

Additional Material for Chapter 10 – Juveniles in court proceedings

Section numbers from the book are used when relevant. Its content provides fuller explanations and context.

10.4.1 No identifying detail should be published

Example of section 49 anonymity

Suppose that an inexperienced reporter files the following copy from a youth court hearing. It is accurate, but the reporter has forgotten that, because of the automatic anonymity provision in section 49 of the Children and Young Persons Act 1949, juveniles concerned in the proceedings should not be identified in what is published. This law is explained 10.4 in McNae's.

A 15-year-old youth stole an aquarium of piranha fish from his neighbour, and dared a girl to put her hand in the tank.

Robert Hedde, of Dodd Close, Probetown, denied burglary, but was convicted by the town's youth court.

He smashed a window to steal the fishtank, carried it a mile to his father's allotment in Old Park, and hid it in a shed there.

The neighbour Alan Udrington, a prosecution witness, told the court that Hedde had often visited him to see the four fish.

'Robert seemed fascinated by them. When police told me they were sure he was the thief I was shocked, because his family have been great neighbours, and his dad is a lay preacher at the Baptist church.

'I have kept piranhas for years. They have a fearsome reputation as flesh-eaters when in shoals in South American rivers. But a few in a tank are cute,' Mr Udrington said.

Police sergeant Jean Greenwood told the magistrates: 'A local parent rang us in great concern because his daughter had told him that a youth known locally as 'Headcase' had charged her money to see the piranhas in the allotment shed, and dared her to put hand in the tank. But by the time we located the shed the fish were all dead.'

Sgt. Greenwood said that Hedde's fingerprints had been found on the aquarium's glass, and a dead piranha had been found in his bedroom.

Hedde told police his fingerprints were found because he too had paid to see the fish.

But fourteen-year-old Helen Evans, of Else Lane, a prosecution witness, told the court he had charged her £1 to enter the shed, and challenged her to put her hand in the tank, telling her it would be safe if

she did so for only 10 seconds. She had refused. The court saw footage from her mobile phone of Hedde putting fish food in the tank.

The court made Hedde subject to a 'referral order', which means he must do unpaid work in the community.

The copy will need to be re-written as follows, to give Hedde and Evans anonymity. Assume that Probetown has about 30,000 residents (and therefore a good number of 15-year-old males and 14-year-old females).

A 15-year-old youth stole an aquarium of piranha fish from a Probetown house, and dared a teenage girl to put her hand in the tank.

The youth denied burglary, but was convicted by the town's youth court.

He smashed a window to steal the fishtank, and carried it a mile to a shed.

The owner of the fish Alan Udrington, a prosecution witness, said: 'I have kept piranhas for years. They have a fearsome reputation as flesh-eaters when in shoals in South American rivers. But a few in a tank are cute.'

Police sergeant Jean Greenwood told the magistrates that a parent had rung the police in great concern after his daughter told him the youth had charged her to see the piranhas in the shed, and had dared her to put her hands in the tank. 'But by the time we located the shed the fish were all dead', Sgt. Greenwood added.

She said that the youth's fingerprints had been found on the aquarium's glass, and a dead piranha had been found in his bedroom.

The youth told police his fingerprints were on the aquarium because he too had paid to see the fish. But a 14-year-old girl told the court he had charged her £1 to enter the shed, and challenged her to put her hand in the tank, telling her it would be safe if she did so for only 10 seconds. She had refused. The court saw footage from her mobile phone of him putting fish food in the tank.

The court made the youth subject to a 'referral order', which means he must do unpaid work in the community.

Case study: In 2014 Brian Aitken, then the editor of the *Newcastle Journal*, was fined £1,600 by a district judge after admitting it breached a section 39 order by naming a juvenile's school. Publisher NCJ Media Ltd, part of Trinity Mirror plc, also admitted breaching the order and was fined £2,160 on that charge and a further £2,160 for a similar publication in sister title the *Chronicle*, and ordered to pay £5,000 costs. The charges arose out of a report of the case of a woman teaching assistant at a school who appeared in a magistrates' court charged with a sexual offence involving a female pupil. As the charge was a sexual offence, the alleged victim

was automatically entitled to lifelong anonymity under the Sexual Offences (Amendment) Act 1992 – law explained in 11.1- 11.3 in *McNae's*. However, the magistrates also gave the pupil anonymity with an order under section 39 of the Children and Young Persons Act 1933, which was at that time used in criminal courts – see 10.6.2 and 10.9 in *McNae's*. But Aitken did not know the section 39 order had been made. The *Journal* felt that, with 1,000 pupils, the school was big enough to allow it to be named without identifying the pupil, who was not identified in the reports. But Aitken and NCJ Media were ruled to have breached the section 39 order by naming the school. The High Court later dismissed Aitken's appeal against the district judge's ruling on the liability of editors, a ruling which had led to Aitken changing his plea to guilty (*Press Gazette*, 20 November 2014; *Media Lawyer*, 20 November 2014 and 23 April 2015; *Brian Aitken v DPP* [2015] EWHC 1079 (Admin)).

10.10 Anti-social behaviour injunctions and criminal behaviour orders

Law creating a new type of injunction banning anti-social behaviour came into force on 23 March 2015. These injunctions, created by Part 1 of the Anti-social Behaviour, Crime and Policing Act 2014, replaced the 'stand-alone' version of the anti-social behaviour orders known as ASBOs. The new type is 'stand-alone' because, as was the case with an ASBO, it can be imposed on a person even though his/her anti-social behaviour has not led to a criminal conviction. The new type is referred to officially as an 'anti-social behaviour injunction' (ASBI), though colloquially they may still be referred to as ASBOs.

In the context of housing—for example, to deter anti-social behaviour in a residential street or on an estate—a county court or (if at least one of the trouble-makers is a juvenile) the youth court may impose an ASBI banning conduct which has caused or is likely to cause 'nuisance and annoyance'. Various bodies, including police and local authorities, can apply for an ASBI to ban, for example, juveniles from residential streets where they have been creating a nuisance. But in non-housing contexts—for example, where an individual is consistently behaving badly in a shopping mall—the threshold for imposing an ASBI is higher, in that the behaviour must have caused or be likely to cause 'harassment, alarm or distress'.

These injunctions are, as ASBOs were, civil orders. Breaching the injunction is a contempt of court—and the maximum punishment for a juvenile aged 14–17 is three months' detention.

10.10.1 Can a juvenile in ASBI proceedings be identified?

- The default position in law is that any juvenile concerned in youth court proceedings which consider an application for an ASBI—which are civil proceedings—will *not* have automatic anonymity in any publication referring to the proceedings, whether or not the ASBI is granted.

This position is set out in section 17 of the 2014 Act, which for these injunction proceedings disapplies the anonymity in section 49 of the 1933 Act that would—as 10.4 in *McNae's* explains—otherwise apply to youth court proceedings.

But a youth court, or any other court, dealing with these injunction applications may give anonymity

to any juvenile 'concerned in the proceedings' by making an order under section 39 of the Children and Young Persons Act 1933. For section 39 orders, see 10.9 in *McNae's*.

The Youth Court Bench Book, published by the Judicial College to guide youth courts, confirms that the section 49 anonymity does not apply for a juvenile as regards a report of proceedings in which he or she is accused of or admits breaching an ASBI. But, again, the court may bestow anonymity for that juvenile by making a section 39 order as regards the breach proceedings. For the Bench Book see Useful Websites, below. The section 49 anonymity will apply, unless lifted, in respect of any criminal charge he or she faces in the same hearing.

Ch. 16 in *McNae's* explains how a journalist can argue in court against imposition of a reporting restriction. The Additional Material for ch. 16 on www.mcnaes.com provides arguments he/she can make that a juvenile made subject to an injunction should be identified in a report of that hearing or of a hearing considering an alleged or actual breach of the injunction.

10.10.2 Criminal behaviour orders

A 'criminal behaviour order' (CBO), which can only be imposed on an individual after he/she has been convicted of a crime, has replaced another type of ASBO. The law creating CBOs, in Part 2 of the 2014 Act, came into force on 20 October 2014.

An application for a CBO may only be made by the prosecution after a conviction. A CBO may be imposed on a juvenile after—for example—he/she is convicted of shoplifting or taking a car without the owner's consent ('joy-riding'), to ban him/her from entering shops or interfering with cars. Breaching a CBO is a criminal offence. A juvenile convicted of a serious breach could be given a training and detention order.

10.10.2.1 Anonymity in reports of hearings to decide whether to impose a CBO

Any criminal court can impose a CBO, but for juveniles this is most likely to be the youth court. Section 23 of the 2014 Act provides that:

- if—and only if—the youth court makes a CBO against the juvenile, the automatic anonymity in section 49 of the 1933 Act automatically lapses as regards that juvenile, allowing media reports of the CBO hearing to identify him/her;
- but the youth court has discretion to preserve the anonymity for that juvenile by making an order under section 39 of the 1933 Act.

The section 49 anonymity will continue to apply to any juvenile witnesses in the CBO hearing and will still apply to the juvenile defendant in respect of the earlier hearing in the youth court, in which he/she was convicted of an offence, unless the court has lifted such anonymity. The court should—if section 49 anonymity remains in place for the earlier hearing—say enough in the CBO hearing to explain the behaviour which led to it being imposed.

The journalist could remind the court clerk that the Justices' Clerks' Society issued guidance to its members that when a court draws up an ASBO it should include details of the anti-social behaviour

which led to the order being made, so this guidance should hold good for CBO cases. See Useful Websites, below, for this guidance.

A journalist could argue that it would be for the good of the community for the section 49 anonymity to be lifted 'in the public interest' in respect of the criminal conviction which led to the CBO (see 10.4.5 and 16.8 in *McNae's*) and that for the same reason section 39 anonymity should not be imposed in relation to the juvenile made subject to the CBO. See the Additional Material for ch. 16 on www.mcnaes.com for specific arguments that can be made against a juvenile subject to a CBO having anonymity.

10.10.3 No automatic anonymity for alleged breaches of CBOs

A juvenile alleged to have breached a CBO may be charged with this as a criminal offence, which will normally be dealt with at a youth court. Section 30 of the 2014 Act says that the usual anonymity under section 49 of the 1933 Act for juveniles appearing in a youth court does not apply to a juvenile accused of breaching a CBO.

- So the media *can* identify a juvenile defendant when reporting a youth court's proceedings for alleged breach of a CBO, whether or not it convicts him/her. But any juvenile witness retains the automatic anonymity under section 49, and the defendant automatically retains section 49 anonymity in respect of a charge for any other offence being dealt with in that hearing.
- The youth court can decide to give the juvenile defendant anonymity in respect of the alleged or admitted breach of the CBO. Section 30 of the 2014 Act gives youth courts the discretionary power to give anonymity to a juvenile defendant accused of breaching a CBO by using section 45 of the Youth Justice and Criminal Evidence Act 1999. Section 45 is explained in 10.6 in *McNae's* in the context of adult courts, but the nature and normal scope of a section 45 order is the same when used by a youth court in proceedings for alleged or admitted breach of a CBO.

Section 30 of the 2014 Act says that if a court does give such a juvenile anonymity under section 45, it must give its reasons for doing so. Again, a journalist covering the hearing could argue that the juvenile should be named in a report of the case —see the Additional Material for ch. 16 on www.mcnaes.com for specific arguments that can be made.

Useful websites

http://webarchive.nationalarchives.gov.uk/20100418065544/http://asb.homeoffice.gov.uk/uploadedFiles/Members_site/Documents_and_images/Evidence_and_court/JCS_ASBOGuide_May06_0041.PDF

Justices' Clerks' Society, Good Practice Guide on ASBOs

<https://www.judiciary.uk/wp-content/uploads/2016/10/youth-court-bench-book-august-2017.pdf>

Youth Court Bench Book