



## GAVIN MILLAR QC

### MAIN AREAS OF PRACTICE:

Discrimination and equality  
Election law  
Employment law  
Media and Information law  
Public law  
Sports law

Called to the Bar 1981  
Appointed to Silk 2000

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### MEDIA AND INFORMATION LAW

#### Recent cases:

*Abbasi v Newcastle upon Tyne Hospitals NHS Foundation Trust; Haastrup v Kings College Hospital NHS Foundation Trust* [2021] EWHC 1699 (Fam). Ruling by the President of the Family Division that privacy injunctions protecting the identities of the treating clinicians in two end of life cases could and should be continued after the conclusion of the inherent jurisdiction proceedings and the deaths of the two children concerned. Gavin represented the Trusts.

*Arlene Foster v Dr Christian Jessen* [2021] NIQB 56. Claim by the First Minister of Northern Ireland the High Court in Northern Ireland in which she was awarded £125,000 in general damages for a defamatory tweet by a doctor, author and television celebrity. Gavin represented the defendant.

*Big Brother Watch and others v UK* (App nos. 58170/13, 62322/14 and 24960/15), 25 May 2021 (Grand Chamber). Complaints to the ECtHR under Arts 8 and 10 of the Convention about scope and magnitude of the UK government's electronic surveillance programmes revealed by Edward Snowden's disclosures. Gavin represented a public interest news outlet, The Bureau of Investigative Journalism, and one of its journalists in the second application. They established that the regime gave rise to violations of their Art 10 rights to protect confidential journalistic information.

*Gubarev and Webzilla Limited v Orbis Business Intelligence and Christopher Steele* [2020] EWHC 2912 (QB). Gavin represented the defendants in this libel trial arising out of BuzzFeed's publication online of their intelligence memoranda about Russian interference in the 2016 US Presidential election. The claim was dismissed because they had neither intended nor authorised the publication.

*In the matter of an Application by PSNI and Durham Constabulary for Search Warrants* [2020] NIQB 55. The police obtained and executed search warrants against public interest investigative journalists who had received and published material in a confidential leaked document of the Northern Ireland Police Ombudsman. In JR proceedings the High Court quashed the warrants because the judge issuing the warrants had failed to respect their ECHR Article 10 rights and for breaches of PACE Sch 1. Gavin represented Barry McCaffrey, one of the applicant journalists.

*Aven and Others v Orbis and Steele* [2020] EWHC 1812 (QB). Gavin represented the defendants. The claimants were referred to in the "Steele Dossier" on the 2016 US Presidential election campaign. They alleged processing of five pieces of personal data unlawfully under the DPA 1998. The court applied the legal rights and national security exemptions to much

of the processing. But one piece of data, about two of the claimants, breached the 4<sup>th</sup> principle (accuracy) and compensation was awarded for this.

*R (BBC) v Newcastle Crown Court [2019] EWHC 2756 (Admin)*. A PACE production order requiring the BBC to give police a copy of a journalist's note was declared unlawful. It was of answers given in a mock TV interview with someone who became a Crown witness at a criminal trial. The note was not likely to be relevant evidence as required by PACE Sch 1 because it was not immediately admissible per se at the trial, though it may have become admissible on issues as to the credibility of the witness.

*ZXC v Bloomberg LP [2019] EMLR 20*. Publication of allegations against the claimant in a leaked law enforcement agency letter of request to a foreign government engaged the claimant's Article 8 rights, which were not outweighed by the Article 10 rights of the publisher. But the privacy damages could not include a sum for damage to reputation.

*Big Brother Watch and others v UK* (App No 62322/14, 13 September 2018) Gavin represented the applicants in the third of these joined cases before the ECtHR, the Bureau of Investigative Journalism and one of its journalists Alice Ross. The Strasbourg Court found that their rights under Article 10 were violated by provisions of RIPA dealing with state surveillance and acquisition of communication data.

*Richard v BBC [2019] Ch 169*. Gavin acted for the BBC at the trial of Sir Cliff Richard's privacy claim arising out of its coverage of a police investigation involving a search of his property.

*Khuja (formerly known as PNM) v Times Newspapers Ltd & Ors [2019] AC 161* Gavin appeared for the Times successfully resisting an appeal seeking a privacy injunction to prevent reporting of references to the Appellant at a criminal trial.

*Buzzfeed Inc v Gubarev [2018] EWHC 1201 (QB)*. An appeal by BuzzFeed seeking an order requiring Christopher Steele to be deposed under the Hague Convention in US libel proceedings, on factual issues relating to his authorship of the "Trump dossier"

*Appleby Global v BBC and Guardian [2018] EMLR 14*. A ruling as to whether a case against media defendants and concerning their journalistic activities should be transferred from the Chancery to the Queen's Bench Division.

*R (News Group Newspapers Limited) v (1) Parole Board (2) Secretary of State for Justice [2018] 3 WLR 829*. Judicial review challenge by the Sun to rule 25(1) of the Parole Board Rules 2016 preventing disclosure of information about proceedings before the Board.

*Gubarev v BuzzFeed Inc [2018] EWHC 512* Application by Christopher Steele to dismiss or vary an order to depose him in US libel proceedings concerning the Trump dossier.

*Bukovsky v CPS [2018] 4 WLR 13 Civ* Gavin acted for the CPS in this appeal concerning the defamatory meaning of a charging announcement.

*Sir Cliff Richard v BBC [2017] EMLR 22* Application by the Claimant for an order requiring a BBC journalist to disclose whether he knew his source information came from within a police investigation.

*Times Newspapers Ltd v Flood [2017] 1 W.L.R. 1415* Gavin represented Associated Newspapers Limited in one of three appeals in which media organisations argued that liability to pay the claimant success fees and ATE

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insurance premiums in High Court proceedings violated their ECHR Art 10 rights.

*ZXC v Bloomberg LP* [2017] EMLR 21 Lloyd's Rep. F.C. 206 Successfully resisted an application for an interim privacy injunction against a publisher in respect of an online article about a law enforcement agency investigation.

*Coulter v Sunday Newspapers Ltd* [2017] NICA 10. Successful appeal to the Northern Ireland Court of Appeal on behalf of a newspaper whose fair comment and public interest speech defences had been dismissed at trial.

*Barron v Collins* [2017] EWHC 162 (QB) Assessment of compensation for defamation in an offer of amends in which the Defendant had disavowed the offer.

*Sir Kevin Barron MP and Rt Hon John Healey MP v Caven Vines* [2016] EWHC 1226 (QB). Represented the claimant MPs in an assessment of damages hearing in libel proceedings complaining of statements made about them by a UKIP spokesperson on Sky News.

*Sir Kevin Barron MP, Rt Hon John Healey MP, Sarah Champion MP v Jane Collins MEP* [2016] EWHC 1166 (QB). Stay of libel proceedings granted to the defendant MEP to allow the European Parliament to express an opinion as to whether a statement complained of in libel proceedings had been made in the performance of her duties within the meaning of Art 8 of Protocol No 7 defining the Privileges and Immunities of the European Union.

*PJS v NGN* [2016] AC 1081. Argued on behalf of the Sun on Sunday that a privacy injunction should be set aside because of widespread availability of the information on the internet.

*Fallows v News Group Newspapers Ltd*, [2016] ICR 801. Represented the newspaper, successfully asserting the right to report on compromised Employment Tribunal proceedings in which the parties had sought a restricted reporting order.

*NGN and others v Commissioner of Police for the Metropolis, Investigatory Powers Tribunal*, 17 December 2015 [2016] 2 All ER 483. The police had used s.22 RIPA powers to obtain the communications data of the newspaper and three of journalists in order to identify journalistic sources. The IPT ruled that the legislative regime was incompatible with the right to protect sources under Article 10 of the Convention.

*Tim Yeo v Times Newspapers Ltd* [2015] EWHC 3375 Gavin successfully defended The Sunday Times in a seven day libel trial arising out of an undercover investigation in which an MP had been asked to breach the paid advocacy rule in the MPs' Code of Conduct. The newspaper relied on a combination of justification, fair comment and Reynolds privilege defences.

*Coventry v Lawrence* [2015] 1 WLR 3485. Gavin represented the Media Lawyers Association intervening in this appeal in which the Supreme Court considered whether the recovery of success fees and ATE insurance was compatible with Convention rights.

*Sir Kevin Barron MP and others v Jane Collins MEP* [2015] EWHC 1161 (QB). Gavin represented the three MPs for Rotherham who were attacked in a broadcast speech by the defendant from the platform at the 2014 UKIP conference. The court tried preliminary issues as to meaning and reference, finding that she had accused the claimants of knowing many of the details of the child sexual exploitation in the town yet allowed the abuse to continue.

*Sir Kevin Barron MP and Rt Hon John Healey MP v Caven Vines* [2015] EWHC 1161 (QB). Summary judgment was granted in favour of two of the

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Rotherham MPs who had been defamed by a UKIP councillor in a live interview on Sky News about the child sexual abuse scandal.

*Tim Yeo MP v Times Newspapers Ltd* [2015] 1 WLR 3031. The High Court offered guidance on costs budgeting where disputes about the costs budgets in a defamation case were argued out at a case management conference before the judge.

*Mitchell v News Group Newspapers Ltd; Rowland v Mitchell* [2014] EWHC 4014 (QB). Gavin appeared for NGN which was being sued in defamation by Andrew Mitchell MP for its "plebgate" exclusive. In this trial of the factual issues in the two "plebgate" libel actions the judge found that Mr Mitchell had spoken to the police officer as alleged in the article in the Sun, using the politically toxic word "pleb".

*R (oao JC) v Central Criminal Court* [2015] 1 WLR 2865. The appellants were 17 year old defendants at an Old Bailey trial. In these judicial review proceedings they sought to establish that an order under the Children and Young Persons Act 1933 s.39 prohibiting the media from reporting their names or other identifying particulars should continue indefinitely rather than expire when they reached 18. Gavin represented the BBC as an interested party, supported by other UK news outlets.

*Tim Yeo MP v Times Newspapers Ltd* [2014] EWHC 2853 (QB); [2015] 1 W.L.R. 971. This was the first application for a jury trial under the Defamation Act 2013. The court held that trial by jury would now be the exception rather than the rule in libel and slander cases, even where they involved senior elected politicians.

*G (An Adult), Re (COP)* [2014] EWCOP 1361; [2014] COPLR 416. Associated Newspapers sought to be joined as a party to proceedings in the Court of Protection in order to argue that G had capacity to discuss her case with journalists. Instructed by the Official Solicitor, Gavin successfully opposed the application at a hearing before the President of the CoP.

*R (on the application of British Sky Broadcasting Ltd) v Central Criminal Court* [2014] AC 885. Represented Sky News. A closed material procedure had been used in production order proceedings brought under the Police and Criminal Evidence Act 1984 against the broadcaster. It successfully challenged the use of the CMP both in the Divisional Court and in the Supreme Court.

*Hunt v Times Newspapers Ltd* [2013] EWHC 1868 (QB). Gavin successfully defended The Sunday Times in a three week libel trial in which the central allegation was that the claimant was the head of an organised crime group involved in murder, drug trafficking and fraud. The newspaper relied on a combination of justification and Reynolds privilege defences.

*Attorney General v Times Newspapers Ltd (DC)* [2012] EWHC 3195 (Admin); [2013] A.C.D. 42. Successfully resisted proceedings to commit his client, TNL, for contempt of court for breach of the strict liability rule under s.2(2) of the Contempt of Court Act 1981. The newspaper articles in issue, under the headline, "alleged knife killer stabbed her elderly mother to death", had given details of a suspect's previous conviction, hospital order and release.

*Phillips v News Group Newspapers Ltd and Mulcaire* [2012] UKSC 28, [2013] 1 AC 1. Gavin represented the private investigator, Glenn Mulcaire. Mr Mulcaire lost his privilege against self-incrimination in High Court voicemail interception proceedings when the Supreme Court ruled that s.72(2) of the Senior Courts Act 1981 applied. This was on the basis that the claimant's

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commercially confidential voicemail information (of which there was some) was intellectual property.

*R. (oao British Sky Broadcasting Ltd) v Chelmsford Crown Court* (DC) [2012] EWHC 1295 (Admin); [2012] 2 Cr. App. R. 33. Gavin represented various news broadcasters including the BBC, ITN and Sky News who successfully challenged production orders requiring them to produce hundreds of hours of footage of the Dale Farm evictions of travellers.

*R (oao Guardian News and Media Ltd) v City of Westminster Magistrates Court* (CA) [2012] EWCA Civ 420; [2013] Q.B. 618. Gavin was represented the newspaper in a judicial review of extradition proceedings brought by the US government. The CA agreed that journalists reporting the case in the public interest should be given access to documents filed and read by the court. Any refusal would have to be justified by some strong contrary interest. This important common law principle is now applied generally in the criminal courts.

*Commissioner of Police for the Metropolis (1); Serious Organised Crime Agency (2) v TNL (1); Gillard (2)* [2011] EWHC 2705 (QB); [2014] EMLR 1. Gavin's journalist client was allowed to use a number of leaked confidential police documents in defending libel proceedings. A restriction on their freedom to do so would have been an unjustifiable interference with their ECHR Art 10 rights.

*Ferdinand v Mirror Group Newspapers Ltd* [2011] EWHC 2454 (QB). Gavin represented the defendant in this trial of a claim for misuse of private information. The newspaper's right to freedom of expression prevailed. There was a public interest in showing that Rio Ferdinand's public image was false and a substantial body of the public would expect higher standards from the England football captain than those reported on.

*R. (on the application of Gaunt) v Office of Communications (OFCOM)* [2011] EWCA Civ 692; [2011] [2011] 1 WLR 2355. Gavin represented a radio presenter who had called a politician a "health Nazi" in a live radio interview. He challenged an OFCOM offensiveness ruling against the broadcaster as a violation of his ECHR Art 10 rights as a journalist. The CA upheld the OFCOM ruling. Judgment is awaited in an application to the ECtHR in which Gavin acts for Mr Gaunt.

*MGN Ltd's Application, Re* [2011] EWCA Crim 100; [2011] 1 Cr App R 31. A successful appeal to the CA on behalf of various national media organisations. The appeal was against a "blanket" order of the Central Criminal Court postponing reporting of a series of newsworthy murder trials under s.4(2) of the Contempt of Court Act 1981.

*R (oao Binyam Mohamed) v Secretary of State for Foreign and Commonwealth Affairs* (CA) [2011] QB 218. Gavin represented the UK media. The Secretary of State had unsuccessfully sought redaction of various paragraphs in a judgment of the High Court on the ground that their publication would damage intelligence sharing between the UK and the US. The CA dismissed the appeal.

#### **Other notable cases:**

*Independent News and Media Ltd v A* (CA) [2010] 1 WLR (the leading case on the media's rights to have access to and report on cases before the Court of Protection).

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*Attorney General's Reference* (No.3 of 1999), Re [2010] 1 AC 145 (the House of Lords removed anonymity granted to an acquitted defendant in a rape case to enable the BBC to report the case fully in the public interest).

*X (A Child) (Residence and Contact: Rights of Media Attendance)*, Re [2009] 2 FLR 1467 (test case on the new Family Proceedings Rules giving accredited media representative presumptive rights of access to private hearings in family courts for the first time).

*Attorney General v Seckerson (1) and Times Newspapers Ltd (2)* [2009] EMLR 20 (test case on what jurors can say to the press after a trial without breaching s.8 of the Contempt of Court Act 1981 protecting "the secrets of the jury room").

*Mersey Care NHS Trust v Ackroyd* (No.2) [2008] EMLR 1 (the CA upheld the right of a freelance journalist's right to protect the confidential source of a story about the mistreatment of Ian Brady in Ashworth Special Hospital).

*Roberts v Gable* [2008] QB 502 (a leading authority on the libel defence of "reportage", see now s.4(3) of the Defamation Act 2013).

*R. (on the application of Trinity Mirror Plc) v Croydon Crown Court* [2008] 3 WLR 51 (the CA ruled that the Crown Court has no inherent jurisdiction to grant injunctions to protect privacy rights).

*Jameel v Dow Jones & Co Inc* [2005] QB 946 (internet libel and the need for substantial harm, see now s.1 of the Defamation Act 2013).

*S (A Child) (Identification: Restrictions on Publication)*, Re [2005] 1 AC 593 (a landmark case identifying the correct approach to balancing ECHR Art 8 and Art 10 rights).

## PUBLIC AND ELECTION LAW

Gavin has specialised in local government, Parliamentary and election law for over 20 years. He has appeared in many election petitions before Election Courts, the High Court and the Court of Appeal. He has appeared in many of the leading modern election cases. These have included:

- *Greene v Forbes (The Peterborough Election Petition)* [2020] EWHC 676 (QB). A ruling of the Divisional Court as to whether a dissolution of Parliament for a general election causes a Parliamentary Election Petition to abate or drop automatically.
- *Ahmed v Kennedy* [2003] 1 W.L.R. 1820, the leading modern authority on the procedure for issuing election petitions.
- *R v Fiona Jones MP*, the first MP in the modern era to lose her seat as a result of a conviction for an election offence. The conviction was overturned on appeal she was reinstated as an MP by a subsequent ruling of the Divisional Court (*Attorney General v Jones* [2000] QB 66).
- *Mainwaring v Rowe* [1992] 1 W.L.R. 1059, re the definition of a "fraudulent device" for the purposes of the election law offence under s.115 of the Representation of the People Act 1983.

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#### Recent cases include:

*Rothery v Evans* [2021] EWHC 577 An injunction application by an aspiring candidate to be reinstated on a ballot paper to party members selecting a mayoral candidate for their political party

*Michael Foster v Iain McNicol (1), The Rt Hon Jeremy Corbyn MP (2)* [2016] EWHC 1966 (QB). A challenge by a member of a political party to the inclusion of a candidate on a leadership ballot.

*Ireland v Dorries* [2016] 1 WLR 571. Gavin represented the MP in a successful application to strike out a Parliamentary Election Petition against her.

*A Local Government Election for the Kinson South Ward of Bournemouth BC* [2016] ACD 22; Gavin successfully challenged the election of two of the three successful candidates. A group of voters had been given, and voted on, incorrect ballot papers. Another group had attended polling stations but not received ballot papers. In total the two groups exceeded the majority of the two successful candidates over the Petitioner on the counted votes. The Divisional Court ruled that a voter could not be permitted to cast two different ballot papers at the same election. It also ruled that an Election Court could not conduct an inferential analysis as to how a voter, disenfranchised by Returning Officer errors, might have voted validly, when considering whether the errors affected the result.

*R. (oao Woolas) v Parliamentary Election Court (DC)* [2010] EWHC 3169 (Admin); [2012] Q.B. 1. Gavin represented Phil Woolas who had been re-elected as MP for Oldham East but was held at trial to have had made false statements of fact in relation to his opponent's personal character or conduct contrary to s.106 of the Representation of the People Act 1983. The Divisional Court held that the decision of Parliamentary Election Court could be challenged by way of judicial review, even though it was comprised of two High Court judges. The JR challenge succeeded only in part, however, and the vacation/disqualification remained in place.

*R. (oao Conservative and Unionist Party) v Election Commissioner* [2010] EWCA Civ 1332; [2011] P.T.S.R. 416; [2011] 2 Costs L.R. 298. Gavin had successfully represented a losing candidate in a two week trial before a Local Government Election Court in Slough. The winning candidate was found personally guilty of an extensive postal vote fraud. In this test case the CA ruled that the election court nonetheless had no power to make a non-party costs order, in respect of the costs of the trial, against his political party.

*R v Chaytor, Morley and Devine* [2010] EWCA Crim 1910; [2010] 2 Cr. App. Represented one of three former MPs facing trial for criminal offences relating to their Parliamentary allowance claims. The Court of Appeal upheld a ruling of the trial judge that they could not claim immunity from prosecution by reason of Parliamentary privilege. This was subsequently upheld by the Supreme Court.

*A v B (Investigatory Powers Tribunal: Jurisdiction)* [2009] UKSC 12; [2010] 2 A.C. 1. Represented a former member of the Security Service who had sought judicial review of a refusal by the Service to consent to publication of large parts of his intended memoir about his time in the service. The

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Supreme Court upheld a decision of the Court of Appeal that RIPA s.65(2)(a) gave exclusive jurisdiction over his Human Rights Act claim to the Investigatory Powers Tribunal.

## EMPLOYMENT/DISCRIMINATION LAW

In *Brennan v Sunderland City Council* (EAT) [2012] ICR 1183 his client, the GMB union, successfully resisted contribution claims by the local authority in equal pay proceedings on the basis that the Civil Liability (Contribution) Act 1978 did not apply in Employment Tribunal proceedings. He has recently concluded a complex, four week public interest disclosure case in the Employment Tribunal involving the police.

## CRIME AND REGULATORY LAW

*R v Murrer* (2008). Gavin defended a journalist, Sally Murrer. Her police source was prosecuted for misconduct in public office and she for aiding and abetting. The case was stayed as an abuse of process at Kingston Crown Court because a conversation between his client and her source in a car had been covertly recorded by the police with a view to identifying him as her source. This was a violation of her ECHR Art 10 right to protect her confidential journalistic source.

*R v Jon Venables* (2010). He represented the Crown and obtained pre-prosecution orders from the Central Criminal Court enabling Venables to be brought before the court to face charges of downloading indecent images of children, without any reporting of the criminal proceedings, including as to his new identity and his current appearance.

*R v Dobson* (2010). Gavin represented the Crown and obtained pre-arrest orders from the Court of Appeal to prevent media reporting of the DPP's authorisation of an investigation of the commission by Gary Dobson of a qualifying offence under s.85(2) of the 2003 Criminal Justice Act. The orders enabled Dobson subsequently to be retried for, and convicted of, the murder of Stephen Lawrence without a risk that pre-trial reporting would damage his fair trial rights.

*R v Devine* (2011). He defended Jim Devine, a former Labour MP charged with false accounting in relation to various of his Parliamentary allowances claims.

*R v Brooks and others* (2013). He defended Glenn Mulcaire who faced two counts of conspiracy in the criminal "phonehacking" case.