IN THE CROWN COURT AT LEICESTER **T20177228**
BEFORE THE HON. MR JUSTICE HADDON-CAVE

THE QUEEN

v.

CHARLIE JOHN PEARCE

RULING ON LIFTING OF PRESS RESTRICTIONS
7th December 2017

INTRODUCTION

The Facts

1. Shortly after 11:30 pm on Wednesday, 3rd July 2017, a female student at the University of Leicester (BC) was walking alone through in Victoria Park in Leicester when she was suddenly attacked by a stranger. She had spent a quiet evening with friends and was on her way home. The path was semi-lit. The stranger was armed with a concrete slab. He struck her several times on the head, dragged her into the bushes, raped her anally and vaginally, stole her handbag and then left her semi-conscious and bleeding in the bushes with life-threatening and life-changing head injuries. Three youths who were in the play park nearby witnessed the beginning of the attack and subsequently called the police. A police patrol car responded but was unable to find anything because a precise location had not been given by the caller.

2. Fortunately, about an hour later at 12:30 am, another student, Sarah Scheffler, was riding home on her bicycle along the same path in Victoria Park when she felt her wheels go over something. She stopped to check that she did not have a puncture. As she did, she noticed a pool of fresh blood, a hair clip and a pair of glasses on the path. She then heard a slight noise in the bushes. She had the bravery and presence of mind to go into the bushes to investigate. She found BC lying semi-conscious covered in blood, with her tights and pants around her knees. She comforted BC as best she could and immediately called the emergency services. An ambulance from the East Midlands Ambulance Service arrived on the scene quickly. The ambulance technician, Sandra Merrigan, said that years of training could not prepare her for the sight that that night. The police and medical back up were called. BC was rushed to Leicester Royal Infirmary. She had suffered numerous injuries including a depressed fracture of the right side of her skull, major brain haemorrhaging and was in danger of 'coning'. In view of her seriously deteriorating condition, she was put into an induced coma and transferred to Queen's Medical Centre in Nottingham. As a result of exceptional medical care, BC survived and recovered consciousness some two weeks later. She could remember nothing of her ordeal.

3. The police cordoned off the area and worked rapidly. The next day, Thursday, 4th July 2017, the police circulated a picture to the local press of a suspect they wanted to interview in connection with the attack. The picture was taken from a CCTV camera which had captured a young man with short dark hair wearing a light-coloured top, carrying what appeared to be part of a concrete slab under his right arm, running along a path on the side of Victoria Park close to the area where the attack had taken place. The picture was remarkably clear both because of the lighting at that precise point and because of the proximity of the suspect to the camera. The picture was posted by the Leicester Mercury on its website.

4. The image was instantly recognised by the Defendant's step-mother, father, uncle and other members of the Pearce family as clearly being Charlie Pearce. He had been out the previous night for a drink with his uncle to celebrate his 17th birthday. His uncle had last seen him sitting outside the Clarendon pub around 10.30 pm saying he was waiting for a friend. He told his family that he had come home to his father's house shortly thereafter. He admitted having been in the Park to meet some cannabis dealers but said he had nothing to do with the incident. His father rang the police who arrested the Defendant at about 10 pm that evening at the family home. Police searches revealed the Defendant had tried to dispose of his clothes and burn BC's handbag. High vaginal swabs taken from BC revealed the Defendant's semen and BC's blood was identified on the Defendant's clothes. An interrogation of the Defendant's phone revealed that, in the weeks before the attack, the Defendant had been accessing hard-core pornography websites depicting anal rape and sexual violence against women.

Proceedings

5. The Defendant was charged with Attempted Murder (Count 1), two counts of rape (Counts 2 and 3) and Robbery (Count 4) and brought before Leicester Magistrates Court. An order was made under s.45 of the Youth Justice and Criminal Evidence Act 1999 ("YJCEA 1999") in view of the Defendant's age, preventing publication of his identity.

6. On 22nd September 2017, the Defendant was arraigned at the PTPH before the Resident Judge at Leicester, HHJ Dean QC, and pleaded not guilty to the charges.

7. On 13th November 2017, the Defendant appeared again before HHJ Dean QC and, following amendments to the indictment, pleaded guilty to the two counts of rape (anal and vaginal) (Counts 2 and 3), theft of the handbag (Count 4) and causing grievous bodily harm with intent (s.18) (Count 5). He pleaded not guilty to Attempted Murder (Count 1).

8. A trial took place before me on 4th to 7th December 2017 at Leicester Crown Court on the count of Attempted Murder. It was prosecuted by Mr Gordon Aspden of Counsel and defended by Mr Philip Bradley QC and Mr Tom Schofield of Counsel. The sole issue was intent to kill. Eye witnesses were called and detailed forensic and medical evidence was presented.

9. After deliberating for over three hours, at 12:04 pm on Thursday 7th December 2017, the Jury returned a unanimous verdict of guilty. I adjourned sentence for reports.

RULING

10. I then heard argument on applications by the Press to lift press reporting restrictions. I gave my ruling at 1 pm on Thursday 7th December 2017 as follows:

> I order that the press restriction under s. 45 under s.45 of the Youth Justice and Criminal Evidence Act 1999 should be lifted forthwith to allow the publication of the name and identity of the Defendant, Charlie John Pearce.

11. I made it clear that the normal reporting restrictions on the victim, BC, remained in full force, and that nothing must be published which does, or tends, to lead to her identification.

12. These are the detailed reason for my Ruling.

THE LAW

13. The relevant law and legal principles are set out in my ruling on press restrictions in *R v. Markham and Edwards* (8th December 2016, Nottingham Crown Court) which was upheld by the Court of Appeal in [2017] EWCA Crim 739 (President of the Queen's Bench Division, Sir Brian Leveson, Blake and Lewis JJ). The Defendants in that case, Stan Lucas Markahm and Kim Edwards were jointly charged with the murder of Elizabeth Edwards (aged 49), and her daughter, Katie Edwards (aged 13), between 13th and 15th April 2016. At the time both Defendants were aged 14. Stan Markham was born on 1st August 2001 and Kim Edwards was born on 13th June 2001. They were 15 years old at the date of sentence on 10th November 2016. The victims were Kim Edwards' mother and younger sister. In written reasons dated 8th December 2016, I lifted reporting restrictions in that case. For the sake of convenience, I repeat below the relevant law and legal principles set out in paragraphs 15-40 of my ruling.

The principle of open justice

14. The starting point is the principle of open justice. As the Lord Chief Justice, Lord Thomas of Cwmgiedd, said in his forward to the Judicial College Guidance *"Reporting Restrictions in the Criminal Courts April 2015 (Revised May 2016)"* (3rd edition) ("the Judicial College Guidance"):

> *"Open justice is the hallmark of the rule of law. It is an essential requisite of the criminal justice system that it should be administered in public and subject to public scrutiny. The media play a vital role in representing the public and reflecting the public interest."*

15. The Judicial College Guidance summarises the 'open justice' principle as follows:

> "***The open justice principle***
>
> - *The general rule is that the administration of justice must be done in public The public and the media have the right to attend all court hearings and the media is able to report those proceedings fully and contemporaneously*

- *Any restriction on these usual rules will be exceptional. It must be based on necessity*
- *The burden is on the party seeking the restriction to establish it is necessary on the basis of clear and cogent evidence*
- *The terms of any order must be proportionate – going no further than is necessary to meet the relevant objective*"

16. The importance of informed debate in the press about criminal justice was emphasised by Lord Stein in *Re S (FC) (a child)* [2005] 1 AC 593 at [34]:

> "*…[I]t is important to bear in mind that from a newspaper's point of view a report of a sensational trial without revealing the identity of the defendant would be a very much disembodied trial. If the newspapers choose not to contest such an injunction, they are less likely to give prominence to reports of the trial. Certainly, readers will be less interested and editors will act accordingly. Informed debate about criminal justice will suffer.*"

17. The importance of the freedom of the press to report criminal trials was emphasised by Lord Woolf MR in In *R v Legal Aid Board ex parte Kaim Todner (A firm)* [1999] QB 966 (at 977) (cited by Lord Steyn in *Re S (FC) (a child)* (*supra*)):

> *"…[I]t is so important not to forget why proceedings are required to be subjected to the full glare of a public hearing. It is necessary because the public nature of the proceedings deters inappropriate behaviour on the part of the court. It also maintains the public's confidence in the administration of justice. It enables the public to know that justice is being administered impartially. It can result in evidence becoming available which would not become available if the proceedings were conducted behind closed doors or with one or more of the parties' or witnesses' identity concealed. It makes uninformed and inaccurate comment about the proceedings less likely . . . Any interference with the public nature of court proceedings is therefore to be avoided unless justice requires it. However Parliament has recognised there are situations where interference is necessary."*

18. In a well-known passage, Sir Igor Judge, President of the Queen's Bench Division (as he then was), said in *Re Trinity Mirror and others (A and another intervening)* [2008] QB 770 at [32]:

> *"In our judgement, it is impossible to over emphasise the importance tobe attached to the ability of the media to report criminal trials. In simple terms, this represents the embodiment of the principle of open justice in a free country… From time to time, occasions will arise when restrictions on this principle are considered appropriate, but they depend on express legislation and, where a court is vested with discretion to exercise such powers, on the absolute necessity of doing so in an individual case."*

The statutory regime: s.39 CYPA 1933 and s.45 YJCEA 1999

19. Parliament has long introduced statutory exceptions to the Common Law principle of open justice. Prohibition on the publication of the identity of a child or young person under 18 concerned in legal proceedings was previously governed by s.39 of the Children and Young Persons Act 1933 ("CYPA 1933"). The general statutory power to impose a discretionary reporting restriction in relation to witnesses, victims and defendants under 18 is now contained in s.45 of the Youth Justice and Criminal Evidence Act 1999 ("YJCEA 1999") which came into force in April 2015.

20. Section 45 of the YJCEA 1999 provides as follows:

> *"**45. Power to restrict reporting of criminal proceedings involving persons under 18***
> *(1) This section applies (subject to subsection (2)) in relation to–*
>
> *(a) any criminal proceedings in any court (other than a service court) in England and Wales or Northern Ireland; and*
>
> *(b) any proceedings (whether in the United Kingdom or elsewhere) in any service court.*
>
> *(2) This section does not apply in relation to any proceedings to which section 49 of the [1933 c. 12.] Children and Young Persons Act 1933 applies.*
>
> *(3) The court may direct that no matter relating to any person concerned in the proceedings shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings.*
>
> *(4) The court or an appellate court may by direction ("an excepting direction") dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction under subsection (3) if it is satisfied that it is necessary in the interests of justice to do so.*
>
> *(5) The court or an appellate court may also by direction ("an excepting direction") dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction under subsection (3) if it is satisfied–*
>
> *(a) that their effect is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and*
>
> *(b) that it is in the public interest to remove or relax that restriction;*
>
> *but no excepting direction shall be given under this subsection by reason only of the fact that the proceedings have been determined in any way or have been abandoned.*
>
> *(6) When deciding whether to make–*
>
> *(a) a direction under subsection (3) in relation to a person, or*
>
> *(b) an excepting direction under subsection (4) or (5) by virtue of which the restrictions imposed by a direction under subsection (3) would be dispensed with (to any extent) in relation to a person,*

the court or (as the case may be) the appellate court shall have regard to the welfare of that person.

(7) For the purposes of subsection (3) any reference to a person concerned in the proceedings is to a person–

(a) against or in respect of whom the proceedings are taken, or

(b) who is a witness in the proceedings.

(8) The matters relating to a person in relation to which the restrictions imposed by a direction under subsection (3) apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular–

(a) his name,

(b) his address,

(c) the identity of any school or other educational establishment attended by him,

(d) the identity of any place of work, and

(e) any still or moving picture of him.

(9) A direction under subsection (3) may be revoked by the court or an appellate court.

(10) An excepting direction–

(a) may be given at the time the direction under subsection (3) is given or subsequently; and

(b) may be varied or revoked by the court or an appellate court.

(11) In this section "appellate court", in relation to any proceedings in a court, means a court dealing with an appeal (including an appeal by way of case stated) arising out of the proceedings or with any further appeal."

21. The structure and operation of s.45 can be summarised in the following four propositions:

(1) By s.45(3), a court may direct that, whilst a person remains under 18 years of age, no matter may be included in any publication "*if it is likely to lead to members of the public to identify that person concerned in the proceedings*";

(2) By s.45(4), a court may dispense with any of all of the restrictions so imposed if it is satisfied it is *"in the interests of justice"* to do so;

(3) By s.45(5), a court may also dispense with any or all of the restrictions so imposed if (a) the effect would be to impose *"a substantial and unreasonable restriction"* on the reporting of the proceedings and (b) it is *"in the public interest"* to remove or relax that restriction;

(4) By s.45(6), when making these decisions, the court is obliged to have regard to *"the welfare of the person"*.

22. The new s.45 YJCEA 1999 provision altered the balance of the previous 1933 statutory regime subtly, but significantly, in two particular respects. First, under s.39 CYPA 1933, there had to be good reason for *lifting* the order; whereas now, under s.45 YJCEA 1999, there must be good reason for *imposing* it. Second, whereas s.39 CYPA 1933 made no specific provision for how long any prohibition on publication would last, s.45 YJCEA 1999 provides expressly by s.45(3) that any anonymising direction endures only whilst the person concerned in the proceedings is under the age of 18. Save as aforesaid, the 1933 and 1999 pieces of legislation are substantially similar, and the authorities in relation to s.39 CYPA 1933 remain relevant to the scope and application of the provisions of s.45 YJCEA 1999 (see further below).

Judicial College Guidance

23. The Judicial College Guidance includes the following general principles regarding Reporting Restrictions (at page 7):

    (1) Open court proceedings and the publicity given to criminal trials are vital to the deterrent purpose behind criminal justice;

    (2) Parliament has recognised the importance of contemporaneous media reports of legal proceedings;

    (3) Any order restricting the rights of the media and public must go *"no further than is necessary to meet the relevant objective"*.

24. The Judicial College Guidance also explains that, in deciding whether to impose an order under s.45, the court must balance the 'open justice' principle against particular considerations relevant to children and young persons under 18 which include the following (at page 15):

    (1) The duty to have regard to the principle aim of the youth justice system to prevent offending by children and young persons as required by s.37 Crime and Disorder Act 1998;

    (2) The obligation to have regard to the welfare of the child or young person as required by s.44 of the CYPA 1933;

    (3) The right to privacy under Article 8 of the *European Convention on Human Rights* ("ECHR") (as interpreted through international instruments such as *UN Convention on the Rights of the Child 1989* and the Beijing Rules);

    (4) Jurisprudence requiring the 'best interests' of the child to be a primary consideration (though not necessarily one that prevails over all other considerations) in accordance with Article 3 of the UN Convention on the Rights of the Child.

Essential principles

25. The following essential principles can be derived from the leading authorities (in particular *Re S (FC) (a child)* (*supra*)):

    (1) There is a presumption in favour of publication because open justice guarantees public scrutiny;

    (2) The purpose of reporting restrictions is not rehabilitation but protection;

    (3) The burden of showing that any convention right is engaged rests on the person asserting it;

    (4) For Article 2 ECHR to be engaged (because it makes demands of the State) the risk must be objectively verifiable and immediate. As Lord Phillips MR made clear in *R (A) v Lord Saville of Newdigate* [2002] EWCA Civ 2048 (§28), that risk is one that was known or ought to be known to the authorities;

    (5) Once the facts are established a *"real risk"* is more than mere possibility but is something less than the balance of probabilities – *Dean v The Lord Advocate* [2016] HCJAC 83 (on Art 3, which imposes the same level of obligation);

    (6) Article 8 ECHR provides a right to a private life;

    (7) Article 10 ECHR enshrines a right to freedom of expression, which includes freedom to publish full reports of criminal trials. In cases such as this, there is a conflict with the Article 8 rights;

    (8) That conflict demands an *"intense focus on the comparative importance of the specific rights being claimed in the individual case…"* (*Campbell v MGN* [2004] UKHL 22).

UN Convention on the Rights of the Child 1989

26. The UK is a signatory to the UN Convention on the Rights of the Child 1989 ("UNCRC"). Both Defendants are *"a child"* within the meaning of Article 1. The UNCRC provides:

> "Article 3.1: *In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration."*
>
> "Article 16: *No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, or correspondence, nor to unlawful attacks on his or her honour and reputation. 2. The child has the right to the protection of the law against such interference or attacks."*

> *"*Article 40.1: *States Parties recognize the right of every child alleged as, accused of, or recognized as having infringed the penal law to be treated in a manner consistent with the promotion of the child's sense of dignity and worth, which reinforces the child's respect for the human rights and fundamental freedoms of others and which takes into account the child's age and the desirability of promoting the child's reintegration and the child's assuming a constructive role in society."*
>
> "Article 40.2 (b) (vii): *To this end, and having regard to the relevant provisions of international instruments, States Parties shall, in particular, ensure that: Every child alleged as or accused of having infringed the penal law has at least the following guarantees: To have his or her privacy fully respected at all stages of the proceedings."*

EU Charter of Fundamental Rights

27. The rights of a child to have a *"voice"* finds expression in Article 24 of the EU Charter of Fundamental Rights entitled *"The Rights of a Child"* ("UNCFR"). Under Article 24(1) UNCFR children have the right to such protection and care as is necessary for their wellbeing:

> "*They may express their views freely. Such views shall be taken into consideration on the matters which concern them in accordance with their age and maturity*".

28. Under Article 24(2) UNCFR, in all actions relating to children a child's best interests must be a primary consideration. Article 24(3) states:

> "*Every child shall have the right to maintain on a regular basis a personal relationship and direct contact with both his or her parents, unless that is contrary to his or her interests*".

ZH (Tanzania) v SSHD [2011]

29. In *ZH (Tanzania) v SSHD* [2011] UKSC 4, the Supreme Court considered the weight to be given to the best interests of children affected by decisions to remove one or both parents from this country. In this context, the Supreme Court considered the applicability of the UNCRC to domestic legislation. Lady Hale referred to Article 3.1 of the UNCRC as a *"binding obligation in international law, and the spirit, if not the precise language, has also been translated into our national law"* (paragraph [24]). Lady Hale said that *"the best interests of the child must be a primary consideration"* (paragraph [26]) and quoted, with approval, the words of Mason CJ and Deane J in *Minister for Immigration and Ethnic Affairs v. Teoh* [1995] HCA 273, 292:

> "*A decision-maker with an eye to the principle enshrined in the Convention would be looking to the best interests of the children as a primary consideration, asking whether the force of any other consideration outweighed it.*" (paragraph [26])

30. Lady Hale further commented, however, as follows (paragraph [26]):

> "*This did not mean (as it would do in other contexts) that identifying their best interests would lead inexorably to a decision in conformity with those interests. Provided that the tribunal did not treat any other consideration as inherently more significant than the best interests of the children, it could conclude that the strength of the other considerations outweighed them. The important thing, therefore, is to consider those best interests first. That seems, with respect, to be the correct approach to these decisions…*"

31. In *ZH (Tanzania),* Lord Kerr said (at paragraph [46]):

> "*It is a universal theme of the various international and domestic instruments to which Baroness Hale JSC has referred that, in reaching decisions that will affect a child, a primacy of importance must be accorded to his or her best interests. This is not, it is agreed, a factor of limitless importance in the sense that it will prevail over all other considerations. It is a factor, however, that must rank higher than any other. It is not merely one consideration that weighs in the balance alongside other competing factors. Where the best interests of the child clearly favour a certain course, that course should be followed unless countervailing reasons of considerable force displace them. It is not necessary to express this in terms of a presumption but the primacy of this consideration needs to be made clear in emphatic terms. What is determined to be in a child's best interests should customarily dictate the outcome of cases such as the present, therefore, and it will require considerations of substantial moment to permit a different result.*"

32. In my judgment, there is no material difference between what Lady Hale and Lord Kerr were saying. Both Lady Hale and Lord Kerr's formulations arrive at the same result: the best interests of the child are a primary, but not overriding, consideration, *i.e.* one which is *primus inter pares* but not overriding and which may be outweighed by countervailing factors.

33. As Lady Hale subsequently explained in *HH v Deputy Prosecutor of the Italian Republic, Genoa* [2012] UKSC 25 at [15]:

> "*[ZH (Tanzania)] made it clear that in considering Art 8 in any case in which the rights of a child are involved, the best interests of the child must be a primary consideration. They may be outweighed by countervailing factors, but they are a primary importance. Importance of the child's best interests is not to be devalued by something for which she is in no way responsible, such as the suspicion that she may have been deliberately conceived in order to strengthen the parent's case.*"

Section 39 authorities

34. The following s.39 CYPA 1933 authorities remain relevant to s.45 YJCEA 1999.

35. In *R. v Winchester Crown Court Ex p. B (A Minor)*, Simon Brown LJ identified the following principles to be considered when making a s.39 order:

> *"(i) In deciding whether to impose or thereafter to lift reporting restrictions, the court will consider whether there are good reasons for naming the defendant.*
> *(ii) In reaching that decision, the court will give considerable weight to the age of the offender and to the potential damage to any young person of public identification as a criminal before the offender has the benefit or burden of adulthood.*
> *(iii) By virtue of section 44 of the Act of 1933, the court must "have regard to the welfare of the child or young person."*
> *(iv) The prospect of being named in court with the accompanying disgrace is a powerful deterrent and the naming of a defendant in the context of his punishment serves as a deterrent to others. These deterrents are proper objectives for the court to seek.*
> *(v) There is a strong public interest in open justice and in the public knowing as much as possible about what has happened in court, including the identity of those who have committed crime.*
> *(vi) The weight to be attributed to the different factors may shift at different stages of the proceedings and, in particular, after the defendant has been found, or pleads, guilty and is sentenced. It may then be appropriate to place greater weight on the interest of the public in knowing the identity of those who have committed crimes, particularly serious and detestable crimes.*"

36. In *R (on the application of Y) v Aylesbury Crown Court* [2012] EWHC 1140 (Admin); [2012] EMLR 26, Hooper LJ restated the same principles, and gave the following futher guidance:

> *"*[19]. … *The fact that a defendant's identity is already known to some people in the community is not necessarily a good reason for allowing much wider publication."*
>
> *"*[46]. … *Prior to conviction the welfare of the child or young person is likely to take precedence over the public interest. After conviction, the age of the defendant and the seriousness of the crime of which he or she has been convicted will be particularly relevant."*

37. In *R v. F and D* (Leeds Crown Court, 7th April 2016) (*supra*), Globe J refused to lift a s.39 order granting anonymity to the two defendants aged 15 and 14 who murdered Angela Wrightson, essentially on Article 2 grounds, namely that there was clear medical evidence demonstrating that both represented an imminent suicide risk. I set

out in my First Ruling, Globe J's useful summary of the law and need not rehearse it again here.

38. In *R v Cornick* [2014] EWHC 3623 (QB), the defendant aged 16 pleaded guilty to the murder of the teacher Ann Maguire in the classroom. Coulson J articulated a two-stage analysis: (i) if Article 2 is engaged, then the defendant needs to demonstrate that there is a *"real and immediate"* threat to life if they are identified (at [17]); and (ii) if the Article 2 claim is not made out, it is then that the Article 8/Article 10 balancing exercise comes into play (at [5]). Coulson J reviewed the authorities and said:

> *"10. ....[T]he general principle that, in the vast majority of cases, a defendant in a criminal case can be expected to be named, unless there is an absolute necessity for anonymity."*
>
> *"12. ... [T]he onus is on the party seeking an order under s.39 to establish, either by way of art.2 or by way of art.8 , that the rights of the Press and public under art.10 should be trumped by the welfare of the child."*

39. Coulson J also highlighted three further points. First, both s.39 and s.45 are concerned with persons *"concerned in the proceedings"* and the breadth of this category demonstrates that neither Act is expressly focused on the issue of rehabilitation: *Central Criminal Court and Others* [2014] EWHC 1041 (Admin), *per* Sir Brian Leveson, cited in *Cornick* at [22]. Second, in *"an exceptional case"* with *"wider issues at stake"*, debate on such issues may be informed by the identification of the defendant as the killer (at [26]). Third, naming a defendant can have a clear deterrent effect, and deterrence is a repeated feature of the authorities (at [27]).

40. In my judgment, Coulson J was correct to state in *R v. Cornick* (*supra*) that the onus of proof is on the defendant to show *"good reason"* why press restrictions should be imposed (albeit he did not have the benefit of full citation of authorities, and in particular was not referred to *ZH (Tanzania)* or the UNCRC (*supra*)). In my view, it is clear that the burden of proof lies on the defendant to justify reporting restrictions under the new statutory regime established by s.45 YJCEA 1999. First, the structure and express wording of s.45 drives one to this conclusion: the entry point to the statutory analysis point is s.45(3) whereby a court *"may direct"* a reporting restriction, subject to the *"excepting directions"* in ss.45(4) and (5) and the *"welfare"* criteria in s.45(6). Second, the Judicial College Guidance supports this conclusion: it states in terms that *"[t]he burden is on the party seeking the restriction to establish that it is necessary on the basis of clear and cogent evidence."* (page7) and that *"[a]s with any departure from open justice, there must be good reason for imposing an order under s.45"* (page20). Third, the authorities support the conclusion that evidentiary burden lies on the defendant: see *e.g. R v. H* [2015] EWCA Crim 1579 where Treacy LJ states at [8] that the court must be satisfied that, on the facts of the case before it, the welfare of the child outweighs the strong public interest in open justice. Fourth, in my view the UNCRC (and UNCFR) do not shift the burden of proof: they merely reinforce the 'centrality' of the welfare of the child.

41. The fact that a s.45 restriction is already in place does not materially alter the position. The matrix of s.45 YJCEA 1999 and the essential burden of proof on the defendant is not altered merely by reason of the fact of which side happens to be making the application to the court. It remains for the defendant to satisfy the Court that there is

"good reason" for the continuation of reporting restrictions, either under Article 2 and/or Article 8 and/or matters relating to his or her *"welfare"* pursuant to s.45(6), taking into account all relevant matters and risks. Further, risk is a multi-faceted question which has be considered in the round, *i.e.* taking account of all mitigating factors which ameliorate or obviate the risk.

General approach

42. The court is not merely concerned with abstract principles, but the substance of each right in the light of the particular circumstances of each case. As Sir Brian Leveson, President, re-iterated in In *R v. Markham and Edwards* (*supra*):

> *"84. …[S]ubmissions in this area of the law should focus on the facts of the particular case relevant to the exercise of the court's judgement, rather than the siren calls of abstract principles that have already informed the approach which the courts adopt. …[T]he court must analyse the content of each right in the light of the particular circumstance of the case."*

Summary

43. In summary, the Court is engaged in a balancing exercise of these competing considerations. In essence, if the Court is to impose a s.45 order, the Court must be satisfied that, on the facts of the case before it, the *"welfare"* aspects outweigh the *"strong public interest"* in open justice (*per* Tracey LJ in *R v. H* [2015] EWCA Crim 1579). The Judicial College Guidance cites the following authority (at page 17):

> *"In summary, the court must balance the interests of the public in the full reporting of criminal proceedings against the desirability of not causing harm to a child concerned with the proceedings"* (Ex parte Crook [1995] 1 WLR 139).

SUBMISSIONS

Press Submissions

44. On 5th November 2017, I received a written application from the Press Association made by its Midlands Correspondent, Mr Matthew Cooper, to lift the lift reporting restrictions made under s.45 of the YJCEA 1999. In his helpful and cogent submissions, Mr Cooper argued that the court should consider lifting the restriction preventing the identification of the defendant at the conclusion of the proceedings on the basis of the 'open justice' principle and because of the gravity of the offences committed against the victim in this case. Mr Cooper submitted as follows. The court must balance the 'open justice' principle against considerations relating to the young person, including the duty of the youth justice system to prevent offending, the obligation required by s.44 of the Children and Young Persons Act 1933 to have regard to the welfare of the defendant. In deciding whether there are "good reason" to lift the reporting restrictions, the Press Association invited the court to consider: (i) The age of the offender, who will be 18 in seven months' time. The current order is due to expire when he reaches adulthood, meaning his identity, and hence his interests, would only be protected for a very limited period if the restrictions remained in place; (ii) The powerful deterrent effect on others of naming of the defendant,

given the nature and gravity of his crimes; (iii) The truly grave nature of the offence itself, an attack using a heavy weapon on a lone woman by a stranger in a public space, involving repeated blows and leaving the victim with near-fatal injuries; (iv) The interest of the public in knowing the identity of those who have committed such crimes; (v) The starting point in relation to such applications, namely, the principle of 'open justice', reiterated by Lord Thomas of Cwmgiedd, who said: "Open justice is the hallmark of the rule of law". He referred to the *R v. Markham and Edwards* (2017) decision and submitted that were the Defendant to be convicted of Attempted Murder after the trial, the gravity of the offences would obviously weigh even more heavily in favour of lifting the restrictions.

45. I also received written submissions from Ms Sarah Branthwaite of the BBC Editorial Department. She submitted as follows:

> *"As a national news broadcaster, the BBC is very concerned about the implications that the ongoing restriction will have on full and proper reporting of the outcome of the case. It is submitted that there is an important public interest in enabling proper public scrutiny and debate of the background and circumstance of serious case like this one and of the Defendant's actions. If the identity of the Defendant cannot be reported, this will inevitably limit the extent to which the details of the evidence can be reported; for example reporting tha the attack took place after the Defendant had been out celebrating his 17th birthday in a local pub. This will inhibit the extent to which the facts and issues can be understood and the level of public scrutiny and debate will be seriously compromised.*
>
> *Furthermore, there is an important public interest recognised by the Courts in naming those who have been convicted of particularly heinous crimes. By way of example, in 2012, the Court of Appeal lifted the restriction on identifying 16 year old Ochaine Williams, convicted of the murder of Stephen Grisales because of the "strong public interest in knowing his identity given the nature of the offence" ([2012] EWCA Crim 2352). Similarly, in 2014 Mr Justice Coulson lifted the restrictions preventing the identification of 16 year old Will Cornick who pleaded guilty to the murder of his teacher Ann Maguire. We respectfully submit that the public interest in knowing the identity of the Defendant is as strong here. The Defendant has been accused of a terrible and unusual crime. As present, we believe that there is a disproportionate restriction on what the media can report in relation to the detail of the Defendant's actions.*
>
> *It is important to note that the s.45 order will cease to have effect when the Defendant turns 18 on 3rd July 2018. After that date, evidence against him can be reported in full. However, as the Court will appreciate, there is significant public interest in contemporaneous reporting of criminal proceedings and the public interest in this case arises most keenly when the verdict is returned, not in 7 months' time.*

> *In view of the matters set out above, the BBC respectfully asks that you dispense with the order under section 45 and permit publication of the identity of the Defendant in the reporting of the outcome of this case."*

46. Mr Navtej Johal, a BBC journalist, also made helpful oral submissions on behalf of the Press. He emphasised the fact that the public had already seen stills from the CCTV and the public interest in seeing the footage played in Court.

Defence submissions

47. In his able submissions on behalf of the Defendant, Mr Tom Schofield of Counsel made essentially five points: (i) The jury verdict in relation to Count 1 must be seen in the context of the earlier pleas by the Defendant to Counts 2, 3 and 5; (ii) The Court should bear in mind the effect that lifting of press restrictions would have on the Defendant's partner and their daughter who had already moved out of town during the trial as a precaution; (iii) There was little public interest in revealing the Defendant's identity because the public were already well aware of the dangers of what befell BC in this case; (iv) The Defendant will receive a substantial sentence; (v) By the time the Defendant reaches his majority next year, interest in the case will have evaporated.

THE BALANCING EXERCISE

General analysis

48. I turn to the balancing exercise. In my view, the following points are pertinent.

49. First, the crimes committed by the Defendant in this case are particularly grave. As Simon Brown LJ said in *R. v Winchester Crown Court Ex p. B (A Minor) (supra)*), *w*here crimes are *"particularly serious and detestable"* there is a high public interest in unrestricted reporting of the trial and identification of the defendant. The Defendant has pleaded to double rape and been convicted of attempted murder. The circumstances in which he committed these offences are particularly mendacious and brutal: preying on a lone woman at night and bludgeoning her with a concrete paving slab, raping her and then leaving her for dead. As Mr Cooper succinctly put it;

> *"Few attacks on members of the public by strangers in the Midlands in recent years have attracted as much revulsion as the case currently before the Court. It is not disputed that were it not for the outstanding medical care, the victim received, this would have become a murder inquiry."*

50. Second, the particularly shocking aspects of the case, the sheer brutality of the attack on a lone woman, the use of a concrete slab, the fact that it was committed in a public park in the middle of Leicester with other people around, meant that it is naturally seared into the public consciousness locally.

51. Third, this notorious case naturally raised many questions in the public's mind and is ripe for speculation. Was the Defendant local or not?, what truly happened and why?. The current reporting restrictions leave a 'vacuum' at the heart of the case which exacerbates the risk of uninformed and inaccurate comment (see the observations in *Kaim Todner* (*supra*)). The ability of the public to begin to come to terms with the

incident will be aided by disclosure. This would, in my view, have been a paradigm case of a *"disembodied trial"* as by Lord Stein in *Re S (FC) (a child)* (*supra*) if the Press were not allowed to report the identity of the Defendant.

52. Fourth, if the Defendant's family instantly recognised the Defendant from the image put up on the Leicester Mercury website, it is likely that numerous others in Leicester also recognised the Defendant and that his involvement (and now guilt) is well known in the area.

53. Fifth, the Defendant was born on 3rd July 2000 and is now 17 years 5 months old. He will be 18 years old on 3rd July 2018. The s.45 Order will, therefore, expire in seven month's time when the Defendant reaches adulthood. It is inevitable that the Defendant will receive a lengthy sentence and not be released from detention for many years. These factors militate strongly in favour of lifting press restrictions. As Sir Brian Leveson, President, observed in *R v. Markham and Edwards* (*supra*):

> *"89. ... The reality is that anonymity lasts only until 18 years of age and both defendants face a very considerable term of detention that will stretch long into their adult life. The process on reflection on their dreadful crimes, addressing their offending behaviour, and starting a process of rehabilitation will be a lengthy one."*

54. Sixth, there is a significant deterrent effect to be had from public identification (see *e.g. R v. Cornick, R v. Fairweather* and *R v. Bartlam).*

55. In my view, none of the points made by Mr Schofield on the Defendant's behalf weighs heavily on the scales compared with the points identified above. I can deal with each of his points briefly: (i) The jury verdict in relation to Count 1 elevates the case into an altogether much more serious bracket of crime, compared with the Defendant's pleas to Counts 2, 3 and 5; (ii) It is inevitable that the identification of defendants in cases such as this will inevitably have a detrimental collateral effect on family members, but there are general laws to protect against harassment and intrusion; (iii) In my view, there is a strong public interest in lifting press restrictions in this case in order, as Ms Branthwaite of the BBC submitted, to enable "proper and public scrutiny and debate of the background and circumstances of this serious case"; (iv) and (v) The fact that Defendant will receive a substantial sentence and reach his majority next year, is all the more reason for lifting press restrictions now (see above).

56. For the above reasons, in my judgment, subject to counter-veiling factors (see below), it would not be right to continue to keep the public in the dark about the identity of the Defendant. The current restriction frustrates the public's understanding of the crime and limits the scope for an informed public debate about the implications of this case.

ECHR rights

57. Mr Schofield did not deal specifically with the Defendant's rights under ECHR. I turn briefly to consider the Defendant's Article 2 and Article 8 nevertheless. I also consider the Article 10 rights of the Press.

Article 2

58. Article 2 is a non-derogable duty. However, the positive obligation under Article 2 only arises when the risk is *"real and immediate".* A real risk is one which is *"objectively verified"*. An immediate risk is one that is *"present and continuing".* Lord Hoffmann said in *In re Officer L* [2007] UKHL 36 at [20]:

> *"It is in my opinion clear that the criterion is and should be the one that is not readily satisfied: in other words, the threshold is high. …. In my opinion, the standard is constant and not variable with the type of act in contemplation."*

59. Mr Schofield told me, presumably on instructions, that the Defendant had previously attempted to commit suicide in prison. I have been provided with no independent confirmation of this. Nor was it not suggested that the risk was *"real and immediate"* such as to meet the relevant threshold. In any event, the prison authorities are well-versed in their duty to ensure the welfare of prisoners and experienced in dealing with such risks.

Article 8

60. Even if Article 8 is engaged in relation to the Defendant, in my view, it does not begin to be satisfied in this case. Mr Schofield submitted that public identification will have a negative impact on the Defendant's "*rehabilitation*". However, as Sir Brian Leveson, President, observed in *JC and RT v. Central Criminal Court,* [1914] EWHC 1041 at [29]) rehabilitation is not the primary focus of the exercise of the Court's jurisdiction under s.45 YJCEA 1999.

61. In my view, there is little weight to be given to any Article 8 argument run by the Defendant.

Article 10

62. Article 10 is clearly engaged. It is well settled that journalists and the press enjoy the rights of freedom of expression which Article 10 confers (*per* Lord Rodger *In Re Guardian News and Media* (*supra*) at [33]. Where both Articles 8 and 10 are in play, the Court has to weight the competing claims of the person(s) relying on Article 8 and of the press under Article 10 (*ibid*, at [43]).

63. I have already emphasised above the importance of open justice. I have also set out above and explained the effect that the current strictures have had on the press reporting in this case and the important general considerations involved.

64. In the context of considering Article 10 rights, it is also necessary to have regard to the importance of allowing news reports and press comment to be current and contemporaneous to the events in question. As has been submitted in previous cases, the value in news reports and press comment is at its highest when they are contemporaneous; and the value in this case will be much diminished if reporting is not allowed for another seven months (as Mr Schofield admitted), *i.e.* when the Defendant is 18 years old. In my view, a seven month delay in identifying the Defendant will significantly infringe the Article 10 rights of the Press to impart information (and the public's coterminous right to receive it).

Conclusion – balancing exercise

65. I have carefully considered all the competing considerations outlined above. In my judgment, the balance is strongly in favour of Article 10 and giving effect to the 'open justice' principle. In my view, as stated above, the points made by Mr Schofield are of limited significance when weighed against the strong public interest in open justice and the Article 10 rights of the Press in this case.

66. Lord Rodger emphasised in *In Re Guardian News and Media* (*supra*) at [49] that the decisive factor in balancing the protection of private life against freedom of expression should lie in the contribution that the material sought to be published makes to a debate of general importance. In the present case, the contribution that publishing the Defendant's identity would make is significant: it would add significantly to public's proper understanding of the crime and help the public, local and national, come to terms with it.

CONCLUSION

67. For the reasons set out above, in my judgment, the points relied upon on behalf of the Defendants are not a *"good reason"* for the Court to maintain the reporting restrictions post trial in relation to the Defendant. In my view, the test under s.45 YJCEA 1999 Order is now met in this case: the current reporting restrictions impose a substantial and unreasonable reporting restriction on the reporting of this case and it is in the public interest to remove it. In summary, there is a strong public interest in full and unrestricted reporting of this exceptional case for the reasons which I have articulated above. Accordingly, I have ruled that the s.45 YJCEA 1999 Order shall be lifted in respect of the Defendant.