



Neutral Citation Number: [2025] EWCA Civ 176

Appeal No: CA-2024-002798

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Mr Justice Nicklin
[2024] EWHC 2969 (QB)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/2/2025

Before:

SIR GEOFFREY VOS, MASTER OF THE ROLLS

LADY JUSTICE NICOLA DAVIES

and

LORD JUSTICE WARBY

Between:

PMC (a child by his mother and litigation friend FLR)

Claimant
Appellant

- and -

A Local Health Board

Defendant
Respondent

Robert Weir KC and Robert Oldham (instructed by **Hugh James**) for **PMC** (the Claimant)
Jeremy Hyam KC for **A Local Health Board** (the Defendant)
Katie Scott for the **Official Solicitor** (the OS)
Emily Formby KC on behalf of the **Personal Injuries Bar Association** (the PIBA)
Nicola Greaney KC and Nicola Kohn appointed by the **Attorney General** as the
Advocates to the Court

Hearing date: 25 February 2025

JUDGMENT

SIR GEOFFREY VOS, MASTER OF THE ROLLS :

This is the judgment of the Court.

When the court sat this morning to hear an appeal from Nicklin J’s order in *PMC v. A Local Health Board* [2024] EWHC 2969 (KB), the court indicated that it had been interested to read [87] of Ms Nicola Greaney KC’s submissions, as advocate to the court, to the following effect:

“It is suggested that this Court may wish to await the Supreme Court’s [the UKSC] decision in [*Abbasi v. Newcastle Upon Tyne NHS Trust & Others* [2023] EWCA Civ 331] before handing down judgment given that the appeal concerns the nature of evidence required to justify a departure from open justice in cases which involve a [*Re S* [2005] 1 AC 593] balancing exercise of Article 8 and Article 10 rights. The [UKSC’s] decision may well be pertinent to an issue in this appeal, including what sort of evidence a child or protected party must adduce in relation to potential future risks if they are not granted anonymity order and whether the Court of Appeal in [*JX MX v. Dartford and Gravesham NHS Trust* [2015] 1 WLR 3647] was correct that evidence as to specific risks was not required”.

The court said it was concerned that, if it proceeded with the argument **before** it had the UKSC’s judgment in *Abbasi*, it would need to reconvene, or at least request written submissions, perhaps back and forth, once *Abbasi* was available.

The court said it felt, subject to any submissions made, that it would be **more satisfactory** for the argument to start once it knew what the UKSC had decided in *Abbasi*. It suggested that such argument could take place early in the Summer term with a judgment to follow as quickly as possible after that.

The court also said that it had reconsidered whether the PIBA and the OS ought to be asked to make oral submissions, in the light of their helpful written submissions, and thought, subject to the parties’ contentions, that such oral submissions would assist the court.

In those circumstances, the court indicated that the 1 day allowed for oral argument today might not anyway be sufficient, and that it was thinking that 2 days would be, in the new circumstances, a more reliable estimate.

Thus, the court said, subject again to what submissions were made, that it was minded to adjourn this appeal to a new 2-day fixture after *Abbasi* was available. The only question, of course, was whether delay was something that was of such concern that the court should take a different course.

Mr Weir KC submitted for the appellants that the court should not adjourn, because *Abbasi* was concerned with the *parens patriae* jurisdiction of the court, which this case was not, and he was only seeking to invoke the jurisdiction of the court to make Reporting Restrictions Orders (RROs) under section 6 of the Human Rights Act 1998 alongside section 37 of the Senior Courts Act 1981. In reply, he said, as Ms Formby KC had also submitted on behalf of the PIBA, that uncertainty had been created by Nicklin J's judgment and that applications for anonymity in approval applications were taking place all the time and it was no longer clear whether the CA's decision in *JX MX* was to be followed. Mr Weir and Ms Formby asked specifically that, if the appeal hearing were to be adjourned, the Court should give a judgment explaining, at least, the current position, pending of course any decision in this case.

The other parties and interveners supported the court's suggestion of a brief adjournment.

In these circumstances, we have decided, for the reasons already stated, that it is most expedient in the interests of justice for the hearing of this appeal to be adjourned to a 2-day hearing before the same court, if possible, as soon as possible in the Summer term. If *Abbasi* in the UKSC is not available by that time, the matter can be reconsidered. We say nothing at this stage about Mr Weir's submission on the jurisdictional basis for anonymity and RROs, save to say that we agree with the advocate to the court that the UKSC's judgments in *Abbasi* may have some bearing on the jurisdictional issues that we have to decide.

The court will also be grateful if the PIBA and the OS can be represented and in a position to make oral submissions at the adjourned hearing of this appeal.

In the concluding section of his judgment, Nicklin J set out a critique at [147]-[159] of the model order devised by the PIBA and published as a court form, numbered PF10, in the light of the decision in *JX MX* and commonly used at approval hearings. We do not express any view on the merits of that critique. We are in no position to do so at this stage. However, in the light of the information about the practical impact of that critique which has been provided to us at the hearing today, we would suggest that, for the sake of good order, it may be best for practitioners and judges to continue to use that form for the time being.

As regards the current supposed uncertainty, we were referred to a note in the Civil Procedure News issue 1/2025 (14.1.25) published by the White Book, which said the following: "Given the errors noted in the draft order [PF10], urgent consideration of its terms and their revision by the [Civil Procedure Rules Committee] would seem to be justified. Practitioners should take care to

note the guidance given in the judgment [of Nicklin J] and approach the draft order accordingly”.

As we have said, it is advisable to use PF10 in the interregnum that arises until judgment is given in this appeal. It is also worth pointing out that first instance judges remain bound by the decision in *JX MX*, until that decision is either departed from by the Court of Appeal or overruled by the UKSC.

As requested by the PIBA and the appellant’s counsel, I will ask my clerk to upload this judgment to the National Archives’ “Find Case Law” database as soon as possible.