

ANONYMISATION AND AVOIDANCE OF THE IDENTIFICATION OF CHILDREN AND TREATMENT OF DESCRIPTIONS OF SEXUAL ABUSE OF CHILDREN IN JUDGMENTS INTENDED FOR THE PUBLIC ARENA

JUDICIAL GUIDANCE: A SUMMARY

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Background

- Guidance builds on a stream of work regarding the privacy, welfare and safeguarding needs of subject children in the context of the ‘transparency’ agenda for family courts. It develops findings from a review of children judgments on BAILII (2015) regarding geographical/personal identifiers and potential for jigsaw identification of children therein, and concerns about explicit descriptions of the sexual abuse of children in a document placed in the public domain. The guidance was funded by the Nuffield Foundation, although the views expressed are those of the authors and not necessarily those of the Foundation.
- In the light of potential for jigsaw identification of children (see Appendix 1) guidance is not confined to the issue of concealing names but extends to the avoidance of any materials liable to lead to the identification of the child. It aims to help judges improve anonymisation practices and draft details of the sexual abuse of children, thus striking a better balance between the objective of publishing more judgments but also taking positive steps to protect the privacy and safeguarding needs of children.
- Guidance offers practical ways to support judges in securing the child’s anonymity, by way of checklists. In this exercise work has also explored available policy and practice regarding children judgments in some similar common law jurisdictions (see Appendix 4).
- The guidance was informed by findings from the 2016 Review of Bailii judgments supplemented by as a desk-based analysis of publically available judgments and selected policy documents and judgments from some similar common law jurisdictions. The work was guided by an advisory group made up of senior judges, lawyers, welfare and clinical experts, and NYAS.

Purposes and audiences for judgments

- Guidance is set within a primary framework which guarantees parties a right to a fair trial; this includes a right to have the outcome of proceedings explained in a reasoned judgment expressed in clear accessible language explaining how and why the court has reached its decision.
- Judgments also provide a secondary purpose: recording the decision for future use by a range of professional and lay audiences, the child/young person, parents and others, an appellate court, the public, and legal and journalistic commentators.

Anonymisation of personal and geographical indicators in judgments: aims of checklist 1

Key aims include:

- Promoting consistency in anonymisation practices and assisting judges to avoid any risk of jigsaw identification of children from information and the details included in judgments
- Support reflective thinking about the inclusion of certain details, indicating where the judge might consider an abridged or skeleton statement, redaction, or exclusion of some details, and setting out a final checklist to assist decisions as to whether to publish a particular judgment
- Acceptable in its application to an appellate court.

CHECKLIST 1 – PERSONAL/GEOGRAPHICAL INDICATORS AND JIGSAW IDENTIFICATION: “DO’S AND DON’TS”

Naming protocols

- Initials are safer than pseudonyms, they must be fictitious but selected with care (and not to indicate an ethnic group); for children, keep it simple: child A, B C etc; for parents ‘the mother’ ‘the father’ etc.

Dates of birth

- These are high risk details facilitating identification of a child; they are rarely essential. Where the text demands specificity, consider using a season and year (e.g. autumn 2009), or if necessary, month

and year. For some children (e.g. from rural, and minority ethnic communities) wherever possible, use only the year.

Other dates

- Take care when including full dates for some events (e.g. a parent's criminal conviction) consider redaction, for example, 'father was [previously] convicted...' 'The mother has previous convictions...'

Ethnic Group

- Identifying a child/parent by ethnic group can be a key identifier with 'beyond border' implications for extended families elsewhere. Consider why it is necessary to refer to a person's ethnicity (see main text). Where it is not relevant to the issues before the court, do not refer to it in the judgment.
- Where it is deemed necessary (e.g. where a cultural/religious or language context is identified as a substantive issue to be addressed), consider using a **generic term**. See the main text for examples, for example, in the paragraph headed 'Background' do not say "...the mother was born in the Sylhet region of Bangladesh." Rather, 'the mother is of South Asian origin'.
- Consider any essential details alongside geographical/personal indicators: does it contribute to jigsaw identification of a child/family? If so, consider whether the judgment should be published.

Religion

- Religious affiliation can be key personal information and an indicator of geographical location and/or a specific community. Some religious groups are small well connected communities although spread geographically; this makes it much easier to identify individuals within the group
- Do not refer to religion unless substantive issues indicate it is relevant and should be addressed.
- If relevant, consider essential details alongside other geographical/personal indicators in the judgment; does it compromise attempts at increased anonymisation, and assist jigsaw identification of a child/family? If so, consider whether the judgment should be published.

School and education: issues and problems

- Do not automatically reproduce all descriptions of problems a young person experienced at school. These will be familiar to peers, teachers and possibly other parents. When combined with other details they are high risk details facilitating the location and identification of a young person.
- When considering incidents remember the details you include in a public document may be shared on media/social media and available on the internet for the remainder of a young person's life. Consider whether details can be abridged and if a timeline rather than dates will suffice (see examples, checklist 1).
- Do not routinely identify a faith, specialist/residential school; they are easily identified by a Google search. Within a local authority area there may be only one school of a particular faith (but a number of faith schools). Where a child attends a special school (e.g. for a physical impairment or mental health problem) these are limited resources, for some facilities perhaps three schools exist in the UK.

Naming the local authority applicant

- Local authorities are public bodies with statutory responsibility for the welfare and protection of children and support of families. Where that work results in proceedings the LA is held accountable for its actions with families by the court.
- The need for a public body to be identified when acting in respect of citizens is important. Nevertheless we now know that naming the local authority in a public document may set clear geographical boundaries to the location of some children; their location may be further narrowed down by other details in a judgment (see Brophy et al 2015).

- The main body of the text below explores the degree of likely risk; naming the local authority without reference to risks issue and balancing the risks in each case may serve only to undermine other work undertaken to redact/abridge parts of the judgment. In the first instance therefore the default position is that an applicant should be named but the judge should undertake a balancing act and naming a local authority should be confined to certain cases. These are outlined in the main text.
- Where the local authority applicant is identified the name of the Director of Children’s Social Care (or equivalent) should also appear. For example: *‘Applicant: Cumbria County Council. The Corporate Director for Children’s Social Care is John Macilwraith’.*

Naming the social workers/family support workers

- Do not routinely name social workers without considering whether this may contribute to jigsaw identification of a child/young person. In some areas naming a social worker narrows down the location of a child/family to an area team; consider naming alongside geographical/personal indicators in the judgment: does it add to a risk of identification of a child/family?
- If the reason for naming is to make public, responsibility for failings, determine whether it is a corporate/managerial failure or that of an individual social worker in the context of her powers to have done things differently. A social worker’s authority to make decisions is not equivalent to that of an expert witness; some areas of decision making are determined by managerial/corporate policy.
- If individual criticism is necessary, consider this alongside other potential geographical/personal in the judgment: can it be drafted so as not undermine attempts to improve anonymisation practices?
- Consider whether it may be appropriate to (a) warn the applicant/social worker and to give them the opportunity to address the criticism, and (b) consider other options which may improve practices: these are suggested in the main body of the guidance below (and Appendix 3).

Naming a local family resource/assessment centre

- These are scarce resources: some are placed in the communities/wards they serve; confidence and engagement in the service is thus important. When considering naming a resource, reflect on other geographical/personal indicators and whether naming may assist jigsaw identification of a child/family and impede future engagement by families.
- Consider using a generic term (see main guidance for examples); if naming is deemed essential, explain the decision in the context of an assessment of the risks to a child/family.

Naming a treating physician

- Do not do this routinely without considering the impact on a child/family and local communities. Consider the type of clinical expertise and whether naming a local health care provider narrows the geographical field of location for a child/family; some clinicians in specialist fields see a relatively small number of children; this can narrow the geographical pool further.
- Local people (informants, teachers/Heads interviewed, foster carers etc.) and young people are likely to know the name of a local doctor/community paediatrician. Be aware that names are key information added to search engines when seeking judgments for specific categories of child abuse/coverage in the media.
- When considering details from a clinical report for inclusion in the judgment, remember the details you include may be shared on social media sites and available on the internet for the remainder of a child’s life. Consider redaction/abridgement for parts of the evidence; include only essential dates.
- Where the aim is to identify work which fails to meet the standards required, it may be appropriate to (a) warn the clinician and give them the opportunity to address the criticism, and (b) consider intended text alongside other information in the judgment: can it be drafted so that it does not undermine other improvements in anonymisation.

Naming an expert witness

- These are a limited resource and for some specialist areas in short supply; some work regionally, others nationally, both may also serve a 'local' community as a treating physician in an NHS trust. Nevertheless experts offer their services to assist the court in return for a fee and in some respects are in a different position to a treating physician.
- That does not preclude considering the impact on a child of naming an expert or reflecting on the degree of detail from the expert's evidence to be included in a public judgment, bearing in mind the details you include may be available on the internet for the remainder of a child's life.
- If the aim of naming an expert is to identify clinical work which failed to meet the required standard, it may be appropriate to (a) warn the clinician and to give them the opportunity to address the criticism, and (b) draft the text so that it does not undermine improvements in anonymisation.

Naming the trial court and judge

- In certain circumstances naming the trial court and judge confirms geographical boundaries to the location of a child/family; when combined with other information this may contribute to jigsaw identification. Appendix 3 and the main checklist 1 text set this out in detail.
- However, the court is unique among actors in the family justice system because of the extent of powers conferred upon it by Parliament but these powers are not unfettered and are subject to checks and balances.
- The court must nevertheless negotiate the landscape between 'transparency' of justice on behalf of the state where life changing decisions are made for children while ensuring their privacy, welfare and safeguarding needs are protected.
- Naming the trial court and judge should remain but in the context of improved anonymisation practices where risks of jigsaw identification have been eliminated so far as practicable by redacting geographical/personal identifiers and abridging certain descriptions of abuse (see checklist 2).

Final Check: personal/geographical identifiers

- Do any of the 'big five' geographical/personal identifiers for a child remain (Appendix 1, bullet point 6) - can these be further anonymised without loss to the aims of judgments as outlined?
- Consider any remaining identifies alongside any **CHECKLIST 2** issues (see below). In the light of evidence about jigsaw identification, the power of search engines, and risks to already highly vulnerable children, do features remain which are essential to the judgment but which make this child/family identifiable? If so, consider whether it is suitable for the public arena?

CHECKLIST 2: TREATMENT OF DESCRIPTIONS OF THE SEXUAL ABUSE OF CHILDREN/YOUNG

Aims include:

- To provide assistance to judges in addressing 'new' frontiers presented by the internet and propensity for descriptions of sexual abuse of children to be downloaded and shared worldwide, for purposes unrelated to public education about family courts including paedophile networks.
- To indicate where and how explicit descriptions of the sexual abuse of children could be abridged while retaining the capacity of the document to meet primary and secondary purposes
- To suggest where some adjustment to style/structure might assist that exercise
- To provide a final checklist of actions to assist in decisions about publication and some standard headings to assist lay audiences to better understand the parameters of privacy and publication.

Guidance: implications for the style/structure of judgments

- The aim is not to reduce the capacity of judgments to meet forensic requirements or to suggest 'one size fits all', or to reduce the capacity to give judgments as soon as practicable. Rather, to suggest where descriptions of the sexual abuse of a child be annexed, and abridged for a public document.

- There are variations in the style/structure of judgments of the same ‘type’ (e.g. fact finding); some could not be abridged without attention to the structure, others lend themselves more easily to a move to abridgement of certain paragraphs of explicit descriptions of sexual abuse of a child.
- Guidance offers suggestions which might assist the change. For example, judgments with broadly consistent headings lend themselves more readily to abridgment (see checklist 2); they also make for easier and quicker checking, and are likely to speed up the process of abridgment over time.
- In some judgments, descriptions of sexual abuse are repeated under several paragraphs: this makes abridgement and cross checking, difficult and timing consuming. For example, some details are contained in paragraphs variously headed ‘Introduction’, ‘Background’, or ‘Family History’; these can be lengthy, with details not returned to in the judgment. They can contain the history of sexual abuse in a household and previous proceedings concerning sexual abuse of a sibling.
- While the reasons for this style/approach vary (see checklist 2), consider whether historical details are necessary, and if so, whether they can be moved to a relevant heading in judgment and redacted/abridged therein (if necessary, cross referenced to a document(s)/another court bundle).

Judgment intended for the public arena

- Annexe descriptions of sexual abuse to an appendix, this to be available in the case of any appeal.
- The judgment with abridged paragraph(s) to be the version released for publication.

Ex Tempore judgments

- This approach to abridgment of descriptions of sexual abuse of children may also be adopted when giving an *ex tempore* judgment. It will need to be structured with broadly consistent headings to facilitate the process, it may take an initial degree of mental agility and discipline but guidance should help structure the delivery of the judgment in such a way that abridgment and better anonymisation (checklist 1) can be more readily achieved and demands on time decreased over time.

ABRIDGMENT OF DESCRIPTIONS OF THE SEXUAL ABUSE OF A CHILD/YOUNG PERSON

- Guidance takes several examples of graphic descriptions of sexual abuse of children and provides examples of abridgement which retain essential information about abuse, relevant time frames, and attendant threats of violence to children for disclosure or rewards for compliance.
- Abridged/skeleton paragraphs also address key issues such as the lack of sexual boundaries in households and sexualised behaviour by children at home and elsewhere and details of the responses of a parent who fails to intervene or protect a child but without graphic descriptions of sexualised behaviour or assaults. That detail is annexed to the judgment for any appeal.
- Abridge paragraphs do not downplay sexual abuse: they contain sufficient information to reflect the seriousness of abuse and misuse of adult power, including rape and exposure of children to pornography but without graphic descriptions of everything that was done, seen and said.

Final check: fact finding judgment: child sexual abuse

- Does it comply with **checklists 1** – treatment of personal/geographical indicators?
- Is it written in **plain English**?
- Is it **suited for publication**? Not all judgments can be drafted to meet the criteria
- Does it meet the **fundamental purpose** of a judgment (see aims)?
- Does it meet **secondary purposes** (see aims)?

Explaining the terms of a judgment

- It will be necessary to explain to parents/young people and others - in plain English, the conditions under which a judgment is issued (i.e. the implications of a judgment ‘handed down in private’ and that ‘delivered in public’), that should also be made clear in standard headings on judgments (see ‘Final Check’ - Checklist 2).