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CHAMBERS

PMC and Anonymity Orders:
Underlying Principles and
Guidance for Applications

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PMC v CWM TAF MORGANNWG UNIVERSITY HEALTH BOARD, C/A 2025



- **Withholding Order (WO):**

(to withhold or anonymise the names of a party/witness, or information that would identify that person)

- **Reporting restrictions order (RRO):**

(to restrict the reporting of material disclosed in court proceedings)

- **Anonymity order (AO):** (does both)

Scott v Scott (HL, 1913)

- ‘*the rock upon which the principles of open justice stand*’
- Fundamental Principle: open justice
- Cases must be heard in public unless there is a strict necessity to depart from that rule to secure that justice is done.
- ‘Strict necessity’ does not depend on court’s discretion; is limited to:
 - *Parens patriae*
 - Where a necessarily secret process would be revealed if the hearing were held in the open.
- *R v Socialist Worker Printers and Publishers Ltd* (HC, 1975):
anonymisation of witnesses in a criminal trial

Jurisdiction (statute/common law)

- Section 11 Contempt of Court Act 1981 ('Publication of matters exempted from disclosure in court'):

“In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld.”
- *Independent Publishing Co Ltd v AG for Trinidad and Tobago* (PC, 2005): no common law jurisdiction for RRO (C/A in *PMC* disagreed)

Human Rights Act 1988

Balancing articles 8 and 10:

- *Re S (a child) (Identification: Restrictions on Publication)* (HL, 2004)
- *Re Guardian News and Media Ltd* [2010] UKSC 1:
The question for the court: is a report of the proceedings which identifies x, resulting in curtailment of his/his family's right to respect for their private and family life, justified by a *sufficient general, public interest in publishing* that report?
- *JIH v News Group Newspapers Ltd* (CA, 2011)

Jurisdiction: common law

- *A v BBC* (2014, SC):
 - An inherent common law jurisdiction
 - To be exercised after a fact-specific balancing exercise
 - Capable of development, in response to changes in society and in the administration of justice.

AOs and CPR 21.10

JX v Dartford and Gravesham NHS Trust (2015, CA)

- The court should: *normally make an AO in favour of the C without the need for any formal application, unless for some reason it is satisfied that it is unnecessary or inappropriate to do so.*
- NB protective nature of approval hearings
- Fear of invasion of privacy generally is key

AOs and infant claimants at liability trials

- *PQ (a child) v Royal Free London NHS FT (2020, HC)*:
 - ‘necessity’ test was met, justifying AO at stage of liability trial
 - To preserve open justice: settlement could be reported to the ‘fullest ability’ of the press, without identifying the names of the child/their family.

Distinguished issues

- *Khuja v Times Newspapers Ltd* (2017, SC)
 - ‘No common law power’ (to restrict reporting of material already deployed in open court)
- *Abbasi v Newcastle upon Tyne Hospitals NHS FT* (2025, SC)
 - Equitable injunctions *contra mundum* (NOT RROs)

A Common Law Power

- The court has a common law power to make both a WO and an RRO within proceedings where that is **strictly necessary in the interests of justice.**
- The power is distinct from equitable injunctions against the world under s.37 Senior Courts Act 1981.
- Article 8/10 balancing follows the structured approach in Abbasi (is the interference prescribed by law, does it pursue a legitimate aim, and is it necessary in a democratic society?)
- Section 11 Contempt of Court Act 1981 can be used alongside the common law power, where it applies.

Dartford – still good law?

- Subject to caveats given in PMC [98-102], its guidance applies broadly to AO applications in personal injury claims by children and protected parties.
- Protective nature of approval hearings under CPR.
- Wrong to treat applications under CPR Part 21.10 to approve a child's settlement as identical to other applications for anonymity.
- **There is no presumption.** The applicant must actually apply and justify the order. *Dartford* streamlined the process; it did not reverse the burden of proof.
- Do not list the application in the child's name.
- Evidence – case dependent.

Approval hearing v child claims more generally

- Approval hearings under CPR 21.10 are essentially protective, and quite different factors apply.
- Under *Dartford*, a limited derogation "will normally be necessary" at approval hearings to protect Article 8 rights, and specific risks do not have to be shown.
- In the wider personal injury claim, the jurisdiction is the common law one, but children "are persons whom the court should look to protect".

The Legal Test

- **Starting point.** Open justice is a cardinal principle. The court must give "very substantial weight" to open justice, and the balance starts with a "very clear presumption" in its favour until displaced by a sufficient countervailing justification.
- **Threshold.** Any derogation must be **strictly necessary in the interests of justice.**
- It must also be the minimum derogation required.
- CPR 39.2(4) allows non-disclosure only where it is necessary to secure the proper administration of justice and to protect the person's interests.
- The process, drawn from ***A v BBC*** – see **PMC [108]**.
- Parties' consent is not enough.

The Application - timing it right

- Apply "as early as reasonably practicable".
- Ideally at or before issue, so the Claimant's name never enters the public court record.
- A late application can still succeed, but relief is likely to be forward-looking only.

The Application – procedure for applying

- Make the application under CPR Part 23, normally on Form N244, supported by evidence (usually a witness statement).
- Relevant CPR rules: CPR 39.2(4) and CPR 5.4C and D – remember to make the application relevant to the relevant rules.
- CPR 39.2(4) allows non-disclosure only where it is necessary to secure the proper administration of justice and to protect the person's interests.
- CPR 5.4C lets non-parties obtain statements of case, and judgments or orders made in public, without permission once the defendant has acknowledged service or filed a defence. Any other document needs the court's permission. The court can restrict or edit access to statements of case, on a Part 23 application. These rules form the "court documents" half of an anonymity order.

Supportive Statement

Content of statement:

- The child's vulnerability, including likely lack of capacity in adulthood if relevant
- The medical, family and financial information that will come out through filed documents, trial or approval
- Any specific risks, such as vulnerability to exploitation
- There is no need to speculate about future risks
- Full and frank disclosure of all prior publicity, including hearings and documents already public (by family or lawyers).
- Provide the "best available evidence"

PF10

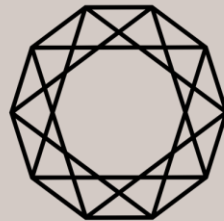
- Attach a draft order in PF10 form to application.
- The revised form came after the judgment in PMC and was approved by the CPRC.
- It appears to widen PF10's scope to cover any stage of the claim as opposed to just approval hearings.
- This draft order is useful as it provides various alternative provisions depending on the case.
- There are notes appended to the PF10 proforma to assist.
- Draft orders should be submitted using proposed three letter cyphers, not TBC. The cyphers should not be the same letter, nor consecutive letters: so avoid, e.g. XXX, WWW, ABC, PQR, etc.
- Note CPR 5.4C and D.

The hearing

- **Listing.** The application should be listed as "an application under CPR Part 21.10" (or similar) or under a three-letter pseudonym, not in the child's name. (As PMC confirmed amending the Dartford position).
- The hearing itself remains in open court.
- The PF10 note now prompts claimants to request anonymous listing.
- **Urgent interim relief.** In *PMC*, without-notice interim relief was refused because of s.12 Human Rights Act 1998 and Article 10. The judge instead ordered an urgent hearing on notice.
- **Notice.** Give notice to any media outlet or non-party known to have published material or shown a specific interest in the case. Otherwise, no advance notice to the media is needed. *See para 101 of PMC in discussion of Dartford.*
- **After the order is made.** The order must be published on the Judiciary website under CPR 39.2(5).
- **Post order.** Non-parties may apply to set it aside or vary it.

Thank you for your attention

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