



JUDGE ADVOCATE GENERAL'S PRACTICE MEMORANDUM 9

Reporting Restrictions and Dealings with the Media

General Principles

- 1.1 The latest guidance on Reporting Restrictions in the civilian courts is in large part applicable in the Service courts and can be found on the following links:

Judicial College Guidance Sep 22

[Reporting Restrictions in the Criminal Courts \(judiciary.uk\)](https://www.judiciary.uk/reports/reporting-restrictions-in-the-criminal-courts/)

HMCTS guidance for court staff:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1075212/HMCTS706_media_guidance_-_Criminal_Court_Guide_v2_May_22.pdf

Part 6 and Rule 6.4 of the Criminal Procedure Rules 2020

<https://www.legislation.gov.uk/ukqi/2020/759/article/6.4/made>

- 1.2 The principle of open justice applies to the Court Martial as it does in any other criminal court and the presumption is that all criminal court proceedings are open and accessible to the public. There is a statutory requirement that the Court Martial sits in open court unless there is a compelling reason for the judge to direct otherwise; for example where the case involving matters which could lead to the disclosure of security classified information. (See Armed Forces Act 2006 s 158 and Armed Forces (Court Martial) Rules 2009 r 152 & 153).
- 1.3 The open justice principle is expressed in the Judicial College guidance as follows:
- 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.

1.4 In the Service Courts, as in other criminal courts, automatic reporting restrictions apply under certain circumstances which may render discretionary restrictions unnecessary, such as:

- restrictions on publishing information identifying of victims or alleged victims in sexual offence cases
- rulings made at preliminary hearings.

Legal Considerations

1.5 The Armed Forces (Court Martial) Rules 2009 r 153 enables the Court Martial to give leave for any name or other matter given in evidence in proceedings to be withheld from the public. It may be appropriate to use this power to order that the name of a victim or alleged victim should not be reported in a case in which, although the charges are not for sexual offences, sexual or other indecent behaviour is involved, for example in some cases of disgraceful conduct of an indecent kind. As is set out below, the press should be given the opportunity of making appropriate representations, (although experience shows that names of victims in such cases are generally not reported).

1.6 Discretionary reporting restrictions can be imposed by a judge advocate under the Contempt of Court Act 1981. Section 4(1) of the Act provides that publication of a fair, accurate and contemporaneous report of proceedings held in public is lawful, and s 4(2) provides:
In any such proceedings the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose.

1.7 The Coroners and Justice Act 2009 ss86 - 93 provide for witness anonymity orders (s94 makes it clear this provision applies to Service courts). A witness anonymity order requires specified measures to be taken in relation to a witness to ensure that the identity of the witness is not disclosed in or in connection with the proceedings. Such measures include ensuring that the witness' name and other identifying details may be withheld or removed from materials disclosed to any party; that the witness may use a pseudonym; that the witness is not asked questions that might lead to his

or her identification; that the witness is screened; and that the witness's voice is subjected to modulation.

1.8 The Contempt of Court Act 1981 s 11 provides:

In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld.

- 1.9 Section 11 directions may be made in relation to the defendant or a witness, or any other "matter" relevant to proceedings (for instance, evidence which is sensitive for security reasons). Under s 11, prior to the making of such a direction the court must first have exercised its discretion to withhold the name or other matter from the public under r 153 or the Coroners and Justice Act 2009 s 86.
- 1.10 The Youth Justice and Criminal Evidence Act 1999 s 46 contains detailed guidance as to when a court can make a "reporting direction" restricting disclosure of the identity of a witness. The court must consider the personal characteristics of the witness as set out in s 46(4). The grounds which the court must consider before granting a "reporting direction" to the effect that no matter relating to a witness shall be included in any publication are set out in s 46(6) and 46(8), including:
- (a) whether it would be in the interests of justice to do so, and
 - (b) the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of the proceedings.

Practical Considerations

- 1.11 If reporting restrictions have been applied for or are to be considered, the hearing considering them should be open to the public unless there are exceptional circumstances. Where practicable, the media must be notified by the Court Officer in advance through the Judicial Communications Office about any applications for reporting restrictions and have the opportunity to make submissions in relation to the application. If this has not been possible, an order should be expressed to be interim and be followed up by a further hearing open to the public and notified to the media at which the judge will give the media an opportunity to be heard or represented.
- 1.12 Media representatives prefer and are entitled to expect to be given an avenue for making representations at the time when the restrictions are originally imposed. The media may appeal against reporting restrictions imposed in the Court Martial to the Court Martial Appeal Court, under the Armed Forces Act 2006 s 163(3)(i) and the Court Martial Appeal Court Rules 2009.

Administrative Action

- 1.13 Whenever an order imposing reporting restriction is made, in all cases (including UK and overseas, Royal Navy, Army & RAF) the Court Officer at that court the same day emails the order(s) to the Judicial Communications Office (JCO) Press.enquiries@judiciary.uk, with copies to the Director of the Military Court Service, the Judge Advocate General (JAG), and Ministry of Defence (MoD) Media Ops DDC-SecretariatClearances@mod.gov.uk. The JCO circulates the order to a wide circle of media contacts and deals with phone calls or queries from the media about actual or possible reporting restrictions. Copies of the order imposing reporting restrictions should be made available to any media representatives present at court. Simple queries received locally may be dealt with locally, if the answer is sufficiently obvious, but otherwise should be referred to the JCO. The JCO may seek advice or information from the JAG if necessary, before responding to media queries. It is primarily the responsibility of the media to make checks about the existence of reporting restrictions, whether these are automatic or discretionary.
- 1.14 Whenever there is significant media interest in a forthcoming trial, with the likelihood of many press and broadcast media personnel attending, MoD Media Ops will make arrangements for management, accreditation, etc of the journalists and, if required, for a pre-trial briefing. MoD Media Ops may arrange for a photograph to be taken of the defendant(s) if they agree. Nothing prevents the media from taking any other photographs or videos outside of the court precincts in the same way as for a Crown or Magistrates' Court. The Court Officer arranges for journalists and their vehicles to be accommodated suitably inside and outside the Court Centre. MoD Media Ops deals with queries from journalists about military operations, uniforms, ranks, vehicles, weapons, and the like, and represents the position of the Ministry of Defence, but does not represent the court, judge or the Service Prosecuting Authority (SPA) nor comment on legal judgments, rulings, or orders except on behalf of those it represents. Such matters are referred to the Judicial Communications Office.

Documents, Exhibits and Other Information About Proceedings

- 1.15 Where there is prosecution evidence in the form of documents or images, such as

photographs or video recordings, which the media desire to publish, media representatives should address requests for access to material to the prosecutor in the first instance, who will decide whether to permit or deny access. If a media representative makes application to the trial judge, without having first contacted the prosecutor, the judge may defer the matter to the prosecutor. If the images are to be shown, or supplied, to the media, MoD Media Ops may assist with the practical arrangements.

- 1.16 In considering any such application, it has been agreed that the prosecutor will have regard to the Crown Prosecution Service/ Association of Chief Police Officers (CPS/ACPO) protocol “Publicity and the Criminal Justice System” insofar as it is relevant. <https://www.cps.gov.uk/publication/publicity-and-criminal-justice-system> The overriding objective is 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. It should however be noted that requests for Crown evidence are subject to the Data Protection Act 1998 (DPA), the Freedom of Information Act 2000 (FOIA) and the Human Rights Act 1998. Although the ECHR Article 10 guarantees the right to impart and receive information, this must be balanced against the other rights guaranteed, notably by Article 2 (Right to Life) and Article 8 (Right to Respect for Private and Family Life). Additional considerations for a military prosecutor would be whether material should not be disclosed for operational reasons or for reasons relating to the personal safety of military personnel.
- 1.17 If media representatives are not satisfied with the decision of the trial prosecutor, they may apply in writing to the Director of Service Prosecutions. Full guidance on how to request information about a case and how such applications should be dealt in the civilian courts can be found at CrimPR 5.8 et seq: <https://www.legislation.gov.uk/ukqi/2020/759/article/5.8>

The Service Courts will follow the criminal procedure where possible.

Access to Archives

- 1.18 A record of the proceedings in the Court Martial is kept in the custody of the Judge Advocate General for six years, and exhibits are retained with the record of proceedings, unless otherwise ordered. The administration of this function is carried out by the Military Court Service.
- 1.19 Armed Forces (Court Martial) Rules 2009 r23 gives details of what records must be made and retained. Rule 23(6) states that a copy of proceedings, or any part of it, shall be supplied on request to any party to the proceedings without charge, and to any other person on payment of an appropriate charge. This is subject to restrictions where proceedings have been held in camera or in chambers. Under Rule 23(8) the Secretary of State may certify that the record or part of it should not be disclosed for reasons of security.

Use of electronic items in court

- 1.20 The Service Courts should have regard to the directions in the Criminal Practice Direction CPD 1 General Matters 6C. Members of the media and legal commentators do not need to make any application to use text-based devices from court. Any member of the public who wishes to use a text-based device from court must make an application either verbally or in writing through the Court Officer. The judge advocate will then decide on the application. Any use of a text-based device in court must not cause a disturbance or distraction. The judge advocate always retains full discretion and may withdraw permission for the use of text-based devices in court at any time.
- 1.21 Sound recordings and the taking of photographs or video in court are prohibited and may be considered a contempt of court.