**Hanna and Dodd: McNae's Essential Law for Journalists 25th edition**

**Additional material for chapter 11: Sexual offences, human trafficking, female genital mutilation and forced marriages**

*Section numbers from the book are used where relevant. The book should be read too. Its content provides fuller explanations and context.*

**11.1 Automatic lifelong anonymity**

**Case study:** David Dinsmore, former editor of *The Sun,* was convicted in 2016 of breachingthe Sexual Offences (Amendment) Act 1992, because the newspaper published a photo identifying the victim of a sexual offence. Mr Dinsmore denied the charge, but was found guilty by the Chief Magistrate, District Judge Howard Riddle at Westminster Magistrates’ Court. The case was brought by Durham police, and arose from a *Sun* article published after footballer Adam Johnson’s arrest in 2015 for illegal sexual activity with a 15-year-old girl. Johnson was jailed for this in March 2016. The article showed part of a photo of him with the girl in which her face was obscured. The article did not name her, and warned that anyone who identified her online would face prosecution. But, Mr Riddle heard, some social media users identified her because they recognised similarities between the original photo, from when it had been visible on a private Facebook account, and the altered version used by *The Sun*. Mr Riddle said he was satisfied that Dinsmore and *The Sun* staff thought they were complying with the law because they took extensive steps to change the photo to obscure the girl’s image, including changing the colour and length of her hair, and the background in the photo. Dinsmore, who in 2015 became chief operating officer of News UK, which owns *The Sun*, told the court that the test staff applied was ‘can this person be identified by a man or woman on the street?’ He was ordered to pay £1,000 in compensation to the girl, and £1,300 in costs. He apologised to the girl (Durham Constabulary press release and *Press Gazette*, 7 March 2016).

**Case study:** The *Luton Herald and Post* was fined £1,000 in 2013 for identifying a woman victim of a sexual offence. In a report of a man’s trial on rape and sexual assault charges, the newspaper did not name her but included a combination of detail which identified her – her age and home country, that she had come to the UK to study, the approximate date and location of her arrival, the name of the placement agency she used, where she was studying, how she had met her attacker and reference to her living arrangements and professional aspirations (*Media Lawyer*, 8 October 2013).

**Case study:** Trinity Mirror Southern Ltd was fined a total of £10,000 in 2011 after it admitted that the *Aldershot News and Mail, Farnborough News and Mail, Fleet News and Mail* and the *Yateley News and Mail* had published in a report of a court case the names of two women who were victims of sexual assault. It was also ordered to pay each of them £5,000 compensation. Human error was blamed for this breach of the Sexual Offences (Amendment) Act 1992. A Crown Prosecution Service lawyer said: ‘The disregard by the newspapers of these women’s automatic right to anonymity proved traumatic to those involved and required extensive extra police and victim support’ (Hampshire Constabulary’s *Frontline* magazine, issue 163, July 2011).

**Case study**: The *Daily Mirror* was fined £1,200 after it admitted breaching the 1992 Act. Its 2011 report of a man's initial appearance before Teesside magistrates named one of two women he was accused of sexually assaulting. The breach also led Cleveland Police to complain to the Press Complaints Commission on the woman’s behalf. The PCC, noting that being named caused the woman considerable distress, said the breach was an ‘alarming case’. It ruled that the *Mirror’s* report breached clause 11 of the Editors' Code of Practice. The newspaper apologised to the woman. It told the PCC it had launched a thorough investigation into how her name came to be published, and would improve staff training to prevent such breaches in future (*The Guardian*, February 19, 2013; *Cleveland police v Daily Mirror*, PCC adjudication published February 19, 2013).

**Case study:** In 2007 the *Lancashire Evening Post’*s parent company was fined £3,000 and ordered to pay £4,000 compensation to two women victims of trafficking for prostitution, whose anonymity was breached in a report (*Media Lawyer*, December 14, 2007).

**Case study**: In 2006 the *Daily Telegraph* was fined £2,000, and ordered to pay £5,000 compensation and the *Daily Express* was fined £2,700 and ordered to pay £10,000 compensation after both newspapers published photographs of a servicewoman which breached her anonymity under the 1992 Act. She was a complainant at a court martial at which a serviceman was cleared of a serious sexual assault. The photos pictured her from behind, so her face was not shown. After being prosecuted, the newspapers admitted the photos identified her, but said that at the time they were published it had been genuinely believed her anonymity was preserved. The *Daily Mail*, which also used a similar photo of the woman but changed the colour of her hair, was not prosecuted (*Media Lawyer*, February 23, 2006).

**Offences allegedly or actually committed aboard**

If it is alleged that the sexual offence took place in a nation other than England, Wales or Northern Ireland, the anonymity provision under or derived from the 1992 Act may not apply. In some circumstances the victim/alleged victim, if under 18, would have anonymity under the 1992 Act, because UK authorities have jurisdiction to prosecute in the UK some sexual offences committed abroad if the alleged perpetrator is a UK citizen. Also, the anonymity would normally apply for a victim/alleged victim of any type of trafficking offence listed in the 1992 Act’s anonymity provision even if the alleged offence was committed abroad, if the alleged perpetrator is someone who the Modern Slavery Act defines as a ‘UK national’, which includes a person with UK citizenship, because this means they can be prosecuted in the UK for the alleged offence.

Irrespective of where a sexual or trafficking offence was or is alleged to have been committed, anonymity provision in ethical codes of conduct applies – see 11.7 in *McNae’s*. Also, to identify any person in the UK without their consent as having been such a victim could give rise to a civil action in UK privacy law, which is covered generally in ch. 27, in that it could be argued they have a ‘reasonable expectation of privacy’ in respect of such an allegation

**11.6.2 By court order, to lift ‘a substantial and unreasonable’ restriction**

**on reporting**

As explained in 11.6.2 in *McNae’s*, a court has power to lift the 1992 Act anonymity if it is satisfied that:

- the anonymity would impose a substantial and unreasonable restriction on media reporting of the trial; and that

- it is in the public interest to remove or relax it.

**Case study:** Police were hunting a known criminal, Arthur Hutchinson, after three members of the same family were murdered at their Sheffield home after a wedding party. To help trace Hutchinson, police publicly named him as the suspect, which added to the already-intense publicity about the case, and he was captured. The media had also named the murder victims. Some time after being charged with the murders, Hutchinson was also charged with raping a teenage girl linked to the family, in the same terrible attack. The media had not previously been told of the rape allegation. At Hutchinson’s trial on the murder and rape charges, lawyers acting for newspapers argued that it would be impossible for them to report the trial at all if their coverage could not identify the girl as the alleged rape victim, because if they could not do that their reports could not identify the family involved. The lawyers pointed out that publishing Hutchinson’s name or that the case was of three murders committed in such circumstances would in itself be enough for the Sheffield public to remember who the family was from the previous publicity, and therefore to identify the girl as the one involved in the trial’s evidence. Also, the lawyers pointed out that the evidence of the rape and murders was inextricably linked. The judge agreed that the media could identify the girl, and thus the family, because anonymity would otherwise impose a substantial and unreasonable restriction on reporting of the trial, and it was in the public interest for the trial to be fully reported (*R v Arthur Hutchinson* (1985) 129 SJ 700; (1985) 82 CrApp 51). Hutchinson was convicted.

**11.6.3 If a person faces a criminal charge that a false claim of victimhood was made as regards a sexual or trafficking offence**

The ‘other than’ definition in section 1(4) of the 1992 Act– see *McNae’s* 11.6.3 - means it would be legal for media covering a burglary trial to identify a woman home owner when reporting that she had asserted in court that the alleged burglar raped her, although the media would need to check that those proceedings at no time included a charge alleging she was a sexual offence victim - see the *Newcastle Journal* case below. The ‘other than’ definition would also allow the media to identify a woman defendant, charged with assaulting a man, as having said in those assault proceedings that the man had tried to rape her. But in both such instances there would still need to be ethical consideration of whether the report should identify her as regards such statements.

**Case study**: In 2017 the Court of Appeal removed any doubt that criminal proceedings in which a rape or sexual assault complainant is accused of perjury or wasting police time fall into the category of ‘other proceedings’ under section 1(4). The Court said that the section’s meaning was ‘plain and obvious’, and that the Judicial College guidance about it is accurate see Useful Websites below – for the College guidance. The Court’s ruling arose in a successful challenge by *The Sun* against a Crown court judge’s decision that the media could not identify Jemma Beale in reports of her trial that year in which she was convicted of perjury and attempting to pervert the course of justice for making false allegations of rape and sexual assault, including one which had led to a man being jailed for seven years. He was subsequently acquitted on appeal. (*R v Jemma Beale in the matter of an appeal by News Group Newspapers* [2017] EWCA 1012 (Crim)).

The anonymity provision for victims alleged victims of FGM or forced marriage offences does not have in the relevant statutes anything equivalent to the ‘other than’ definition in section 1(4) of the 1992 Act. But a journalist covering criminal proceedings in which person is charged with wasting police time, or perjury, or perverting the course of justice as a result of claiming to be a victim of an FGM or forced marriage offence could apply to the court for that person’s automatic anonymity to be removed, and argue that such anonymity for a defendant would be a substantial and unreasonable restriction which is against the public interest in open justice – see *McNae’s* 11.6.2.

Ch. 15 is about open justice. Ch. 16 covers how to challenge reporting restrictions. See in particular, as regards defendants, 16.7, Rights to anonymity are limited.

**11.6.3.1 Newspaper breached anonymity after the rape charge was dropped.**

**Case study:** In 2014 the *Northern Echo* newspaper admitted breach of the Sexual Offences (Amendment) Act 1992. The district judge who fined it for this breach described the case as ‘novel’. The *Echo* had published a woman’s surname when reporting the trial of a man accused of physically assaulting her. During the trial the defendant’s barrister had referred to an alleged rape which did not end up forming part of the case against his client. Earlier in those proceedings – before the trial began – a charge that the defendant raped the woman had been dropped. The fact that the rape allegation did not proceed led the *Echo* to believe that it could legally name the woman in a report of the trial, because the assault charge was not a sexual offence. The *Echo* thought it could rely on the defence in section 1(4) of the 1992 Act. As 11.6.3 in *McNae’s* explains, that part of the Act says that a victim or alleged victim of a sexual offence can be identified as such in an article which consist ‘only of a report of criminal proceedings other than’ proceedings for the sexual offence. The woman was very distressed about being identified. And the *Echo* accepted - after subsequent research into the origins of the 1992 Act and the wording of that part - that in these circumstances Parliament had intended that the alleged victim of a sexual offence should retain lifelong anonymity even when the only sexual offence charge in the proceedings was dropped or reduced to a lesser, non-sexual charge.

At Teesside magistrates’ court the district judge fined the *Echo* £2,400, ordered it to pay £4,500 in compensation, £2,003 in costs and a £480 victim surcharge. Its barrister Guy Vassall-Adams said that the newspaper immediately accepted that, ethically, the woman should not have been named but believed that no law had been broken, He said it was a case of ‘genuine legally uncertain terrain’ (*Media Lawyer*, 25 and 30 July 2014).

**11.6.4 The victim/alleged victim can give written consent to be identified**

If one publisher is given written consent, does it cover others?

If a victim/alleged victim of one of the type of offences referred to in *McNae’s* ch. 11 gives written consent permitting one publisher to identify them in this context, it would seem that other publishers can legally follow that lead by identifying that person as such a victim/alleged victim, even if those other publishers have not acquired the written consent from that person. The regulator Impress took this view after taking legal advice when considering a complaint in 2018, noting that such practice by media organisations continues ‘unchallenged’. But Impress added that there was no ‘settled legal position’ on this question (*A person v Byline,* 28 August 2018).

**Case study:** In 1994 Keith Parker, then editor of the *Wolverhampton Express and Star*, was – despite the decision to prosecute him under the 1992 Act being approved by the then Attorney General - acquitted in a magistrates’ court of breaching the anonymity of a rape victim. She had, before that newspaper identified her, allowed a wide range of other publishers to identify her, which was the essence of Mr Parker’s defence (*Press Gazette,* 1 August 1994). Since then there has not been another prosecution in such circumstances.

Best practice, if a media organisation states publicity that such consent has been given, is for any other publisher to check with that victim/alleged victim that it was validly given, and ideally to get written consent directly from that person.

**11.7 Provision for anonymity in ethical codes**

As explained in 2.1.1 in *McNae’s*, in 2014 the Independent Press Standards Organisation replaced the Press Complaints Commission. Ipso uses the Editors’ Code of Practice to adjudicate on complaints against the press, as the PCC did. Under clause 7 of the Code, the press must not identify children under 16 as being victims or witnesses in ‘sex cases’ unless there is an exceptional, public interest justification *and* the law allows such a child to be identified in this context (and the law hardly ever allows this) – see 11.7.1.1 in *McNae’s*. The clause allows an adult defendant in such a case to be identified in press coverage, provided that coverage does not reveal if a family or other relationship exists or existed between the defendant and child (because this, when the defendant is identified, would identify the child to anyone who knows of the relationship – see 10.8 in *McNae’s*). In clause 7 ‘sex cases’ covers any situation in which a sexual offence is alleged – including if the allegation is made in a civil or employment tribunal case. Clause 11 says that the press must not identify anyone as being a victim of a ‘sexual assault’ or publish material likely to contribute to such identification, unless the law permits this and there is ‘adequate justification’ for identification. These Code definitions include alleged victims of such offences. The Code’s use of the term ‘sexual assault’ covers a range of sexual offences including rape – again, see 11.7.1.2 in *McNae’s*.

**Case study:** In 2019 Ipso’s complaints committee (hereafter referred to merely as Ipso, for convenience) upheld a woman’s complaint that a newspaper’s report of a court case had breached clause 11 of the Editors’ Code by including material likely to identify her as a victim of sexual crime. On its front page, the newspaper reported that an individual had been jailed after being convicted of sexual offences against two children. The report said that the offences had taken place over 10 years ago, stated the age of the victims during that time, and their ages now, the location in which the offences had taken place and the defendant’s and the complainant’s association with that place. The woman told Ipso that because of the report’s detail she had been identified by members of her local community as one of the victims, which had been deeply upsetting. The newspaper said that it did not believe that the detail would be likely to identify her, giving explanations. But Ipso said that the combination of these particular details represented information which would be known to the complainant’s community, particularly those who knew the defendant and the complainant, and was likely to lead to her identification as a victim in the case (*A woman v Airdrie and Coatbridge Advertiser*, 9 May 2019).

**Case study:** In 2017 Ipso upheld complaints that three Scottish newspapers had breached clause 11 of the Code because of details published in their reports of a court case. In it the defendant, named in the reports, pleaded guilty to sexual offences against a child. The details published from the case included the victim’s age when the offences began; the time period over which they took place, the circumstances in which the defendant came into contact with the victim, with reference to a specific day of the week; and the victim’s current age. Ipso said the details reported were of the kind that would be known within the victim’s community, and when reported alongside the time frame of the offences, and the victim’s age, were likely to contribute to the victim’s identification. A similar complaint about reporting of the case by *Dailyrecord.co.uk* was also upheld. The complaints were considered under clause 11 because the victim was an adult when the reports were published *(A man v Gazette (Paisley), A man v Evening Times, A man v Paisley Daily Express,* *A man v Dailyrecord.co.uk*, all issued 15 August 2017). It should be noted that the automatic anonymity in the Sexual Offences (Amendment) Act 1992 for victims of sexual offences does not apply to Scottish cases – see the online chapter ‘Scotland’ on [www.mcnaes.com](http://www.mcnaes.com).

**Case study**: Ipso ruled in 2015 that the *Wilts and Gloucestershire Standard* breached clauses 7 and 11 of the Editors’ Code by publishing a particular, paraphrased quotation in an online report of a court case. The coverage named the defendant, a man accused of a sexual offence involving a child. He was acquitted. He complained that the quotation implied a specific connection between him and the alleged victim, and therefore identified that child. Ipso agreed, saying that the paraphrased comments which had been quoted strongly implied a specific connection. Their inclusion in the report was ‘highly concerning’ and demonstrated a significant failure on the newspaper’s part. The man also complained that the newspaper’s coverage of the case, by omitting some details in order to protect the child’s identity, presented a partial account of his conduct which was misleading, and therefore breached clause 1 of the Code, which seeks to uphold accuracy. But Ipso said clause 1 was not breached. It pointed out his acquittal had been reported and that the Code’s requirements and the law prevented publication of some information relevant to his defence (*A man v Wilts and Gloucestershire Standard*, 27 July 2015).

**Case study**: In 2015 Ipso warned the press to consider if social media sites should be used to report sexual offence cases, because of the danger that readers might post comments speculating about the identity of the victims/alleged victims. It ruled that the *Dunfermline Press* had not breached clauses 7 and 11 of the Editors’ Code in a report, posted on its Facebook page, of an individual being charged with sexual offences against a child. Ipso said that the newspaper was not responsible for the comments made elsewhere on social media identifying the child. But Ipso said it ‘took this opportunity to draw to editors’ attention the need for care in such cases to avoid creating a forum for speculation as to the victim’s identity’. It added: ‘While editors are not in a position to constrain the circulation of links to stories and hosted on third-party websites, consideration should be given to whether stories involving victims of sexual assault can safely be published on publications’ social media sites – particularly where they will be open to comments’ (*A woman v Dunfermline Press*, 27 July 2015). For the ‘Regulation 19’ defence in law if a reader’s online comment breaches anonymity, see 22.12 in *McNae’s.*

In the three-year period 2011-2013 the Press Complaints Commission upheld 11 complaints that newspaper or magazine articles had identified or had the potential to identify victims or alleged victims of sexual offences, some of them children. These included adjudications referred to below, and those regarding the *Daily Mirror* and *Luton Herald and Post* cases also dealt with in law – see 11.1, above.

**Case study:** Police began investigating a woman’s allegation that she had been raped. The *News Shopper (Bexley and North Kent)* published online a photo of the site of the alleged rape – the woman’s home – and video footage showing forensic officers entering it. Recognisable shops were visible in these images, and the article named the general locality and road. The woman complained to the PCC that friends and relatives saw the coverage and contacted her about the matter. She found it inconceivable that the newspaper had not considered that her identification was a likely consequence of its coverage. The PCC ruled that clause 11 of the Editors’ Code was breached because the coverage enabled easy identification of her home, with the inevitable and distressing result that she faced inquiries from friends and family previously unaware of the incident. The PCC noted the newspaper's position that it had not been advised of the complainant's connection to the property where the alleged rape occurred, but the PCC emphasised that the responsibility for published material lay with the editor (*A woman v News Shopper (Bexley and North Kent)*, 3 July 2013).

**Case study**: In 2011 the PCC upheld a complaint against the *Staffordshire Newsletter* because a report about a man being jailed for sexual activity with a child contained detail with potential to enable members of the public to identify the victim. The victim's grandfather complained that the report breached clauses 7 and 11 of the Editors' Code. The report named the offender, and included the child's gender, the child's age when the abuse started and the period of time for which it continued. The grandfather said the victim's identity was now common knowledge in the local community and at the child’s school. The PCC said that the newspaper was fully entitled to identify the convicted man. But it added that while each of the details reported might have seemed relatively insignificant, they had the potential to imply the connection between the accused and his victim. It took into account that the report had been supplied by an outside agency, and so the paper did not know all the case details. But, overall, the PCC ‘did not agree that the newspaper had taken sufficient care to avoid this implication’. The result has been ‘a serious, albeit inadvertent, error’ (*A man v Staffordshire Newsletter*, 3 May 2011).

**Case study:** In 2011 the PCC upheld a complaint that the *Southern Daily Echo* had breached clauses 7 and 11 of the Editors’ Code. In a report of a court case in which a man admitted unlawful sexual activity with a teenage girl, the paper included the victim’s age, the dates of the offence, alluded to the man's profession, identified his workplace and reported another charge against him. The girl’s mother complained to the PCC that the combination of details made the girl's peers and others in their small town aware she was the victim. The newspaper told the PCC it was at pains to avoid reporting the relationship between her and the man. The PCC said the editor had paid attention to the need to protect her, and that the paper was entitled to identify the man, but that the report included information likely to contribute to identification of the victim. The PCC was concerned in particular that the dates of the offence were included in a context which might have implied the relationship between the accused and the victim (*A woman v Southern Daily Echo*, 6 June 2011).

**11.7.9.2 ‘Adequate justification’**

**Case study**: In 2016 Ipso ruled that clause 11 was breached by the *Daily Record’s* lawful identification, in coverage of a Scottish court case, of a man as an alleged victim (the complainant) of a sexual assault. In the case the woman charged with the assault – she allegedly rubbed her breasts against him at a party - was acquitted. The man complained about the *Record’s* report naming him. The *Record* pointed out that under Scottish law he had no anonymity in law. That was because, as explained above, the 1992 Act does not apply to Scottish cases. The *Record* also said that it was clear the alleged offence should not have been classed as sexual assault, that in court the sheriff (judge) had criticised the Crown’s decision to prosecute the woman, and that there was ‘adequate justification’ to name the alleged victim in these circumstances. But Ipso said: ‘This justification must be a compelling one in order to outweigh the general public interest in preserving victims’ anonymity’. Ipso added: ‘The sheriff’s criticism of the decision to prosecute was insufficient to justify identification of the complainant, and it was not necessary to name the complainant in order to report this criticism’ (*A man v Daily Record,* 27 January 2016).

**PCC guidance on reporting sexual offence cases**

In 2011 the PCC issued guidance on the reporting of sexual offence cases. This said that - to preserve the anonymity of victims/alleged victims - editors should ‘err on the side of caution’ when deciding which details could be published. ‘For instance, even such apparently incidental details as the precise dates on which offences were alleged to have taken place have contributed to identification’. It warned that editors were responsible for preserving the anonymity even if the report came from a reliable external agency. It also warned against ‘jigsaw identification’ – a danger explained in 11.1.3 in *McNae’s.*

The PCC issued guidance in 2000 about reporting cases involving paedophiles. This stressed that the general protection of privacy now in clause 2 of the Editors’ Code applied for relatives and friends of such offenders. It said too that, under what is now clause 9, they should not be identified in coverage of the paedophile’s case unless they consented or there was a public interest justification. See Useful Websites, below, for the guidance. Clause 9 is explained in 4.13 in *McNae’s* and in the Additional Material on [www.mcnaes.com](http://www.mcnaes.com) for ch. 4.

**Useful websites**

[**https://www.editorscode.org.uk/guidance\_notes\_10.php**](https://www.editorscode.org.uk/guidance_notes_10.php)

Press Complaints Commission guidance on reporting paedophile cases

**www.judiciary.gov.uk/publications/reporting-restrictions-in-the-criminal-courts-2/**

Judicial College guidance, *Reporting Restrictions in the Criminal Courts*, 4th edition, as

revised in May 2016 by the Judicial College, Media Lawyers Association, News Media

Association and Society of Editors.