

#10

Reporting restrictions for children in criminal cases

s1
Overview

s2
Domestic legal
framework

s3
Court's approach to
discretionary reporting
restrictions

This guide provides an overview of the law on reporting restrictions for children in criminal courts in England and Wales.

The guide gives practical tips for practitioners to help prevent children in the criminal justice system (CJS) being named in the press.

s4
International law

s5
Evidence

s6
Youth court –
power to dispense
with anonymity

s7
Procedure for making,
lifting or varying
reporting restrictions

s8
Reviewing decisions on
reporting restrictions

s9
Turning 18

Overview

Introduction

Being named in the press can be an extremely damaging and intrusive experience for many children and their families. Children involved with criminal proceedings may be unconcerned about being identified at the time and only realise the significance years after the publication, by which time it is too late. Once named, it is very difficult to undo the damage.¹

Most children appearing before the criminal courts will be the subject of reporting restrictions

which prevent the publication of their name, or other details that are likely to lead to their identification. However, there are circumstances where such reporting restrictions are not put in place.

It is incumbent on any professional involved in a case, particularly the lawyer for the child, to check that the appropriate reporting restrictions are in place, or at least that they have been properly applied for and considered by the court.

Summary of this guide

A brief summary of this guide is as follows. The guide first considers the powers or duties the courts have to make orders restricting reporting, publicity and access to legal proceedings involving a child:

- while there is no statutory provision for pre-charge anonymity, Article 8 of the European Convention on Human Rights (ECHR) will normally prevent disclosure of the fact that a child is under criminal investigation for an offence
- there are automatic reporting restrictions for any child concerned in proceedings in a youth court, and certain other contexts, in s49 of the Children and Young Persons Act (CYPA) 1933
- a court has a power to make a lifelong reporting restriction order under s45A of the Youth Justice and Criminal Evidence Act (YJCEA) 1999, for a victim or witness; that power does not apply to a defendant
- the adult magistrates' court and the Crown Court have a power to make a reporting restriction order under s45 YJCEA 1999 for any child before them
- a court has a power in s39 CYPA 1933 to order reporting restrictions for children in civil cases, including in applications for civil orders, including criminal behaviour orders or injunctions for anti-social behaviour
- where a certain matter is not mentioned in open court, a court may order that the restricted information may not be published by the media in connection with the proceedings, by s11 of the Contempt of Court Act (CCA) 1981

- a court may order that certain matters are not reported until the end of proceedings, by s4(2) of the CCA 1981
- courts have a power by virtue of s6 of the Human Rights Act (HRA) 1998 to make orders restricting reporting, including life-long anonymity orders, if required by Article 2 ECHR (the right to life), Article 3 (the prohibition of torture), and/or Article 8 (the right to respect for privacy).

Where the court has a power to restrict reporting, then it should normally apply a specific test, which is considered next by this guide. In summary, the court should carry out a fact-specific balancing exercise, weighing up harm which will be caused by the child's identity being reported on the one hand, against the harm that will be caused by prohibiting reporting, including the principles of open justice and freedom of expression, on the other. When the child's rights under Article 8 ECHR, and/or those of the media under Article 10 ECHR, are engaged, essentially the same test should be applied. A considerable range of factors may be relevant, and it is important for a practitioner representing a child to obtain evidence to prove the adverse impact of the child's identity being reported.

The procedure for making an application for reporting restrictions is considered next. Appeals are then explained. The effect of turning 18 is discussed at the end of the guide.

¹ For further examination of the difficulties in naming children who appear in criminal courts, see: Dr Di Hart, 'What's in a name? The identification of children in trouble with the law', Alliance for Youth Justice (AYJ) (report published under the AYJ's previous name of the Standing Committee for Youth Justice (SCYJ)), May 2014, bit.ly/3eAinvk

Key principles

Welfare of the child and prevention of offending

Courts have a duty under s44 CYPA 1933 to have regard to the welfare of any child before it. The court must also bear in mind the principal aim

of the youth justice system, which is to prevent offending by children and young persons.²

Open justice

'Open justice' is a fundamental principle of the CJS in England and Wales: that everything that happens in the courts is public. There is a wealth of case law supporting the importance of the public accessing court proceedings, and the

press's right to report on it. This principle includes publicly naming those coming before the courts, perhaps best summarised by Lord Sumption in the Supreme Court, that it is important to bear in mind that:³

... from a newspaper's point of view a report of a sensational trial without revealing the identity of the defendant would be a very much disembodied trial. If the newspapers choose not to contest such an injunction, they are less likely to give prominence to reports of the trial. Certainly, readers will be less interested and editors will act accordingly. Informed debate about criminal justice will suffer.

Practical advice: checklist of reminders

1. Always check that the relevant reporting restriction has been made; that the press or relevant parties have been reminded; and that it has been made under the correct legal provision. (Remember reporting restrictions should be automatic for children concerned in proceedings in the youth court.)
2. Check the public court list to ensure that the child defendant's name is not printed there.
3. If a child is in the youth court for a civil injunction and not a criminal offence, automatic reporting restrictions *do not apply* - remember to apply for reporting restrictions.⁴
4. If a child appears with an adult in the magistrates' court, automatic reporting restrictions *do not apply* – remember to apply for reporting restrictions.

² s37 Crime and Disorder Act 1998

³ *Khuja v Times Newspapers Ltd* [2017] UKSC 49, [2019] AC 161 at [29] (quoting Lord Steyn in *In re S (FC) (a child)* [2004] UKHL 47 at [34]; 'open justice' is discussed at [12]–[30] of the *Khuja* judgment)

⁴ For example, applications for criminal behaviour orders (CBOs) or anti-social behaviour injunctions (ASBIs) are both civil proceedings

5. A court may consider removing reporting restrictions upon conviction or upon sentence of its own motion. Equally, the press may make submissions to do so, and in some cases may instruct experienced counsel to make applications to do so. Be fully prepared with the relevant evidence to contest such actions.
6. Make submissions based on instructions and evidence. Gather information from others, such as the local authority, the local youth justice service, parents, etc.
7. Prepare a child defendant for the fact that reporting restrictions are lifted at age 18.
8. Consider applying for a civil injunction to continue reporting restrictions for a child who will turn 18, if the psychological and welfare implications warrant it. See further below.
9. If the child is a witness or victim in proceedings, apply for lifelong reporting restrictions. See further below.

Domestic legal framework

Pre-charge anonymity

There are no statutory protections for children (or indeed adults) to prevent their name being published in connection with an offence before they are charged with an offence. Section 44 YJCEA 1999 – which provides for an automatic restriction prohibiting the publication of any matter likely to identify a person under 18 who is the subject of a criminal investigation – has not yet been brought into force. Automatic restrictions in the youth court only kick in once criminal proceedings are commenced, which is usually considered to be once the child is charged with an offence.

However, disclosure of the fact that a child is under criminal investigation for an offence, but has not yet been charged for it, normally interferes with their right under Article 8 ECHR. It will be unlawful unless justified, as set out in *ZXC v Bloomberg LP*.⁵

There have been some cases where a child who is arrested but not charged with an offence

has been named in the press. The only way to prevent this is to obtain a civil injunction preventing the identification. In practice this can prove difficult, mainly due to time constraints and because often it is not known that the child will be named until after the fact. However, the police do not routinely release the names of those arrested for offences, especially when those arrested are children, and the media may choose not to publish such material in line with their own press codes. The Editors' Code of Practice,⁶ which is monitored by the Independent Press Standards Organisation (IPSO), provides some guidance about considering the welfare of children,⁷ and indicates that children under 18 should not be named after arrest but before appearing in the youth court unless their name is already in the public domain, or consent has been given.⁸ That *does not apply* to children appearing in the Crown Court.

William Cornick was 15 when he was arrested for the murder of his teacher Ann Maguire. He was named prior to being charged with the offence. A few days after being charged, the Crown Court made an order preventing his identification pursuant to s39 CYPA 1933. That restriction was lifted after he pled guilty: *R v Cornick (William)*.⁹

There have been a number of cases in which the names of the defendants have been released somewhere on social media. However, the courts have recognised that the fact that some people

may know the defendant's name is not, of itself, a reason for their name to be disseminated much more widely: *R (Y) v Aylesbury Crown Court*.¹⁰

Youth court

Child defendant

There are automatic reporting restrictions for a child charged with an offence who appears before

the youth court under s49 CYPA 1933. This provision provides that:

5 [2022] UKSC 5, [2022] 2 WLR 424

6 bit.ly/3RXY4GO

7 Editors' Code of Practice, clause 6

8 Editors' Code of Practice, clause 9

9 [2014] EWHC 3623 (QB), [2015] EMLR 9

10 [2012] EWHC 1140 (Admin), [2012] Crim LR 893

Restrictions on reports of proceedings in which children or young persons are concerned

Section s49 CYPA 1933 states that:

- (1) No matter relating to any child or young person concerned in proceedings to which this section applies shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as someone concerned in the proceedings.
- (2) The proceedings to which this section applies are—
 - (a) proceedings in a youth court;
 - (b) proceedings on appeal from a youth court (including proceedings by way of case stated);
 - (c) proceedings in a magistrates' court under Schedule 7 to the Sentencing Code (proceedings for breach, revocation or amendment of youth rehabilitation orders);
 - (d) proceedings on appeal from a magistrates' court arising out of any proceedings mentioned in paragraph (c) (including proceedings by way of case stated).
- (3) In this section 'publication' includes any speech, writing, relevant programme or other communication in whatever form, which is addressed to the public at large or any section of the public (and for this purpose every relevant programme shall be taken to be so addressed), but does not include an indictment or other document prepared for use in particular legal proceedings.
- (3A) The matters relating to a person in relation to which the restrictions imposed by subsection (1) above apply (if their inclusion in any publication is likely to have the result mentioned in that subsection) include in particular—
 - (a) his name,
 - (b) his address,
 - (c) the identity of any school or other educational establishment attended by him,
 - (d) the identity of any place of work, and
 - (e) any still or moving picture of him.

The reference to a 'child or young person concerned in proceedings' in s49(1) covers a child defendant. These automatic reporting restrictions will not apply if the child is in court for a civil injunction, such as a CBO (as discussed below).

Proceedings in the youth court are not open to the general public.¹¹ However, 'bona fide representatives of newspapers or news agencies' are permitted to attend.¹² They are also able to generally report upon the proceedings, subject to the restrictions on identifying the defendants and

any other restrictions which apply (such as, for example, restrictions on identifying victims of sexual assault under the Sexual Offences (Amendment) Act 1992).

Section 49 CYPA 1933 continues to apply throughout the trial and sentence while the matter remains in the youth court, unless specifically lifted by the court. The court has the power to lift the reporting restriction once the child has been convicted, under s49(4A), which provides that:

If a court is satisfied that it is in the public interest to do so, it may, in relation to a child or young person who has been convicted of an offence, by order dispense to any specified extent with the restrictions imposed by subsection (1) above in relation to any proceedings before it to which this section applies by virtue of subsection (2)(a) or (b) above, being proceedings relating to—

- (a) the prosecution or conviction of the offender for the offence;
- (b) the manner in which he, or his parent or guardian, should be dealt with in respect of the offence;
- (c) the enforcement, amendment, variation, revocation or discharge of any order made in respect of the offence;
- (d) where an attendance centre order is made in respect of the offence, the enforcement of any rules made under section 394(1)(d) or (e) of the Sentencing Code; or
- (e) where a detention and training order is made, the enforcement of any requirements imposed under section 242(4)(b) of the Sentencing Code.

¹¹ s47(2) CYPA 1933

¹² s47(2)(c) CYPA 1933

That power can only be exercised after hearing representations from the parties.¹³ The key test is whether lifting such restrictions would be in the public interest.

Section 49(5) CYPA 1933 provides for additional circumstances where it is permitted to lift reporting restrictions prior to the defendant being found guilty. These are very limited: they are where the defendant is unlawfully at large in respect of a serious offence and needs to be

found, or where it would cause an injustice *to the defendant* not to be named.

Unless the court lifts the reporting restrictions under one of these provisions, the restrictions will remain in place until the defendant's 18th birthday. At that point they cease to apply,¹⁴ even if the case is mid-trial. It may be possible to impose further restrictions after this point in some cases, as set out below.

Appeals to the Crown Court

The reporting restrictions in s49 CYPA 1933 extend beyond the youth court when a youth court hearing is appealed (either directly to the Crown Court or by way of case stated) and to proceedings on appeal for breach/revocation/amendment of a youth rehabilitation order.¹⁵

However, the automatic prohibition on public attendance at youth court hearings does not con-

tinue in an appeal. Practitioners can apply to have an appeal held in private. The Crown Prosecution Service (CPS) guidance on reporting restrictions advises that prosecutors should make such an application unless the appeal concerns a matter of law of general importance.¹⁶

Child victim or witness

Reporting restrictions also apply automatically to any child who appears in the youth court as a victim or witness in proceedings as they are 'concerned in proceedings' under s49 CYPA 1933.

Again, the automatic restrictions under s49 CYPA 1933 will cease to apply on that person's

18th birthday. However, for child victims or witnesses, a court has a specific power to make a lifelong reporting restriction order under s45A(2) YJCEA 1999.

Section 45A(2) YJCEA 1999 provides that:

The court may make a direction ('a reporting direction') that no matter relating to a person mentioned in subsection (3) shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as being concerned in the proceedings.

Section 45A YJCEA 1999 sets out the limited statutory criteria for when a lifelong order can be made at s45A(5):

Section 45A(5) states that:

The court may make a reporting direction in respect of a person only if it is satisfied that—

- (a) the quality of any evidence given by the person, or
- (b) the level of co-operation given by the person to any party to the proceedings in connection with that party's preparation of its case, is likely to be diminished by reason of fear or distress on the part of the person in connection with being identified by members of the public as a person concerned in the proceedings.

13 s49(4B) CYPA 1933

14 Confirmed by R (JC) v Central Criminal Court [2014] EWCA Civ 1777, [2015] 1 WLR 2865

15 s49(2) CYPA 1933

16 See 'Reporting restrictions – children and young people as victims, witnesses and defendants', CPS, updated July 2018, [bit.ly/3xjzbnv](https://www.cps.gov.uk/guidance/3xjzbnv). Note that this guidance was last updated in July 2018 and consequently refers to the (out-of-date) Criminal Procedure Rules 2015

The relevant factors the court must consider when exercising its power under s45A YJCEA 1999 are set out at s45A(6) and (7), and include considering the welfare of the child, the views expressed by that child, the interests of justice as well as the public interest in avoiding substantial restrictions on reporting.

The CPS will usually be responsible for applying for a lifelong order for a child victim or witness

if they do not want to be identified once they have turned 18. The order, if granted, is usually permanent and will remain in place if no further order is made. The order may be revoked by the court or any appellate court¹⁷ and can also be lifted or varied through an excepting direction in some circumstances.¹⁸

Adult magistrates' court and Crown Court

Child defendant

A child may appear before the adult magistrates' court or the Crown Court if jointly charged with an adult or if remanded overnight at the police station and brought before a court where no youth court is sitting.¹⁹ Section 49 CYPA 1933 only automatical-

ly applies in the youth court, so in either of these scenarios the main way to protect a child's identity is for the court to make a discretionary reporting restriction under s45 YJCEA 1999.

Section 45 YJCEA 1999 provides as follows:

(3) The court may direct that no matter relating to any person concerned in the proceedings shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings.

[...]

(5) The court or an appellate court may also by direction ('an excepting direction') dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction under subsection (3) if it is satisfied—

- (a) that their effect is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and
- (b) that it is in the public interest to remove or relax that restriction ...

(6) When deciding whether to make—

- (a) a direction under subsection (3) in relation to a person, or
- (b) an excepting direction under subsection (4) or (5) by virtue of which the restrictions imposed by a direction under subsection (3) would be dispensed with (to any extent) in relation to a person,

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

[...]

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

- (a) his name,
- (b) his address,
- (c) the identity of any school or other educational establishment attended by him,
- (d) the identity of any place of work, and
- (e) any still or moving picture of him.

¹⁷ s45A(9) YJCEA 1999

¹⁸ s45A(10) and (11) YJCEA 1999

¹⁹ In the latter scenario the court will deal with the issue of bail only and adjourn the case until the next youth court is sitting

In deciding whether it is in the public interest, the court must have regard to the matters in s52(2) YJCEA 1999, namely:

Section 52(2) YJCEA 1999:

- (a) the interest in each of the following–
 - (i) the open reporting of crime,
 - (ii) the open reporting of matters relating to human health or safety, and
 - (iii) the prevention and exposure of miscarriages of justice;
- (b) the welfare of any person in relation to whom the relevant restrictions imposed by or under this Chapter apply or would apply (or, as the case may be, applied); and
- (c) any views expressed–
 - (i) by an appropriate person on behalf of a person within paragraph (b) who is under the age of 16 ('the protected person'), or
 - (ii) by a person within that paragraph who has attained that age.

Section 45 orders are discretionary and may be lifted at any point in the proceedings.²⁰

Section 45 YJCEA 1999 came into force on 13 April 2015 and replaced the previous discretionary power to make reporting restrictions under s39 CYPA 1933. There is a large body of case law under s39 CYPA 1933 which continues to be relevant and provide guidance for applications made under s45 YJCEA 1999, as confirmed by *R v H*²¹ (see dis-

cussion below). In summary, in deciding whether to make an order, the court should balance the harm in doing so, against the harm in not doing so, giving proper weight to the principle of open justice.

It may be prudent for the child's representative to make an application for an order as soon as a case is sent to the adult magistrates' court or Crown Court.

Child victim or witness

As with child defendants, child victims or witnesses to cases in the adult magistrates' court or Crown Court are not covered by automatic reporting restrictions, and a discretionary order (under s45 YJCEA 1999 or otherwise) would need to be sought on their behalf. CPS guidance indicates

the prosecutor will typically make an application under s45 on behalf of a child victim or witness if either the child requests it or the prosecutor thinks it would be in their best interests.²² Lifelong anonymity orders under s45A can also be sought outside the youth court (see above).

Civil cases and criminal behaviour orders

Section 49 YJCEA 1999 does not apply to applications for civil orders, including CBOs or ASBIs. Nor do s45 or s45A YJCEA 1999, as those only apply to criminal proceedings. However, s39 CYPA 1933

(the precursor to s45 YJCEA 1999) does still apply and gives a discretion to make reporting restrictions.

Section 39 CYPA 1933 states that:

Power to prohibit publication of certain matter

- (1) In relation to any proceedings other than criminal proceedings, in any court, the court may direct that the following may not be included in a publication–
 - (a) the name, address or school of any child or young person concerned in the proceedings, either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness therein;
 - (aa) any particulars calculated to lead to the identification of a child or young person so concerned in the proceedings;
 - (b) a picture that is or includes a picture of any child or young person so concerned in the proceedings; except in so far (if at all) as may be permitted by the direction of the court.

²⁰ s45(9) YJCEA 1999

²¹ [2015] EWCA Crim 159, [2016] 1 Cr App R (S) 13 at [8]

²² See 'Reporting restrictions – children and young people as victims, witnesses and defendants', CPS, updated July 2018, bit.ly/3xjzbNV

This provision gives a court a discretion to impose reporting restrictions in any civil hearing, including the initial application for an injunction or for a

breach of an injunction. Proceedings for breaches of a CBO are 'criminal proceedings' so will be covered by s45 YJCEA 1999.

R (T) v St Albans Crown Court²³ sets out the correct approach to an application under s39 CYPA 1993 when dealing with anti-social behaviour orders (ASBOs) (as these were named as under the previous regime). The court held that in such cases the usual balancing exercise between the welfare of the child (and their rights under Article 8 ECHR) and the principle of open justice (and press rights under Article 10) will need to be carried out. That test and the relevant case law is discussed below. However, Elias J held that there is a greater public interest in revealing the identities of children who received ASBOs than in criminal proceedings for two reasons. First, the court considered that breaches of such orders were more likely to be reported if the identity of the child was known. Second, the court held that the public had a particular interest in knowing the identity of those who committed anti-social behaviour in their neighbourhood. Each case will, however, turn on its own facts.

In R(K) v Knowsley MBC,²⁴ the court held that there was no presumption for or against granting reporting restrictions for an interim ASBO. However, the fact that allegations against the child are unproven is a 'weighty matter' and 'very important consideration' for the court to take into account when weighing up the arguments.²⁵

Other powers to prevent reporting under the Contempt of Court Act 1981

The court can make various orders preventing information from being referred to in open court. Under s11 CCA 1981, the court may then order that that information should not be published by the media in connection with the proceedings. This power may be used to prevent the publication of a name of a witness, whether a child or adult, in connection with a court case where that person has been allowed to give evidence anonymously.

This provision will not apply to the name of a child defendant, as the court has no power to prevent the defendant's name being given in open court and therefore s11 CCA 1981 cannot apply to it. It may apply to other matters concerning the defendant, such as their address, where the court has ordered that not to be mentioned in open court.

Under s4(2) CCA 1981 the court may also make an order that the publication of any matter is postponed where that is necessary to avoid risk of substantial prejudice to the administration of justice in those proceedings. This is routinely used in criminal trials where there is press interest, to prevent reporting prejudicial material during the trial itself.

It is uncertain whether this power may be of use in the case where a defendant turns 18 mid-trial, to prevent the sudden identification of the defendant during the trial process. If it were to be used in this way, the court could only make the relevant order if satisfied that naming the defendant would risk substantial prejudice to the administration of justice, and then publication would only be prevented before the end of the trial.

Anonymity under the Human Rights Act – applications in the High Court

A court has a power under s6 HRA 1998 to grant anonymity where that is required in order to comply with a right under the ECHR²⁶. The most relevant rights are Articles 2, 3, 8 and 10. This is usually used by the High Court for defendants who have turned, or are about to turn, 18 and therefore for whom there is no other power to be granted anonymity. So far, this has been used sparingly.

It is sometimes described as the Venables jurisdiction, and is usually made *contra mundum* (against the world).

23 [2002] EWHC 1129 (Admin)

24 [2004] EWHC 1933 (Admin)

25 Paras [42] and [44]

26 It is unclear whether applications for anonymity pursuant to the HRA are limited to the High Court. In theory, other courts can make orders pursuant to the HRA. However, all of the cases so far have been in the HC, and given the complexity, that is likely to be where future cases are heard.

Article 2 (right to life) and Article 3 (protection from inhumane and degrading treatment)

If there is a real and immediate risk (a) to a person's life or (b) of serious harm as a result of not being granted anonymity, then the positive duties under (a) Article 2 or (b) Article 3 ECHR respectively arises. Those duties require the authorities (here, the court) to take all reasonable steps which might be expected to avoid that risk. Although that is a qualified duty, it appears that in practice that if Article 2 or Article 3 is engaged, it would inevitably mean granting anonymity, regardless of

the interests protected by Article 10 ECHR or other interests.

There is an ongoing debate about this.²⁷ The most recent High Court decision dealing directly with anonymity for child offenders followed the binding decision of the Divisional Court in *RXG v Ministry of Justice*²⁸ and held that where there is a real and immediate risk of serious physical harm or death to the applicant, there was no question of that risk being balanced against the media's Article 10 interests.²⁹

Article 8 (private life)

Naming a child may interfere with the child's rights under Article 8 ECHR. Whether it actually does or not depends on the particular circumstances of the case. If there is an interference with Article 8, then the question of whether anonymity is required by Article 8 will depend on essentially the same balancing exercise as deciding whether anonymity is justified under the common law.

The starting point is the fundamental principle of open justice: everything that happens in the courts is public. In deciding whether a restriction

on open justice by anonymity is justified, the court has to carry out a fact-specific balancing exercise. Central to the court's evaluation would be the purpose of the open justice principle, the potential value of the information in question in advancing that purpose – and, conversely, any risk of harm which its disclosure might cause to the individual concerned, to the maintenance of an effective judicial process or to the legitimate interests of others.³⁰

²⁷ See summary of the debate at *Attorney General v BBC* [2022] EWHC 826 (QB), [2022] 4 WLR 74 at [35]–[45]; *D v Persons Unknown* [2021] EWHC 157 (QB) at [76]–[78]; and *Re AI M (Reporting Restrictions Order)* [2020] EWHC 702 (Fam) at [19]

²⁸ [2019] EWHC 2026 (QB), [2020] QB 703

²⁹ *D v Persons Unknown* [2021] EWHC 157 (QB) at [93]

³⁰ *A v BBC* [2014] UKSC 25, [2015] AC 588

Court's approach to discretionary reporting restrictions

Overview

As noted above, the court has several discretionary powers to grant anonymity, including under s45 YJCEA 1999, and by reference to Article 8 ECHR. The only automatic reporting restriction is under s49 CYPA 1933, which applies in the youth court where a child is charged with an offence, and even then the court has the discretion to dispense with it (see further below). Where the court has a discretion as to whether or not to grant reporting restrictions, it is required to carry out a balancing exercise, weighing up harm which will be caused by the child's identity being reported on the one hand, against the harm that will be caused by prohibiting reporting, including the principles of open justice and freedom of expression, on the other.³¹

While this is a fact-specific assessment in each case, it is unusual for a child to be named *during* criminal proceedings. Even where a child has been named prior to being arrested or where children's names have been reported on social media, these factors have not successfully undermined the arguments to anonymity during the proceedings. This reflects the general acceptance that, '[p]rior to conviction, the welfare of the child or young person is likely to take precedence over the public interest': *R (Y) v Aylesbury Crown Court*.³²

The Judicial College guidance 'Youth defendants in the Crown Court' confirms this approach:³³

It is suggested that, in the majority of cases where the defendant is under 18, the welfare of the child or young person is likely to outweigh the public interest in public reporting; this is particularly so in a case where the child or young person is only on trial in the Crown Court because he/she has been jointly charged with an adult.

The balancing exercise

As set out above, s45 YJCEA 1999 has now replaced s39 CYPA 1933 in criminal proceedings, but the case law on discretionary reporting restrictions under s39 largely continues to apply.

When considering an application for a reporting restriction, the relevant test remains as set out in *R (Y) v Aylesbury Crown Court*:³⁴

- i) In deciding whether to impose or thereafter to lift reporting restrictions, the court will consider whether there are good reasons for naming the defendant;
- ii) In reaching that decision, the court will give considerable weight to the age of the offender and to the potential damage to any young person of public identification as a criminal before the offender has the benefit or burden of adulthood;
- iii) By virtue of section 44 of the 1933 Act, the court must 'have regard to the welfare of the child or young person';

31 That is required to comply with the court's obligations under s6 HRA 1998

32 [2012] EWHC 1140 (Admin), [2012] Crim LR 893

33 See 'Youth defendants in the Crown Court', Judicial College, March 2021, last updated August 2022, para 42, bit.ly/3LcyKKI

34 [2012] EWHC 1140 (Admin), [2012] EMLR 26 at [26]

- iv) The prospect of being named in court with the accompanying disgrace is a powerful deterrent and the naming of a defendant in the context of his punishment serves as a deterrent to others. These deterrents are proper objectives for the court to seek;
- v) There is a strong public interest in open justice and in the public knowing as much as possible about what has happened in court, including the identity of those who have committed crime;
- vi) The weight to be attributed to the different factors may shift at different stages of the proceedings and, in particular, after the defendant has been found, or pleads, guilty and is sentenced. It may then be appropriate to place greater weight on the interest of the public in knowing the identity of those who have committed crimes, particularly serious and detestable crimes;
- vii) [where applicable] The fact that an appeal has been made may be a material consideration.

Subsequent case law indicates that the following general approach should be taken to discretionary decisions whether to impose restrictions to public access to proceedings, including anonymity:³⁵

1. The court must conduct a fact-specific balancing exercise, and decide whether the harm caused by the child being named (which may include the welfare of the child) outweighs the harm caused by granting anonymity (including the extent of the interference with the fundamental principle of open justice and any interference with Article 10 ECHR). If so, anonymity will usually be granted.
2. An intense focus on the comparative importance of the specific rights being claimed on each side of the balance in the individual case is necessary *before* the ultimate balancing test is carried out.
3. The court may impose a restriction only if it is necessary: it should be the least restrictive measure that will prevent the relevant harm.

Potentially relevant factors

Below is a list of potentially relevant factors in discretionary decisions on reporting restrictions. This list is not exhaustive. Practitioners should be alert to specific and individual issues. If the child is

involved in other proceedings, such as in family or immigration courts, those may need to be considered as well.

Sentencing Council Guidelines

Courts have a duty under s44 CYPA 1933 to have regard to the welfare of any child before it. The extent of any adverse impact on the child's welfare, caused by their identity being reported, is a question of fact in the particular case. However,

in *McKerry v Teesdale and Wear Valley Justices*,³⁶ Lord Bingham explained that this duty was the reason why children, unlike adults, will often not be named in criminal proceedings:³⁷

It is a hallowed principle that justice is administered in public, open to full and fair reporting of the proceedings in court, so that the public may be informed about the justice administered in their name. That principle comes into collision with another important principle, also of great importance and reflected in the international instruments ... that the privacy of a child or young person involved in legal proceedings must be carefully protected, and very great weight must be given to the welfare of such child or young person.

³⁵ Such as *A v BBC* [2014] UKSC 25, [2015] AC 588; *In re S (FC) (a child)* [2004] UKHL 47, [2005] 1 AC 593; *In re Guardian News and Media Ltd* [2010] UKSC 1, [2010] 2 AC 697; and *RXG v Ministry of Justice* [2019] EWHC 2026 (QB), [2020] QB 703 at [25] onwards

³⁶ [2000] Crim LR 594

³⁷ [2000] Crim LR 594 at para [25]

Article 8 ECHR

Article 8 (right to respect for private and family life) may be infringed by reporting of a child's identity in connection with criminal proceedings. For example, it may be infringed if reporting has

an adverse impact on the child's psychological integrity, undermines their welfare, development or future career prospects, or causes specific other harms.

Rehabilitation of the child

When dealing with child defendants, there is a much greater focus on rehabilitation than with adults. The CPS states that a specific focus of sentencing is on rehabilitation and the welfare of the child.³⁸ The UN Committee on the Rights of the Child makes it clear that focusing on rehabilitation over other criminal justice objectives is necessary to protect the child's best interests – and is therefore relevant to any consideration of Article 8 ECHR and Article 3 of the UN Convention on the Rights of the Child (UNCRC).³⁹ The CPS's guidance also recognises that '[i]dentification of a youth may be detrimental to his own rehabilitation and that of other young people related to

him or detained with him'.⁴⁰ While any reporting restrictions are ancillary to the sentence, it makes little sense to undermine any rehabilitative aims of sentencing by naming the child.

In *RXG v Ministry of Justice*⁴¹ (an application for an injunction prohibiting ongoing reporting; see below) expert evidence was adduced as to the defendant's ability to reintegrate into the community and to continue to rehabilitate following his sentence and how that would be impacted by his identity being known. The court granted the injunction and cited the Sentencing Council's guidelines on 'Sentencing children and young people', including the following:⁴²

It is important to avoid 'criminalising' children and young people unnecessarily; the primary purpose of the youth justice system is to encourage children and young people to take responsibility for their own actions and promote re-integration into society rather than to punish.

The potential impact of a child's identity being known on their ability to re-integrate into society will be enhanced by the ease with which future employers or any member of the public could become aware of a court case by googling the child's name. Further, publication may impact the child's own sense of identity, how they view themselves and how they are viewed by their peers, which may of course affect their efforts to rehabilitate.

An argument based on the risk to the child's rehabilitation will ideally be supported by specific concerns about the danger of publication. At the time of his trial, RXG was the youngest ever convicted terrorist in the UK, having committed

the offences when he was 14-years-old. Expert opinion made clear that his rehabilitation and social re-integration would be jeopardised if his name was published. Arguments were also made that naming him could turn him into a 'poster boy' for Al Qaeda and make him more likely to be re-recruited or re-radicalised. Similarly, courts may be more sympathetic to making reporting restrictions for children who are attempting to extricate themselves from gangs. In *C v Winchester Crown Court* [2014] EWCA Crim 339, the court used the fact of the child's lengthy criminal history as a reason for imposing reporting restrictions, as there was a powerful public interest in his rehabilitation.

The impact on the child's mental health or other vulnerabilities

The potential impact on the child's mental health of having their name published will likely warrant making a reporting restriction. In *D and F v Persons Unknown*,⁴³ evidence from psychologists about the risk of both self-harm and suicide of

the two young defendants in that case was crucial to the finding that Article 2 and 3 ECHR were engaged and thus that a lifelong anonymity order should be made. The court stated that establishing such a risk would depend on the quality of the ev-

38 Sentencing Council guidelines: 'Sentencing children and young people', Sentencing Council, para 1.2, [bit.ly/3JqmDs3](https://www.sentencingcouncil.org.uk/guidelines/sentencing-children-and-young-people/); s58 Sentencing Code 2020 (principal aim of the youth justice system is preventing offending/re-offending and court has duty to have regard for the welfare of the child), [bit.ly/3Lbmw5g](https://www.sentencingcouncil.org.uk/guidelines/sentencing-children-and-young-people/)

39 See UNCRC in General Comment No 24 (2019) on children's rights in the child justice system, CRC/C/GC/24, 18 September 2019, replacing General Comment No 10 (2007) on children's rights in juvenile justice, para 76, [bit.ly/3qJQmUW](https://www.unhcr.org/refugees/3qJQmUW/); and *ZH (Tanzania) v Secretary of State for the Home Department* [2011] UKSC 4, [2011] 2 AC 166

40 'Reporting restrictions – children and young people as victims, witnesses and defendants', CPS (see above), under 'Application to lift restrictions'.

41 [2019] EWHC 2026 (QB), [2020] QB 703

42 Guidelines para 1.4, cited in *RXG v Ministry of Justice* at para 63(iii)

43 [2021] EWHC 157 (QB)

idence. A person's fear of giving evidence without anonymity may itself justify an order. However, that fear is likely to be of much greater weight if it is supported objectively by evidence: *Re Officer L*.⁴⁴

A child may have particular relevant vulnerabilities which would be exacerbated by publication of their name. The CPS guidance refers to 'looked after' children as one such category.⁴⁵

Risk of harm

In *RXG*, the court stated:⁴⁶

However, where evidence of a threat to a person's physical safety does not reach the standard that engages Articles 2 and/or 3 [ECHR], then the evidence as to risk of harm will usually fall to be considered in the assessment of the person's Article 8 rights and balanced against the engaged Article 10 rights. Whilst the level of threat may not be sufficient to engage Articles 2 or 3, living in fear of such an attack may very well engage the Article 8 rights of the person concerned.

Therefore the risk to life and/or risk of harm to the individual can weigh in favour of a reporting re-

striction, even if the risks are not so high that the rights under Article 2 or 3 are formally engaged.

Danger of retribution

A danger to the child from others is relevant. That danger could be from other inmates, if the child is in custody or in the community. The danger of retribution was, and remains, a primary concern in providing the child killers of James Bulger with new identities. Whilst this will usually only be a factor in high-profile cases, it may also be an issue in cases that have attracted local attention.

Even if a child is receiving a custodial sentence, this will not necessarily provide protection and may even place a burden on the custodial setting whose duty it will be to keep them safe. That may lead to the child having to spend time in isolation for their own safety.

Effect on others

Other children may well be impacted by a decision to publish a defendant's name, including family members of the defendant, other children in the proceedings, and also other children at secure establishments. There have been issues when high-profile offenders have been detained in a custodial setting and press have camped outside, impacting all the children detained there.

In *R v Cornick (William)*,⁴⁷ the judge specifically ruled that evidence about the impact on the child defendant's family was not relevant.⁴⁸ That is because the legal exercise, as set out

above, involves weighing up the rights of the child themselves as against the rights of the press and public. However, Mrs Justice Yip DBE did rely on the impact on the defendant's younger siblings in her reasons for maintaining the order under s45 YJCEA 1999 for the teenager convicted of the murder of Ava White at Liverpool Crown Court on 11 July 2022. The judge commented: '[T]here are real and immediate concerns for the welfare of the defendant and his younger siblings if his identity becomes more widely known.'⁴⁹

44 [2007] UKHL 36, [2007] 1 WLR 2135

45 'Reporting restrictions – children and young people as victims, witnesses and defendants', CPS (see above), under 'Application to lift restrictions'

46 At para 35

47 [2014] EWHC 3623 (QB)

48 At [14]

49 D Haygarth, 'Reasons judge gave for not revealing identity of Ava White's killer', *Liverpool Echo*, 11 July 2022, [bit.ly/3Bgirbz](https://www.liverpoolecho.com/news/crime/2022/07/11/reasons-judge-gave-for-not-revealing-identity-of-ava-white-s-killer/)

Open justice and the rights of the media to report proceedings

As noted above, open justice is of fundamental importance and will tend to be given considerable weight. Similarly, the courts place a high value on the right to freedom of expression in Article 10 ECHR.

By way of example, Lord Judge in *R v Croydon Crown Court ex p Trinity Mirror plc and others* stated:⁵⁰

... it is impossible to over-emphasise the importance to be attached to the ability of the media to report criminal trials. In simple terms this represents the embodiment of the principle of open justice in a free country. 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. Uncomfortable though it may frequently be for the defendant that is a normal consequence of his crime.

The court will normally consider that the ability of the media to report the name of a defendant is an important matter.⁵¹ However, this is not inevitable

and depends on the particular facts. There is often a lower public interest in the publication of the name of a witness or victim.

Seriousness of the crime

It is usually accepted that the more serious the crime, the stronger the public interest in knowing the identity of the offender. This can be a factor in favour of naming a child after conviction.

However, anonymity may be granted even in cases of serious crimes. In *R (Rai) v Crown Court at Winchester*,⁵² the court took into account the countervailing public interest in the young man being rehabilitated, which would be more likely if

he was not named. Equally, in *RXG v Ministry of Justice*,⁵³ the High Court considered an injunction for a young man who was at that time the youngest person to be convicted of terrorist offence. Despite the seriousness of his offending, the impact on him and his rights still outweighed any public interest in reporting his identity. The seriousness of the crime and level of public interest is therefore in no way definitive.

Practical advice: tips for making applications in the Crown Court

1. Be prepared. Ensure that you are prepared for any application to lift reporting restrictions – do not assume that the court will continue the restrictions after the end of the trial.
2. Gather as much evidence as possible (see page 19 below) to show the potential impact on the child of being named, in particular ensure that the views of the Youth Offending Team (YOT) are before the court. Try to dissuade the court from lifting reporting restrictions without full information about the impact on the child in front of it.

⁵⁰ [2008] EWCA Crim 50 para [32]. See also *R (Rai) v Crown Court at Winchester* [2021] EWCA Civ 604, [2021] Crim LR 795 at [26]; and *RXG v Ministry of Justice* [2019] EWHC 2026 (QB) at [25]–[30]

⁵¹ Some of the reasons why this may be an important matter were explained in *In re Guardian News and Media* [2010] UKSC 1, [2010] 2 AC 697 at [63]–[68]

⁵² [2021] EWCA Civ 604, [2021] Crim LR 795, mentioned above

⁵³ [2019] EWHC 2026 (QB)

3. It is very difficult to undo the damage caused by identification in the press, therefore try to persuade the court to adjourn any consideration of lifting restrictions where necessary to gather further information. Alert the court immediately to any appeal against a decision or potential appeal regarding the identification of a child.
4. Each decision is fact-specific, and therefore previous case-law is unlikely to be of much assistance as each case will turn on its facts. Some of the factors that may be relevant are discussed above.
5. Factors usually cited in favour of naming the defendant are the principle of open justice (see page 3 above), deterrence and the seriousness of the crime. The age of the defendant, and the fact that they may be named once they turn 18, may also be relevant (see page 23 below).

International law

International law is not directly applicable in the UK courts. However, it may be relevant, for example if a child's rights under Article 8 ECHR are engaged.⁵⁴

The following international law provisions are worth noting:

1. Article 3 UNCRC states that 'the best interests of the child' must be 'a primary consideration' in all actions concerning children, including those undertaken by courts of law.
2. Article 40 UNCRC specifically provides that children in criminal proceedings should have their privacy protected:

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

3. The UN Committee on the Rights of the Child has expanded on the principle in Article 40 UNCRC in General Comment No 24 (2019) on children's rights in the child justice system.⁵⁵ The Committee states:⁵⁶

In the Committee's view, there should be lifelong protection from publication regarding crimes committed by children. The rationale for the non-publication rule, and for its continuation after the child reaches the age of 18, is that publication causes ongoing stigmatization, which is likely to have a negative impact on access to education, work, housing or safety. This impedes the child's reintegration and assumption of a constructive role in society. States parties should thus ensure that the general rule is lifelong privacy protection pertaining to all types of media, including social media.

4. A child's right to privacy, including to anonymity in the criminal justice system, is reiterated in various forms in other international instruments and guidance including guidelines 6 and 7 of the 'Council of Europe guidelines on child-friendly justice',⁵⁷ and rule 8 of the 'UN Standard minimum rules for the administration of juvenile justice' ('the Beijing Rules').⁵⁸

54 R (SC) v Secretary of State for Work and Pensions [2022] AC 223 at [86] and [92]

55 CRC/C/GC/24, 18 September 2019, bit.ly/3qJQmUW. The Committee represents the authoritative international view of what the UNCRC requires, as recognised in R (C) v Secretary of State for Justice [2008] EWCA Civ 882, [2009] QB 657 at [60], citing the speech of Lady Hale in R (Williamson) v Secretary of State for Education and Employment [2005] 2 AC 246 at [84] and [86]

56 At para 70

57 Adopted by the Committee of Ministers of the Council of Europe on 17 November 2010, bit.ly/3Ba0UBO

58 Adopted by General Assembly resolution 40/33 of 29 November 1985, bit.ly/3QJZmnn

Evidence

Evidence will be necessary to support applications for reporting restrictions (or to oppose their removal). In most cases, that can be put before the court from professionals or people affected in the form of witness statements or expert reports in the usual way.

The following individuals and organisations may provide evidence or a relevant opinion on the impact on the child of being named:

1. Expert psychologists/psychiatrists, especially if reports have been obtained during the trial or there is a concern about the mental health or vulnerability of the child.
2. The YOT, who will usually be considering the rehabilitation of the child in any pre-sentence report. The YOT can be asked to consider the effect on the child of lifting any reporting restrictions, considering both the impact on their welfare generally and also how it may affect their rehabilitation and any work YOT is planning to do with the child. These reports may also gather evidence from other professionals working with the child.
3. Parents or other family members, including foster parents.
4. The local authority, if they have responsibility for the child. If the child is a 'looked after child' (and any child who is remanded acquires looked after status), then social workers or other professionals who know the child may be able to assist the court as to the impact of publication on the child's welfare. In some cases where the local authority has parental responsibility, it has applied to become a party to proceedings, so as to instruct counsel to make oral submissions (in addition to providing written evidence): see reference in *D v Person Unknown*.⁵⁹
5. Custodial establishment where the child is being held, if remanded.
6. Any other professional working with the child, including teachers.

The above list is not exhaustive, and other professionals, or indeed others who know the child, may be well placed to assist. CPS guidance also suggests that the police or governor of the secure establishment where the child is being, or is likely to be, held, should be notified to gain their views on naming the child.⁶⁰

⁵⁹ [2021] EWHC 157 (QB) at [13]

⁶⁰ 'Reporting restrictions – children and young people as victims, witnesses and defendants', CPS (above), under 'Application to lift restrictions'

Youth court – power to dispense with anonymity

Although the court has a discretion to dispense with the automatic reporting restrictions, it is very uncommon for the youth court to choose to lift reporting restrictions.

In *McKerry v Teesdale and Wear Valley Justices*,⁶¹ Lord Bingham stated that the court's powers to dispense with anonymity under s49(4A) CYPA 1933 'must be exercised with very great care, caution and circumspection' and it 'would

be wholly wrong for any court to' use this power as an 'additional punishment' or as a 'naming and shaming' exercise.⁶²

This has been expanded on further, most recently in *KL v R*⁶³ where the Court of Appeal summarised the relevant factors when considering making an exception to a reporting restriction as follows:⁶⁴

- (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 [YJCEA 1999] 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 CJ in the context of the 1933 Act in *McKerry v. Teesdale and Wear Valley Justice* (2000) 164 JP 355; [2001] EMLR 5 at para 19 .
 - (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.
- ... [other factors set out related to the test on appeal]

These are similar considerations to the balancing exercise undertaken under s45 YJCEA 1999, or s39 CYPA 1933, albeit with the balance more deci-

sively in favour of retaining protections for children where they have already been granted.

61 [2000] Crim LR 594, discussed above

62 Para [25]

63 [2021] EWCA Crim 200, [2021] QB 831

64 Para [67]

Procedure for making, lifting or varying reporting restrictions

Where reporting restrictions apply automatically, those representing children can remind the court of the relevant power and ensure that the restrictions are put in place.

Otherwise, the Criminal Procedure Rules (CrimPR) Part 6 apply to all reporting restrictions. The court can make, vary or lift a reporting order on application, or on its own initiative.⁶⁵ If an application is made, the representative should notify the other parties in advance, and comply with the requirements set out in CrimPR 6.4(3).

The CrimPR provide that orders can be made with or without an oral hearing but that any party

directly affected should be afforded the opportunity to make representations.⁶⁶ This may include representatives of the media, the prosecution, the defence or others that might be concerned with the child's welfare, such as the local authority and/or the establishment where the child is living. Anyone who is affected and wants to make representations must comply with the directions in rule 6.7. The representatives of a child defendant will need thorough evidence about the impact of reporting restrictions (see above).

⁶⁵ CrimPR 6.4(2), 6.5(2)

⁶⁶ CrimPR 6.2

Reviewing decisions on reporting restrictions

Overview

Where a reporting restriction is not made, or is lifted, and the child intends to challenge that decision, the decision may be stayed pending an appeal – see, for example, *Markham v R*.⁶⁷ It will

therefore be vital to inform the court of the intention to appeal, or at least the intention to consider an appeal, so that the names are not printed in the press prior to any such challenge.

Judicial review

Challenges to decisions not to grant reporting restrictions are usually conducted by way of judicial review. There is no ability to directly appeal the discharge of an anonymity order under s45 YJCEA 1999, so the only means of challenge is by review in the High Court: see *R v Lee (a minor)*⁶⁸ and *R v Aziz*.⁶⁹

In *KL v R*⁷⁰ the Court of Appeal confirmed that both orders made under s45 YJCEA 1999 and under s39 CYP A 1933 could be judicially reviewed. In addition, although there was no freestanding jurisdiction to appeal a s45 order, such an order could be considered as an ancillary matter if leave to appeal has been granted. Consequently, if leave is declined, there is no power to revisit reporting restrictions made under s45. The court also

concluded that the Divisional Court was better placed to address reporting restrictions, including through allowing interested parties such as the media to be involved and because such challenges could also be brought by that mechanism by victims and witnesses as needed.

It is less clear if an appeal against a decision of an adult magistrates' court needs to be conducted by way of judicial review. Certainly, that was the route of appeal used in *R (A) v Lowestoft Magistrates' Court*.⁷¹ However, s108 Magistrates' Courts Act 1980 provides for an appeal against sentence which is defined (under s108(3)) as 'any order made on conviction'. That might be thought to include an order to remove or vary a reporting restriction.

Appeals by the press

A member of the press (or other interested party) who wishes to appeal against a reporting restriction made in the Crown Court can appeal to the

Court of Appeal under s159 of the Criminal Justice Act 1988.

67 [2017] EWCA Crim 739, [2017] 2 Cr App R (S) 30

68 [1993] 1 WLR 103, [1993] 2 All ER 170, 96 Cr App R 188

69 [2019] EWCA Crim 1568, [2020] Crim LR 356 at [51]–[57]

70 [2021] EWCA Crim 200, [2021] QB 831

71 [2013] EWHC 659 (Admin), [2014] 1 WLR 1489

Turning 18

Reporting restrictions, whether made under s39 or s49 CYPA 1933 or s45 YJCEA 1999, will expire when the child turns 18. This is set out directly in the text of s49 CYPA 1933 and s45 YJCEA 1999, and has been confirmed as the position under s39.⁷² The only statutory provision for lifelong anonymity orders for children in criminal proceedings, in s45A YJCEA 1999, applies only to child victims and witnesses, and excludes defendants.

The only way to protect the identity of a defendant becoming known once the defendant turns 18 is to obtain a civil injunction from the High Court. That power has been recently reconfirmed by the Divisional Court in *RXG v Ministry of Justice*.⁷³ These injunctions are colloquially known as an exercise of the ‘Venables jurisdiction’, from the high-profile case in which the power was used. In *RXG*, the court described the power as ‘exceptional’. It granted the anonymity order for the (now adult) offender on the basis of the risk to his rehabilitation, his mental health and the fact he was a child at the time of the offending and had

been radicalised by others. The protective duties in Article 2 or Article 3 ECHR were not engaged. The decision was based on balancing his Article 8 rights against the Article 10 rights of the media, and a decision that the former outweighed the latter.

The re-establishment of the principles underlying anonymity injunctions has already resulted in more applications for such injunctions being made: from the three examples of exercise of the Venables jurisdiction since 2001, there have now been three such applications in the past three years.⁷⁴

The fact that a defendant is very likely to be named upon turning 18 has been used as an argument in favour of naming the defendant at the close of the trial, as the defendant will be named anyway.⁷⁵ However another case pointed out the importance of not naming a child before he has the ‘burden or benefit of adulthood’.⁷⁶

72 *R (JC) v Central Criminal Court* [2014] EWCA Civ 1777, [2015] 1 WLR 2865

73 [2019] EWHC 2026 (QB) [2020] 2 WLR 635

74 *D v Persons Unknown* [2021] EWHC 157 (QB); *Re Persons formerly known as Winch* [2021] EWHC 1328 (QB), [2021] EMLR 20 (albeit an informant not a child offender); and *DXB v Persons Unknown* [2020] EWHC 134 (QB), [2020] EMLR 13 (order not granted on the facts)

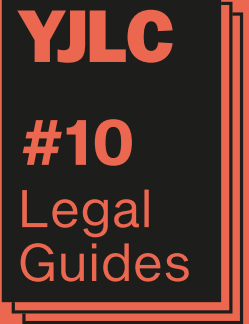
75 See for example, *R v Markham* [2017] EWCA Crim 739, [2017] 2 Cr App R (S) 30 at [89]

76 *Inner London Crown Court ex p Barnes* [1995] 7 WLUK 7

#10

Reporting restrictions for children in criminal cases

Written by Jennifer Twite in collaboration with Katya Moran and Laura Cooper at the Youth Justice Legal Centre. With thanks to Rosa Polascheck (Doughty Street Chambers) and Adam Straw KC (Doughty Street Chambers).



#01
Turning 18

#02
Intermediaries for
child defendants

#03
Child Criminal
Exploitation

#04
Criminal
Behaviour Orders

#05
Trauma Informed
Lawyering

#06
Criminal Practice
Directions

#07
Effective
Participation

#08
Police bail
and remand

#09
Court Bail
and remand

#10
Anonymity

#11
Sexual allegations

#12
Diversion

Youth Justice Legal Centre

yjlc.uk

The Youth Justice Legal Centre (YJLC) has been set up by the charity Just for Kids Law to provide legally accurate information, guidance and training on youth justice law. YJLC is a centre of excellence on youth justice law, providing:

- Guidance and expertise on youth justice law to safeguard children's rights in the youth justice system;
- A dedicated website with comprehensive information, legal resources and best practice guides for lawyers, judges, magistrates, youth offending teams, professionals, children and families;
- Training on youth justice issues for lawyers and non legal professionals working with children;
- Free specialist legal advice for children, their families, youth offending teams, the judiciary and lawyers.

Doughty Street Chambers

doughtystreet.co.uk

Doughty Street Chambers offers extensive expertise across numerous child rights-related areas and has wide-ranging experience in bringing ground-breaking litigation for and concerning children in public law, extradition, immigration, mental health, community care, prison law, trafficking, education, criminal justice, clinical negligence and inquests. Many of our members specialise in complex and developing areas concerning the rights of children, including female genital cutting (FGC) and children, abortion rights for vulnerable teenagers, unaccompanied minors' rights, the education rights of children in custody, inclusive education for disabled children, children's effective participation in criminal trials, and the rights of LGBTIQ children.

Just for Kids Law

justforkidslaw.org

Just for Kids Law is a UK charity that works with and for children and young people to hold those with power to account and fight for wider reform by providing legal representation and advice, direct advocacy and support, and campaigning to ensure children and young people in the UK have their legal rights and entitlements respected and promoted and their voices heard and valued.

The Dawes Trust

The Dawes Trust is a charity set up from funds of the estate of the late Christopher Dawes. The Trust's object is to fight crime, including organised crime, by the protection of people and property, the preservation of public order and the prevention and detection of crime for the public benefit.

The Trust provides funding to various organisations and projects in furtherance of its object.