last for a few days initially. The court will usually set a ‘return date’ by which a second hearing will take place, giving the defendant – the person or organisation against whom the privacy injunction is directed – time to consider their position. At

that second hearing the court will decide whether or not to continue the interim injunction (perhaps with some variation in its terms). The defendant may oppose the continuation of the injunction, or agree to be bound by it. If the court continues the injunction after this second hearing it will normally last until a full trial can take place. Interim injunctions are granted only on the basis of witness statements, without oral evidence or disclosure of documents.

After then hearing all the evidence and arguments at the full trial, the court can decide to continue (or vary) the interim injunction as a final injunction, which makes the injunction permanent, or cancel it (also termed "discharge"), which means the injunction no longer exists so there is no restriction on the publication or dissemination of the information in question.

Master of the Rolls

The leading judge dealing with the civil work of the Court of Appeal in England and Wales, and presides over the most difficult and sensitive cases.

On-notice application

The party an injunction is aimed at – for example a newspaper intending to publish a story – is told that the injunction is being sought. They can therefore choose to challenge it if they wish.

Privacy injunction / anonymised injunction

An injunction which restrains a person from publishing information which concerns the applicant (the person seeking to obtain the injunction) and is said to be confidential or private, and where the names of either or both of the parties to the proceedings are not stated. These are termed "privacy injunctions" throughout this report.

Queen's Bench Division

The part of the High Court which deals mainly with civil actions in contract and tort (civil wrongs). It also hears more specialist matters, such as applications for judicial review. It contains within it the Commercial Court and the Admiralty Court.

Royal Courts of Justice

The Building on the Strand in London which houses the High Court and Court of Appeal.

Super-injunction

A particular type of privacy injunction which restrains a person from publishing information which concerns the applicant (the person seeking to obtain the injunction) and is said to be confidential or private, and publicising or informing others of the existence of the injunction and the court proceedings.

Without-notice application

The party an injunction is aimed at is not notified that an injunction is being sought.

Contact points for further information

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General information about the official statistics system of the UK is available from www.statistics.gov.uk

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Alternative formats are available on request from
statistics.enquiries@justice.gsi.gov.uk