

Anonymity for protected parties at approval hearings

On 17 February 2015, the Court of Appeal (CA) gave judgment in the case of *JX MX (by her mother and litigation friend AX MX) -v- Dartford and Gravesham NHS Trust* [2015] EWCA Civ 96. This was an appeal from a decision by the High Court that a child claimant should not be granted anonymity in relation to a clinical negligence claim brought on their behalf.

The application for anonymity had been made on behalf of the child when her claim against the defendant NHS Trust was settled. Any proposed settlements on behalf of children or individuals who are considered to lack mental capacity to conduct their own litigation (known as 'protected parties') have to be approved by the court before they are final.

The claimant child in this case was to receive substantial compensation and when the parties agreed a proposed settlement, the claimant's mother (who was conducting the litigation on her behalf) applied to the court to have the settlement approved and also applied to have her identity withheld from the public. The High Court judge who initially dealt with the application refused to grant the claimant anonymity but ordered that her address should not be disclosed.

When giving judgment on behalf of the CA, Lord Justice Moore-Bick stated that, "Proceedings involving children and vulnerable adults will often call for a measure of privacy...because such persons may suffer a distinct injustice if they are exposed to the publicity that may be generated if the proceedings are held in public. Moreover, a claimant who is, or will in due course grow up to be, a protected party may need protection from those who would seek to gain access to the funds that are intended to provide compensation..."

The CA's judgment stated that whilst the public undoubtedly has an interest in knowing how the court exercises its role in protecting the interests of children and protected parties when approving settlements, this interest can usually be served without the need for disclosure of the claimant's identity. They concluded that when dealing with an approval application in these types of cases the court should recognise that it is "dealing with what is essentially private business, albeit in open court" and should normally make an anonymity order in the claimant's favour.

The CA stated that an anonymity order would typically involve prohibiting the publication of the claimant's name and address and that of their immediate family, plus a restriction on access by non-parties to documents in the court records. Where the claimant wants to seek restrictions on the press reporting other aspects of the proceedings (e.g. the circumstances giving rise to the claim or the settlement amount), the CA's judgment makes it clear that the press should be given an opportunity to make arguments to the court about this before an order is made.

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