Judiciary of England and Wales

28 August 2025

PMC (a child by his mother and litigation friend FLR) v. A LOCAL HEALTH BOARD
Appeal No: CA-2024-002798
Neutral Citation Number: [2025] EWCA Civ 1126

JUDGMENT SUMMARY

Important note for media and public: this summary forms no part of the court's decision. It is provided so as to assist the media and the public to understand what the court decided. The full judgment of the Court of Appeal is the only authoritative document. Judgments are public documents and are available at: www.judiciary.uk, https://caselaw.nationalarchives.gov.uk

Introduction

1. This appeal raised the question of the court's power to grant a withholding order and a reporting restriction order in a clinical negligence case brought by a vulnerable child suffering from cerebral palsy, whose injuries had been caused at birth by the negligence of the defendant health authority.

The facts

2. The claimant was born in 2012 at one of the defendant's hospitals. He is now 13. After his birth, he developed a large intraventricular haemorrhage as a result of asphyxia prior

to birth and during labour. The haemorrhage led to his cerebral palsy. The appellant was profoundly damaged and reliant on others for his care and day to day needs.

3. A letter claiming damages was sent in October 2013. In 2016, liability for negligence in the care of the claimant and his mother was admitted. The defendant made large interim payments, even before the claim form for more than £10 million in damages was issued in March 2023. A liability judgment was entered by consent in November 2023. In November 2024, the claimant issued an application for an AO on the basis that: (a) he was unlikely to have capacity to conduct proceedings or manage his affairs on reaching adulthood, and (b) publication of the circumstances giving rise to the claim, the interim payments and any ultimate settlement sum would be unjust and would infringe his article 8 rights.

4. Before the proceedings were issued, there had already been two media articles about the claimant's case published in 2020 and 2021, which arose from his mother's engagement with a media outlet. The mother said she did not wish to engage further with the media.

The terminology

5. A **withholding order** (a WO) is an order sought within court proceedings to withhold or anonymise the names of a party or a witness, including withholding information that would identify that person.

6. A **reporting restrictions order** (RRO) is an order sought within court proceedings which has the effect of restricting the reporting of material disclosed during those proceedings whether in open court or by the public availability of court documents.

7. An **anonymity order** (an AO) is **both** a WO and an RRO.

The judge's decision

8. Mr Justice Nicklin (the judge) refused the AO sought by the claimant on the basis that there was no statutory foundation for making an RRO in the absence of a WO, and that the evidence did not support a WO being made in this case, because material concerning the claimant and his claim was already in the public domain. Derogation from the principle of open justice was not, according to the judge, necessary in this case. The judge reached two important conclusions:

   i) the judge concluded that he should follow what Lord Sumption had said in *Khuja v. Times Newspapers Limited* [2019] AC 161 at [18] (*Khuja*): "[t]he inherent power of the court at common law to sit in private or anonymise material deployed in open court has never extended to imposing reporting restrictions on what happens in open court", in preference to following Lord Reed's view expressed in several places in *A v. British Broadcasting Corporation* [2015] AC 588 (*A v. BBC*) that there was a common law power in the court to derogate from the open justice principle where it was in the interests of justice to do so.

   ii) Secondly, the judge held that he should not follow parts of the Court of Appeal's decision in *JX MX v. Dartford and Gravesham NHS Trust* [2015] 1 WLR 3647 (*Dartford*), because (a) *Dartford* had not identified the jurisdiction to make an RRO, (b) several passages in *Dartford* were not consistent or conflicted with the "very clearly established principles of open justice", and (c) *Dartford* did not

deal with the situation (which arises in this case) of an application for an AO after the name of the claimant had already been publicised.

9. The claimant appealed the judge's approach to all these points. The defendant Health Authority was neutral on the appeal. The Official Solicitor supported the appeal, and the Personal Injuries Bar Association supported aspects of the appeal. The BBC supported most aspects of the judge's judgment. The Advocate to the Court gave significant assistance to the Court.

The Court of Appeal's decision

10. The Court of Appeal (Sir Geoffrey Vos MR, Warby and Whipple LJJ) allowed the appeal.

11. The Court of Appeal (in a judgment of the Master of the Rolls) said that there was a limited common law power to derogate from the principle of open justice in civil or family court proceedings by making, within court proceedings, both a WO and an RRO.

12. There were three reasons why the judge was wrong to prefer what Lord Sumption had said in *Khuja* to other authority. First, *Khuja* was not a case like this. This case involved a classic situation in which the court was being asked to protect the integrity of its own process in the interests of justice. Secondly, it was clear from *Scott v. Scott* [1913] AC 417, *A v. BBC*, *Wolverhampton CC v. London Gypsies and Travellers* [2024] AC 983 and *Abbasi v. Newcastle upon Tyne Hospitals SC* [2025] 2 WLR 815 that there was an inherent power in the court derived from the common law to derogate from the principle of open justice in civil or family court proceedings by making, within court proceedings,

both a WO and an RRO, where such an order was strictly necessary in the interests of justice. Thirdly, there were clear indications in the authorities that the common law power to derogate from the open justice principle in the course of proceedings could be deployed to protect the interests of vulnerable parties.

13. The Master of the Rolls reformulated his approval of what the judge had said at [41] (approved by him in *Tickle v. BBC* [2025] 2 WLR 714, at [49]) in relation to the assessment of a derogation from the common law principle of open justice: The Court must start from the position that very substantial weight must be accorded to open justice. The balance starts with a very clear presumption in favour of open justice unless and until that is displaced and outweighed by a sufficiently countervailing justification.

14. The Court of Appeal held that *Dartford* remained good law. The judge had not been right to criticise Moore-Bick LJ's judgment in *Dartford*. It had been binding on him. Subject to three caveats, the guidance in *Dartford* applied to approval applications under CPR Part 21.10 **and** to applications for AOs in personal injury claims brought by children and protected parties. The three caveats were that (i) the application for an AO should be listed anonymously, (ii) the applicant did in every case have to apply for an AO that would only be made if it were shown to be strictly necessary to derogate from the open justice rule in the interests of justice, (iii) the necessary evidence in support of an AO depended on the circumstances, but those circumstances might be sufficient to make it unnecessary to speculate as to future specific risks to the claimant.

15. Where the parties were aware that the media or other non-parties had published information about the case or had shown a specific interest in doing so, those non-parties ought to be notified of the court's consideration of the application so they could be

heard. In cases where no third party was known to have an existing interest in the case, the media did not need to be notified in advance of an anonymity application being made. The media would become aware immediately after an AO was made because of the provisions of CPR Part 39.1(5) requiring a copy of the court's order to be published on the Judiciary's website.

16. Applying the principles it had stated, the Court of Appeal reached the clear conclusion that an AO drafted in prospective terms was strictly necessary in this case in the interests of justice. A 10-day quantum trial was fixed to take place in December 2025. If the claim settled, an approval hearing under CPR Part 21.10 would be required. If it went to trial, private details about the claimant and his family would inevitably be mentioned in open court. Either way, documents would be filed at court containing private information which would, without protection, be open to public inspection. The prospective AO would not prevent the media reporting on the matters of public interest arising in the litigation, such as the events that led to the claimant's injuries and the conduct of the hospital in dealing with them. Nor would the order prevent reporting of the amount of any damages agreed or awarded. Instead, it would prevent the claimant and his family from being further identified in the media as the claimant in the case.

17. The fact that there had been previous publicity did not disqualify the application. Previous media coverage might, however, be a pointer against making an AO or towards making only a forward-looking RRO. The main features making it strictly necessary here to make a prospective WO and an RRO, in the interests of justice, were (i) the extreme vulnerability of the claimant, and (ii) the serious infringement upon the claimant's private and family life in relation to medical details, family circumstances and financial matters that this litigation would involve, if the details were reported in

the media alongside the claimant's name. It should not be assumed that a derogation from the open justice principle would be held to be strictly necessary in a case where the evidence did not cover all these factors and was less compelling. Each case would need to be considered on its own facts.

18. The court invited submissions as to the precise form of order that was appropriate in the light of the guidance provided in the judgment.

END