86.7 ***Statutory provisions Postponement***

R v Beale 2017 EWCA Crim 1012 B gave evidence in a rape trial. She was later put on trial for perjury and perverting the course of justice for making false rape claims. The Judge made an order under section 4(2), because otherwise it would deprive B of her right to anonymity. Held. The power given under section 4(2) has clear limitations: it is for the protection of the administration of justice in particular proceedings. Section 4(2) does not give power to make an order restricting publication for the purposes of protecting the administration of justice generally. The Judge accepted that naming B would not create a substantial risk of prejudice to the administration of justice in the current proceedings; and so there was no power to make the order. Also, section 4(2) cannot postpone the publication of proceedings indefinitely, see *Times Newspapers Limited v R* 2007 EWCA Crim 1925, 2008 1 Cr App R 16. para 19 Open justice and freedom of the press are fundamental principles. A reporting restriction under section 4(2) represents an interference with those principles and such a restriction can only be imposed where this is 'necessary'. para 20 The Judge failed to ask himself whether the restriction was 'necessary'. An order is only 'necessary' if it satisfies the requirements of Article 10(2) of the European Convention on Human Rights, that is to say, it is 'necessary in a democratic society' in pursuit of one or more of a number of specified aims. This includes the requirement that the measure be a proportionate means of achieving such aims. In order to avoid an unwarranted incursion into open justice, the step-by-step approach to making a section 4(2) order, identified in *R v Sherwood and Others* 2001 EWCA Crim 1075 at para 22, must be followed [not listed here]. Judge's order quashed.

R v Sarker 2018 EWCA Crim 1341 LCJ The trial Judge postponed reporting of a doctor's trial for fraud. The BBC appealed the order. The Court of Appeal set out the relevant rules and authorities. Held. In section 4(2) cases, [the applicant must show] clearly (and ordinarily in writing): i) how contemporaneous, fair and accurate reports of the trial will cause a substantial risk of prejudice, and ii) why a postponement order would avoid the identified risk of prejudice. The default position is the general principle that all proceedings in courts and tribunals are conducted in public. This is the principle of open justice. Media reports of legal proceedings are an extension of the concept of open justice. Here, fair and accurate contemporaneous reporting of the trial would not have given rise to any risk of prejudice. Order quashed. [The rest of the careful and detailed guidance is not listed.]

86.8 ***Anonymity of complainants Sex offenders***

R v Beale 2017 EWCA Crim 1012 B gave evidence in a rape trial. She was later put on trial for perjury and perverting the course of justice for making false rape claims. The Judge ruled he had no power to make an anonymity order under Sexual Offences (Amendment) Act 1992 s 1. Held. The Judge was right. Section 1 does not operate to prohibit a report of any criminal proceedings other than those in which a person is accused of the sexual offence in question, or in an appeal from such proceedings. para 3.2 of the Judicial College Report Restriction section [see below] is an accurate statement of the law.

See also **86.7**.

Judicial College on Reporting Restrictions in the Criminal Courts (April 2015, revised May 2016), www.banksr.com Other Matters Other Documents Reporting Restrictions para 3.2:

Victims of sexual offences

Victims of a wide range of sexual offences are given lifetime anonymity under the Sexual Offences (Amendment) Act 1992. The 1992 Act imposes a lifetime ban on reporting any matter likely to identify the victim of a sexual offence, from the time that such an allegation has been made and continuing after a person has been charged with the offence and after conclusion of the trial. The prohibition imposed

by section 1 applies to ‘any publication' and therefore includes traditional media as well as online media and individual users of social media websites, who have been prosecuted and convicted under this provision.[1]

The offences to which the prohibition applies are set out in section 2 of the 1992 Act and include rape, indecent assault, indecency towards children and the vast majority of other sexual offences.

There is no power under the 1992 Act to restrict the naming of a defendant in a sex case. Complainants enjoy the protection provided by section 1 of the 1992 Act and it is for the media to form its own judgment as to whether the naming of a defendant in a sex case would of itself be likely to identify the victim of the offence.[2] The same must be true for witnesses other than victims in sex cases.

A defendant in a sex 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.

There are three main exceptions to the anonymity rule. First, a complainant may waive the entitlement to anonymity by giving written consent to being identified (if they are 16 or older).[3]

Secondly, the media is free to report the victim’s identify in the event of criminal proceedings other than the actual trial or appeal in relation to the sexual offence. This exception caters for the situation where a complainant in a sexual offences case is subsequently prosecuted for perjury or wasting police time in separate proceedings.[4] It appears to have been the intention of Parliament, however, that a complainant would retain anonymity if, during the course of proceedings, sexual offences charges are dropped and other non-sexual offence charges continue to be prosecuted.[5]

Thirdly, the court may lift the restriction to persuade defence witnesses to come forward, 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 for it to be lifted.[6] This last condition cannot be satisfied simply because the defendant has been acquitted or [there has been some] other outcome of the trial.[7]

Footnotes

Due to a typesetting error, some of the footnotes in the book have been printed incorrectly. We have listed the relevant footnote corrections in these chapter updates.

Footnote number 947 should read: Added by Armed Forces Act 2011 Sch 2 para 6(a)
Footnote number 948 should read: Added by Armed Forces Act 2011 Sch 2 para 6(b)

---

1 For example, individuals who posted on social network websites revealing the identity of a victim of rape by the former footballer Ched Evans were convicted of offences under this provision. See, for example, www.theguardian.com/uk/2012/nov/05/ched-evans-rape-naming-woman

2 *R (Press Association) v Cambridge Crown Court* 2012 EWCA Crim 2434, paras 15-17

3 It is a defence to an offence of publishing identifying matter under Sexual Offences (Amendment) Act 1992 s 5 to show that the complainant gave written consent to the publication, see section 5(2).

4 Sexual Offences (Amendment) Act 1992 s 1(4)

5 Report of the Advisory Group on the Law of Rape (the Heilbron Committee), Cmnd 6352, paras 168-172. As the purpose of the anonymity provision is to encourage complainants in sexual offences cases to come forward, it would be inconsistent with the statutory purpose if dropping a sexual offence charge during the course of proceedings had the effect of removing anonymity. In addition, any interpretation that anonymity automatically falls away in such circumstances creates problematic conflicts, for example it could lead to sexual offences charges being maintained in order to ensure continued anonymity, in circumstances where dropping the charge (e.g. in a negotiated plea) was in the interests of justice.

6 Sexual Offences (Amendment) Act 1992 s 3

7 Sexual Offences (Amendment) Act 1992 s 3(3)

Footnote number 949 should read: As inserted by Criminal Practice Directions 2015 Amendment No 6 2018 para 2
Footnote number 950 should read: The case is also known as Local Authority, A v PD 2005 EWHC 1832.
Footnote number 951 should read: As inserted by Education Act 2011 s 13(1)
Footnote number 952 should read: As inserted by Criminal Justice and Immigration Act 2008 s 9
Footnote number 953 should read: Although this relates to trials, the same rules would apply to sentence hearings.
Footnote number 954 should read: Criminal Law Act 1967 s 28-29
Footnote number 955 should read: Criminal Justice Act 1988 s 36(3A) as inserted by Criminal Justice Act 2003 s 272(1) and amended by Criminal Justice and Immigration Act 2008 s 46(1)-(2)
Footnote number 956 should read: In some reports this case is listed as Att-Gen's Ref Nos 73 and 75 of 2010 and 3 of 2011 2011 EWCA Crim 633
Footnote number 957 should read: Criminal Justice Act 2003 s 161A-161B
Footnote number 958 should read: As substituted by Legal Aid, Sentencing and Punishment of Offenders Act 2012 s 64