



**Case note: *R (on the application of C) v Secretary of State for Justice* [2016] UKSC 20  
Rhys Hadden, Guildhall Chambers**

*“Publicity is the very soul of justice. It is the keenest spur to exertion, and the surest of all guards against improbity. It keeps the judge himself, while trying, under trial.*

*In the darkness of secrecy, sinister interest and evil in every shape, have full swing. Only in proportion as publicity has place can any of the checks, applicable to judicial injustice, operate. Where there is no publicity there is no justice.”*

Jeremy Bentham

In keeping with the sentiment eloquently expressed by Jeremy Bentham, the principle of open justice exists to reassure the public and the parties that the courts are doing justice according to the law. So, in what circumstances is it right to keep the names of parties to civil proceedings a secret?

In *R (C) v Secretary of State for Justice* [2015] UKSC 2 the Supreme Court were faced with the difficult question of whether the identity of a double murderer should remain anonymous following an unsuccessful claim for judicial review.

**The facts**

The appellant, C, had a long history of severe mental illness, was convicted of murdering his ex-girlfriend and her new boyfriend in 1997. He was sentenced to life imprisonment with a minimum term set at 11 years before parole could be considered.

In giving the only substantive judgment Lady Hale described the murder as *“a particularly savage killing which must have caused untold suffering to the victims and has continued to cause great grief to their families.”*

In 2000 C was transferred from prison to a high security psychiatric hospital for treatment under the Mental Health Act 1983 (“MHA 1983”) with a restriction order. In July 2012 C’s treating doctors applied, unsuccessfully, to the Secretary of State for permission to have unescorted leave in the community to assess his suitability for discharge.

C subsequently applied to the First-tier Tribunal for discharge. In 2013 the Tribunal recommended to the Secretary of State that C ought to be considered for conditional discharge as he was no longer suffering from a mental disorder of a nature or degree which made it necessary for him to be detained to protect him or others. The Secretary of State referred the case to the Parole Board.

Following the Tribunal’s decision, C’s doctors again applied for the Secretary of State’s permission for him to have unescorted community leave. This application was refused. C challenged this decision by way of a claim for judicial review. This claim was rejected and C’s application for anonymity in the proceedings was also refused. It is this case management decision that C appealed all the way to the Supreme Court.

In September 2015 the Parole Board decided to approve C’s conditional release from detention on a life licence. His release was conditional upon having to live at a specific care home, complying with ongoing treatment. C also agreed to change his name. C was eventually released from hospital in October 2015.



## The judgment

Lady Hale began her judgment endorsing the long-standing principle of open justice as being “one of the most precious in our law”. In doing so, she identified two aspects to this:

*The principle of open justice is one of the most precious in our law. It is there to reassure the public and the parties that our courts are indeed doing justice according to law. In fact, there are two aspects to this principle. The first is that justice should be done in open court, so that the people interested in the case, the wider public and the media can know what is going on. The court should not hear and take into account evidence and arguments that they have not heard or seen. The second is that the names of the people whose cases are being decided, and others involved in the hearing, should be public knowledge. The rationale for the second rule is not quite the same as the rationale for the first, as we shall see. This case is about the second rule.*

As Lady Hale went on to observe, although the courts have acknowledged the importance of the public knowing who litigants are and the media being able to publish their names, most of the crucial safeguards secured by a public hearing can still be achieved if names are withheld from the public. In particular, there are established exceptions in order to protect vulnerable groups of people, where it is necessary in practice to grant anonymity do so in some whole classes of cases (such as children or mental patients).

The Supreme Court felt it necessary to draw a distinction between ordinary civil proceedings in which a mental patient may be involved and proceedings concerning the compulsory powers under the MHA 1983, where there is a presumption of anonymity. Similar rules for anonymity exist in the Court of Protection. The default position in the First-tier Tribunal and the Court of Protection is that names will not be disclosed when decisions about the property, care or treatment of a patient are being considered.

Lady Hale held that these should not be the same presumption of anonymity in ordinary civil proceedings involving mental patients. Instead, the courts must in each case consider the question set out in CPR 31.2(4), namely whether anonymity was necessary in the interests of the patient. In doing so, the courts should weigh up the rights of the mental patient under Article 8 ECHR with the public right to information about decisions in respect of notorious criminals and the right to freedom of expression of the press under Article 10.

However, it was further recognised that many of the same reasons for the privacy rules in specialist tribunals would still apply in a judicial review claim as the hearing would inevitably involve examination of confidential medical information about a patient. Fear of disclosure of confidential information might inhibit a patient from frank dealings with his medical team. Lady Hale summarised the position:

*The question in all these cases is... is anonymity necessary in the interests of the patient? It would be wrong to have a presumption that an order should be made in every case. There is a balance to be struck. The public has a right to know, not only what is going on in our courts, but also who the principal actors are. This is particularly so where notorious criminals are involved. They need to be reassured that sensible decisions are being made about them. On the other hand, the purpose of detention in hospital for treatment is to make the patient better, so that he is no longer a risk either to himself or to others. That whole therapeutic*



*enterprise may be put in jeopardy if confidential information is disclosed in a way which enables the public to identify the patient. It may also be put in jeopardy unless patients have a reasonable expectation in advance that their identities will not be disclosed without their consent. In some cases, that disclosure may put the patient himself, and perhaps also the hospital, those treating him and the other patients there, at risk. The public's right to know has to be balanced against the potential harm, not only to this patient, but to all the others whose treatment could be affected by the risk of exposure.*

Applying these principles to the facts of the present case, the Court unanimously held that it was appropriate to grant C's application for anonymity. In so concluding Lady Hale held, there was "a very real risk that the progress he has made during his long years of treatment in hospital would be put in jeopardy and his reintegration in the community, which was an important purpose of his transfer to hospital, will not succeed".

### **Comment**

This decision comes amidst ongoing controversy about secrecy in the courts and howls of protest by some tabloids. Some of the media coverage of this judgment has been critical of a perceived failure to take into account the interests of the victims' families or public interest in knowing the identity of C and what is going to happen to him.

Such criticism is arguably misplaced. The Court remained very alive to such concerns. In conducting a careful balancing act, Lady Hale recognised the public right to information about decisions concerning notorious criminals but weighed this against the potential harm to C if his identity was exposed. In this case, the public interest in knowing how such cases were decided was protected by the holding the hearing in public. Withholding C's identity did not alter this. C was far more likely to lead a successful life in the community if the public were not aware of his identity. Therefore, on balance, the anonymity order was necessary in the interest of C. The judgment serves as a useful guide to the proper approach the courts should take on this issue.

**Rhys Hadden**