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Reporting Restrictions for children involved in criminal proceedings in Scotland

Carole Murphy and Deborah Nolan

The naming of children accused or convicted in Scottish criminal court proceedings[1] is comparatively rare, resulting in limited case law and literature (McInnes, 2019). Where a child is named the implications for that child, their family and others involved in their life are significant. This information sheet has been developed following recent cases where there was concern a child could be named; potentially identifying information of a child was published; and a child was named on social media or in other publications. It clarifies the legal position on reporting restrictions, before highlighting the process for courts dispensing with restrictions and arguments that defence lawyers and local authorities might want to consider if faced with having reporting restrictions dispensed with.

The legal position

Reporting restrictions for children accused (or convicted) in Scottish criminal court proceedings are largely governed by s.47 of the Criminal Procedure (Scotland) Act 1995, which:

- Prohibits a newspaper or certain sound or visual programmes publishing a picture or reporting the name, address or school or any particulars calculated to lead to the identification of any such child (under 18). These provisions do not apply pre-court where a child is a suspect; only apply to the outlined publications (therefore do not include social media or podcasts for example); and only apply until the child turns 18 after which time the child's identity can be published.
- Breach of these provisions is a criminal offence that can on summary conviction result in a fine up to £2,500.
- At any stage of proceedings, the court can dispense with these requirements to the extent specified by the court "if satisfied that it is in the public interest to do so".
- Scottish Ministers have the same power to do so after the completion of proceedings.
- S.47 is bolstered to some extent by the provisions in s.2 of the Contempt of Court Act 1981, which penalises publications that create "a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced". The strict liability rule applies to publication only if the proceedings in question are active at the time of publication. Publication "includes any speech, writing, programme included in a cable programme service or other communication in whatever form, which is addressed to the public at large or any section of the public". This is broad enough to include social media, however, it relates only to the duration of the court proceedings.

Efforts were made to reform these provisions via the Children (Care and Justice) (Scotland) Act 2024. However, the proposed provisions were removed from the final Bill.

Court process for dispensing with restrictions

As the court can name a child at any stage of proceedings, it is important that those supporting a child (and their family) are alert to this possibility and consider how everyone involved will be supported and protected should this happen (e.g. additional security measures within the child's placement or a safe address for family members should risks prevent a return home).

The judge/sheriff can decide of their own accord to consider whether it is in the public interest to dispense with reporting restrictions, or following an incidental application, court motion or formal minute being made to the court by one or more media outlets. Where the latter route is taken, the motion will be intimated to parties (including COPFS and the child's defence agent), who will have the opportunity to make submissions to the court to help inform judicial decision making. The child's defence lawyer should alert the local authority as soon as possible, who should liaise with the child, their family and any placement provider.

[1] There are similar publishing restrictions for children's hearings and for victims and witnesses in criminal proceedings.

The local authority will have corporate parenting duties to the child where the child is a looked after child or is to be treated as such by virtue of being remanded and placed in secure care. Local authorities could share any relevant information to help inform judicial decision making with the child's lawyer and COPFS. The local authority's legal department may also wish to consider seeking permission from the court to share information directly – they will not however receive automatic intimation nor is it guaranteed that this would be an option. Other reports, for example on the psychological impact of being named could also be requested via the child's lawyer. Making this information available quickly is key. Where consideration of the child being named is likely, information could also be provided within the child's justice social work report.

The court can be open or closed for the hearing, with representatives for the media, COPFS and the child having the opportunity to make representation. There is no necessity for the court to offer detailed reason for why the public interest test is met. Nor is public interest, or any prescribed factors that require to be considered in determining this, prescribed in law. Where reporting restrictions are dispensed with, the only appeal route for a child is an emergency petition to the Nobile Officium. For an appeal to have impact, the dispensing of reporting restrictions would need to have a condition attached or be suspended until an appeal was concluded (McInnes, 2019). In case of this eventuality, the child's views should be sought in advance by their lawyer. A judicial review could also be sought against the decision not to name a child by those who made the application.

Common arguments

The identification of child accused is an emotive and contested topic but one where children have had almost a century of legal protection. Common arguments in favour of the identification of children (along with counter arguments include):

- Deterrence for future offending (of the child or others) thereby protecting the public. There is no credible evidence for this (Hart, 2014) and identification could in fact have the opposite effect (RXG v Ministry of Justice). Conversely by drawing greater attention to a very small number of situations, we could enhance the perception that more children are becoming involved in the most serious offences and have a counterproductive response to this fear, as for example seen with publishing images of knives.
- Public interest. There is arguably a distinction between public interest (if indeed there is one interest) and matters that interest the public. Freedom of expression, open justice, fair and accurate reporting and press freedom are fundamental and aligned principles. However, these can be maintained and circumstances of the case usually reported on without identifying the child (see McInnes, 2019).
- That the child is close to 18 years old when they can be named anyway, with no legislation that extends protections for children accused or convicted of committing an offence beyond the age of 18. However, not all children will be named and in line with international human rights standards, should not be (CRC General Comment 24). General Comment 24 (2019, para 70) states "*...there should be lifelong protection from publication regarding crimes committed by children. The rationale for the non-publication rule, and for its continuation after the child reaches the age of 18, is that publication causes ongoing stigmatization, which is likely to have a negative impact on access to education, work, housing or safety. This impedes the child's reintegration and assumption of a constructive role in society. States parties should thus ensure that the general rule is lifelong privacy protection pertaining to all types of media, including social media*". The period ahead of a child turning 18 can also be a vital time for rehabilitation, redemption and intervention. Children have greater capacity for change given their developmental stage which should be maximised without the impacting risks and concerns of the child's identity being publicly known. This can also allow time for preparation of the child and others, including for safety measures to be developed, ahead of the child turning 18.
- That the child's identity is already known within a community or establishment. This is however different to a child being named nationally and internationally, potentially forevermore, with the profile and risks this brings (see Sir McFarlane).

The core arguments against the identification of children which could be included in information to courts to aid judicial decision making are:

- The upholding of human rights. The Human Rights Act 1998 (which incorporated the European Convention on Human Rights (ECHR) into UK domestic law) protects children in conflict with the law. Article 8 provides the right to respect for private and family life.
- The upholding of children's rights. The UNCRC affords children special protections by virtue of their developmental stage to help them overcome the disadvantage they have due to being vulnerable from, and dependent on adults. These rights are enshrined in Scots law and include Article 16 the right to privacy and Article 40(2)(b)(vii) which states children in conflict with the law have "at least the ... guarantee ... [t]o have their privacy fully respected at all stages of the proceedings." In addition, *General Comment No. 25 (2021) on children's rights in relation to the digital environment* recognises the risks that can be posed by the digital age and details that States parties should protect children from risks to their right to life, survival and development and ensure that their best interests are a primary consideration within a digital context. General Comment No. 25 is very clear that this applies to all children, including those children in conflict with the law.
- The dispensing of reporting restrictions can significantly impact on the child's other rights. This includes their rights to life, survival and development; protection from torture, cruel and inhuman treatment; and a fair trial. Where the right to life and the right to be protected from torture, cruel and inhuman treatment are engaged, these will outweigh the right to freedom of expression (RXG v Ministry of Justice). Likewise, the impact identification can have on the rights of other children can be significant and requires consideration. For example, siblings, their own children, friends, or other children cared for alongside the child. The consequences of identification can be difficult to rectify.
- Identifying a child can have a detrimental impact on their rehabilitation, reintegration and assumption of a constructive role in society (Article 40) (CRC, 2019). Rehabilitation is a primary consideration in sentencing a child, recognising children's greater potential for change and rehabilitation, and is the aim of the youth justice system (Scottish Sentencing Council, 2021). Naming children is contrary to this: *"There seems little doubt that being publicly named puts rehabilitation at risk"* (Hart, 2014, p.25). This is owing to the detrimental impact of the subsequent shaming, labelling and stigma that children are particularly susceptible to and the resulting adverse effect on access to opportunities and future life chances into adulthood (UN, 1985; Hart, 2014; RXG v Ministry of Justice). Public identification provides additional, potentially lifelong, punishment that persists, especially in this digital age, even when the offence is no longer subject to disclosure requirements (O'Brien, 2024; Fitz-Gibbon & O'Brien, 2017; Lightowler, 2025).
- Until the point of conviction, assessments and interventions can take place but any potential risks of doing so in terms of the legal process should be carefully considered against the impact on the child's wellbeing of missed opportunities and delay in helping a child address any identified needs (Scottish Government, 2024; CYCJ, 2016). These should be agreed with the child and their family and discussion with the child's legal representative encouraged. However, this means that the child may have been unable to talk freely about the offence or have undertaken any rehabilitative work directly relating to the offence. Naming of the child might impact on the effectiveness of services and supports available within the secure environment and the child's ability to engage with these crucial services to support their rehabilitation and reintegration.

The above illustrates these issues extend far beyond the individual child and have implications for wider individual's, communities and society as a whole.

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