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Reporting Restrictions in the Criminal Courts

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Foreword

From the Rt Hon Lord Judge, Lord Chief Justice of England and Wales

In May 2000 an event took place which would have seemed utterly remarkable to older generations of the judiciary and news editors and journalists. Their representatives worked closely together, each fully respecting the independence of the other, to address the misunderstandings and problems to which reporting restrictions both in the Crown Court and the magistrates' court can give rise. The results of their efforts were, I believe, immensely valuable both to judges and magistrates and to journalists and editors all of whom might be confronted, often unexpectedly, with areas of uncertainty for which no immediate answer could be found in the books likely to be available at court. No one wanted a jurisprudential disquisition and no one wanted delay while lawyers were instructed, nor indeed the consequent expense of doing so. The objective was to produce a practical guide which would provide rapid answers to immediate problems in a form to which both the judiciary and the magistracy and the media could refer with equal confidence for authoritative guidance. That objective was, I believe, to the overall advantage of the administration of justice.

The essential principles of open justice in the criminal courts which underpinned that remarkable collaboration are unchanged. In any society which embraces the rule of law it is an essential requisite of the criminal justice system that it should be administered in public and subject to public scrutiny. For this purpose the representatives of the media reflect the public interest. However, as is well known, there are a number of statutory exceptions to these principles. Hence the occasions of difficulty and uncertainty which can sometimes arise.

The time had come for fresh guidance which would take account of developments over the last decade or so, and their incorporation and assimilation into the guidance. At the invitation of representatives of

the published media, I chaired a meeting, held on 9 April 2008, between the judiciary, the Society of Editors, the Newspaper Society, Times Newspapers Ltd, Trinity Mirror plc, the Press Association and Reuters. It was readily agreed that a new edition of the guidance was required, not least because, quite apart from any necessary updating, the issue of fresh guidance would have a beneficial impact generally on the open operation of the criminal justice system, principles which can bear endless repetition. Our objective was to ensure that those with a professional interest in the making of orders restricting reports of legal proceedings should have access to a modern, practical guide to the statutory and common law principles which should be applied.

The present guide owes its legal accuracy and practical effectiveness to the work of Guy Vassall-Adams of Doughty Street Chambers, proof-read, approved and gratefully adopted by the Judicial Studies Board. The guide is available to the judiciary, the media and the public on the JSB website (www.jsboard.co.uk), as well as on the websites of the Newspaper Society (www.newspapersoc.org.uk) and the Society of Editors (www.societyofeditors.org). A dedicated checklist will be included in the magistrates' courts bench book.

I am, as before, grateful for the efforts both of the industry and the JSB for the production of this impressive second edition of the guide to Reporting Restrictions in the Criminal Courts.

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CHECKLISTS

Points to consider before making an order

Media and public access to proceedings in the magistrates' court and Crown Court – advice and guidance for magistrates and judges

Introduction

In recognition of the open justice principle, the general rule is that justice should be administered in public. To this end:

- Proceedings must be held in public.
- Evidence must be communicated publicly.
- Fair, accurate and contemporaneous media reporting of proceedings should not be prevented by any action of the court unless strictly necessary.

Therefore, unless there are exceptional circumstances laid down by statute law and/or common law the court must not:

- Order or allow the exclusion of the press or public from court for any part of the proceedings.
- Permit the withholding of information from the open court proceedings.
- Impose permanent or temporary bans on reporting of the proceedings or any part of them including anything that prevents the proper identification, by name and address, of those appearing or mentioned in the course of proceedings.

The courts and Parliament have given particular rights to the press to give effect to the open justice principle, so that they can report court proceedings to the wider public, even if the public is excluded.

Guidance follows on the recommended approach to follow when making decisions to exclude the media or prevent them from reporting proceedings in the courts. The guidance takes the form of an easy reference checklist for use in court.

In this document reference is made throughout to the media. This includes the press, radio, television, press agencies and online media.

Checklist

A structured approach for magistrates and judges

The general rule is that the administration of justice must be done in public. If the court is asked to exclude the media or prevent them from reporting anything, however informally, do not agree to do so without first checking whether the law permits the court to do so. Then consider whether the court ought to do so. Invite submissions from the media or their legal representatives. The prime concern is the interests of justice.

1 Magistrates should seek legal advice

Magistrates should seek the advice of the clerk/legal adviser on the circumstances in which the law allows the court to exclude the media, withhold information, postpone or ban reporting before considering whether it would be a proper and appropriate use of that power in the case before the court.

2 Check the legal basis for the proposed restriction

Is there any statutory power which allows departure from the open justice principle? What is the precise wording of the statute? Is it relevant to the particular case?

Or is the applicant suggesting that the power for the requested departure from the open justice principle is derived from common law and the court's inherent jurisdiction to regulate its own proceedings? If so, does the case law actually support that contention?

3 Is action necessary in the interests of justice?

Is action necessary in the interests of justice? Automatic restrictions upon reporting might already apply, or there may be restrictions on reporting imposed by the media's codes, or as a result of an agreed approach.

Has the applicant produced the factual evidence necessary to the court's assessment of his case, where the law might require this?

Is any derogation from the open justice principle really necessary? Always consider if there are there any less restrictive alternatives available.

4 If restrictions are necessary how far should they go?

Reporting restrictions must be proportionate. Always check whether the same objective might be achieved by a more narrowly tailored restriction.

5 Invite media representations

Invite oral or written representations by the media or their representatives, as well as legal submissions on the applicable law from the prosecution, in addition to any legal submissions and any evidence which the law might require in support of an application for reporting restrictions from a party.

The court should invite media representations at the time it is first considering an order and, if an order is imposed, it should hear media representations as to whether the reporting restriction should be lifted or varied.

In the Instructions to Prosecution Advocates, the Director of Public Prosecutions (DPP) has highlighted the role of the prosecution in respect of safeguarding open justice, including opposition to reporting restrictions applications, where appropriate.

6 As soon as possible after oral announcement of the order in court, the order should be committed to writing

If an order is made, the court must make it clear in court that a formal order has been made and its precise terms. Magistrates should seek the advice of the clerk/legal adviser on the drafting of the order and the reasons for making it. It may be helpful to suggest at the same time that the court would be prepared to discuss any problems arising from the order with the media in open court, if they are raised by written note.

The reporting restrictions order should be in precise terms, giving its legal basis, its precise scope, its duration and when it will cease to have effect if appropriate. The reasons for making the order should always be recorded in the court record.

7 Notifying the media

The court should have appropriate procedures for notifying the media that an order has been made. Copies of the written notice must be provided to the media and members of staff should be available and briefed to deal with media inquiries, inside and outside court hours.

8 Review

The court should exercise its discretion to hear media representations against the imposition of any order under consideration or as to the lifting or variation of any reporting restriction as soon as possible.

GUIDANCE

1 The open justice principle

The general rule is that the administration of justice must be done in public, the public and the media have a right to attend all court hearings and the media are able to report those proceedings fully and contemporaneously. The public has the right to know what takes place in the criminal courts and the media in court act as the eyes and ears of the public enabling it to follow court proceedings and to be better informed about criminal justice issues.

The open justice principle is central to the rule of law. Open justice helps to ensure that trials are properly conducted. It puts pressure on witnesses to tell the truth. It can result in new witnesses coming forward. It provides public scrutiny of the trial process, maintains the public's confidence in the administration of justice and makes inaccurate and uninformed comment about proceedings less likely. Open court proceedings and the publicity given to criminal trials are vital to the deterrent purpose behind criminal justice. Any departure from the open justice principle must be necessary in order to be justified.

Parliament has recognised the importance of contemporaneous media reports of legal proceedings by giving protection from liability for contempt of court and defamation to fair, accurate and contemporaneous reports of court proceedings.¹ The important role of the media as a public watchdog is also recognised under the right to freedom of expression guaranteed by Article 10 of the European Convention on Human Rights (ECHR).²

As public authorities under the Human Rights Act, courts must act compatibly with Convention rights, including the right to freedom of expression under Article 10 ECHR and the right to a public hearing under Article 6 ECHR. Any restriction on the public's right to attend court proceedings and the media's ability to report them must be necessary, proportionate and convincingly established.

The open justice principle

- The general rule is that the administration of justice must be done in public. The public and the media have the right to attend all court hearings and the media are able to report those proceedings fully and contemporaneously.
- Any restriction on these usual rules will be exceptional. It must be based on necessity.
- The need for any reporting restriction must be convincingly established and the terms of any order must be proportionate – going no further than is necessary to meet the relevant objective.

Whenever a court is considering excluding the public or the media, or imposing reporting restrictions, or hearing an application to vary existing restrictions, it should hear representations from the media. Likewise, the court should hear any representations made by the media for the variation or lifting of an order in order to facilitate contemporaneous reporting.

2 Hearings from which the public are excluded

2.1 Hearings *in camera*: all criminal courts

In accordance with the open justice principle the general rule is that all court proceedings must be held in open court to which the public and the media have access. The common law attaches a very high degree of importance to the hearing of cases in open court and under Article 6 ECHR the right to a public hearing and to public pronouncement of judgment are protected as part of a defendant's right to a fair trial.

The court has an inherent power to regulate its own proceedings, however, and may hear cases in secret (*in camera*) in exceptional circumstances. The only exception to the open justice principle at common law justifying hearings *in camera* is where the hearing of the case in public would frustrate or render impracticable the administration of justice.³ The test is one of necessity. The fact, for example, that hearing evidence in open court will cause embarrassment to witnesses does not meet the test for necessity.⁴

Hearing a case in secret has a severe impact upon the general public's right to know about court proceedings, permanently depriving it of the information heard in secret. It follows that if the court can prevent the anticipated prejudice to the trial process by adopting a lesser measure, e.g. a discretionary reporting restriction such as a postponement order under [s4\(2\) Contempt of Court Act 1981](#) (CCA), it should adopt that course.

Often the adoption of practical measures such as allowing a witness to give evidence from behind a screen or ordering that a witness shall be identified by a pseudonym (such as by a letter of the alphabet) and prohibiting publication of the witness's true name by an anonymity order under [s11 CCA](#) (see below), will remove the need to exclude the public. Another possibility, where only a small part of the witness's evidence is sensitive, is to allow that part to be written down and not shown to the public or media in court. However, measures such as these are also exceptional and stringent tests must be satisfied before they are adopted.

The necessity test requires that even where a court concludes that part of a case should be heard *in camera*, it must give careful consideration as to whether other parts of the same case can be heard in public and adjourn into open court as soon as exclusion of the public ceases to be necessary.

Circumstances which may justify hearing a case *in camera* include situations where the nature of the evidence, if made public, would cause harm to national security, e.g. by disclosing sensitive operational techniques or identifying a person whose identity for strong public interest reasons should be protected, e.g. an undercover police officer. The application to proceed *in camera* should be supported by relevant evidence and the test to be applied in all cases is whether proceeding *in camera* is necessary to avoid

the administration of justice from being frustrated or rendered impracticable. Disorder in court may also justify an order that the public gallery be cleared. Again the exceptional measure should be no greater than necessary. Representatives of the media (who are unlikely to have participated in the disorder) should normally be allowed to remain.

The court has a discretion under s37 Children and Young Persons Act 1933 to exclude the public but not *bone fide* representatives of the media during the testimony of witnesses aged under 18 in any proceedings relating to an offence against, or conduct contrary to, decency and morality. At common law, the court can exclude the public but allow media representatives to remain when considering exhibits in obscenity trials.

[Section 25 of the Youth Justice and Criminal Evidence Act 1999](#) permits the court to exclude persons of any description from the court, during the evidence of a child or vulnerable adult witness in cases relating to a sexual offence, or where there are grounds for believing that a witness has been, or may be, intimidated. However, it was not envisaged that the media should routinely be excluded alongside the rest of the public, even in such exceptional cases. Even where the media generally are to be excluded, one nominated representative of them must be permitted to remain.⁵

2.2 The Crown Court

Special procedures must be followed in the Crown Court where one of the parties seeks an order that a court should hear evidence *in camera* for reasons of national security or for the protection of the identity of a witness or other person (see [Criminal Procedure Rules 2005 r16.10](#)). These applications must be made by notice in writing seven days before the start of the trial. The application must be displayed within the precincts of the court. The media should be given an opportunity to make representations in opposition to the application. If the order is made, the proceedings have to be adjourned for a short period to allow for an appeal to the Court of Appeal under [s159 Criminal Justice Act 1988](#).

2.3 Hearings in chambers

These are hearings which are conducted in private for reasons of administrative convenience but which are generally not secret in the same way as hearings *in camera*. The [Criminal Procedure Rules 2005 rule 16.11](#) prescribes the limited range of Crown Court hearings that may be conducted in chambers. The [Administration of Justice Act 1960 s12](#) defines a number of specific situations where publication of information about proceedings in private (whether held *in camera* or in chambers) of itself constitutes a contempt of court, e.g. in matters relating to national security. In all other cases, to publish what has occurred in chambers is not a breach of confidence or a contempt of court unless it causes a substantial risk of serious prejudice to the administration of justice.⁶

While the public and media do not have a right to attend hearings in chambers, where they make such a request it should be accommodated where possible. Bail applications and appeals, for instance, are among the proceedings which the Rules say may be heard in chambers, but this does not mean that

there is any presumption in favour of excluding the public. While there will be many cases where this may justifiably occur, if the parties (or the media) ask to be admitted, the starting point should be in favour of open justice.⁷ What happens in hearings in chambers is not (outside the situations referred to above) confidential or secret and information can be made available to the public and media where requested and, in the case of judgments and orders, should be made available.⁸

2.4 Youth Courts and magistrates' courts

Section 47 of the Children and Young Persons Act 1933 generally bars the public from attending Youth Court proceedings, but makes specific exception for representatives of the media. The court has the discretion to admit other members of the public however and has been encouraged by the Home Office and Ministry of Justice to do so.⁹

Decisions by magistrates to hear cases *in camera* may be challenged through judicial review proceedings.

Hearings from which the public may be excluded

- The general rule is that all court proceedings must be held in open court to which the public and the media have access.
- The court may sit *in camera* in exceptional circumstances where doing so is necessary to prevent the administration of justice from being frustrated or rendered impracticable.
- Where lesser measures such as discretionary reporting restrictions would prevent prejudice to the administration of justice, those measures should be adopted.
- Where it is necessary to hear parts of a case *in camera* the court should adjourn to open court as soon as it is no longer necessary for the public to be excluded.
- The embarrassment caused to witnesses from giving evidence in open court does not meet the necessity test.

3 Automatic reporting restrictions

There are a number of automatic reporting restrictions which are statutory exceptions to the open justice principle. The existence of an automatic restriction may make any further discretionary restrictions unnecessary, e.g. there is no need to make a discretionary order in respect of a child victim of a sexual offence because the automatic restrictions as to the identity of any victim of a sexual offence apply. It may be of assistance in some cases for the judge to remind the media of any automatic restriction and to consider whether any guidance will assist the media to keep within such automatic restrictions. The statutory provisions give the courts the power to lift or vary the automatic restrictions in specified circumstances if asked to do so by a party or the media or on the court's own initiative.

3.1 Victims of sexual offences

Victims of a wide range of sexual offences are given lifetime anonymity (in respect of their identification as victims of the specified sexual offences) under the [Sexual Offences \(Amendment\) Act 1992](#).

The [1992 Act](#) imposes a lifetime ban on reporting any matter likely to identify the victim of a sexual offence, from the time that such an allegation has been made and continuing after a person has been charged with the offence.

The offences to which the prohibition applies are set out in [s2 of the 1992 Act](#) and include rape, indecent assault, indecency towards children and the vast majority of other sexual offences contrary to the [Sexual Offences Act 1956](#) and the [Sexual Offences Act 2003](#).

The [1992 Act](#) does not prohibit the naming of a defendant or a witness other than a victim in a sex case unless doing so would of itself be likely to identify the victim of the offence (see also 4.2 Protection of under-18s and 5.5 Jigsaw identification below).

A defendant in a sex case may apply for the restriction to be lifted if that is required to induce potential witnesses to come forward and the conduct of the defence is likely to be substantially prejudiced if no such direction is given.

There are three main exceptions to the anonymity rule. First, a complainant may waive the entitlement to anonymity by giving written consent to being identified (but only if he or she is over 15).¹⁰ Secondly, the media are free to report the victim's identity as the complainant of the offences alleged in any report of subsequent criminal proceedings, other than the actual trial or appeal in relation to the sexual offence, e.g. if the complainant were to be prosecuted for perjury in separate proceedings.¹¹ Thirdly, the court may lift the restriction to persuade defence witnesses to come forward, or where the court is satisfied that it is a substantial and unreasonable restriction on the reporting of the trial and that it is in the public interest for it to be lifted.¹² This last condition cannot be satisfied simply because the defendant has been acquitted or other outcome of the trial.¹³

3.2 Rulings at pre-trial hearings

Crown Court judges may make pre-trial rulings on the admissibility of evidence or on points of law relevant to a forthcoming trial under the [Criminal Procedure and Investigations Act 1996 sections 39 and 40](#).

Automatic reporting restrictions under [section 41 of the 1996 Act](#) prevent reporting of these pre-trial hearings. These restrictions continue until the trial has been concluded when they automatically cease to apply.

The trial judge may lift the restrictions before the conclusion of the trial if satisfied, after hearing any representations from the accused, that it is in the interests of justice. The restrictions will continue to apply, however, to any representations that were made by the accused in relation to the lifting of the restrictions.

3.3 Preparatory hearings

Crown Court judges may undertake preparatory hearings in long, complex or serious cases (under [CPIA 1996, s37](#)) or in serious fraud cases ([Criminal Justice Act 1987, s11](#)).

Automatic reporting restrictions prevent the reporting of these preparatory hearings with the exception of certain specified facts about the proceedings such as the names of the accused and the offences with which they have been charged. These restrictions continue until the conclusion of the trial when they automatically cease to apply.

The trial judge may lift the restrictions before the conclusion of the trial if satisfied, after hearing any representations from the accused, that it is in the interests of justice. The restrictions will continue to apply, however, to any representations that were made by the accused in relation to the lifting of the restrictions.

3.4 Dismissal proceedings

In Crown Court proceedings automatic reporting restrictions prevent the publication of any report of an unsuccessful dismissal application made by an accused person except for certain specified facts such as the name of the accused and the offence.

These cover serious fraud cases ([Criminal Justice Act 1987, s11](#)); charges alleging sexual offences or offences involving violence or cruelty against children (Criminal Justice Act 1991, [s53, Sched 6, para 6](#)) and indictable-only cases automatically transferred to the Crown Court for trial ([Crime and Disorder Act 1998, Sched 3, para 3](#)).

Successful dismissal applications may be fully reported and the restrictions automatically lapse at the conclusion of the trial. Before the trial concludes, the trial judge has a discretion to lift the restrictions if, after hearing representations from the accused where any of them object, he is satisfied that it is in the interests of justice.

3.5 Committal and similar proceedings in magistrates' courts

There are automatic reporting restrictions that apply to the reporting of committal proceedings in the magistrates' courts ([Magistrates' Courts Act 1980, s8](#)). These prevent media reports of the proceedings from including anything except certain specified facts about the case such as the names, addresses, ages, occupations of the accused, the charges they face, identity of the court, magistrates, legal representatives, whether or not bail and legal aid have been granted, date and place of any adjournment and whether they have been committed for trial. Very similar reporting restrictions apply to proceedings in magistrates' courts where a case is transferred or sent for trial at the Crown Court.

The restrictions may be lifted on application by a party or by the media, but where any of the accused objects to their removal, the court may only do so if satisfied that it is in the interests of justice.

These restrictions cease to apply if the court decides not to commit the accused for trial or after the conclusion of the trial.

3.6 Prosecution appeals against rulings

In Crown Court, Court of Appeal and House of Lords proceedings, automatic reporting restrictions apply when the prosecution informs the court of its intention to appeal against the courts' rulings and to the courts' subsequent decision as to whether to expedite the prosecution appeal, or adjourn, or discharge the jury. The restrictions prevent the publication of anything other than certain specified factual information (identification of court, judge, defendant, witnesses, lawyers, offence, bail, legal aid, place and date of adjourned proceedings etc). Subject to consideration of the (unreportable) objections of defendant(s), the courts may order that the restrictions do not apply to any extent, if it is in the interests of justice to do so, otherwise the restrictions automatically lapse at the conclusion of the trial(s) ([Criminal Justice Act 2003 section 71](#)).

3.7 Youth Court proceedings

Although the media are entitled to attend Youth Court proceedings they are prohibited from publishing the name, address or school or any other matter that is likely to identify a person under 18 as being concerned in proceedings before the Youth Courts (Children and Young Persons Act 1933, s49). A child or young person is concerned in the proceedings if they are a victim, witness or defendant.

These automatic reporting restrictions may be lifted in three specific circumstances. First, the court may lift the restriction if satisfied that it is appropriate to do so for avoiding injustice to the child. Secondly, the court may lift the restriction to assist in the search for a missing, convicted or alleged young offender who has been charged with, or convicted of, a violent or sexual offence (or one punishable with a prison sentence of 14 years or more in the case of a 21-year-old offender). Thirdly, the restriction may be lifted in relation to a child or young person who has been convicted, if the court is satisfied that it is in the public interest.

The court must offer the parties an opportunity to make representations and take these into account before lifting the restrictions. Home Office guidance encourages Youth Courts to make greater use of the power to lift the restrictions.¹⁴

The [Youth Justice and Criminal Evidence Act 1999 s44](#) creates a new automatic reporting restriction that prohibits the publication of any matter likely to identify a child or young person who is the subject of a criminal investigation and which lasts until the commencement of proceedings. The [1999 Act](#) also makes a number of amendments to s49 of the 1933 Act. However, [s44](#) has not been brought into force and it appears that there are no current plans for doing so.

3.8 Special measures and other directions

[Section 47 of the Youth Justice and Criminal Evidence Act 1999](#) prohibits the reporting of special measures directions, directions relating to the use of a live link for an accused and directions prohibiting an accused from cross-examining a witness in person.

These automatic restrictions may be lifted by the court and lapse automatically when proceedings against the accused are determined or abandoned.

3.9 Indecent material calculated to injure public morals

[Section 1 of the Judicial Proceedings \(Regulation of Reports\) Act 1926](#) prohibits the publication in relation to any judicial proceedings of any indecent medical, surgical or physiological details which would be calculated to injure public morals.

Automatic reporting restrictions

There are several automatic reporting restrictions which are statutory exceptions to the open justice principle.

- Victims of sexual offences are given lifetime anonymity which does not apply if they consent in writing to their identity being published. Their anonymity can also be lifted by the court in other limited circumstance.
- Reports of pre-trial hearings in the Crown Court cannot generally be published until after the trial is over.
- Reports of preparatory hearings in the Crown Court in long, complex or serious cases, complex fraud cases and unsuccessful dismissal applications must be limited to a specified range of factual matters, with reporting of all other matters relating to those proceedings prohibited until the trial is over.
- Similar restrictions apply in respect of committal proceedings in the magistrates' courts.
- These restrictions on pre-trial proceedings lapse at the conclusion of the trial and may be lifted earlier where the court is satisfied that it is in the interests of justice.
- Reports of special measures directions and directions prohibiting the accused from conducting cross-examination cannot be published until the trial(s) of all accused are over, unless the court orders otherwise.
- Reports of the prosecution's notices of appeal against rulings and the courts' decisions on whether to expedite the appeal, or, if not, to adjourn the proceedings or discharge the jury, cannot be published (apart from a limited range of factual matters) until the trial of (all) the accused are over, unless the court orders otherwise.
- The media are prohibited from publishing the name, address or school or any matter likely to identify a child or young person involved in Youth Court proceedings whether as a victim, witness or defendant.
- The Youth Court may lift the restriction in specified circumstances including where the child or young person is convicted of an offence and the court considers that it is in the interests of justice.

4 Discretionary reporting restrictions

The general rule is that the administration of justice must be done in public. If the court is asked to exclude the media or prevent them from reporting anything, however informally, do not agree to do so without first checking whether the law permits the court to do so. Then consider whether the court ought to do so. Invite submissions from the media or their legal representatives. The prime concern is the interests of justice (see Checklists).

4.1 Procedural safeguards common to all discretionary reporting restrictions

Before imposing a discretionary reporting restriction, courts should check that no automatic reporting restriction already applies which would make a discretionary restriction unnecessary.

Where a discretionary restriction is potentially available, courts must ensure that they apply the restriction with care, checking that the relevant statutory conditions have been met. Where the statutory conditions are met, the court must make a judgment, balancing the need for the proposed restriction against the public interest in open justice and freedom of expression. In all cases, courts must be satisfied that the need for the proposed restriction has been convincingly established and that the terms of the proposed order go no further than is necessary to meet the statutory objective.

The imposition of a reporting restriction directly engages the media's interests, affecting their ability to report on matters of public interest. For this reason it is important that wherever possible the media should be given an opportunity to make representations to the court about proposed reporting restrictions before they are made, or, if the court is persuaded that there is an urgent need for at least a temporary restraint, as soon as practicable after they have been made. The media bring a different perspective to that of the parties to the proceedings. They have a particular expertise in reporting restrictions and are well placed to represent the wider public interest in open justice on behalf of the general public. Because of the importance attached to contemporaneous court reporting and the perishable nature of news, courts should act swiftly to give the media the opportunity to make representations.

Any reporting restriction imposes potential criminal liability on media organisations, journalists or editors who breach it. For this reason, it is essential that any reporting restriction should be reduced to writing as soon as possible, clear and precise in its terms and drawn up as a court order as soon as practicable. Once orders have been made, they should be drawn to the attention of the media by being shown on the court list and on the door of the court and wherever possible sent to relevant local and/or national media organisations. Court staff should respond positively to media organisations' requests for assistance in relation to the existence or terms of reporting restriction orders.

Procedural safeguards

- Where automatic reporting restrictions already provide protection it is generally not necessary to impose additional discretionary restrictions.
- Care must be taken to ensure that the statutory conditions for imposing a discretionary reporting restriction are met.
- Where the statutory conditions are met, the court must make a judgment balancing the need for the reporting restriction against the public interest in open justice and freedom of expression.
- The need for any order must be convincingly established and the terms of any order must be proportionate, going no further than is necessary to meet the statutory objective.
- The media should be given an opportunity to make representations about discretionary reporting restrictions.
- Orders should be put in writing as soon as possible.
- The media should be put on notice as to the existence and terms of the order.

4.2 Protection of under-18s

The power to impose a discretionary reporting restriction in relation to a person aged under 18 is currently contained in s39 of the Children and Young Person's Act 1933 (CYPA). Currently, section 39 permits any court to make an order in relation to any proceedings before it, but section 39 will cease to apply to criminal proceedings if and when [s45 of the Youth Justice and Criminal Evidence Act 1999](#) is brought into force.

Section 39 CYPA permits a criminal court to prohibit publication by the media of the name, address, school or any information calculated to lead to the identification of any child or young person concerned in criminal proceedings before that court. The power to prohibit publication also extends to pictures of the child or young person. The order only applies to the proceedings in the court by which it was made.

The child or young person will be concerned in criminal proceedings if he is a victim, defendant or witness in the case. He must still be alive.¹⁵ The publication of the name, address and other details relating to the child is not in itself prohibited – what a s39 order seeks to do is to prevent the identification of a child as a witness, victim or defendant in the criminal proceedings. Media reports on unrelated matters, e.g. the same child winning a prize at school, would not be affected by an order in s39 terms. Criminal proceedings commence when a defendant is charged – there is therefore no power to impose a s39 order to protect the identity of a person who has been arrested but has not yet been charged.

The order should spell out what is prohibited. It is common for a s39 order to track the words of the section. It could be less extensive, but it cannot be wider. Thus there is no power to prohibit the

publication of the names of adults involved in the proceedings or other children or young persons not involved in the proceedings as witnesses, defendants or victims.¹⁶ The court may, however, give guidance to the media if it considers that the naming of an adult defendant would be likely to identify a child. Such guidance is not binding.¹⁷ The media may, for instance, be able to name a defendant without infringing the order, if the relationship of the victim to the defendant is omitted or the nature of the offence is blurred (e.g. 'a sexual offence' rather than incest). Media codes have been aligned to assist this. See 5.5 below on jigsaw identification.

There must be a good reason, apart from age alone, for imposing a s39 CYPA order. There is a clear distinction between the automatic ban on identification of children in Youth Court proceedings and the discretion to impose an order under s39 of the 1933 Act. Whereas under s49 CYPA (see 3.6 above) there must be a good reason for lifting the order, under s39 the onus lies on the party contending for the order to satisfy the court that there is a good reason to impose it. The appellate courts have emphasised that Parliament intended to preserve the distinction between juveniles in Youth Court proceedings and in the adult courts.¹⁸

In deciding whether to impose an order under s39 the judge must balance the interests of the public in the full reporting of criminal proceedings against the desirability of not causing harm to a child concerned in the proceedings.¹⁹ The court is required to have regard to the welfare of the child. Where the child is an accused person the court should 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 having the burden or benefit of adulthood.²⁰

Any order made must comply with Article 10 ECHR – it must be necessary, proportionate and there must be a pressing social need for it.²¹ Age alone is not sufficient to justify imposing an order as very young children cannot be harmed by publicity of which they will be unaware and s39 orders are therefore unnecessary.

Courts may review an order at any time and frequently are invited to do so where a defendant named in an order has been convicted at trial. The courts have recognised that in considering whether to lift an order the welfare of the child must be taken into account, but the weight to be given to that interest changes where there has been a conviction, particularly in a serious case; there is a legitimate public interest in knowing the outcome of proceedings in court and the potential deterrent effect in respect of the conduct of others in the disgrace accompanying the identification of those guilty of serious crimes.²²

If a reporting restriction is imposed, the judge must make it clear in court that a formal order has been made. The order should use the words of section 39 and identify the child or children involved with clarity. A written copy should be drawn up as soon as possible after the order has been made orally. Copies must be available for inspection and communicated to those not present when the order was made (e.g. by inclusion in the daily list). Court staff should assist media inquiries in relation to the order.

Protection of under-18s

- Under s39 Children and Young Persons Act 1933 a court may direct that the media cannot identify an under-18 concerned in the proceedings as a victim, witness or defendant.
- The child or young person concerned must still be alive.
- The court may order that the media cannot publish his name, address, school or picture or any detail likely to lead to his identification as a child involved in the proceedings.
- There must be a good reason for imposing an order under s39 and the burden lies on the party contending in favour of the order.
- In exercising its discretion, the court must balance the public interest in open justice against the welfare of the child or young person.
- Orders should reflect the terms of s39 and there is no power to name an adult as the subject of a s39 order or a child who is not a victim, witness or defendant.
- Where an under-18 named in a s39 order has been convicted of a serious crime, the public interest in knowing the identity of the convicted person and the need for deterrence generally favour lifting the order.

4.3 Protection of adult witnesses

[Section 46 of the Youth Justice and Criminal Evidence Act 1999](#) (YJCEA) gives the court power to restrict reporting about certain adult witnesses (other than the accused) in criminal proceedings on the application of any party to those proceedings for a 'reporting direction'.

The court may make a reporting direction that no matter relating to the witness shall during his lifetime be included in a publication if it is likely to lead members of the public to identify him as being a witness in the proceedings. Again, publication of the name, address, educational establishment, workplace or a still or moving picture of the witness is not of itself an offence, unless its inclusion is likely to lead to his identification as a witness by the public in the criminal proceedings.

An adult witness is eligible for protection if the quality of his evidence or his cooperation with the preparation of the case is likely to be diminished by reason of fear or distress in connection with identification by the public as a witness. Quality of evidence relates to its quality in terms of completeness, coherence and accuracy. Factors which the court must take into consideration include the nature and circumstances of the offence, the age of the witness, any behaviour towards the witness by the defendant or his family or associates and the views of the witness.²³

The court must also consider whether the making of a reporting direction would be in the interests of justice and consider the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of proceedings.²⁴

The court may give a direction at any time dispensing with the restrictions if satisfied either that it is in the interests of justice or that the restrictions impose a substantial and unreasonable restriction on the reporting of the proceedings and that it is in the public interest. Such directions are referred to as 'excepting directions'. The fact that the proceedings have been determined in a particular way or abandoned is not a sufficient reason in and of itself to dispense with the restrictions, but will often be a relevant consideration.

[Section 52 of the YJCEA 1999](#) sets out some of the matters to which the court should have regard in determining the public interest, including the interest in the open reporting of crime, the open reporting of matters relating to human health and safety, the prevention and exposure of miscarriages of justice, as well as the welfare of any protected person, and any views expressed by the 'protected person', if 16, or any views expressed by an 'appropriate person' with parental responsibility (as defined) on their behalf if under that age.

The subject of a section 46 anonymity direction can also waive his/her anonymity, or in the case of an under 16-year-old, their parent or guardian (including a local authority) may waive the young person's anonymity, by giving written consent to the inclusion of any identifying material otherwise prohibited (subject to safeguards that it was not obtained by interference of the peace and comfort of that person).

Detailed procedural guidance regarding the making of s46 orders is to be found in the [Criminal Procedure Rules 2005 rules 16.1–16.9](#).

Protection of adult witnesses

- Under s46 of the Youth Justice and Criminal Evidence Act a court may prohibit the publication of matters likely to identify an adult witness in criminal proceedings (other than the accused) during his lifetime.
- The court must be satisfied that the quality of his evidence or his cooperation with the preparation of the case is likely to be diminished by reason of fear or distress in connection with identification by the public as a witness.
- In exercising its discretion, the court must balance the interests of justice against the public interest in not imposing a substantial and unreasonable restriction on reporting of the proceedings.
- Excepting directions may be given, or the order revoked or varied at any stage of the proceedings, or written consent to identification may be given by the subject or, if under 16, by their parent or guardian.

4.4 Names and other matters withheld in court

Where a court exercises its powers to allow a name or any other matter to be withheld from the public in criminal proceedings, the court may make such directions as are necessary under s11 of the [Contempt of Court Act 1981](#) prohibiting the publication of that name or matter in connection with the proceedings.

Section 11 can only be invoked where the court allows a name or matter to be withheld from being mentioned in open court. It follows that there is no power to prohibit publication of any name or other matter which has been given in open court in the proceedings.²⁵ For this reason, applications for an order under s11 may be heard *in camera*.

Section 11 does not itself give the court power to withhold matters from the public. The power to do this must exist either at common law or from some other statutory provision.

Consistent with the requirement to protect the open justice principle and freedom of expression, courts should only make an order under s11 where the nature or circumstances of the proceedings are such that hearing all evidence in open court would frustrate or render impracticable the administration of justice.²⁶ It is not appropriate therefore to invoke the s11 power to withhold matters for the benefit of a defendant's feelings or comfort or to prevent financial damage or damage to reputation resulting from proceedings concerning a person's business.²⁷ Nor can the power be invoked to prevent identification and embarrassment of the defendant's children, because of the defendant's public profile.²⁸

Where the ground for seeking a s11 order is that the identification of a witness will expose that person to a risk to his life engaging the state's duty to protect life under Article 2 ECHR, the court will take into consideration that person's subjective fears and the extent to which those fears are objectively justified.²⁹

In rare circumstances, the right to private and family life under Article 8 ECHR may mean that normal media reporting has to be curtailed, but injunctions to cover these cases are dealt with by the High Court rather than the criminal courts.³⁰

The court has a discretion to hear representations from the media about making orders under s11 and should wherever possible give the media the opportunity to do so. In cases of urgency, a temporary order should be made and the media should be invited to attend on the next convenient date. The media have a right of appeal against s11 orders made in the Crown Court under s159 CJA and may challenge orders made in the magistrates' courts in judicial review proceedings.

Names and other matters withheld in court

- Where a court exercises a common law or statutory power to withhold a name or other matter from being given in evidence in open court, it may prohibit publication of that name or matter under s11 Contempt of Court Act 1981.
- The court may only exercise its power to prohibit publication under s11 where it has deliberately withheld that information from being given in open court.

4.5 Postponement of fair and accurate reports

Under s4(2) of the [Contempt of Court Act 1981](#) the court may order the postponement of publications of a fair, accurate and contemporaneous report of its proceedings where that is necessary to avoid a substantial risk of prejudice to the administration of justice in those or other proceedings.

It is normally contempt of court under the 'strict liability rule' to publish anything which creates a substantial risk of serious prejudice to the administration of justice – see s2 of the 1981 Act. However, ordinarily fair, accurate and contemporaneous reports of legal proceedings held in public which are published in good faith will not breach the strict liability rule – see s4(1) of the Act.

The power to make postponement orders recognises that there may need to be exceptions to the general defence under s4(1). There can be circumstances where two or more trials are due to take place which are closely connected and where publication of reports of trial 1 could cause a substantial risk of prejudice to trial 2. But section 4(2) orders can only be made if the conditions set out below are all fulfilled

The subject matter of a postponement order under s4(2) is fair, accurate, good faith and contemporaneous reports of the proceedings. Trial judges have no power under s4(2) to postpone publication of any other reports, e.g. in relation to matters not admitted into evidence or prejudicial comment in relation to the proceedings.³¹ Likewise, courts have no power under s4(2) to prevent publication of material that is already in the public domain. Such publications may incur liability for contempt of court under the strict liability rule and the media bear the responsibility for exercising their judgment in such cases.³²

Where a court is exercising its discretion as to whether to make a s4(2) postponement order the test to be applied has three stages.³³

The first question is whether reporting of the proceedings would give rise to a substantial risk of prejudice to the administration of justice. If not, that is the end of the matter.

If there is a substantial risk of such prejudice, the court must ask whether a s4(2) order would eliminate that risk. If not, there could be no necessity to impose a ban. Even if a judge is satisfied that the order would achieve the objective, he should still ask whether the risk can be overcome by less restrictive means. If so, a s4(2) order could not be said to be necessary.

If the judge is satisfied that the order is necessary, he has a discretion and must balance the competing public interests between protecting the administration of justice and ensuring open justice and the fullest possible reporting of criminal trials.

As orders must be proportionate in order to comply with Article 10 ECHR, the court must limit the order to those specific matters that create a substantial risk of prejudice to the administration of justice if published contemporaneously. As s4(2) is a postponement power, the order should normally identify the specific event or time when the order will come to an end.

The reference in s4(2) to avoiding a substantial risk of prejudice to the administration of justice refers to the protection of the public interest in the administration of justice rather than the private welfare of those caught up in that administration. Where a defendant argues that the scandalous nature of the

allegations would result in members of the public attacking him, he is not entitled to a s4(2) order as attacks upon the accused by ill-intentioned persons are not to be regarded as a natural consequence of the publication of the proceedings and such dangers should not cause the court to depart from well-established principles.³⁴ Besides, s4(2) only allows a court to *postpone* reporting, not to ban it indefinitely.³⁵

Section 4(2) is regularly invoked in cases involving sequential trials. The aim in those cases is to postpone the reporting of specific parts of the evidence in the first trial to prevent prejudice to the defendants in the second trial. It is generally not appropriate to invoke this power in relation to matters that form part of the evidence in both trials because in those cases prejudice is unlikely to arise.

Before imposing an order in the context of sequential trials, the judge must be satisfied that there is a substantial risk of prejudice arising from contemporaneous reports of the first trial sufficient to outweigh the strong public interest in the full and contemporaneous reporting of criminal proceedings. The judge must also bear in mind that the staying power of news reports is very limited. In addition, it has often been said that normally juries can be trusted to follow conscientiously the directions of trial judges to decide cases on the evidence which they have heard in court and to ignore anything they may have read or viewed in the media.³⁶

The appellate courts have also emphasised that newspapers and broadcasters should be trusted to fulfil their responsibilities to accurately inform the public of court proceedings and to exercise sensible judgment about the publication of comment which may interfere with the administration of justice. The media have access to legal advice and have their own judgments to make. The risk of being in contempt of court for damaging the interests of justice is not one any responsible editor would wish to take. In itself this is an important safeguard and it should not be overlooked because there are occasions in which there is ill-judged publicity in the media.³⁷

Postponement of fair and accurate reports

- Under s4(2) of the Contempt of Court Act 1981 the court may postpone publication of a fair, accurate and contemporaneous report of its proceedings where that is necessary to avoid a substantial risk of prejudice to the administration of justice in those or other proceedings.
- The power is strictly limited to fair, accurate and contemporaneous reports of the proceedings.
- The court must be satisfied that a substantial risk of prejudice would arise from such reports.
- If the concern is potential prejudice to a future trial, in making that judgment, the court will bear in mind the tendency for news reports to fade from public consciousness and the conscientiousness with which it can normally be expected that the jury in the subsequent case will follow the trial judge's directions to reach their decision exclusively on the basis of evidence given in that case.
- Before making a s4(2) order, the court must be satisfied that the order would eliminate the risk of prejudice and that there is no less restrictive measure that could be employed.
- If satisfied of these matters, the court must exercise its discretion balancing the risk of prejudice to the administration of justice against the strong public interest in the full reporting of criminal trials.

4.6 Quashing of acquittal and retrial: restriction on publication in the interests of justice

Under section 82 of the [Criminal Justice Act 2003](#), if necessary in the interests of justice, the Court of Appeal can make orders to prevent the inclusion of any matter in a publication which appears to give rise to a substantial risk of prejudice to the administration of justice in a retrial. Before the prosecution has given notice of its application for an acquittal to be quashed and retrial, such an order can only be made on the application of the DPP and where an investigation has commenced. After such notice has been given, the order may be made either on the application of the DPP, or of the Court of Appeal's own motion. The order may apply to a matter which has been included in a publication published before the order takes effect, but such an order applies only to the later inclusion of the matter in a publication (whether directly or by inclusion of the earlier publication), and does not otherwise affect the earlier publication.

Unless an earlier time is specified, the order will automatically lapse when there is no longer any step that could be taken which would lead to the acquitted person being tried pursuant to an order made on the application, or, if he is so tried, at the conclusion of the trial.

4.7 Postponement of derogatory remarks in mitigation

Section 58 of the [Criminal Procedure and Investigations Act 1996](#) gives courts the power to postpone reports of derogatory assertions about named or identified persons that have been made in mitigation. The court must have substantial grounds for believing that the assertion is derogatory and false or that the facts asserted are irrelevant to the sentence.

This power may be exercised when a court is determining sentence following conviction, when a magistrates' court is determining whether an accused should be committed to a Crown Court for sentence and when a court is considering whether to give permission to appeal against a sentence or hearing an appeal against, or reviewing, a sentence. An interim order can be made as soon as the assertion has been made if there is a real possibility that a final order will be made. A final order (maximum duration 12 months) must be made as soon as reasonably practicable after the sentence is passed.

An order must not be made in relation to an assertion if it appears to the court that the assertion was previously made at the trial at which the person was convicted of the offence or during any other proceedings relating to the offence.³⁸

Such orders may be revoked at any time and orders made after the handing down of a sentence automatically cease to have effect after 12 months.

Home Office Circular 24/3/1997 suggests that the media or other third parties can make applications, perhaps by written submission, for orders to be revoked. It also provides guidance to court staff on: the prompt notification of the media when an order has been made; the display and content of notices on court premises and the availability of more detailed information; the entry into the court register of the dates on which the order commences and ceases to have effect; its statutory basis; whether interim or final; names of the defendant and the third party protected; and the derogatory assertions.

Postponement of derogatory remarks in mitigation

- Section 58 of the Criminal Procedure and Investigations Act 1996 gives courts the power to postpone reports of certain assertions about named or identified persons that have been made in mitigation.
- The court must have substantial grounds for believing that the assertion is derogatory and false or that the facts asserted are irrelevant to the sentence.
- Orders must not be made in relation to assertions that were made during the trial or any other proceedings relating to the offence.

4.8 Anti-social behaviour orders

Applications for anti-social behaviour orders (ASBOs) are civil proceedings and there are no automatic reporting restrictions, although the usual discretionary restrictions apply. Anti-social behaviour orders may also be imposed in criminal proceedings following conviction for a relevant offence.

Breach of an ASBO is itself a criminal offence which may be prosecuted in the Youth Court, Magistrates' Court or Crown Court. This guidance relates to reporting criminal proceedings for breach of an ASBO.

The automatic reporting restriction preventing the identification of children or young persons in the Youth Court under s49 of the Children and Young Person's Act 1933 does not apply in relation to reporting the criminal proceedings for the specific offence of breach of an ASBO only as the result of an amendment to the [Crime and Disorder Act 1998](#) introduced in 2005.³⁹ The decision to reverse the usual position in Youth Court proceedings reflected the Government's response to the submissions of the local press and government policy emphasising the importance of publicising ASBOs in order for them to work effectively.

While there are therefore no automatic reporting restrictions that apply in relation to breach proceedings for an ASBO, Youth Courts retain the discretion to impose reporting restrictions under s39 CYPA, as do Magistrates' and Crown Courts. Like all s39 orders, however, there must be good reason, aside from age alone, to justify making such an order. Furthermore, Home Office guidance emphasises that publicising ASBOs provides the affected community with the information needed to report a breach and acts as a deterrent to the perpetrator and to others.⁴⁰

Where there is an application in the Youth Court involving a juvenile where evidence has included details of past criminal convictions, however, s49 CYPA prohibits the reporting of those matters unless the court has exercised its discretion to lift the restriction.

Similarly where an order has been made on conviction against a juvenile in the Youth Court, unless the s49 reporting restriction is lifted, the juvenile cannot be identified in relation to the criminal proceedings, including the criminal offences of which they have been convicted or behaviour alluded to in the criminal proceedings in the Youth Court. However, under an amendment to the 1998 Act,

introduced by section 86 of the [Anti-Social Behaviour Act 2003](#), 'insofar as the proceedings relate to the making of the order' only, s49 CYPA does not apply in respect of identifying the child or young person against whom the order is made. Therefore where an order has been made on conviction in the Youth Court, the juvenile could be identified as the subject of the ASBO order (subject to a s39 CYPA 1933 order). However, nothing could be reported identifying him as the subject of Youth Court criminal proceedings (past, present or future) including convictions or evidence, unless any such matter was actually stated in court in the separate 'proceedings relating to the making' of the ASBO following that person's conviction.

Anti-social behaviour orders

- In criminal proceedings specifically for breach of an ASBO or proceedings in so far as they relate to making an ASBO order after conviction in the Youth Court (not the preceding criminal proceedings or other Youth Court proceedings), the normal rule prohibiting the identification of under-18s in the Youth Court does not apply.
- The Youth Court retains a discretion to impose such an order under s39 CYPA. However, there must be a good reason for such an order and Home Office guidance emphasises the importance of publicising the identity of persons subject to ASBOs.

5 Additional matters relating to court reporting

5.1 The availability of court lists

Crown Court lists may be accessed over the Internet from CourtServe.⁴¹ Magistrates' courts lists are available from the court offices of the court concerned and are the subject of a 1989 Home Office circular that encourages justices' clerks to meet reasonable requests by the media for copies of court lists and the register of decisions in magistrates' courts.⁴² The Home Secretary considered that court lists should be made available in court on the day of the hearings and, where provisional lists are prepared in advance, copies should be available on request. At a minimum the lists should contain each defendant's name, age, address and, where known, his profession and the alleged offence. Courts will not breach the [Data Protection Act 1998](#) by providing journalists with such information.

On 15 July 2008, the Secretary of State for Justice announced in Parliament that newspapers and other media could immediately access court registers containing the outcome of criminal cases and details of upcoming court cases free of charge. A notice was circulated to all courts and a Ministry of Justice press release www.justice.gov.uk/news/newsrelease150708c.htm was issued to publicise the abolition of the charges, referring to the 1989 Home Office circular and previous JSB guidance. Abolishing the fee for these publications charged by magistrates' courts since 1989, the Secretary of State for Justice, Jack Straw, said:

'Media will now be better able to report accurately and factually, as they strive to do, on proceedings in magistrates' courts. This move will help increase confidence in the criminal justice system. It also supports compliance with obligations under the European Convention on Human Rights to ensure that trials are held in public.'

Media will be expected to meet common sense conditions (for instance, on security and destruction) relating to use of the publications. In the longer term, courts will be expected to publish their registers electronically, a less resource-intensive means of production.

On 1 July 2009, HM Courts Service issued the '[Protocol for Sharing Court Registers and Court Lists with Local Newspapers](#)', agreed between HM Courts Service, the Newspaper Society and the Society of Editors. This includes agreement by HMCS to provide copies of court registers and court lists by e-mail wherever possible, not to charge for copies of them and to ensure that they contained the details of any reporting restrictions when they are first made. If HMCS is unable to supply e-mail copies, newspapers could be asked to collect a hard copy or pay the cost of postage. The protocol also encourages similar supply by the Crown Courts:

'Although there is no direct equivalent to the magistrates' court register in the Crown Court, similar principles are to apply insofar as they can. Given the relatively small number of cases heard in the Crown Court and the fact that they have in the main come from the magistrates' court, it is recognised that newspapers are often already alerted to their content and interest value. Crown Court staff are encouraged to cooperate with local newspapers when they make enquiries.'

See www.newspapersoc.org.uk/Default.aspx?page=4998 for the letter of 15 July 2008 and protocol of 1 July 2009.

Increasingly, the existence of reporting restrictions is shown on Crown Court lists under the name of the relevant case – allowing a ready means of checking whether there are such restrictions in place. Work is under way with the Ministry of Justice on a system for recording reporting restrictions orders and facilitating media checks and it has agreed that all court registers must contain references to reporting restrictions (when first made).

5.2 Identification of those involved in court proceedings

At common law, it would be considered inimical to the administration of justice to protect the identity of magistrates presiding over proceedings. Their identity should be made known to press and public. (See *R v Felixstowe Justices ex p Leigh* 1987 QB 582, *R v Evesham Justices ex p McDonagh* (1988) 2 WLR 227).

The media are particularly concerned about accurate identification of those involved in court proceedings. Announcement in open court of names and addresses enables the precise identification vital to distinguish a defendant from someone in the locality who bears the same name and avoids inadvertent defamation. The Home Secretary issued Circular No 78/1967 in response to press concern. In addition to recommending that courts supply the press with advance copies of court lists, the circular encouraged courts to ensure the announcement in open court of both the names and the addresses of defendants. The circular acknowledges that a person's address is as much a part of his description as his name. It states that there is therefore a strong public interest in facilitating press reports that correctly describe persons involved. Statutory reporting restrictions, even when automatic, provide for the lawful publication of magistrates' identities and names and addresses of

defendants and others appearing before the courts. Common law also restricts the circumstances in which names and addresses can be withheld from the public or reporting restrictions imposed to prevent or postpone their publication (see above and *R v Evesham Justices ex parte McDonagh* (1988) 2 WLR 227).

5.3 Unauthorised recording of court proceedings

Unauthorised tape recording of proceedings in court is a contempt of court under [s9 of the Contempt of Court Act 1981](#). However, courts may at their discretion permit journalists to record proceedings in court as an aide memoire. The recording must not be broadcast or used to brief witnesses: see [Practice Direction \(Criminal Proceedings: Consolidation\) \[2002\] 1 WLR 2870](#) para 1.2. It is an offence to take photographs or make sketches (with a view to publication) or attempt do so in court, in respect of a judge, a juror, witness or party if in the court room, court building or court precincts including the cell area.⁴³ The court can issue guidance on the extent of the precincts of the court buildings, e.g. by way of a map. The prohibition on the taking of photographs includes taking pictures on a mobile phone, video recordings, photographs on conventional cameras or by any other means.

5.4 Jury's deliberations

It is a contempt of court contrary to [s8 of the Contempt of Court Act 1981](#) to obtain, disclose or solicit any details of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in their course of their deliberations in any legal proceedings. The prohibition on disclosure binds both jurors themselves and the media in relation to the publication of any such disclosure.⁴⁴

5.5 Jigsaw identification

Jigsaw identification refers to the phenomenon whereby the identity of a person protected by a reporting restriction order may be inadvertently disclosed as a result of different media reports, none of which breach the terms of any order or statutory provision, but which taken together enable the protected person to be identified. In most cases this is not an issue but particular difficulties arise in relation to sex offences within the same family. For example, where one report refers to an unnamed defendant convicted of raping his daughter and another refers to the name of the defendant, the daughter will be identifiable to the public in breach of the automatic prohibition protecting victims of sexual offences.

In recognition of these potential difficulties the newspapers and broadcasters have aligned their respective codes so that the media adopt a common approach when reporting sexual offences.⁴⁵ Typically the media will name the defendant but not name the victim (this would breach the statutory prohibition) or give any details of his or her relationship with the defendant. It is routine for in-house lawyers to check what information is already in the public domain before advising on whether a report of court proceedings is likely to breach any legal requirement, so, even in non-sex cases, in practice the media often end up adopting a common approach.

6 Footnotes

- ¹ See s4(1) Contempt of Court Act 1981; s14 Defamation Act 1996.
- ² [Observer and Guardian v U K \(1992\) 14 EHRR 153, para 59.](#)
- ³ *AG v Levens Magazine* [1979] AC 440, per Lord Diplock p450.
- ⁴ *Scott v Scott* [1913] AC 417.
- ⁵ [S25\(3\), Youth Justice and Criminal Evidence Act 1999.](#)
- ⁶ [Hodgson v Imperial Tobacco \[1998\] 1 WLR 1056](#), per Lord Woolf at p1072C.
- ⁷ [R \(Malik\) v Central Criminal Court \[2006\] 4 All ER 1141.](#)
- ⁸ *Ibid.*
- ⁹ See the Home Office/Lord Chancellor's Department publications *Opening Up the Youth Court* (1998); [The Youth Court 2001 – The Changing Culture of the Youth Court: Good Practice Guide.](#)
- ¹⁰ It is a defence to an offence of publishing identifying matter under [s5 Sexual Offences \(Amendment\) Act 1992](#) to show that the complainant gave written consent to the publication: see [s5\(2\)](#).
- ¹¹ [Ibid, s1\(4\).](#)
- ¹³ [Sexual Offences \(Amendment\) Act 1992, s3.](#)
- ¹³ [Ibid, s3\(3\).](#)
- ¹⁴ [Ibid.](#)
- ¹⁵ [In re S \(A Child\) \(Identification: Restrictions on Publication\) \[2005\] 1 AC 593.](#)
- ¹⁶ *Ex parte Godwin* [1992] QB 190, 94 Cr App R 34 (CA).
- ¹⁷ *Ibid.*
- ¹⁸ *R v Central Criminal Court ex parte W, B and C* [2001] 1 Cr App R 7.
- ¹⁹ *Ex parte Crook* [1995] 1 WLR 139.
- ²⁰ *R v Inner London Crown Court ex parte B* [1996] COD 17, DC.
- ²¹ *Briffett v CPS* [2002] EMLR 12.
- ²² *R v Central Criminal Court ex parte S* [1999] 1 FLR 480, DC.
- ²³ See [s46\(4\) Youth Justice and Criminal Evidence Act 1999.](#)
- ²⁴ See [s46\(8\) Youth Justice and Criminal Evidence Act 1999.](#)
- ²⁵ [Re Trinity Mirror plc \[2008\] 2 Cr App R 1, CA.](#)
- ²⁶ *AG v Levens Magazine* [1979] AC 440.
- ²⁷ *R v Dover JJ ex parte Dover District Council* 156 JP 433, DC.
- ²⁸ *Crawford v DPP, The Times*, 20 February 2008.
- ²⁹ *R(A) v Lord Saville of Newdigate* [2002] 1 WLR 1249, CA.
- ³⁰ [Re Trinity Mirror plc, Ibid](#) (and any such injunction ought not restrain the publication of the defendant's name or nature of his/her conviction, on the basis that his/her children would thereby be harmed).
- ³¹ *Galbraith v Her Majesty's Advocate*, High Court of Justiciary, 7.9.2000, adopted by the Court of Appeal in [R v B \[2006\] EWCA Crim 2692.](#)
- ³² [R v B \[2006\] EWCA Crim 2692.](#) (A case where the DPP supported the media's appeal against reporting restrictions imposed in a terrorism case.)
- ³³ [Ex parte the Telegraph Group plc \[2001\] 1 WLR 1983.](#)
- ³⁴ *Re Belfast Telegraph Newspapers Ltd's Application* [1997] NILR 309.
- ³⁵ [Re Times Newspapers Ltd \[2008\] 1 WLR 234.](#)
- ³⁶ *R v Horsham Justices, ex parte Farquharson* [1982] 1 QB 762, [R v B \[2006\] EWCA Crim 2692.](#)
- ³⁷ [R v B \[2006\] EWCA Crim 2692](#), para 25.
- ³⁸ See [s58\(5\) Criminal Procedure and Investigations Act 1996.](#)
- ³⁹ See s1 of the [Crime and Disorder Act 1998](#), as amended by s141 of the [Serious Organised Crime and Police Act 2005.](#)
- ⁴⁰ [Publicising anti-social behaviour orders, Home Office Guidance, October 2005.](#)
- ⁴¹ [www.courtservice.net/homepage.htm](#)
- ⁴² Home Office Circular 80/1989.
- ⁴³ See [s41 Criminal Justice Act 1925.](#)
- ⁴⁴ [Att Gen v Associated Newspapers \[1994\] 2 AC 238.](#)
- ⁴⁵ Press Complaints Commission Code of Practice; OFCOM Code; BBC Editorial Guidelines.

Automatic reporting restrictions (see also Checklists and section 3)

Are these proceedings in the Youth Court?

Automatic ban on identifying a child under 18 in the proceedings and on publishing name, address, school and photo (except in proceedings for breach of an ASBO).
(§49 CYPA 1933)

Is this a prosecution for a sexual offence?

Automatic ban on identifying the victim of the offence during their lifetime.
(§2 Sexual Offences (Amendment) Act 1992)

Are these committal or similar proceedings in the magistrates' court?

Automatic restriction limits reporting to specified matters until the conclusion of the trial.
(§8 MCA 1980)

Is the hearing a dismissal application in the Crown Court?

If application unsuccessful automatic restriction limits reporting to specified matters until the conclusion of the trial.
(Various Acts)

Is the hearing a pre-trial hearing in the Crown Court?

Automatic ban on reporting the hearing until the conclusion of the trial.
(§41 CPIA 1996)

Is the hearing a preparatory hearing in the Crown Court?

Automatic restriction limits reporting to specified matters until the conclusion of the trial.
(Various Acts)

Discretionary reporting restrictions (see also Checklists and section 4)

All discretionary reporting restrictions should be put in writing and made available to the media.

Under 18s

1 Is there a child under 18 concerned in the proceedings as a victim, witness or defendant?



2 Is there a good reason for ordering that the child should not be identified?



3 On the specific facts of this case, does the welfare of the child outweigh the strong public interest in open justice?



4 Is the proposed restriction necessary and are the terms of the proposed order proportionate?



The court may order the media under s39 CYPA 1933 not to disclose the name, address, school or picture or any detail likely to lead to the child being identified as being concerned in the proceedings.

Adult witnesses

1 Is there an adult witness in the proceedings (other than the accused) whose evidence or cooperation with the preparation of the case is likely to be diminished by reason of fear or distress in connection with being identified?



2 On the specific facts of this case, do the interests of justice favour making the order or would such an order impose a substantial and unreasonable restriction on the reporting of the proceedings taking into account the open justice principle?



3 Is the proposed restriction necessary and are the terms of the proposed order proportionate?



The court may order the media under s46 YJCEA 1999 not to publish any matter relating to the witness during his lifetime if it is likely to lead members of the public to identify him as being a witness in the proceedings.

Names and other matters withheld in court

1 Is there a power, common law or statutory, to withhold the material from the public in open court?



2 On the facts of this case have the criteria for exercising that power been fulfilled? Are the common law conditions satisfied or the statutory terms met?



3 Do the circumstances outweigh the strong public interest in open justice?



4 Has the material been withheld from the public in open court or will it be?



5 Is it necessary and proportionate to prohibit publication by the media?



The court may order the media under s11 CCA 1981 not to publish the name or matter that has been withheld.

Postponement of fair and accurate reports

1 Would a fair, accurate and contemporaneous report of the proceedings (or part thereof) published in good faith create a substantial risk of serious prejudice to the administration of justice in those or other proceedings?



2 Is an order postponing the publication of such reports necessary and are its terms proportionate? Would such an order eliminate the risk of prejudice to the administration of justice? Could less restrictive measures achieve the objective?



3 On the specific facts of this case, does the public interest in protecting the administration of justice outweigh the strong public interest in open justice?



The court may order the media under s4(2) CCA 1981 to postpone publication of such reports until a specific event or for a specific period of time.