[2024] EWCR 5

IN THE CROWN COURT AT NOTTINGHAM

Date: 31 July 2024

Before :

Mrs Justice Tipples DBE

- -

Between :

REX

- and -

(1) BGI & (2) CMB

Defendants

- -
- -

Mr Jude Bunting KC for Independent Television News, News Corp UK & Ireland Limited and Associated Newspapers Limited (instructed by in-house solicitors)

Miss Michelle Heeley KC and Mr Peter Grieves-Smith for the Prosecution (instructed by the Crown Prosecution Service)

Miss Rachel Brand KC and Mr Justin Jarmola for the First Defendant (instructed by Sundip Murria (Wolverhampton) Solicitors Limited)

Mr Paul Lewis KC and Mr Amir Riaz for the Second Defendant (instructed by Riaz Law Solicitors)

Hearing date: 29 July 2024

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APPROVED RULING

(ON MEDIA'S APPLICATION FOR EXCEPTING DIRECTION)

Mrs Justice Tipples DBE:

Introduction

1. This is an application for an excepting direction under section 45(4) and (5) of the Youth Justice and Criminal Evidence Act 1999 ("**the 1999 Act**") in order to permit the identification of the two child defendants in this case. The application is made by three media organisations: Independent Television News (the publishers of, amongst other broadcasts, *Channel 4 News*); News Corp UK & Ireland Limited (the publishers of the *Sun*, and other publications) and Associated Newspapers Limited (the publishers of the *Daily Mail*) and is dated 20 June 2024. I shall refer to the applicants collectively as the media in this ruling. The media's application is opposed by the Prosecution and the Defence.

2. I also received an application by email from Mr Matthew Cooper of PA Media dated 20 June 2024, which I have read and taken into account. However, in the light of the representation of the media by Mr Jude Bunting KC, Mr Cooper indicated that he did not wish to say anything further at the hearing of the media's application.

3. On 10 June 2024 defendants in this case were convicted by a jury at the Crown Court in Nottingham of the murder of Shawn Seesahai. The first defendant had, at any earlier stage of the proceedings, pleaded guilty to possession of a bladed article in a public place. The second defendant was convicted of this very same offence by the jury on 10 June 2024. The defendants were 12 years old on the date of the offence and the date of conviction.

4. As a result of the defendants' very young age there have been reporting restrictions in place in respect of each defendant since 20 November 2023. That order was made by under section 45(3) of the 1999 Act and, in relation to the first defendant, provided that:

> "*No matter relating to the youth may be published that would identify them, including their name, address, any educational establishment or any workplace they attend, and any picture of them. This order lasts until the youth reaches the age of 18. No matter relating to [the First Defendant] in the proceedings, shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him in the proceedings*".

5. An order in the same terms was made in relation to the second defendant.

6. I am told that the defendants are the youngest people to be convicted for murder since the murder of James Bulger, which is now over 30 years ago. The trial itself, which took place over a five-week period in May and June of this year, attracted extensive local and national media attention. The day after the verdicts the case attracted front page coverage in many national newspapers.

7. The court was notified by Mr Cooper of PA Media that an application would be made for an excepting direction well in advance of the conclusion of the trial. Following the verdicts, I gave case management directions for the determination of the application for an excepting direction and sentencing of the defendants. Further, I determined that the application for the excepting direction should be determined first, with a pause to allow time for any challenge to my decision by judicial review, followed by sentencing of the defendants. This was because of the very high profile nature of this case, and to allow the outcome of any challenge to be determined in advance of sentencing, thereby providing all concerned with certainty when the defendants are sentenced. There was no opposition from any party to that course of action. The sentencing hearing has been fixed for Thursday 26 and Friday 27 September 2024 at the Crown Court in Nottingham.

8. On 20 June 2024 I also directed that the reports to be provided by the Youth Offending Team must set out the implications for the defendants and their families in the event the reporting restrictions were lifted and they were named. No directions were sought by any party for expert evidence in relation to the media's application. Further, this is not a case where the defendants adduced any expert evidence in support of their defence at trial.

9. I have been provided with the following documents and information in relation to the media's application for an excepting direction (all of which has been up-loaded to the Digital Case System):

    a. The application dated 20 June 2024 signed by Mr Bunting. This sets out the legal basis of the application, together with the facts his clients rely upon.

    b. The prosecution responses to the application dated 16 and 17 July 2024.

    c. The first defendant's response to the application dated 22 July 2024, together with:

        i. The pre-sentence report in relation to the first defendant dated 12 July 2024. This report has been prepared by the two social workers from Wolverhampton Youth Justice Service ("**WYJS**") who were allocated to work with the first defendant from when he was remanded in a secure unit on 17 November 2023. The first page of the report states that it has been prepared "in accordance with the National Standards for Youth Justice Services and relevant guidance". Further, paragraph 1.1 of the report identifies that it has been prepared in conjunction with a YJS ASSETPLUS assessment Tool in line with the Youth Justice Board Guidance and has been gatekept in line with YJS best practice guidelines.

ii. A letter dated 10 July 2024 from Independent Child Trafficking Guardian, Barnardo's National Counter Trafficking Centre.

iii. The witness statement of the first defendant's grandmother dated 24 July 2024.

iv. An article entitled: *What's in a name? The identification of children in trouble with the law* Dr Di Hart (and published by the Standing Committee for Youth Justice in May 2014).

d. The second defendant's response to the application dated 20 July 2024, together with the pre-sentence report in relation to the second defendant dated 9 July 2024. This report has also been prepared by the two social workers from WYJS who were allocated to work with the second defendant from when he was remanded in a secure unit on 17 November 2023. The report, again, states that it has been prepared in accordance with the appropriate Youth Justice Board Guidance: see paragraph 1.1.

10. The evidence relied on by the Defence has all been served on the media on the basis that it can only be used for the purposes of application for the excepting direction; must not be published or used by the media in any other way whatsoever without the permission of the court; and must otherwise be kept confidential by the media.

11. I was also informed during the course of the hearing that the family of Shawn Seesahai support the media's application for the defendants to be named.

12. The parties have also provided me with an agreed bundle of authorities, which I was taken to at the hearing.

13. I was able to consider all this material in advance of the hearing and I received helpful submissions from all Counsel at the hearing.

The offence

14. The defendants in this case were 12 years old when they were convicted of the murder of Shawn Seesahai, aged 19. Shawn Seesahai was born in Anguilla and had come to the UK to receive medical treatment for his eyesight. Shawn Seesahai was a stranger to the defendants and he, together with his friend Deron Harrigan, encountered the defendants shortly after 8pm on Monday 13 November 2023 by a park bench in Stowlawn fields, Wolverhampton. The defendants had seen Shawn and Deron a few minutes earlier, and words were spoken between them. There was a dispute on the evidence at trial as to what as actually said, and whether it related to who could sit on the park bench. Thereafter, the fatal events took place in not much more than a minute

and, acting together, the defendants murdered Shawn Seesahai with a machete. Shawn was killed by a single stab wound through this body, which was 23 cm deep and penetrated his ribs, lung and heart. There was also a cut to Shawn's head, which had gone through to the skull bone, a stab wound to the arm and a cut to the thigh.

15. The defendants immediately left the scene, together with the first defendant's girlfriend, who was also present, and went back to their respective homes. The first defendant, who owned the knife, took it home, cleaned it with bleach and put it under his bed. His clothes, which had numerous blood stains on them, were turned inside out and put in the laundry basket. As for the second defendant, there was one small spot of blood on one of his trainers. The defendants exchanged messages on their phones later that evening and were both arrested on the evening of the next day. The defendants were best friends in the same year at school and, outside school, they spent a lot of time together.

16. These facts are, of course, shocking particularly given the very young age of the defendants.

The evidence in relation to each defendant

17. The Court has now been provided with much more information about each defendant and their respective backgrounds. This evidence is set out in the pre-sentence reports I have been provided with. This evidence is only provided now as it was not relevant to the issues at trial but is essential to the sentencing of each defendant. The position in relation to each defendant can be summarised as follows.

The first defendant

18. The first defendant is still 12 and does not turn 13 until the autumn.

19. The pre-sentence report for the first defendant has been prepared by the two social workers who were allocated to work with him from when he was remanded in Youth Detention Accommodation on 17 November 2023.

20. These social workers have collated information in relation to the first defendant from numerous sources, both in terms of documents and speaking to the relevant people, in order to address the following topics in the report: (1) sources of information; (2) offence analysis, including the impact of the offence on the victim; (3) assessment of the young person, including consideration of safety and welfare issues; (4) assessment of the risk to the community, including the likelihood of reoffending and risk of serious harm to others; (5) conclusion and proposal for sentencing. The last section, the conclusion, identifies the social workers' assessment of naming the first defendant publicly.

21. The authors of the report identify the sources they have obtained information from as follows:

    a. The first defendant and they have interviewed him twice since the conclusion of the trial in June 2024, although they have been working with him since 17 November 2023.

    b. The first defendant's grandmother and his allocated social worker, and they have viewed the records of Children's Services.

    c. The first defendant's case worker at the secure unit, and they have attended monthly remand planning meetings.

    d. The headteachers of the primary schools the first defendant attended, together with the safeguarding and welfare manager at his secondary school.

    e. A Child & Adolescent Mental Health Services' Nurse in order to access information in relation to the first defendant's mental health.

    f. The Independent Child Trafficking Guardian from Barnardo's National Counter Trafficking Centre.

22. The third section of the report deals with the assessment of the first defendant, including consideration of safety and welfare issues. This section describes in detail the extensive involvement of Children's Services in the first defendant's life and the reasons for that. The report also explains, amongst other things, that the first defendant has been referred to mental health services and there have been instances of self-harm.

23. It is in this context, and against this factual background, that paragraphs 3.22 and 3.23 of the report say this:

> "… having spoken with [the first defendant] and consulted records held about him, we would assess that [the first defendant] seems to function at a lower level than his chronological age both in terms of understanding and his emotional literacy. [The first defendant] is a child with extremely complex needs…. "

24. In relation to the application to lift the reporting restrictions, the authors of the pre-sentence report say this in the conclusion to the report:

> "[5.2] … We would assess that naming [the first defendant] publicly would have an extremely detrimental impact on his mental health. He is finding it difficult to comprehend his current situation and his future. He is only 12 years old, and he has experienced multiple childhood adversities in addition to now facing a life sentence. Lifting his anonymity could increase the likelihood of

> bullying and negative attention from other young people within the unit. This in turn could have a detrimental impact on his current positive behaviour and impede the rehabilitation process. … [the first defendant] has been exploited and is assessed as vulnerable to negative influence. Should knowledge of his offence and conviction become more widely known, it would also have an impact on his ability to build a more positive future in the longer term. We have also considered the likely impact of lifting anonymity on his family. His grandmother has shared that she is very fearful for her own safety and possible repercussions should [the first defendant's] name become known …".

25. That conclusion is based on all the evidence known about the first defendant set out in the pre-sentence report, which has been drawn from the many sources identified at the start of the report.

26. I also have a witness statement from the first defendant's grandmother which explains how she has had to give up her employment and move home.

The second defendant

27. The pre-sentence report for the second defendant has been prepared by the two social workers who were allocated to work with him from when he was remanded in a secure unit in November 2023.

28. These social workers have also collated information in relation to the second defendant from numerous sources, both in terms of documents and speaking to the relevant people, in order to address the same topics/headings identified in the report for the first defendant, which I have set out above. The last section, conclusion, identifies the social workers' assessment of naming the second defendant publicly.

29. The authors of the report identify the sources they have obtained information from as follows:

    a. The second defendant and they have interviewed him three times.

    b. The second defendant's parents and two other family members; his child in care social worker; his key worker at the secure unit; and his solicitor.

    c. The remand review meetings at the secure unit which they have attended throughout the second defendant's time there.

    d. The safeguarding officer at the school where the second defendant was a pupil.

    e. The operations manager at the Restorative Justice Unit at WYJS.

f. The second defendant's social workers.

30. The report explains in detail the second defendant's background and upbringing, and refers to his mother's mental health problems. The report identifies that whilst the second defendant is "physically mature for his age, he is still young, and it will take time for him to mature emotionally and developmentally, in an environment where he feels safe …" (paragraph 5.1).

31. In relation to the application to lift the reporting restrictions, the authors of the pre-sentence report say this in the conclusion:

> "[5.2] … the lifting of [the second defendant's] anonymity is likely to increase the likelihood of negative attention within the secure estate, and this would negatively impact on [the second defendant's] rehabilitation, and feeling of safety within the unit. We hope that when [the second defendant] is released from custody he can reintegrate into society and lead a law-abiding life. However, this might be put at risk if his name is known in the public domain… there are concerns for [second defendant's] brother should anonymity be lifted. He is an adolescent in school. His current emotional wellbeing is fragile, in part due to being concerned regarding repercussions for him in the community. The fragility in [the second defendant's] mother's mental health means that lifting anonymity could be detrimental for her emotional wellbeing, impacting further on her emotional availability for [the second defendant's] brother and [the second defendant]."

32. That conclusion is based on all the evidence known about the second defendant set out in the pre-sentence report, which has been drawn from the many sources identified at the start of the report.

33. I now need to explain the relevant law.

Relevant law

34. There is no dispute between the parties as to the relevant law, which is well established. A decision to dispense with anonymity involves the exercise of judgment, requiring the court to carry out a balancing exercise weighing up the welfare of the child or young person on the one hand, and the principles of open justice and freedom of expression, on the other.

35. I should however refer to the relevant statutory provisions and the case of *R v KL* [2021] QB, 831 ("***R v KL***"), in which the legal principles which govern the making of excepting directions were set out most recently by the Court of Appeal, Criminal Division.

36. The court has the power to make an excepting direction, and thereby dispense with anonymity and the reporting restrictions in place under section 45(3), where it is satisfied that it is necessary in the interests of justice to do so (section 45(4) of the 1999 Act) or where it is satisfied (a) that the effect of the reporting restrictions is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and (b) that it is in the public interest to remove or relax that restriction (section 45(5) of the 1999 Act).

37. In deciding whether to make an excepting direction under sections 45(4) or 45(5), section 45(6) of the 1999 Act provides that the court shall have regard to the child or young person's welfare: section 45(6) of the 1999 Act. Further, when the court is determining whether anything is in the public interest it must have regard to, amongst other things, the open reporting of crime and any views expressed by a parent or guardian of the child or young person subject to the reporting restrictions: section 52 of the 1999 Act.

38. In *R v KL* at [67] the Court of Appeal explained that the relevant principles may be summarised as follows:

> "(1) The general approach to be taken is that reports of proceedings in open court should not be restricted unless there are reasons to do so which outweigh the legitimate interests of the public in receiving fair and accurate reports of criminal proceedings and in knowing the identity of those in the community who have been guilty of criminal conduct.
>
> (2) The fact that the person before the court is a child or young person will normally be a good reason for restricting reports of the proceedings in the way permitted by the legislation; and it will only be in rare cases that a direction under section 45(3) of the 1999 Act will not be given or, having been given, will be discharged.
>
> (3) The reason why removal of a restriction will be rare is the very great weight that the court must give to the welfare of a child or young person. In practical terms, this means that the power to dispense with anonymity must be exercised with "very great care, caution and circumspection". See the guidance given by Lord Bingham of Cornhill CJ in the context of the 1933 Act in *McKerry v. Teesdale and Wear Valley Justices* [2001] EMLR 5, para 17.
>
> (4) However, the welfare of the child or young person will not always trump other considerations. Even in the Youth Court, where the regime requires that proceedings should be held in private, with the public excluded, the court has power to lift restrictions. When a juvenile is tried on indictment in the Crown Court there is a strong presumption that

justice takes place in open court and the press may report the proceedings.

(5) The decision for the trial judge is a case specific and discretionary assessment where, guided by the above considerations, a balance falls to be struck between the interests of the child and the wider public interest in open justice and unrestricted reporting.

(6) When considering a challenge to an excepting direction made by the Crown Court by way of judicial review, the Divisional Court will "respect the trial judge's assessment of the weight to be given to particular factors, interfering only where an error of principle is identified, or the decision is plainly wrong": see *Aziz* [2020] EMLR 5, para 36.

(7) To this standard public law approach must be added the conventional public law requirements that: (i) a fair process should be adopted by the judge in considering an application [to] remove a restriction; and (ii) the judge should give reasons sufficient to explain why the balance has come down in favour of removal of the restriction. This latter point is particularly important because the judge's reasons are the only indicator that the parties (and a reviewing court) will have to satisfy themselves that the judge has indeed performed a lawful balancing exercise."

39. I also note the following six points.

40. First, I have read and considered the guidance provided in Youth Defendants in the Crown Court *Judicial College (Branston & Norton; Oct 2023)* at Chapter 11; and Reporting Restrictions in the Criminal Courts *Judicial College (July 2023)* at paragraph 4.2 (Protection of under-18s).

41. Second, the power to protect the identity of persons under the age of 18 is consistent with the principles that inform the sentencing of children and young persons: see section 37(1) of the Crime and Disorder Act 1998; section 44(1) of the Children and Young Persons Act 1933; The Sentencing Council Guidelines, *Sentencing Children and Young People*: https://www.sentencingcouncil.org.uk/overarching-guides/magistrates-court/item/sentencing-children-and-young-people/; see also *RXG v Ministry of Justice* [2020] QB 703, Div Court at [62] to [65].

42. Third, the weight to be attributed to different factors may shift at different stages in the proceedings and, in particular, after a defendant has been found guilty and sentenced. In *R v Winchester Crown Court* [1999] 1 WLR 788 at 790F, Simon Brown LJ said that at that stage: "It may then be appropriate to place greater weight on the interests of the public in knowing the identity of those who have committed crimes, particularly serious

and detestable crimes". A judge must nevertheless keep in mind that "the principal aim of the youth justice system is to prevent offending, and then, if the identity of the offender is made public, that may have a detrimental effect on his/her rehabilitation … which may in turn impede the effectiveness of that principal aim": see paragraphs 60 to 62 of Youth Defendants in the Crown Court.

43. Fourth, it is for the defendants to adduce "clear and cogent evidence" to demonstrate that the balance falls in favour of anonymity. Further, as Warby LJ explained in *R (Marandi) v Westminster Magistrates' Court (British Broadcasting Corporation and others intervening)* [2023] 2 Cr App R 15, Div Ct at paragraph 43(6): "the cases all show that this question is not to be answered on the basis of "rival generalities" but instead by a close examination of the weight to be given to the specific rights that are a stake on the facts of the case. That is why "clear and cogent evidence" is needed".

44. Fifth, a reporting restricting under section 45 of the 1999 Act ceases to have effect when the subject of the restriction reaches 18. The length of time before the child affected reaches 18 is a relevant consideration: see *R v KL* at [85]. In the case of the first defendant it is more than 5 years until his 18th birthday and, in the case of the second defendant, it is just under 5 years until his 18th birthday. Further, although I am not dealing with sentencing today, there is no dispute between prosecution and defence counsel that this case falls within paragraph 5A of Schedule 21 of the Sentencing Act 2020. The mandatory sentence for murder is life imprisonment and, for offenders aged 14 or under when the offence was committed, the starting point for the minimum term is 13 years. Prior to the consideration of the aggravating and mitigating factors that minimum term will, however, need to be adjusted downwards to reflect the fact that the defendants were 12 (and closer to 12 than 13) when the offences were committed. The relevance of this for present purposes is that the defendants will each be eligible for parole at a much earlier stage in their lives than, for an example, a 16 or 17 year convicted of murder with a knife. The minimum term for a 16 year old is 17 years, and for a 17 year old is 23 years and in such cases a 16 or 17 year old defendant may, depending on the facts of any particular case, not be eligible for parole until their 30s.

45. Sixth, given that reporting restrictions under section 45 come to an end when a person turns 18, the only application which could be made in anticipation of that person's majority would, if the evidence justified it, be for an injunction under the *Venables* jurisdiction: see Reporting Restrictions in the Criminal Courts at 4.10; *R v Aziz (Ayman)* [2020] EMLR 5, at [36]. Such orders are exceptional, and this was the order sought, and made, in *RXG v Ministry of Justice* [2020] QB 703, Div Court. Further, an order can be made under this exceptional jurisdiction where there is evidence that revealing a person's identity will significantly increase that person's risk of self-harm: see *D & F v Persons Unknown* [2021] EWHC 157 (QB). I mention this because it is a point which could be potentially of relevance in a case such as this. However, the first defendant does not rely on this point and, as for the second defendant, there is no evidence before me to show it is potentially relevant to him at this stage.

The parties' submissions

46. Mr Bunting for the media recognises that the defendants are both young and the fact that they are children means that the court will have particular regard to their welfare. However, it is for the defendants to prove that anonymity is an absolute necessity and, on a forensic analysis of the evidence in this case, the media contend that there is no sound evidential footing for maintaining the reporting restrictions for the defendants.

47. Mr Bunting submitted there were five separate aspects to the welfare of each defendant.

48. First, in relation to age there are examples in the cases where excepting directions have been made in relation to children aged 13 and 14 (see, for example the recent decision in *R v Dermody,* Ellenbogen J, 5 July 2024; *R v Lee (a minor)* [1993] 1 WLR 103; *R v Craig Mulligan and others*, Jefford J, 30 June 2022).

49. Second, evidence that a child is vulnerable is inadequate to prove the need for anonymity. Rather, what is required is expert evidence, for example from a psychiatrist, in relation to a defendant's mental health condition and which shows a causal link between the lifting of the reporting restrictions and the consequences, ie vulnerability or increased vulnerability, of the child or young person. Mr Bunting pointed to various examples in the cases where he submitted there was evidence that the youth defendants were far more vulnerable than in this case and in those cases the evidence that they had adduced had been insufficient to maintain their anonymity (see, for example, *R v Markham* [2017] 2 Cr App R (S), 30 at [25]-[29], [31] and [74]). In this case, the media submit that the evidence in support of anonymity is insufficient. In the first defendant's case the pre-sentence report identifies mental health issues, but there is no explanation of the nature and extent of that condition, or why it cannot be managed within the secure unit. The second defendant does not have any mental health issues or vulnerability (other than his age).

50. Third, the prospect of rehabilitation must be demonstrated on evidence and not assertion (see, for example, *R v KL* at [85]). The defendants have failed to provide any particulars in this case of how maintenance of their anonymity will assist with their rehabilitation in the five years until they reach 18.

51. Fourth, impact on other family members. There is no evidence in either defendant's case to show that, if their anonymity is lifted, there is a real and immediate threat to any family members, and there is evidence that the first defendant's identity is already known in the local community. Further, the evidence in each case is not sufficient to show that any consequence of lifting the reporting restrictions on a member of the defendant's family, will indirectly affect the welfare of that defendant himself.

52. Fifth, any reference to the *Venables* jurisdiction is irrelevant in the present context.

53. Mr Bunting submitted there were strong reasons for open justice in this case and identified the following factors in favour of lifting the reporting restrictions.

54. First, the crime was particularly grave and has given rise to local concern and national revulsion. Second, the facts are shocking. Third, this is case where the names of each defendant matter to the reporting of the case and, as in the case of *R v Charlie Pearce* (Haddon-Cave J, 7 December 2017), the current reporting restrictions "leave a 'vacuum' at the heart of the case which exacerbates the risk of uninformed comment" which impedes the ability of the public to come to terms with the murder of Shawn Seesahai. Fourth, the identity of the first defendant is already known within the community. Fifth, the defendants have now been convicted of murder, which shifts the balance in favour of publication. Sixth, there is a substantial public interest in reporting knife crime: see *R v KL* at [88].

55. Seventh, it is said that this is a case where there may be institutional failures, with issues as to whether sufficient care was taken to protect the first defendant and how it was he came to be in possession of the machete used to commit the offence. The press want to investigate this and that requires telling people who the first defendant is and, unless his anonymity is lifted, the investigation of these important institutional issues will be impeded.

56. Eighth, the media rely on the deterrent effect of naming defendants based on quotes from two police officers set out in editorial of *The Sun* which included the following "We don't have enough deterrents these days, which is why criminals roam the streets without fear. Naming and shaming sometimes works". Further, the authorities make it clear that deterrence is a relevant factor for the court to take into account (see, for example, *R v Winchester Crown Court, ex p B* [1999] 1 WLR 788, Div Court at 790E, per Simon Brown LJ).

57. Miss Brand KC and Mr Jarmola for the first defendant submit that he is a very vulnerable and young child with extremely complex needs, whose functioning and behaviour are a direct consequence of his traumatic and disrupted up-bringing. They submit that, if he is named now, then it will have an extremely detrimental impact on his mental health, which will deteriorate, and the positive progress he has made to date will be undermined. This, they submit, is clear from the evidence of the two social workers, who have been working with the first defendant since November 2023, and have prepared the pre-sentence report. That evidence, they submit, is more than adequate for the purposes of maintaining the first defendant's anonymity and refusing the application for an excepting direction.

58. Further, Miss Brand submits there is no reason in this context for "naming and shaming" a defendant (see, for example, *McKerry v Teesdale and Wear Valley Justices* [2001] EMLR 5, at [19] per Lord Bingham CJ); deterrence is unlikely to occur as a

consequence of naming a child offender; the important public debate in relation to knife crime is not assisted by knowing the name of a particular offender; there has already been extensive publication of the details of the trial, and about the upbringing and background of the first defendant; the inability to publish the first defendant's name does not have the effect of imposing "a substantial and unreasonable restriction on the reporting of the proceedings"; it is difficult to understand how the naming of the defendant would somehow inform comment by the public or ensure comments are accurate and Miss Brand submits that public comments attached to online news articles or in other social media are often in inflammatory or offensive terms; and it is difficult to present evidence to the court as precisely how the rehabilitation process will be impeded if the first defendant is identified now, before he is mature enough to cope with all that entails, over and above the opinion of the social workers in the pre-sentence report that removing his anonymity would have "an extremely detrimental impact on his mental health".

59. Mr Lewis KC and Mr Riaz for the second defendant adopted the submissions made on behalf of the first defendant in response to the media's arguments. In relation to the particular facts concerning the second defendant, they pointed to his extreme youth; he has no previous history of offending; there is a real and genuine prospect of future rehabilitation, which is likely to be adversely affected if his identity were made public; the potential risk to his wellbeing; the adverse impact on his teenage brother and his mother's mental health, which indirectly will affect the second defendant and his mother's ability to support him; proper and informed debate in relation to this case, or knife crime more generally, can take place without the second defendant being identified; and the second defendant, if named now, will forever be prevented from seeking an injunction under the *Venables* jurisdiction protecting his identity from being made public, and he should not be denied that possibility at the age of 12.

60. In opposition to media's the application, Miss Heeley KC and Mr Grieves-Smith for the prosecution submit that the pre-sentence reports prepared in relation to each defendant, provide ample justification for the orders remaining in place; the defendants, their backgrounds and what led to the offences being committed can be understood without the defendants being named; there is no evidence that the name of the defendants would act as a deterrent, rather deterrence arises from fear of detection, conviction and sentence; and the evidence before the Court does demonstrate that, if the reporting restrictions are lifted, it will adversely affect the rehabilitation of each defendant.

The balancing exercise

61. In conducting this balancing exercise I have considered, and taken into account, the parties' submissions and the evidence before me. I am required to focus on the facts of this particular case which are relevant to the exercise of the court's judgment.

The first defendant

62. The defendants in this case are very young. They were both 12 years old when the offences were committed, and when they were convicted. The first defendant does not turn 13 until the autumn and it is over five years until the first defendant turns 18. There is therefore a very substantial period of time until his anonymity will otherwise come to an end. Further, that is a very substantial period of time in the context of his young life. This is a very different landscape to that for a 16 or 17 year-old convicted of murder with a knife, who only has a relatively short period of time until reporting restrictions lapse on turning 18, and who face starting points for minimum terms under Schedule 21 of the Sentencing Act 2020, which are longer.

63. Further, given that the public interest also demands a good opportunity of rehabilitation including the opportunity to be brought up in a secure way in order to facilitate a defendant's rehabilitation this is a case where that opportunity exists in the light of the substantial period of time before the first defendant reaches his 18th birthday. I appreciate that the first defendant has now been convicted of murder, and that age alone is not determinative of the media's application. However, the fact the first defendant is so young is a factor which in my view carries very great weight in assessing the competing interests at play on this application.

64. The real focus on the media's opposition to each defendant's argument that their respective anonymity should be maintained, was directed at the quality of the evidence they relied on. Mr Bunting did not go so far as to submit that expert evidence (ie from a psychiatrist) was essential in order to satisfy the need for "clear and cogent evidence" to maintain a defendant's anonymity. However, he did submit that, if such evidence had been served, it would have made things "much more difficult" for his clients. In addition to that he recognised that the contents of a pre-sentence report may, in any particular case, be sufficient to support the maintenance of a defendant's anonymity.

65. The pre-sentence report for the first defendant has been prepared by two social workers from WYJS who have met him, and have been working with him, for eight months and have collated information from numerous different sources in order to build up a very detailed picture of the first defendant, his needs and to address the various different topics in the pre-sentence report. The report explains that it has been prepared in accordance with best practice, and the appropriate "gate-keeping" has been carried out. The authors of the report are social workers working in the context of Youth Justice Service, and have the relevant experience to do so. Their assessment of the first defendant, his needs and the impact that lifting the reporting restrictions will have on him is evidence that I can properly take into account in determining the application. In my view, they have the experience to express a view as to what impact lifting the reporting restrictions will have on the first defendant, and I am entitled to rely on that conclusion.

66. Further, if the social workers considered that they were unable to answer the court's questions as to the likely impact of lifting of reporting restrictions on each defendant, and their families, then then they would have said so. They did not identify this as a concern in the case of either defendant. Indeed, if they had done, then it would have then been necessary for each defendant's legal team to secure the necessary funding from the Legal Aid Board in order to instruct the appropriate expert to answer the questions asked. That situation, of course, did not arise.

67. I have considered the contents of the pre-sentence report for the first defendant with care. This report has to be read in the context that it is a report for a 12-year old, who functions at a lower level than his chronological age, and has extremely complex needs. I accept the conclusion expressed by the authors of that report that naming him publicly would have an extremely detrimental impact on his mental health. That, in turn, will inevitably impact on his rehabilitation in the secure unit when, over the course of the next five years (and during his teenage years), there is the opportunity for him to be brought up in the secure unit in a way which will facilitate his rehabilitation which is, of course, directly relevant to his welfare. That five-year period, from the age of 12 to 18, will be a very significant period in terms of his development as a person and, on the evidence before me, I am satisfied there is a real risk that his mental health and opportunity for rehabilitation will be adversely affected if his anonymity is removed.

68. There is no dispute that this was a particularly grave crime and there is a substantial public interest in the reporting of knife crime, and the discussion of the background to this particular crime. Further, the facts are shocking. A stranger murdered by two 12 year-olds with a machete in a public park, after a few words were spoken between them, in an attack which took place in not much more than a minute. These are, of course, very strong points in favour of open justice. However, the details of the trial have already been extensively reported and, as Miss Brand has pointed out, the media can, and already have, published substantial detail in the relation to the up-bringing and background of the first defendant, and will be able to continue to do so in relation to matters that will arise at the forthcoming sentencing hearing. In this context, I do not consider that this is a case where the current reporting restrictions in relation to the first defendant leaves a "vacuum" at the heart of the case which exacerbates the risk of uninformed and inaccurate comment (cf *R v Charlie Pearce*, Haddon-Cave J).

69. I accept from the evidence that the first defendant's name is already known to people within the local community. That is clear from his grandmother's witness statement. However, the fact that the first defendant's identity is already known in the wider community is not necessarily a good reason for letting the public at large know about it. Further, in the context of this case I do not consider this to be a good reason to dispense with his anonymity.

70. The media's point that this is, or may be, a case where there may have been institutional failures in relation to the first defendant was raised for the first time in Mr Bunting's

oral submissions. The point was, no doubt, advanced by the media having had the opportunity to consider the detailed information in relation to the first defendant contained in pre-sentence report. I simply do not know whether, in relation to the facts concerning the first defendant, this is a case which calls for any inquiry or investigation in relation to steps taken or not taken by Children's Services or any other authorities.

71. It is clear on the authorities that deterrence is a proper objective for the court to pursue. I accept that an offence such as this to have been committed by children as young as 12 is a matter of real concern. However, I do not see how withholding the first defendant's identity will prevent the media reporting this case in a way which will serve as a deterrent to others. This is a case in which those responsible for the murder of Shawn Seesahai have been tried, convicted and will be sentenced in September 2024 and that in itself identifies deterrence to others.

72. I accept that the first defendant has now been convicted of murder and that shifts the balance towards publication of his identity. However, that is one factor to be considered together with all the other factors set out above, and does not in my view tip the balance in favour of publication.

73. Overall therefore I am not persuaded by Mr Bunting's arguments for the media and, having considered all the factors set out above, in my view first defendant's welfare, clearly outweighs the wider public interest in open justice and unrestricted reporting. I therefore refuse the media's application for an excepting direction in relation to the first defendant.

The second defendant

74. The second defendant turned 13 a few days ago and it is just under five years until he turns 18. The fact the second defendant is so young is a factor which, for the same reasons I have identified above in relation to the first defendant, carries very great weight in assessing the competing interests at play on this application.

75. I have considered the contents of the pre-sentence report for the second defendant with care. The same points I have made in relation to the preparation and content of the pre-sentence report for the first defendant apply to this report as well. This report also has to be read in the context that it is a report for a 12-year old. The report for the second defendant shows his different background to that of the first defendant. Until his arrest he was not known to Children's Services, there are no mental health issues identified, and no episodes of self-harm. Mr Bunting made the same criticisms of the quality of the information in this pre-sentence report, submitted it was based on assertions and not evidence, and it was inadequate to support the maintenance of the second defendant's anonymity. This is still, however, a report for a 12-year old boy who, although presenting a resilient exterior, is "unlikely to have the emotional capacity to process everything that has happened". I accept the conclusion expressed by the authors of the

report that the lifting of the second defendant's anonymity is "likely to increase the likelihood of negative attention within the secure estate, and this would negatively impact on the [second defendant's] rehabilitation, and feeling of safety in the unit". Again, the evidence shows he has made a positive start in the secure unit, and it is just under five years until he turns 18, and that provides a substantial period of time to facilitate his rehabilitation within the secure unit. That five-year period will be a very significant period in terms of his development as a person. The authors of the report have identified the real risk that this will be undermined in the event the reporting restrictions are lifted and, if that happens, that will adversely affect the second defendant's welfare, and I accept that evidence.

76. Further, in the second defendant's case I have regard to the effect that lifting the restrictions will have on his mother, who has a history of mental health problems. The pre-sentence report explains that the fragility of the second defendant's mother's mental health means and, in particular, that lifting the reporting restrictions could be detrimental for her emotional wellbeing and, if that happened, then that would adversely affect her ability to support the second defendant. I accept the evidence of that risk which has the potential to indirectly impact on the second defendant's welfare.

77. In relation to the gravity of the offence, the points are the same as in relation to the first defendant and these are very strong points in favour of open justice. However, the details of the trial have already been extensively reported and there is no need for the second defendant to be identified for there to be informed debate about the circumstances and background to the crime. At the date of the hearing of the media's application, there was very little information in the public domain in relation to the second defendant's upbringing and background. That, of course, will change in the light of the evidence which will before the court for the purpose of sentencing, and which can be reported. In relation to the second defendant, the media do not point to any evidence to suggest that his name is known within the community. In this context, I do not consider the current reporting restrictions in relation to the second defendant leaves, or will leave, a hole at the heart of the case which exacerbates the risk of uninformed and inaccurate comment.

78. As to deterrence, I do not see how withholding the second defendant's identity will prevent the media reporting this case in a way which will serve as a deterrent to others.

79. I accept that the fact the second defendant has been convicted of murder shifts the balance towards publication of his identity. That is, however, one factor to be considered together with all the other factors set out above and it does not, in my view, tip the balance in favour of publication.

80. In conclusion therefore I am not persuaded by the media's arguments and, having considered all the factors set out above, in my view the second defendant's welfare also outweighs the wider public interest in open justice and unrestricted reporting. I

therefore refuse the media's application for an excepting direction in relation to the second defendant.

Final points

81. I should also mention that I was concerned that, if one defendant was named, then that could lead the identification of the other defendant. The media said that point did not arise in this case. Neither defendant raised this point in their favour. This is not therefore a point I have had regard to.

82. In order that this decision may be openly reported, I have avoided including any details which could lead to jigsaw identification of the defendants. The material I have considered has all been up-loaded to the Digital Case System in full so that it is available in the event this matter needs to be considered further.