

Reporting
Restrictions
in the
Magistrates'
Court



Judicial Services Board



Ministry of Justice

Reporting Restrictions in the Magistrates' Court

Foreword

I am as happy to introduce this guidance to Reporting Restrictions in the Magistrates' Court as I was to introduce similar guidance for the Crown Court. This joint project between the Society of Editors and the Newspaper Society and the judiciary to produce useful information in readily accessible form about the principles which should govern the arrangements for reporting of cases before the courts is now complete.

Although it may perhaps be unnecessary for me to repeat what I said in relation to the full-time judiciary in my foreword to the guidance in the Crown Court, the essential principle is equally applicable to Magistrates' Courts. Justice should be administered in public where both the process, and the results, are open to scrutiny.

The responsibility for accurately reporting these matters to the community at large is performed by representatives of the media. Without their efforts, whatever the theory, in practice the process would become closed. The fact that the jurisdiction of the Magistrates' Court is obviously not as extensive as the jurisdiction of the Crown Court should not obscure the fact that the vast majority of criminal cases are conducted in them. And the principle of open justice applies just as much to the apparently minor case heard in the Magistrates' Court as it does to the high profile trial being conducted in the Crown Court.

Some trials attract more media interest than others, but the principle applies to each and every case. Unless the individual case falls within the exceptions to the general principle, the process, and the decisions of the magistrates represent the public exercise of justice in the local community.

As before, I am extremely grateful to Bob Satchwell of the Society of Editors and Santha Rasaiah, Head of Political, Editorial and Regulatory Affairs at the Newspaper Society for their great contribution to the guidance, and for the close working relationship which developed between them and Mrs Justice Hallett and Michael Woolley on behalf of the Magisterial Committee of the Judicial Studies Board.

I have not the slightest doubt that the guidance will very rapidly prove immensely valuable in day to day use, and I commend immediate reference to it as soon as any problems about reporting restrictions are anticipated.

Igor Judge

Senior Presiding Judge for England and Wales

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Introduction

The general rule is that the **administration of justice must be done in public**. The media is in court to

report the proceedings to the public, the majority of whom will be unable to be there in person but who have the right to be informed as to what has occurred. Accordingly, unless there is good and lawful reason, nothing should be done to prevent the publication to the wider public of fair and accurate reports of proceedings by the media.

The open justice principle is clearly recognised by the courts and by Parliament. The common law has been supplemented in this respect by statute. The media has been given statutory rights to attend certain proceedings from which the public is excluded. Statutory defences in libel and contempt litigation are available for fair, accurate and contemporaneous reports of proceedings. Statutory rights have been provided to make representations against the imposition of restrictions on reporting or public access to proceedings. The role of the media is recognised in the case law under the European Convention on Human Rights.

Exceptions to the General Rule

There are circumstances in which the court will have to consider departing from this general principle. In some cases, statute automatically restricts the giving of certain details in reports of court proceedings. Common law powers and statutory restrictions enable the court in other circumstances to exclude the public and the media and to impose temporary or permanent restrictions on the media's reports of court proceedings by making a court order.

In all such circumstances, courts are encouraged to exercise their discretion to hear the media's representations at the time any court is considering imposition of an order. Courts are also encouraged to exercise their discretion to hear media representations on the lifting of such restrictions to permit contemporaneous reporting of the proceedings. Such discretion should be exercised in addition to any formal rights which the media might have for appeal or review of such orders or to apply for lifting of automatic reporting restrictions. This also often ensures that problems are resolved quickly. The law provides particular protection to contemporaneous reports of court proceedings and has recognised the 'perishable' nature of news and courts have acknowledged the importance of hearing and resolving issues relating to reporting as soon as possible.

If the necessary balance between the general principle of open justice and properly competing interests is to be achieved, a clear understanding of the legal basis for the imposition of restrictions is necessary by magistrates, court staff and the media. This guide seeks to highlight those areas in which consideration of restrictions is likely to occur in the Magistrates' Court, in dealing with criminal and civil proceedings.

Court lists and the register of decisions in the Magistrates' Courts

Following discussions between the Home Office, the Lord Chancellor's Department, the Justices' Clerks' Society, the Magistrates Association, Newspaper Society and the Society (then Guild) of Editors, the Home Office issued a circular on availability of court lists and register of judgements. Circular 80/1989 encourages justices' clerks to meet reasonable requests by the media for copies of court lists and the register of decisions in Magistrates' Courts. The Home Secretary considered that court lists should be available to the media in court on the day of the hearings and, where provisional lists are prepared in advance, copies should also be made available on request. As a minimum the lists should contain each defendant's name, age, address and, where known, his profession and the alleged offence.

The Home Secretary also encouraged all courts to provide their local newspaper with a copy of the court register when it was prepared. It was for the editors to ensure that any relevant legal restraints on publication were observed, in the same way that they were responsible for the accuracy of the results of cases they published.

The circular strongly recommended that the media be asked to meet the full economic cost of providing copies of all court papers, taking into account the cost of materials and staff resources required to prepare copies. Journalists might also telephone the court staff from time to time to check progress of cases or ensure the accuracy of names and charges or other matters.

Following discussions between the Newspaper Society, the Home Office and the Data Protection Commissioner, the DPC has confirmed that courts can continue to provide lists, registers and other information in accordance with the circular and assist such accuracy and progress checks, without contravention of the Data Protection Act 1998.

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 is 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 below and *R v Evesham Justices ex parte McDonagh* (1988) 2 WLR 227).

In general, court proceedings must be held in open court, so that press and public have the right to attend the proceedings, evidence is communicated publicly and nothing is done to discourage the from publication to a wider public of a fair and accurate report of proceedings.

- In addition, there are express statutory obligations upon the Magistrates' Court to sit in open court, unless there are express statutory provisions to the contrary, whether sitting in petty sessional or occasional court-house (section 121 (4) of the Magistrates' Courts Act 1980). Particular provisions govern committal proceedings, requiring the examining justices to sit in public in the absence of statutory provisions to the contrary unless the ends of justice would not be served.
- The court does have inherent power to regulate its own proceedings. **However departure from the open justice principle is exceptional.** It must be justified as necessary for the avoidance of the frustration of the administration of justice or the rendering of it impracticable.
- If the Magistrates' Court does have the power to sit in camera, it can employ less restrictive derogations from open justice that would still protect the administration of justice. However, any alternatives which might also involve derogations from open justice, such as reporting restrictions or enabling information to be withheld from being given out in open court, are also exceptional measures and require satisfaction of similar stringent tests and consideration of less restrictive measures before they can be used.
- The Magistrates' Court has the discretion to exclude the public but not bona fide representatives of newspapers, broadcasters and news agencies during the testimony of witnesses aged under 18 in any proceedings relating to an offence against, or conduct contrary to, decency and morality (section 37 Children and Young Persons Act 1933).
- Section 25 of the Youth Justice and Criminal Evidence Act 1999 (when in force), permits the court to exclude persons of any description from the court, during the evidence of a

child or vulnerable adult witness on cases relating to a sexual offence, or where there are grounds for believing that the witness has been, or may be, intimidated. However, it was not envisaged that the press should routinely be excluded alongside the rest of the public, even in such exceptional cases. Moreover, even if the media are to be excluded, one nominated representative must be permitted to remain.

- Section 47 of the Children and Young Persons Act 1933 permits the press but not the public to attend Youth Court proceedings. The court has the discretion to admit the public and has been encouraged to use these powers by the Home Office and Lord Chancellor's Department (see below).
- Section 69 of the Magistrates' Courts Act 1980 permits the press and news agencies to attend family proceedings, with the exception of adoption proceedings, from which the public is otherwise excluded (see below). Rules have been made under section 144 of the Magistrates' Courts Act 1980 which enable private sittings in certain circumstances in proceedings where the court might exercise its powers under the Children Act 1989 (see below and the Family Proceedings Courts (Children Act 1989) Rules 1991 r16). With the exception of adoption proceedings, the court has the discretion to allow other people, including those with no direct connection with the case to attend family proceedings hearings.
- The Human Rights Act 1998 and Articles 6 and 10 of the European Convention on Human Rights are relevant considerations as these require the courts to comply with rights to fair and public hearings, public pronouncement of judgements and the right to receive and impart information, subject to strictly limited exceptions.

There are a number of automatic reporting restrictions on proceedings held in open court. The existence of an automatic restriction may render some 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 court 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 may give the court power to lift or vary the restrictions in specified circumstances on its own motion or after hearing applications from the parties or media.

Once Schedule 2 of the Youth Justice and Criminal Evidence Act 1999 is brought into force, all restrictions on reporting matters relating to the identity of complainants in sexual offences will be contained in the Sexual Offences (Amendment) Act 1992 as amended.

These are automatic reporting restrictions, which only protect complainants. Anonymity provisions for defendants were repealed by the Criminal Justice Act 1988. The court has no specific powers to impose reporting restrictions under the Sexual (Offences) Acts 1976-1992, as amended, although it does have the power to dispense with the restrictions and the complainant him/herself can waive protection and give written consent to the publication of any otherwise prohibited identifying matter.

- Until the 1999 Act is brought into effect, two-tier, but automatic, prohibitions on identification apply to complainants of rape offences and other sexual offences. The law is set out for certain sexual offences other than rape offences in the Sexual Offences

(Amendment) Act 1992 and, for rape offences, in the Sexual Offences (Amendment) Act 1976. (See Stone's.)

- Until the 1999 Act comes into force, there are two levels of protection for complainants. First, when an allegation of a sexual offence is made, the alleged victim's name, address, still or moving picture cannot be published, if it is likely to lead to his identification as an alleged victim of such an offence.

Second, after a person has been accused (as defined) of a sexual offence, nothing can be published within the alleged victim's lifetime, which might identify him as the complainant in relation to that accusation. Breach of the prohibitions is a summary offence, punishable by a level 5 fine. However, the complainant can give written consent to the publication of any identifying matter and this would be a defence, provided that it is not proved that any person interfered unreasonably with the victim's peace or comfort with intent to obtain the consent.

It is also a defence to prove that the publisher etc was not aware and neither suspected, nor had reason to suspect, that the material published was likely to lead to the complainant's identification as an alleged victim of the sexual offence. It is also permissible to identify the alleged victim as the complainant of the offences alleged in any report of subsequent criminal proceedings, other than those relating to the accused's trial or appeal arising from it.

The restrictions do not apply to defendants who have been accused of certain sexual offences, committed against each other (e.g. some incest offences). The trial or appellate court may remove or vary the automatic reporting restrictions if there is a substantial and unreasonable restriction upon reporting and it is in the public interest to do so.

Pre-trial, the court may also lift the restriction on the application of the defence to induce witnesses to come forward for trial or obtain evidence in support of an appeal where the defence would otherwise be substantially prejudiced or the applicant suffer substantial injustice.

Clauses to be introduced by Youth Justice and Criminal Evidence Act 1999

- Once the 1999 Act is in force, the 1992 Act as amended imposes a lifetime ban on reporting the identity of the alleged victim once an allegation that an offence has been committed is made and this continues after someone has been charged. The publication of names, addresses, identities of schools, educational establishments, workplaces and, indeed, still or moving pictures of the complainants are not banned *per se*. The restriction only applies insofar as publication of any of these particular matters is likely to lead members of the public to identify the individual as being the complainant of the alleged offence.
- The offences to which this automatic restriction applies are set out in section 2 of the 1992 Act (as amended by section 48 and Schedule 2 of the 1999 Act) and include rape, indecent assault, indecency with children and the vast majority of other sexual offences.
- Contravention of the reporting restrictions is a summary offence, punishable by a fine not exceeding level 5. The consent of the Attorney-General has to be obtained before proceedings can be instigated. Those liable include newspaper and periodical publishers,

editors, proprietors; broadcast companies and staff with functions equivalent to editors; publishers of other publications.

- Since the restriction is mandatory no order of the court is required even in the case of a child victim.
- A person charged with a sexual offence covered by the restriction may apply to the court to direct that the restriction shall not apply, if such a direction 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.
- The court can also direct that the prohibitions on identification do not apply if they would impose a substantial and unreasonable restriction upon the reporting of the proceedings at the trial, or of the proceedings during which the mode of trial has been decided, and it would be in the public interest to remove that restriction.
- Without recourse to the court, the victim or alleged victim may agree in writing to the publication of material likely to lead to members of the public identifying him/her.
- Such written consent is also a defence to any offence for contravention of the prohibition, with which the media may be charged, provided there has been no unreasonable interference with the peace and comfort of the person giving consent, with intent to obtain such a waiver, or that the complainant was not under 16 at the time consent was given.
- Other defences available include that the accused did not know and had no reason to suspect that the publication included identifying material; or that the accused did not know and had no reason to suspect that an allegation of a prescribed offence had been made.
- See also Section 6 below, GENERAL CONSIDERATIONS.

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

Committal proceedings

- Examining justices should sit in open court unless there is express statutory provision to the contrary and where the ends of justice would not be served by their doing so in respect of the whole or part of the proceedings – see above and section 4 of the Magistrates' Courts Act 1980.
- Written statements, depositions and other documents admitted in evidence under sections 5A-E of the Magistrates' Courts Act 1980 should be read aloud unless the court otherwise directs, in which case an oral account of the part of the statement not read aloud should be given, or the court commits the accused for trial without consideration of the evidence under section 6(2) of the Magistrates' Courts Act 1980.

- On the day that a person is discharged or committed for trial, or the following day, the justices' chief executive should ensure that a notice is displayed in the part of the court-house to which the public has access (in accordance with Section 6(5) Magistrates' Courts Act 1980, as amended when the Access to Justice Act 1999 Sched.13 comes into force). This notice should contain the person's name, address and age (if known), then, as appropriate, the offence with which he was charged and that the court has determined to discharge him, or charge(s) on which he has been committed and the court to which he has been committed.
- This provision is subject to section 4 of the Sexual Offences (Amendment) Act 1976 and so the notice should not identify complainants of sexual offences, in contravention of that section. The name and address of any under 17 year old should not be included in the notice unless the justices have stated that, but for this prohibition that information would have been included and (s)he should be mentioned in it for the purpose of avoiding injustice to the under 17 year old.
- Automatic restrictions apply to the reporting of committal and other proceedings relating to an information charging an indictable offence, before the court proceeds to inquire into the information as examining justices. The court should be slow to impose additional, discretionary reporting restrictions such as postponement orders under section 4(2) of the Contempt of Court Act 1981 (*R v Beaconsfield Justices, ex p Westminster Press* (1994), *The Times* 28 June; *R v Horsham Justices ex p Farquharson* [1982] 2 All ER 269 (see below)).
- The accused should be informed of the automatic reporting restrictions and asked if he would like to make an application for their removal. If there are two or more accused, and one objects to the restrictions being lifted, then the court should only lift them after hearing the accused's representations, if it is satisfied that it is in the interests of justice to do so. The order that grants such an application should be put in the court register and repeated at the beginning of any adjourned hearing. (Magistrates' Courts Rules 1981, rule 5(1)). The media may publish that the court did or did not decide to lift reporting restrictions, but even if an order to lift the automatic restrictions on the committal proceedings is granted, this does not apply to the application hearing.
- **Magistrates' Courts Act 1980, section 8**

If reporting restrictions are not lifted, the media can only report or broadcast:

- (a) the identity of the court and the names of the examining justices
- (b) the names, addresses and occupations of the parties and witnesses and ages of the accused
and witnesses
- (c) the offence(s) or a summary of them with which the accused is charged
- (d) the names of the legal representatives engaged in the proceedings
- (e) any decision of the court to commit the accused or any of them for trial and any decision of the court on disposal of the case of any of the accused not committed
- (f) the charge(s) on which the accused, or any of them have been committed and the court to

which they have been committed

(g) the date and place to which committal proceedings have been adjourned, if adjourned

(h) any arrangements as to bail on committal or adjournment

(i) whether legal aid was granted (or, when the Access to Justice Act 1999 is in force, whether a right to representation funded by the Legal Services Commission as part of the Criminal Defence service was granted to the accused or any of the accused).

- The automatic restrictions do not apply and so full reports of committal proceedings, containing more than these particulars, can be published:

(i) after the court has decided not to commit the accused, or any of the accused for trial;

(ii) after the conclusion of the accused's trial or the trial of the last accused to be tried, if the court

does commit the accused or any of the accused for trial;

(iii) as part of a report of a summary trial relating to an accused whom the court decides to try summarily (under section 25 (3) or (7) of the 1980 Act), while committing one or more of the other accused for trial, a report of so much of the committal proceedings as took place before its determination.

Offences relating to reporting restrictions on hearings by the Crown Court

Rulings at Pre-trial Hearings

- Automatic restrictions under section 41 and 42 of the Criminal Procedure and Investigation Act 1996 prevent reporting of all rulings made at Crown Court pre-trial hearings together with orders for discharge and variation of such rulings and application proceedings for rulings and orders.
- The restrictions apply until the trial of all defendants in the case has concluded. However, the restrictions can be lifted in whole or in part, provided that the court is satisfied, after hearing the representations of all the accused where any of them object, that it is in the interest of justice to do so. (If lifted, the reporting ban still applies to the accused's objections and representations).
- Contravention of the restrictions is an offence punishable on summary conviction by a fine not exceeding level 5. Proceedings can only be instigated by or with the consent of the Attorney-General.

Preparatory Hearings

- Reporting restrictions are imposed in respect of preparatory hearings heard by a judge of the Crown Court and relevant appeals. Section 37 and 38 of the Criminal Procedure and Investigation Act 1996 provide for restrictions where the case is a long or complex and section 11 of the Criminal Justice Act 1987 makes provision in cases of serious fraud.
- The Crown Court, Court of Appeal and House of Lords can lift the restrictions in whole or in part, although, if any of the accused object, the court has to be satisfied that it is in the interests of justice to do so after hearing the representations of each accused. If the restrictions are lifted, the ban continues to apply to the accused's objections to and representations against their lifting. Otherwise, the restrictions end on conclusion of the trial of the accused or the last of the accused to be tried.
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- Until then, in Great Britain newspapers, periodicals, and broadcasters can only publish or include one or more of the following matters in their reports of the proceedings: the identity of the court and the name of the judge; the names, ages, home addresses and occupations of the accused and witnesses; the offence or offences with which the accused is or are charged or a summary of them; the names of counsel and solicitors in the proceedings; where the proceedings are adjourned, the date and place to which they are adjourned; any arrangements as to bail; whether legal aid was granted to the accused or any of the accused. In serious fraud cases, relevant business information may also be given including the name and address of any business which the accused was carrying on, on his own account; name and address of any firm of which he was a partner or by which he was engaged; name, registered or principal office, or working address of the accused, of any company of which he was a director, or by which he was otherwise engaged at the relevant time.
- The addresses that may be published or included in a relevant programme are addresses at any relevant time, and at the time of their publication or inclusion in a relevant programme; "relevant time" here means a time when events giving rise to the charges to which the proceedings relate occurred.
- Contravention of the reporting restrictions on preparatory hearings are punishable on summary conviction by a fine not exceeding level 5. Prosecution proceedings can only be instigated by or with the Attorney-General's consent.

Proceedings to dismiss where there has been no committal

- Similar restrictions apply to successful applications for dismissal in cases for trial in the Crown Court where there have been no committal proceedings. These cover serious fraud cases (s. 11 Criminal Justice Act 1987); charges alleging sexual offences or offences involving violence or cruelty against children (s. 53; Sched. 6 para. 6 Criminal Justice Act 1991); and indictable only cases automatically sent for trial (Sched. 3 paragraph 3 of the Crime and Disorder Act 1998).

The media have statutory rights to attend the Youth Court and are free to report the proceedings, save for automatic restrictions which prevent the identification of under 18-year-olds involved in the proceedings. However, the court has the discretion to allow victims and the public to attend Youth Court proceedings.

There are also statutory provisions that enable the Youth Court to lift the reporting restrictions so as to enable media reports to identify the young persons and children involved in appropriate circumstances.

The Home Office and Lord Chancellor's Department have encouraged the Youth Courts to use these powers and the Home Secretary has encouraged the media to make applications for their use (see Home Office/Lord Chancellor's Department Joint Circular June 1998: Opening Up Youth Court Proceedings and The Youth Court 2001 – The Changing Culture of the Youth Court: Good Practice Guide published by the Home Office and the Lord Chancellor's Department – March 2001).

The Good Practice Guide suggests that increased contact with the Press can improve public awareness and result in the public becoming better informed about youth justice and the youth court. It recommends a proactive approach, review of the arrangements for contacts with the media and the listing of reporting restrictions, supply of advanced court lists and supplemental daily list, appointment of a liaison point for media contacts and circulation of protocols including guidelines on lifting of reporting restrictions.

Restrictions on Public Attendance at Youth Court

- Under section 47 of the Children and Young Persons Act 1933, attendance at Youth Court proceedings is limited to: members and officers of the court, parties, their legal representatives, witnesses and other persons directly concerned in the case, bona fide representatives of a news-gathering or reporting organisation and such other persons as the court may specially authorise to be present. The Home Office/Lord Chancellor's Circular Opening Up Youth Court Proceedings provides guidance on issues which the court might wish to consider in making use of its discretionary powers.
- Under section 37 of the Children and Young Persons Act 1933, such bona fide media representatives have the right to remain in court, alongside the others specified, even if the public or others are excluded during the taking of evidence from a witness who is a child or young person, in any proceedings relating to an offence against, or any conduct contrary to decency or morality.
- The position after the Youth Justice and Criminal Evidence Act 1999 comes into force is set out below:

Restrictions on reporting Youth Court proceedings

a. Pre-commencement of criminal proceedings

Until the Youth Justice and Criminal Evidence Act 1999 comes into effect, apart from the automatic restrictions on identification of complainants of sexual offences, there are no specific automatic reporting restrictions which prevent reporting or identification of children and young persons who are the subject of criminal investigations but not the subject of criminal proceedings, either before the adult Magistrates' Court or the Youth Court. However, automatic restrictions on the identification of children and young persons will affect reporting once they are involved in Youth Court proceedings, but not proceedings before the adult courts. All the self-regulatory and statutory Codes and guidelines which govern the media provide special protection for children and young persons (see Code of Practice upheld by the Press Complaints Commission, BBC Producer Guidelines, ITC Programme Code, Radio Authority Programme Code). If legal proceedings are pending or imminent or have become active, the media is also constrained by the law of contempt (both at common law and under the Contempt of Court Act 1981).

- When the Youth Justice and Criminal Evidence Act 1999 comes into effect, there will be automatic restrictions on the identification of alleged young offenders. However, its restrictions on identification of young victims and witnesses cannot be implemented save by an order laid by the Secretary of State and approved by a resolution in each House of Parliament following debate. They will not automatically come into force when a commencement date is designated for the restrictions on identification of alleged young offenders. The Government is keeping the case for implementation under review. In either case, the automatic prohibitions end on commencement of legal proceedings, when section 49 of the Children and Young Persons Act 1933, as amended by the Youth Justice and Criminal Evidence Act 1999 will apply to Youth Court proceedings only.
- Children and young persons involved in criminal proceedings, whether as accused, witnesses or victims and who appear before Magistrates' Courts other than the Youth Court and before other criminal courts are not subject to automatic reporting restrictions. The court has the discretion to make an order prohibiting their identification, if there is good reason to do so, currently under section 39 of the Children and Young Persons Act 1933. Once the Youth Justice and Criminal Evidence Act 1999 comes into effect, section 39 orders will only apply to civil proceedings and a new power under section 45 of the new Act will be available to the criminal courts, save where section 49 of the Children and Young Persons Act 1933 applies.

a. Commencement of Youth Court Proceedings – automatic reporting restrictions

- Section 49 of the Children and Young Persons Act 1933 imposes automatic restrictions on the identification of children and young persons involved in Youth Court proceedings. There are statutory provisions which give the Youth Court discretion to lift the restrictions.
- Under section 49 of the Children and Young Persons Act 1933, no report can be published which reveals the name, address or school of any child or young person concerned in the Youth Court proceedings, or includes any particulars likely to lead to the identification of any such child or young person so concerned in the proceedings. Pictures of such persons are also prohibited. These restrictions apply to publication in newspapers or inclusion in programme services. A child or young person is concerned in any proceedings if (s)he is the person against or in respect of whom the proceedings are taken or a witness in the proceedings. (Section 49 will be amended by the Youth Justice and Criminal Evidence Act 1999 when this comes into effect, see below.)
- These prohibitions apply to proceedings in Youth Courts and to proceedings for varying and revoking supervision orders under sections 15 and 16 of the Children and Young Persons Act 1969, and to appeals arising out of both such sets of proceedings, including by way of case stated. However, the prohibitions will only apply to any proceedings under sections 15 and 16 of the Children and Young Persons Act 1969 before a Magistrates' Court other than a youth court, or appeals from such a court, if that Magistrates' Court or the appellate court announces in the course of proceedings that section 49 applies to those proceedings.
- Contravention of the reporting restrictions is an offence, punishable on summary conviction by a level 5 fine. Proprietors, editors and publishers of newspapers and broadcasting companies and staff with functions equivalent to a newspaper editor are liable.

- The court has a wide discretion to lift the reporting restrictions. Section 49 (5)-(8) sets out the circumstances in which it may do so, prior to and irrespective of any conviction. Section 49(4) sets out the circumstances after conviction.
- Under section 49(5), a court, including a single justice, may by order dispense with the restrictions, to any specified extent, if it is satisfied that it is appropriate to do so for the purposes of avoiding injustice to the child.
- Reporting restrictions can also be lifted to assist a search for a missing, convicted or alleged young offender where the under 18 year old is charged with, or convicted of, a violent or sexual offence, or one punishable in the case of an over 21 year old offender by imprisonment of 14 years or more. If an application has been made by, or on behalf of the DPP and notice has been given to the child's or young person's legal representative, the court, including a single justice, may, if necessary, dispense with the requirements for the purpose of apprehending such a child or young person who is unlawfully at large and bringing him before the court or returning him to custody (section 49(5)-(7)).
- The Youth Court also has the power to order the lifting of the reporting restrictions to any extent, in relation to a child or young person who has been convicted, if it is satisfied that it is in the public interest to do so. The child or young person may therefore be identified in relation to any proceedings related to the prosecution or conviction of the offender for the offence, the manner in which he or his parent or guardian should be dealt with in respect of the offence, the enforcement, variation, revocation or discharge of an order made in respect of the offence, the enforcement of any rule made under section 16(3) of the Criminal Justice Act 1982 in respect of an attendance centre order or the enforcement of any requirements relating to detention and training orders under section 76 (6)(b) of the Crime and Disorder Act 1998.
- The court has to offer the parties an opportunity to make representations and take these into account before lifting the restrictions.
- The Joint Home Office/Lord Chancellor's Department Circular June 1998, Opening up the Youth Court provides some guidance and examples of instances where the Youth Court could consider its exercise of its discretion to dispense with the restrictions. It suggests that lifting the restrictions might be particularly appropriate where the nature of the young person's offending is persistent or serious or has impacted on a number of people or his local community in general; or where alerting others to his behaviour would help prevent further offending. The courts have also given some consideration to the factors that should be taken into account. This guidance is repeated in the Youth Court 2001 – The Changing Culture of the Youth Court: Good Practice Guide published by the Home Office and the Lord Chancellor's Department in March 2001.
- When the Youth Justice and Criminal Evidence Act 1999 comes into effect, section 49 will be slightly amended (see section 48, and Schedule 2), as follows:
 - the automatic prohibition on identification of a young person concerned in the proceedings will only apply until the 18th birthday of the young person concerned;
 - the particulars listed which might identify the child or young person are not prohibited from publication per se; publication of the youth's name, address, school or other educational establishment, workplace, still or moving picture is an offence only if likely to

lead members of the public to identify the young person as a person against or in respect of whom the proceedings are taken, or a person called, or proposed to be called to give evidence in the proceedings;

- publication in contravention of the prohibition is an offence, punishable on summary conviction with a fine not exceeding level 5 on the standard scale. Those liable include newspaper and periodical proprietors, editors and publishers, publishers of other publications and broadcasting companies and those with functions equivalent to editors in respect of identifying matters included in programme services (picture includes a likeness however produced);
- the accused has a defence that at the time of the alleged offence he was not aware, and neither suspected nor had reason to suspect, that the publication contained the matter in question.
- See also 3.6 below, Anti-Social Behaviour Orders.

The media is permitted to attend and report domestic and family proceedings heard by the Magistrates'

Courts, subject to some restrictions.

Press access to family proceedings

Section 65(1) and (2) of the Magistrates' Courts Act 1980 set out the proceedings under various enactments which are considered to be family proceedings for the purposes of that Act.

Section 69 governs media access to family proceedings

- With the exception of adoption proceedings (see below), representatives of newspapers and news agencies are entitled to attend hearings and determinations of family proceedings, alongside officers of the court, parties, legal representatives, witnesses and others directly concerned with the case. The court also has discretion to allow others to attend – but must give permission to attend to anyone who has adequate grounds.
- Access to proceedings under the Adoption Act 1976 is more restricted. Press representatives have no right to attend adoption proceedings and the court cannot give permission for anyone to attend who is not an officer of the court, or one of the parties, lawyers, witnesses or other person directly involved in the proceedings.
- The press can be excluded during the taking of any indecent evidence if the court considers it necessary in the interest of the administration of justice or of public decency (section 69(4) of the Magistrates' Courts Act 1980).
- The Magistrates' Court retains any other powers to hear proceedings in camera in addition to and without prejudice to the statutory provisions.
- Section 144 of the Magistrates' Courts Act 1980 enables rules to be made which enable the Magistrates' Courts to sit in private. The Family Proceedings Courts (Children Act 1989) Rules 1991 enable magistrates to sit in private in proceedings in which any powers

under the Children Act 1989 may be exercised. However this power can only be exercised if expedient in the interests of the child concerned in the particular proceedings. Magistrates may not adopt private sittings as a general policy. Even if the court does sit in private, the press need not be excluded – the court can specify 'other persons' who may attend in addition to the officers of the court, the parties and their lawyers (rule 16).

Automatic restrictions on reporting family proceedings before the Magistrates' Court

Section 71 of the Magistrates' Courts Act 1980 sets out the reporting restrictions which automatically apply to family proceedings and adoption proceedings. The Judicial Proceedings (Regulation of Reports) Act 1926 contains automatic restrictions, which limit reports of divorce and related proceedings. Children enjoy additional protection against identification in connection with the court proceedings under section 97(2) of the Children Act 1989 if the Magistrates' Court might exercise any power under the Children Act 1989 with respect to them or any other child.

Restrictions on reporting domestic proceedings

- Under section 71 of the Magistrates' Courts Act 1980 newspapers, periodicals and broadcasters can only lawfully print, publish or include in programme services (or cause or procure such publication) the following particulars:
 - i) names, addresses and occupations of the parties and witnesses
 - ii) the grounds of the application and concise statement of charges, defences and counter-charges
 - in support of which evidence has been given
 - iii) submissions on any point of law arising in the course of the proceedings and decisions of the
 - court on them
 - iv) the decision of the court and any observations made by the court in giving the decision.
- Tighter restrictions apply to proceedings under the Adoption Act 1976 and identification of children potentially subject to the exercise by the court of powers under the Children Act 1989.
- In respect of adoption proceedings, (i) and (ii) do not apply, so reports must be confined to submissions, the court's decisions and accompanying observations.
-
- Particulars of the proceedings which should not be reported under section 97(2) of the Children Act 1989 include the name, age, address or school, any picture or other particular calculated to lead to the identification of any child as being involved in any proceedings before the Magistrates' Court in which any power under the Children Act 1989 may be exercised in relation to that or any other child. This protects children involved in various family proceedings, not just those specifically brought under the Children Act 1989. Section 8(4) and (5) define these proceedings. The protection is confined to under 18 year olds (section 105) aside from exceptions which also protect 18

year olds, which are set out in Schedule 1 para 2 and 6 relating to some orders for financial relief and periodical payments.

- The reporting restrictions under section 71 do not apply to reports appearing in newspapers and periodicals of a technical character which are bona fide intended for circulation to members of the legal or medical professions.
- Contravention of section 71 is a summary offence, punishable by a level 4 fine. However the Attorney-General's consent is required to begin any prosecution.
- Contravention of section 97(2) is also an offence punishable by a level 4 fine on summary conviction. It is a defence for the accused to prove that he did not know and had no reason to suspect that the published material was intended or likely to identify the child.
- The court, or the Lord Chancellor, can lift the reporting restrictions if satisfied that the welfare of the child requires it.

Reporting of proceedings held in private: contempt

The Administration of Justice Act 1960 section 12 relates to the operation of the law of contempt in respect of proceedings held in private and brought under the Children Act 1989 or otherwise related wholly or mainly to the maintenance or upbringing of a minor.

In the absence of any other reporting restriction, it is permissible to publish the date, time and place of the hearing and the order made by the court. If other material actually relating to the proceedings is published, the question of contempt would be at issue, in the absence of any defence recognised by law.

There is no automatic ban on publication of any other matter relating to the child- only upon the report of the proceedings.

Reporting of proceedings for divorce, nullity and related matters

Section 1 of the Judicial Proceedings (Regulation of Reports) Act 1926 regulates reporting of divorces and related proceedings).

- Section 1(a) prohibits the publication or printing, or causing or procuring such actions, in relation to any judicial proceedings of any indecent matter, or indecent medical, surgical or physiological details the publication of which would be calculated to injure public morals (subject to certain exceptions).
- Section 1(b) places automatic reporting restrictions on coverage of judicial proceedings for dissolution and nullity of marriages, judicial separation and restitution of conjugal rights. See also extension to proceedings under Part II of the Family Law Act 1996 or otherwise (when in force). Only the following matters may be lawfully printed or published, or caused or procured to be printed or published:-
 - - i) the names, addresses and occupations of the parties and witnesses
 - ii) a concise statement of the charges, defences and counter-charges in support of which

evidence has been given

iii) submissions on any point of law arising in the course of the proceedings and the decision of

the court thereon

iv) the summing up of the judge and the finding of the jury (if any) and the judgement of the

court and observations made by the judge in giving judgement.

- These prohibitions do not apply to printing of pleadings, transcripts of evidence or other documents for use in connection with the judicial proceedings or communication of such material to people concerned in them; nor to printing or publishing any notice or report in pursuance of the court's directions, nor to the printing and publishing of any volume or bona fide series of law reports, which are not part of any other publication and consist solely of reports of court proceedings, or any other publication of a technical character bona fide intended for circulation amongst members of the legal or medical profession.
- Contravention of the prohibition is a summary offence punishable by level 5 fine or imprisonment for a term up to four months. Proprietors, publishers, editors and master printers are liable to prosecution, but the Attorney-General's consent is required to sanction prosecution.

Applications for anti-social behaviour orders (ASBO) pursuant to section 1 of the Crime and Disorder Act 1998 are civil proceedings (*R (McCann) v Crown Court at Manchester* CA [2001] 1 WLR 1084; *B v Chief Constable of Avon and Somerset Constabulary* [2001] 1 WLR 340). Since the Youth Court has no civil jurisdiction, all such applications will be heard by the Magistrates' Court. The Magistrates' Court is open to the general public; no automatic restrictions will apply to prevent public and press access or to prevent reporting of the proceedings or to protect the identity of any adult or juvenile who are defendants as the subject of an application (see 1 and 2 above).

The court would have to have good reason, aside from age alone, to impose any discretionary order under section 39 of the Children and Young Persons Act 1933 to prevent the identification of any child or young person concerned in the proceedings (see 4.1b below and *R v Lee* (1993) 96 Cr App R 188 applied by the Divisional Court in *R v Central Criminal Court ex p W, B and C* [2001] Cr App R 2).

Although any request for reporting restrictions to be imposed is for the court to decide, the applicant may resist a call from the defendant's representatives for such restrictions if the effectiveness of the ASBO will largely depend on a wider community knowing the details. Given the nature of the proceedings, i.e. that the under 18 year old is being accused of anti-social behaviour in the community, it is in the community interest that any order will be enforced in order to protect the community. Unless the nuisance is extremely localised, enforcement of the order will normally depend upon the general public being aware of the order and of the identity of the person against whom it is made.

Effective enforcement may require the publication of photographs of the subjects, as well as their names and addresses. The magistrates dealing with a youth in ASBO proceedings may be called

upon to balance the interests of the community with that of the young person against whom the order has been made.

Breach of an ASBO without reasonable excuse is an offence, punishable on conviction on indictment

with five years' imprisonment and/or fine and on summary conviction by six months' imprisonment

and/or fine up to the statutory maximum. Again, no automatic restrictions upon press and public access or upon media reporting will apply to criminal proceedings before the Magistrates' Court (or the Crown Court). There would have to be good reason to impose any restrictions to prevent media reports' identification of any under 18 year old involved in the proceedings under section 39 of the Children and Young Persons Act 1933 or its replacement, section 45 of the Youth Justice and Criminal Evidence Act 1999, when in force (see above and 4.1b below).

If the defendant is under 18 and is the subject of criminal proceedings before the Youth Court for the alleged breach of an ASBO, then the automatic restrictions upon public, but not press, access to the proceedings and upon identification of the alleged offender will apply. The press will have the right to attend the proceedings under section 47 of the Children and Young Persons Act 1933 and the right to report the proceedings, subject to the automatic restrictions upon identification of the under 18 year old involved under section 49 of the Children and Young Persons Act 1933. As outlined above at 3.4 and in the two Home Office/Lord Chancellor's Department's publications, Circular 1998, Opening Up the Youth Court and Youth Court 2001 – The Changing Culture of the Youth Court: Good Practice Guide, the Youth Court has the discretion to admit the public and to lift the automatic reporting restrictions. The joint publications suggest relevant considerations.

The High Court in *McKerry v Teesdale and Wear Justice* [2001 Crim.L.R 594] considered factors to be taken into account by youth courts in lifting section 49 restrictions. (Note that this case did not directly relate to imposition of discretionary restrictions under section 39 and the Court was not referred to the Court of Appeal's judgment in *R v Lee – McKerry* was considered but not followed by the Divisional Court in *R v Central Crown Court ex p W, B and C* [2001] Cr App R 2 which re-emphasised Parliament's distinction between treatment of juveniles appearing in youth courts and juveniles appearing in adult courts.)

The factors included the great care, caution and circumspection which had to be exercised, the need for the statutory public interest test to be satisfied; the background of international law and practice, including the competing principles of articles 8 and 10 of the European Convention on Human Rights, and the collision between the hallowed principle that justice was administered in public, open to full and fair reporting of court proceedings so that the public might be informed about the justice administered in their name and the important principle of protection of juveniles' privacy in legal proceedings, great weight being given to their welfare; inappropriateness of dispensing with a juvenile's prima facie right to privacy as an additional punishment.

The High Court also made clear that there was nothing to preclude the justices from hearing a representative of the press either orally or in writing on whether reporting restrictions should be lifted and that could be a valuable process since the reporter might well have a legitimate point to make and one which would save the court from falling into error.

he Magistrates' Court has power in appropriate cases to impose temporary or permanent restrictions on the media's reports. In general, the authorities stress the paramount importance of the open justice principle, the exceptional nature of any restrictions and the criteria safeguarding that principle which must be satisfied before any such reporting restriction can be imposed. Courts may need to consider the interaction of statutory provisions with common law powers and Articles 6 and 10 of the European Convention on Human Rights, particularly the need to give reasons so that those subject to a restriction know where they stand and whether to appeal. The Youth Justice and Criminal Evidence Act 1999 (when in force) provides for revised restrictions on the reporting of the identity of young persons involved in criminal proceedings and a new power to restrict reporting in respect of certain adult witnesses.

1. *Persons under the age of 18*

a. Pre-commencement of criminal proceedings

- Currently, there are neither automatic nor discretionary reporting restrictions on children subject to criminal investigation pending the commencement of court proceedings. The media's self-regulatory and other codes do give particular protection to school age children.
- However, section 44 of the 1999 Act (if brought into force in full) would automatically prevent the reporting of any matter which might lead the public to identify a person under the age of 18 as a potential defendant, victim or witness as soon as a criminal investigation has begun (as defined in the Act).
- Any prohibition brought in under this section will only apply to a person by whom the alleged offence is alleged to have been committed.
- There is no automatic prohibition on publishing the youth's name, address, identity of school or other educational establishment, workplace or still or moving picture *per se*. The section is only contravened if the inclusion is likely to lead to members of the public identifying that young person as a person involved in the offence.
- The automatic restriction only lasts until criminal proceedings begin.
- Any criminal court, including a single justice, may dispense with the restrictions to any extent that it specifies if satisfied that it is necessary in the interests of justice to do so and the court has had regard to the welfare of the young person. There is a right of appeal to the Crown Court, which can be exercised by anyone who was a party to the application to lift the restrictions, or by anyone to whom the court gives leave.
- Contravention of the prohibition on identification under section 44 is an offence, punishable on summary conviction by, at maximum, a level 5 fine. The Attorney-General's consent is required to instigate proceedings.
- Defences include absence of awareness or suspicion or reason to suspect that the publication included the identifying matter, or that a criminal investigation had begun.

If the offences relating to non-identification of victims and witnesses are ever brought into force, the Act contains defences for publication in the public interest, as defined, or where written consent to the publication of the identifying matter has been given by the young person or an appropriate adult on their behalf without unreasonable interference (save for witnesses of alleged sexual offences, aged under 16).

a. Proceedings in the Magistrates' Court

- The Magistrates' Courts' power to impose discretionary reporting restrictions in respect of under 18 year olds involved in criminal and civil proceedings is currently contained in section 39 of the Children and Young Persons Act 1933. When the Youth Justice and Criminal Evidence Act 1999 Act comes into force, section 39 will apply only to civil proceedings (but see automatic reporting restrictions at 3.5 above). Criminal courts will have a new power under section 45 of the 1999 Act. The application of both powers is described below.
- **Under section 39 of the Children and Young Persons Act 1933**, any court can direct that media reports should not, except insofar (if at all) specified by the court, reveal the name, address, or school, or include any particulars calculated to lead to the identification of any child or young person concerned in the proceedings, either as being the person by or in respect of whom the proceedings are being taken or as being a witness therein. No picture of the subject of the order may be published.
- Contravention of the prohibition on publication is a summary offence, punishable on conviction by a maximum fine not exceeding level 5.
- The court has the discretion to hear media representations on whether it should make or lift a section 39 order. Courts have discretion to hear reporters in person, as well as their legal representatives. Indeed, many courts have formally reconsidered orders or purported restrictions after media representations by letter or discussion with the clerk to the justices.
- There must be good reason to make a section 39 order. There is a clear distinction between the automatic ban on identification of children involved in youth court proceedings under section 49 and the discretion to impose an order under section 39 of the 1933 Act. *R v Lee* [1993] 1 WLR 103, *R v Central Criminal Court ex parte W, B and C* [2001] Cr App R 2. Age alone is insufficient to justify the order. Courts have accepted that very young children cannot be harmed by publicity of which they will be unaware and therefore section 39 orders are unnecessary. Orders cannot be made in respect of dead children. Naming a young offender who has been convicted might act as a deterrent to others or the public might wish to know the outcome of the trial in serious cases.
- The order must be restricted to the terms of section 39. The court cannot ban the naming of any adult, nor make any order relating to any child or young person who is not involved in the proceedings. The court can give guidance on the practical effect of the order and what, in its view, might and might not be caught by the order. However, this can only be guidance, which is not binding on the media. (See Section 6 below, GENERAL CONSIDERATIONS, concerning the practical approach adopted by the media which enable cases to be fairly and accurately reported without harmful publicity to young people involved in court proceedings.)

- If a reporting restriction is imposed, the justices 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 made available for media 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 relating to the order. The order only applies to the proceedings in the court by which it was made, but is not limited as to time. (See Section 6 below, GENERAL CONSIDERATIONS.)
- **Section 45 of the 1999 Act**, when brought into force, gives a power to the court to give a direction restricting the reporting of any matter which might lead to the identification of a person under the age of 18 as a defendant, victim or witness in criminal proceedings.
- This power does not apply to Youth Court or any related proceedings where the automatic reporting restrictions imposed by section 49 of the Children and Young Persons Act 1933, as amended by the 1999 Act apply (for current provisions of section 49 see above).
- In contrast to the investigation stage, this power is not automatic but at the **discretion** of the court. The power should not be exercised as a matter of routine but the court should balance the general requirement for open justice with the need to protect young people involved in the proceedings.
- The court is required by subsection 6 to have regard to the welfare of the young person.
- Again, publication of the young person's name, address, school or other educational establishment, workplace or still or moving picture would not in itself be prohibited – the section would only be contravened if the inclusion of such a particular in the publication is likely to lead to the identification of the under 18 year old concerned.
- The restriction can only be made under this section until the person reaches the age of 18.
- The court, or appellate court may at the time of giving a reporting restriction direction, or subsequently qualify the direction to any extent by "an excepting direction" if either it is necessary in the interests of justice, or the effect of the direction is to impose a substantial and unreasonable restriction on the reporting of proceedings and it is in the public interest to remove or relax the restriction. [The public interest element is dealt with below at (3)].
- There is no power to impose restrictions to prevent the identification of children other than the defendant, a victim or a witness, e.g. the siblings of the defendant or a victim. Nor is there power to impose restrictions to prevent the identification of adults involved in the proceedings e.g. as defendants charged with or witnesses of offences against their own children or witnessed by their children.
- **Under section 39 of the Children and Young Persons Act 1933**, it was held that there was no power to make an order to prevent identification of a deceased child. This would appear to apply equally under the new law, in respect of orders under Section 45 of the Youth Justice and Criminal Evidence Act 1999 (yet to come into force).

- In a number of cases at first instance, (relating to section 39 of the 1933 Act) the court has considered that it is a very relevant consideration that a child victim was a baby or very young so that any adverse publicity was likely to have been a thing of the past before the child would even be aware of it.
- Guidance under the old law as to whether a reporting restriction prohibiting a young defendant from being identified should be lifted where an appeal is proposed was given by the Court of Appeal in *R v Manchester Crown Court ex parte H and D* [2000] 1Cr. App. R. 262.
- Breach of section 45 is an offence, punishable on summary conviction by (at maximum) level 5 fine. Instigation of proceedings requires the consent of the Attorney-General. Those liable to conviction include the proprietors, publishers and editors of newspapers and periodicals; broadcasting companies and those performing functions equivalent to print media editors; and publishers of other publications.
- (For decisions relating to the application of section 39 of the Children and Young Persons Act 1933 in criminal proceedings, see Stone's.)

1. *Adult Witnesses*

- Section 46 of the Youth Justice and Criminal Evidence Act 1999 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.
- The Court may make a reporting direction that no matter relating to the witness shall during his life-time 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, work-place 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.
- An adult witness is eligible for protection if the quality of his evidence or his co-operation 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. (Coherence is further defined- it refers to the witness's ability in giving answers which address the questions put to him or her, which can be understood both individually and collectively).
- The court may make a reporting restriction direction in respect of such a person if the making of such an order is likely to improve the quality of the evidence of the witness or his co-operation in the preparation.

The court must have regard to:

- i. The nature and circumstances of the offence;
- ii. The age of the witness;
- iii. The social and cultural background of the witness and his ethnic origin, if relevant;

iv. The domestic and employment circumstances of the witness, if relevant;

v. Any religious beliefs or political opinions of the witness, if relevant;

vi. Any behaviour towards the witness by the defendant, his family or associates or anyone likely

to be a witness or defendant in the proceedings. Any behaviour towards the witness by the

defendant, his family or associates or anyone likely to be a witness or defendant in the

proceedings.

vii. Any views expressed by the witness.

- 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.
- Strangely it does not seem possible to give a reporting restriction order under section 45 in respect of a witness under 18 that will last beyond his 18th birthday even in a case where the court would make a lifetime direction in relation to an adult under section 46.
- "Excepting directions" can be given and the directions may be revoked or varied at any stage either by the court or an appellate court, under similar provisions relating to those under 18. The court may dispense with the restrictions imposed by the reporting direction, to any extent that it specifies in the excepting direction. It has to be satisfied either that it is in the interests of justice to do so or that the effect of the restrictions is to impose a substantial and unreasonable restriction on the reporting of the proceedings and it is in the public interest to remove or relax that restriction. (The fact that the proceedings had been determined in any way or had been abandoned would not in itself be sufficient reason to dispense with the reporting restrictions imposed.) The subject of a reporting direction under section 46 can consent to the inclusion in the publication of any identifying matter otherwise prohibited and written consent is a defence to any prosecution for breach of the order. To be effective, the consent must have been obtained without interference of the peace and comfort of the person giving the consent on behalf of the protected person or the protected person himself with intent to obtain the consent.

3. General Considerations in Relation to Persons Under 18 and Adult Witnesses under the Youth Justice

and Criminal Evidence Act 1999 Restrictions

- Breach of reporting directions is a summary offence under section 49 of the 1999 Act. Prosecution requires the consent of the Attorney-General. Statutory defences are provided under section 50(1) that the person charged was not aware, and neither suspected nor had reason to suspect, that the publication included the matter or report in question; or, under section 50(2), that a criminal investigation had begun. Written consent is also a defence to publication of identifying material contrary to a reporting direction under section 46.

- If the section 44 prohibitions on identification of under 18 year old victims and witnesses are brought into effect, then additional defences are provided by section 50(2)-50(11) including: publication in the public interest (does not apply to witnesses of sexual offences) if the effect was to impose a substantial and unreasonable restriction on the reporting of matters connected with that offence; written consent by a 16 or 17 year old; or written consent by another appropriate person on their behalf, if under 16, after written notice had drawn his attention to the need to consider the under 16 year old's welfare and the consent was not subsequently withdrawn.
- A restriction direction prevents publication of any matter leading to identification but specifically name and address, any school or educational establishment attended, place of work and photographs (still or moving) if they are likely to lead members of the public to identify the person as having been involved in the offence.
- In determining whether something is or was in the public interest, the court must have regard to the interest in the open reporting of crime, the open reporting of matters relating to human health or safety and the prevention and exposure of miscarriages of justice, as well as to the welfare of the person in relation to whom the restriction would apply, and any views expressed by that person, if aged 16 or over, or if aged under 16 years old, by an 'appropriate person' on his behalf (see sections 50 or 52). The provisions of sections 45 and 46 of the Act do not apply to proceedings commenced before the coming into force of the sections.
- Section 47 of the 1999 Act prohibits the reporting of special measures directions under section 19 and directions which prohibit the accused from conducting cross-examination. The automatic ban applies during the trial, but the court may order that the restrictions do not apply in whole or in part. The ban ends on determination (by acquittal, conviction or otherwise) or abandonment of the proceedings in relation to the accused or each of them.

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- Under section 11 of the Contempt of Court Act 1981, in any case where a court (having the power to do so) allows a name or other matter to be withheld from the public in proceedings before it, it may give such directions prohibiting the publication of the name or other matter in connection with the proceedings, as appear to be necessary for the purpose for which it was withheld.
 - The court must have, at common law, the power to depart from the open justice principle. For example, it cannot make a section 11 order to prohibit publication of material previously given out in open court in those proceedings. Applications for section 11 orders may therefore be heard in camera.
 - The Court of Appeal and Divisional Court have considered a range of cases where orders prohibiting identification or publication of identifying details, such as an address, have been sought in respect of defendants, witnesses, including victims, and claimants. Consistent with the general requirement of open justice, the Court's prime consideration should be the administration of justice and whether it is satisfied that failure to make an

order would frustrate or impede it (sympathy for the accused or protection of his business interests against economic damage are not good grounds).

- The Court has the discretion to hear representations from the media or their legal representatives as to the making, variation or lifting of a section 11 order. The media may formally make applications for judicial review of such an order made by the Magistrates' Court.
 - The order should be committed to writing by the clerk to the court and a permanent record kept. It should state its precise scope, the time at which it will cease to have effect, if appropriate, and the specific purpose in making the order (see Practice Direction (Contempt: Reporting Restrictions) [1982]1 WLR 1475). Court Business Rules also suggest prominent display of the notice and insertion into the Daily List.
 - Where material might be withheld from the public, it is possible to use other means which represent a lesser derogation from the open justice principle e.g. postponement orders under section 4(2) of the Contempt of Court Act 1981 if the relevant requirements are satisfied. The court has the power to permit some evidence to be submitted in writing rather than read aloud (e.g. medical reports submitted for sentencing consideration). However, the circumstances in which it is appropriate to do so would be rare.
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- Under section 4(2) of the Contempt of Court Act 1981, the Court has power in certain restricted circumstances to order that publication of reports of part or all of the proceedings held in open court be postponed for so long as necessary, where such a postponement is necessary for avoiding a substantial risk of prejudice to the administration of justice in those or other proceedings.
 - Under section 4(2), Courts should consider whether publication would create a substantial risk of prejudice to the administration of justice and whether postponement of publication of a fair and accurate report of part or the whole of the proceedings which have been held in open court is necessary to avoid the risk. The court should only exercise its discretion to make an order after weighing the competing interests of open justice and fair trial (see *R v Sherwood ex p The Telegraph Group plc* (2001) The Times, 12 June). It should be slow to do so where the automatic restrictions under section 8 of the Magistrates' Courts Act 1980 apply (e.g. committal proceedings).
 - The courts have suggested that where possible the question of any imposition of reporting restrictions is best dealt with in advance of trial.
 - The Magistrates' Court has discretion to invite representations from the media or their legal representatives as to whether an order should be made, varied or lifted. It may make a temporary order to restrict publication pending its hearing to determine whether an order should be made. The prosecution should also assist the court on the proper legal principles to be applied. The courts have drawn attention to the number of inappropriate orders which otherwise unnecessarily restrict reporting. The media can formally make an application for judicial review of any order.
 - The Practice Direction (Contempt of Court: Reporting Restrictions) [1982] 1WLR 1475 CA requires that the order must be committed to writing (in the case of the Crown Court by the Judge or by the clerk under his supervision). It must be formulated in precise

terms and must state (a) its precise scope, (b) the time at which it shall cease to have effect, if appropriate, and (c) the specific purpose of making the order.

- It may be appropriate for the Court to make clear whether and to what extent the terms of the order can be published.
- Section 58 of the Criminal Procedure and Investigations Act 1996 gives a Magistrates' Court which is determining sentence following conviction, or determining whether the accused should be committed to Crown Court for sentence (and a court deciding whether to give leave to appeal against a sentence or hearing an appeal against or reviewing a sentence,) power to postpone reporting of derogatory assertions about a named or identified person, if believed on substantial grounds to be false or irrelevant, newly made in mitigation and sentencing appeals and reviews. The section does not apply if the assertions have previously been made during the trial or at other proceedings relating to the offence.
- 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 must be made as soon as reasonably practicable after the sentence is passed and can last for 12 months. The Court can revoke orders of its own motion at any time, or after application. Home Office Circular 24/3/1997 suggests that the media and other third parties can make applications, perhaps by written submission.
- The Home Office Circular gives 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 availability of more detailed information, the entry into the court record 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.
- The order prohibits publication or broadcast (as defined) of an assertion which names the person about whom the assertion is made or contains enough to make it likely that members of the public would identify him as that person and reproduces the actual wording of the matter asserted or contains its substance.
- Contravention of the order is an offence punishable on summary conviction by a fine up to level 5 on the standard scale. Those liable include publishers, newspaper and magazine proprietors, editors or publishers and broadcasting companies and those with functions corresponding to newspaper editors.
- Defences include that the accused was not aware and neither suspected nor had reason to suspect that the publication or programme included the prohibited assertion or that either an interim or final order had effect at that time.

he court has the discretion to permit tape recordings, which would otherwise constitute contempt. (Contempt of Court Act 1981, section 9, Practice Direction (Tape Records) [1981] 1 WLR 1526). It is an offence to take photographs or make sketches (with a view to publication) or attempt to do so in court, in respect of the judge, a juror, witness or party if in the court room, court building or court precincts. (Criminal Justice Act 1925 section 41). The court can issue guidance on the extent of the precincts of the court buildings e.g. by way of a map.

In some instances referred to above there is a requirement that a restriction order should be committed to writing. In the case of the Crown Court by the judge personally or by the clerk under his supervision. In the case of the Magistrates' Court, this would be done by their clerk. Good practice should require that this is done whenever a discretionary order is made to ensure that the written order is in the precise form required by the Court.

There will be cases where the court will be assisted before making an order by receiving either written

or oral representations from the media. Factors known to the media may not be apparent from the

papers and neither the prosecution nor the defence may be aware of them or have any particular interest

in advancing them. It is sensible always to consider inviting such representations. This practice was

encouraged by the Divisional Court in *R v Teesdale and Wear Valley Justices ex parte M* (7 February

2000).

- When a discretionary restriction order is made, it is desirable that the media are given every assistance to comply with it. Magistrates may, therefore, think it helpful to say that if there are any particular problems arising from the making of the order which the media wish to raise in a written note, further guidance will be given in open court.
- Every court should have a proper procedure for ensuring that adequate steps are taken to draw any discretionary restriction order to the attention of media representatives who may not have been in court when the order was made and the court should ensure that the procedure has been followed.
- "Jigsaw Identification": Particular problems may arise where an order restricts publication of the identity of a victim or witness, and different reports, each complying with the requirement not to identify the victim or witness provide information which when put together makes the restricted identification clear. For example, if one report refers to an unnamed defendant having been convicted of rape of his daughter, and another report names the defendant but does not identify the relationship between the defendant and the witness. However, newspapers, magazines, broadcasters and their regulators have aligned their respective codes so that the media adopt a common approach which avoids such problems when reporting sexual offences (see Code of Practice upheld by the Press Complaints Commission, BBC Producers' Guidelines, Independent Television Commission's Programme Code, Radio Authority Programme Code).
- Media organisations may also agree to follow the same approach in reporting other offences involving children. This enables identification of the defendant by name but requires that no details should be given of any relationship which would link the offences to the alleged victim or otherwise identify the victim and the witness. It is recognised that this restriction may handicap the reporting of proceedings but the uniform approach protects the victim or the witness in the way required by the court. Since reports may already have appeared before the case reaches the Court, the Court should be very slow to interfere with this agreed practice (even where interference is possible – see *R v*

Southwark Crown Court ex p. Godwin [1991] 3 All ER 818) since it may result in the sort of identification that the agreement is designed to prevent.

- Courts must ensure that any restrictions on the principle of open justice in both criminal and civil cases are strictly limited and compatible with the European Convention on Human Rights. Exclusion of press and public from court proceedings or imposition of restrictions upon reporting of court proceedings, (including anonymity provisions), must be exercised with reference to the European Convention on Human Rights, in particular Articles 6 and 10, and the duties of the court to act in accordance with the Convention, under section 6(1) and (3) of the Human Rights Act 1998. In civil, but not criminal cases, regard must also be had to the Section 12 of the Human Rights Act 1998 in any case where it might be considering an order or other remedy, which might affect the exercise of the Convention right of freedom of expression.
- The most pertinent provisions are Article 6, the right to fair and public hearings, and public pronouncements of judgment, and Article 10, the right to freedom of expression, including the right to receive and impart information without interference by public authority. Exceptions to both articles are strictly limited. Moreover, the question is not merely one of achieving a proper balance between the two articles – both promote open justice and curtail exclusion from court proceedings and reporting restrictions. Under Article 6, the ECHR has acknowledged that the publicity element which creates open justice helps ensure a fair trial and the UK media has benefited from Articles 6 and 13 (not incorporated in the Human Rights Act 1998) as well as Article 10, to secure reforms to the law of contempt, to obtain rights to appeal against court reporting restrictions and to make representations against in cam-era proceedings.
- In civil cases, courts must also have regard to the special protection against prior restraint on media publication afforded by Section 12 of the Human Rights Act 1998, which applies when courts might be considering any remedy or order which might affect the exercise of the Convention right to freedom of expression. The courts must have particular regard to the importance of the Convention right to freedom of expression. There are requirements relating to notification, consideration of the merits, extent to which the material is already or is about to pass into the public domain, the public interest in publication and self regulatory media codes.

When the Youth Justice and Criminal Evidence Act 1999 comes into force, automatic restriction on identification of alleged young offender when criminal investigation commences until legal proceedings commence – section 44 Youth Justice and Criminal Evidence Act 1999. No restrictions at present.

- Automatic restrictions on identification of children and young persons involved in Youth Court proceedings – section 49 Children and Young Persons Act 1933. No automatic restrictions on other proceedings.
- Automatic restrictions on identification of children involved in adoption proceedings and proceedings where the courts may exercise powers under the Children Act 1989 (section 71 Magistrates Courts Act 1980, section 97(2) Children Act 1989).
- Discretion to prohibit identification of child or young person involved in any court proceedings, provided there is sufficient reason, under section 39 of the Children and Young Persons Act 1933. When the Youth Justice and Criminal Evidence Act 1999

comes into force, section 39 orders will be confined to civil proceedings, but the criminal courts will have the power to make discretionary orders under section 45 of the 1999 Act.

- In common with adults, under 18 year olds are protected by automatic restrictions on identification of complainants of sexual offences – Sexual Offences (Amendment) Acts 1956-1992, to be further amended by Youth Justice and Criminal Evidence Act 1999.
- In all cases, the courts have powers to dispense with automatic restrictions on access or reporting. The court can ask to be addressed on the appropriate use of both the powers to lift the automatic restrictions to any extent, as well as those to impose discretionary orders. See also the relevance of media codes in Section 6 above.

Media and public access to proceedings in the Magistrates' Court – advice and guidance for magistrates

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.
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- Evidence must be communicated publicly.
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- 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.

In recognition of the open justice principle, the courts and Parliament have given particular rights to the press, 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 it from reporting proceedings in the Magistrates' Courts, together with an easy reference checklist for use in court.

Always seek the advice of the clerk/legal

adviser when considering imposing press

reporting or public access restrictions to the court.

A structured approach for magistrates

Note: In this document reference is made throughout

to the media. This includes, the press, radio and television.

If the court is asked to exclude the media or prevent it from reporting anything, however, informally, do not agree to do so without first checking whether the law would permit the court to do so. Then consider whether the court ought to do so. Invite submissions from the media or its legal representatives. The prime concern is the interests of justice.

1. Seek the advice of the Clerk/legal advice on the circumstances in which the law allows the court to exclude the media, withhold information, postpone or ban reporting and then consider whether it would be a proper and appropriate use of that power in the case before the court.

2. Then consider:

- 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? Has the applicant produced the factual evidence necessary to the court's assessment of his case, where the law might require this?
- Is action necessary in the interests of justice? Automatic restrictions upon reporting might already apply, or there may be restrictions on reports imposed by the media's codes, or as a result of an agreed approach and other factors affecting the way that a particular case might be reported which are not known to the court, or in the interests of the parties to put forward.
- Is there any derogation from the open justice principle really necessary? If so are there any less restrictive alternatives available? 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.
- (NB: The court should invite media representatives 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.)

1. If an order is made, the court must make it clear in court that a formal order has been made and its precise terms. 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.

A check-list

On occasions reporting restrictions are lawful and necessary. If the court is asked to exclude the press or prevent it from reporting anything, however informally:

- **Seek the advice of your clerk.**
- **Check your powers.**
- **Invite representations from the parties and the media.**

Make sure that the court has had all the relevant statutes and legal authorities drawn to its attention before making any decision.

If you are referred to a statutory power:

What is the precise wording of the statute? Is it relevant to the particular case? Consider the case law.

If you are referred to a common-law power

and the court's inherent jurisdiction to

regulate its own proceedings:

Does the case law actually support that contention advanced? Has the applicant produced the factual evidence required by law?

- **Is action by the court necessary in the interests of justice?**

Automatic restrictions upon reporting might already apply. There may be other restrictions on reporting imposed by the media's codes, or by agreement which are not known to the court.

- **If restrictions are necessary how far should they go?**

Always consider whether there are less restrictive alternatives available.

- **If an order is made, the court must make it clear in court that a formal order has been made and its *precise terms*.**

It may be helpful to indicate 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.

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

This should be under the court's direction. It should be in precise terms, giving its legal basis, its precise scope, its duration and when it will cease to have effect if appropriate and the reasons for making the order. Appropriate entries should be made in the court record.

- **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.

- **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. further information please contact: