Judicial College

Reporting Restrictions in the Criminal Courts

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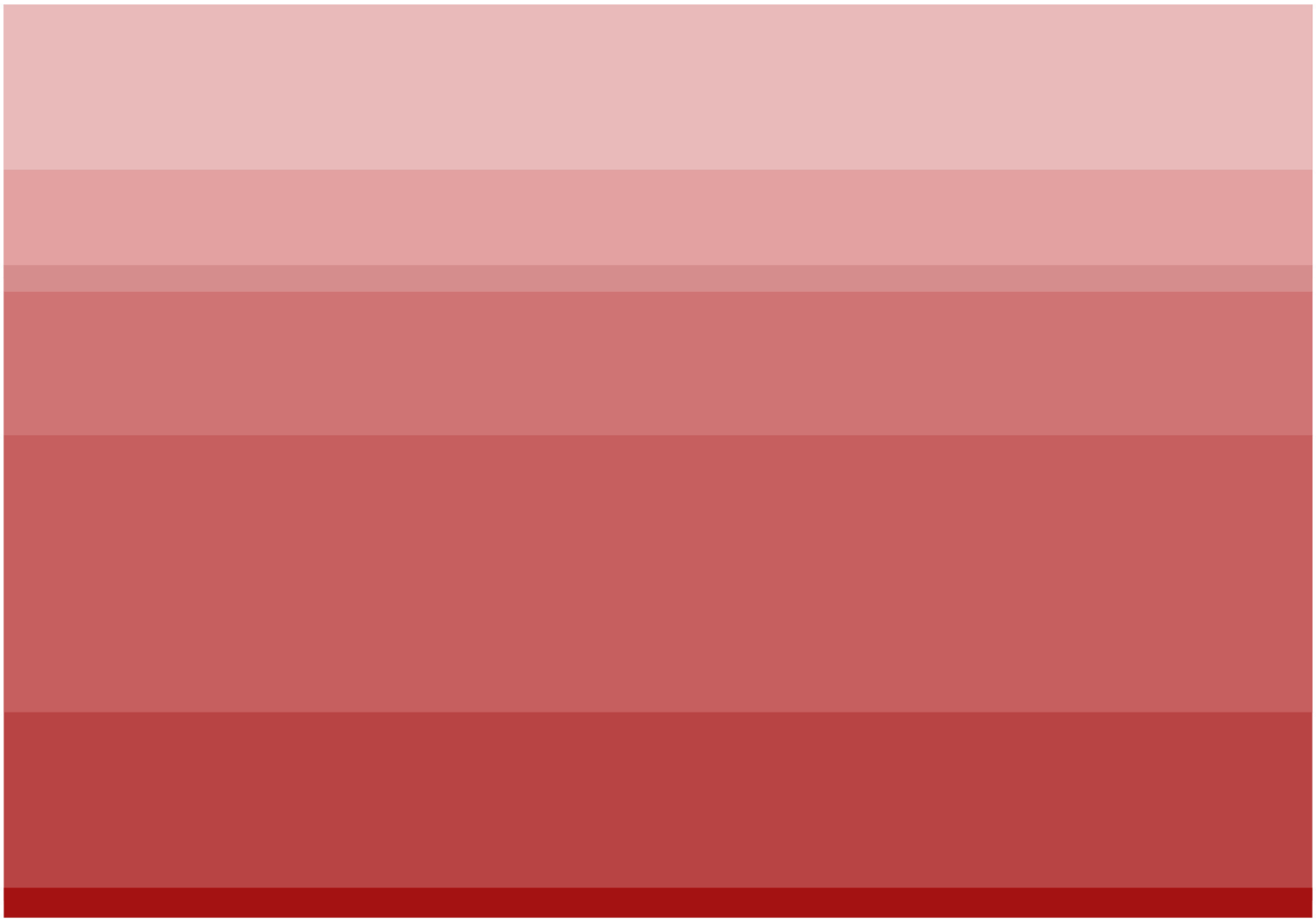

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Foreword

By The Rt Hon The Lord Burnett of Maldon, Lord Chief Justice of England and Wales

It is a central principle of criminal justice that the court sits in public so that the proceedings can be observed by members of the public and reported on by the media. Transparency improves the quality of justice, enhances public understanding of the process, and bolsters public confidence in the justice system. Media reporting is critical to all these public interest functions. There are occasions, however when it is necessary to make an exception to these principles, to protect the rights of children or the identities of some adult complainants for example. Such issues often arise at short notice and the law relating to the decisions that have to be made can be complex.

The Fourth Edition of the Guide contains extensive revisions to the Third Edition. It aims to distil and explain the relevant legal provisions and principles so they are clearly understood and properly applied in practice. It is available on the judiciary's website and on the websites of the Society of Editors, the News Media Association and the Media Lawyers Association.

I am grateful to Guy Vassall-Adams KC, Tim James-Matthews of Counsel and to the judicial and academic editors for their contributions to this new edition of this important Guidance.

Hon The Lord Burnett of Maldon
Lord Chief Justice of England and Wales

Media and Public Access to Proceedings in the Magistrates' Court and Crown Court – Advice and Guidance for Magistrates and Judges

Introduction

In recognition of the open justice principle, the general rule is that justice should be administered in public. To this end:

- Proceedings must be held in public.
- Evidence must be communicated publicly.
- Fair, accurate and contemporaneous media reporting of proceedings should not be prevented by any action of the court unless strictly necessary.

Therefore, unless there are exceptional circumstances laid down by statute and/or common law the court must not:

- Order or allow the exclusion of the press or public from the courtroom for any part of the proceedings.
- Allow evidence to be withheld from the open court proceedings.
- Impose permanent or temporary bans on reporting of the proceedings or any part of them including anything that prevents the proper identification, by name and address, of those appearing or mentioned in the course of proceedings.

Important statutory exceptions to the open justice principle are the exclusion of the public from criminal proceedings in the Youth Courts and the prohibition on identifying under 18s concerned in criminal proceedings in the Youth Courts (see sections 2.2 and 3.9 below). In addition, particular considerations apply to reporting restrictions in relation to under 18s appearing in the adult criminal courts (see section 4.2 below).

The courts and Parliament have given particular rights to the press to give effect to the open justice principle, so that they can report court proceedings to the wider public, even if the public is excluded.

Guidance follows on the recommended approach to take when making decisions to exclude the media or prevent it from reporting proceedings in the courts. The guidance takes the form of an easy reference checklist for use in court.

Throughout this document reference is made to ‘the media’. This includes the press, radio, television, press agencies and online media. In general terms, the automatic and discretionary reporting restrictions described in this guidance apply both to traditional media such as newspapers and broadcasters and to online media and individual users of social media websites such as Twitter and Facebook.[1]

[1] The Contempt of Court Act 1981 applies to all publications and nearly all of the automatic and discretionary reporting restrictions referred to in this guidance would apply in practice to online publishers and individual users of social media websites.

Glossary

Please note the following abbreviations which are used within this Guide:

CDA	Crime and Disorder Act 1998
CCA	Contempt of Court Act 1981
CJA	Criminal Justice Act
CPIA	Criminal Procedure and Investigations Act 1996
Cr.App.R	Criminal Appeal Reports
CrimBO	Criminal Behaviour Order
CrimPD	Consolidated Criminal Practice Directions*
CrimPR	Criminal Procedure Rules 2020*
CYPA	Children and Young Persons Act 1933
ECHR	European Convention on Human Rights
SA	Sentencing Act 2020
YJCEA	Youth Justice and Criminal Evidence Act 1999

***NOTE:**

CrimPR and CrimPD are available on Gov.uk

A structured approach for magistrates and judges

If the court is asked to exclude the media from the courtroom or prevent it from reporting anything, however informally, do not agree to do so without first checking whether the law permits the court to do so. Then consider whether the court ought to do so. Invite submissions from the media or its legal representatives. The prime concern is the interests of justice.

1. **Magistrates should seek legal advice.**

   Magistrates should seek the advice of the clerk/legal adviser on the circumstances in which the law allows the court to exclude the media, withhold information, postpone, or ban reporting before considering whether it would be a proper and appropriate use of any such power in the case before the court.

2. **Check the nature of the proposed restriction and its legal basis.**

   What is the precise restriction sought? Is there any statutory power which allows departure from the open justice principle? What is the precise wording of the statute? Is it relevant to the particular case?

   Or is the applicant suggesting that the power for the requested departure from the open justice principle is derived from common law and the court's jurisdiction to regulate its own proceedings? If so, does the case law actually support that contention?

3. **Is action necessary in the interests of justice?**

   Is action necessary in the interests of justice? Automatic restrictions upon reporting might already apply, or there may be restrictions on reporting imposed by the media's codes, or as a result of an agreed approach.

   The burden lies on the party seeking a derogation from open justice to persuade the court that it is necessary on the basis of clear and cogent evidence. Has the applicant produced clear and cogent evidence in support of the application?

   Is any derogation from the open justice principle really necessary? Always consider whether there are any less restrictive alternatives available.

4. **If restrictions are necessary how far should they go?**

   Where the court is satisfied that a reporting restriction pursues a legitimate aim and is truly necessary, it must consider carefully the terms of any order. The principle of proportionality requires that any order must be narrowly tailored to the specific objective the court has in mind and must go no further than is necessary to achieve that objective. Over-broad orders are liable to be set aside, as are those that last too long.

5. **Invite media representations.**

   Invite oral or written representations by the media or their representatives, as well as legal submissions on the applicable law from the prosecution, in addition to any legal submissions and any evidence which the law might require in support of an application for reporting restrictions from a party.

   Before imposing any reporting restriction or restriction on public access to proceedings in the courtroom the court is required to ensure that each party and any other person directly

affected (such as the media) is present or has had an opportunity to attend or to make representations.[2]

Where, exceptionally, the court makes an order where advance notice has not been given, the court should invite the media to make representations as soon as possible. A record of those representations should be made and kept.

In the Instructions to Prosecution Advocates the Director of Public Prosecutions (DPP) has highlighted the role of the prosecution in respect of safeguarding open justice, including opposition to reporting restrictions, where appropriate.

6. As soon as possible after oral announcement of the order in court, the order should be committed to writing.

If an order is made, the court must make it clear in court that a formal order has been made and its precise terms. Magistrates should seek the advice of the clerk/legal adviser on the drafting of the order and the reasons for making it. It may be helpful to suggest at the same time that the court would be prepared to discuss any problems arising from the order with the media in open court, if they are raised.

The formal order made by the court must be committed to writing. The court should review the written terms where they have been drawn up by a legal adviser or clerk. The reporting restrictions order should be in precise terms, giving its legal basis, its precise scope, its duration and when it will cease to have effect, if appropriate. Consideration should be given to whether to restrict reporting of the making of the order. The reasons for making the order should always be recorded.

7. Notifying the media.

The court should have appropriate procedures for notifying the media that an order has been made. Copies of the written notice must be provided to the media and members of staff should be available and briefed to deal with media inquiries, within and outside court hours.

8. Review.

If the media have not been heard before the making of the order, the court should hear any media representations as to the lifting or variation of any reporting restriction as soon as possible. Restrictions should in any event be reviewed at significant stages, such as when verdicts have been taken or sentence passed.

[2] CrimPR 2020, r.6.2(3), CrimPD I (October 2015, as amended October 2020), para 6B.4(e).

1. The open justice principle

The general rule is that the administration of justice must be done in public, the public and the media have a right to attend all court hearings in person, and the media is able to report those proceedings fully and contemporaneously.[3] The public has the right to know what takes place in the criminal courts and the media in court acts as the eyes and ears of the public, enabling it to follow court proceedings and to be better informed about criminal justice issues.

The open justice principle is reflected in r.6.2(1) Criminal Procedure Rules 2020 (CrimPR), which requires the court, when exercising its powers in relation to reporting and access restrictions, to have regard to the importance of dealing with criminal cases in public and allowing a public hearing to be reported to the public.

The open justice principle is central to the rule of law. Open justice helps to ensure that trials are properly conducted. It puts pressure on witnesses to tell the truth. It can result in new witnesses coming forward. It provides public scrutiny of the trial process, maintains the public's confidence in the administration of justice and makes inaccurate and uninformed comment about proceedings less likely. Open court proceedings and the publicity given to criminal trials are vital to the deterrent purpose behind criminal justice. Any departure from the open justice principle must be necessary in order to be justified.

Parliament has recognised the importance of contemporaneous media reports of legal proceedings by giving protection from liability for contempt of court and defamation to fair, accurate and contemporaneous reports of court proceedings.[4] The important role of the media as a public watchdog is also recognised under the right to freedom of expression guaranteed by Article 10 European Convention on Human Rights (ECHR).[5]

As public authorities under the Human Rights Act, courts must act compatibly with Convention rights,[6] including the right to freedom of expression under Article 10 ECHR and the right to a public hearing under Article 6 ECHR. However, both Article 10 and Article 6 permit of exceptions. In some cases, the right to privacy under Article 8 may be engaged and need to be weighed in the balance. However, any restriction on the public's right to attend proceedings in the courtroom and the media's ability to report them must fulfil a legitimate aim under these provisions and be necessary, proportionate and convincingly established.[7] It is for the party seeking to derogate from the principle of open justice to produce clear and cogent evidence in support of the derogation.[8]

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3 For a full discussion of the principle of open justice, see: *Khuja v Times Newspapers Ltd* [2019] AC 161. Note that *Khuja* preceded the advent of remote observation of proceedings under first the Coronavirus Act 2020 and now the amendments made by ss.198 and 200 Police, Crime, Sentencing and Courts Act 2022 which give courts the power to allow remote observation of in-person and 'hybrid' hearings: see section 5.7 below, text to note 215.

4 See CCA 1981, s.4(1); Defamation Act 1996, s.14.

5 *Observer and Guardian v UK* (1992) 14 EHRR 153 [59].

6 Human Rights Act 1998, s.6(1).

7 *In re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593; *Re Trinity Mirror* [2008] 2 Criminal Appeal Reports 1 (Cr.App.R). See also footnote 13 below. Reference can also be made to the Council of Europe guide to Article 10 at p78.

8 *R v Central Criminal Court ex parte W, B and C* [2001] 1 Cr.App.R 2.

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.

The procedures for making and considering an application for reporting restrictions are set out in the CrimPR 2020, rr.6.4 and 6.5. Unless unavoidable, those rules must be followed.[9] The court should guard against applications which are advanced at the last minute, without following the proper procedure, and without consideration of the relevant principles.

Courts are required to hear the media's representations in relation to a proposed reporting restriction or restriction on public access to the courtroom before making any order.[10] The court should consider whether this means an application should be adjourned and notice given to the media. Exceptionally this may not be possible where an unexpected issue arises; in such circumstances the media should be invited to make representations at the first available opportunity.

The Crown Prosecution Service Instructions for Prosecuting Advocates[11] require them to be familiar with the CPS legal guidance on contempt of court and reporting restrictions, and this Guide. The contempt of court guidance[12] says the CPS has a duty to protect the integrity of the trial process. The Instructions also require prosecutors to be familiar with the CPS legal guidance on reporting restrictions concerning children and young persons.[13] Whatever the position taken by the CPS, it is the duty of the prosecution advocate to ensure that the court is aware of the relevant legal principles.[14]

Where there is no party able to make representations in opposition to an application for a reporting restriction order, the obligation to ensure that such orders are only made when justified remains on the court.

The open justice principle is subject to common law exceptions and to statutory exceptions, including those relating to Youth Court proceedings, which are addressed in the following sections.

9 *In re British Broadcasting Corporation* [2018] 1 WLR 6023 (CA) [21] (Lord Burnett CJ).

10 CrimPR 6.2(3), CrimPD I 6B.4(e).

11 Instructions for Prosecuting Advocates | The Crown Prosecution Service (cps.gov.uk) at section 14.

12 CPS Legal Guidance: Contempt of Court, Reporting Restrictions and Restrictions on Public Access to Hearings.

13 CPS Legal Guidance: Reporting Restrictions – Children and Young People as Victims, Witnesses and Defendants.

14 *Ex p News Group Newspapers Ltd* [2002] EMLR 9 [25] (Lord Bingham CJ).

2. Hearings from which the public may be excluded

2.1 Trials in private: all criminal courts

In accordance with the open justice principle, the general rule is that all court proceedings must be held in open court to which the public and the media have access. The common law attaches a very high degree of importance to the hearing of cases in open court and under Article 6 ECHR the right to a public hearing and to public pronouncement of judgment are protected as part of a defendant's right to a fair trial.

The court has an inherent or implicit power to regulate its own proceedings, however, and may hear a trial or part of a trial in private, but this is the most extreme measure, to be adopted only in exceptional circumstances, where the hearing of the case in public would frustrate or render impractical the administration of justice.[15] The test is one of necessity. The fact, for example, that hearing evidence in open court will cause embarrassment to witnesses does not meet the test for necessity.[16] Neither is it a sufficient basis for a hearing in private that allegations will be aired which will be damaging to the reputation of individuals.[17] The interests of justice could never justify excluding the media and public if the consequence would be that a trial was unfair.[18]

Rules 6.6 to 6.8 CrimPR 2020 govern procedure "where the court can order a trial in private".[19] A party who wants the court to hear a trial in private must apply by notice in writing not less than five business days before the start of the trial.[20] The court officer must display notice of the application somewhere prominent within the vicinity of the courtroom and give notice to reporters.[21] The media should be given an opportunity to make representations in opposition to the application.[22] If the order is made, the court must not commence the trial in private until the following business day or until any appeal against the order has been disposed of (if later).[23]

Hearing a case in private has a severe impact upon the general public's right to know about court proceedings, permanently depriving it of the information heard in private. It follows that if the court can prevent the anticipated prejudice to the trial process by adopting a lesser measure e.g. a discretionary reporting restriction such as a postponement order under s.4(2) Contempt of Court Act 1981 (CCA 1981), it should adopt that course. In making an application for a case to be heard in private, a party must explain why no measures other than trial in private will suffice.[24]

Often the adoption of practical measures such as allowing a witness to give evidence from behind a screen, giving their name in a note handed to the judge, or ordering that a witness shall be identified by a pseudonym (such as by a letter of the alphabet) and prohibiting publication of the witness's true name by an anonymity order under s.11 CCA 1981 (see section 4.4 below), will remove any need to exclude the public.

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15 *AG v Leveller Magazine* [1979] AC 440, 450 (Lord Diplock); *R v Times Newspapers Ltd* [2007] 1 WLR 1015.

16 *Scott v Scott* [1913] AC 417.

17 *Global Torch v Apex Global Management Ltd* [2013] 1 WLR 2993 (CA). The court held that hearings in public were integral to open justice and that open justice, Article 10 and Article 6 ECHR would generally trump the Article 8 rights to reputation of parties and witnesses in a civil case.

18 *R v Wang Yam* [2008] EWCA Crim 269.

19 CrimPR 6.6(1).

20 Ibid, r.6.6(2).

21 Ibid, r.6.6(5).

22 Ibid, r.6.7.

23 Ibid, r.6.6(8).

24 Ibid, r.6.6(3)(c).

The necessity test requires that even where a court concludes that part of a trial should be heard in private, it must give careful consideration as to whether other parts of the same case can be heard in public and must revert to proceedings in open court as soon as exclusion of the public ceases to be necessary.

Circumstances which may justify hearing a case in private include situations where the nature of the evidence, if made public, would cause harm to national security e.g. by disclosing sensitive operational techniques or identifying a person whose identity for strong public interest reasons should be protected e.g. an undercover police officer. The application to proceed in private should be supported by relevant evidence and the test to be applied in all cases is whether proceeding in private is necessary to avoid the administration of justice from being frustrated or rendered impractical. Disorder in court may also justify an order that the public gallery be cleared. Again, the exceptional measure should be no greater than necessary. Representatives of the media (who are unlikely to have participated in the disorder) should normally be allowed to remain.

The Court has a discretion under s.37 Children and Young Persons Act 1933 (CYPA) to exclude the public but not bona fide representatives of the media during the testimony of witnesses aged under 18 in any proceedings relating to an offence against, or conduct contrary to decency and morality.

Section 25 Youth Justice and Criminal Evidence Act 1999 (YJCEA 1999) permits the court to exclude persons of any description from the court during the evidence of a child or vulnerable adult witness in cases relating to a sexual offence or where there are grounds for believing that a witness has been, or may be, intimidated. However, it was not envisaged that the media should routinely be excluded alongside the rest of the public, even in such exceptional cases. Even where the media generally are to be excluded, one nominated representative of the media must be permitted to remain.[25]

Under the Sentencing Act 2020 (SA 2020), a court may review the sentence of a defendant who has assisted the police, or previously obtained a reduced sentence having agreed to assist the police but reneged on the agreement.[26] Where it does so, the court may exclude the public and media from such proceedings, where satisfied that this is necessary to protect the safety of any person and is in the interests of justice.[27]

The Administration of Justice Act 1960 s.12 defines a number of specific situations where publication of information about proceedings in private of itself constitutes a contempt of court e.g. in matters relating to national security. In all other cases, to publish what has occurred in private is not a breach of confidence or a contempt of court unless it causes a substantial risk of serious prejudice to the administration of justice.[28]

The Criminal Justice and Courts Act 2015 creates an exception to the open justice principle by allowing a single magistrate to sit anywhere (including other than in court) and decide and sentence certain cases on the papers in the event of a guilty plea or a failure to respond to the statutory notification.[29] In addition, the Deregulation Act 2015 removes the presumption that written witness statements should be read aloud in open court unless the court directs otherwise.

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25 YJCEA 1999, s.25(3).

26 SA 2020, ss.387, 388.

27 SA 2020, s.390(2)(a).

28 *Hodgson v Imperial Tobacco* [1998] 1 WLR 1056, 1072C (Lord Woolf).

29 The Government has said that the HMCTS Protocol on supply of court registers to the local press and the CrimPR relating to access to court documents will continue to apply to such cases, although case lists and pleas are more likely to be retrospective.

2.2 Youth Courts

Section 47 Children and Young Persons Act 1933 is a statutory exception to the open justice principle which generally bars the public from attending Youth Court proceedings. This prohibition does not extend to court members and officers, the parties, their legal representatives and witnesses, or to representatives of the media or to such other persons as the court may specifically authorise to be present.

The s.47 exclusion of the public does not apply where a Criminal Behaviour Order is being applied for. In that instance the court can consider an order under s.39 CYPA. Likewise it does not apply to proceedings for breach of a Criminal Behaviour Order but the court can there consider making an order under s.45 YJCEA.[30] If, in either case, the court gives a direction the court must give reasons.

Hearings from which the public may be excluded

- The general rule is that all court proceedings must be held in open court to which the public and the media have access.
- The court may hear trials in private in exceptional circumstances where doing so is necessary to prevent the administration of justice from being frustrated or rendered impractical.
- Where lesser measures such as discretionary reporting restrictions would prevent prejudice to the administration of justice, those measures should be adopted.
- Where it is necessary to hear parts of a case in private the court should revert to proceeding in open court as soon as it is no longer necessary for the public to be excluded.
- The embarrassment caused to witnesses from giving evidence in open court is not enough to justify hearing evidence in private.
- There is a statutory exception to the open justice principle for proceedings in the Youth Courts, which members of the public are prohibited from attending.

3. Automatic reporting restrictions

There are a number of automatic reporting restrictions which are statutory exceptions to the open justice principle. The existence of an automatic restriction may make any further discretionary restrictions unnecessary e.g. there is no need to make a discretionary order in respect of a child victim of a sexual offence because the automatic restrictions as to the identity of any victim of a sexual offence apply. It may be of assistance in some cases for the judge to remind the media of any automatic restriction and to consider whether any guidance will assist the media to keep within such automatic restrictions. Such guidance from the judge is not binding.[31] The statutory provisions give the courts the power to lift or vary the automatic restrictions in specified circumstances if asked to do so by a party or the media or on the court's own initiative.

[30] Section 30(5) Anti-social Behaviour, Crime and Policing Act 2014.

[31] *R (Press Association) v Cambridge Crown Court* [2012] EWCA Crim 2434 [20].

3.1 The strict liability rule

The CCA 1981 provides the framework for all reporting of criminal proceedings in England and Wales. Sections 1 and 2 govern the 'strict liability rule': the rule that it is a contempt of court to publish anything to the public which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced, even if there is no intent to cause such prejudice. In practice this means that ignorance of the law or of the existence of a reporting restriction or its terms is no defence if contempt is committed.

The strict liability rule applies to all 'publications', a term defined very widely as including 'any speech, writing, programme included in a programme service or other communication in whatever form, which is addressed to the public at large'. Accordingly, the strict liability rule is not only of relevance to newspapers and broadcasters but also applies to online media and individual users of social media websites. The strict liability rule applies once proceedings are 'active', which means that the relevant initial step must have been taken, such as placing a suspect under arrest.

There are three specific defences under the Act. The most important in practice is the defence provided by s.4 for 'a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith'. Section 5 of the Act creates a defence which protects publications relating to discussions in good faith of public affairs or matters of general public interest, providing that the risk of prejudice to particular legal proceedings is merely incidental to the discussion. In addition, there is a defence under s.3 for publishers and distributors who can show that they took reasonable care and did not know or have reason to suspect that proceedings were active (publishers) or that a publication contained matter in breach of the strict liability rule (distributors).

The existence of the strict liability rule is in itself a significant safeguard as it places the media in jeopardy of being in contempt of court when reporting criminal proceedings unless that reporting is fair and accurate and published in good faith. It is important for courts to bear this in mind, particularly when a party seeking discretionary reporting restrictions seeks to argue that absent such additional restrictions media reporting is likely to be inaccurate, biased or otherwise prejudicial. The correct approach is for the court to proceed on the basis that such reporting is not likely and to trust the media to fulfil their responsibilities to report proceedings accurately and make sensible judgements about publications which may cause prejudice.[32]

3.2 Complainants of sexual and modern slavery offences

Complainants[33] of a wide range of sexual offences are given lifetime anonymity under the Sexual Offences (Amendment) Act 1992. This now also applies to complainants in offences under s.2 Modern Slavery Act 2015.

The 1992 Act imposes a lifetime ban on reporting any matter likely to identify a complainant, from the time that such an allegation has been made and continuing after a person has been charged with the offence and after conclusion of the trial. The prohibition imposed by s.1 applies to 'any publication' and therefore includes traditional media as well as online media and individual users of social media websites, who have been prosecuted and convicted under this provision.[34]

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32 *R v B* [2007] EMLR 5.

33 A person against whom the offence is alleged to have been committed whether or not they are a witness.

34 For example, individuals who posted on social network websites revealing the identity of a victim of rape by the former footballer Ched Evans were convicted of offences under this provision. See e.g. https://www.theguardian.com/uk/2012/nov/05/ched-evans-rape-naming-woman

The offences to which the prohibition applies are set out in s.2 of the 1992 Act and include the vast majority of sexual offences and also complainants in offences under s.2 Modern Slavery Act 2015 where the exploitation may or may not be sexual.

There is no power under the 1992 Act to restrict the naming of a defendant in a sex case. Complainants enjoy the protection provided by s.1 of the 1992 Act and it is for the media to form its own judgement as to whether the naming of a defendant in a sex case would of itself be likely to identify the complainant.[35] The same must be true for witnesses other than complainants in sex cases.

A defendant in a sex case may apply for the restriction to be lifted if that is required to induce potential witnesses to come forward and the conduct of the defence is likely to be substantially prejudiced if no such direction is given.

There are three main exceptions to the anonymity rule.

- First, a complainant may waive the entitlement to anonymity by giving written consent to being identified (if they are 16 or older).[36]
- Secondly, the media is free to report the complainant's identity in the event of criminal proceedings other than the actual trial or appeal in relation to the sexual offence. This exception caters for the situation where a complainant in a sexual offences case is subsequently prosecuted for perjury or wasting police time in separate proceedings.[37] It appears to have been the intention of Parliament, however, that a complainant would retain anonymity if, during the course of proceedings, sexual offences charges are dropped and other non-sexual offence charges continue to be prosecuted.[38]
- Thirdly, the court may lift the restriction to encourage defence witnesses to come forward, or where the court is satisfied that it is a substantial and unreasonable restriction on the reporting of the trial and that it is in the public interest for it to be lifted.[39] This last condition cannot be satisfied simply because the defendant has been acquitted or other outcome of the trial.[40]

3.3 Complainants of female genital mutilation

Section 71 Serious Crime Act 2015 provides for automatic anonymity for those complaining of female genital mutilation (FGM).

The reporting restriction applies from the moment that an allegation has been made that a FGM offence has been committed against a person and imposes a lifetime ban on identifying that person as being an alleged victim of FGM.

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35 *R (Press Association) v Cambridge Crown Court* [2012] EWCA Crim 2434 [15-17].

36 It is a defence to an offence of publishing identifying matter under s.5 Sexual Offences (Amendment) Act 1992 to show that the complainant gave written consent to the publication: see s.5(2).

37 Ibid, s.1(4). See *R v Beale (Jemma)* [2017] EWCA Crim 1012, [2017] EMLR 26. But the exception is wider in scope than this: *R v Musharraf* [2022] EWCA Crim 678.

38 'Report of the Advisory Group on the Law of Rape' (The Heilbron Committee), Cmnd. 6352, paragraphs 168-172. As the purpose of the anonymity provision is to encourage complainants in sexual offences cases to come forward, it would be inconsistent with the statutory purpose if dropping a sexual offence charge during the course of proceedings had the effect of removing anonymity. In addition, any interpretation that anonymity automatically falls away in such circumstances creates problematic conflicts e.g. it could lead to sexual offences charges being maintained in order to ensure continued anonymity, in circumstances where dropping the charge (e.g. in a negotiated plea) was in the interests of justice.

39 Ibid, s.3.

40 Ibid, s.3(3).

The court has the power to relax or remove the restriction if satisfied that the restriction would cause substantial prejudice to the conduct of a person's defence at a trial of a FGM offence, or if the restriction imposes a substantial and unreasonable restriction on the reporting of the proceedings and it is in the public interest to do so.

3.4 Rulings at pre-trial hearings

Crown Court judges may make pre-trial rulings on the admissibility of evidence or on points of law relevant to a forthcoming trial under the Criminal Procedure and Investigations Act 1996 (CPIA 1996), ss.39 and 40 and magistrates have similar powers at pre-trial hearings under s.8A Magistrates' Court Act 1980.

Automatic reporting restrictions under s.41 of the 1996 Act and s.8C of the 1980 Act prevent reporting of these rulings and the proceedings on applications relating to such rulings. These restrictions continue until the trial has been concluded when they automatically cease to apply.

The trial judge or magistrate may lift the restrictions on the application of any person before the conclusion of the trial if satisfied, after hearing any representations from the accused, that it is in the interests of justice to do so. The restrictions will continue to apply, however, to any representations that were made by the accused in relation to the lifting of the restrictions.

3.5 Preparatory hearings

Crown Court judges undertake preparatory hearings in terrorism-related cases and may also order preparatory hearings in other cases such as long, complex or serious cases and serious fraud cases.[41] Automatic reporting restrictions prevent the reporting of these preparatory hearings with the exception of certain specified facts about the proceedings such as the names of the accused and the offences with which they have been charged.[42] These restrictions continue until the conclusion of the trial when they automatically cease to apply.

The trial judge may lift the restrictions on the application of any person before the conclusion of the trial if satisfied, after hearing any representations from the accused, that it is in the interests of justice to do so. The restrictions will continue to apply, however, to any representations that were made by the accused in relation to the lifting of the restrictions.

3.6 Dismissal proceedings

In Crown Court proceedings automatic reporting restrictions prevent the publication of any report of an unsuccessful dismissal application made by an accused person except for certain specified facts such as the name of the accused and the offence.

A dismissal application may be made in respect of any charge brought against a person who has been sent for trial under s.51 or 51A Crime and Disorder Act 1998 (CDA 1998).[43]

The trial judge may lift the restrictions on the application of any person after hearing representations from the accused.

Successful dismissal applications may be fully reported and the restrictions automatically lapse at the conclusion of the trial. Before the trial concludes the trial judge has a discretion to lift the restrictions if, after hearing representations from the accused where any of them object, he/she is satisfied that it is in the interests of justice to do so.

41 CrimPR 3.22 to 3.26.

42 CPIA 1996, s.37; CJA 1987, s.11.

43 CDA 1998, Schedule 3.

3.7 Allocation and sending proceedings in magistrates' courts

There are automatic reporting restrictions that apply to the reporting of allocation and sending proceedings in the magistrates' courts (CDA 1998, s.52A). These prevent the media from reporting anything except certain specified facts about the case such as the name of the court, names of the accused and the charges they face. The restrictions may be lifted on application by any person but where any of the accused objects to their removal, the court may only do so if satisfied that it is in the interests of justice.

These restrictions cease to apply if the court decides the case is suitable for summary trial and the accused pleads guilty, or after the conclusion of a summary trial.

3.8 Prosecution appeals against rulings

In Crown Court proceedings, automatic reporting restrictions apply when the prosecution informs the court of its intention to appeal against the court's rulings and to the court's subsequent decision as to whether to expedite the prosecution appeal, or adjourn, or discharge the jury. Those reporting restrictions apply for the purposes of any appeal to the Court of Appeal or the Supreme Court.

The restrictions prevent the publication of anything other than certain specified factual information (identification of court, judge, defendant, witnesses, lawyers, offence, bail, legal aid, place and date of adjourned proceedings etc). Subject to consideration of the (unreportable) objections of defendant(s), the courts may order that the restrictions do not apply to any extent, if it is in the interests of justice to do so, otherwise the restrictions automatically lapse at the conclusion of the trial(s) (Criminal Justice Act 2003 (CJA), s.71).

3.9 Youth Court proceedings

Criminal proceedings in the Youth Court are a statutory exception to the open justice principle as the media, although permitted to attend, are prohibited from publishing the name, address or school or any other matter that is likely to identify a person under 18 as being 'concerned in the proceedings' before the Youth Courts (Children and Young Persons Act 1933, s.49). A child or young person is 'concerned in the proceedings' if they are the person in respect of whom the proceedings are taken, a witness or defendant.

The prohibition on publication also extends to appeals from criminal proceedings before a Youth Court (including by way of case stated); proceedings in a magistrates' court for breach, revocation or amendment of a youth rehabilitation order; and on appeal from such proceedings in a magistrates' court (including by way of case stated).[44]

There are three exceptional situations in which these automatic reporting restrictions may be lifted. First, the court may lift the restriction if satisfied that it is appropriate to do so for avoiding injustice to the child. Secondly, the court may lift the restriction to assist in the search for a missing, convicted or alleged young offender who has been charged with, or convicted of, a violent or sexual offence (or one punishable with a prison sentence of 14 years or more in the case of a 21-year-old offender). Thirdly, the restriction may be lifted in relation to a child or young person who has been convicted, if the court is satisfied that it is in the public interest to do so.

[44] Children and Young Persons Act 1933, s.49(2). However, s.49 does not apply to proceedings for breach of a Criminal Behaviour Order where the discretionary powers are provided – see section 4.9 below.

When deciding whether to lift the automatic reporting restriction following conviction, particular considerations relevant to offenders under 18 must be balanced against the open justice principle. The particular considerations relevant to offenders under 18 include the:

- duty to have regard to the principal aim of the youth justice system to prevent offending by children and young persons as required by s.37 CDA 1998;
- obligation to have regard to the welfare of the child or young person as required by s.44 Children and Young Persons Act 1933;
- right to privacy under Article 8 ECHR (as interpreted through international instruments such as the UN Convention on the Rights of the Child[45] and the Beijing Rules[46]);[47] and
- 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.[48]

It is wrong for the court to dispense with a child's prima facie right to anonymity as an additional punishment, or by way of 'naming and shaming'.[49] The welfare of the child must be given very great weight and it will rarely be the case that it is in the public interest to dispense with the reporting restrictions.[50] Where it decides to lift the reporting restrictions, the court must clearly identify the specific public interest which justifies that course.[51]

The Court must offer the parties an opportunity to make representations and take these into account before lifting the restrictions.[52]

The YJCEA 1999, s.44 creates a further automatic reporting restriction that prohibits the publication of any matter likely to identify a child or young person who is the subject of a criminal investigation and which lasts until the commencement of proceedings. The 1999 Act also makes a number of amendments to s.49 of the 1933 Act. However, s.44 has not been brought into force and it appears that there are no current plans for doing so.

3.10 Special measures and other directions

Section 47 YJCEA 1999 prohibits the reporting of special measures directions, directions relating to the use of live link for an accused and directions prohibiting an accused from cross-examining a witness in person.

These automatic restrictions may be lifted by the Court and lapse automatically when proceedings against the accused are determined or abandoned.

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45 The UN Convention on the Rights of the Child 1989 has been ratified by the United Kingdom and applies to all children under the age of 18. Article 40(2)(b)(vii) entitles every child 'accused of having infringed the penal law…[t]o have his or her privacy fully protected at all stages of the proceedings.'.

46 The UN Standard Minimum Rules for the Administration of Justice 1985 (the Beijing Rules) are not binding. Rule 8 invites States to protect the privacy of defendants and offenders under 18. In particular, r.8.1 indicates the 'juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling' and r.8.2 indicates 'no information that may lead to the identification of a juvenile shall be published'.

47 *McKerry v Teesdale and Wear Valley Justices* [2001] EMLR 5 [12-16] (Lord Bingham CJ).

48 *McKerry* (note 47 above) [13] and *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166 [46] (Lord Kerr).

49 *McKerry* (note 47 above) [17].

50 *McKerry* (note 47 above) [17].

51 *McKerry* (note 47 above) [17].

52 Children and Young Person's Act 1933, s.49(4B).

3.11 Alleged offences by teachers against pupils

Section 141F Education Act 2002 as amended introduces an automatic reporting restriction which prevents the identification of any teacher who is alleged by a pupil at the same school (or by someone on the pupil's behalf) to have committed a criminal offence against the pupil. This reporting restriction may be varied or lifted on the application of any person and automatically ends if proceedings against the teacher are instituted. Provision is made for an appeal against such restrictions.

3.12 Indecent material calculated to injure public morals

Section 1 Judicial Proceedings (Regulation of Reports) Act 1926 prohibits the publication in relation to any judicial proceedings of any indecent medical, surgical or physiological details which would be calculated to injure public morals. The prohibition is qualified by s.1(4) which exempts the printing of materials for use in connection with proceedings, and other related communications, but might apply, for instance, to detailed online reports of children's testimony in cases of sexual abuse. A prosecution requires the sanction of the Attorney General.

Automatic reporting restrictions

- There are several automatic reporting restrictions which are statutory exceptions to the open justice principle.
- Complainants in sexual or s.2 modern slavery offences are given lifetime anonymity which does not apply if they consent in writing to their identity being published. Their anonymity can also be lifted by the court in other limited circumstances.
- Reports of pre-trial hearings in the Crown Court cannot generally be published until after the trial is over.
- Reports of preparatory hearings in the Crown Court in long, complex or serious cases, complex fraud cases and unsuccessful dismissal applications are also prohibited (apart from a limited range of factual matters) until the trial is over.
- Similar restrictions apply in respect of sending and allocation proceedings in the magistrates' courts.
- These restrictions on pre-trial proceedings lapse at the conclusion of the trial and may be lifted earlier where the court is satisfied that it is in the interests of justice to do so.
- Reports of special measures directions and directions prohibiting the accused from conducting cross-examination cannot be published until the trial(s) of all accused are over, unless the court orders otherwise.
- Reports of the prosecution's notices of appeal against rulings and the courts' decisions on whether to expedite the appeal, or, if not, to adjourn the proceedings or discharge the jury, cannot be published (apart from a limited range of factual matters) until the trial of (all) the accused are over, unless the court orders otherwise.
- The media is prohibited from publishing the name, address or school or any matter likely to identify a child or young person involved in Youth Court proceedings whether as a complainant, witness or defendant.

- The Youth Court may lift the restriction in exceptional circumstances including where the child or young person is convicted of an offence and the court considers that it is in the public interest to do so.
- The court must give great weight to the welfare of the child and it is wrong to dispense with the automatic anonymity for a child or young person as an additional punishment, or by way of 'naming and shaming'.

4. Discretionary reporting restrictions

4.1 Procedural safeguards common to all discretionary reporting restrictions

Before imposing a discretionary reporting restriction, courts should check that no automatic reporting restriction already applies which would make a discretionary restriction unnecessary.

Where a discretionary restriction is potentially available, courts must ensure that they apply the restriction with care, checking that the relevant statutory conditions have been met. Where the statutory conditions are met, the court must make a judgement, balancing the need for the proposed restriction against the public interest in open justice and freedom of expression. In all cases, courts must be satisfied that the need for the proposed restriction has been convincingly established by clear and cogent evidence and that the terms of the proposed order go no further than is necessary to meet the statutory objective.

The court is required to scrutinise closely any application for discretionary reporting restrictions, even where the restrictions are agreed between the parties. It is not open to the parties to waive the rights of the public by consent.[53]

The imposition of a reporting restriction directly engages the media's interests, affecting its ability to report on matters of public interest. For this reason the court should not impose any reporting restrictions without first giving the media an opportunity to attend or to make representations,[54] or, if the court is persuaded that there is an urgent need for at least a temporary restraint, as soon as practicable after they have been made.[55] The media bring a different perspective to that of the parties to the proceedings. They have a particular expertise in reporting restrictions and are well placed to represent the wider public interest in open justice on behalf of the general public.[56] Because of the importance attached to contemporaneous court reporting and the perishable nature of news, courts should act swiftly to give the media the opportunity to make representations. They may be allowed to do so by live link.

Any reporting restriction imposes potential criminal liability on media organisations, journalists or editors who breach it. If a breach occurs, media organisations and their employees may face

53 *JIH v News Group Newspapers Ltd (Practice Note)* [2011] 1 WLR 1645 [21(7)].

54 CrimPR 6.2(3).

55 CrimPR 6.2(3).

56 In *R v Clerkenwell Metropolitan Stipendiary Magistrate, ex parte The Telegraph Plc* [1993] QB 462, May LJ held at p.462 that a court contemplating making a s.4(2) order should receive assistance from those who would, absent the order, have a right to report the proceedings and that the media is "the best qualified to represent that public interest in publicity which the court has to take into account in performing any balancing exercise which has to be undertaken."

unlimited fines.[57] For these reasons, it is essential that any reporting restriction should be reduced to writing as soon as possible, clear and precise in its terms and drawn up as a court order as soon as practicable. Once orders have been made, they should be drawn to the attention of the media by being shown on the court list and on the door of the court and wherever possible sent to relevant local and/or national media organisations. Court staff should respond positively to media organisations' requests for assistance in relation to the existence or terms of reporting restriction orders.

Procedural safeguards

- Where automatic reporting restrictions already provide protection it is generally not necessary to impose additional discretionary restrictions.
- Care must be taken to ensure that the statutory conditions for imposing a discretionary reporting restriction are met.
- Where the statutory conditions are met, the court must make a judgement, balancing the need for the reporting restriction against the public interest in open justice and freedom of expression.
- The need for any order must be established by clear and cogent evidence and the terms of any order must be proportionate, going no further than is necessary to meet the statutory objective.
- The media must be given an opportunity to make representations about discretionary reporting restrictions.
- Orders should be put in writing as soon as possible.
- The media should be put on notice as to the existence and terms of the order.

4.2 Protection of under-18s

Summary of provisions

There are two main powers to make discretionary reporting restrictions for under-18s. Under s.45 YJCEA 1999 a criminal court can grant anonymity to a juvenile defendant, victim or witness in adult criminal proceedings. Such anonymity will last until that person reaches the age of 18. This power is not available to Youth Courts, as s.49 Children and Young Persons Act 1933 (CYPA) provides automatic anonymity in those proceedings except for allegations of breach of a Criminal Behaviour Order (CrimBO) (see section 3.9 above).

In addition, under s.45A YJCEA, criminal courts including Youth Courts are given a power to grant life-long anonymity to witnesses and complainants who are under 18, bringing the law for under-18s into line with the law for adult victims and witnesses (see section 4.3 below).[58] Consistently

[57] Section 85 Legal Aid, Sentencing and Punishment of Offenders Act 2012, which came into force on 12 March 2015, provides that following commencement of that provision fines which would, on summary conviction, have been punishable by a maximum fine at Level Five on the Standard Scale (£5,000) shall in future be punishable by a fine of any amount. As pointed out in MOJ Circular No 2015/02 at para 32, courts will continue to set fines according to the seriousness of the offence and the means of the offender.

[58] This change in the law followed the criticisms made by Sir Brian Leveson P in *JC and RT v Central Criminal Court* [2014] EWHC 2041 (Admin), [2014] 1 WLR 3697, where he called for urgent reform to address the anomaly that a

with the law in relation to adult defendants, there is no power under s.45A to grant life-long anonymity to defendants who are under 18 (however, see section 4.10 below in relation to the '*Venables* jurisdiction').

Section 45 YJCEA replaced s.39 of CYPA in relation to all criminal proceedings. However, s.39 continues to apply to civil and family proceedings and to CrimBOs (see section 4.9 below). Section 39 has been amended so that reporting restrictions made under s.39 now apply to online publications, as well as the print and broadcast media.[59]

The intention of Parliament in enacting these provisions was to widen the scope of protection applying specifically to under-18s. Although the new powers are of broader application than s.39 CYPA 1933, they give rise to similar issues and it has been held that the s.39 case law provides appropriate guidance to the principles and practice to be followed concerning applications under s.45.[60]

The CPS has produced its own guidance on 'Reporting Restrictions – Children and Young People as Victims, Witnesses and Defendants'.[61] Owing to the continuing relevance of s.39, further guidance is provided in Appendix 1.

Reporting restrictions under s.45 YJCEA 1999

The general power to impose a discretionary reporting restriction in relation to a person under aged 18 is now contained in s.45 YJCEA 1999.[62] This discretionary power applies to under-18 complainants, witnesses and defendants.

Section 45 YJCEA 1999 permits a criminal court (other than the Youth Court) to prevent any information being included in a publication which is likely to lead members of the public to identify the under-18 person in respect of whom the proceedings are taken, witness or defendant as a person concerned in the proceedings. When deciding whether to make an order under s.45 the court must have regard to the welfare of that person.

As with any departure from open justice there must be a good reason for imposing an order under s.45. 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.[63]

The reason for the 'good reason' requirement is explained in the case law under s.39. The courts have emphasised that Parliament intended to preserve the distinction between children and young people appearing in Youth Courts, who are automatically entitled to anonymity, and those appearing in the adult criminal courts, who are not so entitled and must apply for a discretionary reporting restriction.[64] The rule under s.49 is the reverse of the rule under s.33 CYPA and s.45

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child or young person who was the subject of a s.39 CYPA order lost anonymity when they reached the age of 18, while adults who obtained orders under s.46 YJCEA 1999 could be granted life-long anonymity.

59 This change reflects the decision of Mr Justice Tugendhat in *MXB v East Sussex Hospitals Trust* [2012] EWHC 3279 (QB), that s.39 CYPA only applied to reports of court proceedings in newspapers and broadcast services and did not cover online publications. The same conclusion was reached by Sir Brian Leveson in *JC & RT v Central Criminal Court* (note 58 above). The deficiency was remedied by an amendment to s.39 CYPA in s.79(7) Criminal Justice and Courts Act 2015, widening the definition of publication in s.39.

60 *R v H* [2015] EWCA Crim 1579 [8] (Treacy LJ).

61 http://www.cps.gov.uk/legal/p_to_r/reporting_restrictions/

62 Section 39 CYPA 1933 no longer applies to criminal proceedings but does apply to civil proceedings including applications for Criminal Behaviour Orders (see below).

63 *R v H* (note 60 above) [7] (Treacy LJ).

64 *R v Central Criminal Court ex parte W* [2001] 1 Cr.App.R 2 (and the cases cited therein).

YJCEA 1999. Under s.49 CYPA 1933 there must be a good reason for lifting the order; under s.45 YJCEA 1999 there must be a good reason for imposing it.

In deciding whether to impose an order under s.45, the court must balance the open justice principle against particular considerations relevant to those under 18. The particular considerations include the:

- Duty to have regard to the principal aim of the youth justice system to prevent reoffending by children and young persons as required by s.37 CDA 1998;
- Obligation to have regard to the welfare of the child or young person as required by s.44 CYPA;
- Right to privacy under Article 8 ECHR (as interpreted through international instruments such as the UN Convention on the Rights of the Child[65] and the Beijing Rules[66])[67]; and
- 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.[68]

Neither the principle of open justice nor the best interests of the child necessarily dictate the conclusion in a particular case.[69] The court must weigh the competing public interest factors on the particular facts before it.[70] The case law governing this balancing exercise under s.39 CYPA remains relevant under s.45.[71]

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 in the proceedings.[72] Among the possible public interests is the public interest in knowing the outcome of court proceedings and the valuable deterrent effect that the identification of those guilty of at least serious crimes may have on others.[73]

In relation to harm, publication can have a significant effect on the prospects and opportunities of young defendants and, therefore, on the likelihood of effective integration into society.[74] That the defendant's identity is already known to some people in the community is not necessarily a good reason for allowing much wider publication.[75] Prior to and during the trial, the welfare of the

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65 The UN Convention on the Rights of the Child 1989 has been ratified by the United Kingdom and applies to all children under the age of 18. Article 40(2)(b)(vii) entitles every child 'accused of having infringed the penal law…[t]o have his or her privacy fully protected at all stages of the proceedings.'

66 The UN Standard Minimum Rules for the Administration of Justice 1985 (the Beijing Rules) are not binding. Rule 8 invites States to protect the privacy of defendants and offenders under 18. In particular, r.8.1 indicates the 'juvenile's right to privacy shall be respected at all stages in order to avoid harm being caused to her or him by undue publicity or by the process of labelling' and r.8.2 indicates 'no information that may lead to the identification of a juvenile shall be published'.

67 *R (Y) v Aylesbury Crown Court* [2012] EWHC 1140 (Admin), [35-36] (Hooper LJ).

68 *R (Y) v Aylesbury* (note 67 above) [35] and *ZH (Tanzania)* (note 48 above) [46] (Lord Kerr).

69 *R (A) v Lowestoft Magistrates' Court* [2014] 1 WLR 1489 [10] (Kenneth Parker J).

70 *R v Markham* [2017] 2 Cr.App.R (S) 30 [84] (Leveson P): "submissions in this area of the law should focus on the facts of the particular case relevant to the exercise of the court's judgment, rather than the siren calls of abstract principles that have already informed the approach which the courts adopt. … the court must analyse the content of each right in the light of the particular circumstances of the case".

71 *R v H* [2015] EWCA Crim 1579 [8] (Treacy LJ).

72 *Ex parte Crook* [1995] 1 WLR 139.

73 *R (Y) v Aylesbury* (note 67 above) [44].

74 *R (Y) v Aylesbury* (note 67 above) [42].

75 *R (Y) v Aylesbury* (note 67 above) [19].

defendant is likely to take precedence over the public interest in publication, whereas after conviction, the age of the offender and the seriousness of the crime will be particularly relevant.[76] The court should give considerable weight to the age of the offender and to the potential damage of public identification as a criminal before having the burden or benefit of adulthood.[77]

The definition of publication in s.63 YJCEA 1999 is wide and covers the print media, broadcast media and online publications such as Twitter and Facebook.

Section 45(8) of YJCEA identifies particular examples of information that a s.45 reporting restriction may contain, including the child or young person's name, home address, school, place of work or still or moving image. However, this list is not intended to be exhaustive.

Section 45 orders should be carefully framed, to prevent them from having an overbroad effect. The purpose of a s.45 order is not to prevent the publication of the name, address or other details of the child or young person per se; what a s.45 order seeks to do is to prevent their identification as a person in respect of whom the proceedings are taken, or as a witness or defendant in criminal proceedings. For this reason, when making an order under s.45, courts should track the language of s.45(3) YJCEA and make sure to include the qualifying words in italics 'if it is likely to lead members of the public to identify him *as a person concerned in the proceedings*'. Adopting this language prevents media reports of unrelated matters e.g. the same child winning a prize at school, being caught by the restriction.

Breach of a s.45 order is a criminal offence, subject to certain specific defences.

The s.45 reporting restriction ceases to apply when the young person reaches the age of 18. In these circumstances, the court now has the power to impose life-long anonymity under s.45A YJCEA if the relevant conditions are met.

Further information is contained in MOJ Circular No. 2015/02 'Reporting Restrictions applying to Under-18s: Youth Justice and Criminal Evidence Act 1999 and Criminal Justice and Courts Act 2015', 23 March 2015.

Excepting directions

The court, or an appellate court, may dispense with a s.45 reporting restriction if satisfied that doing so is in the interests of justice or that the restrictions impose a substantial and unreasonable restriction on the reporting of the proceedings and it is in the public interest to remove or relax the restriction. When considering the 'public interest' the court should have regard, in particular, to the matters identified in s.52 YJCEA: the open reporting of crime, the open reporting of matters relating to health and safety, the prevention and exposure of miscarriages of justice, the welfare of the child or young person and the views of the child or young person.

The fact that proceedings have been determined in any way or abandoned is not in itself a sufficient reason for dispensing with the reporting restrictions, although it may be a relevant consideration.[78] However, after a child or young person has been convicted and sentenced, the balance will invariably have shifted in favour of publication, albeit not necessarily decisively so.[79] When deciding whether to relax or remove a restriction, the court must have regard to the welfare of the child or young person concerned.

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76 *R (Y) v Aylesbury* (note 67 above) [46].

77 *R v Inner London Crown Court ex parte Barnes* [1995] Times, 7 August.

78 *R (Y) v Aylesbury* (note 67 above) [46].

79 *R (Y) v Aylesbury* (note 67 above) [46]; *R v Z* [2016] EWHC 3728 (QB); *R v Markham* (note 70 above) [86] (Leveson P).

A judge who is considering whether to make an excepting direction at the sentencing hearing under s.45(4) allowing the press to name the defendant should indicate as much in advance, in open court, and require any specific applications to be made and served on relevant parties.[80]

Life-long anonymity under s.45A YJCEA 1999

Section 45A YJCEA confers power to impose a life-long reporting restriction in the case of an under-18 complainant or witness. This provision aligns the law for complainants and witnesses who are children or young persons with that which applies to their adult counterparts in criminal proceedings.

Section 45A permits a criminal court to prevent any information being included in a publication during the lifetime of a complainant or witness which is likely to lead members of the public to identify that under-18 complainant or witness as being concerned in the proceedings. The same wide definition of publication in s.63 YJCEA 1999 applies as in s.45 orders and covers the print media, broadcast media and online publications such as Twitter and Facebook.

As with s.45 orders, s.45A identifies particular matters that may be included in a s.45A reporting restriction e.g. the name, address, school etc of an under-18, but the reporting restriction power is not limited to those specific matters. For the same reasons that apply in the case of s.45 orders, care should be taken to ensure that s.45A orders track the statutory language so as to prevent them from having an overbroad effect (see above).

The test for making a s.45A order is that the court must be satisfied that fear or distress on the part of the complainant or witness in connection with being identified as a person concerned in the proceedings is likely to diminish the quality of that person's evidence or the level of cooperation they give to any party to the proceedings in connection with that party's presentation of its case. Witnesses who could benefit from a s.45A order could therefore be witnesses for the prosecution or the defence.

The applicant for an order under s.45A must explain how their circumstances meet the statutory criteria and why a reporting restriction would be likely to improve that person's evidence, or their level of cooperation.[81]

When applying the test in s.45A the court is required to take into account certain particular matters: the nature and alleged circumstances of the offence to which the proceedings relate; the age of the complainant or witness; their social and cultural background and ethnic origins (if relevant); their domestic, educational and employment circumstances (if relevant); any religious and political beliefs (if relevant); any behaviour towards the complainant or witness on behalf of an accused or others and the views expressed by the victim or witness.

In deciding whether to make a reporting restriction, the court must also have regard to the welfare of the child or young person, whether it would be in the interests of justice to make the direction and the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of the proceedings. Section s.45A therefore gives statutory effect to the requirement for the court to take into account the impact on the media's ability to report the proceedings when considering whether to make an order (and not just when it is being asked to remove or relax a reporting restriction).

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80 *R v KL* [2021] EWCA Crim 200 which also decided that post-conviction excepting directions may be the subject of judicial review and could only be considered by the Court of Appeal as part of a wider appeal. See further 'Appeals and other challenges' at section 6 below.

81 CrimPR 6.4(3)(e).

Breach of a s.45A order is a criminal offence, subject to certain specific defences. Further information is contained in MOJ Circular No. 2015/02 'Reporting Restrictions applying to Under-18s: Youth Justice and Criminal Evidence Act 1999 and Criminal Justice and Courts Act 2015', 23 March 2015.

The court, or an appellate court, has the same powers to dispense with a s.45A order as it has in relation to s.45 orders,[82] and must take into account the same public interest considerations. As with s.45 orders, the fact that the proceedings have been determined or abandoned is a relevant, but not decisive consideration, and the court, when deciding whether to remove or relax a restriction, must have regard to the welfare of the child or young person concerned.

Protection of under-18s

- Under s.45 of YJCEA a criminal court may make an order preventing the publication of information that identifies a child or young person as being a person concerned in the proceedings (whether as complainant, witness or defendant).
- This restriction applies to traditional print and broadcast media as well as online publications.
- The court must have regard to the welfare of the child or young person.
- Where the child is an accused person the court should 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 reaching adulthood.
- A s.45 order ceases to have effect when the child or young person turns 18.
- The court may remove or relax the s.45 reporting restriction if satisfied that this is necessary in the interests of justice or that the order imposes a substantial and unreasonable restriction on reporting and that it is in the public interest.
- Under s.45A of YJCEA a criminal court may make an order preventing the publication of information that identifies a child or young person as being a victim or witness in the proceedings during the course of their lifetime.
- The court must be satisfied that the fear or distress on the part of the complainant or witness arising from such identification would be likely to diminish the quality of their evidence or their cooperation with any party to the proceedings.
- The court must also take into account the impact on the media's ability to report the proceedings before making a s.45A order.
- The court may remove or relax the s.45A reporting restriction if satisfied that it imposes a substantial and unreasonable restriction on reporting and that it is in the public interest.
- Section 50 provides a limited defence to a charge of breach in case of written consent.

82 See 'Excepting Directions' above.

4.3 Protection of adult witnesses

Section 46 YJCEA 1999 gives the court power to restrict reporting about certain adult witnesses (other than the accused) in criminal proceedings on the application of any party to those proceedings. The witness protected by the order may be the complainant or any other witness.

The Court may make a reporting direction that no matter relating to the witness shall during his/her lifetime be included in a publication if it is likely to lead members of the public to identify him/her as being a witness in the proceedings. Again, publication of the name, address, educational establishment, workplace or a still or moving picture of the witness is not of itself an offence, unless its inclusion is likely to lead to his/her identification by the public as a witness in the criminal proceedings. A s.46 order may also restrict the identification of children where it would lead to the identification of the adult in question.[83]

An adult witness is eligible for protection if the quality of his/her evidence or his/her co-operation with the preparation of the case is likely to be diminished by reason of fear or distress in connection with identification by the public as a witness. The applicant for an order under s.46 must explain why a reporting direction would improve the quality of the witness' evidence or level of cooperation.[84] Quality of evidence relates to its quality in terms of completeness, coherence and accuracy. Factors which the court must take into consideration include the nature and circumstances of the offence, the age of the witness, any behaviour towards the witness by the defendant or his/her family or associates and the views of the witness.[85]

The court must also consider whether the making of a reporting direction would be in the interests of justice and consider the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of proceedings.[86]

The court may give a direction at any time dispensing with the restrictions if satisfied either that it is in the interests of justice or that the restrictions impose a substantial and unreasonable restriction on the reporting of the proceedings and that it is in the public interest. Such directions are referred to as 'excepting directions'. The fact that the proceedings have been determined in a particular way or abandoned is not a sufficient reason in and of itself to dispense with the restrictions, but will often be a relevant consideration.

Section 52 YJCEA 1999 sets out some of the matters to which the court should have regard in determining the public interest, including the interest in open reporting of crime, human health and safety, exposure of miscarriages of justice, as well as the welfare and views of the 'protected person', or an 'appropriate person' with parental responsibility (as defined).

The subject of a s.46 anonymity direction can also waive his/her anonymity, by giving written consent to the inclusion of any identifying material otherwise prohibited (subject to safeguards that it was not obtained by interference with the peace and comfort of that person).

The media has a right of appeal against s.46 orders under s.159 CJA 1988 even where the restriction on reporting is confined to photographs or film.[87]

A court which reviews the sentence of a defendant who has assisted the police, or failed to assist the police after having agreed to do so (under SA 2020, ss.377, 378) may impose a reporting restriction prohibiting the publication of any matter relating to the proceedings including the fact

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83 *ITN News v R* [2013] EWCA Crim 773, [2014] 1 WLR 199, [2013] 2 Cr.App.R 22, [29].

84 CrimPR 6.4(3)(f).

85 See YJCEA, s.46(4).

86 See YJCEA, s.46(8).

87 *ITN News v R* (note 83 above) [26].

that the reference has been made.[88] The court may make such an order only to the extent that such an order is necessary to protect the safety of any person and is in the interests of justice.[89]

Protection of adult witnesses

- Under s.46 YJCEA 1999 a court may prohibit the publication of matters likely to identify an adult as a witness in criminal proceedings (other than the accused) during his/her lifetime.
- The court must be satisfied that the quality of his/her evidence or his/her co-operation with the preparation of the case is likely to be diminished by reason of fear or distress in connection with identification by the public as a witness.
- The court must balance the interests of justice against the public interest in not imposing a substantial and unreasonable restriction on reporting of the proceedings.
- Excepting directions may be given, or the order revoked or varied at any stage of the proceedings.
- Section 50 provides a limited defence to a charge of breach in case of written consent.

4.4 Names and other matters withheld in court

At common law, the court only has power to withhold material from the public in court where it is satisfied that, if the name or matter was to be heard in open court, it would frustrate or render impractical the administration of justice and that the order is necessary taking into account the public interest in open justice. Blackmail victims are normally granted anonymity on these grounds (see section 5.3 below)) Other arguments commonly raised by applicants rely on the ECHR Article 2 (right to life) or Article 8 (right to privacy) and these are weighed against Article 10 (freedom of expression).

Where a court exercises its powers to allow a name or any other matter, such as a defendant's home address, to be withheld from the public in criminal proceedings, the court may then, as a second step, make such directions as are necessary under s.11 CCA 1981 prohibiting the publication of that name or matter in connection with the proceedings.

Section 11 can only be invoked where the court allows a name or matter to be withheld from being mentioned in open court. It follows that there is no power to prohibit publication of any name or other matter which has been given in open court in the proceedings,[90] except where that name or other matter was mentioned in open court in error.[91] For this reason, applications for an order under s.11 may be heard in private provided there is good reason for doing so.[92]

Section 11 does not itself give the court power to withhold a name or other matter from the public. The power to do this must exist either at common law or from some other statutory provision.

In practical terms a defendant's address is usually read out during magistrates' proceedings but not during Crown Court proceedings. Ordinarily the media are entitled to obtain the address from court staff so a Crown Court direction will be required to withhold that as a preliminary to a s.11

88 SA 2020, s 390(2)(b).

89 Ibid, s.75(3).

90 *Re Trinity Mirror* [2008] 2 Cr.App.R 1.

91 *In re Times Newspapers* Ltd [2008] 1 WLR 234 [22]-[23] (Lord Phillips CJ); *In re Times Newspapers Ltd* [2016] 1 WLR 4366 (CA) [32] (Gross LJ).

92 *Re Carlin's Application for Judicial Review* [2013] NICA 40 [4].

order. The issue may, most commonly, come before the Crown Court if that court is asked to determine an application to continue or to lift a restriction imposed at the magistrates' court. That is because, if the step was not taken at that stage the information is likely already to be in the public domain.

Consistent with the requirement to protect the open justice principle and freedom of expression, courts should only make an order under s.11 where the nature or circumstances of the proceedings are such that hearing all evidence in open court would frustrate or render impractical the administration of justice.[93] It follows that a defendant in a criminal trial must be named save in rare circumstances.[94] It is not appropriate therefore to invoke the s.11 power to withhold matters for the benefit of a defendant's feelings or comfort[95] or to prevent financial damage or damage to reputation resulting from proceedings concerning a person's business.[96] Nor can the power be invoked to prevent identification and embarrassment of the defendant's children, because of the defendant's public profile.[97]

Where the ground for seeking a s.11 order is that the identification of a witness or a defendant, or the giving of that person's address, will expose that person to a real and immediate risk to his/her life engaging the state's duty to protect life under Article 2 ECHR,[98] the court will consider whether the fear is objectively well-founded.[99] In practical terms, the applicant will have to provide clear and cogent evidence to show that publication of his/her name and/or address will create or materially increase a risk of death or serious injury.[100]

In rare circumstances, it may be argued that the right to private and family life under Article 8 ECHR requires normal media reporting to be curtailed. Any such argument calls for a fact-sensitive investigation which starts with recognition that communication to the public of information about what happened in a criminal court ranks high on the scale of values and the onus lies on the person seeking to restrain publication to justify the restriction by clear and cogent evidence.[101]

Injunctions to cover these cases are dealt with by the High Court rather than the criminal courts.[102] The High Court's jurisdiction is based on s.6 Human Rights Act 1998, read in conjunction with s.37 Senior Courts Act 1981.[103] Applications for injunctions in the High Court face significant obstacles; the combined effect of the Article 6 right to a fair and public hearing, the open justice principle and Article 10 making it a rare case where Article 8 rights can be invoked successfully to restrict reporting of criminal proceedings.[104]

The court is required to hear representations from the media about orders under s.11. In cases of urgency, a temporary order should be made and the media should be invited to attend on the next convenient date. The media have a right of appeal against s.11 orders made in the Crown Court under s.159 CJA 1988 and may challenge orders made in the magistrates' courts in judicial

93 *AG v Leveller Magazine* [1979] AC 440.

94 *R v Marines A, B, C, D & E* [2013] EWCA Crim 2367 [84].

95 *Evesham Justices ex parte McDonagh* [1988] QB 553.

96 *R v Dover JJ ex parte Dover District Council* 156 JP 433, DC.

97 *Crawford v DPP, The Times,* 20 February 2008, *R v Marines A, B, C, D & E* [2013] EWCA Crim 2637.

98 *Osman v United Kingdom* [1998] 29 EHRR 245 [116].

99 *In re Officer L* [2007] UKHL 36.

100 *R(M) v The Parole Board* [2013] EWHC 141 (Admin).

101 *R (Rai) v Crown Court at Winchester* [2021] EWCA Civ 604.

102 *Re Trinity Mirror* (note 90 above).

103 *Re Trinity Mirror* (note 90 above) [22], [26], [31]; *In re BBC* [2010] 1 AC 145 [157] (Lord Brown).

104 *In re S (A Child) Restrictions on Publication)* [2005] 1 AC 593, *Re Trinity Mirror* (note 90 above), *Global Torch* (note 17 above), *Khuja v Times Newspapers* (note 3 above).

review proceedings. A defendant does not have a right of appeal under s.159 against an order refusing to restrict reporting of his/her identity, but such an order may be challenged by way of judicial review.[105]

Names and other matters withheld in court

- At common law, the court only has power to withhold material from the public in court where it is satisfied that, if the name or matter was to be heard in open court, it would frustrate or render impractical the administration of justice and that the order is necessary taking into account the public interest in open justice.
- Alternatively, there must be some other power to withhold the name or other material from the public in court. Section 11 does not give that power.
- Where a court exercises a common law or statutory power to withhold a name or other matter from being given in evidence in open court, it may also prohibit publication of that name or matter under s.11 CCA 1981.
- The court may only exercise its power to prohibit publication under s.11 where it has deliberately withheld that information from the public.

4.5 Postponement of fair and accurate reports: s 4(2) Contempt of Court Act 1981

The most common application for a reporting restriction is for an order postponing publication of reports of proceedings in open court, under s.4(2) CCA 1981.

The power

Whilst it is normally a contempt of court under the 'strict liability rule' to publish anything which creates a substantial risk of serious prejudice to the administration of justice (see s.2), a person is not guilty of contempt of court in respect of a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith (see s.4).

That said, it may sometimes be necessary to restrict reporting to protect the administration of justice. For instance:

- Disputed applications to admit evidence and other matters may be discussed in open court, but in the absence of the jury which, if published before the end of the case, could prejudice the proceedings. Experienced reporters have long been aware of this and avoid reporting such legal submissions but contrary to widespread belief there is no automatic statutory prohibition and less experienced observers may be present. An informal judicial reminder to avoid reporting anything that might prejudice the proceedings may not be enough.
- There can also be circumstances where two or more trials are due to take place which are closely connected and where publication of reports of trial 1 could cause a substantial risk of prejudice to trial 2. Open reporting of an appeal against conviction might prejudice any re-trial.

The court has no inherent or common law power to restrict reporting to prevent this[106] but a statutory power is provided under s.4(2) to order the postponement of publication of such reports of the proceedings, or any part of the proceedings, where that is necessary to avoid a substantial

[105] See *KL* (note 80 above) and 'Appeals and other Challenges' at section 6 below.

[106] *Independent Publishing Co Ltd v AG of Trinidad and Tobago* [2005] 1 AC 190 [67].

risk of prejudice to the administration of justice in those or any other proceedings pending or imminent.

The subject matter of an order

The subject matter of a postponement order under s.4(2) is fair, accurate, good faith and contemporaneous reports of the proceedings. Therefore, a trial judge has no power under s.4(2) to postpone publication of anything else, such as matters not admitted into evidence or prejudicial comment in relation to the proceedings.[107]

The fact that there has already been reporting, or that matters that are later given in evidence have previously been made public in some other context does not debar the court from making an order under s.4(2). Nor is there any implied public domain proviso to orders of this kind, permitting reporting of aspects of the proceedings so long as the facts in question have been publicised before. Indeed, previous reporting may be a reason for making an order. However, a s.4(2) order cannot prevent the publication of information in the public domain which is not or does not purport to be a report of the relevant proceedings.[108]

Nevertheless, such publications may incur liability for contempt of court under the strict liability rule and the media bears the responsibility for exercising its judgement in such cases.[109]

The application process

The procedure is prescribed by CrimPR 6 and CrimPD I 6B. The applicant must apply as soon as reasonably practicable, notify each other party and such other person(s) as the court directs, specify the proposed terms of the order, and how long it is to last, and explain what power the court has to make the order and why an order in the proposed terms is necessary.[110]

These requirements must be followed unless unavoidable,[111] which will rarely be the case. The notice requirements are of particular importance. The court must not make an order unless each party and any other person directly affected is present or has had the opportunity to attend or to make representations.[112] The court will therefore need to consider which non-parties are 'directly affected' and ensure that they are able to attend (perhaps remotely) or make representations before a decision is made. This will include those known to be interested in publishing contemporaneous reports of the proceedings which are the subject of the proposed order. Media organisations may instruct an advocate, but in cases of urgency the court may and commonly does hear from journalists directly.

The court's approach

The court must have regard to the importance of allowing a public hearing to be reported to the public.[113]

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107 *Galbraith v Her Majesty's Advocate*, High Court of Justiciary, 7 September 2000, adopted by the Court of Appeal in *R v B* [2006] EWCA Crim 2692 [24-25].

108 *Attorney General v Yaxley-Lennon* [2019] EWHC 1791 (QB), [2020] 3 All ER 477 [50]-[52] (Sharp P).

109 *R v B* [2006] EWCA Crim 2692 [24-25].

110 CrimPR 6.4. The explanation should ordinarily be in writing: *R v Sarker and BBC* [2018] EWCA Crim 1341 [22]. See also 'The terms of the order' below.

111 *Sarker* (note 110 above) [21].

112 CrimPR 6.2(2).

113 CrimPR 6.2(1)(b).

The guiding principles were identified in *R v Sarker and BBC.*[114] In summary:

- All applications require careful scrutiny.
- Any derogation from the principle of open justice requires clear justification and should only be made when strictly necessary to secure the proper administration of justice. They are measures of last resort.
- A three-stage approach is to be adopted:[115]
  - Would reporting give rise to a substantial[116] risk of prejudice to the administration of justice in the relevant proceedings (i.e. the current proceedings or proceedings that are pending or imminent)? If not, no order should be made.
  - Is a s.4(2) order necessary? It will only be necessary if it would eliminate the risk *and* the risk could not satisfactorily be overcome by some lesser restriction.
  - If there is no other way of eliminating the perceived risk of prejudice, is the degree of risk tolerable as being 'the lesser of two evils' balancing the competing public interests in a fair trial and open justice (Articles 6 and 10 ECHR).

Factors to be borne in mind at these three stages include the following:[117]

- Substantial risk of prejudice:
  - The risk with which the court is concerned is a risk to the public interest in the administration of justice, not to the private interests of individuals.[118]
  - The decision is to be made on the footing that media reports would be responsible, fair and accurate (so as not to fall foul of the strict liability rule).
  - A risk that the 'scandalous' nature of the allegations would result in members of the public attacking a defendant does not justify a s.4(2) order: attacks upon the defendant by ill-intentioned persons are not to be regarded as a natural consequence of reporting of the proceedings and should not cause the court to depart from well-established principles.[119]
  - Besides, s.4(2) only allows a court to *postpone* reporting, not to ban it indefinitely.[120] It is rarely appropriate to use s.4(2) to alleviate the difficulties of witnesses giving evidence, when there are other statutory measures designed for that purpose.[121]
  - If the concern is about the impact of reporting on jurors in the current trial, they will see and hear the evidence or submissions that will be reported. They are given express directions about the right approach to media reports at the beginning of trials. They have a passionate and profound belief in and commitment to the right of a defendant to a fair trial and should be expected to follow the judge's directions and prioritise what they hear in court.[122]

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114 Note 110 above [20]ff. (Lord Burnett CJ).

115 Drawing on Longmore LJ in *R v Sherwood* (*ex p the Telegraph Group plc)* [2001] EWCA Crim 1075, approved by the Privy Council in *Independent Publishing Co Ltd* [2005]1 AC 190 [69].

116 Meaning 'not insubstantial' or 'not minimal', as opposed to 'weighty': *Sarker* (note 110 above) [31].

117 *Sarker* (note 110 above) [31-36], and other cases cited in notes below.

118 *R v Newtownabbey Magistrates' Court Ex p. Belfast Telegraph Newspapers Ltd* [1997] NILR 309; Times 27 August 1997.

119 *Belfast Telegraph* (note 118 above).

120 *Attorney General v Yaxley-Lennon* (note 108 above) [29].

121 *Application for leave to appeal by MGN Limited* [2011] EWCA Crim 100 [23].

122 *R v B* [2006] EWCA Crim 2692 [31]; *CCC (ex p Telegraph plc)* [1993] 1WLR 980 [987E-G].

  - Media organisations can disable 'comment' features on websites to prevent third party prejudicial content, and the responsibility for that lies with the media organisations.
  - The power of the 'fade factor' between sequential trials is important: when it comes to jurors remembering publicity about earlier trials, 'the staying power of news reports is very limited'.
- The necessity of a s.4(2) order:
  - The key question is whether a less restrictive order might avoid the risk that has been identified.
  - A targeted order under s.45(4) Senior Courts Act 1981 might be sufficient to guard against the identified risk. That might be an order to restrain a threatened contempt of court but may, as examples, include postponing the identification of certain persons involved in a trial or to particular aspects of the evidence.[123]
  - It is common for experienced members of the media to propose limited restrictions that might suffice in order to avoid a blanket postponement.
- The ultimate balance.
  - This is not a discretion but a value judgement about the competing rights and interests.
  - The order will not be necessary unless the interference with the right to freedom of expression which it involves is proportionate to the identified need.

The terms of the order[124]

The wording of the order is the responsibility of the Court or Bench making it. It must be in precise terms and if practicable agreed with the advocates.[125] Template orders are attached as Appendix II to this document and should generally be used.[126]

The order must be in writing and state the following:[127]

- the power under which it is made;
- its precise scope[128] and purpose;[129]
- the time at which it shall cease to have effect.

The CrimPD also require the order to 'specify, in every case, whether or not the making or terms of the order may be reported'.[130]

The order should provide that any interested party who has not been present or represented at the time of the making of the order has permission to apply within a limited period, e.g. 24

123 *Sarker* (note 110 above) [35].
124 See generally CrimPD 1 6B 'Restrictions on reporting proceedings'.
125 CrimPD 6B.4(g).
126 CrimPD 6B.5.
127 CrimPD 6B.4(h).
128 That is, the specific matters that may not be reported.
129 For example, 'to avoid a substantial risk of prejudice to the administration of justice in [specified proceedings]'.
130 CrimPD 6B.4(i).

hours.[131] It is desirable also to include the identities of those from whom the court has heard, and of any third parties to whom the order should be provided.[132]

After the order

A copy of the order should be provided to any person known to have an interest in reporting the proceedings and to any local or national media who regularly report proceedings in the court.[133] The fact that reporting restrictions apply should appear on the published court list.[134] Court staff should be prepared to answer any enquiry about a specific case, but it remains the responsibility of anyone reporting a case to ensure that no breach of any order occurs and the onus rests on them to make enquiry in case of doubt.[135]

As with any reporting restriction, an order under s.4(2) is open to review, and may be varied or revoked, in the light of any material change of circumstances during the period of its operation.

Postponement of fair and accurate reports under s.4(2) Contempt of Court Act 1981

- Under s.4(2) the court may postpone publication of a fair, accurate and contemporaneous report of its proceedings, or part of the proceedings, where that is necessary to avoid a substantial risk of prejudice to the administration of justice in those or other proceedings.
- The power is strictly limited to the postponement of fair, accurate, and contemporaneous reports of the proceedings, not other matter.
- An application should comply with CrimPR 6 and interested parties must be given an opportunity to be heard.
- The court must be satisfied that a substantial risk of prejudice would arise from such reports.
- If the concern is potential prejudice to a future jury trial the court will bear in mind: the jury directions and expectation that they will be followed; jurors' commitment to a fair trial; their focus on the evidence; and, submissions they will hear and the 'fade factor'.
- Before making a s.4(2) order, the court must be satisfied that the order would eliminate the risk of prejudice and that there is no less restrictive measure that could be employed.
- If satisfied of these matters, the court must make a value judgement balancing the risk of prejudice to the administration of justice against the strong public interest in the full reporting of criminal trials (Articles 6 and 10 ECHR) and the order must be proportionate.
- The judge or bench making the order is responsible for the terms of the written order and must review the terms drawn up, ensure they comply with the CrimPD and ensure distribution.
- Orders are subject to review if circumstances change.

131 CrimPD 6B.4(f).

132 See 'After the order' below, note 133 and text to that note.

133 CrimPD 6B.6. Some courts hold lists of regular journalists. It is also clearly desirable to ensure the order is made known to any judge conducting any separate trial which the order is designed to protect.

134 CrimPR 5.11 and see further section 5.1 below.

135 CrimPD 6B.7. Recklessness as to the terms of an order is sufficient to establish contempt: *Attorney General v Yaxley-Lennon* (note 108 above) [54-57].

4.6 Quashing of acquittal and retrial: restriction on publication in the interests of justice

Under s.82 CJA 2003, if necessary in the interests of justice, the Court of Appeal can make orders to prevent the inclusion of any matter in a publication which appears to it would give rise to a substantial risk of prejudice to the administration of justice in a retrial.[136] Before the prosecution has given notice of its application for an acquittal to be quashed and a retrial, such an order can only be made on the application of the DPP and where an investigation has commenced. After such notice has been given, the order may be made either on the application of the DPP, or on the Court of Appeal's own motion. The order may apply to a matter which has been included in a publication published before the order takes effect, but such an order applies only to the later inclusion of the matter in a publication (whether directly or by inclusion of the earlier publication) and does not otherwise affect the earlier publication.

Unless an earlier time is specified, by s.82(8) and (9) CJA 2003 the order will automatically lapse when there is no longer any step that could be taken which would lead to the acquitted person being tried pursuant to an order made on the application, or if he/she is so tried, at the conclusion of the trial.

4.7 Postponing prejudicial website publication

Pre-existing material

Reports of proceedings may sometimes contain links to earlier reporting. Concern is sometimes raised that such reports, or other material first posted before criminal proceedings began, might prejudice the jury.

It has been held that the expression 'at the time of publication' in s.2 CCA 1981 is capable of covering the whole period from the time when material is first posted online to when it is withdrawn.[137] On that basis, old reports that remain online could in principle pose a risk of prejudice to a current trial that falls within the strict liability rule.

This will rarely justify a reporting restriction under s.4(2) CCA 1981, however. The court must proceed on the basis that the jury will abide by the standard, express directions which they are given, to try the case on the evidence presented during the trial, not to carry out their own research and to ignore any media reports.[138] In addition, it is a criminal offence contrary to s.20A Juries Act 1974 for a juror to research their case during the trial, which includes carrying out internet searches, and a further offence contrary to s.20B, for a juror to share that research with another juror. In the exceptional case where in spite of these safeguards the online material is deemed to pose a substantial risk of serious prejudice the Crown Court (but not the magistrates' court) has power under s.45 Senior Courts Act 1981[139] to grant an injunction to restrain a threatened contempt.[140] This course will be a last resort and can have utility only against

136 *R v Dunlop* [2006] EWCA Crim 828.

137 *HM Advocate v Beggs (No.2*) 2002 SLT 139, a Scottish case followed in *AG v Associated Newspapers* [2011] EWHC 418 (Admin) at [28] (Moses LJ). The position might be different in relation to a fair and accurate report of earlier proceedings, first published contemporaneously with those proceedings: cf the position in the law of defamation: *Qadir v Associated Newspapers Ltd* [2012] EWHC 2606 (QB) [162] (Tugendhat J).

138 *Sarker* (note 110 above) [32] and the standard written directions to jurors.

139 Formerly known as the Supreme Court Act 1981.

140 As in *R v Harwood* [2012] EW Misc 27 (CC) (Fulford J, as he then was).

publishers amenable to the Crown Court's jurisdiction. If contemplating such an order the court will need to give the parties and the interested publishers notice and an opportunity to be heard.[141]

Reader comments on news websites

News websites may allow readers to post comments in response to otherwise unobjectionable contemporaneous court reports. These may prompt concern about the risk of prejudice to the trial. But (i) if there is a risk, it will not arise from fair and accurate reporting and hence will fall outside s.4(2) CCA 1981; (ii) the risk should not be exaggerated; media organisations are able to disable comment facilities if they pose a substantial risk of serious prejudice to the administration of justice.[142] Responsibility for doing so rests firmly on those responsible for the sites, who should generally be trusted to fulfil their responsibilities.[143] When prejudicial comments are published, a risk may be ruled out due to a lack of overlap between the readership and the pool from which the jurors have been drawn,[144] or because of the standard jury directions.[145] In an exceptional case the Crown Court can consider exercising its powers under s.45 Senior Courts Act to injunct the publisher requiring them to disable or remove comments to restrain a threatened contempt.[146]

4.8 Postponing reports of derogatory remarks in mitigation

Section 58 CPIA 1996 gives courts the power to postpone reports of derogatory assertions about named or identified persons that have been made in mitigation. The court must have substantial grounds for believing that the assertion is derogatory to a person's character and either false or that the facts asserted are irrelevant to the sentence.

This power may be exercised when a court is determining sentence following conviction, when a magistrates' court is determining whether an accused should be committed to a Crown Court for sentence and when a court is considering whether to give permission to appeal against a sentence or hearing an appeal against, or reviewing, a sentence. An interim order can be made as soon as the assertion has been made if there is a real possibility that a final order will be made. A final order must be made as soon as reasonably practicable after the sentence is passed. Such orders may be revoked at any time and orders made after the handing down of a sentence automatically cease to have effect 12 months after the order is made.

An order must not be made in relation to an assertion if it appears to the court that the assertion was previously made at the trial at which the person was convicted of the offence or during any other proceedings relating to the offence.[147]

Home Office Circular 24/3/1997 suggests that the media or other third parties can make applications, perhaps by written submission, for orders to be revoked.[148]

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141 CrimPR 6B.4(e).

142 *Sarker* (note 110 above) [33].

143 *R v B* [2006] EWCA Crim 2692, [2007] EMLR 5 [24-25] (Sir Igor Judge P).

144 As in *Re Pembrokeshire Herald*, *R v Oulton* [2021] EWCA Crim 1165 [8], [20].

145 See text to note 140 above.

146 See section 4.7 above, text to notes 139 and 140.

147 See s.58(5) CPIA 1996.

148 The Home Office Circular also provides guidance to court staff on: the prompt notification of the media when an order has been made; the display and content of notices on court premises and the availability of more detailed information; the entry into the court register of the dates on which the order commences and ceases to have effect; its statutory basis; whether interim or final; names of the defendant and the third party protected; and the derogatory assertions.

Postponing reports of derogatory remarks in mitigation

- Section 58 CPIA 1996 gives courts the power to postpone reports of certain assertions about named or identified persons that have been made in mitigation.
- The court must have substantial grounds for believing that the assertion is derogatory and false or that the facts asserted are irrelevant to the sentence.
- Orders must not be made in relation to assertions that were made during the trial or any other proceedings relating to the offence.

4.9 Criminal Behaviour Orders

Criminal Behaviour Orders (CrimBO) may only be made following conviction for a criminal offence. Breach of a CrimBO is a criminal offence.

There is no automatic reporting restriction for under-18s against whom proceedings are brought for a CrimBO (s.49 CYPA 1933 does not apply), however the court may still impose a reporting restriction under s.39 CYPA. There are also no automatic reporting restrictions for CrimBO breach proceedings, however s.45 YJCEA 1999 applies in relation to CrimBO breach proceedings against someone aged under 18, so the court has the power to impose discretionary reporting restrictions. Care will be required when reporting breach proceedings for a CrimBO not inadvertently to report any previous convictions in the Youth Court to which s.49 CYPA 1933 continues to apply.

Criminal Behaviour Orders

- There are no automatic reporting restrictions which apply to proceedings for a CrimBO, even if those proceedings relate to a child or young person.
- The Court retains the power to impose a discretionary reporting restriction to prevent the identification of a child or young person under s.39 CYPA 1933.
- In criminal proceedings for breach of a CrimBO, there are also no automatic reporting restrictions that apply to a child or young person, but the Court has the power to impose a discretionary reporting restriction under s.45 YJCEA 1999.

4.10 Lifelong anonymity for defendants (the '*Venables* jurisdiction')

There is no statutory provision that expressly confers power to order lifelong anonymity for a criminal defendant, whether adult or child.[149] However, the High Court has an exceptional power to grant such an injunction, derived from s.6(1) Human Rights Act 1998 and s.37 Senior Courts Act 1981. The power to make such an order is typically referred to as the '*Venables* jurisdiction', as it was first recognised in the decision of Dame Elizabeth Butler-Sloss P to grant a lifelong injunction to protect the new identities of Jon Venables and Robert Thompson, who were convicted of the murder of James Bulger, aged two.[150]

In practice, the exercise of the *Venables* jurisdiction is rare and exceptional, and has largely been used to protect the new identities of notorious offenders at the time of their release (all but two of

[149] In relation to a child or youth defendant, the protection of a s.45 order expires when the defendant turns 18 years of age, and there is no power to make a s.45A order in respect of an adult defendant. See section 4.2 above.

[150] *Venables v News Group Newspapers* [2001] Fam 430.

whom were children at the time of the offending).[151] The jurisdiction may however be engaged in the case of a 'supergrass'.[152] Typically this jurisdiction is invoked in circumstances where identification of a person by the media would give rise to a real and immediate risk to life or serious injury, thereby engaging the state's obligations under Article 2 and Article 3 ECHR. 153 However, there have been instances where, on exceptional facts, an injunction has been granted based on Article 8.[154]

Article 2 and Article 3 ECHR are unqualified rights. Therefore, where the evidence demonstrates that there is a real and immediate risk of serious harm or death, this always outranks any Article 10 right.[155] However, Article 8 is a qualified right and where it is engaged the Court must balance that right against the Article 10 rights of the media and public. As a life-long anonymity injunction is a serious intrusion on Article 10 the courts will be astute to ensure that any such order is lawful, fulfils a pressing social need, has been convincingly established on the evidence, and is proportionate.

Where the *Venables* jurisdiction is exercised, the court will grant an injunction *contra mundum* (i.e. against the world). Claims for such an injunction must be made in the High Court, rather than in the criminal courts.

Lifelong anonymity for criminal defendants (the '*Venables* jurisdiction')

- The *Venables* jurisdiction provides a rare and exceptional power for the High Court to grant lifelong anonymity to a criminal defendant.
- As a serious interference with free speech, ordinarily the exercise of the power will only be justified where there is convincing evidence of a real and immediate risk of serious physical harm or death if the defendant's identity were to be revealed.

5. Additional matters relating to court reporting

5.1 Obtaining information from the Court

The rules and procedures on the supply of information held by the court to parties, the media and the public were substantially revised in 2021.[156] The main rules are now found in CrimPR 5[157] which is supported by CrimPD I 5B.

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151 At the time of writing, the *Venables* jurisdiction had only been exercised on seven occasions: *Venables* itself (note 150 above); *X, formerly known as Mary Bell v O'Brien* [2003] EMLR 37; *Carr v News Group Newspapers Ltd* [2005] EWHC 971 (QB); *A (A Protected Person) v Persons Unknown* [2017] EMLR 11; *RXG v Ministry of Justice* [2019] EMLR 25; *D v Persons Unknown* [2021] EWHC 157 (QB); and *Re Winch* [2021] EWHC 1328 (QB). An application for the exercise of the *Venables* jurisdiction was refused in *DXB v Persons Unknown* [2020] EMLR 13.

152 *Re Winch* (note 151 above).

153 The threshold has been described as "the real possibility of serious physical harm and possible death": *Venables* (note 150 above) [94], "a continuing danger of serious physical and psychological harm to the applicant": *Carr* (note 151 above) [4]; and an "extremely serious risk of physical harm": *A (A Protected Person)* (note 151 above) [36].

154 *Mary Bell* (note 151 above) [61]; *RXG* (note 151 above).

155 *RXG* (note 151 above) at [35](vii), *D v Persons Unknown* (note 151 above) and *Re Winch* (note 151 above) [18].

156 Following a review in the light of *Cape Intermediate Holdings Ltd v Dring* [2019] UKSC 38, [2020] AC 629.

157 Substantially revised version in effect from 4 October 2021.

The information and material held by the court may be divided into five categories:

- Information the court is obliged to publish.
- Information or material that must be provided on request to the public or reporters.
- Information or material that must be provided on request to the parties or persons directly affected.
- Information provided only if the court so directs.
- Audio recordings of Crown Court proceedings, copies of the audio and transcripts, for which separate arrangements are made in CrimPR 5.5 and CrimPD I 5B32-36.

HMCTS publishes a series of guides for court staff to assist them to support media access. In addition to the supply of information to the media the guides also contain advice on the arrangements for the management of high-profile trials or hearings. These guides are publicly available using the internet search term 'Media access to courts'. Journalists attending court are likely to be familiar with their contents.

The material includes the 'Protocol on sharing court list, registers and documents with the media'[158] ('the Protocol') which is the document setting out arrangements that the Lord Chancellor has made under CrimPR 5.[159] That Protocol sets out the information to be provided to accredited journalists. 'Accreditation' is normally established by production of a UK Press Card issued under the scheme managed by the UK Press Card Authority.

Information the court is obliged to publish

The court is obliged to publish the date, time and place of forthcoming hearings and the identity of the defendant as well as such information as is practicable to publish concerning the type of hearing, the identity of the prosecutor, the identity of the court (which is to say the names of the judge or magistrates), the offence(s) alleged and whether reporting restrictions apply.[160] There are special rules for the Single Justice Procedure.[161] Courts will not breach the UK GDPR or Data Protection Act 2018 by providing journalists with such information.

Court lists may be accessed freely over the internet from CourtServe.[162] These lists generally only detail the name of the judge or magistrates, defendant, the prosecutor and the date and time of hearing. They may give information about the type of hearing but generally do not list the offence(s). The mandatory information is provided in accordance with the Protocol. Whilst local arrangements may vary the magistrates' court will generally supply court lists containing the mandatory information and a Crown Court may email copies of the 'running list' which includes the charges to journalists who have requested to receive it.

By the Protocol HMCTS undertook to ensure that court registers would contain details of any reporting restrictions when they were first made. It is now standard practice for the existence of any reporting restriction to be shown on the Crown Court list under the name of the relevant case – allowing a ready means of checking whether there are such restrictions in place. Court of Appeal Criminal Division daily cause lists are available on www.gov.uk and similarly indicate where reporting restrictions are or may be engaged.

158 In force from 6 April 2020.

159 CrimPR 5.8(6)(c); 5.11(1)(b) & (3)(b).

160 CrimPR 5.11(1) and (2).

161 CrimPR 5.11(3).

162 www.courtserve.net/homepage.htm.

In March 2014 the Law Commission recommended that there should be a single publicly accessible website enabling the media and members of the public to find out if an order had been made under s.4(2) CCA 1981.[163] At the time of writing, this website had not been established.

Information that must be supplied on request to the public or reporters

Under CrimPR 5.8, a member of the public or a reporter is entitled on request to be told the date of a public hearing, each offence and plea, decisions in public about bail, committal or sending, whether a case is under appeal, the outcome, the identity of the prosecutor, the defendant (including his/her date of birth), the parties' representatives (including their addresses) and the judge or magistrates or legal adviser by whom a decision was made, and any reporting restrictions.[164]

Although this list does not include the address of the defendant, HMCTS guidance[165] advises staff that 'in order to comply with the obligation in relation to the identity of the defendant, you should also provide the media (although not the public) with defendant's address, age and where it is provided, date of birth'. This reflects a long-standing policy that a defendant's home address is part of his/her identity, which should normally be made public and reportable.[166] A departure from this rule should only be permitted if that is convincingly shown to be necessary.[167]

The request for information may be oral or written and need not explain why it is made.[168] The supply of information may be by word of mouth or in writing (including by written certificate or extract from court records), or by other arrangements that the Lord Chancellor may direct.[169] With r.5.8 requests it is for the court officer to choose.

There are exceptions. The information must not be supplied if that is prohibited by a reporting restriction, if the information is the date of a hearing of which a party has yet to be notified, relates to a trial in which the verdict was more than six months before, or if the information is not readily available. Court recordings and transcripts are likewise exempted as they are dealt with separately under CrimPR 5.5.

If the court officer is not required to provide the information the request has to be pursued under r.5.10.

Information that must be supplied on request to a party or a person directly affected by a case

CrimPR 5.9 identifies information to which a party or a person directly affected by a direction, order or warrant is entitled on request. In that instance the requester may identify in what way the information is to be supplied. Again, the request need not be in writing and need not explain why the information is requested. If the court officer is not required to provide the information the request has to be pursued under r.5.10.

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163 See Contempt of Court: Court Reporting | Law Commission.

164 CrimPR 5.8(4).

165 'Jurisdictional guidance to support media access to courts and tribunals – Criminal courts guide'.

166 *R v Evesham Justices ex p McDonagh* [1988] QC 553.

167 See *R (Rai) v The Crown Court at Winchester* (note 101 above).

168 CrimPR 5.8(3)(a).

169 CrimPR 5.8(6).

Information or documents the supply of which is not required by CrimPR 5.8 or 5.9

CrimPD I 5B.6 provides that a request for access to such documents should first be addressed to the party who presented them to the court, or who, in the case of a written decision of the court, received that decision. Observance of that direction lifts a significant administrative burden from the court.

If that is not effective, then CrimPR 5.10 provides a process by which the information can be requested and a decision made by the court. This is only to be used where the information is not within the categories that the court officer must supply on request.

In this instance the request must be in writing (unless the court otherwise permits) explaining why the information is requested.[170] There is then a process for that request to be served on the applicant for any direction, order or warrant that the request concerns or anyone else that the court directs and for those served to have the opportunity to make objections. Thereafter the court may determine the request with or without a hearing.

Rule 5.10(9) sets out matters to which the court is required to have regard including the open justice principle, any reporting restrictions, other legislation, public interest issues and the extent to which the information is otherwise available.

In this instance if the court directs the supply of information the court will also direct how information is to be supplied.

Under the CrimPD the burden of justifying a request to the court lies on the applicant and in particular, regard should be had to: (i) whether the request is for the purpose of contemporaneous reporting; (ii) the nature of the information sought; (iii) the purpose for which the information is requested; (iv) the stage of proceedings at the time when the application is made; and (v) the value of the documents in advancing the open justice principle (vi) risk of harm (vii) any reasons given by parties for refusing to provide the material or representations made by them.[171] The special position of the media is also recognised.[172]

The default position is that where documents have been placed before a judge and referred to in the course of proceedings the media is entitled to have access to those documents in accordance with the open justice principle.[173] Where access to documents has been sought for a proper journalistic purpose, the case for allowing it will be particularly strong. This principle extends to any type of document on the court file and also extends to photographs, video footage, stills and sound recordings which have been shown or played in open court.[174] This principle will also extend to character references submitted in support of a criminal defendant, which are evidence, like any other evidence.[175]

However, there may be countervailing reasons in an individual case which outweigh the merits of the application. In deciding these questions, the court has to carry out a proportionality exercise which is fact-specific, where central considerations will be the purpose of the open justice

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170 CrimPR 5.8(3)(b) and 5.9(3)(b).

171 CrimPD I 5B.9.

172 CrimPD I 5B.26-30.

173 *Dring* (note 156 above); *R (Guardian News and Media Ltd) v City of Westminster Magistrates' Court* [2012] EWCA Civ 420, [2013] QB 618.

174 *R v Marines A, B, C, D & E* [2013] EWCA Crim 2367.

175 For a recent example of the application of this principle, see: *R v Elphicke* (Whipple J, Southwark Crown Court, 9 December 2020).

principle, the potential value of the material in advancing that purpose and conversely any risk of harm which access to the documents may cause to the legitimate interests of others.[176]

Consideration should also be given to whether the documents could be provided in a redacted form, where those redactions are necessary to protect important interests.[177] However, it remains the responsibility of the recipient of information or documents to ensure they comply with any restriction such as statutory or individual reporting restrictions[178] and so it will not usually be necessary to redact documents for that purpose.

Sound recordings and transcripts of court proceedings

The CrimPR require the court to arrange for a recording of court proceedings in the Crown Court where someone has a right of appeal to the Court of Appeal.[179] Anyone who wants a transcript of proceedings in public (at their own expense) may apply and receive that transcript,[180] subject to certain specified exceptions.[181] Any person who receives a transcript of proceedings which are subject to reporting restrictions must themselves observe those reporting restrictions.

The rule also makes provision for a person to apply for permission to hear the recording and, if the court so directs, to be allowed to hear it.[182] There is no provision allowing a person to receive a copy of the recording.

5.2 Media access to prosecution materials

Media access to materials relied upon by the prosecution in criminal proceedings is governed by a Protocol between ACPO, the CPS and the Media entitled 'Publicity and the Criminal Justice System' and published in October 2005 (the 'Protocol').[183]

The stated purpose of the Protocol is 'to ensure greater openness in the reporting of criminal proceedings' and to 'provide an open and accountable prosecution process, by ensuring the media have access to all relevant material wherever possible, and at the earliest appropriate opportunity'.

The Protocol sets out the categories of material relied upon by the prosecution in court which should normally be released to the media. This includes maps and photographs (including custody photos of defendants), diagrams and other documents produced in court; videos showing scenes of crimes as recorded by police after the event; videos of property seized; sections of transcripts of interviews or statements as read out in court and videos or photographs showing reconstructions of the crime and CCTV footage of the defendant.

The Protocol also sets out further categories of prosecution material which may be released after consideration by the CPS in consultation with the police and relevant complainants, witnesses and family members. These categories are CCTV footage or photographs showing the defendant and

176 See *Newman v Southampton City Council* [2020] EWHC 2103 (Fam) for an example of this exercise, in the context of an application by a professional journalist for access to the court file relating to care proceedings.

177 Again, see *R v Elphicke* (note 175 above), where the names of certain persons who gave character references for a criminal defendant were redacted, because it was the content of the references (and not the names of the individuals giving the references) in which there was a public interest (see [56]).

178 CrimPD I 5B.2.

179 CrimPR 5.5(1)(a).

180 CrimPR 5.5(1)(b), (2)(c).

181 Rule 5.5(2).

182 Rule 5.5(3). The applicant must explain the reasons for the request.

183 As referred to in CrimPD I 5B.7.

complainant, or the victim alone, that has been viewed by the public and jury in open court; video and audio tapes of police interviews with defendants, victims or witnesses and complainant and witness statements.

The Protocol applies even if the accused pleads guilty and the case does not proceed to trial, providing the material released to the media reflects the prosecution case and has been read out, or shown in open court, or placed before the sentencing judge. The Protocol also provides for a review mechanism enabling the media to make further representations to the CPS if an initial request for media access is refused.

Where the CPS refuses to provide the media with access to prosecution material shown in open court, such as CCTV footage, the media may apply to the Court for an order granting access to that material and the default position is that such access should be granted in accordance with the open justice principle.[184] CrimPR 5.10 now sets out the process for such an application.

5.3 Identification of those involved in court proceedings

Parties to court proceedings should ordinarily expect their names to be made public.[185] At common law, it would be considered inimical to the administration of justice to protect the identity of magistrates presiding over proceedings. Their identity should be made known to press and public.[186]

The media is particularly concerned about accurate identification of those involved in court proceedings. Announcement in open court of names and addresses of defendants enables the precise identification vital to distinguish a defendant from someone else who bears the same name and avoids inadvertent defamation. The Home Secretary issued Circular No 78/1967 in response to press concern. The circular encouraged courts to ensure the announcement in open court of both the names and the addresses of defendants, on the footing that a person's address is as much a part of his/her description as his/her name. It stated that there is therefore a strong public interest in facilitating press reports that correctly describe persons involved. For the current position under the CrimPR and associated guidance see above.[187]

In contrast, a witness giving evidence will not be asked to give their home address unless that information is necessary for understanding their evidence.

Statutory reporting restrictions, even when automatic, provide for the lawful publication of magistrates' identities and names and addresses of defendants and others appearing before the courts. Common law also restricts the circumstances in which names and addresses can be withheld from the public or reporting restrictions imposed to prevent or postpone their publication (see above).

In *Re Trinity Mirror*[188] the Court of Appeal stated:

> 'it is impossible to over-emphasise the importance to be attached to the ability of the media to be able to report criminal trials which represents the embodiment of the principle of open justice in a free country. An important aspect of the public interest in the administration of criminal justice is that the identity of those convicted and sentenced for criminal offences should not be concealed. From time to time occasions will arise where restrictions on this principle are considered appropriate but they depend on express

184 *In re Guardian News and Media Limited* [2016] EWCA Crim 58.

185 *R v Legal Aid Board, ex p Kaim Todner* [1999] QB 966, 978E-G (Lord Woolf MR).

186 *R v Felixstowe Justices ex p Leigh* [1987] QB 582; *R v Evesham Justices ex p McDonagh* [1988] 2 WLR 227.

187 Text to notes 165 to 168.

188 [2008] EWCA Crim 50, [2008] QB 770, [2008] 2 Cr.App.R 1.

> legislation and, where the court is invested with a discretion to exercise such powers, on the absolute necessity for doing so in the individual case.'[189]

Media reporting which names the individuals involved in court proceedings is more attractive, more likely to be published, and contributes more fully to informed public debate, than media reporting which only refers to unidentified people.[190]

In some cases, it may be necessary to prevent the identification of the victim of a criminal offence, although no automatic reporting restriction applies. By way of example, the proper administration of justice will generally call for anonymity to be granted to the alleged victim of a blackmail which involves a shameful secret, or something to hide.[191]

5.4 Reporting which is suspected of being in Contempt of Court

A judge has jurisdiction to deal summarily with behaviour which amounts to a contempt in the face of the court, or an interference in the course of the proceedings he/she is hearing, but the jurisdiction should be exercised sparingly, with due regard to procedural fairness; in most cases the summary procedure will not be necessary, and the judge will refer the matter to the Attorney General.[192] The Attorney General's Office publishes guidance on the types of contempt that the law officers will deal with,[193] which includes 'publication contempt', 'naming people' in breach of an automatic restriction, and breach of a reporting restriction. Such cases can generate a number of legal complexities, making them more suitable for this procedure.[194]

If the court does initiate contempt proceedings it is essential to follow CrimPR 48 including providing a written statement of the alleged contempt, and usually wise to adjourn to a later date and to consider adjourning to a different judge.[195]

5.5 Proceedings for committal for contempt of court

Proceedings for committal for contempt of court are subject to the open justice principle. The Lord Chief Justice has issued a Practice Direction setting out how those requirements must be applied in courts in England and Wales.[196] The fundamental requirement is that all committal hearings, whether on application or otherwise and whether for contempt in the face of the court or for any other form of contempt, shall be listed and heard in public. If a court is exceptionally considering derogating from the general rule and holding a committal hearing in private, or imposing any other restriction on open justice, it must give advance notice to the national print and broadcast media and hear submissions at the outset of the hearing from the parties and the media. Where the court

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189 *Re Trinity Mirror* (note 188 above).

190 *In re Guardian News and Media Ltd* [2010] 2 AC 697 [63] (Lord Rodger).

191 *R v Socialist Worker Printers and Publishers Ltd, ex p Attorney-General* [1975] QB 637, 650A, 652E-F (Lord Widgery CJ). The rationale for this general position is to encourage the particular complainant to come forward and give evidence, and to encourage other future victims of blackmail to come forward. That rationale is likely to be weaker in cases of 'corporate' blackmail: see *R v Wright* [2021] EMLR 3.

192 *In re Yaxley-Lennon (aka Tommy Robinson)* [2018] EWCA Crim 1856 [27-28].

193 See 'The Law Officers' approach to contempt of court referrals'.

194 See the final judgment in *Attorney General v Yaxley-Lennon* (note 108 above) where the defendant's live streaming of a confrontation outside court involved breach of the strict liability rule, breach of a s.4(2) reporting restriction, and common law contempt by interference.

195 *In re Yaxley-Lennon* (note 192 above) [28].

196 Practice Direction: Committal for Contempt of Court – Open Court, 26 March 2015 and Practice Guidance 24 June 2015.

decides to hold a committal hearing in private, it must first sit in public and give a reasoned judgment setting out the basis for its decision.

The Practice Direction provides that in all cases where a court finds that a person has committed a contempt of court, whether or not the court conducted the hearing in public or in private, the court must at the conclusion of the hearing sit in public and provide information about the case including the name of the person, the nature of the contempt of court in relation to which the committal order is being made and the punishment being imposed. This information must also be provided to the national media and the Judicial Office, for publication on the website of the Judiciary of England and Wales. For the avoidance of any doubt, the Practice Direction states in terms that 'There are no exceptions to these requirements'.

In relation to all committal decisions, the court must also produce a written judgment setting out its reasons, or ensure that any oral judgment is transcribed on an expedited basis.

5.6 Unauthorised video and sound recordings of court proceedings

As a general rule,[197] it is an offence to take photographs or make sketches (with a view to publication) or to attempt do so in court, in respect of a judge, a juror, witness or party in the courtroom, court building or court precincts including the cell area, or to publish a photograph or sketch taken or made in breach of these restrictions.[198] In a serious case, such conduct can amount to contempt of court.[199] The prohibition on the taking of photographs includes taking pictures on a mobile phone, video recordings, photographs on conventional cameras or by any other means.[200] The court can issue guidance on the extent of the precincts of the court buildings e.g. by way of a map.

Unauthorised sound recording of proceedings in court is a contempt of court under s.9 CCA 1981 and may be subject to forfeiture.[201] However, courts may at their discretion give permission for the recording of sound during a hearing.[202] In giving such permission, a court may require that a sound recording device is only used for a specified purpose, for a purpose connected with a person's activity as a member of a specified group (for example, as a representative of the press), or is only used at a specified time, or in a specified way.[203] The publication of an unofficial sound recording is a contempt of court under s.9 CCA 1981.

Recording and publication of proceedings which are conducted remotely is an offence[204] and can amount to a contempt of court.[205]

197 For the exceptions, see section 5.7 below.

198 See CJA 1925, s.41.

199 *Solicitor General v Cox* [2016] EWHC 1241 (QB), [2016] EMLR 22, *Attorney General v Yaxley-Lennon* [2019] EWHC 1791 (QB) [27] [82-87].

200 *R v Loveridge* [2001] EWCA Crim 973, [2001] 2 Cr.App.R 29; *R (Finch) v Surrey County Council* [2021] EWHC 170 (QB), [2021] 4 WLR 37 [6-7].

201 CrimPR 6.10.

202 See ibid, r.6.9.

203 See ibid, r.6.9(5).

204 Courts Act 2003, ss.85B and 85C, as inserted by the Coronavirus Act 2020.

205 See *R (Finch) v Surrey* (note 200 above).

5.7 Live-streaming, broadcast and electronic transmission of court proceedings

The statutory prohibitions on the recording and transmission of court proceedings[206] do not apply to the transmission of video and audio of court hearings into a second courtroom, or to another location in England and Wales which is designated as an extension of the court.[207] Not infrequently in criminal proceedings which attract a high level of public and press interest a second courtroom will be made available to permit a greater number of people to follow the proceedings in this way.

Until 2022, however, the general rule was that the statutory prohibitions on taking and publishing photographic images and sound recordings of court proceedings meant that courts had no power to allow their proceedings to be electronically transmitted to the general public. Any exception to this general prohibition requires further legislation.[208]

There are four exceptions where Parliament has intervened to permit the live-streaming or electronic transmission of court proceedings.

- First, s.47 Constitutional Reform Act 2005 creates an exception to the general rule for proceedings in the Supreme Court, which are broadcast online on the Supreme Court Live service.[209]
- Secondly, the Crime and Courts Act 2013 s.32 empowers the Lord Chancellor to make regulations disapplying the prohibitions on making sound recordings and photographic images, thereby permitting the live-streaming of court proceedings. To date, orders have been made permitting the live-streaming of:
  - Public hearings before the full court of the Court of Appeal.[210]
  - Sentencing remarks of certain specified judges in the Crown Court, with the permission of the relevant judge.[211]
- Thirdly, the Coronavirus Act 2020 made temporary amendments to the Courts Act 2003, in light of the impact of the coronavirus pandemic, to enable certain criminal proceedings to be conducted by means of video or audio link[212] and to permit the 'broadcast' of criminal proceedings conducted wholly by means of video or audio, for the purpose of enabling members of the public to see and hear the proceedings.[213] As this power was limited to proceedings conducted 'wholly' by video or audio link, it follows that it did not confer power to permit live-streaming of criminal court proceedings which took place in person, or partly in

206 Section 5.6 above.

207 *Gubarev v Orbis Business Intelligence Ltd* [2020] EWHC 2167 (QB) [20] (Sharp P).

208 See *R (Spurrier) v Secretary of State v Transport* [2019] EMLR 16, where the Divisional Court held it had no power to permit the live-streaming of judicial review proceedings.

209 See Supreme Court Practice Direction 8, paragraph 8.17.1.

210 Court of Appeal (Recording and Broadcasting) Order 2013, SI 2013/2786.

211 Crown Court (Recording and Broadcasting) Order 2020, SI 2020/637. The Order applies to sentencing remarks made by: (i) a High Court Judge; (ii) a Senior Circuit Judge who is also the Resident Judge of a Crown Court centre; or (iii) a Senior Circuit Judge whose base court is the Central Criminal Court.

212 CJA 2003, ss.51 to 55 and Schedule 3.

213 CJA 2003, s.85A.

person. This power did not allow a court conducting a fully remote hearing to permit a TV production company to record and then re-broadcast the proceedings.[214]

- Fourthly, the Police, Crime, Sentencing and Courts Act 2022 replaces the temporary powers under the Coronavirus Act with permanent amendments to the CJA 1925, CCA 1981 and the Courts Act 2003. These allow the Lord Chancellor to empower the Court to direct the electronic transmission of images or sounds of proceedings of all kinds for the purpose of enabling persons not taking part in the proceedings to watch or listen to them, though onward recording and broadcasting is prohibited.[215]

5.8 Live, text-based communications from court

There is no statutory prohibition on the use of live text-based communications in open court. However, given the normal rule that mobile phones must be turned off in court, permission from the court to activate and use a mobile phone, laptop, or other equipment for this purpose is required. Criminal Practice Direction I (as amended at October 2020) gives guidance (at Part 6C) on using laptops and hand-held devices to communicate directly from courts in England and Wales e.g. by sending emails or by tweeting.

A representative of the media or a legal commentator who wishes to use live, text-based communications may do so without making an application to the court, as it is presumed that they will be doing so for the purpose of preparing fair and accurate reports of the proceedings and that this does not pose a danger of interference with the proper administration of justice.

A member of the public who wishes to make live, text-based communications from court is required to make an application for permission, which may be done informally by communicating a request to the judge through court staff.

The Practice Direction makes it clear that a judge always retains full discretion to prohibit live, text-based communications from court, the touchstone being whether such communications may interfere with the administration of justice. The Practice Direction makes clear that the use of unobtrusive, hand-held, silent electronic equipment for the purposes of simultaneous reporting of proceedings to the outside world is generally unlikely to interfere with the proper administration of justice.

However, where the administration of justice so requires, the court may limit the use of such devices, e.g. to members of the media only, including where there is the potential for interference with the court's own sound recording equipment. For the avoidance of doubt, the use of mobile devices for these purposes remains subject to the statutory bans on taking photographs in court and on making sound recordings. Users of electronic devices to make live, text-based communications must also comply with the strict provisions of ss.1, 2 and 4 CCA 1981 in relation to the reporting of court proceedings.

5.9 Jury deliberations

It is a criminal offence under s.20D Juries Act 1974 to obtain, disclose or solicit any details of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in

[214] See *R (Good Law Project Ltd)* v *Secretary of State for Health* [2021] EWHC 346 (Admin) [161-168] (Chamberlain J). Although that was a civil case, the reasoning applies equally to criminal proceedings.

[215] Sections 198-199. The power is exercisable by a statutory instrument made by the Lord Chancellor with the concurrence of the Lord Chief Justice. The statute allows the Court to grant remote access to those using live-streaming premises designated for the purpose by the Lord Chancellor or to individuals who have first identified themselves to the court.

the course of their deliberations in any legal proceedings. The prohibition on disclosure binds both jurors themselves, court staff who may inadvertently become aware of such information, and the media in relation to the publication of any such disclosure.[216]

5.10 Jigsaw identification

Jigsaw identification refers to the phenomenon whereby the identity of a person protected by a reporting restriction order may be inadvertently disclosed as a result of different media reports, none of which breach the terms of any order or statutory provision, but which taken together enable the protected person to be identified. In most cases this is not an issue, but particular difficulties arise in relation to sex offences within the same family. For example, where one report refers to an unnamed defendant convicted of raping his daughter and another refers to the name of the defendant, the daughter will be identifiable to the public in breach of the automatic prohibition protecting victims of sexual offences.

In recognition of these potential difficulties the newspapers and broadcasters have aligned their respective codes so that the media adopts a common approach when reporting sexual offences.[217] Typically the media will name the defendant but not name the victim (this would breach the statutory prohibition) or give any details of his/her relationship with the defendant. It is routine for in-house lawyers to check what information is already in the public domain before advising on whether a report of court proceedings is likely to breach any legal requirement, so even in non-sex cases in practice the media often ends up adopting a common approach.

6. Appeals and other challenges

6.1 Procedure

Decisions of the magistrates' court

There is no statutory procedure for an appeal from the magistrates' court in connection with a reporting restrictions decision. However, a party aggrieved by a reporting restrictions decision of a magistrates' court could seek judicial review of that decision.

Decisions of the Crown Court

Section 159 CJA 1988 provides that a person aggrieved by particular reporting restrictions decisions in the Crown Court may, with leave, appeal to the Court of Appeal Criminal Division The relevant reporting restrictions decisions are: (i) an order under s.4 or s.11 CCA 1981; (ii) an order under s.58(7) or (8) CPIA 1996; (iii) an order restricting the access of the public to the whole or any part of a trial on indictment, or any proceedings ancillary to such a trial; and (iv) any order restricting the publication of any report of the whole or any part of a trial on indictment, or any proceedings ancillary to such a trial.

[216] *Attorney.General. v Associated Newspapers* [1994] 2 AC 238.

[217] IPSO Editors Code of Practice; OFCOM Code; BBC Editorial Guidelines.

Given the importance of the open justice principle to criminal proceedings s.159(c) 'should be given the widest possible construction' and thus covers the grant of a reporting restriction under s.46 YJCEA 1999.[218]

The right of appeal conferred by s.159 CJA 1988 is available to the defendant, the Crown, or representatives of the media.[219]

On an appeal under s.159, the court may confirm, reverse or vary the order made at first instance, and may stay the trial on indictment pending its decision.[220] It will often be necessary to exercise this power to stay. For this and other reasons the applicant must act promptly; the CrimPR set a short time limit of ten days in which to apply for leave to appeal.[221] An applicant seeking leave outside that period will have to show that it is in the interests of justice to extend time.[222] But an appeal under s.159 may be pursued even after the reporting restriction order has been discharged.[223]

There are some circumstances in which a party aggrieved by a reporting restrictions decision in the Crown Court will not have a statutory right of appeal, pursuant to s.159 CJA 1988. Most significantly, s.159 does not provide for an appeal against a decision discharging or revoking a reporting restriction, or refusing to revoke such an order, or to vary it by way of an excepting direction. The Court of Appeal Criminal Division does not have jurisdiction in such cases; the aggrieved party would need to seek judicial review of the Crown Court's decision.[224]

6.2 The proper approach on an appeal

In the case of a statutory appeal against the imposition of a reporting restriction in the Crown Court, brought pursuant to s.159 CJA 1988, the duty of the Court of Appeal is not merely to review the decision of the trial judge who made the order under challenge, but to come to its own independent conclusions on the material placed before it.[225]

However, most decisions in relation to reporting restrictions – including decisions as to anonymity, and in relation to the publication of judgments – are evaluative decisions, involving a balancing exercise, which are akin to the exercise of a discretion. When considering an appeal against such a decision, the appellate court will be slow to interfere.[226]

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218 *ITN News v R* (note 83 above) [26]. For example, *In re Guardian News and Media Limited* [2016] EWCA Crim 58 involved an appeal against a court's refusal to grant the media access to CCTV footage shown in open court, which fell within s.159(c): [29]-[31].

219 *Re A* [2006] 1 WLR 1361.

220 CJA 1988, s.159(5).

221 CrimPR 40.2(2)(b).

222 *Re Pembrokeshire Herald* (note 144 above) [26], [31].

223 *Ex p Central Television plc* [1991] 1 WLR 4, 9E (Lord Lane CJ); *In re British Broadcasting Corporation* [2018] 1 WLR 6023 [2] (Lord Burnett CJ).

224 *KL v R* [2021] EWCA Crim 200 [54], [59-60]; *Re Pembrokeshire Herald* (note 144 above) [28-29].

225 *Ex p Telegraph plc* [1993] 2 All ER 971, 977 (Lord Taylor CJ); *Ex p Telegraph Group* [2001] 1 WLR 1983 (CA) [3] (Longmore LJ); *In re Guardian News and Media Ltd* [2015] 1 Cr.App.R 4 [3] (Gross LJ).

226 *JIH v News Group* (note 53 above) [26] (Lord Neuberger MR); *PNM v Times Newspapers Ltd* [2015] 1 Cr.App.R 1 [46] (Sharp LJ); *R v Aziz (Ayman)* [2019] EWCA Crim 1568, [2020] EMLR 5 [36] (Lord Burnett CJ); *Al Maktoum v Al Hussein* [2020] EWCA Civ 283, [2020] EMLR 15 [42] (Underhill LJ); *Re Pembrokeshire Herald* (note 144 above).

APPENDIX I

Section 39 Children and Young Persons Act 1933

Although s.39 Children and Young Persons Act 1933 (CYPA 1933) no longer applies to criminal proceedings, this power to impose a discretionary reporting restriction in relation to a young person aged under 18 continues to be available in family and civil proceedings and in relation to Injunctions and Criminal Behaviour Orders (see section 4.8 above). For this reason, the following guidance from the previous edition of this Guide is included for ease of reference.

Section 39 of CYPA permits a court to prohibit publication by the media of the name, address, school or any information calculated to lead to the identification of any child or young person concerned in criminal proceedings. The power to prohibit publication also extends to pictures of the child or young person. The new definition of 'publication' introduced in 2015 in s.39(3) is now wide enough to cover publications by the print media, broadcast media and online publications.[227]

The child or young person will be concerned in criminal proceedings if he/she is a complainant, defendant or witness in the case, but not merely because he/she is 'concerned' in the sense of being 'affected'.[228] He/she must still be alive.[229] The publication of the name, address and other details relating to the child is not in itself prohibited – what a s.39 order seeks to do is to prevent the identification of a child as a complainant, witness, or defendant in the criminal proceedings. Media reports on unrelated matters e.g. the same child winning a prize at school would not be affected by an order in s.39 terms.

Criminal proceedings commence when a defendant is charged – there is therefore no power to impose a s.39 order to protect the identity of a person who has been arrested but has not yet been charged.

The order should spell out what is prohibited. A s.39 order should track the language of the legislation.[230] It could be less extensive, but it cannot be wider. Thus, there is no power to prohibit the publication of the names of adults involved in the proceedings or other children or young persons not involved in the proceedings as complainants, witnesses, or defendants.[231] The court may, however, give guidance to the media if it considers that the naming of an adult defendant would be likely to identify a child. Such guidance is not binding.[232] The media may, for instance, be able to name a defendant without infringing the order, if the relationship of the complainant to the defendant is omitted or the nature of the offence is blurred (e.g. 'a sexual offence' rather than incest). See section 5.10 below on jigsaw identification.

There must be a good reason, apart from age alone, for imposing a s.39 CYPA order. There is a clear distinction between the automatic ban on identification of children in Youth Court proceedings and the discretion to impose an order under s.39 of the 1933 Act. Whereas under s.49 CYPA (see section 3.8 above) there must be a good reason for lifting the order, under s.39

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227 Section 39(3) was introduced by s.79(7) Criminal Justice and Courts Act 2015.

228 *R v Jolleys; Ex parte Press Association* [2013] EWCA Crim 1135, paras 12-13; cf a case brought 'in respect of' a child, which may be sufficient for s.39: *R(A) v Lowestoft Magistrates' Court* [2013] EWHC 659 (Admin) [8]-[9].

229 *In re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593.

230 *R v Jolleys; Ex parte Press Association* [2013] EWCA Crim 1135 [19].

231 *Ex p. Godwin* [1992] QB 190, 94 Cr.App.R 34 (CA).

232 Ibid.

the onus lies on the party contending for the order to satisfy the court that there is a good reason to impose it. The appellate courts have emphasised that Parliament intended to preserve the distinction between children and young people in Youth Court proceedings and in the adult courts.[233]

In deciding whether to impose an order under s.39, the judge 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 in the proceedings.[234] The court is required to have regard to the welfare of the child. Where the child is an accused person the court should 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 having the burden or benefit of adulthood.[235] That the child's identity is already known to some people in the community is not necessarily a good reason for allowing much wider publication of that identity.[236]

Any order made must comply with Article 10 ECHR – it must be necessary, proportionate and there must be a pressing social need for it.[237] Age alone is not sufficient to justify imposing an order and very young children are unlikely to be harmed by publicity of which they will be unaware, which may make a s.39 order unnecessary.[238]

Courts may review an order at any time and frequently are invited to do so where a defendant named in an order has been convicted at trial. The courts have recognised that in considering whether to lift an order the welfare of the child must be taken into account, but the weight to be given to that interest changes where there has been a conviction, particularly in a serious case; there is a legitimate public interest in knowing the outcome of proceedings in court and the potential deterrent effect in respect of the conduct of others in the disgrace accompanying the identification of those guilty of serious crimes.[239]

A s.39 order automatically lapses when the person reaches the age of 18 and cannot extend to reports of the proceedings after that point.[240]

If a reporting restriction is imposed, the judge must make it clear in court that a formal order has been made. The order should use the words of s.39 and identify the child or children involved with clarity. A written copy should be drawn up as soon as possible after the order has been made orally. Copies must be available for inspection and communicated to those not present when the order was made (e.g. by inclusion in the daily list). Court staff should assist media inquiries in relation to the order.

233 *R v Central Criminal Court ex parte W, B and C* [2001] 1 Cr.App.R 7.

234 *Ex parte Crook* [1995] 1 WLR 139.

235 *R v Inner London Crown Court ex.p.B* [1996] COD 17, DC.

236 *R (Y) v Aylesbury Crown Court* [2012] EWHC 1140 (Admin).

237 *Briffett v CPS* [2002] EMLR 12.

238 See e.g. *R(A) v Lowestoft Magistrates' Court* [2014] 1 WLR 1489 at [24]-[26].

239 *R v Central Criminal Court, ex parte S* [1999] 1 FLR 480, DC.

240 *JC & RT v Central Criminal Court* (note 58 above).

APPENDIX II

Forms of order

Section 39 Children and Young Persons Act 1933 (for use in proceedings commenced before 12 April 2015)

[Name] [Crown/Magistrates'] Court

Court Location Code	[Code]
Case Number	[Number]
Pre Trial Issues Unique Reference Number	[PTIURN]

Order under s.39 Children and Young Persons Act 1933

Regina v …….

Before [His] [Her] Honour Judge ……..

sitting at……..…… on ……..……

Upon hearing the advocates for the prosecution and for the defendant/s [and a representative of the media]

[And upon the court giving permission to any person directly affected by this order to apply to vary or discharge it within {24} hours of being notified of it]

The court makes a direction under section 39 of the Children and Young Persons Act 1933 as follows:

no matter relating to **[name[s] of youth[s]], [a] person[s]** concerned in the proceedings, shall while he/she is[are] under the age of 18 be included in any publication if it is calculated to lead to lead members of the public to identify him/her as [a] person[s] concerned in the proceedings, and in particular:

Notes: The court shall serve a copy of this order as soon as practicable on:

(a) all parties to the proceedings;
(b) the youth concerned, by his/her parent or guardian;
(c) E [and F] as representative(s) of the local [and national] media;
(d) [G, being a person known to have had an interest in the proceedings.]

…….

Judge

……..

Date

Section 45A Youth Justice and Criminal Evidence Act 1999

[Crown/Magistrates'] Court at **[Name]**

Court Location Code [Code]

Case Number [Number]

Pre Trial Issues Unique Reference Number [PTIURN]

Order under s.45A Youth Justice and Criminal Evidence Act 1999

Regina v …….

Before [His] [Her] Honour Judge ……..

sitting at……..…… on ……..……..

Upon hearing the advocates for the prosecution and for the defendant/s, and anyone affected by such an order, [and a representative of the media]

[And upon the court giving permission to any person directly affected by this order to apply to vary or discharge it within {24} hours of being notified of it]

The court gives a reporting direction under section 45A of the Youth Justice and Criminal Evidence Act 1999 as follows:

No matter relating to the **witness/victim H** shall during his/her lifetime be included in any publication if it is likely to lead members of the public to identify him/her/them as being a person concerned in the proceedings;

[Without prejudice to the generality of (1) the following matters shall not be included in any publication during his/her/their lifetime if their inclusion is likely to have the result mentioned in (1):

(a) his/her name;

(b) his/her address;

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

(d) the identity of any place of work of his/her

(e) any still or moving picture of him/her

The court shall serve a copy of this order as soon as practicable on:

(a) all parties to the proceedings;

(b) the witness/victim H;

(c) I [and J] as representative(s) of the local [and national] media;

(d) [K, being a person known to have had an interest in the proceedings.]

…….

Judge

……..

Date

Section 45 Youth Justice and Criminal Evidence Act 1999 (for use in proceedings commenced on or after 13 April 2015

[Name] [Crown/Magistrates'] Court

Court Code	[Code]
Case Number	[Number]
Pre Trial Issues Unique Reference Number	[PTIURN]

Order under s.45 Youth Justice and Criminal Evidence Act 1999

Regina v …….

Before [His] [Her] Honour Judge ……..

sitting at……..…… on ……..……

Upon hearing the advocates for the prosecution and for the defendant/s [and a representative of the media]

[And upon the court giving permission to any person directly affected by this order to apply to vary or discharge it within {24} hours of being notified of it]

The court makes a direction under section 45 of the Youth Justice and Criminal Evidence Act 1999 as follows:

no matter relating to **[name[s] of youth[s]], [a] person[s]** concerned in the proceedings, shall while he/she is [are] under the age of 18 be included in any publication if it is likely to lead members of the public to identify him/her as [a] person[s] concerned in the proceedings, and in particular:

(a) his/her name,

(b) his/her address,

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

(d) the identity of any place of work, an€(e) any still or moving picture of him/her

Notes: The court shall serve a copy of this order as soon as practicable on:

(a) all parties to the proceedings;

(b) the youth concerned, by his/her parent or guardian;

(c) E [and F] as representative(s) of the local [and national] media;

(d) [G, being a person known to have had an interest in the proceedings.]

…….

Judge

……..

Date

Section 4(2) Contempt of Court Act 1981

In the [Crown/Magistrates'] Court at **[Name]**

Court Location Code [Code]

Case Number [Number]

Pre Trial Issues Unique Reference Number [PTIURN]

Order under s.4(2) Contempt of Court Act 1981

Regina v …….

Before [His] [Her] Honour Judge ……..

sitting at……..…… on ……..…….

Upon hearing the advocates for the prosecution and for the defendant/s [and a representative of the media]

[And upon the court giving permission to any person directly affected by this order to apply to vary or discharge it within {24} hours of being notified of it]

The court makes an order under section 4(2) of the Contempt of Court Act 1981 as follows:

The publication of any [further] report of [the proceedings] [the following part of the proceedings, namely….] shall be postponed.

[The publication of any report of the making of this order or its terms shall be postponed.]

This order shall cease to have effect [at…. on….] [after the return of the last verdict in the proceedings] [after the return of the last verdict in proceedings on indictment T…..]

The court shall serve a copy of this order as soon as practicable on:

(a) all parties to the proceedings;

(b) A [and B] as representative(s) of the local [and national] media;

(c) [C, being a person known to have had an interest in the proceedings.]

[The court shall send a copy of this order to……and to the trial judge in the case of indictment(s) T……for consideration of any necessary extension, variation or discharge of this order.]

The specific purpose of making this order is to avoid a substantial risk of prejudice to the administration of justice [in the proceedings] [in proceedings on indictment T….], namely that [reports of the evidence given in the proceedings will prejudice the fair trial of proceedings on indictment T….] [*or otherwise state the substantial risk*].

…….

Judge

……..

Date

Section 11 Contempt of Court Act 1981

CROWN COURT AT

CONTEMPT OF COURT ACT 1981 Section 11

R-v-

Case Number:

Before:

Pursuant Section 11 of the Contempt of Court Act, 1981

It being necessary to avoid a substantial risk of prejudice to the administration of justice in these proceedings, or in any other proceedings pending or imminent,

IT IS ORDERED THAT:

No reporting to be made of any Preliminary issues of law until the case is opened, until lifted by the court

By order of the Court

Dated

AN OFFICER OF THE COURT

Section 11

Section 11 Contempt of Court Act 1981 gives the court the power to make a direction prohibiting the publication of a name or other specific matter but only where the court has exercised either its inherent or statutory jurisdiction to withhold those details from the public in the proceedings, for example the common law power to allow the name of blackmail victims to be withheld from the public R v Socialist Worker ex p A.G. [1975] QB 637 (DC). It is rare for the court to make such a direction in respect of a defendant. S 11 is not enacted for the comfort and feelings of defendants (Evesham Justices ex p McDonagh [1988] QB 553) and there is a requirement of clarity of terms and duration, and explanations for its purpose that a section 11 order has to meet.