

= Greene v Associated Newspapers Ltd =

Greene v Associated Newspapers Ltd [2004] EWCA Civ 1462 is a case of the Court of Appeal of England and Wales that governs the use of injunctions against publication in alleged defamation cases . Greene , a businesswoman , sought an injunction against Associated Newspapers Ltd to prevent them publishing alleged links with Peter Foster ; while they claimed to have emails showing links , she asserted that they were false . The test at the time for a preliminary injunction in defamation cases was *Bonnard v Perryman* , where it was established that the applicant has to show " a real prospect of success " at trial . The Human Rights Act 1998 established that judges should consider whether applicants are " more likely than not " to succeed at trial , a test applied to confidentiality cases in *Cream Holdings Ltd v Banerjee* and the *Liverpool Post and Echo Ltd* . Greene claimed that the *Cream* test should be applied rather than the *Bonnard* test .

The case first went to the High Court of Justice , where it was heard by Fulford J ; he decided that he did not have the authority to overrule *Bonnard* , and passed the case on to the Court of Appeal after granting a temporary injunction . In the Court of Appeal , the case was heard by May , Dyson and Brooke LJJ , with Brooke delivering the judgment on 5 November 2004 . In it , Brooke judged that defamation , the subject of Greene , was significantly different from breach of confidentiality , the subject in *Cream* . While the damage from a breach of confidentiality can never be undone , justifying a simple test for issuing injunctions , a defamation case that is won vindicates the injured party . Making it easier to grant injunctions in defamation cases would damage the delicate balance between freedom of the press and the right to privacy ; as such , despite the Human Rights Act , *Bonnard* is still a valid test .

= = Background = =

Martha Greene , a businesswoman , sought an injunction against Associated Newspapers Ltd to prevent them publishing allegations that she was linked to Peter Foster , a convicted fraudster . Associated Newspapers claimed they had emails proving the link , and wanted to rely on a defence of fair comment and justification ; Green asserted that the emails were fakes . At the time , the law on injunctions was governed by two cases ; *Bonnard v Perryman* and *Cream Holdings Ltd v Banerjee* and the *Liverpool Post and Echo Ltd* . *Bonnard* established that " The right of free speech is one which it is for the public interest that individuals should possess , and indeed , that they should exercise without impediment , so long as no wrongful act is done ? Until it is clear that an alleged libel is untrue , it is not clear that any right at all has been infringed ; and the importance of leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions " , telling courts that injunctions in libel cases should only be granted if there is " a real prospect of success " at trial .

The Human Rights Act 1998 , which came into force in 2000 , brought the European Convention on Human Rights into British domestic law . Article 8 of the convention covers " the right to respect for private and family life " , and during the passage of the Act through Parliament , elements of the press were concerned that this could affect their freedom of expression . As such , Section 12 of the Act provides that , if a court is considering whether to grant relief which infringes on the right to freedom of expression (such as an injunction) , it must " have particular regard to the importance of the Convention right to freedom of expression " , although recognising the other limits put on this right . Where a relief (such as an injunction) is granted in the absence of the respondent , the court must be satisfied that the claimant has taken all reasonable steps to ensure that the defendant was notified , unless there are compelling reasons why they should not be . The court must also not grant relief that would restrict publication before trial , unless satisfied that it is " more likely than not " that the trial will establish that publication should not be allowed .

As a result of the Act , it was uncertain what test to use ; was " a real prospect of success " at trial acceptable , or the easier test of " more likely than not " to succeed at trial ? In *Cream* the House of Lords decided that " a real prospect of success " was still valid law , but that from then on the test of " more likely than not " should be applied . Following on from this ruling , Greene argued that the

Bonnard test was now invalid , and that the case should be judged under the Human Rights Act and Cream .

= = Court proceedings = =

The case first went before Fulford J in the Queen 's Bench Division of the High Court of Justice , with Fulford 's judgment delivered on 16 October 2004 . In it , he held that the High Court was bound to apply Bonnard v Perryman , but granted an injunction until such time as a more senior court could determine Bonnard 's status . The case then went to the Court of Appeal of England and Wales , where it was heard by May , Dyson and Brooke LJ ; Brooke delivered a judgment for the entire court on 5 November 2004 . In it , the court refused to extend the " more likely or not " test found in the Human Rights Act 1998 to cover defamation as well as breach of confidentiality (the subject of the Cream case) . While Brooke noted that the Bonnard test was inflexible , he also considered the distinction between defamation and breach of confidentiality ; while " confidentiality , once breached , is lost for ever " , if a defamatory statement is taken to trial and the claimant wins , he or she is vindicated and suffers no lasting harm . As such , the Cream test should not be applied , because it would violate the delicate balance between the right to privacy and the freedom of the press .