

Anonymity and reporting restrictions for children in criminal cases

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Please note that at the time this guide was published Parliament is considering the [Police, Crime, Sentencing and Courts Bill](#) which may bring into force significant changes to this area.



“Further consideration should be given by the Ministry of Justice to whether the law on youth reporting restrictions should be amended to provide for them to apply automatically in the Crown court (as they currently do in the youth court), to children involved in criminal investigations and for the lifetime of the defendants.”

- Charlie Taylor’s Review of the Youth Justice System, 2016, para 107

Anonymity for children

There are important exceptions to the principle of open justice¹ and anonymity for children is one of them because of:

- the right to privacy for children²
- the duty to protect a child’s welfare;³ and
- [consideration of a child’s best interests.](#)

The starting position in the adult courts, in light of the principle of open justice, is that the public has a right to be present unless the court takes the decision to “sit in camera.” Conversely anonymity for children appearing in the youth court is automatic⁴, albeit with some exceptions: criminal behaviour orders, civil injunction orders and gang-related injunction proceedings.⁵

In the adult courts, the media is permitted to report the identity of a young person, whether a defendant or witness, unless an order to the contrary is made by the court. Keeping the identity of a child anonymous is not inconsistent with the open justice principle; the media can usually still report all the details of the case other than the child’s name, address, school/educational establishment, photograph and other identifying information.⁶



¹ Article 10 (Freedom of Expression), European Convention on Human Rights

² Article 8 (Right to Privacy and family life), European Convention on Human Rights

³ Art 3(1) UN Convention on the Rights of the Child

⁴ Section 49, Children and Young Persons Act 1933

⁵ The court retains a discretion to grant anonymity under section 39 Children and Young Persons Act 1933

⁶ Section 49 ((1) and 3A), Children and Young Persons Act 1933

Youth court proceedings, in contrast to proceedings in the adult courts, are not public hearings. The only people permitted in the youth court during the hearing of a case are:⁷

- a) Members and officers of the court.
- b) Parties.
- c) The child's parent, guardian or other supporting adult.
- d) Legal representative(s) - only those involved in that particular case.
- e) A witness.
- f) Anyone else directly involved in the case such as the relevant Youth Offending Team (YOT) representative.
- g) Bona fide representatives from the press or news reporting organisation (note that they are subject to the reporting restrictions considered below).
- h) Additional people may be authorised to be present by the youth court.

Reporting restrictions

These apply whether the child is a witness, a victim or a defendant or if a child is concerned in some way in the proceedings, for example by being a child or sibling of a defendant. The restrictions on reporting cases such as these extend to the publication in newspapers, on the internet, on television and on online media (such as Twitter and Facebook),⁸ of a child's name, address, photograph or other information that might identify them directly or indirectly.

Even the naming of a school or work placement could lead to identification.⁹ A breach of these reporting restrictions may constitute a criminal offence, punishable by an unlimited fine.¹⁰

⁷ Section 47(2), Children and Young Persons Act 1933, CrimPR r.24.2 (1) (c), youth court Bench Book (2016) p. 1, para 4

⁸ Judicial College Bench Book, Youth Defendants in the Crown Court (March 2021) para 11-3.

⁹ Statutory provisions are found at s.49 of the CYPA 1933 amended by sch.2, para 3 of the YJCEA 1999 effective from 13 April 2015

¹⁰ Section 49(9), Children and Young Persons Act 1933



Young victims of rape and other serious sexual offences

[Victims of sexual offences, including youth victims, have automatic anonymity](#) for life.

An application can also be made for reporting restrictions to protect the anonymity of young witnesses in the context of these offences under section 45 or 45A Youth Justice and Criminal Evidence Act 1999; see 5 below.

Crown Court appeals from the youth court

Reporting restrictions apply automatically pursuant to s.49, Children and Young Persons Act (CYPA) 1933. However, whilst s.47 of that Act provides for youth court proceedings to be closed to the wider public, any application for a private hearing in the Crown Court must be made under the usual rules for trials in private (see CPR 2020 Rule 6.6), which are rarely granted.

Sections 45 and 45A YJCEA 1999 (replaces s.39 CYPA 1933 in criminal proceedings)

Since 13 April 2015 there have been two main powers to make discretionary reporting restrictions for those who are under 18.

1) Under s.45 of the Youth Justice and Criminal Evidence Act 1999 (YJCEA) a criminal court can grant anonymity to any young person under 18 who is concerned in adult criminal proceedings. Such anonymity will last until that person reaches the age of 18. This power is not available to youth courts, as s.49 CPYA provides automatic anonymity in those proceedings.

2) In addition, under s.45A of the YJCEA, criminal courts, including youth courts, are given a power to grant life-long anonymity to juvenile victims and witnesses, bringing the law for under-18s into line with the law for adult victims and witnesses. However, in line with the law in relation to adult defendants, there is no power under s.45A to grant life-long anonymity to juvenile defendants.

The exercise of the Court's discretion must be made by taking into account:

- the importance of— (a) dealing with criminal cases in public; and (b) allowing a public hearing to be reported to the public;¹¹



- that a restricting publication is a departure from the general principle that proceedings are open and can be freely reported on;¹²
- whether the aim sought by the proposed order cannot be achieved by some lesser measure;¹³
- the welfare of the child;¹⁴
- and whether the proposed order is proportionate and compliant with Article 10 ECHR.

The Court's exercise, therefore, involves a balance between the welfare of the child and the principles of open justice/freedom of expression. A breach of these reporting restrictions is an offence punishable on summary conviction with an unlimited fine.¹⁵

Special protection for school teachers

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

Case-by-case advice

Where a child is a witness, victim or defendant:

Reporting restrictions should always be an important consideration for the advocate. Anonymity in the youth court is automatic, subject to some exceptions, but in any other court the advocate should check that reporting restrictions are in place.

If a 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 in the adult court proceedings pursuant to s.45 YJCEA.

When a child is jointly charged with an adult appearing in the adult magistrate's court:

The court should be invited to use its discretion to impose reporting restrictions to protect the anonymity of any child "concerned in the proceedings" pursuant to s.45 YJCEA - see above.

¹¹ Section 59, Youth Justice and Criminal Evidence Act 1999

¹² Criminal Practice Direction 6B.4(b)

¹³ Ibid 6B.4(C)

¹⁴ Section 44 Children and Young Persons Act 1933 and Section 45(6) and 45A(8)(a) Youth Justice and Criminal Evidence Act 1999

¹⁵ Section 49 Youth Justice and Criminal Evidence Act 1999

Cases in the youth court:

Reporting restrictions will automatically apply in most cases (section 49 CYPA 1933). The exceptions are:

- An application for (or hearing for breach of) an anti-social behaviour civil injunction (Part 1, Anti-Social Behaviour, Crime and Policing Act 2014)
- A 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, the court can still protect a child's anonymity under section 39 CYPA 1933. The court retains the power to lift (remove) reporting restrictions.

How to make an application for reporting restrictions where a child is to be tried in the Crown Court:

A s.45 order should have been made by the youth court. If not, an application for a s.45 order should be made at the first hearing in the Crown Court.

The courts have a duty to consider the child's welfare pursuant to s.44 CYPA 1933. The advocate should consider and make submissions as to the reasons why the loss of anonymity would affect the child's welfare. Arguments can include considerations of family life, living arrangements, education and training. The following authorities are relevant:

- Restriction of reporting can assist in the future progress and rehabilitation of the child even in serious cases where a defendant has a history of offending: *C v Winchester CC* [2014] EWCA Crim 339. Note that the principal aim of the youth justice system is to prevent offending.¹⁶
- Any order lifting restrictions must be necessary, proportionate, and there must be a pressing need for it. Having conducted the balancing exercise, if the factors favouring a restriction and those favouring publication were evenly balanced the court had to make an order restricting publication: *R (on application of Y) v Aylesbury Crown Court* [2012] EWHC 1140 (Admin), paragraph 26.
- When there is a tension between the principle of 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 individual case: *McKerry v Teesdale and Wear Valley* (2000) 164 J.P. 355. See also: *R (on the application of C) (Appellant) v Secretary of State for Justice (Respondent)* [2016] UKSC 2 at para 18: "[I]n many, perhaps most cases, the important safeguards secured by a public hearing can be secured without the press publishing or the public knowing the identities of the people involved. The [media] interest protected by publishing names is rather different..."

¹⁶ Section 37, Crime and Disorder Act 1988

The [Judicial College Bench Book on Youth Defendants in the Crown Court](#) (in section 11 at paragraph 42) suggests 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 on the Crown Court because he or she has been jointly charged with an adult, and where – were they being tried alone – the trial would be taking place in the youth court where they would have the protection of the automatic prohibition”.

Making an application to lift reporting restrictions imposed by s.49 (4A)-(7) in the youth court:

This can be done in one of three ways;

- 1) either on the basis that it is appropriate to avoid injustice to the young person;
- 2) where it is deemed necessary to allow for the apprehension of a young person who is unlawfully at large. This second provision relates only to a juvenile who is charged with or convicted of a specified violent or sexual or terrorism offence, or an offence which would be punishable in the adult court with a sentence of 14 years or more. An application under this limb requires the application to be made by or on behalf of the Director of Public Prosecutions, and any notice must be served on the legal representatives of the juvenile concerned;
- 3) where a juvenile has been convicted of an offence and the court is satisfied that naming the convicted juvenile is in the public interest. All parties must be given an opportunity to make submissions. Such a lifting of the ban on publicity must be approached with caution, and the authorities noted above are directly relevant.

Lifting or relaxing reporting restrictions in the Crown Court:

Reporting restrictions may be varied or removed where it is in the interests of justice;¹⁷ or the court is satisfied that the effect of the reporting restriction is to impose a ‘substantial and unreasonable restriction’ on the reporting of the proceedings and that it is in the public interest to remove or relax that restriction.¹⁸

Once convicted or sentenced, the press may apply for the reporting restrictions to be lifted or relaxed. Post-conviction, the balancing act between competing principles of open justice and the child’s welfare may weigh more heavily in favour of public interest.¹⁹

The case of [Markham and Edwards v The Queen \[2017\] EWCA Crim 739](#) concerned appeals against sentence and an appeal to lift a reporting ban and allow unrestricted reporting. Having balanced the arguments in relation to competing principles (primarily articles 8 and 10 ECHR), the Court of Appeal came down firmly in favour of lifting reporting restrictions on the basis that it is in accordance with the law, it pursues a legitimate aim and is a reasonable and proportionate measure. Note that this was an exceptional case concerning murders in a family context.

¹⁷ Section 45(4) and section 45A(11)(a), Youth Justice and Criminal Evidence Act 1999

¹⁸ Ibid, Section 45(5) and section 45A(11)(b).

¹⁹ R v Winchester Crown Court [2000] 1 Cr App R 11, 13.

Advocates resisting such an application may wish to consider whether any of the following apply:

- Publicity of offending will inevitably make the rehabilitation and reintegration into society more difficult for a child.
- Restrictions should not be lifted to 'name and shame' the Defendant or as an additional form of punishment.²⁰
- The risk of reprisals may make it unsafe or frightening for a child to venture out publicly. The knock-on effect of this will be the impact on a child's education, employment, ability to socialise, take advantage of geographically-placed family support, ability to comply with supervision protocols, disengagement with family, siblings and extended family.²¹
- Family members, including other children, can become the victims of abuse or bullying.
- Unlike the adult criminal justice system, the principal aim of the youth justice system is to prevent re-offending and the court must have regard to the children's welfare. It has a duty to promote rehabilitation and reintegration of children.²²
- It should also be remembered that the Judge has the power to allow publication of some but not all of the details.

²⁰ R (on application of Y) v Aylesbury Crown Court [2012] EWHC 1140 (Admin),

²¹ Ibid at para 42

²² Sentencing Guidelines Council, Overarching Principles: Sentencing Youths, para 1.3

In [R v Ayam Aziz \[2019\] EWCA Crim 1568](#) at [36], the Court of Appeal emphasised the decision was 'an exercise of judgment, requiring the court to balance the competing claims of privacy, a child's welfare and open justice'. The Court in that case distilled the following key principles:

- 1) The general approach to be taken is that reports of proceedings 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 knowing the identity of those in the community who have been guilty of criminal conduct and may, therefore, present a danger or threat to the community in which they live: *R v Leicester Crown Court ex p S (A Minor)* [1993] 1 WLR 111, 156 (Watkins LJ); Markham [80].
- 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) will not be given or, having been given, will be discharged: *ibid*.
- 3) Very great weight must be given to the welfare of such a child or young person. Power to dispense with anonymity must be exercised with very great care, caution and circumspection; the court must be clear in its mind why it is in the public interest to dispense with the restrictions, which will very rarely be the case: *McKerry v Teesdale and Wear Valley Justices* (2000) 164 JP 355 [2001] EMLR 5, Markham [81].
- 4) It is not the case, however, that the welfare of the child or young person will 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 and the press may report the proceedings, as made clear by the House of Lords in *Re S*: Markham [82].



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