



Briefing for the Public Petitions Committee

Petition Number: [PE1799](#)

Main Petitioner: Sarah McHardy (on behalf of Families Outside)

Subject: Calls on the Parliament to urge the Scottish Government to make it illegal for any press or media outlet to publish a defendant's address.

Background

Families Outside

Families Outside is the only national charity in Scotland working exclusively on behalf of families affected by imprisonment. The charity engages with thousands of families each year providing information and support on issues such as housing, finance and emotional support.

The charities' Family Support Co-ordinators and helpline have supported a number of families who have received abuse after a family member has been sentenced. Families Outside believe that there is a direct link between this abuse and a defendant's address appearing in the press.

The principle of "open justice"

While proceedings in the courts can be held behind closed doors in special circumstances, it is one of the fundamental principles of the Scottish system that the judicial process is public. One of the fundamental principles underpinning the Scottish legal system is that of "open justice"; that is, having justice not only be done, but be seen to be done.

Article 6 of the European Convention on Human Rights relates to the right to a fair trial and states:

"In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice".

The courts in Scotland do have the power, even in relation to proceedings in open court, to order that certain material (including the names of parties) be kept secret from the public sitting in court, and where that is the case, also from any media reporting of the case. However, such orders tend to be rare and reserved for cases where publication of the material would frustrate or render impracticable the administration of justice, rather than where a witness or defendant simply prefers to remain anonymous.

When the Inner House of the Court of Session refused an application of convicted murderer William Beggs to have an appeal heard in private with the press excluded, Lord Macfadyen stated:

“The relevant general principle is that court proceedings should be held in public. In circumstances in which it is thought proper to exclude the public, it is normal to allow representatives of the press to be present to preserve the public nature of the proceedings. It would be an extreme step indeed for us to exclude the press”¹.

On [23 January 2019](#), Mark McDonald MSP asked the Cabinet Secretary for Justice what steps were in place to prevent disclosure of an accused’s identity from compromising the safety of innocent parties. In response, the Cabinet Secretary stated:

“In addition to the provisions of the Contempt of Court Act 1981, the courts have a common-law power to restrict the reporting of proceedings where it is in the interests of justice to do so. It is for the court to decide whether to make such an order in any individual case and in appropriate cases, an interdict may also be available”.

Mr McDonald stated that the disclosure of an accused’s identity and address opens up the potential for innocent family members to face retribution and repercussion as a result of the actions of the accused, despite the fact that those family members are innocent. He asked the Cabinet Secretary if he would look at the issues around identification, in particular the disclosure of address details, which can often lead to retribution and repercussion being brought to the door of family members who have played no role in any criminal proceedings.

The Cabinet Secretary acknowledged that Mr McDonald had raised an important issue and that he would look into it but reiterated that it was a matter for the courts to make decisions on whether to impose orders banning publication of matters mentioned in court.

There is no requirement in law to publish prosecuted persons’ home addresses. Neither the Crown Office nor the Scottish Prison Service publish the address of convicted persons. Scottish courts do not routinely publish the addresses of accused persons either. It is possible however, that an address may be referenced (e.g. by the defence or by witnesses) in the course of proceedings or in a judgment, if relevant to a case. Nevertheless, the vast

¹ [Beggs v Scottish Ministers 2006](#).

majority of court cases will result in such details as the name of the accused, and the location in which a crime is said to be committed, being aired publicly in court. In these circumstances, particularly in modern conditions, in very many instances it would not be difficult for anyone sufficiently interested to establish the address of an accused person.

Children and young persons

Section 47 of the Criminal Procedure (Scotland) Act 1995 provides courts with the power to prohibit the identification of children and young persons under the age of eighteen in relation to any court proceedings. Section 47 provides that no newspaper report of any proceedings in court shall reveal the name, address or school, or include any particulars calculated to lead to the identification of any person under the age of eighteen involved in the proceedings. The prohibition also extends to photographs².

Scottish Government Action

Witness anonymity orders

The Criminal Justice and Licensing (Scotland) Bill was introduced in the Scottish Parliament on 5 March 2009. The Bill included provisions relating to witness anonymity orders. The Bill received Royal Assent on 6 August 2010.

Witness anonymity orders are available to both the prosecutor and the accused. The legislation provides that a court may make an order requiring such specified measures to be taken in relation to a witness or an accused in criminal proceedings as the court considers appropriate to ensure that the individual's identity is not disclosed in or in connection with the proceedings.

Scottish Parliament Action

Notwithstanding the passing of the Criminal Justice and Licensing (Scotland) Bill which included the provisions on witness anonymity orders, the Parliament has not taken action on this issue.

Graham Ross
Senior Researcher
11 August 2020

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² Section 47 of the 1995 also provides for a relaxation of the prohibition in certain circumstances.