March 23, 2022

The UK Supreme Court has handed down its highly anticipated judgment in the matter of *Bloomberg LP v. ZXC* [2022] UKSC 5. As we explained in our 16 February 2022 Cooley alert, the case highlighted the tension between the privacy interests of individuals under investigation who have not been charged with a crime and the rights of the press to publish information of public importance.

Bloomberg had published two reports about a US-based executive who was the subject of a criminal investigation in the UK. One of the reports described a confidential letter of request for mutual legal assistance to foreign authorities, including details of the theory of suspected fraud. The executive successfully sued Bloomberg for the misuse of private information. Bloomberg appealed, arguing that individuals under investigation do not have a reasonable expectation of privacy, and that the general public is cognisant of the presumption of innocence.

Last month, the UK Supreme Court dismissed Bloomberg's appeal, explaining:

> '[A]s a legitimate starting point, a person under criminal investigation has, **prior to being charged, a reasonable expectation of privacy in respect of information relating to that investigation** and that in all the circumstances this is a case in which that applies and there is such an expectation' (emphasis added)

The Supreme Court emphasised that while each individual case must be assessed according to the particular facts in play, it is a broad matter of public policy that individuals are not identified by enforcement authorities prior to charge because there is a significant risk to causing irreversible damage to an individual's reputation by publishing such a fact. The Supreme Court's view was that there was scant justification to allow media organisations to bypass this principle.

What this means for businesses and individuals

Media organisations in the UK must be cautious when reporting about individuals who are under criminal investigation but not yet charged. Individuals can take some comfort in knowing that they will have recourse if their identity, or details relating to their involvement in a criminal investigation, are made public before a charging decision. We note, however, that these cases generally turn on their facts. We recommend that businesses and individuals under investigation take steps to prevent the identities of suspects under investigation prior to charge, and the facts under investigation, from being disclosed, particularly now that the Supreme Court has re-emphasised the right of suspects to privacy in the UK.

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