

# Celebrity's rights to privacy



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Do celebrities have rights to privacy? Should their private lives be open to press scrutiny? Please analyse *Hello v Douglas*, *Campbell v MGN Ltd*, *A v B* and *Campbell v Frisbee*. Please also mention cases that were referred to in the judgements of these cases, and the importance of data protection in answering this question.

There is no express common law 'tort of privacy' in English law[1]. Rather, there is a generally recognised 'right' to privacy. In recent times, there has been much controversy surrounding the issue of privacy, and questions have been raised as to whether or not privacy should be expressly enforceable through the courts. Prior to the HRA 1998, a person could only bring an action against another for breach of confidence, trespass or defamation[2].

Grundberg[3] opines, '...Freedom of the press is the cornerstone of freedom of speech.' However, it is the media that have had the biggest role to play in the discussions surrounding the right to privacy. Gibbons suggests that the issue now is deciding how far the interests of the media count against the introduction of a general law. He opines that the concept of privacy '...is not easy to elucidate and its priority in securing protection over other interests is not self-evident.' [4] Essentially, Gibbons affirms, privacy centres on the individual's right to restrict the availability of information about him or herself.

There have been attempts to pass bills in Parliament with the aim of introducing a statutory tort of privacy, all of which were unsuccessful. Government Committees and Royal Commissions have also recommended against the introduction of such a law on the basis that there would be an '

unworkable definition of the tort.’[5]The Younger Committee Report on Privacy confirmed that they ‘...found privacy to be a concept which means widely different things to different people and changes significantly over relatively short periods. In considering how the courts could handle so ill-defined and unstable a concept, we conclude that privacy is ill-suited to be the subject of long process of definition through the building up of precedents over the years, since the judgements of the past would be an unreliable guide to any current evaluation of privacy.’[6]The absence of such a law was criticised in the case of *Kaye v Robertson*. [7]Gordon Kaye, an actor, had been involved in a serious accident and was consequently admitted to hospital. Journalists from the *Sunday Sport* ignored notices to see a member of staff before visiting Kaye, and subsequently took photographs of him. Medical evidence was submitted, stating that Kaye was not fit to give interviews at that time and had no recollection of ever giving one in the first place. Consequently, Potter, J granted an injunction to prevent publication of the pictures and any accompanying story. Barendt and Hitchens assert that this particular case has been the subject of much analysis in recent times, and cite Professor Markesinis[8]who claimed that, ‘...English law, on the whole, compares unfavourably with German law... Many aspects of the human personality and privacy are protected by a multitude of existing torts but this means fitting the facts of each case in the pigeon hole of an existing tort...it may leave a deserving plaintiff without a remedy.’[9]

In October 2000, an express right to privacy finally broke into English law by virtue of the Human Rights Act 1998. The European Convention on Human

Rights and Fundamental Freedoms, Article 8 was incorporated into English law. The Convention stipulates that 'Everyone has the right to respect for his private and family life, his home and his correspondence.'

According to Grundberg, the HRA 1998 applies only to government action and not to the actions of private individuals. Furthermore, Article 8 requirements can conflict with the right to freedom of expression, as detailed in Article 10.[10]

In *Douglas v Hello!*, the Douglases and OK Magazine won their case against the publishers of Hello! magazine for breach of confidence. Hello! had published unauthorised photographs of the wedding of Michael Douglas and Catherine Zeta Jones, in the full knowledge that OK had an exclusive on the story. In addition to winning their claim for breach of confidence however, the Douglases were also awarded damages under the Data Protection Act 1998 by virtue of the fact that the photographs were deemed to be 'personal data.' [11] The photographs were said to have been unlawfully processed by Hello!, thereby contravening the requirements of the DPA 1998. Lindsay, J stated that, '...When a data controller (Hello!) is responsible for the publication of hard copies that reproduce data that has previously been processed by means of equipment operating automatically, the publication forms part of the process and falls within the scope of the Act.' [12] Hello! argued that their publication fell within the 'wide journalism exception' under s. 32 of the DPA 1998, a mechanism that was successfully used against Naomi Campbell in the case of *Campbell v MGN Ltd* [13] at the Court of Appeal. In this case however, Lindsay, J ruled that unlike the Campbell case, there was '...no credible evidence that Hello! had the necessary belief

that the publication was in the public interest, particularly given that the photographs were obtained by trespassing paparazzo and Hello! knew OK was about to publish a wedding exclusive.' [14] He continued to assert, ' That the public would be interested is not to be confused with their being a public interest.'

Kate Brimsted claims that the first principle of the DPA 1998 requires the processing of data to be fair and lawful. In this case, Lindsay, J held that the principle had been breached by Hello! magazine in that their methods of obtaining the photographs were unfair. The magazine had also failed to comply with the requirements laid out in Schedule 2 of the Act in relation to fair and lawful processing. In the case of *Hello v Douglas* Lindsay, J referred to the case of *Peck v UK* [15]. In this case, the European Court of Human Rights held that English law had failed to provide Peck with an effective domestic remedy when CCTV images of him looking apparently suicidal were broadcast. Brimsted argues that in the current climate, the DPA 1998 would provide him with a legal remedy by virtue of the fact that he would be entitled to compensation as he suffered ' by reason of any contravention' of the Act by the data controller (the broadcaster).

In the case of *Campbell v MGN Ltd* [16] the Mirror newspaper had ran a cover story with the headline ' Naomi: I am a Drug Addict,' accompanied by two pictures - one of Naomi Campbell as a glamorous model, the other of her looking casual in jeans and a baseball cap, over the caption ' Therapy: Naomi outside meeting.' The Mirror had exposed Naomi Campbell's attendance at Narcotics Anonymous. In general, the article was deemed to be supportive

and sympathetic, though inaccurate in places. The frequency of her attendance was also exaggerated.

Campbell took action against MGN Ltd the day the story was published. The Mirror responded by publishing further stories, though the tone of the articles shifted from sympathetic and supportive to aggressive and demeaning; one headline was simply labelled 'Pathetic'. In the proceedings, Campbell claimed damages for breach of confidence, and compensation under the Data Protection Act 1998. Morland, J upheld her claim, awarding her approximately £3, 500. MGN Ltd subsequently appealed, and this was upheld. Campbell appealed once again to the House of Lords, though this time her appeal was dismissed on the basis that inter alia, the pictures published by MGN Ltd 'conveyed no private information beyond that discussed in the article...there was nothing undignified or distraught about her appearance.' [17] It is worth noting here the difference between this case and *Peck v UK*, where Peck's vulnerable and suicidal appearance was a key factor in the final decision.

Naomi Campbell was involved in further legal proceedings against her former employee Vanessa Frisbee, in *Campbell v Frisbee*. [18] The News of the World had published an article about apparent sexual encounters between Campbell and the actor Joseph Fiennes. The story had been provided to the newspaper by Vanessa Frisbee, who had been employed by Campbell to provide 'management services'. It was a term of Frisbee's contract that she would keep information about Campbell private, and she entered into a Confidentiality Agreement on the 9th February 2000. Frisbee agreed to abide by a number of clauses; namely however that she would not disclose

anything to the media without the prior permission of Campbell. It was appreciated in court that Frisbee owed Campbell a duty of confidence, and that the disclosures she had made were clearly a breach of this confidence. Campbell claimed damages or account of profits arising from the breach of confidence. By way of defence, Frisbee argued that, through a culmination of mistreatment and assault the contract between herself and Campbell had been repudiated, and, even if the court found that this was not the case, she was entitled to sell the story nevertheless, because there was a public interest.

Lightman, J held in this case that confidentiality remained binding in respect of confidential information that the employee or contractor had acquired in the course of his or her service, even if the contract had been repudiated by other means[19].

In the case of *A v B*, the court was concerned with whether or not to grant an injunction to restrain the publication of private information. This information concerned the sexual relations that A, a married professional footballer, had had with two women - C and D. Lord Woolf stated in this case that any interference with the press had to be justified; under s. 12 (4) of the Human Rights Act, the court had to have regard to whether or not it would be in the 'public interest' for material to be published. Lord Woolf stressed in this case however that, even if there were no obvious special public interest, this did not mean that the court would be justified in interfering with the freedom of the press; he opined that, '...where an individual was a public figure he was entitled to have his privacy respected in appropriate circumstances. He should recognise however that he must expect and accept that his actions

would be more closely scrutinised by the media.’[20] Lord Woolf appears to be adhering to the school of thought that suggests celebrities, by virtue of their prominent status within society, should appreciate that their lifestyles and activities will be more carefully monitored by the press than ordinary members of the public.

Crone suggests that it is unlikely a claimant will be able to restrain the publication of information about his or her private life unless the information ‘...is trivial or already in the public domain...there is a clear public interest in the publication involving, for example, the detection or exposure of crimes... or the claimant can clearly be compensated in damages because, for example, he is prepared to sell the relevant information about his private life, as was the case in *Douglas v Hello!*. ’ [21]

In answering the question, ‘ Should the lives of celebrities be open to press scrutiny,’ the difficulty lies in deciding which information is of sufficient importance for the public to have a justifiable claim to knowing about it. Gibbons claims that in some cases this is reasonably clear, i. e. if facts about anti-social or harmful practices are private, this does not warrant their continued secrecy, and facts relevant to a politician’s ability to govern are required to be publicly known in the interest of society at large. It appears that celebrities are entitled to object if information is private and there is no public interest in the material being published. There are obvious differences between cases such as *Campbell v MGN Ltd* , where the claimant did not wish the photographs to be published at all, and *Douglas v Hello!*, where there objections stemmed from the fact that, while they were willing for photographs to be published, they had agreed an exclusive with a magazine

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in order to protect their commercial interests. It is also interesting to note that now, while the UK does not benefit from a specific privacy law, adequate redress can now be obtained by virtue of the Data Protection Act 1998, and the protection it offers “ by reason of any contravention” of its provisions.

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*Campbell v Frisbee* (2002) EWCA Civ No. 1374

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### STATUTORY PROVISIONS

Data Protection Act 1998

Human Rights Act 1998

## LEGAL WEBSITES

[www.spr-consilio.com](http://www.spr-consilio.com)

[www.hmcourts-service.gov.uk](http://www.hmcourts-service.gov.uk)

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## Footnotes

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