

Insights

HIGH COURT'S REFUSAL TO ORDER DISCLOSURE OF JOURNALISTIC SOURCE UNDERSCORES HIGH BAR FOR NORWICH PHARMACAL ORDERS

Apr 14, 2026

SUMMARY

The High Court has refused to compel *The Guardian* newspaper to disclose the identity of an alleged source of non-public court information. The judgment emphasises the high bar for obtaining a Norwich Pharmacal order (typically used to compel disclosure of the identity of a wrongdoer from a third party): in particular, it will be crucial that the party from whom the information is sought is “mixed up” in the wrongdoing, not just a witness or recipient of the information or documents. The case also underscores the significant weight placed by the courts on the public interest in maintaining the confidentiality of journalistic sources.

INTRODUCTION

Victims of wrongdoing have several tools available to them to uncover the identity of those responsible so they can pursue meaningful redress. Among these tools are Norwich Pharmacal orders. These orders are exceptional and will only be granted where the applicant can satisfy strict legal thresholds. This is reinforced by the High Court's decision in [Tooley v Associated Newspapers Ltd & Guardian News & Media Ltd \[2026\] EWHC 548 \(KB\)](#). The judgment, dated 13 January 2026, has only been published recently.

The claimant, Ms Tooley, applied for a Norwich Pharmacal order that would require *The Guardian* to disclose the identity of an individual she alleged had shared with *The Guardian* court material (including witness statements) which had not yet been deployed in a public hearing. *The Guardian* had not published any story about the matter.

Ms Tooley claimed a journalist had identified the source (said to be her ex-husband's solicitors) to her verbally: she now sought written confirmation of the source's identity to support a regulatory complaint. Ms Tooley also argued that the alleged disclosure by the source potentially breached an existing non-molestation order in family court proceedings.

NORWICH PHARMACAL ORDERS

A Norwich Pharmacal order allows the court to compel a person who has become innocently “mixed up” in the wrongdoing of another to provide information (typically the identity of the wrongdoer) to the victim, even though the respondent is not personally liable for the wrongdoing.

To obtain a Norwich Pharmacal order, an applicant must show that:

1. a wrong (e.g. a crime, tort, breach of contract, equitable wrong or contempt of court) has been committed, or arguably committed, by an ultimate wrongdoer (**Condition 1**).
2. the order is needed to enable action to be brought against the ultimate wrongdoer (**Condition 2**).
3. the respondent was “mixed up in” the wrongdoing so as to have facilitated it and is able or likely to be able to provide the information necessary to enable the ultimate wrongdoer to be sued (**Condition 3**). An order will not be granted against a “mere witness”.

Even if the three conditions are met, the court must be satisfied that disclosure is an appropriate and proportionate response and it retains a discretion whether to grant the order.

When exercising its discretion, the court will consider several factors. These include the strength of the applicant’s potential cause of action, whether the information could be obtained from another source, the degree of confidentiality of the information and the public interest in maintaining the confidentiality of journalistic sources.

Were the requirements for a Norwich Pharmacal Order met?

Condition 1: Wrong carried out, or arguably carried out, by an ultimate wrongdoer

The claimant argued that confidential, non-public court information was improperly passed to the newspaper by the source before it was aired in open court. She argued this may have breached a non-molestation order in family court proceedings which prohibited either party from communicating information to the press directly or indirectly.

The Guardian submitted that the information related to civil (not family) proceedings held in public. There was nothing to suggest an order had been made in those proceedings making private any part of the evidence given in those proceedings.

The judge found that the claimant “just about” satisfied Condition 1. Although the evidential position was “*at best, ambiguous*”, insofar as the claimant was relying on information being shared *before* the public hearing, “*there is some potential for establishing that the information should not have been disclosed at that stage, for example if it was from witness statements that had yet to be used in court*”.

The judge (without making any evidential findings) considered there was a potential argument that the actions constituted a breach of the non-molestation order.

Condition 2: Need for an order to be made to enable action to be brought against the ultimate wrongdoer

The Guardian argued there was no need for an order. The claimant (on her own account) already had oral information as to the identity of the source, and there were alternative routes open to the claimant.

The claimant argued that the order was necessary. She claimed that there would be a delay of up to 18 months if she instead pursued matters via the Information Commissioner's Office and that a subject access request had not yielded the information.

The judge expressed doubt as to whether Condition 2 was met, noting that even if it were satisfied, it would have been "only just" met. However, the judge did not need to rule definitively on necessity because Condition 3 was not satisfied.

Condition 3: Person against whom order is sought is mixed up in, so as to have facilitated, the wrongdoing

The judge found that the claimant had failed to establish that *The Guardian* was mixed up in the alleged wrongdoing, so as to have facilitated it.

The claimant accepted that *The Guardian* did not publish any material resulting from the communication in question; at most, they simply received the information. The judge held that this quite clearly did not constitute facilitation and placed *The Guardian* squarely in the category of a mere witness or recipient, which does not satisfy the Norwich Pharmacal test.

The judge contrasted this with situations involving operators of websites where anonymous third parties publish material. In those cases, the operator may be considered to have facilitated the wrongdoing, but here the newspaper had done no such thing.

EXERCISE OF DISCRETION

As all three conditions were not met, the judge did not need to consider whether to exercise her discretion to make the order.

However, the judge indicated that she would not have exercised her discretion to make the order in favour of the claimant. The two strongest factors in her reasoning were:

- the weakness of the claimant claim: the judge could not "*say by any shape or form that this is a strong case at this stage*"; and

- the public interest in maintaining the confidentiality of journalistic sources, which was a strong factor in favour of *The Guardian*.

There has since been a further judgment which determined a number of applications made by the claimant, including another application for Norwich Pharmacal relief, this time against Associated Newspapers Limited (“ANL”): [Tooley v Associated Newspapers Ltd & Anor \[2026\] EWHC 683 \(KB\)](#). Ms Tooley sought an order requiring ANL to disclose the identity of a source and whether the information was derived from court proceedings. This application was rejected as the judge was not persuaded that there had been arguable wrongdoing. Even if there had been, the judge would not have exercised her discretion to grant a Norwich Pharmacal order as she was “*not persuaded that the interests of justice in enabling the claimant to pursue civil or regulatory proceedings against a third party wrongdoer is so pressing as to require the strong protection against disclosure of journalistic sources to be overridden.*”

KEY TAKEAWAYS

This decision confirms that Norwich Pharmacal orders remain a narrow and exceptional remedy, particularly where they intersect with media freedoms. Organisations handling sensitive information should note that:

- Courts are very unlikely to compel media organisations to reveal sources where their role is limited to receiving information, rather than facilitating any alleged wrongdoing;
- The public interest in maintaining the confidentiality of journalistic sources will be a significant factor weighing against disclosure of a source’s identity;
- Disclosure will only be ordered where it is strictly necessary. This is a remedy of last resort and so if another practicable route exists, the court is unlikely to grant a Norwich Pharmacal order.

For clients concerned about leaks or misuse of confidential materials, this judgment reinforces the importance of building a strong evidential foundation before seeking Norwich Pharmacal relief and considering alternative legal or regulatory options in parallel.

BCLP regularly advises corporates and individuals on complex disclosure issues, including those involving media organisations. If you would like to discuss the issues in this piece, please get in contact with us.

RELATED CAPABILITIES

- Litigation

- Business & Commercial Disputes

MEET THE TEAM



Andrew Street

Partner, London

andrew.street@bclplaw.com

[+44 \(0\) 20 3400 3658](tel:+442034003658)



Hilary Baker

Associate, London

hilary.baker@bclplaw.com

[+44 \(0\) 20 3400 4236](tel:+442034004236)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.