

Anonymity injunctions for clinicians

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Browne Jacobson's Katie Viggers and Luke Berry look into the Supreme Court's decision on anonymity injunctions for clinicians.

The Supreme Court recently delivered its judgment in the linked cases of *Abbasi and another v Newcastle upon Tyne Hospitals NHS Foundation Trust* and *Haastrup v King's College Hospital NHS Foundation Trust* [2025] UKSC 15 (as previously reported by Healthcare Today). This case looked at injunctions in proceedings concerned with the withdrawal of life-sustaining treatment of children, to protect the anonymity of clinicians and hospital staff involved in that treatment.

The central question before the Supreme Court was whether such injunctions can be granted and, if so, whether they should continue after the conclusion of court proceedings, once the treatment has either been withdrawn (usually resulting in the child's death) or directed to continue.

The Supreme Court concluded that the High Court, which oversees end-of-life and best interests proceedings for children, does have jurisdiction to grant injunctions to protect the identities of clinicians and other hospital staff involved in the care and treatment of the child. It was determined, however, that these injunctions should be limited in duration rather than indefinite. A reasonable period for such injunctions would extend until the conclusion of the legal proceedings and a subsequent cooling off period, typically measured in weeks rather than months or years. Should a new injunction or a continuation of the existing one be required after the cooling-off period, a fresh application supported by specific evidence must be made to the court by those individual clinicians, rather than the NHS Trust.

Background

The two children at the centre of this case were Zainab Abbasi and Isaiah Haastrup. Both were severely unwell and were being treated by NHS Trusts. Each Trust made an application to the High Court, seeking a declaration that withdrawing life-sustaining treatment was in the child's best interests. They sought injunctions as part of this, protecting the anonymity of clinicians involved for an indefinite period.

After the children's deaths, both sets of parents wished to speak publicly about what had happened, to voice their criticisms of the care received by their child and to express their concerns over the professional conduct of certain clinicians. However, the injunctions prevented them from doing this. The parents therefore applied to discharge the injunctions.

The NHS Trusts sought new injunctions on the same terms should the existing injunctions be discharged. Their reasoning was that in some recent similar cases, there had been public protests outside of the hospitals, alleged threats to staff and verbal abuse towards clinicians on social media. This had caused anxiety and distress for staff and was likely to disrupt the quality of care provided to patients.

The High Court dismissed the parents' applications and upheld the injunctions. The parents then appealed to the Court of Appeal which reversed that decision and discharged the injunctions. The NHS Trusts then appealed to the Supreme Court.

Does the High Court have the power to grant anonymity injunctions?

The Supreme Court concluded that, in proceedings concerned with the withdrawal of life-sustaining treatment of children, the High Court does have the power to grant injunctions preserving the anonymity of clinicians and other hospital staff involved in that treatment.

However, such injunctions are time-limited and must be based on a relevant principle. During the currency of the High Court proceedings, these may overlap somewhat – but after the proceedings have concluded the justification for an injunction is likely to tail off.

The High Court's *parens patriae* powers: Protecting the child

An injunction can be granted under this power if it is necessary to protect the child's interests, including its welfare, right to confidentiality and privacy and human rights. It cannot be granted based on concern for the clinician's rights or their own interests. An injunction granted under this power will last only as long as the child is alive, plus a further cooling off period. This is likely to be a matter of weeks, rather than months or years.

The Broadmoor principle: Protecting the performance of statutory duties

Referring to the case of *Broadmoor Special Hospital Authority & Anor. v Robinson* [2000] QB 775, this allows an NHS Trust to seek an injunction to protect the identity of its staff in order to prevent interference with the Trust's performance of its statutory duties, such as patient treatment and maintaining hospital security. The injunction remains in effect as long as there is a risk of interference with the Trust's performance of its functions, with an additional cooling off period, as mentioned.

Tort of invasion of privacy: Protecting the clinician's own rights.

The clinicians themselves (or a representative clinician) can apply for an injunction based on the tort of invasion of privacy to protect themselves against wrongful invasions of their privacy, including injunctions which prohibit their identification.

Extending an injunction

The Supreme Court recognised that clinicians might want an injunction to continue beyond the cooling off period. However, in such a scenario, the Court determined that the clinicians themselves (or one or more representatives) must seek either a fresh injunction or a continuation of the existing injunction.

The Supreme Court stressed that the clinicians would need to participate in the proceedings and explain why, after the end of any cooling off period, they need protection for a significantly longer period or even indefinitely. Specific evidence of their concerns will be required. An application cannot be made by the NHS Trust to protect the clinicians' human rights (under the European Convention on Human Rights), since the High Court cannot protect an individual's rights unless they are a party to the proceedings.

When considering whether to grant or continue an injunction, the court must consider the competing Article 8 (right to respect for private life) and Article 10 (right to freedom of expression) Convention rights. It needs to consider whether there is an interference with the relevant right which is prescribed by the law, whether it pursues a legitimate aim, and whether the interference is necessary in a democratic society. Any need for restricting freedom of expression must be convincingly established. A permanent injunction would require compelling circumstances.

Practical considerations for clinicians and NHS Trusts

For clinicians and NHS Trusts, this judgment highlights the need to consider the basis for seeking injunctions carefully and the duration for which they are necessary. Trusts should ensure that any applications for injunctions are supported by specific evidence of risk and are limited in duration to reflect the changing circumstances over time.

Clinicians should be prepared to assert their own rights if they seek continued protection beyond the initial proceedings and cooling off period, and must provide specific evidence to explain why continued protection is necessary. General concerns or hypothetical risks will be insufficient. For that reason, it would be sensible for clinicians to keep detailed records of any abuse or harassment suffered.

The Supreme Court recognised that clinicians may be under significant pressure whilst caring for the child and might not have the time to make an application for an injunction themselves. They suggested that, with the clinicians' agreement, the Trust could make an application on their behalf and join them as a party to the proceedings. The Supreme Court also opined (although did not conclude) that the application could be funded by the Trust.

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