**Graveson Moot Cup Final 2024**



**IN THE SUPREME COURT OF THE UNITED KINGDOM**

**ON APPEAL FROM THE COURT OF APPEAL (CIVIL DIVISION)**

*Alam (Respondent)*

*v*

*NHS Wales for Swansea and Neath Port Talbot (Appellant)*

To be heard on 27th March 2024

**Statement of Agreed Facts**

*Leila Alam*

1. Leila was born with Down’s Syndrome in 2010.
2. Throughout Leila’s life she was under the care of NHS Wales for Swansea and Neath Port Talbot (‘Swansea’).
3. In 2015 she contracted pneumonia and was admitted to hospital. Whilst being treated, her pneumonia developed into sepsis.
4. After developing sepsis, Leila was kept in hospital for a few weeks, on IV (intravenous fluids).
5. The hospital in which Leila was treated for her sepsis is close to a large petrol station, which produces high concentrations of benzene in the air surrounding it. The windows of the ward in which Leila was staying during her treatment were kept open everyday to increase ventilation.
6. Leila’s treatment for sepsis was successful. However, a few months later, in 2016, she was diagnosed with leukaemia.
7. Both Down’s Syndrome and benzene exposure are known risk factors for increasing the likelihood of developing leukaemia.
8. Leila was treated for leukaemia at the same hospital where she had been treated for pneumonia and sepsis and spent months at a time as an inpatient in the paediatric cancer ward of the hospital between 2016 and 2020.
9. In May 2019, the hospital sought a declaration from the Family Division of the High Court that it was in Leila's best interest for life-sustaining treatment to be withdrawn, in favour of palliative treatment.
10. At an early hearing, a reporting restriction order (an ‘RRO’) was made by Cohen J upon the application of Swansea for such an order. An ‘RRO’ is a reporting restriction order. These are made by the High Court long before end of life proceedings are initiated. They tend to protect the identities of all those involved in the care of a patient regarding whom an application to withdraw treatment is made. They are intended to protect the privacy of the patient, their family and those involved in the patient’s treatment as well as to ensure the integrity of proceedings.
11. Swansea had held that an RRO was necessary to protect the identity of Leila, her family, the Trust, the hospital and a small number of clinicians concerned in her case. Their arguments centred on articles 10 and 8 of the European Convention on Human Rights which protect the right to free speech and private and family life respectively. The RRO will be discussed in greater detail below.
12. The RRO relates only to the treatment that Leila received for her cancer, not her earlier treatment for pneumonia and sepsis.
13. In June 2020, after a few consecutive weeks of hospitalisation for treatment, Leila caught an infection and died from this. This was ten days before the final hearing date set for the proceedings issued by the hospital.
14. Leila’s parents are both medical professionals and criticised the treatments and care plan which Leila was given for her leukaemia. They felt that the focus was more on palliative care than active treatment. They also hold the hospital responsible for Leila contracting leukaemia in the first place due to her exposure to benzene during her earlier hospitalisation and they hold the hospital responsible for her catching an infection, the immediate cause of her death.

*The RRO*

1. Leila, her family and those treating her remain subject to the aforementioned RRO made by Cohen J.
2. The RRO reads as follows:

**"IMPORTANT: PENAL NOTICE**

**(1) This order contains injunctions. You should read it carefully. You are advised to consult a solicitor as soon as possible. You have the right to ask the court to vary or discharge this order.**

**(2) If you disobey this order you may be found guilty of contempt of court and may be sent to prison or fined or your assets may be seized.**

…

IT IS HEREBY ORDERED THAT:

1. Duration

a. The prohibition on the naming of the NHS Trust subject to this order shall have effect until the conclusion of these proceedings and shall be discharged thereafter, subject to any further order.

b. The remaining parts of this order shall have effect until further order.

1. Who is bound

This Order binds all persons and all companies (whether acting by their directors, employees or agents in any other way) who know that the Order has been made.

1. Publishing restrictions

This order prohibits the publishing or broadcasting in any newspaper, magazine, public computer network, internet website, social networking website, sound or television broadcast, any cable or satellite programme service of:

a. The name and/ or personal details of:

i. The clinical and non-clinical staff involved in L’s care throughout the course of her treatment for pneumonia and sepsis.

ii. The clinical and non-clinical staff involved in L’s care throughout the course of her treatment for leukaemia.

iii. Any clinician who has provided a second opinion or advice to the Applicant regarding L’s diagnosis, prognosis, treatment and management.

iv. Any clinician whom the Applicant's clinical staff have consulted and or communicated with regarding a possible transfer of L to another hospital.

b. any picture being or including a picture of the above; and/or

c. any other material that is likely or calculated to lead to the identification of the above.

1. The persons bound by this order shall not by any means (and so orally or in writing or electronically by way of social media or in any other way) directly or indirectly cause, enable, assist in or encourage the publication or communication of the matters referred to in paragraph 3 above.
2. No publication of the text or a summary of this order (except for service…) shall include any of the matters referred to in paragraph 3 above.
3. What is not restricted by this Order

a. Nothing in this order shall prevent any person from:…

v) publishing information relating to any part of a hearing in a court in England and Wales (including a coroner's court) in which the court was sitting in public and did not itself make any order restricting publication…

1. Variations of this order

The parties and any person affected by this order may apply to the Court for an order (and the Court may of its own motion make an order) that:

a. varies or discharges this order or any part or parts of it, or which

b. permits the publication of any of the Information on the basis that it is lawfully in the public domain or for such other reason as the Court thinks fit."

1. On 31 July 2020 Cohen J varied the RRO by consent to permit publication of the names of Leila and the parties to the proceedings. That included her parents. Otherwise, the restrictions remained undisturbed. However: (a) the anonymity of Swansea fell away when the proceedings concluded (the onus was placed on the Trust to apply to continue the order and it did not do so); and (b) the order recognised that it would be for other courts concerned with the circumstances surrounding the case to make their own judgment about the need for anonymity in the context of their proceedings. Although not expressed as being against the whole world, that is the effect of the order because it binds anyone who gains knowledge of the facts of the case.

*Application to discharge (in the High Court)*

1. In 2021, Dr Alam and her husband Mr Alam - Leila’s parents - made an application to the Family Division of the High Court to discharge the RRO. They submitted that the RRO prevented them from meaningfully discussing and writing publicly about the circumstances in which Leila was treated and died, or mainstream media from doing so should public interest in the circumstances of the case be sparked, as the range of medical staff and other staff protected in the RRO is very wide.
2. Dr Alam and Mr Alam held that following the variation of the RRO in 2020, there was great national and international press coverage of the case and great public interest into the behaviour of the NHS.
3. In a witness statement, Dr Alam emphasised that she and her husband were concerned with greater accountability of the clinical and non clinical staff involved in Leila’s care, not their vilification or scrutiny of their personal lives.
4. The arguments presented by Swansea in response were as follows:

i) Naming staff would be detrimental to the hospital staff and the hospital's ability to deliver care to children;

ii) There was concern as to the invasion into the private lives of staff;

iii) Experience from other cases was that, once named, staff can become vulnerable to physical attacks and/or personal attacks in social or mainstream media;

iv) The experience of previous cases and wider research indicated that publicity is likely to have an adverse impact on the mental health and wellbeing of staff;

v) The hospital in question is a teaching hospital. Any step destabilising staff was likely to have a detrimental impact on the many children and families depending on the hospitals to provide care for very sick children;

vi) Staff working in Paediatric Intensive Care Units need always to function at optimal levels;

vii) There was a wider concern that the impact of publicity might inhibit decision-making by staff in the future or adversely impact upon recruitment to crucial front-line services;

viii) In the event of adverse criticism, paediatricians and other staff are unable to respond by publishing any response to specific allegations;

ix) Publication of a person's name can now, relatively easily, lead to identification of other details and information which can then be published on social media;

x) The parents knew the identity of the treating clinicians. Complaint and disciplinary processes exist. Where appropriate, decisions can be challenged in the courts.

1. The President of the Family Division of the High Court ordered the continuation of the RRO asserting that the detailed and substantial case for protecting staff anonymity comfortably outweighed the parents' basic assertion of their right to freedom of expression.
2. Permission to appeal was granted on the grounds that:
3. There was no jurisdiction to make or continue RROs - preventing the naming of individuals who were neither parties nor witnesses - in the absence of an identifiable cause of action.
4. The balance the President struck between articles 8 and 10 was wrong and he failed to give sufficient weight to the open justice elements in play in these cases.

*Court of Appeal*

1. The Court of Appeal held that the RRO should be discharged. They proclaimed that the focus on the specific rights argued for delivers the clear conclusion that the article 10 rights of the parents in wishing to "tell their story" outweigh such article 8 rights of clinicians and staff as may still be in play, long after the RROs were made in the end-of-life proceedings. They continued that the wider systemic concerns which affect the operation of the NHS cannot justify the creation of a practice, not anchored to the specific circumstances of the case, of granting indefinite anonymity to those involved in end-of-life proceedings. They held that such a step is one that is controversial and intensely political and suitable for Parliament rather than the courts.

*Grounds of Appeal to the Supreme Court*

1. Swansea now appeals to the Supreme Court on the following grounds:

i) Discharging the RROs would restrict the clinical and non-clinical hospital staff members’ enjoyment of their article 8 ECHR rights in a manner disproportionate to any extended enjoyment of article 10 ECHR rights that the parents would be granted in gaining the opportunity to ‘tell their story’.

ii) Allowing discharge of RROs in this manner would set a dangerous precedent for removing anonymity in other similar cases which could have wider detrimental systemic repercussions for NHS professionals, and it is within the court’s role and jurisdiction to consider such policy issues.

This question was inspired by the current UK Supreme Court case, *Abbasi and another (Respondents) v Newcastle upon Tyne Hospitals NHS Foundation Trust (Appellant)* UKSC 2023/0052*; Haastrup (Respondent) v King's College Hospital NHS Foundation Trust (Appellant)* UKSC 2023/0053, to be heard from 15th-16th April 2024.

***Written by Nuha Ahmed, LLB ’25***