Pathfinder Legal Services Ltd

REPORTING RESTRICTION ORDERS

WHAT IS A REPORTING RESTRICTION ORDER?

A Reporting Restriction Order (RRO) is designed to protect the privacy and anonymity of the specified parties, witnesses or other persons who are mentioned in a court case, where a hearing to decide that matter would normally be held in public and/ or be available in the public domain.

HOW IS THIS APPLICABLE IN PUBLIC LAW CHILDREN'S CASES?

In public law children's cases, a child is usually a victim, defendant, or witness to criminal matters. This article will only focus on criminal matters given this is likely to be the most common circumstance in which this arises in relation to children. It is increasingly becoming a common issue due to the rise in criminal activity and offences amongst children (those aged 10-17).

Being named in the press can be a damaging and intrusive experience for children and their families. Children involved with criminal proceedings may be unconcerned about being identified at the time and only realise the significance years after the publication, by which time it is too late.[1]

Within criminal proceedings, s.45 Youth Justice & Criminal Evidence Act 1999 affords protections to children who are identified as defendant, witness or alleged victim within the proceedings. There must be no publication of any details if they are likely to lead members of the public to identify them as a concerned person in the proceedings. This is usually sufficient to protect the concerned children.

However, what happens if the child does not fall into one of the three categories covered by s.45 Youth Justice & Criminal Evidence Act 1999? It is difficult to think of such circumstances, but the child in question could be the child of a deceased victim, or the sibling of another deceased child or even caught up in gang activity, without having perpetrated any crime.

Most children appearing before the criminal courts will be the subject of reporting restrictions which prevent the publication of their name, or other details that are likely to lead to their identification. However, there are circumstances where such reporting restrictions are not put in place. It is incumbent on any professional involved in a case, particularly the lawyer for the child, to check that the appropriate reporting restrictions

[1] Dr Di Hart, 'What's in a name? The identification of children in trouble with the law', Alliance for Youth Justice (AYJ), May 2014, bit.ly/3eAinvk

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are in place, or at least that they have been properly applied for and considered by the court.

Many will cite s.97(2) Children Act 1989 which provides: “No person shall publish to the public at large or any section of the public any material which is intended, or likely, to identify – (a) any child as being involved in any proceedings before the High Court or the family court in which any power under this Act or the Adoption and Children Act 2002 may be exercised by the court with respect to that or any other child…”.

Whilst s.97(2) is an exception to the general principle in favour of open justice and establishes automatic restrictions on the reporting and publication in family cases involving children, it must be noted that restrictions under s.97(2) cease on the termination of proceedings. Therefore, the protection afforded under this provision is limited to the lifetime of Children Act proceedings. For some children this will simply not be enough and being able to be identified in the future could still place the children at risk of emotional and/ or physical harm.

Within Children Act 1989 proceedings, an application is made on a Form C66 Application for Inherent Jurisdiction Order in relation to children. A statement from the case allocated social worker should accompany the application setting out the reasons for the application under the Inherent Jurisdiction. The statement should set out clearly that the provisions under s.45 Youth Justice & Criminal Evidence Act 1999 do not apply and set out why it would be contrary to the child/ren’s interests to be identified in the community. It should consider any Life Story work which may be taking place and/ or compromised if they are able to read press coverage of their circumstances in an uncontrolled manner.

Under the terms of the welfare principle consideration should also be given to any physical and/ or emotional harm that the child/ren may be subject to, if any details pertaining to their identification were published. If the Local Authority’s final or permanency care plan for either or both children turn out to be adoption (possibly abroad), then identifying them in the criminal proceeding could jeopardise the chance of identifying suitable prospective adopters.

Service of applications for reporting restriction orders on the national media can now be effected via the Press Association’s CopyDirect service, to which national newspapers and broadcasters subscribe as a means of receiving notice of such applications. The court retains the power to make without notice orders, but such cases will be exceptional, and an order will always give those affected the liberty to apply to vary or discharge the order at short notice.

The order sets out the information not to be disclosed or printed. Service is deemed immediate if before 4:30pm on the day or the next working day (CPR Rule 6.26) and so any publication would be in breach of the order and considered contempt of court. In such circumstances a media outlet could be subject to an unlimited fine and/or the person(s) responsible for the publication (usually the editor) could also be subject to up to two years imprisonment.

ONGOING DUTY

At times criminal proceedings may be instituted towards the end of care proceedings once information is available to the police, Crown Prosecution Service and/ or criminal courts from within the care proceedings. The need for a RRO should be kept under review and an application made at the earliest opportunity possible. If the Children Act proceedings conclude then social workers should be reminded to keep this under active review and to return for legal advice and representation to make an (ex-parte) application on behalf of any affected children within any criminal proceedings.

About Pathfinder Legal Services Ltd's Childcare Team

We have a highly skilled team of Lawyers and Paralegals who have a wealth of both Public and Private sector experience concerning safeguarding children and children's welfare. Our Lawyers have extensive experience in conducting Advocacy in all tiers of the Courts, including undertaking the more complex cases, enabling continuity and consistency of service to be delivered. Our Team is able to use their expertise in understanding the "real" child protection landscape, including parameters of good practice, Social Work demands and Budgetary restraints. We are key contributors to the workings of the Local Family Justice Boards that our Clients serve, ensuring that we maintain regular and good dialogue with the local Judiciary and other Partner Stakeholders involved in child protection.

About Pathfinder Legal Services Ltd

As a 'social enterprise law firm', Pathfinder Legal Services Ltd is one of the first of its kind to be established in the UK and is wholly owned by Cambridgeshire County and Central Bedfordshire Councils. We are experts in our field and provide a tailored legal service exclusively to the public and not-for-profit sectors, our clients are key, and our fees reflect this: our charging rates are substantially reduced and our billing system transparent. Our credibility, values and focus remain paramount to all that we do as a publicly owned legal service provider, with clients including Local Authorities, Integrated Care Boards, Foundation Trusts, Charities and Fire Services. In 2021 the firm was awarded 'Law Firm of the Year' (under its previous trading name of LGSS Law Ltd) at the prestigious Cambridgeshire Law Society's legal awards.

If you are keen to find out more about Pathfinder Legal Services including how our services work, our billing process and how to instruct us, please contact us at operations@pathfinderlegal.co.uk

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