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The Attorney General
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The Attorney General's Guidance on Reporting Restrictions and the Criminal Courts

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Contents

Introduction

1. In order to be effective, the criminal justice system must have the support and confidence of the public. A vital part of promoting support and confidence in the criminal justice system is openness and transparency, so that the public can be kept informed about how the system operates and so that justice can be seen to be done.

2. The open justice principle means that criminal proceedings are held in public and the public are free to attend the criminal courts. Criminal proceedings can involve hearing information which is very sensitive and personal in nature and vulnerable adults, children and young people can be involved in the proceedings.

3. Vulnerable adults, children and young people involved in criminal proceedings need protection and support and this can include the need to restrict the reporting of information about them.

4. The law is required to strike a balance between the open justice principle and the need to support and protect people involved in the criminal justice system. In order to achieve this balance the law creates a number of exceptions to the open justice principle that place restrictions on certain types of information which can be reported.

5. The role of the prosecution is to assist the court in safeguarding the open justice principle and to make applications for reporting restrictions to protect vulnerable adults, children and young people, where appropriate.

6. The purpose of this guidance is to assist prosecutors by identifying the various reporting restrictions which can apply to criminal proceedings and the correct approach to be taken when considering whether a reporting restriction should apply.

Terminology

A range of terminology is in use in the criminal justice system. The most common terms used in relation to reporting restrictions are listed below.

Complainant means a person against whom an offence has been, or is alleged to have been, committed.

Defendant means a person charged with an offence, whether or not the person has been convicted

Media includes the press, radio and television broadcasters and online media. It refers to newspapers and news broadcasters as well as individual users of social media websites.

Publication means making information available to the public as a whole, or a section of the public, whether by traditional forms of media, online publications or individual posts on social media platforms.

Summary of Reporting Restrictions

Reporting restrictions are contained in a number of different areas of the criminal law. The table below sets out a summary of reporting restrictions and the relevant statutory provisions.

Automatic Reporting Restrictions	
Description of the Reporting Restriction	**Relevant Statutory Provision**
Prohibition against identifying a child or young person involved in a criminal investigation	s.458 Criminal Procedure and Evidence Ordinance 2014
Exclusion of the public from Youth Court proceedings	s.721 Criminal Procedure and Evidence Ordinance 2014
Limitation on reporting Youth Court proceedings	s.755 Criminal Procedure and Evidence Ordinance 2014
Strict liability rule prohibiting reporting which seriously impedes or prejudices proceedings	s.465 Crimes Ordinance 2014
Protection for juries	s.466 Crimes Ordinance 2014
Prohibition against recording proceedings	s.468 Crimes Ordinance 2014
Prohibition against identifying a complainant in a sexual offence case	s.465 Criminal Procedure and Evidence Ordinance 2014
Prohibition against identifying a complainant in a domestic abuse case	s.465 Criminal Procedure and Evidence Ordinance 2014
Prohibition against identifying a complainant in a female genital mutilation case	s.465 Criminal Procedure and Evidence Ordinance 2014

Restriction on reporting pre-trial rulings	Part 15 Criminal Procedure and Evidence Ordinance 2014
Restriction on reporting sending proceedings and applications for dismissal	s.200 to s.206 Criminal Procedure and Evidence Ordinance 2014
Restriction on reporting directions assisting people to give evidence	s.461 Criminal Procedure and Evidence Ordinance 2014
Discretionary Reporting Restrictions	
Description of the Reporting Restriction	**Relevant Statutory Provision**
Exclusion of the public during the evidence of a child, young person or vulnerable adult in sexual offence cases or where the witness has been, or maybe, intimidated	s.436 Criminal Procedure and Evidence Ordinance 2014
Prohibition against identifying a child or young person involved in proceedings	s.459 Criminal Procedure and Evidence Ordinance 2014
Prohibition against identifying an adult person involved in proceedings	s.460 Criminal Procedure and Evidence Ordinance 2014
Withholding of a name or address	Court's inherent power
Restriction on reporting following quashing of acquittal and order for retrial	s.693 Criminal Procedure and Evidence Ordinance 2014
Postponing reporting of derogatory remarks in mitigation	s.485 Criminal Procedure and Evidence Ordinance 2014

Open Justice

1. It is a central principle of criminal justice that criminal courts sit in public so that proceedings can be observed by members of the public and reported on by the media fully and contemporaneously. Members of the public cannot often attend court proceedings and the media acts as the eyes and ears of the public, enabling people to follow court proceedings and to be better informed about criminal justice issues.

2. The open justice principle is central to the rule of law. Open justice helps to ensure that cases are properly conducted. It puts pressure on witnesses to tell the truth and can result in new witnesses coming forward. It provides public scrutiny of the criminal justice process, maintains public confidence in the administration of justice and makes inaccurate and uninformed comment about proceedings less likely.

3. Open court proceedings and the publicity given to criminal cases are vital to the deterrent purpose behind criminal justice and any departure from the open justice principle must be lawful and necessary.

4. There are occasions when it is necessary to make an exception to the overarching principle of open justice and to require that all, or part of the court proceedings are not reported. The law allows for this and it is most often required to protect the rights of children and young people, or the identities of complainants in relation to specified offences, such as sexual offences and offences involving domestic abuse. This does not mean that these cases cannot be reported, only that care is required to ensure that any reporting restrictions are complied with.

5. Where a reporting restriction applies as a result of a statutory provision, or where the court is satisfied that it is necessary to impose a restriction, the fact that the proceedings are subject to a reporting restriction should be clearly communicated.

6. Ultimately, it is for media organisations to determine how they report criminal proceedings and to comply with reporting restrictions, but the availability of guidance and clear information is intended to assist media organisations to deliver the vital public service of providing fair, accurate and contemporaneous reporting of criminal proceedings.

General Approach

1. When considering reporting restrictions, the criminal courts court normally adopt the structured approach set out below.

2. The role of the prosecution is to assist the court by supporting the structured approach and by identifying relevant statutory provisions and case law when making submissions in relation to reporting restrictions.

Legal advice (Summary Court)

3. In the Summary Court, Justices of the Peace will seek the advice of the court officer acting as clerk of the court on the circumstances in which the law will allow the court to exclude the media, restrict reporting, withhold information or postpone reporting before considering whether the use of any such power would be proper and appropriate in the case before the court.

Nature of the proposed restriction and its legal basis

4. The court will consider the nature of the precise restriction sought and whether there is a statutory power or common law principle which allows departure from the open justice principle and will take into account any relevant case law.

5. Where the prosecution is making an application in relation to a reporting restriction the prosecutor must make the application in accordance with the Criminal Procedure Rules, clearly set out the basis for the application and refer the court to relevant statutory provisions and case law.

Interests of justice

6. In general terms, when considering whether to exercise a power to restrict reporting, the court will consider whether action is necessary in the interests of justice. Automatic reporting restrictions may already apply, or there may be restrictions on reporting as a result of an agreed approach.

7. The burden lies on the party seeking to depart from the open justice principle to persuade the court that it is necessary in the circumstances of the case. There should be clear and cogent evidence in support of the application.

8. Where there are good grounds for making an application, the court will consider whether departure from the open justice principle is really necessary and will always consider whether there are any less restrictive alternatives available.

9. When seeking a reporting restriction, the prosecution should only seek the minimum restriction necessary to achieve the relevant outcome and should consider alternative methods of dealing with any risk which may be created by reporting proceedings.

Extent of restrictions

10. Where the court is satisfied that a reporting restriction pursues a legitimate aim and is truly necessary, the court will carefully consider the extent of any order. The principle of proportionality requires that any order must be narrowly tailored to the specific objective the court has determined and should go no further than is necessary to achieve that objective.

Representations

11. When dealing with a reporting issue, the court will usually invite representations from the prosecution and the defence in the normal manner. The court will also invite oral or written representations by the media or their representatives.

12. Before imposing any discretionary reporting restriction, or restriction on public access to proceedings, the court will ensure that the prosecution and the defence, and any other person directly affected by the order (such as the media), is present or has had an opportunity to attend or to make representations.

13. Although both the prosecution and the defence should assist the court, the prosecution has an enhanced duty to safeguard open justice. This duty requires prosecutors to assist the court in accordance with this guidance and this includes opposing reporting restrictions where appropriate.

14. As soon as possible after oral announcement of a reporting restriction order in court, the order should be committed to writing. If an order is made, the court must make it clear in court that a formal order has been made and its precise terms.

15. The Summary Court will seek the advice of the court clerk on the drafting of the order and the reasons for making it. Prosecutors should be ready to assist with this process where required. For example, the prosecution may be asked to draft the terms of the reporting restriction order for the court to consider.

16. At the point a reporting restriction order is made, it is normally helpful for the court to check with the media, in open court if present, to ensure that the terms of the order are understood and for any problems or questions to be raised so that they can be discussed by the court, the prosecution and the defence. This approach helps to ensure that orders are clearly drawn and understood.

Notification

17. Orders of the court imposing reporting restrictions are recorded in writing. The court has appropriate procedures for notifying the media that an order has been made and for providing copies of the reporting restriction to them.

Review

18. Where the media have not been heard before the making of a reporting restriction order, the court should hear any media representations as to the lifting or variation of the order as soon as possible.

19. The court will also review discretionary reporting restrictions at significant stages of the proceedings, such as when verdicts have been taken or sentence passed, to ensure that the restrictions remain appropriate.

20. The role of the prosecution is to assist the court with the process of ongoing review by drawing to the court's attention any relevant factual information which may affect the basis for making the order and any relevant statutory provisions or case law.

Proceedings in Private

1. In accordance with the open justice principle, the general rule is that all court proceedings must be held in open court to which the public and the media have access. The law attaches a very high degree of importance to the hearing of cases in open court and the Constitution protects the right to a public hearing and to public pronouncement of judgment as part of the right to the protection of law[1].

2. The court has an inherent power to regulate its own proceedings and may hear proceedings, or part of proceedings, in private where it is justified and necessary to do so. This is an extreme measure which is only appropriate in exceptional circumstances and where the hearing of the case in public would frustrate or render impractical the administration of justice.

3. The test for hearing proceedings in private is one of necessity. The fact, for example, that hearing evidence in open court will cause embarrassment to people does not meet the test for necessity and nor does the risk that a person's reputation may be damaged.

4. Hearing a case in private has a severe impact upon the open justice principle because it permanently deprives the public of the information heard in private. The necessity test requires that even where a court concludes that part of the proceedings should be heard in private, it must give careful consideration as to whether other parts of the same case can be heard in public and must revert to proceedings in open court as soon as exclusion of the public ceases to be necessary.

5. Circumstances which may justify hearing a case in private are rare but they include situations where the nature of the evidence, if made public, would cause harm to national security, for example by disclosing sensitive operational techniques or by identifying a person whose identity, for strong public interest reasons, should be protected, for example an undercover police officer.

6. Any application to proceed in private should be supported by relevant evidence and made in accordance with the Criminal Procedure Rules. The test to be applied in all cases is whether proceeding in private is necessary to avoid the administration of justice from being frustrated or rendered impractical.

7. Disorder in court may also justify an order that the public gallery be cleared. Again, this exceptional measure should be used to an extent which is no greater than necessary. Where disorder has been caused by an individual or a small group then only those people should be excluded, rather than the public as a whole.

8. Even where the public gallery is cleared, representatives of the media, who are unlikely to have participated in disorder, should be allowed to remain, unless there is good reason to exclude them.

[1] See section 6 of the Constitution

9. The court has a discretion to exclude the public but not genuine representatives of the media during the testimony of witnesses aged under 18 in any proceedings relating to an offence against, or conduct contrary to decency and morality[2].

10. The court can also exclude persons of any description from the court during the evidence of a child, young person or vulnerable adult in cases relating to a sexual offence or where there are grounds for believing that a witness has been, or may be, intimidated[3].

11. In these circumstances, however, the law does not envisage that the media should routinely be excluded alongside the rest of the public, even in exceptional cases.

12. Where exclusion of the media is justified, one nominated representative of the media must be permitted to remain[4].

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[2] See section 753 of the Criminal Procedure and Evidence Ordinance 2014
[3] See section 436 of the Criminal Procedure and Evidence Ordinance 2014
[4] See section 436 of the Criminal Procedure and Evidence Ordinance 2014

Children and Young People

Introduction

1. The law recognises that special considerations apply to children and young people involved in the criminal justice system.

2. This means that there are a number of statutory provisions which relate to reporting in cases involving children and young people. The purpose of these restrictions is to balance the open justice principle with protection for children and young people in light of their age.

Investigation stage

3. The Criminal Procedure and Evidence Ordinance 2014 creates an automatic reporting restriction that prohibits the publication of any matter likely to identify a child or young person involved in a criminal investigation[5].

4. A court may make an order dispensing with this restriction where it is in the interests of justice to do so, having had regard to the welfare of the child or young person involved.

Youth Court

5. There is a statutory exception to the open justice principle which generally bars the public from attending Youth Court proceedings[6].

6. This prohibition does not extend to:

    (a) members and officers of the court;

    (b) parties to the case before the court, their legal practitioners, witnesses and other persons directly concerned in the case;

    (c) genuine representatives of newspapers or news agencies; and

    (d) any other persons that the court authorises to be present.

7. Although media organisations are permitted to attend Youth Court proceedings the information which may be reported is limited[7]. No report may be published which reveals the name, address, school or any other matter which is likely to lead to the identification of any person under 18 who is concerned in the proceedings.

[5] See section 458 of the Criminal Procedure and Evidence Ordinance 2014
[6] See section 721 of the Criminal Procedure and Evidence Ordinance 2014
[7] See section 755 of the Criminal Procedure and Evidence Ordinance 2014

8. In addition, no picture may be published or included in a relevant programme, as being or including a picture of any person under 18 who is concerned in the proceedings. Being concerned in proceedings means being concerned as a defendant, complainant or witness.

9. The prohibition on publication extends to appeals from the Youth Court (including by way of case stated) and proceedings relating to varying or revoking a youth rehabilitation order, including an appeal relating to such proceedings.

10. There are three exceptional situations in which these automatic reporting restrictions may be lifted. The court may lift the restriction:

    (a) if satisfied that it is appropriate to do so for avoiding injustice to the child or young person;

    (b) to assist in the search for a missing, convicted or alleged young offender charged with a specified serious offence; or

    (c) in relation to a child or young person who has been convicted, if the court is satisfied that it is in the public interest to do so.

11. When deciding whether to lift the automatic reporting restriction following conviction, the particular considerations relevant to offenders under 18 must be balanced against the open justice principle. The particular considerations relevant to offenders under 18 include:

    (a) the duty to have regard to the principal aim of the youth justice system to prevent offending by children and young persons;

    (b) the obligation to have regard to the welfare of the child or young person;

    (c) the right to privacy under the Constitution; and

    (d) jurisprudence requiring the best interests of the child or young person to be a primary consideration (though not necessarily one that prevails over all other considerations).

12. The court will not remove the restriction on the basis of it being an additional punishment, or by way of 'naming and shaming'. The welfare of the child or young person is given very great weight and it will rarely be the case that it is in the public interest to dispense with the reporting restrictions.

13. Where it decides to lift the reporting restrictions, the court must clearly identify the specific public interest which justifies that course of action. The court will offer the prosecution and the defence an opportunity to make representations before lifting the restrictions.

Automatic Reporting Restrictions

Introduction

1. There are a number of automatic reporting restrictions which are statutory exceptions to the open justice principle. The existence of an automatic reporting restriction may make any further discretionary restrictions unnecessary. For example, there will be no need to make a discretionary order in respect of a complainant who is a child or young person in a sexual offence case because the automatic reporting restriction protecting the identity of all complainants in sexual offence cases will apply.

2. At the start of a hearing to which an automatic reporting restriction applies the court will normally remind those present that an automatic reporting restriction is in place.

3. Automatic reporting restrictions apply regardless of whether the court reminds those present that a reporting restriction is in place.

4. Statutory provisions give the courts the power to lift or vary automatic reporting restrictions in specified circumstances on the court's own initiative or if asked to do so by the prosecution, the defence or the media.

The strict liability rule

5. The strict liability rule is a statutory rule which applies to all criminal proceedings in the Falkland Islands. The purpose of the rule is to protect the integrity of criminal proceedings and preserve the right to a fair trial under the Constitution[8].

6. The rule states that it is a contempt of court to publish anything to the public which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced, even if there is no intent to cause such prejudice. In practice this means that ignorance of the law, the existence of the rule, or its terms, is no defence if a contempt is committed.

7. The strict liability rule applies to any speech, writing, programme or other communication in whatever form, which is addressed to the public or a section of the public. This means that the strict liability rule applies to traditional forms of media, online publications and individual users of social media platforms. It can apply where information is shared to social media groups.

8. The strict liability rule applies once proceedings are active, which generally means that a relevant initial step has been taken, such as placing a suspect under arrest.

[8] See section 465 of the Crimes Ordinance 2014

9. A contempt will not be committed where:

   (a) reporting is a fair and accurate report of legal proceedings held in public, published contemporaneously and in good faith;

   (b) where a publication relates to discussions in good faith of public affairs or matters of general public interest, providing that the risk of prejudice to particular legal proceedings is merely incidental to the discussion; or

   (c) where a publisher or distributor shows that they took reasonable care and did not know or have reason to suspect that proceedings were active (publishers) or that a publication contained matter in breach of the strict liability rule (distributors).

10. The existence of the strict liability rule is itself a significant safeguard as it places the media in jeopardy of being held in contempt of court when reporting criminal proceedings unless that reporting is fair and accurate and published in good faith.

11. This should be borne in mind, particularly when considering whether additional discretionary reporting restrictions are necessary. The correct approach is to proceed on the basis that the media will be trusted to fulfil their responsibilities to report proceedings accurately and make sensible judgements about publications which may cause prejudice.

Protection for juries

12. An automatic restriction applies in relation to juries and it is a contempt of court to obtain, disclose or solicit any particulars of statements made, opinions expressed, arguments advanced or votes cast by members of a jury in the course of their deliberations in any legal proceedings[9].

Restriction against the use of recording equipment

13. An automatic restriction applies which makes it a contempt of court to use in court, or bring into court for use, any tape recorder or other instrument for recording sound, except with the leave of the court[10].

14. In light of the fact that in the modern world most electronic devices have a capacity to make audio recordings there is implied permission to bring such devices into court (mobile telephones, tablets, laptops etc.) but audio recordings are strictly prohibited.

15. The restriction also prohibits the publication of a recording of legal proceedings by playing it in the hearing of the public or any section of the public, or to dispose of it with a view to such publication.

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[9] See section 466 of the Crimes Ordinance 2014

[10] See section 468 of the Crimes Ordinance 2014

16. Permission may be given for a recording of proceedings to be made and the Criminal Procedure Rules govern the procedure for the recording of proceedings. In the majority of cases, recording is limited to the official audio recording made by the court.

17. It is a contempt in the face of the court to use visual recording equipment to make a still or moving image of the courtroom or the court precincts. If media organisations are provided with, or are offered any such recording the court or the police should be notified immediately, or the media organisation may also become liable for the breach of the restriction.

18. There is no prohibition on the use of live text-based communications in open court. However, given the normal rule prohibiting the use of mobile telephones and other electronic devices, members of the public require permission from the court to activate and use a mobile phone, laptop, or other equipment for this purpose. This may be done informally by communicating a request through court staff.

19. A representative of the media or a legal commentator who wishes to use live, text-based communications may do so without asking the permission of the court, as it is presumed that they will be doing so for the purpose of preparing fair and accurate reports of the proceedings and that this does not pose a danger of interference with the proper administration of justice.

20. The court retains a full discretion to prohibit any live, text-based communication where it may interfere with the administration of justice.

Protection for Complainants

Sexual Offence Cases

21. The law automatically gives complainants in sexual offence cases lifetime anonymity[11]. The restriction applies from the point when an allegation is made that a sexual offence has been committed against a person.

22. No matter relating to a complainant in a sexual offence case may, in that person's lifetime, be included in any publication if it is likely to lead members of the public to identify the person as the person against whom the offence or behaviour is alleged to have been committed.

23. The restriction applies to any publication and includes traditional media as well as online media and individual users of social media websites.

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

[11] See section 465 of the Criminal Procedure and Evidence Ordinance 2014

25. There are exceptions to the lifetime anonymity rule:

(a) a complainant who is 16 years or older may waive the entitlement to anonymity by giving written consent to being identified;

(b) the complainant's identity may be reported in relation to other criminal proceedings that do not relate to the sexual offence;

(c) the court may lift the restriction to encourage defence witnesses to come forward where there is likely to be substantial prejudice to the defendant if the reporting restriction is not lifted; or where the court is satisfied that it is a substantial and unreasonable restriction on the reporting of the trial and that it is in the public interest to remove or relax the restriction. However, this exception cannot be satisfied simply because the defendant has been acquitted or as a consequence of some other outcome of the trial.

Domestic Abuse Cases

26. The law automatically gives complainants in domestic abuse cases lifetime anonymity[12]. The restriction also applies to proceedings relating to domestic abuse protection orders.

27. Domestic abuse is defined as being physical or sexual abuse, violent or threatening behaviour, controlling or coercive behaviour, economic abuse or psychological, emotional or other abuse, by a person towards another person, if each person is aged 16 or over and they are personally connected to each other[13].

28. A personal connection exists if the people are (or have been) married to each other, they are (or have been) civil partners of each other, they have agreed to marry one another, they have entered into a civil partnership agreement, they are (or have been) in an intimate personal relationship with each other, they have (or there has been) a parental relationship in relation to the same child or young person, or they are relatives[14].

29. No matter relating to a complainant in a domestic abuse case may, in that person's lifetime, be included in any publication if it is likely to lead members of the public to identify the person as the person against whom the offence or behaviour is alleged to have been committed.

30. The restriction applies to any publication and includes traditional media as well as online media and individual users of social media websites.

31. A defendant in a domestic abuse case may apply for the restriction to be lifted on the same grounds as apply to sexual offence cases (see above).

[12] See section 465 of the Criminal Procedure and Evidence Ordinance 2014
[13] See section 102 of the Crimes Ordinance 2014
[14] See section 103 of the Crimes Ordinance 2014

32. The same exceptions apply to the lifetime anonymity rule in domestic abuse cases as apply in sexual offence cases (see above).

Female Genital Mutilation Cases

33. The law automatically gives complainants in female genital mutilation cases lifetime anonymity[15]. The restriction also applies to proceedings relating to female genital mutilation protection orders.

34. No matter relating to a complainant in a female genital mutilation case may, in that person's lifetime, be included in any publication if it is likely to lead members of the public to identify the person as the person against whom the offence or behaviour is alleged to have been committed.

35. The restriction applies to female genital mutilation offences and any offence involving behaviour that amounts to female genital mutilation[16].

36. The restriction applies to any publication and includes traditional media as well as online media and individual users of social media websites.

37. A defendant in a female genital mutilation case may apply for the restriction to be lifted on the same grounds as apply to sexual offence cases (see above).

38. The same exceptions apply to the lifetime anonymity rule in domestic abuse cases as apply in sexual offence cases (see above).

Rulings at pre-trial hearings

39. Prior to the commencement of a trial, criminal courts can conduct preliminary hearings and may make pre-trial rulings on the admissibility of evidence or on points of law relevant to the case[17].

40. An automatic reporting restriction applies to preliminary hearings and pre-trial rulings. The purpose of the reporting restriction is to protect the trial process by restricting the publication of information which could influence a potential member of the jury or witness in the case.

41. The restriction applies to any publication and includes traditional media as well as online media and individual users of social media websites.

42. The reporting restriction covers any appeal proceedings against a pre-trial ruling and continues until the trial in the case has been concluded and then automatically ceases to apply.

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[15] See section 465 of the Criminal Procedure and Evidence Ordinance 2014
[16] An offence under sections 89C to 89F of the Crimes Ordinance 2014
[17] See sections Part 15 of the Criminal Procedure and Evidence Ordinance 2014

43. The court may remove or relax the reporting restriction on the application of any person before the conclusion of the trial if satisfied that it is in the interests of justice to do so.

44. The reporting restriction does not apply to the following matters:

(a) the identity of the court and the name of the judge;

(b) the names, ages, home addresses and occupations of the defendant or defendants and witnesses;

(c) the offence or offences, or a summary of them, with which the defendant is or the defendants are charged;

(d) the names of legal practitioners in the proceedings;

(e) if the proceedings are adjourned the date and place to which they are adjourned;

(f) any arrangements as to bail; and

(g) whether legal aid was granted to the defendant or (if there is more than one defendant) to any of them.

Sending proceedings and applications for dismissal

45. Automatic reporting restrictions apply to proceedings relating to sending cases to the Supreme Court and to applications for dismissal in the Supreme Court[18].

46. The restriction applies to any publication and includes traditional media as well as online media and individual users of social media websites.

47. The purpose of the reporting restriction is to protect the trial process by restricting the publication of information which could influence a potential member of the jury in the case.

48. The court may remove or relax the reporting restriction on the application of any person before the conclusion of the trial if satisfied that it is in the interests of justice to do so.

49. Where an application for dismissal is successful the reporting restriction ceases to apply. In cases involving more than one defendant, where the case is to continue, notwithstanding that one or more defendants have made a successful application for dismissal, the reporting restriction will continue until the case has concluded.

50. The same categories of information which can be reported in relation to preliminary hearings and pre-trial rulings can be reported in relation to sending proceedings and applications for dismissal (see above).

[18] See sections 200 to 206 of the Criminal Procedure and Evidence Ordinance 2014.

Directions assisting people to give evidence

51. An automatic reporting restriction applies to the reporting of special measures directions, defendant evidence directions and prohibitions against an accused cross-examining a witness in person[19].

52. The reporting restriction prevents any publication reporting on the making of directions assisting people to give evidence and includes traditional media as well as online media and individual users of social media websites.

53. The purpose of the reporting restriction is to protect the person who is being assisted to give evidence.

54. The court may remove or relax the reporting restriction on the application of any person before the conclusion of the trial if satisfied that it is in the interests of justice to do so.

55. The reporting restriction continues until the case has been concluded and then automatically ceases to apply.

[19] See section 461 of the Criminal Procedure and Evidence Ordinance 2014.

Discretionary Reporting Restrictions

Introduction

1. There are a number of statutory provisions which permit the courts to impose discretionary reporting restrictions. Before imposing a discretionary reporting restriction, the court will check that no automatic reporting restriction already applies which would make a discretionary restriction unnecessary.

2. Where a discretionary restriction is potentially available, courts apply the restriction with care, checking that the relevant statutory conditions have been met. Where the statutory conditions are met, the court must make a judgement, balancing the need for the proposed restriction against the public interest in open justice and freedom of expression.

3. In all cases, courts must be satisfied that the need for the proposed restriction has been convincingly established by clear and cogent evidence and that the terms of the proposed order go no further than is necessary to meet the statutory objective.

4. The court is required to scrutinise closely any application for discretionary reporting restrictions, even where the restrictions are agreed between the parties. It is not open to the parties to waive the rights of the public by consent.

5. The imposition of a reporting restriction directly engages the media's interests, affecting its ability to report on matters of public interest. For this reason the court will not impose any reporting restrictions without first giving the media an opportunity to attend or to make representations, or, if the court is persuaded that there is an urgent need for at least a temporary restraint, as soon as practicable after they have been made.

6. The media bring a different perspective to that of the parties to the proceedings. They have a particular expertise in reporting cases and are well placed to represent the wider public interest in open justice on behalf of the general public. Because of the importance attached to contemporaneous court reporting and the perishable nature of news, courts should act swiftly to give the media the opportunity to make representations and this can be facilitated by use of live link facilities.

7. Any reporting restriction imposes potential criminal liability on media organisations and individuals who breach the restriction. If a breach occurs, media organisations and individuals face serious consequences and the courts will therefore ensure that any reporting restriction is clear and precise in its terms and drawn up as a court order as soon as practicable.

8. Where orders have been made, the court will normally draw them to the attention of the media by showing them on the court list and wherever possible by sending them to relevant media organisations.

Protection of people under 18

9. In addition to automatic reporting restrictions in relation to children and young people involved in the youth justice system (see above), the court may direct that no matter relating to any person concerned in the proceedings may, while he or she is a child or young person, be included in any publication if it is likely to lead members of the public to identify him or her as a person concerned in the proceedings[20].

10. This discretionary power to impose a reporting restriction is intended to ensure that children and young people involved in adult criminal proceedings can be protected. The court may direct that no matter relating to a child or young person concerned in the proceedings may, while he or she is a child or young person, be included in any publication if it is likely to lead members of the public to identify them as a person concerned in the proceedings.

11. The restriction applies to any publication and includes traditional media as well as online media and individual users of social media websites.

12. The reporting restriction can be made in relation to defendants, complainants, witnesses or any other child or young person who is named in the proceedings in any other way. The court may remove or relax the reporting restriction on the application of any person before the conclusion of the proceedings if satisfied that it is in the interests of justice to do so. The reporting restriction continues until the child or young person reaches the age of 18.

13. Before imposing a discretionary reporting restriction the court will need to be satisfied that there is a good reason and that the welfare of the child or young person outweighs the strong public interest in open justice.

14. In deciding whether there is a good reason, the court will consider:

    (a) the duty to have regard to the principal aim of the youth justice system to prevent reoffending by children and young persons;

    (b) the obligation to have regard to the welfare of the child or young person;

    (c) the Constitutional right to privacy; and

    (d) the best interests of the child or young person as a primary consideration, though not necessarily one that prevails over all other considerations.

15. Neither the principle of open justice nor the best interests of the child or young person necessarily dictate the conclusion in a particular case. The court will weigh the competing public interest factors and take into account the particular circumstances of the case.

[20] Section 459 of the Criminal Procedure and Evidence Ordinance 2014

16. The court will balance the interests of the public in the full reporting of criminal proceedings against the desirability of not causing harm to a child or young person concerned in the proceedings. Among the possible relevant public interest factors is the public interest in having information about court proceedings and the valuable deterrent effect that this may have on others.

17. In relation to harm, publication can have a significant effect on the prospects and opportunities of young defendants and, therefore, on the likelihood of effective integration into society.

18. The fact that the identity of the child or young person may already be known to some people in the community is not necessarily a good reason for allowing much wider publication. Care must be taken not to overstate the issue of 'common knowledge' given that experience has shown that such knowledge is often less widespread than is thought.

Protection of adult witnesses

19. The court has a discretionary power to restrict reporting about eligible adult witnesses (other than the defendant). The person to be protected may be the complainant or any other witness, whether called by the prosecution or the defence[21].

20. On application by the prosecution or the defence, the court may make a reporting direction that no matter relating to the witness shall, during their lifetime, be included in a publication if it is likely to lead members of the public to identify them as being a witness in the proceedings.

21. The restriction applies to any publication and includes traditional media as well as online media and individual users of social media websites.

22. An adult witness will be eligible for protection if the quality of their evidence or 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.

23. The applicant seeking the reporting restriction must explain why a reporting restriction would improve the quality of the witness' evidence or level of cooperation. Quality of evidence relates to its quality in terms of completeness, coherence and accuracy. Factors which the court must take into consideration include the nature and circumstances of the offence, the age of the witness, any behaviour towards the witness by the defendant or their family or associates and the views of the witness.

24. 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.

[21] See section 460 of the Criminal Procedure and Evidence Ordinance 2014

25. The court may give a direction at any time dispensing with the restrictions if satisfied either that it is in the interests of justice or that the restrictions impose a substantial and unreasonable restriction on the reporting of the proceedings and that it is in the public interest to dispense with the restriction.

Names and other matters withheld in court

26. The court has an inherent power to withhold from the public the name of a witness or other matter where it is satisfied that, if the name or matter was to be heard in open court, it would frustrate or render impractical the administration of justice and that withholding the information is necessary taking into account the open justice principle. Blackmail cases are an example of where it is appropriate for the court to order the name of a complainant to be withheld.

27. The court will also impose a reporting restriction in relation to the withheld information and the reporting restriction applies to any publication and includes traditional media as well as online media and individual users of social media websites.

28. The court should hear representations from the media about exercising its inherent power to withhold the name of a witness or other matter.

Quashing of acquittal and retrial

29. Where it is necessary in the interests of justice, the Court of Appeal can make orders to prevent the inclusion of any matter in a publication which appears to it would give rise to a substantial risk of prejudice to the administration of justice in a retrial[22].

Postponing prejudicial website publication

30. Reports of proceedings may contain links to earlier reporting and concern is sometimes raised that such reports, or other material first posted before criminal proceedings began, might prejudice the proceedings.

31. Publication is a continuing concept and is capable of covering the whole period from the time when material is first posted online to the time when it is withdrawn. On this basis, old reports that remain online could in principle pose a risk of prejudice to criminal proceedings but this will rarely justify a reporting restriction.

32. The court will proceed on the basis that the proceedings will not be prejudiced by the mere existence of old reports and that in jury cases the jury will abide by the standard direction not to carry out their own research and to ignore any media reports. In any event, it is a criminal offence for a juror to conduct such research[23].

[22] See section 693 of the Criminal Procedure and Evidence Ordinance 2014.
[23] See section 338A of the Criminal Procedure and Evidence Ordinance 2014.

Reader comments relating to online media publications

33. Online media publications may allow readers to post comments in response to otherwise unobjectionable contemporaneous court reports. The content of these comments may prompt concern about the risk of prejudice to the proceedings.

34. If such a risk is created, it will not arise from fair and accurate reporting and is likely to fall outside of the scope of the reporting restriction as it relates to the media organisation. This does not prevent action from being taken against the individual who posted the comment.

35. Care should be taken not to exaggerate the risk posed by online comment facilities because media organisations are able to disable comment facilities if they pose a substantial risk of serious prejudice to the administration of justice and media organisations should be trusted to do this where such a risk arises.

Postponing reports of derogatory remarks in mitigation

36. The court has the power to postpone reports of derogatory assertions about named or identified persons that have been made in mitigation.

37. The court will impose a reporting restriction in relation to assertions where there are substantial grounds for believing that the assertion is derogatory to a person's character and either false or that the facts asserted are irrelevant to the sentence.

38. The reporting restriction may be revoked at any time and automatically ceases to have effect 12 months after the reporting restriction is imposed.

39. The restriction applies to any publication and includes traditional media as well as online media and individual users of social media websites.

40. A reporting restriction will not be imposed in relation to an assertion if it appears to the court that the assertion was previously made at the trial at which the defendant was convicted of the offence or during any other proceedings relating to the offence.

Obtaining Information

1. Media organisations may approach the court and/or the Prosecution Service for information about criminal proceedings.

2. The starting point for obtaining information will be to approach the court. The reason for this is that the court ultimately has control of the proceedings and is the decision maker in relation to the supply of information.

3. The Prosecution Service has a duty to promote the open justice principle and should supply information about a case where the information can clearly be disclosed. This approach assists in the fair and accurate reporting of criminal proceedings. Where it is unclear as to whether information should be disclosed the Prosecution Service will refer the media organisation or individual to the Courts and Tribunal Service.

4. There are set procedures relating to the supply of information to the media and the public about criminal proceedings and these are contained in the Criminal Procedure Rules.

5. Unless a reporting restriction prevents the supply of information, the court must supply:

   (a) the date of any hearing in public, unless any party has yet to be notified of that date;

   (b) each alleged offence and any plea entered;

   (c) the court's decision at any hearing in public, including any decision about bail or the committal, sending or transfer of the case to another court;

   (d) whether the case is under appeal;

   (e) the outcome of any trial and any appeal; and

   (f) the identity of the prosecutor, the defendant, legal practitioners, the judge or justices of the peace, by whom a decision at a hearing in public was made; and the clerk to the Summary Court present at a hearing in public when a decision was made.

6. The court may also supply other information about the case where the information is not subject to a reporting restriction and where it is appropriate to do so. When considering whether to supply information the court will have regard to:

   (a) whether the request is for the purpose of contemporaneous reporting;

   (b) the nature of the information sought;

(c) the purpose for which the information is requested;

(d) the stage of proceedings at the time when the application is made;

(e) the value of the documents in advancing the open justice principle;

(f) the risk of harm; and

(g) any reasons given by parties for refusing to provide the material or representations made by them.

7. The default position is that where documents have been placed before a judge and referred to in the course of proceedings the media is entitled to have access to those documents in accordance with the open justice principle.

8. Where access to documents has been sought for a proper journalistic purpose, the case for allowing access will be particularly strong. This principle extends to any type of document on the court file and also extends to photographs, video footage, stills and sound recordings which have been shown or played in open court. This principle will also extend to character references submitted in support of a criminal defendant, which are evidence, like any other evidence.

9. However, there may be countervailing reasons in an individual case which outweigh the merits of the application. In deciding these questions, the court will carry out a proportionality exercise which is fact-specific, where the central considerations will be the purpose of the open justice principle, the potential value of the material in advancing that purpose and conversely any risk of harm which access to the documents may cause to the legitimate interests of others.

10. For example, it will rarely be in the public interest to disclose pre-sentence reports and medical reports due to the sensitive personal nature contained in such reports and the Constitutional right to a private and family life. How these types of report impact on sentencing will be explained by the sentencing court and this will normally be sufficient to balance the open justice principle against the right to privacy in relation to sensitive personal information.

11. The court will invite representations from the prosecution and the defence where appropriate and particularly where the information or material relates to a complainant or witness in the case. For example, particular care will be taken in relation to providing photographs or video footage of a complainant's injuries without first having sought the views of the complainant and the prosecution. Only in exceptional circumstances will it be appropriate to disclose images of a complainant in the absence of their express consent. The reason for this is that their Constitutional right to privacy will outweigh the open justice principle in light of the fact that disclosing images in the absence of express consent will cause distress and add to the trauma they have already experienced.

12. Consideration should also be given to whether the documents could be provided in a redacted form, where those redactions are necessary to protect important interests. However, it remains the responsibility of the recipient of the information or documents to ensure they comply with any restriction such as statutory or individual reporting restrictions and so it will not be for the court, the prosecution or the defence to undertake the redaction of documents for that purpose.

13. The Criminal Procedure Rules do not permit the supply of a recording of criminal proceedings, or a transcript of a recording, to the media or public.

Breach of a Reporting Restriction

1. Breach of a reporting restriction is a serious matter and where the prosecution becomes aware of a potential breach during ongoing proceedings it is vital that the prosecution brings the matter to the attention of the court as a matter of urgency.

2. Where proceedings have concluded the matter must be brought to the attention of the Attorney General and the Royal Falkland Islands Police to determine whether further investigation and enforcement action is required.

3. Where proceedings are ongoing it is firstly for the court to determine how to proceed. A court has jurisdiction to deal summarily with behaviour which amounts to a contempt in the face of the court or an interference in the course of the proceedings. Where a court decides to deal with a matter in this way the prosecution must be ready to support the court by ensuring that the correct procedure is identified and by reference to relevant case law.

4. Proceedings for contempt can be complex and may detract from making progress in relation to the substantive proceedings. For these reasons the courts do not often use the power to deal with contempt summarily and this procedure is normally reserved for abusive and disruptive conduct in the face of the court.

5. This means that in most cases the summary contempt procedure will not be necessary and instead the court will refer the matter to the Attorney General for consideration to be given as to whether the Attorney General should exercise the power to bring committal proceedings for contempt [24] or to commence a prosecution where the breach amounts to a criminal offence.

6. Cases involving breach of reporting restrictions can often require further investigation and this will need to be undertaken by the Royal Falkland Islands Police. This means that referral to the Attorney General is the more suitable method for dealing with breaches of reporting restrictions.

[24] See section 469 of the Crimes Ordinance 2014

Practical Approach: Identity Restrictions

Introduction

1. The most common reporting restrictions are reporting restrictions which apply to identifying individuals involved in criminal proceedings, for example complainants in sexual offence cases or domestic abuse cases.

2. Reporting restrictions in relation to a person's identity are framed in general terms by preventing the publication of information if it is likely to lead members of the public to identify the protected person. In the majority of cases the general terms are not further defined and the question of whether a specific piece of information is likely to lead to identification is left to the judgement of the media.

3. There are good reasons why reporting restrictions are framed in general terms without further definition. Firstly, media organisations must be free to report on cases in compliance with the terms of a reporting restriction but free from direction from the court as to the content of the report. This is an important part of promoting freedom of reporting in an open and democratic society. Secondly, it is impossible for a court to seek to define in advance the precise parameters of every news report.

4. The following guidance is intended to provide practical assistance in respect of reporting restrictions relating to a person's identity.

Jigsaw identification

5. Jigsaw identification is a term used to refer to an issue which can arise whereby a reporting restriction protecting a person's identity may be breached as a result of information in different media reports, which all comply with the restriction, being nonetheless pieced together to enable the protected person to be identified.

6. For example, one media report may refer to an unnamed defendant convicted of committing a sexual offence against their daughter and another media report may refer to the name of the defendant but not specify the nature of the relationship with the complainant in the case. Taken together, the media reports reveal the identity of the protected person because one reports the family name and one reports the family relationship.

7. Courts and media organisations must be aware of the risk of jigsaw identification but the risk should not be overstated because this could lead to the adoption of a blanket approach whereby proceedings do not get reported at all. The open justice principle must always be given sufficient weight and any risk should be assessed in a reasonable and proportionate manner.

8. Media organisations are responsible for complying with a reporting restriction and this includes being aware of information already in the public domain and considering whether their publication could lead to the jigsaw identification of a protected person.

9. The actual risk of jigsaw identification must be considered in a proportionate manner and a publication will only breach a reporting restriction on the basis of jigsaw identification where there is a real risk, real danger or real chance of the protected person being identified[25].

10. The risk of jigsaw identification can be greatly reduced where media organisations adopt a common approach to reporting on criminal proceedings (see below).

Local knowledge

11. Local knowledge is a term used to refer to an issue which can arise whereby a reporting restriction protecting a person's identity may be breached as a result of the fact that people in the local community may need very little information about the circumstances of a case before they are able to identify a protected person.

12. For example, a media report may refer to a sexual offence having occurred at a specific location on a specified date and the identity of a person needing medical attention at that location on the same date may be common knowledge. The mere fact that the media report refers to the date and location of the offence is sufficient to link the case to an incident where the identity of the person involved is well known.

13. Local knowledge is not an issue limited to small jurisdictions. In places with much larger populations there will always be a section within the population who are likely to be able to identify a person from very little information contained in a media report due to their proximity to the location to which the case relates. For example, neighbours and residents living at the location to which the case relates are likely to need little information from a media report before they are able to identify the protected person, whereas residents of the wider town or city will not have the local knowledge to do so.

14. A reasonable and proportionate approach should be taken to the issue of local knowledge. Regardless of the size of a community there will always be some people who will be able to identify a protected person from a small amount of information in a media report due to their proximity to the incident to which the case relates.

15. Courts and media organisations must be aware of the risk that local knowledge may lead to a protected person being identified but the risk should not be overstated because this could lead to the adoption of a blanket approach whereby proceedings do not get reported at all. The open justice principle must always be given sufficient weight and any risk should be assessed in a reasonable and proportionate manner.

[25] For example, see *Attorney General v British Broadcasting Corporation [2022] EWHC 1189*

16. The open justice principle and a reporting restriction will not be breached solely because it could be said that some people may be able to use their local knowledge to identify the protected person. Care must also be taken not to assume that certain facts or matters are widely known because presumed 'common knowledge' is often overestimated.

17. Media organisations are responsible for complying with a reporting restriction and this includes being aware of considering whether local knowledge could lead to the identification of a protected person.

18. The actual risk of local knowledge leading to identification must be considered overall, and not in relation to a small section of the local community. The risk should be assessed in a proportionate manner and a publication will only breach a reporting restriction on the basis of identification through local knowledge where there is a real risk, real danger or real chance of the protected person being identified.

19. The risk of identification through local knowledge can be greatly reduced where media organisations adopt a common approach to reporting on criminal proceedings (see below).

Reporting the nature of the offence

20. Reporting the nature of the offence is essential to understanding the court proceedings and any sentence which may be imposed. A media report that does not reference the nature of the offending is unlikely to meet the objectives of the open justice principle, which is to provide the public with accurate information about cases in the criminal justice system.

21. This means that media organisations can freely report the charges to which the proceedings relate, subject to compliance with a reporting restriction protecting a person's identity, for example by using the term complainant in place of the protected person's name.

22. A question can arise as to whether it is appropriate, in sexual offence cases and domestic abuse cases, where complainants are automatically protected by reporting restrictions, to identify the nature of these types of case. This is particularly relevant in domestic abuse cases where naming the defendant, in combination with reporting the nature of the case, could lead to the identification of the protected person.

23. The definition of domestic abuse covers a wide range of personal relationships and includes ongoing and former relationships, intimate relationships and family relationships. Although reporting the defendant's name and reporting the nature of the case as being one of domestic abuse narrows the identity of the protected person to someone who has a personal connection to the defendant, it does not lead directly to the identity of the protected person because it does not specifically state the nature of the personal relationship.

24. The open justice principle includes promoting confidence in the criminal justice system and domestic abuse often goes unreported to the police. There is a strong public interest in media reporting identifying cases involving domestic abuse so that the public is aware that such cases are treated seriously and offenders will be brought before the courts.

25. Given the wide range of relationships covered by the definition of domestic abuse the reporting of the defendant's name, in combination with reporting that the case is a domestic abuse case, will not, in itself, create a real risk real danger or real chance of the protected person being identified.

Reporting the name of the defendant

26. A defendant must be named by the court in criminal proceedings, save in very rare circumstances where the naming of the defendant would frustrate or render impractical the administration of justice. It follows that the court must name the defendant and there is no power to impose a reporting restriction in relation to the identity of the defendant for the benefit of the defendant's feelings or comfort, to prevent financial or reputational damage, or to save others from embarrassment.

27. Naming a defendant promotes confidence in the criminal justice system and allows justice to be seen to be done. It protects against false narratives, misinformation and is essential to the principle of open justice.

28. In some circumstances, naming the defendant in a media report will lead to the identification of a person protected by a reporting restriction due to the facts of the case. For example, in proceedings involving child neglect, naming the defendant may mean that the identity of the neglected child is revealed due to the family name and family relationship having been published.

29. This situation most commonly arises where the proceedings involve a defendant who has offended against a family member and the publication of the family name and family relationship creates a real risk that the protected person may be identified.

30. The starting point for media organisations is that the publication of the name of the defendant will not be a breach of a reporting restriction relating to the identity of another person involved in the case.

31. Where the name of the defendant may lead to the identification of a protected person media organisations must take care not to also report matters which will create the link between the defendant's name and the identity of the protected person. For example, by not reporting the nature of the family relationship between the defendant and the protected person.

32. The risk of identification through naming the defendant can be greatly reduced where media organisations adopt a common approach to reporting on criminal proceedings (see below).

Reporting the name of witnesses

33. Unless a reporting restriction applies to the identity of a witness media organisations are free to report the name of the witness.

34. In general terms, media organisations recognise that giving evidence as a witness in criminal proceedings is a difficult experience and unless there is a specific reason for doing so media reports will not normally name the witness but will instead refer to the person using the term 'witness'. For example, "the offence was seen by a witness who reported the matter to the police".

Common Approach to Reporting

1. It is for individual media organisations to decide how to report court proceedings. A common approach to reporting court proceedings where reporting restrictions apply can assist media organisations to avoid breaching a reporting restriction by providing a common framework within which to report[26]. A common approach between media organisations reduces the risk of jigsaw identification and local knowledge identification.

2. The following is an example of the type of common approach which could be agreed between media organisations.

Common Approach to Reporting: Identity Restrictions

- In accordance with the statutory provisions relating to an identity reporting restriction, the protected person's name, address, school, educational establishment or place or work will not be reported and no still or moving image of the protected person will be published.
- The appearance of the protected person will not be reported.
- The protected person will be referred to as:
  - the "complainant"
    (where they are the person against whom the offence has been committed)
  - the "witness"
    (where they will/have given evidence in the proceedings)
  - a "third party"
    (where they are named in the proceedings but are not a complainant or a witness)
- The name of the defendant can be reported.
- The charge or charges can be reported and/or their general nature.
  (Examples: "the defendant is charged with one offence of assault by penetration and one offence of sexual communication with a child" and/or "the defendant is charged with two sexual offences", "the defendant is charged with domestic abuse in the form of common assault" and/or "the defendant is charged with an offence relating to domestic abuse")
- The age of the protected person will not be reported.
- The nature of the relationship between the protected person and the defendant will not be reported.
- The timing and the location of the offence, or any association that the defendant and/or the protected person has to the location of the offence, will not be reported.
- Mitigating and aggravating factors in relation to sentence can be reported, subject to the requirements above.

[26] For example, see IPSO Editors Code of Practice, OFCOM Code and BBC Editorial Guidelines.

3. The following are examples of the common approach being applied in two fictional scenarios, one involving sexual offences and one involving domestic abuse.

Case One – Circumstances

Joe Bloggs appeared before the Magistrate's Court and pleaded guilty to one offence of meeting a child following sexual grooming and one offence of sexual communication with a child.

On 1st January 2024, Joe Bloggs was at a social event for young people interested in the performing arts. At the event Joe Bloggs was with his daughter, Mary Bloggs, who is 14 years old. Mary Bloggs introduced her father to her school friend, Jane Doe, who is also 14 years old.

Later the same day Joe Bloggs sent a message to Jane Doe on social media. They began to exchange messages and over the period of one-month Joe Bloggs sent 1,117 messages to Jane Doe. In the messages, Joe Bloggs asked Jane Doe sexual questions and suggested that they meet to engage in sexual activity.

On 1st February 2024 Joe Bloggs arranged to meet Jane Doe at the River Hotel. Jane Doe's parents became aware of the messages and reported the matter to the police. When Joe Bloggs arrived at the River Hotel police officers were waiting for him. Joe Bloggs was arrested and found to be in possession of condoms.

At the sentencing hearing, the court heard that Jane Doe has a significant learning disability and that Joe Bloggs has no previous convictions and had himself been subjected to sexual abuse as a child.

The Senior Magistrate sentenced Joe Bloggs to 3 years imprisonment. In accordance with the sentencing guideline the court held that raised harm and raised culpability were both present and the starting point for the offence was 4 years imprisonment. Jane Doe was particularly vulnerable due to her learning disability and the content of the messages to Jane Doe from the defendant demonstrated that the defendant had used this to manipulate Jane Doe. The defendant had clearly intended penetrative sexual activity and had attended at the River Hotel with that intention in mind. These factors justified an uplift from the starting point to 6 years imprisonment. The Senior Magistrate took into account the fact that Joe Bloggs had no previous convictions and had suffered sexual abuse as a child. The sentence was reduced to account for these factors and the sentence was further reduced by one third to reflect the fact that Joe Bloggs pleaded guilty at the earliest opportunity.

The Senior Magistrate imposed a sentence of 3 years imprisonment and stated that the defendant had manipulated Jane Doe and clearly intended to engage her in penetrative sexual activity. The offence was so serious that notwithstanding that Joe Bloggs had no previous convictions the offending justified a lengthy sentence of imprisonment. A sentence of 12 months imprisonment was passed in relation to the offence of sexual communication with a child, to run concurrently.

Case One – Example of Reporting

In the Magistrate's Court Joe Bloggs pleaded guilty to one offence of meeting a child following sexual grooming and one offence of sexual communication with a child. The court heard that Joe Bloggs had groomed the complainant by sending them over one thousand messages on social media. The content of the messages was sexual in nature and Joe Bloggs had then arranged to meet the complainant.

The arrangement was discovered before the meeting could take place and police officers were waiting at the meeting location. When Joe Bloggs attended the police arrested him and found him to be in possession of condoms.

The prosecution informed the court that the complainant was particularly vulnerable due to their personal circumstances and that Joe Bloggs clearly intended to commit a very serious criminal offence when he arranged to meet the complainant. In mitigation, the court heard that Joe Bloggs had no previous convictions and that he had experienced difficult personal circumstances in the past, which had impacted on his thinking.

In sentencing, the Senior Magistrate stated that Joe Bloggs had manipulated a vulnerable complainant and the offending justified a lengthy sentence of imprisonment. The Senior Magistrate reduced the sentence by one-third to reflect the early guilty pleas and sentenced Joe Bloggs to 3 years imprisonment.

Case Two – Circumstances

Joe Bloggs appeared before the Summary Court and pleaded guilty to one offence of common assault. The facts of the offending as stated in court were that on 1st January 2023 Joe Bloggs was at his home address at 123 Smith Street with his partner Jane Doe, with whom he had been in a relationship with for 9 months. Shortly after 23.30 hours police attended after receiving reports from John Rover, a passing dog walker, that a loud commotion could be heard from inside the property.

Police officers found Jane Doe sat on the steps in the garden of the property in a state of distress. Jane Doe was wearing only her night dress, she was crying and there was a large bruise on her left cheek. When police officers asked what had happened Jane Doe stated "he's been up to his old tricks again" and said that Joe Bloggs had slapped her and threatened to hit her with leather belt. Police officers arrested Joe Bloggs and found him to be drunk.

At the sentencing hearing the court heard that Joe Bloggs has 4 previous convictions for assaulting Jane Doe and his last conviction was 18 months ago, for which a community order was imposed and successfully completed.

Jane Doe has moved in with her sister, Mary Doe, and wants the relationship to end. Joe Bloggs is in full time employment and the court heard that if he was sent to prison he would lose his income and not be able to pay the mortgage on 123 Smith Street.

Case Two – Circumstances (cont.)

The Probation Service had prepared a report which stated that Joe Bloggs has significant problems with alcohol, but demonstrated remorse and a willingness to address his offending. A rehabilitative sentence was recommended.

The Summary Court found that there was high culpability due to the threatened use of a weapon and category 1 harm, more than minor harm. The previous convictions were a significant aggravating factor which justified an uplift to the maximum sentence. The Summary Court reflected credit for the early guilty plea by suspending the sentence of imprisonment.

The Summary Court sentenced Joe Bloggs to 6 months imprisonment, suspended for 18 months with a supervision order and alcohol treatment requirement. The court made a domestic abuse protection order for 24 months, prohibiting Joe Bloggs from contacting Jane Doe.

Case Two – Example of Reporting

In the Summary Court Joe Bloggs was sentenced to 6 months imprisonment suspended for 18 months with an order for supervision and alcohol treatment. The court heard that Joe Bloggs had engaged in domestic abuse by assaulting the complainant and threatening them with a weapon. When police attended the location they found that the complainant had suffered an injury and that Joe Bloggs was drunk.

The court received a report from the Probation Service which stated that Joe Bloggs had shown a willingness to address his problems with alcohol and had demonstrated remorse. The court also heard that if Joe Bloggs was sent to prison he would lose his employment.

Justices of the Peace found that there was high culpability due to the threatened use of a weapon and that more than minor harm had been caused by the assault, which justified imposing the maximum sentence of 6 months imprisonment. The Summary Court decided to suspend the sentence of imprisonment due to Joe Bloggs having entered a guilty plea and made an order to protect the complainant from any further acts of domestic abuse.

Victim Personal Statements

1. A victim personal statement is a statement given by the victim of a crime, or a family member, which sets out the impact that the crime has had. The impact of crime can be physical, emotional, psychological, financial or a combination of these factors.

2. A victim personal statement is taken into account by the court at the point of sentence and it can be read out to the court, by the victim themselves or by the prosecutor, during the sentencing hearing.

3. A victim personal statement can be read out in whole or in part and it may also be summarised in general terms. Victim personal statements frequently contain information which is highly sensitive and personal in nature.

4. The impact of criminal offending is a significant part of the sentencing process and reporting on the impact of offending is important in understanding the sentence which has been passed and forms a vital part of the open justice principle.

5. There is no reporting restriction which prohibits reporting on the content of a victim personal statement, save that no matter which may lead to the identification of a protected person may be reported.

6. Due to the personal and sensitive nature of a victim personal statement, media organisations often take a careful and balanced approach by reporting the impact of the offending in general terms. For example, a victim impact statement may set out in some detail the ongoing physical impact of a violent offence by providing details of a personal nature. Media organisations may choose not to include these details in their reports and instead may choose to summarise the impact of the offending by reporting that "a victim personal statement read to the court set out details of the significant and ongoing physical impact of the offending on the complainant".

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