

Courts 'have no power to give anonymity to dead children'

By Mike Dodd

A senior judge has confirmed that criminal courts have no power to give anonymity to dead babies and children in court reports.

The comment came from Mr Justice Holgate in a case at Liverpool Crown Court in February this year, as he explained why he had overturned an order made under section 45 of the Youth Justice and Criminal Evidence Act 1999 which purported to give anonymity to a dead child.

The youngster, seven-month-old Amelia Crichton, was murdered by her mother, Jennifer Crichton, who was jailed for a minimum of 21-and-a-half years by Mr Justice Holgate at Liverpool Crown Court on April 11, 2018.

The judge raised the issue of the anonymity order relating to Amelia during a discussion about reporting restrictions on February 14.

He said that at an earlier stage in the proceedings, on January 16, he had discharged an order banning the media from identifying Amelia because "the protection of the identity of a deceased victim does not fall within the scope" of section 45 of the 1999 Act.

The judge's comment highlights an issue increasingly facing journalists - the willingness of courts, particularly magistrates' courts, to impose anonymity orders in relation to dead children even though section 45 gives them no power to do so.

One recent example was a case at Southampton Magistrates' Court in February in which a District Judge made an order giving anonymity to a baby who was allegedly murdered by his 16-year-old father.

District Judge Loraine Morgan made a section 45 order giving the teenager anonymity, as she was entitled to do. But she also made an order under the same section purporting to give the murdered baby anonymity - and without giving journalists in court any opportunity to make representations.

Asked about the order via the Judicial Communications Office, District Judge Morgan replied: "I agree that such an order does not ordinarily extend to the deceased in a case of murder.

"However, I do consider this case to be distinguishable in that the child bore the same surname as his father who is the defendant and who is also just 16 years of age.

"Giving the child's name, and stating that the defendant is the child's father would lead to his identification." She added that the case would be in the Crown Court the following day, when the press could raise the issue and the judge could consider the position.

The case is of concern because the District Judge purported to exercise a power she did not have under the Act. But she also seemed to assume that editors and reporters would be unable to understand that, because the 16-year-old defendant had been given anonymity, they would be identifying him if they named the baby and said he was the father.

A further issue about anonymity orders is that many criminal courts do not yet seem to be aware that section 39 of the Children and Young Persons Act 1933, which also gives courts the powers to give anonymity to children

appearing in court cases, was replaced three years ago, when section 45 of the Youth Justice and Criminal Evidence Act 1999 was brought into force.

Some courts have continued to seek to make orders under section 39, even though restrictions under that section can now only be made by civil courts and at inquests.

But the Court of Appeal has held that the previous cases relating to section 39 orders also apply to the issue of orders under section 45.

In *R v H* ([2015] EWCA 1579) Lord Justice Treacy said (at paragraph 8): "A body of case law dealing with the approach to matters under section 39 of the Children and Young Persons Act has built up. Given the similarities between the terms of section 39 of the 1933 Act and section 45 of the 1999 Act, we consider that that case law continues to provide appropriate guidance as to the principles and practice to be followed concerning applications of this sort under section 45."

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