



Children and Young People's
Centre for Justice

01/10/2024

Media Reporting on Child Homicide Victims – Scottish Government consultation

CYCJ Response

Overview

Background

The Children and Young People's Centre for Justice (CYCJ) is based out of the University of Strathclyde, Glasgow, and works towards ensuring that Scotland's approach to children and young people in conflict with the law is rights-respecting; contributing to better outcomes for our children, young people and communities.

Our response to this consultation draws together our research evidence, policy and practice knowledge, and evidence from our participatory work with children and young people with experience of Scotland's care and justice systems

Consultation's purpose

This consultation looks at media reporting of and public information sharing about child homicide victims. You can read the [consultation paper](#) for more information.

Summary of CYCJ position

CYCJ very much welcomes the opportunity to respond to this consultation and support a change in reporting restrictions. Our response highlights several key points, including:

- restrictions should also apply when it is suspected the child has died because of a crime, with anonymity being the default position from the start;
- choice and control for family members should be maximised;
- Punishments for breaking restrictions should be greater for organisations and media outlets, than for individuals.
 - Particularly for children who should not be criminalised.

Our response

Question 1

Please share any thoughts you have on how the media currently reports on child homicides.

CYCJ were signatories to the [open letter regarding anonymity from victim support organisations and charities](#), thereby we agree a change to reporting restrictions is required, including for child homicide victims.

Question 2

Please share any thoughts you have on any action that could be taken to amend the current position on media reporting of child homicides.

All answers in this consultation are relevant to this question and should be read with reference to the following underpinning positions:

- CYCJ is supportive of Scotland's trauma-informed approach to justice and international standards and rights in relation to privacy, including UNCRC and Council of Europe Guidelines on child-friendly justice.
- The changes proposed would be a significant shift. However, the current approach to reporting restrictions in respect of all children requires significant change to uphold the rights of children and comply with international standards. There is however likely to be learning, both positive and negative, from existing approaches and there will be some unavoidable risks from legislative change.
- We believe that there should be a combination of legislative and non-legislative change. Legislating for such individualised case-by-case considerations, when contested and changing views are highly likely, is inherently difficult and practice and cultural change alongside any legislative change is important in successful implementation.
- With any change efforts should be made to avoid compounding the trauma experienced by a child homicide and reporting restrictions as far as possible.
- Reporting restrictions should apply from the earliest possible point and to as wide a jurisdiction as possible (i.e. UK wide and include online and social media content). Whilst inevitably there will be widespread knowledge about the fact that a child has died because of homicide, that information being available worldwide, in the public domain, often with graphic levels of detail about the circumstances involved and being difficult if not impossible to completely retract is the key difference.
- Restrictions should also apply when it is suspected the child has died because of a crime, even if criminality is yet to be established, to prevent information getting into the public domain which can then identify someone who is later classified as a homicide victim.
- The implications for children, including surviving siblings, but also other children who may be involved in a child's death, including witnesses, other non-deceased victims, and any child suspect/accused, need to be fully considered. A child rights and wellbeing impact assessment will be required.
- A rights-based approach is important but there will inevitably be competing rights of any one individual (for example freedom of expression and privacy) and of all those

impacted by a child homicide. The more people who have rights enshrined in legislative change, for example of waiver, the greater the likelihood of competing views and rights. Proportionality is important.

- Choice and control for immediate family members should be maximised, recognising there is likely to be competing views and views may change over time. It is also important to recognise for some families/family members being able to talk about their deceased child publicly is an important part in their grieving process and that using that person's experience to affect positive change, for example via campaigning, can help them feel something has been achieved through their loss. The subject matter inevitably means there will be various, at times competing views and experiences.
- By creating reporting restrictions, their breach would be a criminal offence. We are concerned about the risks of criminalising family members who publicly share information about their loved one and other people who are impacted by the child's death. There will inevitably be enforcement challenges, and it is important to recognise potential limitations to this, for example the challenges of removing knowledge of information that has already been publicly available.
- Clarity, consistency and alignment of approach and legislation as far as possible across different scenarios where there are/could be reporting restrictions is important in terms of understanding, enforcement and the upholding of rights. Consideration of how these proposals would align with the changes in the Victims, Witnesses and Justice Reform (Scotland) Bill will be important. Beyond this, we deem there are real risks of unintended consequences from amending reporting restrictions for only one group of children. Our preference would be wholesale change to reporting restrictions for all children, including suspects, accused, and those who have been convicted of an offence in childhood (for more information on this see Q24). This is in keeping with Section 47 of the Criminal Procedure (Scotland) Act 1995 which prohibits the publication of the name, address, school or any particulars calculated to lead to the identification of any person under the age of 18 who is an accused, victim or witness in criminal proceedings. We would like to see the [changes proposed in the Children \(Care and Justice\) \(Scotland\) Bill](#) revisited as part of any legislative change in this area.

Question 3

To what extent do you think an extension of anonymity to deceased child victims would affect family and friends wanting to talk publicly about their loss?

International evidence, as cited in the paper accompanying the consultation, highlights this is a very real risk. We deem it unavoidable that different people may have different views and in addition people's views may change, albeit recognising that once a child is publicly identified it is virtually impossible to remove that knowledge and although the retraction of information is possible, this is challenging. As detailed in response to question 23, we think there are means by which families can talk publicly about their loss, whilst retaining choice and control over the information shared. Efforts to maximise this balance are key.

Question 4

Do you consider that an extension to anonymity would have an impact on the ability of the police to investigate a crime? Please provide details.

Ensuring that police can continue to fulfil their functions is crucial, but we do not believe the proposed changes would impact on this. There are existing arrangements for example in respect of missing person cases that can be built upon, as well as existing guidelines and processes for Police Scotland liaising with families to agree communication strategies, as well as Police Scotland working with COPFS regarding the publication of information in criminal investigations. Whilst there may be risks, for example that a child identified previously as a missing person would be identified should the case develop into a homicide investigation, these risks exist currently for example where a missing person case develops into a criminal investigation where that individual is now a victim. These risks would appear to be unavoidable.

Question 5

Do you consider that an extension to anonymity would have an impact on freedom of expression? Please provide details.

Rights and principles like freedom of expression, privacy, public interest and open justice will always require to be balanced in decision making. Like most decisions regarding reporting restrictions there are balances to be struck, often balances that are highly case specific. We need to consider whose freedom of expression and privacy is the priority here

- that of the deceased victim, their next of kin and surviving relatives, or of those who are publicly identifying the child, including media outlets? We also need to consider the differing motivations for such expression and that these motivations may change. Within these considerations, the contested concept of public interest is important (see for example, Fitz-Gibbon & O'Brien, 2017; Hart 2014; Lynch, 2018).

Question 6

Do you consider that an extension to anonymity would have an impact on open justice? Please provide details.

We do not believe that these changes will fundamentally impact on open justice. Justice will still be seen to be served and cases will still be able to be reported on, just without information that identifies the child and therefore in a manner that affords greater protection to deceased children and their families.

We recognise the challenges of jigsaw identification and that these changes could inevitably mean parents who murder their child are not identified. However, this could be beneficial to any other surviving siblings, avoiding the potential stigma these children could experience. There will also be learning from approaches in other cases involving child victims where offences are committed by a family member who benefit from reporting restrictions for example cases of incest.

Question 7

To what extent do you agree that a media toolkit could support journalists and editors to report on child homicides in a trauma-informed way?

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree

Please give reasons for your answer.

Existing toolkits appear to be useful however we would welcome more information on how these have been used and developed to support our answering of questions 7 and 8. We believe that such a toolkit should apply to child anonymity/reporting restrictions in respect of child victims, witnesses and accused as a whole. Legislation is rarely a panacea and cultural and practice change alongside this is always key, with it important all legislative and non-legislative options are explored.

We recognise however the issues pervade far beyond journalists and editors with online (including social media) being much harder to legislate for, monitor and take action. Any toolkit should be applicable across all forms of communications.

Question 8

What should such a toolkit cover?

A toolkit could provide supportive information for family members to consider in determining what information they are agreeable to being published and the parameters around this.

Question 9

Are there other non-legislative means of improving how child homicides are reported and information published?

Question 10

To what extent do you agree that the Scottish Government should work with the criminal justice agencies to explore non-legislative options to help reduce the trauma of reporting on bereaved families of child homicide victims?

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree

Please give reasons for your answer.

As detailed above all options should be explored.

Question 11

If anonymity for deceased child victims was introduced, at what point do you think it should start?

- a) From the point of a child's death (when it is established that criminality is involved)**
- b) From the start of criminal proceedings
- c) Other – please provide details

Please give reasons for your choice.

- a) Anonymity should start as soon as possible including when it is suspected that the child has died as a result of a crime, even if this is not established, given the inability to remove information once it is already in the public domain. We think this could be important where there is initial uncertainty if for example the death was accidental. We also query whether restrictions should apply even if criminality is not established but if a family deem their death has been caused by someone else or for example because an individual died in state care that they deem the state to be responsible. Option b) would be more consistent with existing approaches to reporting restrictions that start once proceedings are in court, however, we have previously highlighted our concerns that currently restrictions do not apply pre-charge and that they should.

Question 12

If anonymity is automatic, how should a waiver process operate?

- a) Family members must apply to court to waive anonymity
- b) Family members are allowed to waive anonymity without requiring a court order and all restrictions fall when anonymity is waived

c) Family members are allowed to waive anonymity without requiring a court order but restrictions do not fall when they do so and those wishing to publish identifying information must seek permission from the family before doing so

d) Other – please provide details

Please give reasons for your choice.

Please see our response to question 23

Question 13

Who should be allowed to waive anonymity/apply for a waiver?

Please see our response to question 23

Question 14

What do you think are the main challenges to enforcing anonymity restrictions?

The emotive subject of a child's homicide is likely to make enforcement challenging, particularly given individuals many well-meaningly or unknowingly breach reporting restrictions.

There are significant challenges with the monitoring and enforcement of reporting restrictions online and through social media, which arguably are more problematic in terms of content and approach than traditional/mainstream media (as per p.16 of consultation). The ability to retrospectively remove information is challenging and limited and even when this information is removed it is still known by those who have accessed it, which in the context of the world wide web could be nationally or internationally.

For all children and young people, opportunities to develop safe and appropriate internet usage is important and it is vital that measures apply to social media settings also. Children and young people could be disproportionately impacted by such changes as they are high users of online/social media platforms, are more likely to be peers or siblings of child homicide victims, and are still developing and going through intense [physiological, emotional and cognitive change](#). The negative consequences of criminalisation are well established, and children should be protected from this as far as possible.

Question 15

To what extent do you think it is important that the wider public understand anonymity provisions?

It is crucial that those who may be impacted by non-adherence to the legislation are as fully informed as possible, particularly given the risks of committing an offence. This is why trying to simplify the legislation as far as possible, recognising the inevitable complexity that such a challenging subject matter brings is important, but why alignment and consistency wherever possible is important. This is particularly important for children and young people.

Question 16

What can be done to increase public understanding of anonymity provisions?

1. Make legislation as aligned and understandable as possible
2. Clear and tailored communications strategy and information to sit alongside any legislative change, which must include accessible, child-facing materials
3. Practice examples to help people understand what the law permits and does not
4. Identifying other ways in which individuals can communicate and share their grief without breaching reporting restrictions
5. Ensuring the professional supporting those impacted by child homicide really understand the legislation and what is/is not permissible so that this information can be shared with those who need it, when they require it

Question 17

What group of people do you think it would be hardest to educate about anonymity provisions?

Particular attention needs to be given to the needs of children and young people.

Question 18

How might this group be accessed and educated?

Aside from protecting children from risk of breaching anonymity provisions, children have the right to receive information in methods that suit them best (Art 13, UNCRC; Art 21 UNCRPD). It can be helpful to think about provision of information in two parts: the design of written or visual communication, and the best method for helping children and young people to process and understand it, typically through trusted adults or peer supports.

This human rights footing has led to a number of resources which have been designed to help adults consider how to communicate complex information to children and young people in written or visual formats ([Lundy et al, 2022](#)). This includes the 'Top tips for developing easy read communication' as outlined by the Scottish Government in their guidance for taking a child rights-based approach ([Scottish Government, 2024](#)).

Regardless of method used, account should be taken of any speech, language and communication needs (SLCN) and the diversity of needs and experiences across communities of children. For example, research suggests that SLCNs are common for children at risk of, or in, conflict with the law, with the Scottish Government's [Rights Respecting Approach to Justice for Children and Young People](#) (2021) stating that it is a priority for all working with children to consider and adapt to SLCNs.

While children have agency, to varying degrees they are dependent on adults both in terms of development and legal standing. As a result, it is critical that any approach to educate this community considers who the adults are that are most likely to help them understand such provisions. In a universal sense, parents, carers, schools and youth clubs will be important spaces for sharing such information. Additionally, however, it is important to consider how to effectively educate children and young people who are in alternative care, who do not attend school or who are engaged with services designed to support prevention or desistance from offending.

Ultimately, the diversity of identities, experiences and needs across the child population evidences the need to avoid a 'one-size-fits-all' approach, to consider written/visual communication, to recognise the role of trusted adults in communicating this information, and to engage experts, including children and young people, in the design.

Question 19

What do you think would be an appropriate penalty for breaching an anonymity restriction?

We are concerned about the range of people who could be penalised for breaching restrictions, particularly family members who are grieving and for whom publicly sharing information about their loved ones could be an important part of the grieving process. We also recognise members of the public or community who may be impacted by the child's death and publicly share well intentioned information could be at risk of being criminalised, underlining the importance of developing understanding of provisions. We think understanding the intent behind sharing information will be important when penalties are being considered and proportionality of response. There is a clear difference between well intentioned outpourings of grief and sensationalist, graphic reporting to gain or increase a social media presence or to earn money from sales or advertising. We wonder if there could be a greater focus on penalties for organisations who breach restrictions, including social media platforms where information is shared, or penalties in terms of fines being proportionate to income/ revenue raised from the publication of such information for individuals or organisations, which could be higher than the current maximum penalties.

We however recognise penalties have an important role in ensuring the provisions are robust and in recognition that a crime will have been committed. Alignment of maximum penalties across different legislation in respect of reporting restrictions is important. We note the proposals in the VWJR Bill and that were made at Stages 1 and 2 of the Children (Care and Justice) (Scotland) Act and agree that increased maximum penalties are important. The use of maximum penalties allows the judiciary to make decisions based on the circumstances of the case but addresses the current issues that penalties set at the current low levels may be seen as a "risk worth taking" when compared with the benefits for the individual or organisation involved, be this through sales revenue or social media/online presence.

Question 20

To what extent do you agree that any extension of anonymity to deceased child victims in Scotland would need to apply to the rest of the UK to be effective?

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree

Please give reasons for your answer.

Any change to reporting restrictions must apply UK wide and arguably beyond. Having the situation as detailed in the consultation (p.7) would fundamentally undermine the effectiveness and impact of the proposed changes. We are mindful of the removal of the sections in respect of reporting restrictions at Stage 3 of the Children (Care and Justice) (Scotland) Act and part of the [rationale](#) for this was the previous UK Government not being minded to grant a Scotland Act Order on these sections. The agreement of the UK Government to these changes therefore appears crucial to their success or otherwise and we would be keen to avoid a repeat of the situation faced by that Bill.

Question 21

To what extent do you support the options discussed in this paper?

We do not fully support any of these options for change, the reasons for which should be clear from what we have said previously. Instead, please see our response to question 23.

- No anonymity restrictions (i.e. the status quo) but with non-legislative actions, such as a media toolkit:

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree

Please give reasons for your answer.

- Full anonymity restrictions (no waiver):

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree

Please give reasons for your answer.

- Automatic anonymity with option to waive:

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree

Please give reasons for your answer.

- No automatic anonymity but can apply for court order (with the potential for non-legislative actions, such as a media toolkit):

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree

Please give reasons for your answer.

Question 22

To what extent do you think that the legislative options proposed are proportionate and enforceable?

- No anonymity restrictions (i.e the status quo) but with non-legislative actions, such as a media toolkit:

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree

Please give reasons for your answer.

- Full anonymity restrictions (no waiver):

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree

Please give reasons for your answer.

- Automatic anonymity with option to waive:

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree

Please give reasons for your answer.

- No automatic anonymity but can apply for court order (with the potential for non-legislative actions, such as a media toolkit):

Strongly agree

Agree

Neither agree or disagree

Disagree

Strongly disagree

Please give reasons for your answer.

See question 23

Question 23

Are there other options you think we should explore? Please provide details.

We believe that to try to minimise the potential challenges/unintended consequences of each of the options detailed above, there should be automatic anonymity, with the right for those with parental rights and responsibilities to be able to waive anonymity without requiring a court order. There could be certain caveats to this, possibly enshrined in guidance, such as if there were no surviving parents or the parent was involved in the murder of the child, similar to the approach in New South Wales as outlined in the accompanying evidence paper.

The rights and views of surviving siblings should be paramount in decisions. Those with parental rights and responsibilities should seek these children's views and take them into account when deciding whether to identify the deceased child.

We think the involvement of courts in decisions should be minimised given the emotional, time and financial implications of court involvement but deem there should be recourse to court in certain circumstances and at any time. These circumstances could include where a child's parents and/or surviving siblings have different views on whether information should be shared and what can be shared, or where another individual, for example a child's primary carer who does not have parental rights, wants to waive anonymity. This is particularly important given that parents may hold differing views, as may siblings, but for whom the rights implications could be significant and reflects the fluid nature of families.

It may also be an option that an organisation, potentially the police family liaison officer or a third sector organisation, could be funded to provide brokering or conflict resolution support to families and an opportunity to try to mediate differences in opinion which might reduce the need for recourse to court. Courts will be experienced in managing acrimonious cases but there may be relevant considerations from the previous amendments in the Children (Care and Justice) (Scotland) Act that could help inform decision making.

We do not believe that all restrictions should fall at that stage, nor that family members should need to give permission if identifying information is to be re-published as we are concerned that this could result in repeated contact, even hounding for permissions. However, we believe that the individuals who waive anonymity should be able to define what type of information can be published and shared, which can then be republished by others without a criminal offence being committed. This should avoid information that families would not want to be shared, including often graphic information which could potentially be the most traumatising, from being published, thereby maximise the level of control that family members have over what is being shared, without enhancing the burden of requests on families.

Whilst this approach is likely to still have issues that will require further consideration, we deem this could alleviate some of the international issues as highlighted in the accompanying documents. Given the similarities to the New South Wales approach, any further learning from this would be beneficial.

Question 24

Do you have any other comments on this issue that you would like to share with us?

In our [consultation response](#) to the Children (Care and Justice) (Scotland) Bill, as well as in our previous [work](#), CYCJ have, drawing on various sources of evidence, outlined our concerns regarding Scotland's approach to reporting restrictions particularly in respect of children who are in conflict with the law and the significant implications public identification can have in respect of children's rights. We welcomed the wide ranging efforts to legislate in this area under the Bill and think there is a high likelihood of unintended consequences to adopting a piecemeal approach to considering legislative change in this area for some children and not others. There are also real risks that legislation in one area would subsequently need to be amended as further children are legislated for.

In our consultation response we cited a recent case involving a child homicide victim where details of the charges the child was facing, and their bail conditions, were revealed by media outlets following the child's death. These reports significantly change the narrative around this victim's death. This highlights that children can have more than one experience and therefore could be subject to different reporting restrictions. A child who is one day a victim of an offence, another a witness, and another an accused could all be subject to vastly different rules regarding reporting restrictions. There can be real challenges in understanding reporting restrictions and therefore enhances the risk of children being criminalised, the adverse impacts of which are well established.

If reporting restrictions in respect of child accused were strengthened, some of the issues as highlighted in the documents accompanying the consultation could be addressed for example "Particularly traumatising for bereaved families was the constant juxtaposition of their loved one's picture alongside the person responsible for their death" (Roundtable on the end point for anonymity for child victims, p.4). Additionally, some of the graphic details in relation to an offence and a victim that can be publicly documented when a child accused appeals their sentence could only be anonymously reported should these changes apply to child accused, which would further benefit child victims, including deceased victims, and their families.

We recognise at Stage 3 of the Children's (Care and Justice) Bill when removing these provisions, Ms Don committed to enable the matters to be considered further outwith the Bill and when other members asked for information on how these matters would be consulted on and when, committed to taking this work forward, citing future legislation. Given the complexity involved and significant implications for children's rights, this work needs to be re-commenced in a timely manner. CYCJ would be keen to be involved in this work.