

Introduction

Open justice is a fundamental principle of the criminal justice system in England and Wales. This means most criminal trials take place in open court.

Anonymity for children is protected by a court ordering 'reporting restrictions'. The right to privacy for children¹ and the duty to protect children's welfare² and their best interests³ creates a well-established exception to the open justice principle.⁴ Courts deciding whether to grant (or lift) reporting restrictions must balance a child's welfare needs and their best interests with the principle of open justice.

Anonymity is automatic for children in the youth court⁵ (with some exceptions: anti-social behaviour order, criminal behaviour order and civil injunction order, gang-related injunction proceedings in the youth court⁶). In the Crown Court and adult magistrates' court, the decision to grant anonymity is discretionary, courts may impose reporting restrictions to protect children's anonymity.⁷

Reporting restrictions prevent the media from reporting the child's name, address, school, place of work or any detail that might lead to a child being identified or any picture of the child. This includes online publications. Reporting restrictions do not prevent media sources from being able to report the facts and circumstances of a case even if they are unable to name a child defendant.

The protection of anonymity for child defendants lasts until their 18th birthday,⁸ victims and witnesses can ask the court for lifelong anonymity.⁹

¹ Article 8 (Right to Privacy and family life), European Convention on Human Rights

² Section 47, Art 3 UN Convention on the Rights of the Child

³ Paragraph 1, [In the matter of on application by JR38 for Judicial Review \(Northern Ireland\) \[2015\] UKSC 42 \(SC\)](#)

⁴ Article 10 (Freedom of Expression), European Convention on Human Rights

⁵ Section 49 Children and Young Persons Act 1933

⁶ The court retain a discretion to grant anonymity under section 39 Children and Young Persons Act 1933

⁷ Section 45 Youth Justice and Criminal Evidence Act 1999 (came into force, 13 April 2015)

⁸ [R \(on the application of JC & RT\) v Central Criminal Court, Court of Appeal \[2014\] EWCA Civ 1777](#)

⁹ Section 45a Youth Justice and Criminal Evidence Act 1999

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Key Points

Children have a right to privacy and being given anonymity protects their welfare, rehabilitation and reintegration into society. These are the aims and duties of the youth justice system.

Anonymity for children is automatic in criminal proceedings in the youth court.

Courts can grant anonymity to children in all other cases.

Step by Step Guide

Step 1: Is a child involved in the criminal case?

When a child is involved in a criminal case, (defendant, witness or victim) reporting restrictions should always be considered. Unless it is a criminal case in the youth court, **always** check whether reporting restrictions are in place.

Step 2: In the youth court: do automatic reporting restrictions apply?

If the case is in the youth court, reporting restrictions will automatically apply in most cases (section 49 Children and Persons Act (CYPA) 1933).

Unless there is an application for (or hearing for breach of) an anti social behaviour civil injunction ([Part 1, Anti-Social Behaviour, Crime and Policing Act 2014](#)), criminal behaviour order ([Part 2, Anti-Social Behaviour, Crime and Policing Act 2014](#)) or gang-related injunction ([Section 18 Crime and Courts Act 2013, Part 4 Policing and Crime Act 2009](#)). In these circumstances, courts can still protect a child's anonymity under section 39 Children and Persons Act (CYPA) 1933 - see arguments in Step 5.

(In rare cases, the court has the power to lift (remove) reporting restrictions - Go to - Step 6)

Step 3: Apply for discretionary reporting restrictions before the case is sent to the Crown Court

If a child is being sent to the Crown Court, the youth court has a discretion to impose reporting restrictions to protect the child's anonymity which will apply to proceedings in the adult court ([section 45 Youth Justice and Criminal Evidence Act 1999](#) - often called a 'section 45 order').

Step 4: In the adult magistrates' court: reporting restrictions for children jointly charged with adults

The court should use its discretion to impose reporting restriction to protect the anonymity of any child "concerned in the proceedings" ([section 45 Youth Justice and Criminal Evidence Act 1999](#) - often called a 'section 45 order'). This is because the child would have been entitled to automatic anonymity if they had been in the youth court ([Reporting Restrictions - Children and Young People as Victims, Witnesses and Defendants, CPS legal guidance](#)).

If a child is being sent to the Crown Court, the youth court has a discretion to impose reporting restrictions to protect the child's anonymity which will apply to proceedings in the adult court ([section 45 Youth Justice and Criminal Evidence Act 1999](#) - often called a 'section 45 order').

Step 5: Applying for discretionary reporting restrictions in the Crown Court

If a child has been sent to the Crown Court for trial, a section 45 order should have been made by the youth court. If not, an application for a section 45 order should be made at the first hearing in the Crown Court ([section 45 Youth Justice and Criminal Evidence Act 1999](#)).

- The courts have a duty to consider children's welfare ([section 44 Children and Young Persons Act 1933](#)). Provide reasons why the loss of anonymity would affect the child's welfare (this may include their family life, living arrangements, education and training).
- The future progress of child and their rehabilitation may well be assisted by restricting publication. (*C v Winchester CC* [2014] EWCA Crim 339, para 10; *R (on application of Y) v Aylesbury Crown Court* [2012] EWHC 1140 (Admin), para 26).
- The best interests of the child must be a primary consideration (Article 3 UNCRRC).
- Further obligations are imposed under international law and human rights law to protect children's privacy (Article 8 ECHR). Children should have their privacy protected at all stages of criminal proceedings (Art 40 2(b)(vii) of the UNCRRC).
- When there is tension between open justice and the right to privacy for children. The tension between the two competing principles must be weighed up by the judge in each case (*McKerry v Teesdale and Wear Valley* (2000)).

These principles can also be used when applying for a section 39 order in the youth court in situations where reporting restrictions are not automatically imposed.

Step 6: Lifting reporting restrictions in the youth court

The court has a discretion to lift (remove) reporting restrictions for the purpose of avoiding injustice. For example, if the defence want publicity to find witnesses or want publicity to find a missing defendant (Section 49(5)-(7) Children and Young Persons Act 1933).

Removing the anonymity should rarely be used:

"It is very difficult to see any place for 'naming and shaming'... This will rarely be the case, and the justices making an order under s 49(4A) must be clear in their minds why it is in the public interest to dispense with the restrictions." (*McKerry v Teesdale and Wear Valley* (2000))

Step 7: Lifting (removing) or relaxing reporting restrictions in the adult courts

Once convicted or sentenced, the press may apply for the reporting restrictions to be lifted (removed) or relaxed. The balancing act between a child's welfare and right to privacy and the public interest weighs slightly more in favour of the public interest post-conviction.

- Factors relevant to continuing to protect anonymity are that the child's rehabilitation and reintegration into society are likely to be made more difficult if there is publicity of their offending, it may make it difficult or unsafe for a child to go out in public because of fear of reprisals. This may disrupt a child's education, prospect of gaining employment, ability to comply with any supervision in the community, even causing children to have to move out of the area taking them away from family support particularly if a child's family, particularly siblings, could be put at risk of bullying, stigma, retribution or other risks.
- The principles of the youth justice system are different from the adult criminal justice system. The principle aim of the youth justice system is to prevent re-offending (Section 37 Crime and Disorder Act 1998), the court must have regard to the children's welfare (Section 44 Children and Young Persons Act 1933) and has a duty to promote rehabilitation and reintegration of children (Sentencing Guidelines Council, Overarching Principles: Sentencing Youths, para 1.3).
- "Identifying a defendant in the media may constitute an additional and disproportionate punishment on the child or young person. In rare cases ... the child or young person may be at serious personal risk if identified."(R (on application of Y) v Aylesbury Crown Court [2012] EWHC 1140 (Admin), para 42);
- The Judge may decide to permit the publication of some details, but not all. (R (on application of Y) v Aylesbury Crown Court [2012] EWHC 1140 (Admin).

Domestic Legislation

[Section 44\(1\) Children and Young Persons Act 1933](#)

Section 49 Children and Young Persons Act 1933

Section 45 Youth Justice and Criminal Evidence Act 1933

Paragraphs 3G.5, 3G.6 Criminal Practice Direction 2013

International Law

Article 3, 6, 8,10 European Convention on Human Rights

Article 3, 16(1), 40 UN Convention on the Rights of the Child

Guideline 6 & 7, European Guidelines on Child Friendly Justice¹⁰

Rule 8, United Nations Minimum: Rules for the Administration of Justice (Beijing Rules)

The UN Committee on the Rights of the Child – General Comment: Children’s rights in juvenile justice (CRC/C/GC/10, 25/4/2007)¹¹

¹⁰ Adopted by the Committee of Ministers of the Council of Europe on 17 November 2010

¹¹ The Committee represents the authoritative international view of what the UN CRC requires, see *R (C) v Secretary of State for Justice* [2008] EWCA Civ 882 at [60], citing the speech of Lady Hale in *R (Williamson) v Secretary of State for Education and Employment* [2005] 2 AC 246, [84] and [86].

Case Law

C v Winchester CC [2014] EWCA Crim 339

Judicial review of a judge's decision to lift a section 39 order at the conclusion of the sentencing hearing concerning a 17 year old defendant.

The balance was between the public interest in knowing a defendant's identity and the need for the child's effective rehabilitation as well as his own interest in maintaining his anonymity. "The fact remains that he is still under 18 and the court is under a statutory duty to have regard to his welfare." (para 8)

The court found that the defendant's long criminal record, was a factor to be weighed in favour of anonymity because it meant that there is "a strong public interest in promoting his rehabilitation". (para 10)

R (on application of Y) v Aylesbury Crown Court [2012] EWHC 1140 (Admin)

This was a review of a decision to lift reporting restrictions to allow the defendant's name and address to be publicised. The High Court concluded Y's welfare was best served by an order restricting publication. The public interest on the facts of this case did not take precedence.

Key principles (para 26)

- The defendant must satisfy court that there is good reason to impose the order, though not to any particular burden or standard of proof
- The court must have regard to child/young person's welfare in accordance with mandatory requirement of s44 CYPA 1933
- The future progress of child/young person may well be assisted by restricting publication
- The court should consider the public interest in knowing the outcome of court proceedings and the valuable deterrent effect that identification of those guilty of at least serious crimes may have on others
- Any order restricting publication must be necessary, proportionate and there must be a pressing social need for it
- The court must balance welfare of child (likely to favour restriction on publication) with public interests and requirements of Article 10 (likely to favour no restriction on publication)

- Prior to conviction, welfare of child is likely to take precedence over the public interest. After conviction, the age of the defendant and the seriousness of the crime will be particularly relevant.
- Where the competing interests are evenly balanced, the court should make an order restricting publication.
- The Judge may decide to permit the publication of some details, but not all.

“Publication could well have a significant effect on the prospects and opportunities of the young person, and therefore, on the likelihood of effective integration into society. Identifying a defendant in the media may constitute an additional and disproportionate punishment on the child or young person. In rare cases (and not in this case) the child or young person may be at serious personal risk if identified.”

Re S(FC) (a child) (Appellant) [2004] UKHL 47 (SC)

Lord Steyn applied the test as set out in *Campbell v MGN Ltd* [2004] 2 WLR 1232 that neither article 8 or article 10 has precedence over the other. Where the values of the two are in conflict, intense focus on comparative importance of specific rights being claimed in this case is necessary. Justifications for interfering with each right must be taken into account. Proportionality test must be applied.

McKerry v Teesdale and Wear Valley Justices [2000] Crim LR 594 (Div. Ct.)

Relates to section 49 in which Lord Bingham CJ in ruling that naming and shaming of offenders is unlawful stated that s39 and s49 CYPA 1933 must be read against international law obligations and concluded that “very great weight” must be given to the welfare of such a child or young person involved in legal proceedings.

“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.”

The court has the discretion in appropriate cases to order disclosure of the name of a child convicted before it of criminal charges where the public interest properly required this. *“must be*

exercised with very great care, caution and circumspection' and it would be wholly wrong to use this power as an additional punishment or as a 'naming and shaming' exercise."

R v Leicester Crown Court ex parte S (a minor) [1992] 2 All ER 659

When considering s39 Watkins LJ said at page 662:

"the mere 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 ways permitted by section 39 and it will, in our opinion, only be in rare and exceptional cases that directions under section 39 will not be given, or having been given will be discharged."

R(SG) v Secretary of State for Work and Pensions [2015] UKSC 16

[83]It is not in dispute that the Convention rights protected in our domestic law by the Human Rights Act can also be interpreted in light of international treaties such as the UNCRC, that are applicable in the particular sphere.

[84] The approach adopted is illustrated in *V v United Kingdom* (1999) 30 EHRR 121, where the European Court had regard to articles 37 and 40 of the UNCRC when considering how the prohibition of inhuman and degrading treatment in article 3 of the ECHR applied to the trial and sentencing of child offenders and, in a domestic context, by *R(T) v Chief Constable of Greater Manchester Police* [2014] UKSC 35, where this court referred to article 40 of the UNCRC when considering whether legislation regulating the disclosure of offences committed by children was compatible with article 8 of the ECHR

T v UK and V v UK [1999] 30 EHRR 121

The European Court of Human Rights cited the Beijing Rules as well as the UN convention on the Rights of the Child.

Non-statutory Guidance

Standing Committee for Youth Justice – What’s in a Name? The Identification of Children in Trouble with the Law

http://scyj.org.uk/wp-content/uploads/2014/05/Whats-in-a-Name-FINAL-WEB_VERSION_V3.pdf

Judicial College – Reporting Restrictions in Criminal Proceedings June 2014

<http://www.societyofeditors.co.uk/userfiles/files/ReportingRestrictionsGuide2014.pdf>

Judicial College – Reporting Restrictions in Criminal Proceedings 2015¹²

Other issues

Pre-charge anonymity

There is currently no statutory protection for reporting restrictions before charge.

Section 44 of the Youth Justice and Criminal Evidence Act 1999 would offer this protection but it has not been brought into force. This creates an anomaly where a child being questioned by the police can be named but then will become anonymous once appearing in the youth court.

Turning 18

Reporting restrictions made under section 39 of CYPA 1933, section 45 and 49 YJCEA 1999 will expire when the child turns 18. Where the child turns 18 during proceedings, section 45 orders continue until the end of proceedings.

Child victims and child witnesses can apply for lifelong anonymity (section 45a YJCEA 1999).

Youth Court Appeals

The Crown Court hears appeals from the youth court, these take place in public even though reporting restrictions should apply automatically. An application for a private hearing in the Crown can be made ([CPR 63.7](#)).

¹² The Judicial College Reporting Restrictions Guide is currently being revised after requesting submissions from child rights organisations.