Standing Committee for Youth Justice

Endorsed by the Association of YOT Managers

Anonymity for children in trouble – Guidance for YOTs

When children in trouble with the law are named by the press or in the local community, it can have serious implications for the work of YOTs, the children themselves, and their families. Courts decide whether a child in trouble can be identified. However, they often do so without considering the YOT's views. This guide from the Standing Committee for Youth Justice (SCYJ) sets out four steps YOTs can take to ensure their views are taken into account by the court:

- **Anticipate** whether an application to lift reporting restrictions is likely;
- **Adjourn** – ask the court to adjourn the decision on lifting reporting restrictions, where necessary;
- **Assess** the impact of naming on the child, their family and the YOT's work;
- **Submit** the YOTs views on naming to the court.

This guide also sets out some of the ways you can protect a child and their family if they are named.

The law on naming:

Children tried in the youth court (other than in anti-social behaviour cases) have an automatic right to anonymity under s.49 of the Children and Persons Act (CYPA) 1933, though a judge or magistrate can decide to lift this. Children involved in anti-social behaviour proceedings can automatically be named. A judge or magistrate can impose reporting restrictions on anti-social behaviour cases using s.39 of the CYPA 1933.

Children tried in courts other than the youth court have no automatic right to anonymity but the judge or magistrate can decide to impose reporting restrictions on proceedings, using s.45 of the Youth Justice and Criminal Evidence Act 1999. In practice, they generally do so at the start of a case and consider lifting reporting restrictions on conviction, or at sentence, usually following an application from the media.

Anticipate

It's important to anticipate when the press will apply to lift reporting restrictions, and to be clear when a child will be named by default. Often the press apply to lift reporting restrictions without warning. **Anticipating this and preparing a response** ensures the YOT will be in a position to submit its views to the court. Doing so **before the child enters a plea** gives you plenty of time to prepare a response and ensures you will not be caught on the back foot.

Begin by asking the defence team and the prosecutor to be kept informed of any developments on reporting restrictions. Then make your own assessment of whether the press are likely to apply to lift reporting restrictions. They are likely to do so in the following circumstance:

- Grave or serious crimes;
- Cases where the press reported the crime when it first occurred;
- A sensational story or one with an interesting angle. For example, a case involving a child soap star, an arson attack by a trainee fire-fighter, or a family feud;
- Where the case is likely to generate local interest for any reason.

All children involved in anti social behaviour proceedings (applications or breach proceedings for civil injunctions or criminal behaviour orders) can be named by default. SCYJ's flowchart, "Do reporting restrictions apply", will help to establish if a child will be named by default and if action is required.

If you anticipate the press will apply to lift reporting restrictions, or if the child will be named by default, follow the steps, "Assess", and "Submit" below. Make sure the court officer has all the relevant information so they are prepared to respond if the media make an application to lift restrictions.

Adjourn

If the press make an application to lift reporting restrictions that you have not anticipated, or to which you are not in a position to respond, the YOT officer in court may feel unable to comment without consulting other members of the team. In these circumstances, they can ask the court to adjourn the decision. The YOT officer in court should explain to the judge or magistrate that they were **not warned** of the application and **ask the court to adjourn the decision** on the following grounds:

If the application is to lift **either** a s.45 **or** a s.49 order reporting restriction:

- Under s.44 of the Children and Young Person's Act 1933, the court is required to have regard to the welfare of the child. The YOT is best placed to provide information on how naming will affect the child's welfare. The YOT needs time to assess the situation to provide this information.
- Under s.11 of the Children's Act 2004, YOTs have a duty to promote the welfare of children. The YOT needs time to assess the impact of naming on the child's welfare, so it can take a position on the application, and so fulfil its statutory duty.

In addition, if the application is to lift a s.45 order reporting restriction the YOT officer can **also** say that:

- Under s.45(6) of the Criminal Justice and Evidence Act 1999, the court must have regard to the welfare of the child when deciding whether to lift a s.45 order. As above, the YOT will need time to assess the situation to provide information to the court.

And if the application is to lift a s.49 order reporting restrictions the YOT officer can **also** say that:

- Under s.49 (4B) of the Children and Young Persons Act 1933, the court is required to give parties to the proceedings an opportunity to make representations on whether reporting restrictions should be lifted. Ask that the YOT is considered a party for these purposes.

You can then follow the steps "Assess" and "Submit" below.

Assess

If you anticipate the press will apply to lift reporting restrictions, if such an application has already been made (and adjourned), or if the child will be named by default, assess how lifting reporting restrictions will impact on the YOT's work, the child, and their family. You could consider the following factors:

- **Will it be more difficult to supervise a child in the community?** Naming a child may affect the likelihood that they will comply with the order. It may make it difficult or unsafe for them to go out in public, because of fear of reprisals, and make home visits more difficult. It may even lead to a child leaving the area, taking them away from family support and their educational establishment.
- **What will be the impact on rehabilitation?** Labelling a child as an offender can make reoffending more likely. Publicly identifying the child as "an offender", particularly in the media, will contribute to the labelling process, and will make it more difficult for them to put the past behind them. It may make accessing education and employment more difficult too.
- **What will be the impact on the child and their welfare?** Public naming can be a traumatic process, it could result in self-harming, psychological harm, stigmatisation, or put the child at serious risk of retribution, in custody or the community. All children are vulnerable because of their age, naming a child could lead to their being targeted in the community and make it very difficult to keep them safe. As above, it may also impact their ability to access education and employment.
- **What will be the impact on the child's family?** A child's family, particularly siblings, could be put at risk of bullying, stigma, retribution or other risks. For instance, the family could be on a domestic violence anonymity programme. Contact social workers, where relevant, to discuss the impact of naming on the family. Details of siblings' family or private lives are also likely to be made public if the child is named.
- **Child Rights:** The UK has ratified the UN Convention on the Rights of the Child (UNCRC). Article 40 states that children have a right to privacy in criminal proceedings. UN resolutions are clear that this is to help prevent the negative effects of labelling[1].

SCYJ's report "What's in a name? The identification of children in trouble with the law" sets out the impact naming a child can have in more detail[2]. If you believe naming would be damaging, let the defence solicitor know about your concerns and follow the submit process.

Submit

If a child is likely to be named, and your assessment (above) leads you to believe this would be damaging, you should submit, or be prepared to submit, the YOTs views to the court. **Set out the YOTs views on naming clearly in a letter to the court**, including the reasons you believe naming would be damaging. Include this information in the Pre-Sentence Report too (if the court has not made a decision on naming by then). Inform the defence team of the YOT's position too.

[1] *United Nations Standard Minimum Rules for the Administration of Juvenile Justice ("The Beijing Rules"), A/RES/40/33, 1985*

[2] *http://scyj.org.uk/wp-content/uploads/2014/05/Whats-in-a-Name-FINAL-WEB_VERSION_V3.pdf*

If an application to lift reporting restrictions is anticipated, but has not been made, provide the YOT court officer with at least two copies of the letter, so they are prepared to respond if an application is made. Liaise with probation if they are represented in the court. Provide the defence with a copy of the letter and ask that they oppose any attempts to lift reporting restrictions. Pass the letter to the prosecutor too. They could support your case if an application is made, or at least not oppose it. If the child has a social worker in court, speak to them about your concerns as well.

If an application is made to lift reporting restrictions:

- Explain to the court that the YOT opposes the application. Explain the reasons are set out in a letter, and submit the letter to the court.
- If the decision on naming has been delayed to sentence, include the YOTs views on naming in your Pre-Sentence Report.

If the child will be named by default, **speak to the defence team about making a s45 or s.39 application**[3]. These are orders to impose reporting restrictions on proceedings. If the defence agree to apply for an order, submit your letter to the court, as above, supporting the application and include information in the Pre-Sentence Report.

One YOT reports:
"We recently had a case in the Crown Court where we had anticipated the press might want to name the child. We wrote to the judge and asked the defence solicitor to oppose any application to lift the reporting restriction. The judge and the defence solicitor were very receptive. When an application was made to lift the restrictions the judge opposed it based on the information we had provided."

Protect

If a court allows a child to be identified, there are steps you can take to protect them and their family from some of the negative effects. These include:

- Hold a planning meeting to plan how the risks can be addressed. You could involve the police (who can provide protection), MAPPA, the child's family, social care, and housing (if the family may need new accommodation).
- If the family has been harassed by the press, or is concerned about being harassed, advise them to contact the press regulators, IPSO and Impress. They can help prevent press harassment. In some cases IPSO will send out a Private Advisory Notice or Desist Notice, and Impress will send out advisory notices, to the editors they regulate. Visit www.ipso.co.uk and www.impressproject.org for more information about harassment and their contact details.

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

[3] *Reporting restrictions on criminal proceedings are imposed via section 45 of the Youth Justice and Criminal Evidence Act 1999. This replaces order made under s.39 of the Children and Young Persons Act 1933 in criminal courts. S.39 orders are still used in anti-social behaviour cases under section 39 of the Children and Young Persons Act 1933.*