



Standing Committee for Youth Justice

SCYJ briefing: Anonymity for children in court and the Criminal Justice and Courts Bill – Amendments 122A & 139

Introduction

Since the Children and Young Persons Act 1933 (CYPA), children involved in court proceedings have had the right to have their identity protected, at a judge's discretion. The CYPA protects all children involved in court proceedings, be they victims, witnesses or defendants.

Until now, media organisations have generally respected that once a reporting restriction is given, it continues beyond the child turning 18, if the case had concluded before then. However, a recent High Court decision could lead to the press naming children once they reach adulthood, even though proceedings had concluded before they had reached 18. In response to concerns raised by the courts and by Peers in Committee, the Government has tabled amendments to allow lifelong anonymity to be provided to child victims and witnesses, but not defendants.

SCYJ believes that the exclusion of defendants has serious safeguarding implications and will have an immensely negative effect on reintegration and rehabilitation. What is more, in our view, the proposed government amendments make it more difficult for child victims and witnesses to be provided with anonymity than is currently available, and do nothing to help past victims and witnesses. We propose an alternative amendment.

The Law

Anonymity is currently provided to children in court pursuant to sections 39 and 49 of the CYPA.

- Section 49 of the CYPA provides an automatic restriction on reporting the details of children involved in cases heard in the youth court and on appeal, and related hearings in a magistrate's court (other than anti-social behaviour legislation). A judge can lift the restriction in certain limited circumstances, for example, to avoid injustice, to help to apprehend a child at large, or because it is in the public interest.
- Section 39 of the CYPA applies to cases involving children that are heard outside the youth court (for instance, in the magistrates and Crown Court). It gives judges the power to make an order placing reporting restrictions on the details of children involved in cases.¹ There is no test needed for a judge to make a s39 order.

Leveson Judgement (JC and RT) and expiration of orders

- Since the CYPA was enacted in 1933, s.49 and s.39 orders generally appear to have been respected after a child reached adulthood. There are extremely few cases, as far as we are aware, of any media organisations reporting the name of a child who had turned 18 where s.49 or s.39 order is in place.
- In the case of JC & RT, Lord Justice Leveson ruled, as in previous cases, that s.39 orders expire when a child reaches 18.² The same analysis would also apply to s.49. The case has been granted an appeal, to be heard later this year.

¹ Further explanation is contained in The Judicial College, Media Lawyers Association, Newspaper Society, and Society of Editors, *Reporting Restrictions in the Criminal Courts* (June 2014), available at <http://www.judiciary.gov.uk/wp-content/uploads/2014/06/Reporting-Restrictions-Guide-2014-FINAL.pdf>

² *R (JC & RT) v Central Criminal Court*, [2014] EWHC 1041 (Admin); [2014] 2 Cr. App. R. 13).

- This means that once a child benefitting from an anonymity order reaches 18, even when legal proceedings had potentially concluded many years earlier, their identity can be revealed. This includes child victims and witnesses and applies historically – so, for example, people in their 60s who committed an offence as a child and who have never been identified, could be named publicly.
- There would be no mechanism, bar seeking a civil injunction, for a court to apply lifelong anonymity for a child even if they wished to do so.³ The injunction process is legally complex and expensive (it is unlikely that legal aid would be available). Lord Justice Leveson described this as an “entirely unrealistic” solution.⁴
- Lord Justice Leveson pointed out that bizarrely this left child victims and witnesses with less protection than vulnerable adult victims and witnesses.
- Parliament must act quickly to provide anonymity for children in court. In the past, we believe there has been confusion about the law amongst media organisations which has meant that, in practice, children have not been named when they reach 18. However, this case, in which the BBC and other media organisations are an interested party, has drawn attention to the problem. As a result, we believe it is likely to lead to the press naming more children when they reach 18, but are no longer involved in legal proceedings.

Government amendment (139)

- Government amendment 139 creates a new order which applies lifelong anonymity to child victims and witnesses if they meet a relatively high threshold test (diminishment of co-operation or evidence through fear).
- To make the order for child victims and witnesses, the court must be satisfied that: *“the quality of any evidence given by the person or the level of co-operation given by the person to any party to the proceedings in connection with that party’s preparation of its case, is likely to be diminished by reason of fear or distress on the part of the person in connection with being identified by members of the public as a person concerned in the proceedings.”*
- This is a far higher threshold test than children currently have to meet to be provided with anonymity under the CYP(A). Prior to the Leveson judgement, s39 and s49 seemed to have been generally been respected by media organisations after a child turned 18 and they were no longer a part of legal proceedings.
- Child defendants are excluded from even this protection. This means there will be almost no mechanism for a court to provide a child defendant with lifelong anonymity, even if they wished to do so. We believe this raises serious safeguarding issues and will have an extremely negative effect on reintegration and rehabilitation (see below).
- The Government’s amendment does not address the retrospective position; people who are now adults but who were victims and witnesses as children, will have to apply to court for one of the new orders if they are not to be named. It is unlikely they will know to do so.

Why anonymity is so important:

- **Rehabilitation and Reintegration:** Naming children has a negative impact on the rehabilitation of children who offend. It makes it very difficult for them to put their past behind them, particularly in the age of the internet where stories are likely to be online in perpetuity. It labels them as an offender, and may make it harder to access education or employment. It would be a disproportionate interference with their private life if a child who had ceased offending and turned their life around was identified upon reaching adulthood and labelled “an offender”, affecting their relationships and career prospects.⁵ Naming children as adults could have severe safeguarding implications and lead to the police having to dedicate resources to protecting former defendants.

³ In Para 11 of the judgement, Lord Justice Leveson said “...However much in need of protection a young person might be, the only presently operative statutory mechanism to protect identity in criminal proceedings is s.39 of the 1933 Act.”

⁴ Para 35, supra

⁵ “What’s in a Name? The Identification of Children in Trouble with the Law”. Standing Committee for Youth Justice, May 2014 http://scyj.org.uk/wp-content/uploads/2014/05/Whats-in-a-Name-FINAL-WEB_VERSION_V3.pdf

- **Purpose of the youth justice system:** Domestic and international provisions set out that the purpose of the youth justice system should be rehabilitation, reintegration and not retribution.⁶ Lifting anonymity at 18, potentially long after proceedings have finished, flies in the face of this.
- **Children's Rights:** The UN Convention on the Rights of the Child, which the UK has ratified, is clear that children in criminal proceedings should have their privacy respected, and that their best interest should be a primary consideration.⁷ This Government has committed to complying with the UNCRC.⁸ The UN Committee on the Rights of the Child has criticised the UK for failing to respect children's privacy in judicial proceedings and has been clear that naming is against a child's best interests.⁹
- **Child victims and witnesses:** It is often very difficult for children to come forward and give evidence in court. The protection of anonymity helps children overcome their anxieties. The former DPP, Sir Keir Starmer, said earlier this year "It takes real courage to come forward. And the criminal justice response dictates the likelihood that anyone would."¹⁰ Creating a high threshold test to access lifelong anonymity, is unlikely to encourage child victims and witnesses to feel comfortable participating in legal proceedings.

SCYJ believes courts should have the power to provide child defendants with lifelong anonymity and that a restrictive threshold test for lifelong anonymity should be removed. This is the effect of amendment 122A, which:

- Permits the Government's new lifelong anonymity orders to be applied to defendants if the judge in the case thinks it warrants it (judicial discretion).
- Removes the high threshold test of diminished co-operation or evidence through fear in granting the new lifelong anonymity orders.
- Still requires a court to consider the public interest and "avoiding the imposition of a substantial and unreasonable restriction on the reporting of the proceedings" in deciding whether to make a lifelong anonymity order.

Please support amendment 122A and oppose amendment 139.

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The contents of this document do not necessarily reflect the views of all member organisations of the SCYJ.

⁶ Section 44 of the Children and Young Person Act 1933 provides that courts must have regard to the welfare of any child brought before it. The Crime and Disorder Act 1998 established the prevention of offending as a principal aim of youth justice system. The "Overarching Principles – Sentencing Guidelines for Youths" sets out that a court must be aware that the youth justice system is intended to "promote re-integration rather than to impose retribution". Article 40 of the UN Convention on the Rights of the Child states that children in trouble with the law must be treated in a way that promotes their reintegration, and encourages them to assume a constructive role in society.

⁷ Article 16 of the UNCRC and Article 8 of the ECHR provide for a general right to privacy; Article 3 of the UNCRC establishes that the child's best interests must be a primary consideration in any proceedings before a court. Article 40 (2) (vii) of the UNCRC sets out that a child involved in criminal proceedings has the right to be treated with dignity and in a way that promotes rehabilitation, and specifically states they have a right to have their privacy respected. The UN Beijing Rules reaffirms the child's right to privacy when involved in the criminal justice system.

⁸ See for instance, the July 2014 Cabinet Office Guide to making legislation which reads: "The Government has also made a commitment to give due consideration to the articles of the UN Convention on the Rights of the Child (UNCRC) when making new policy and Legislation". <https://www.gov.uk/government/policies/creating-a-fairer-and-more-equal-society/supporting-pages/the-united-nations-convention-on-the-rights-of-the-child-uncrc>

⁹ UN Committee on the Rights of the Child, 'Concluding observations: United Kingdom of Great Britain and Northern Ireland', 2008 [<http://www2.ohchr.org/english/bodies/crc/docs/AdvanceVersions/CRC.C.GBR.CO.4.pdf>]

¹⁰ Sir Keir Starmer, 2014 "Britain's criminal justice system fails the vulnerable. We need a Victims' Law", The Guardian. <http://www.theguardian.com/commentisfree/2014/feb/03/britain-criminal-justice-system-victims-law-public-prosecutions>