

IN THE SUPREME COURT

UKSC 2023/0052 and 0053

ON APPEAL FROM:
HIS MAJESTY'S COURT OF APPEAL
(CIVIL DIVISION)
Lord Burnett of Maldon CJ, King and Carr LJJ

BETWEEN :

NEWCASTLE UPON TYNE HOSPITALS NHS FOUNDATION TRUST

Appellant

-and-

(1) RASHID MAQSOOD ABBASI

(2) ALIYA ABBASI

Respondents

AND BETWEEN:

KING'S COLLEGE HOSPITAL NHS FOUNDATION TRUST

Appellant

-and-

(1) LANRE HAASTRUP

(2) TAKESHA THOMAS

Respondents

APPLICATION FOR PERMISSION TO INTERVENE
ON BEHALF OF THE MEDIA LAWYERS ASSOCIATION

A. Introduction and Summary

1. This is an application on the part of the Media Lawyers Association (the "**MLA**") for permission to intervene in writing in this appeal.
2. Reporting restriction orders, including anonymity orders, directly affect the ability of the media to fulfil its role as "*public watchdog*". The media is almost invariably an intended recipient (and usually the primary intended recipient) of anonymity orders. The MLA, as a representative of the media with extensive

experience of the issues to which these appeals give rise, is therefore well-placed to add value to the argument before the Court.

3. The MLA respectfully invites the Court to give permission for it to intervene by way of written submissions, not to exceed twenty pages. The MLA seeks to intervene in the public interest with the aim of assisting the Court in its analysis of these important issues. All parties consent to the application. The MLA regrets that its application to intervene is late. It will avoid any delay to the procedural timetable by complying with any directions of the Court.

B. The proposed intervenor

4. The MLA is an association of in-house media lawyers from newspapers, magazines, book publishers, broadcasters, and news agencies. A list of its members is set out in at **Annex 1** to this application. The MLA exists to promote and protect freedom of expression and the right of everyone to impart and receive information, ideas, and opinions.
5. The MLA has played a long-standing role in campaigning relating to media law and open justice, including by way of responses to government consultations (including the recent Ministry of Justice call for evidence on open justice), submissions to Parliamentary committees, and close involvement in the Leveson Inquiry. The MLA also has substantial experience of third party interventions. The MLA and its members have regularly provided submissions in order to assist Courts at every level, from Magistrates' and County Courts to the Supreme Court, in understanding issues relating to open justice and the balance between Articles 8 and 10 ECHR. Its interventions at this level include: *R (C) v Secretary of State for Justice* [2016] 1 WLR 444, *Dring v Cape Intermediate Holdings Ltd* [2020] AC 629 and *Lachaux v Independent Print Ltd* [2020] AC 612.
6. As a result, the MLA is well-placed to present relevant legal and practical considerations from the perspective of the media and thereby to ensure that the Court, when considering these appeals, obtains "*a more rounded picture than it would otherwise obtain*" (*In re E (a child)* [2009] 1 AC 536 at §2).

C. The nature of the proposed submissions

7. The MLA is mindful that the issues of principle under consideration apply beyond the facts of these appeals, and that the Court's decision is likely to have repercussions for media reporting across a range of fields.
8. The Court will hear argument from the Appellants and from five interveners who seek to argue in favour of restricting reporting. The MLA is conscious that the Free Speech Union (the "**FSU**") has been granted permission to intervene in these appeals. It has consulted the FSU's application to avoid duplication of arguments.
9. The issues on which the MLA intends to focus are:
 - a. The important and well-established principles governing the Court's approach to the role of the media as "*public watchdog*" (focusing on the rights and interests of the media and the wider public they serve, as distinct from the rights and interests of the respondents).
 - b. The legal issues to which anonymity and reporting restriction orders give rise for the media in carrying out its "*public watchdog*" role under Article 10.
 - c. The correct approach at common law to the issues in the appeal. In particular, the MLA seeks to address the Court on how the balance is struck at common law and to use this as a guide to the same balancing exercise under Articles 8 and 10.
10. The MLA has considerable expertise on these issues. This appeal will directly impact on journalists across the country. The MLA respectfully requests permission to intervene so that the Court has a fuller and better understanding of the interests of the media when deciding this appeal.

D. The parties' positions

11. The MLA has sought the parties' consent to its proposed intervention. The correspondence is annexed to this application at **Annex 2**. In summary:
 - a. The Respondents consent to the application.

- b. The Appellants have seen an early draft of this application and have confirmed that they consent to it with one exception. The Appellants suggest that the “*common law*” issue set out at §9(c), above, is vague and is likely to duplicate other submissions made by the parties. The MLA will ensure that there is no such duplication and respectfully submit that the common law is a useful starting point in assessing the balancing exercise in issue in this appeal.
- c. The Free Speech Union consents to the application.
- d. The Faculty of Intensive Care Medicine, the Royal College of Nursing, the Royal College of Paediatrics and Child Health and the Paediatric Critical Care Society take a neutral position on the application.
- e. The British Medical Association have raised a concern in respect of the lateness of this application. They have further indicated that they do not specifically object to the application but agree with the Appellants about the nature of the proposed submissions intimated in it. The MLA recognises that this application is advanced late and past the deadline set out for applications to intervene in the Practice Direction, §6.9.4. The MLA apologises for this late application. Nevertheless, it will not duplicate the submissions of the parties or current interveners and will ensure that its submissions are concise and focussed. It will avoid any further delay to the Court’s procedural timetable by providing its written submissions as quickly as the Court orders (and, in any event, by 11th March 2024). The Appellants will therefore have a full opportunity to address its arguments in oral submissions.

E. Costs

- 12. The MLA commits to bearing its costs of this intervention and will not seek any order as to costs against any of the parties. Pursuant to r.46(3) of the Rules of Procedure of the Supreme Court (2009), “... *orders for costs will not normally be made either in favour of or against interveners but such orders may be made if the Court considers it just to do so (in particular if an intervener has in substance acted as the sole or principal appellant or respondent).*” The Court is respectfully invited to confirm that the MLA has permission to intervene on a costs-neutral basis.

F. Conclusion

13. This appeal raises important questions of public interest in which the MLA has a direct interest and expertise. Accordingly, it respectfully invites the Court to grant it permission to intervene pursuant to r.26(2)(a) of the Rules of the Supreme Court 2009.

JUDE BUNTING KC

CLAIRE OVERMAN

Doughty Street Chambers

28th February 2024