36

Media law in Northern Ireland

Chapter summary

Media law in Northern Ireland is, including in defamation law, broadly the same as that in England and Wales. Restrictions on reports of preliminary hearings before magistrates, prior to committal to Crown court, follow Northern Ireland law but restrictions on reports of criminal proceedings involving children are similar to those in England. Victims or alleged victims of sexual, trafficking and female genital mutilation offences must remain anonymous. It is an offence to disclose the identity of a juror who is serving or has served on a trial in Northern Ireland.

36.1 Introduction

The law in Northern Ireland, including the courts structure, is broadly the same as that in England and Wales. In cases in Northern Ireland's High Court which have involved media organisations, judgments from England have been cited. The Supreme Court in London is the final court of appeal for Northern Ireland's criminal and civil cases on major points of law.

Many of the laws applicable in England and Wales extend to Northern Ireland either because the UK Parliament decided the relevant statute should be for all three nations or all the UK, or an Order was made by the Northern Ireland Secretary of State to adopt the statute applying in England and Wales.

This means that much of the law described in other chapters of this book, as regards actual or potential effects on journalistic activity, applies in Northern Ireland – for example, the Human Rights Act 1998 (see 1.3 in *McNae's*, including about the European Convention on Human Rights); the Data Protection Act 2018 (ch. 28); the Copyright, Designs and Patents Act 1988 (ch. 29); the Official Secrets Acts 1911 and 1989 (ch. 32); the Investigatory Powers Act 2016 (see ch. 33 about protection of the identities of journalists' confidential sources), the Freedom of Information Act 2000 (see online ch. 37); and the major counter-terrorism laws (see online ch. 40).

Generally speaking, because of shared statutory law and shared heritage in common law, what are crimes in England and Wales are crimes in Northern Ireland (see ch. 6), including those in the Computer Misuse Act 1990 and the Bribery Act 2010, and the common law offence of misconduct in public office, which investigative journalists or their sources risk being accused of (see ch. 34).

Northern Ireland also has its own statutory law – for example, created by the Northern Ireland Assembly.

In reaching decisions, Northern Ireland courts consider precedents set by the senior courts of England and Wales, although the only binding precedents in Northern Ireland are Supreme Court rulings or from Northern Ireland case law (see 1.2 in *McNae's* for explanation of 'common law', 'case law' and 'precedent', and about other law sources).

However, the general alignment of and overlaps in Northern Ireland's law with that of England and Wales means that to a large extent the same precedent applies in all three nations on breach of confidence (see ch. 26) and privacy law (see ch. 27) – so, for example, a media organisation in Northern Ireland should in most circumstances avoid publishing the identity of someone under police investigation, including an arrested person, unless they have been charged (see 5.11 in the book). The UK's full adoption in 2000 of the European Convention on Human Rights has great effect in media-related judgments throughout the UK, including in cases concerning privacy disputes or journalists' confidential sources. NB: Major cases from Northern Ireland concerning source protection feature in ch. 33.

This chapter focuses on important differences between the laws of England and Wales and those of Northern Ireland which affect journalists, including about what statutory law applies. But the chapter will continue to point to content elsewhere in *McNae's* which applies for journalists working in Northern Ireland as well as for those based in England and Wales.

Statutory law referred to can be seen on www.legislation.gov.uk

36.2 Northern Ireland's court system

The Lord or Lady Chief Justice of Northern Ireland is assisted by High Court judges and circuit judges who in criminal cases preside in the Crown court. Appeals from the Crown court are to the Court of Appeal. The current Lady Chief Justice is the Right Honourable Dame Siobhan Keegan. The Court of Judicature is a term used to refer collectively to Northern Ireland's Court of Appeal, High Court and Crown court.

A district judge presides in a criminal case in a magistrates' court. A conviction or sentence can be appealed to the County Court or, occasionally, the Court of Appeal. The Crown court deals with the most serious criminal cases. Appeals from it are to the Court of Appeal. Criminal trial procedures - for example, the sequence of a trial - are the same or similar to those in England and Wales, see 7.5 and 9.6 in *McNae's*, with the same standard of proof, see 5.1. But, as will be explained, in Northern Ireland there is no jury in some Crown court trials.

Civil cases are heard by a judge or judges sitting in the Northern Ireland High Court in Belfast which deals with complex cases of unlimited financial value, or by a circuit judge sitting in the County Court. For most types of case, the County Court can hear cases in which the maximum value of the claim is £30,000. Within the County Court is the separate, small claims court which deals with cases for which the maximum value from 3 October 2022 will be £5,000. Appeals from the County Court can be made to the High Court, with any further appeal permitted being heard by the Court of Appeal. Procedures in civil cases are the same or similar to those in England and Wales, described in ch. 13. The High Court, County Court and magistrates' courts hear family law cases – see later - depending on the type of proceedings or whether it is an appeal.

For more detail of Northern Ireland's court system, see Useful Websites at the end of this chapter.

36.2.1 Contempt of court and other reporting restrictions

The Contempt of Court Act 1981 applies in Northern Ireland, as it does throughout the UK. The only significant difference is that in Northern Ireland more trials are held without juries. Such trials involve serious charges connected with terrorism or sectarianism, and are known as 'Diplock courts' (Lord Diplock wrote the report which led to the law enabling such trials, after 'perverse acquittals' and concerns that some jurors had been threatened). Crown courts in England and Wales can also sit without juries but such cases are exceptional (see 9.1 *in McNae's*). It has been argued that the absence of a jury means there is a much-reduced likelihood of media publication creating a substantial risk of serious prejudice to those proceedings, which would be a contempt of court under the 1981 Act. But the risk remains that the evidence of witnesses might be affected or improper pressure be put on defendants by what is published pre-trial or during the trial. The need to protect the administration of justice means that the common law of contempt of court applies in Northern Ireland identically (in essence) to how it applies in England and Wales. Ch. 19 explains contempt law.

Reporting restrictions which impose anonymity provision on coverage of youth court and family law cases, and other restrictions on court reporting in Northern Ireland, are explained later. As in England and Wales, it is a criminal offence - punishable by a fine and in some instances by a jail term– to breach a reporting restriction. For example, if the restriction is imposed under section 4(2) or section 11 of the Contempt of Court Act 1981, and the breach is proved to be a contempt, the person ruled to be responsible could be jailed for up to two years and/or fined an amount unlimited by statute (see 12.5 and 19.11 in *McNae's* about such orders).

A breach of a reporting restriction could also, if thereby a person who should have anonymity was identified to the public, lead to that person successfully suing for damages in civil law (for context, see 27.12.1) and/or successfully complaining to one of the media regulators – Ipso, Ofcom or Impress - about breach of its code of ethics.

Useful Websites
The Judicial Studies Board for Northern Ireland has issued guidance on reporting restrictions in criminal cases. See Useful Websites at the end of this chapter for this guidance

36.3 Attorney General and prosecutors

Northern Ireland has an Attorney General, who is the chief legal adviser to the Northern Ireland Executive for civil and criminal matters in the Northern Ireland Assembly's devolved powers. The Attorney General has other statutory powers, including to initiate proceedings to punish contempt of court in Northern Ireland.

The Attorney General appoints Northern Ireland's Director of Public Prosecutions, who is head of its Public Prosecutions Service (PPS), which is the nation's equivalent of the Crown Prosecution Service (CPS) serving England and Wales. The PPS decides on prosecutions in cases investigated by the Police Service of Northern Ireland, and by some other statutory authorities such as HM Revenue and Customs for Northern Ireland cases. For context on the CPS and on private prosecutions, see 5.4 and 5.9 in *McNae's*.

36.4 Media coverage of crime stories before any court case

Throughout the UK, defamation law and, as already stated, privacy law mean that a media organisation which publishes the identity of a person as being under investigation by an official agency, such as the police, would in most circumstances because of that identification have to pay that person damages if they are not charged with any offence – see 5.11.

In addition to that position in civil law, it is due to become a criminal offence in Northern Ireland for any publication to identify someone as being suspected of committing a sexual offence.

36.4.1 Anonymity for a person suspected of a sexual offence

When section 12 of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 comes into force, it will normally be illegal to publish in Northern Ireland material which is likely to identify a person as being or having been a suspect for a sexual offence (as defined in the Act).

The anonymity will automatically apply when an allegation that the person has committed a sexual offence has been made to the police, or the police have taken any step to investigate whether the person has committed a sexual offence (but such an allegation has not been made).

The anonymity will not apply if the person has been or is being prosecuted for that particular offence. Section 12 makes clear that the anonymity therefore

automatically expires if a summons or arrest warrant is issued under Article 20 of the Magistrates' Courts (Northern Ireland) Order 1981 against the suspect in respect of the offence; the suspect is charged with the offence after being taken into custody without a warrant; an indictment charging the suspect with the offence is presented under section 2(2)(c) or (e) of the Grand Jury (Abolition) Act (Northern Ireland) 1969; or a magistrates' court commits the suspect to the Crown court for trial on a new charge alleging the offence.

However, if there is no prosecution, under this law the anonymity provision normally remains in force until 25 years after the suspect's death. The provision then expires automatically unless it has been extended.

This radical change in the law follows recommendations made in 2019 by Sir John Gillen in his report into the law and procedures in Northern Ireland relating to sexual offences.

When section 12 is in force, the anonymity provision will also be retrospective – that is, it will apply too if the allegation or police step was made before section 12 came into force (for example, if the allegation was made 30 years previously about someone who now holds political office or is a celebrity).

Section 12 says that no matter relating to the suspect is to be included in any publication if it is likely to lead members of the public to identify the suspect as a person who is alleged to have, or is suspected of having, committed the offence, and that such matter includes in particular, if likely to identify the suspect;

- the suspect's name;
- the suspect's address;
- the identity of any school or other educational establishment attended by the suspect;
- the identity of any place of work;
- any still or moving picture of the suspect (a picture means 'a likeness however produced').

A publisher should take care that identification of the suspect does not occur because of 'jigsaw identification' – that is, a combination or accumulation of details in a single report or in several reports which would together identify the suspect to the public or make identification likely – for context on jigsaw identification see 10.8 in *McNae's*.

The 2022 Act's definition of sexual offences (given in section 13) include those, such as rape, attempted rape, sexual assault, voyeurism, sexual activity with a child and 'grooming' of a child, which under the Sexual Offences (Amendment) Act 1992 mean that the victim/alleged victim normally has automatic anonymity in any coverage of the crime/alleged crime or of court proceedings arising from it (see later in this chapter at 36.13 on that anonymity). Examples of such offences are in 11.2.1 of *McNae's* (described in the context of the lifetime anonymity provision in England and Wales, but in essence the offences are the same in Northern Ireland). Also, because the section 13 definition includes all offences in the Sexual Offences (Northern Ireland) Order 2008, it will include the new offence of 'sending an unwanted sexual image' – see later at 36.13.1.2.

But the 2022 Act's definition of 'sexual offences' includes other offences, such as possession of extreme pornographic images, and possession of a 'paedophile manual', for which there may not be any identifiable victim, yet the suspect will have the section 12 anonymity. The definition also includes the offences of intercourse with an animal and sexual penetration of a corpse.

When this law on anonymity for suspects in force, under section 14 of the Act a 'relevant person' will be able to apply to a magistrates' court for the anonymity to be 'disapplied' (lifted) or 'modified' during the suspect's lifetime or before 25 years have passed since his/her death.

The law will require the court, before it makes an order which lifts or modifies, to be satisfied that this would be 'in the interests of justice' or 'otherwise in the public interest'. If it is thus 'satisfied', it must make the order.

During the suspect's lifetime, those who qualify as a 'relevant person' are the suspect or Northern Ireland's Chief Constable. The latter could therefore apply for the anonymity to be lifted if police considered that publication of the suspect's identity would assist in an investigation. The suspect could apply for the anonymity to be lifted if, for example, he/she wanted to make a public statement complaining about being under investigation.

After the suspect's death, those who qualify as 'relevant person' are the suspect's spouse or civil partner, or a co-habitee partner, or a relative (as defined in section 14), or a 'personal representative' of the suspect, or 'a person interested in publishing matters relating to the suspect' which would otherwise be banned from publication because of the anonymity (because the 'matters' would identify suspect). Therefore, this law will allow a media organisation to apply for the anonymity to be lifted soon after the death of the suspect, when it is to be argued that identification would be in the public interest. For example, the media may wish to publish the suspect's identity when reporting that allegations against him were made during his life to the police by several women but there was no charge (as was the case with the celebrity Jimmy Savile in England). But the 2022 Act will also allow a relative or widow of the suspect to apply for the anonymity to be extended beyond the 25 years.

Court rules are due to be made to govern procedures for applications for such orders. Check www.mcnaes.com for updates about the 2022 Act.

If an order is made to lift or modify the anonymity, it can later be revoked or varied by a magistrates' court, if it is satisfied this would be in the interests of justice' or 'otherwise in the public interest'.

See Useful Websites, at the end of this chapter, for the 2022 Act.

36.4.1.2 Liability for breach of the anonymity for sexual offence suspects

Section 16 of the 2022 Act says that those who can be prosecuted for a breach of the suspect's anonymity are in the case of a newspaper or periodical, any editor, proprietor or publisher [and so an organisation such as a company could be prosecuted]; in the case of a programme, a body corporate engaged in providing the programme service in which the programme is included, or any person who

has functions in relation to the programme corresponding to those of an editor of a newspaper; and in the case of any other type of publication (such as a tweet or blog), any person who publishes it. If convicted of breach, the person or organisation can be fined to a maximum of £5,000 and/or the person could be jailed for up to six months.

If a body corporate is convicted of such a breach, an 'officer' of it (for example, the director or manager of a company) can be convicted of the offence if it can be proved that officer consented to or connived with the breach, or that it was attributable to any neglect on that person's part.

If a person is prosecuted for breach of the anonymity, under section 16 it is a defence for them to prove any of the following (here summarised):

(a) that the suspect himself/herself included the relevant matter in a publication, and the matter was likely to identify himself/herself;

(b) that the publication in which such matter appeared was one in respect of which the suspect had given written consent to the appearance of such matter

(c) that at the time of the alleged breach, the person/organisation which published the matter was not aware, and neither suspected nor had reason to suspect, that the publication included the matter in question;

(d) that at the time of the alleged offence the person/organisation was not aware, and neither suspected nor had reason to suspect—

  (i) that the allegation that the suspect had committed the sexual offence had been made to the police, or

  (ii) that any step had been taken by the police to investigate the suspect for such an offence.

Written consent given by the suspect will not be valid if they were under 16 when it was given, or it is proved that any person interfered unreasonably with the peace or comfort of the suspect, with intent to obtain the consent. For context, see 11.6.4.1 in *McNae's* on good practice in wording such written consent.

NB: The law of Ireland is beyond the scope of this chapter, but Northern Ireland journalists should be aware that in Ireland those charged with rape have anonymity in law unless they are convicted of the charge.

✻ Remember

Regulatory codes have anonymity provisions for children who are crime suspects or witnesses or victims. The codes also have anonymity provision for children or adults who are victims/alleged victims of sexual offences – see 5.14 and 11.7 in *McNae's*.

The Contempt of Court Act 1981 limits what can be published about 'active' cases. See 19.4.2 in *McNae's* for when a criminal case becomes 'active' - for example, when there is an arrest.

36.5 Bail in Northern Ireland

In Northern Ireland, as in England and Wales, the presumption is that the defendant will get bail unless there is a sufficient, legal ground for it to be refused. In Northern Ireland bail can only be refused if the court decides at least one of the following grounds applies:

- there is risk that if bailed the defendant:
  - will fail to appear for trial, or
  - will interfere with the course of justice– for example, by destroying evidence or interfering with (such as threatening) a witness, or
  - will commit further offences, or
  - would be at risk of harm from himself/herself or from others, against which he or she would be inadequately protected; or
- there is risk to the preservation of public order if the defendant is released on bail.

The court must consider if imposing any condition(s) of bail – for example, that the defendant must surrender his/her passport, obey a curfew, have a surety, report to the police regularly, not go to a certain area or not have contact with a witness – would sufficiently alleviate any such risk, so that bail could be granted. For the bail role of a 'surety', see 7.3.2 in *McNae's*.

36.5.1 Appeal route in bail matters

In Northern Ireland if a district judge in the magistrates' court refuses bail, the defendant can appeal to the High Court. This is the appeal route too if a Crown court judge refuses bail.

See Useful Websites at the end of this chapter for guidance on bail issued by the Northern Ireland Courts and Tribunals Service.

36.6 Types of charges

As in England and Wales (see ch.6), in Northern Ireland there are three main categories of criminal charges: indictable-only, which are the most serious, such as murder and rape, and which can only be dealt with by a Crown court; 'either-way', which depending on circumstances could be dealt with by a magistrates' court or a Crown court; and summary charges. However, in terms of what particular charges are in each category, and how each category is processed through the courts, there are some differences between the Northern Ireland system and that of England and Wales.

In most instances, summary charges allege comparatively minor offences, such as driving without due care and attention, and can only dealt with in magistrates' courts unless the charge is part of a case involving an indictable offence committed to the Crown court. However, in Northern Ireland a defendant has, broadly speaking, the right to choose trial by Crown court jury if the alleged summary

offence carries a custodial sentence of more than six months (and the defendant is aged over 14), and therefore such a charge is in effect either-way, although this right does not exist for all summary charges with this potential sentence.

For other types of either-way charges (that is, if the possible custodial sentence is six months or less), procedure in Northern Ireland differs from that in England and Wales (explained ch. 8). In Northern Ireland, the prosecutor decides for some such charges whether the case should be dealt with by a magistrates' court or whether that court will be asked to commit the case to the Crown court – see next section. This type of either-way charge is sometimes referred to as a 'hybrid' charge. As regards another type of either-way charge, the defendant can choose to be dealt with at the magistrates' court if the district judge offers that option.

NB: the term 'indictable' can be used to cover any type of charge which must or can be dealt with by a Crown court.

36.7 Reporting restrictions for preliminary hearings at magistrates' courts

A committal hearing is a type of preliminary (pre-trial) hearing in which, after a person is charged with an indictable-only charge, or a type of charge which the prosecutor or defendant can argue should be tried at Crown court, a district judge in the magistrates' court considers the evidence to decide whether there is a *prima facie* case (sufficient evidence from the prosecution) to commit the case to Crown court for trial. If the district judge decides the evidence is not sufficient, the charge will be dismissed (and so the defendant will not face trial on that charge).

Committal hearings have been abolished in England and Wales. There is explanation in 6.1 of *McNae's* that in these nations indictable-only cases are 'sent for trial' without consideration at the magistrates' court of the strength of the evidence. As explained in 8.3 in *McNae's*, this 'sending' procedure is also used in England and Wales for contested, either-way cases in which the defendant wants to be tried by jury or when the magistrates' court decides, in allocation procedure, that the case is too serious to be tried in that court.

When this edition of *McNae's* was completed in 2022, a committal hearing in Northern Ireland could be either a 'preliminary investigation' or a 'preliminary inquiry'. In the former type, there is oral evidence given by witnesses who can therefore be cross-examined during the hearing, whereas the latter is normally a 'paper exercise' in that the evidence is usually considered only from documents – for example, written statements from witnesses. Normally in a preliminary inquiry there will be no witness present.

- Article 44(1) of the Magistrates' Courts (Northern Ireland) Order 1981 (SI 1981/1675) automatically prohibits publication of a report of any opening statement made by the prosecution in a preliminary investigation or preliminary inquiry.

This prevents pre-trial publication of anything in the statement which could prejudice the jury's decision, should the case proceed to Crown court trial and

should any juror recall the report – for example, the prosecutor may refer to charges which are dropped before the trial and which therefore the jury should not be aware of when considering the remaining charges.

- There is no automatic ban on reporting evidence aired in either type of these preliminary hearings. But Article 44(2) says that if objection is taken in the preliminary hearing to the admissibility of evidence the court may, if satisfied that the objection is made in good faith, ban the reporting of that evidence and of any discussion of it.This banning power exists because, for example, it is possible that some evidence referred to in a preliminary hearing will not be evidence at the trial, because the Crown court judge rules that particular evidence is not admissible.
- Also, even if there is no such objection, Article 44(2) enables the court to make an order banning publication of any evidence if the court is satisfied that publication would prejudice the defendant's trial.

See Useful Websites, below, for the 1981 Order. Any person who publishes material which breaches the automatic ban in Article 44(1) or a ban imposed under Article 44(2) can be jailed for up to six months and/or be fined up to £500.

36.7.1 Reforms to the committal process

Reforms in the Justice Act (Northern Ireland) 2015 as amended by the Criminal Justice (Committal Reform) Act (Northern Ireland) 2022 are due to remove any possibility of a witness giving evidence in person in a committal hearing, including by abolishing all 'preliminary investigations'. Testifying in court can be a daunting and traumatic experience, especially if the witness is the alleged victim of the offence. The reforms are intended to ensure that in most contested cases a witness will give oral evidence only once – at the trial.

The reforms, when in force, will mean that any committal hearing in which the magistrates' court (that is, the district judge) considers whether the evidence is sufficient will be a 'preliminary inquiry' (and the automatic reporting restriction in Article 44(1) will apply as regards an opening statement by the prosecutor, and the judge may use the Article to impose a restriction preventing publication of any reference to evidence). In May 2022 the Department of Justice indicated that these reforms could be implemented in September 2022.

Another reform will enable Northern Ireland magistrates' courts to use 'direct committal' procedure to send all indictable-only cases straight to Crown court. Direct committal means there is no consideration in the magistrates' court of the strength of the evidence, so there will be no preliminary inquiry for such charges. This will mean that the magistrates' court's function will be limited in a direct committal hearing to bail decisions and other procedural matters. So direct committal procedure will be similar to the 'sending' procedure in England and Wales, described in 8.1 in *McNae's*. A similar procedure is already used in Northern Ireland for serious or complex fraud cases, and for indictable cases in which a sexual offence, or an offence involving violence or cruelty, is alleged in which a child is due to give evidence.

The 'direct committal' procedure, when the relevant part of the 2015 Act is in force, can be used in other categories of indictable cases after a defendant indicates in the magistrates' court an intention to plead guilty, in which circumstance the 'direct committal' would be in effect be a 'committal for sentence' – see 7.6.2 in *McNae's* - although a defendant could change his or her mind and formally plead 'not guilty' when arraigned at Crown court. The Department of Justice said in 2022 that the aim is to implement this reform in early 2024.

36.7.2 Law on open justice in preliminary hearings

Article 35 of the Magistrates' Courts (Northern Ireland) Order 1981 says that a preliminary investigation or preliminary inquiry must be held in public (that is, 'in open court') unless any statutory provision permits it to be held in private or 'it appears to the court that the ends of justice would not be served by sitting in open court' for the whole or any part of the hearing.

The Magistrates' Courts Rules (Northern Ireland) 1984 say in rules 26 and 34 that the court conducting a preliminary investigation or preliminary inquiry shall cause the charge to be read to the accused, but that when there is more than one charge, the court may proceed by the clerk making public the nature of the charges by reading aloud and in full at least one charge in each category of the offence charged.

Article 34 of the 1981 Order says that a magistrates' court conducting a preliminary inquiry shall read aloud so much of every written statement as is admitted in evidence, or the purport thereof, if requested to do so by either the prosecution or the accused.

Rule 35 says that if at a 'preliminary inquiry' hearing a written statement is admitted in evidence the name and address of the maker of the statement shall be read aloud unless the court in the interests of justice otherwise directs. The rule gives the court discretion to order that a statement's contents be read aloud. See Useful Websites, below, for the rules.

Article 37 of the 1981 Order says that if the magistrates' court conducting the preliminary inquiry discharges the accused (that is, the court's decision is not to commit the case concerning that charge to the Crown court) the magistrates' court shall read aloud the contents of every written statement admitted in evidence; and where the contents of the written statements are so read out an order made under Article 44 (2), see earlier, shall not apply to the evidence contained in those statements.

36.8 Reporting restrictions for pre-trial hearings at Crown court

To prevent potential jurors knowing of prejudicial material discussed by the judge and lawyers in Crown court hearings before the case's trial begins, there are automatic reporting restrictions which apply in respect of those earlier hearings.

One set, applying to reports of unsuccessful applications to dismiss charges and of 'preparatory' hearings in cases of alleged serious or complex fraud, is in Article 10 of the Criminal Justice (Serious Fraud) (Northern Ireland) Order 1988 (SI 1988/1846). Another set, applying to reports of unsuccessful applications for dismissal of charges in cases in which a child is due to give evidence, is in paragraph 5 of Schedule 1 of the Children's Evidence (Northern Ireland) Order 1995 (SI 1995/757). There are also sets of restrictions in section 37 and 41 of the Criminal Procedure and Investigations Act 1996 which apply in respect of 'preparatory' hearings in all other types of case and in respect of 'pre-trial' hearings in general.

As regards these automatic restrictions, see 9.4 in *McNae's* for their format as set out in the 1996 Act or as set out identically in analogous law in England and Wales in respect of serious or complex fraud cases, or cases due to involve a child witness. The categories of information which under these restrictions can be published is set out in detail in 9.4.1 and (in respect of 'relevant business information' in such fraud cases) in 9.4.3. Note what is said in 9.4.6 about the need for the journalist to check with the court at a pre-trial hearing if there is any doubt about what type of hearing it is.

The penalty for breach of these restrictions in Northern Ireland is a fine of up to £5,000. If there is a breach, 'any proprietor, editor or publisher' of the relevant newspaper or periodical can be prosecuted. If the breach is published in any other type of written report—for example, on a website not linked to a newspaper—'the person who publishes it' can be prosecuted. In the case of a TV or radio programme, 'the body corporate which provides the service' and any person 'having functions in relation to the programme corresponding to those of an editor of a newspaper' can be prosecuted.

36.9 Reporting restrictions for prosecution appeals against rulings

Law in the Criminal Justice Act 2003 applying in England and Wales for prosecution appeals to the Court of Appeal against the termination of all or part of a criminal case by a judge's ruling, was extended to Northern Ireland by the Criminal Justice (Northern Ireland) Order 2004 (SI 2004/1500). Article 30 of the Order imposes reporting restrictions on coverage of such appeal-related proceedings. These are identical in format and scope to those serving the same purpose in the 2003 Act, see 9.4.9 in McNae's. The penalty for breach of the restrictions in Northern Ireland is a fine of up to £5,000, and those who can prosecuted are the same as for breach of the restrictions outlined in 36.8

Cross-reference

What is said in Ch. 9 about reporting the arraignment and majority verdicts, and about other procedures in Crown court cases, applies in general for Northern Ireland, but remember what is said 36.2.1 about some trials in Northern Ireland not having juries

36.10 Children involved in criminal cases

In much of the Northern Ireland law cited below, the term for someone aged under 18 is 'a child'. *McNae's* sections cited below refer to analogous law in England and Wales. The similarities with Northern Ireland law mean that explanation in *McNae's* should be helpful. But note than in *McNae's* the term 'child or young person' is used to refer to someone aged under 18, reflecting the terminology of that analogous law. As in England and Wales, the term 'juvenile' is sometimes used in Northern Ireland to denote someone aged under 18.

In Northern Ireland, as in England and Wales, it is a criminal offence to publish detail which breaches anonymity provided for a child, whether that is provided by a statute automatically or by a court order.

As explained below, there are circumstances in which a media organisation may argue in court against the imposition or continuation of anonymity for a child. As regards a child who is a persistent offender or has committed a serious crime, these arguments are more likely to succeed if the child is 16 or 17. See also 36.17 about challenging reporting restrictions.

✻ Remember

Regulatory codes have anonymity provisions for some children who are crime suspects or witnesses or victims – see 5.14.

36.10.1 Youth courts

As in England and Wales, in Northern Ireland a child cannot be prosecuted for any offence committed or allegedly committed when they were under the age of 10, because this is below the age of criminal responsibility. A person who is under 18 when criminal proceedings against them are commenced – for example, they are charged – will be dealt with by a youth court unless the charge is too serious for that court to deal with, in which circumstance the case can be committed to the Crown court for trial by jury, or for sentence. As stated earlier, for some types of summary charge, in Northern Ireland a person aged 14 or older has a right to choose to be tried by jury at Crown court.

Youth courts in Northern Ireland have similar powers of punishment, if the defendant is convicted, to those of youth courts in England and Wales, which are described in ch. 10. However, there are some differences, including in terminology. For an official guide to Northern Ireland's youth justice system, see Useful Websites at the end of this chapter.

36.10.1.1 The right of journalists to attend youth courts

Under Article 27 of the Criminal Justice (Children) (Northern Ireland) Order 1998 (SI 1998/1504) ('the 1998 Order'), the general public cannot attend youth court cases but representatives of newspapers or news agencies can. For context, see 10.2.6 in *McNae's* on analogous law applying in England and Wales.

36.10.2 Anonymity for children concerned in youth court cases

Article 22(2) of the 1998 Order is an automatic reporting restriction which bans any report of a youth court case from identifying any child as being 'concerned' in its proceedings, which means the defendant and any child witness, and any child who – though not a witness – is the alleged victim/victim of the offence.
The scope of the anonymity is that:

- no report shall be published which reveals the name, address or school of a child (someone aged under 18) concerned in the proceedings or includes any particulars (details) likely to lead to the child being identified,
- and no picture shall be published as being or including a picture of any such child. 'Picture' will be deemed to include footage.

The wording of Article 22(2) automatically bans any identification of the child's school, even if publishing the name of the school would be unlikely to identify the child. Note that the wording is close to that of section 39 of the Children and Young Persons Act 1933 which can be used in England and Wales to provide anonymity for children and young persons concerned in civil proceedings and inquests. For context on section 39, see 10.5 in *McNae's*.

For explanation of the effect of this anonymity provision on reports of youth court cases, see 10.3 in *McNae's*, where explanation is in the context of analogous law in England and Wales.

Article 22 says that those who can be prosecuted for breaching this anonymity are the newspaper or periodical's proprietor (usually a company), the editor and the publisher, or any 'body corporate' (for example, a company) providing the programme service and any person whose functions in relation to the programme correspond to those of an editor of a newspaper. The penalty for breach is a fine of up to £5,000.

The anonymity provision automatically applies to reports of a hearing in Northern Ireland's higher courts if it is an appeal from a youth court decision – for example, an appeal against conviction or severity of sentence or about a legal ruling.

36.10.2.1 Lifting of the youth court anonymity

The Article 22(2) anonymity applying to a particular child can be lifted wholly or to an extent if the court or the Secretary of State is satisfied that it is 'in the interests of justice' to do so and makes an order to that effect.

Also, Article 22(2) says a court can make an order to lift the anonymity as regards a convicted child if the court satisfied that it is 'in the public interest' to lift it, but that the court must first hear any representations the prosecution or defence wish to make about that.

For circumstances in which these 'lifting' provisions might be used, see 10.3.5 and 16.13 in *McNae's* about similar provision in English and Welsh law, and grounds on which a journalist can argue that the 'public interest' justifies the lifting of a convicted child's anonymity.

The Article 22(2) anonymity automatically ceases to apply when the child reaches the age of 18.

36.10.3 Discretionary power to bestow anonymity for children in criminal court case

Article 22(1) of the 1998 Order gives criminal courts – for example, the magistrates' court or Crown court – the power to order that reports of the case should not identify a child (someone aged under 18) as being concerned in the proceedings. This provision is not automatic, so the court should consider if that particular child needs the anonymity.

If an order is made under Article 22(1), its normal scope is that:

- no report shall be published which reveals the name, address or school of a child concerned in the proceedings or includes any particulars (details) likely to lead to the child being identified,
- and no picture shall be published as being or including a picture of any such child [again, the definition of 'picture' includes footage]

For explanation and context about this type of anonymity provision, see 10.4 in *McNae's*, about analogous law in England and Wales. The definition of 'concerned' in proceedings means the anonymity can be bestowed for a child who is a defendant or witness or victim/alleged victim. It includes a child 'in respect of whom the proceedings are taken', and so includes a child whose parent is prosecuted in a magistrates' court for allowing the child to be truant.

As is the case with the wording of Article 22(2), the wording of Article 22(1) means that the normal scope of anonymity bestowed by such an order is similar to that normally bestowed by a 'section 39' order in England and Wales, see earlier – so this usually means there is a blanket ban on identifying the child's school.

Those who can be prosecuted for breaching anonymity bestowed by an Article 22(1) order are the same as those can be prosecuted for breaching Article 22(2) anonymity, as set out earlier. Again, the penalty is a fine of up to £5,000.

There is case law from England and Wales outlined in 16.12 in *McNae's*, which can be cited in Northern Ireland, on grounds on which a journalist can successfully challenge the imposition or continuation of anonymity provision for a person aged under 18. The fact that such case law can be considered in Northern Ireland is recognised in the guidance on reporting restrictions issued by the Judicial Studies Board - see Useful Websites at the end of this chapter.

The Board's guidance refers to United Nations' international treaties which are sometimes cited by lawyers arguing for a child's anonymity to be preserved. But as stated in 16.12.2 in *McNae's*, the (England and Wales) Court of Appeal, when dismissing argument based on the treaties, has said that a court should focus on the facts of the particular case which are 'relevant to the exercise of the court's judgment', rather than 'listen to the siren calls of abstract principles that have already informed the approach which the courts adopt'.

It can be construed from the (England and Wales) Court of Appeal decision referred to in 10.4.1.1 in *McNae's* that anonymity bestowed by an Article 22(1) order automatically ceases to apply when the child reaches the age of 18. That case is noted in the Board's guide.

36.11 Whether anonymity applies for children in ASBO cases

The Anti-social Behaviour, Crime and Policing Act 2014 changed the law of England and Wales by introducing criminal behaviour orders (CBOs) and anti-social behaviour injunctions to replace anti-social behaviour orders (ASBOs). The Additional Material for ch. 10 on www.mcnaes.com explains this. These measures in the 2014 Act are similar to ASBOs in some respects.

Northern Ireland has retained ASBOs. These can be imposed to stop a person's behaviour, criminal or not, which causes harassment, alarm or distress to one or more people not in the person's household. They can be imposed on an adult, or a child aged 10 or older.

The ASBO may be imposed to stop the person engaging in activity which may lead to crime. A persistent shoplifter can, by means of an ASBO, be banned from going into any shop. ASBOs have banned teenagers from entering streets where they habitually have been creating a nuisance.

An ASBO is an order made in civil law, but breaching it is a criminal offence. So, for example, if a person banned from any shop ignores the ban, this is an offence in itself, even if he/she cannot be proved to have shoplifted there. The minimum duration of an ASBO is two years.

There are two main types of court hearing which can impose an ASBO on a child.

36.11.1 ASBO applications in civil proceedings in magistrates' courts

A magistrates' court, sitting in civil proceedings, can impose an ASBO on an adult or child, if persuaded to do so by an application by a district council, the Northern Ireland Housing Executive or the police.

There is no automatic ban on the media identifying a child in a report of an ASBO application in a magistrates' court, whether or not it results in an ASBO. But Article 8(1) of the Anti-Social Behaviour (Northern Ireland) Order 2004 (SI 2004/1988) gives courts discretion to ban any report of proceedings for, or in relation to, an ASBO against a child from identifying him or her. An Article 8(1) order can be made whether or not the ASBO is imposed, and normally has the same anonymity scope as an order made under Article 22(1) of the Criminal Justice (Children) (Northern Ireland) Order 1998, see earlier: that is, the report must not reveal the name, address or school of the child, or include any particulars likely to lead to the identification of him/her, and the report must not include any picture which is or includes a picture of him/her. Those who can be

prosecuted for breach of an Article 8(1) order by a newspaper report or broadcast programme are the same as for breach of an Article 22(1) order. The penalty is a fine of up to £5,000.

36.11.2 ASBO applications in criminal courts

A criminal court, including a youth court, can impose an ASBO on a defendant it has convicted of a relevant offence, whether or not any agency has applied for an ASBO. Such a hearing - on whether an ASBO is needed - is a consequence of that conviction (for example, for theft or taking vehicles), and may proceed immediately after that criminal case concludes.

This type of ASBO, because of this linkage to the conviction, is sometimes known as a 'bolt-on' ASBO (it remains an order made in civil law). In youth courts, the automatic anonymity provided by Article 22(2) of the 1998 Order, explained earlier, prevents the media identifying the child defendant and any child witness or child victim/alleged victim in any report of the criminal court case which precedes the 'bolt-on' ASBO hearing, unless the court or the Secretary of State lifts a child's Article 22(2) anonymity as regards that criminal case.

But if in a subsequent hearing the youth court decides to impose a 'bolt on' ASBO on the convicted child, a media report may be able to identify him/her in this respect. Article 8(4) of the 2004 Order states that anonymity under Article 22 of the 1998 Order does not apply 'in so far as the proceedings relate to the making of the [ASBO] order', so the default position is that the child can be identified in a report of the ASBO proceedings if and only if the ASBO is imposed on him/her. Even if an ASBO is imposed, Article 8(1) of 2004 Order gives the youth court discretion to ban the media from identifying that child. See earlier for the normal scope of this reporting restriction, if it is imposed.

It should be remembered that under the 1998 Order, Article 22(2) anonymity automatically applies as regards any other child concerned in such ASBO proceedings at a youth court, for example as a witness, whether or not an ASBO is made.

The Additional Material for ch. 10 on www.mcnaes.com outlines grounds on which reporters can challenge anonymity being given to children made subject to ASBOs (the explanation there is given in the context of the English and Welsh provision for injunctions and Criminal Behaviour Orders, but this is very similar provision to the ASBO law).

36.11.3 Summary of anonymity provision for youth court applications for an ASBO

Unless an Article 8(1) order is made under the 2004 Order, the media can identify a child on whom a 'bolt-on' ASBO is imposed at a youth court, in a report of those ASBO proceedings. However, that child may still retain automatic anonymity under Article 22(2) of the 1998 Order as regards any report of the earlier hearing in the youth court in which he/she was convicted (for example, of theft). The media can argue that the Article 22(2) anonymity should be lifted 'in

the public interest' in respect of that earlier hearing – see what is said 'public interest' grounds, earlier.

Another option for a reporter who knows an application for an ASBO is to be made is to approach beforehand the person making the application to ask them to repeat in the ASBO hearing information about the child's offending given to the youth court during the criminal case hearing - so that the information can then be reported as being part of the ASBO proceedings.

36.11.4 Alleged breach of an ASBO by a child

A child alleged to have breached an ASBO may face a criminal charge, because a breach is a criminal offence. The charge will normally be dealt with at a youth court. The anonymity under Article 22(2) of the 1998 Order, see earlier, automatically applies in respect of youth court proceedings in which a child is charged with breaching an ASBO, unless the court lifts the anonymity. This default position in Northern Ireland differs from that which existed in England and Wales for ASBOs. There section 141 of the Serious Organised Crime and Police Act 2005 removed automatic anonymity for defendants in youth court proceedings as regards any charge of breach of an ASBO. But this section did not apply to Northern Ireland, and there is no other law there which automatically removes the anonymity in youth court proceedings for breach or alleged breach of an ASBO. Nevertheless, the media could choose to challenge the continuation of Article 22(2) anonymity by arguing that it is in the public interest for the court to remove the anonymity - see earlier.

36.12 Anonymity provision for children in civil courts and inquests

Article 170(7) of the Children (Northern Ireland) Order 1995 (SI 1995/755) gives a court (other than in family or criminal proceedings) a discretionary power to ban reports of a case from identifying a child as being involved in it. This is a power which can be used by a civil court - for example, in a civil case in which one party is suing another for damages – or a coroner's court.

The normal scope of the ban, if the court imposes it, is that no person shall publish any material which is intended, or likely, to identify any child as being involved in those proceedings, or publish an address or school as being that of a child involved in those proceedings.

A person prosecuted for breach of the anonymity has a defence if she or he can prove that he or she did not know, and had no reason to suspect, that the published material was intended, or likely, to identify the child.

Relevant case law from England and Wales is covered in 16.12 in *McNae's*. Those cases can be cited in Northern Ireland, providing grounds on which a journalist can challenge the imposition or continuation of this type of anonymity. Again, the 'section 39' law referred to there is the discretionary power which can be used in England and Wales by judges in civil cases and coroners in inquests to provide such anonymity for someone aged under 18 concerned in the proceedings.

36.13 Automatic anonymity for victims/alleged victims of sexual, human trafficking, FGM and forced marriage offences

The Sexual Offences (Amendment) Act 1992 automatically bans publication of material which is likely to identify a person as being a victim/alleged victim of a sexual offence - see 11.1-11.2 in *McNae's*. The potential penalties for breach of this ban are explained shortly. The anonymity does not apply in some circumstances - see 11.6.

36.13.1 Extension of anonymity in Northern Ireland in sexual offence cases

In England and Wales, this anonymity provision is for the person's lifetime, but does not apply to the dead. So, for example, a woman who was raped and murdered can be identified as such a victim in a report of or feature about the crime, or about a trial of the man accused of raping and murdering her.

But as regards material published in Northern Ireland, this lifetime anonymity provision in section 1 of the 1992 Act for a victim/alleged victim of a sexual offence is due to be extended so that normally it will continue to be in effect until 25 years after the person's death.

The relevant amendments to the 1992 Act are due to be made by sections 8 and 9 of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 which the Northern Ireland Assembly passed to implement certain recommendations of Sir John Gillen's report (mentioned earlier, in 36.4.1).

When these changes to the 1992 Act are in force, amending its section 1 and creating a section 3A, 'an interested party' will be able after the victim/alleged victim's death to apply to a magistrates' court for the anonymity to be 'disapplied' (lifted) or 'modified' before the 25 years have passed. The definitions of 'interested party' include 'a person interested in publishing matters relating' to the deceased which would otherwise be banned from publication because of the anonymity (because the 'matters' would identify the person having been such a victim/alleged victim). Therefore, this law allows a media organisation to apply for the anonymity to be lifted, for example, soon after the death of the victim/alleged victim.

The spouse or civil partner or a co-habitee, or a relative (as defined by the amendments due to be made to the 1992 Act), or a 'personal representative' of the dead person will also qualify as an 'interested party'. This law will allow them, for example, to apply to the court for the anonymity to be lifted or that it should be modified to extend beyond the 25 years.

The law will require the court, before it makes an order to lift or modify, to be satisfied that making it would be 'in the interests of justice' or 'otherwise in the public interest'. If an order is made, it can later be revoked or varied by a magistrates' court, on either of those grounds. Court rules are due to be made to govern procedures for applications for such orders.

36.13.1.2 Additional sexual offences for which the victim/alleged victim has anonymity

The 2022 Act, by amending the Sexual Offences (Northern Ireland) Order 2008, will create several new sexual offences for Northern Ireland, although the amendments were not in force when this chapter was completed. As the 1992 Act covers offences in the relevant parts of the 2008 Order, the victims/alleged victims of these new offences will be covered by the 1992 Act's automatic anonymity provision.

The new offences will include (here described in summarised form):

- 'upskirting' – a voyeurism offence, replicating that of England and Wales, see 11.2.1 in *McNae's*
- 'downblousing' – a similar offence involving the taking or intention to take a photo or footage of someone's breasts or underwear covering them in circumstances when they or the underwear would not otherwise be visible, and without that person's consent
- abuse of a position of trust by someone who coached or taught the victim/alleged victim, when he/she was under 18, in a sport or a religion (when the offence is not already covered by an existing abuse of trust offence, such as when the abuser/alleged abuser is a school teacher) – for the general nature of the 'abuse of trust' category of offences, see 11.2.1
- giving or sending or showing an unwanted sexual image – for example, by email or 'cyberflashing' in another type of message – without reasonably believing that the person to whom it is given, sent or shown consents to this and when it will cause that person humiliation, alarm or distress.

An example of what will be an effect of new law due to be created by the 2022 Act is as follows: A woman alleges to a journalist that a politician has emailed an unwanted sexual image to her, but the politician has not been charged with any offence. Unless the woman gives written consent to be identified in a report of this alleged incident, she has - in respect of it - anonymity during her life and the anonymity will normally extend until 25 years after her death. The politician has anonymity in respect of her allegation, unless he gives written consent to be identified or identifies himself in this respect in a publication, or the magistrates' court disapplies the anonymity because the police or he asked it to, or he is charged with the offence, or after his death 'a relevant person', such as a media organisation, successfully applies to the court for the anonymity to be lifted – see earlier at 36.4.1. Otherwise, his anonymity as a suspect normally extends until 25 years after his death.

✻ Remember

Regulatory codes have specific anonymity provision for a victim/alleged victim of a sexual offence.

Useful Websites
See Useful Website, at the end of this chapter, for the full text of the 2022 Act, including the full wording of the new offences. Check www.mcnaes.com for updates on this new law.

36.13.2 Trafficking cases

The Sexual Offences (Amendment) Act 1992 automatically bans publication of material which is likely to identify a person during their lifetime as being a victim/alleged victim of a 'trafficking for human exploitation' offence, including trafficking for sexual exploitation (for example, as a trafficked prostitute).

In Northern Ireland the trafficking offences for which victims/alleged victims have this automatic anonymity under the 1992 Act are those in section 2 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015, which are further defined by reference to the Act's section 1 and 3. Most of the definitions of these trafficking offences are the same as or similar to offences in the Modern Slavery Act 2015 which apply in England and Wales, and which are set out in 11.2.6 in *McNae*'s, But the Northern Ireland definitions include more specific references to some types of exploitation, for example, trafficking to exploit a person to gain the proceeds of forced begging or of criminal activities.

See Useful Websites at the end of this chapter for the wording of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015.

In Northern Ireland, as in England and Wales, a victim/alleged victim of a trafficking offence can be legally identified in some circumstances – see 11.6 in *McNae's*. For example, if such a person is 16 or older she or he can give written consent for identification, or a court may lift the anonymity.

36.13.3 Female genital mutilation (FGM) cases

Law also automatically bans publication of material which is likely to identify a person during their lifetime as being a victim/alleged victim of a female genital mutilation offence. In Northern Ireland, as in England and Wales, this law is in the Female Genital Mutilation Act 2003. See 11.3 and 11.6 in *McNae's*, which cover too when the anonymity does not apply – it can be lifted by court order or if the person is aged 16 or older and gives valid, written consent to identification.

36.13.4 Liability for breach of the anonymity in the 1992 and 2003 Acts

Who can be prosecuted for breach of the anonymity provision in the 1992 and 2003 Acts is set out in 11.5 of *McNae's* (they include anyone who illegally identifies on social media such a victim/alleged victim).

The penalty for breach of the anonymity of a victim/alleged victim of a trafficking or FGM offence is a fine of up to £5,000. Part of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022, when in force, is due to amend

the 1992 Act so that breach in Northern Ireland of the anonymity of a victim/alleged victim of a sexual offence can be punished by a jail term of up to six months, as well as by a fine of up to £5,000 (currently the punishment is limited to a fine).

36.13.5 Forced marriage offences

As in England and Wales, in Northern Ireland it is illegal to publish material which is likely to identify a person during their lifetime as being a victim/alleged victim of a forced marriage offence. In Northern Ireland, the law defining such offences is in section 16 of the Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015. The anonymity provision is in Schedule 3A of the Act. It covers, for example, a teenager tricked into travelling abroad for a forced marriage to take place. The anonymity does not apply if it is lifted by court order, or if the person is aged 16 or older and gives valid, written consent to identification. This anonymity provision can be understood by reading in 11.4 and 11.6 in *McNae's* about the analogous law in England and Wales.

As set out in Schedule 3A, a court can lift the anonymity by ruling that otherwise the defence of a person accused of a forced marriage offence would be substantially prejudiced. A court can also lift the anonymity by ruling that it imposes a substantial and unreasonable restriction on the reporting of the court proceedings, and that it is in the public interest to remove or relax the restriction.

If a person is prosecuted for breaching the anonymity, it is a defence if he/she can prove that he/she did not know or suspect or have reason to suspect that the publication included 'the matter in question' (the identifying detail), or that he/she did not know or suspect or have reason to suspect that the allegation in question (that is, the relevant allegation of a forced marriage offence) had been made.

Schedule 3A says that if the anonymity is illegally breached, each of the persons responsible for the publication is guilty of an offence. It says those who have this responsibility are, in the case of a newspaper or periodical, any person who is a proprietor, editor or publisher; in the case of a programme, a body corporate engaged in providing the programme service in which the programme is included, or any person who has functions in relation to the programme corresponding to those of an editor of a newspaper; and in the case of any other type of publication, any person who publishes it. The person or company can be fined up to £5,000.

36.13.6 'Revenge porn' offence

Northern Ireland's equivalent of the 'revenge porn' offence, in which (for example) the perpetrator posts a sexual image of a former partner on the internet, is in section 51 of the Justice Act (Northern Ireland) 2016. There is currently no automatic anonymity provision for the victim/alleged victim. But most editors would normally choose not to publish that person's identity in a report of the case, unless the person consented to this. For context, see 11.8 concerning the analogous law in England and Wales. The 2016 Act includes, as that analogous law does, a defence applying for 'public interest' journalism.

36.14 Other reporting restrictions

As in England and Wales, anyone reporting court cases in Northern Ireland must know of a wide range of automatic or potential reporting restrictions.

36.14.1 Bans on photography, sketching and filming in courts and their precincts

Section 29 of the Criminal Justice (Northern Ireland) Act 1945 automatically bans photography, filming, sketching and portrait-making in a courtroom, courthouse or its precincts of a judge or a juror or a witness in or a party to any proceedings before the court. It also bans the publication of any such image.

The wording in section 29 replicates that of section 41 of the Criminal Justice Act 1925 which imposes the same ban in respect of England and Wales. The maximum penalty is a £1,000 fine. The scope of this ban can be understood by reading 12.1 in *McNae's*. As explained there, such illegal activity may in some circumstances be punished as a contempt of court in common law, for which a person can be jailed for up to two years and/or be fined an amount unlimited by statute (see 12.1.3).

The Judicial Studies Board guidance says the court can issue a map showing what its precincts are—see Useful Websites at the end of this chapter.

✻ Remember

The bans on photography, filming, sketching, portrait-making and recording apply when a court visits an external location and when a transmission of a court's proceedings is relayed to an annexe because the press bench in court is full – see 12.1.5 and 12.1.6

36.14.2 Ban on audio-recording in courts

Section 9 of the Contempt of Court Act 1981 applies throughout the UK to automatically ban audio-recording in any type of court, unless authorised by the court (for example, for note-taking purposes). Playing, broadcasting or webcasting such an audio-recording to any section of the public is banned. For detail of this law, see 12.1.4 in *McNae's*.

36.14.3 Bans on recording or transmitting images and sounds from a court's transmission

Courts can hold 'physical' hearings, in which all participants are in a courtroom, or 'hybrid' hearings, in which one or more of the participants uses an electronic 'live link' or a telephone to take part from a remote location (such as their home or an office) in the courtroom hearing, or 'virtual' hearings, in which all those participating, including the judge, communicate using 'live links' or telephones (in which circumstance there may be no need to any of them to be in a physical courtroom).

Courts, including those which are tribunals (see later), can authorise that a 'live' transmission of their proceedings be relayed to 'designated' premises where the public and/or journalists can attend to watch and/or hear the transmission – for example, by viewing a screen set up in a room in a courthouse; or authorise that a person, such as a journalist, be sent a 'live link' to observe the transmission from a remote location by using their home or office computer. For context on journalists being able to report cases by such 'remote observation', see 15.14 in *McNae's* which relates to the law of England and Wales. Courts can also direct that an official recording be made of the transmission.

This law was temporarily created for Northern Ireland in schedule 27 of the Coronavirus Act 2020, amending other statute, and enabled a range of courts to authorise such transmissions to facilitate open justice during the pandemic, when the number of virtual hearings rapidly increased, and the number of hybrid and physical hearings was minimised, to help prevent spread of the virus in courthouses. Check www.mcnaes.com for updates on this temporary law.

It is an offence to make an unauthorised onward transmission of any sound or image in the official transmission (which means it is illegal to publish any such sound or image), or to 'record' any such sound or image in it (for example, by taking a screengrab or photo or footage of any part of the transmission, or by recording audio from it), or to 'record' any sound or image of any person taking part in the hearing remotely by 'live link' or telephone, or observing the hearing remotely in designated premises or elsewhere. For context on these offences, for which the maximum penalty is a £1,000 fine, see 12.1.8 in *McNae's* about analogous law in England and Wales. As explained there, in some circumstances unauthorised onward transmission or unauthorised recording of any such sound or image can be punished as a contempt of court in common law, for which the punishment could be a jail term of up to two years and/or a fine unlimited by statute – see the case study of the BBC being fined £28,000.

36.14.4 The risk of committing other common law contempts

As is the case in England and Wales, a journalist who in Northern Ireland harasses a witness or defendant when photographing or filming them in the street, or trying to do that, at any location when covering a case could be ruled to have committed contempt in common law – for example, if the activity is ruled to have created a real risk that the administration of justice would be impeded. A journalist who pesters a witness for an interview before the witness testifies in court, or who does interview the witness before that testimony is given, also runs a risk of being ruled to have committed such a contempt. For explanation, see 12.1.3, 19.3.3 and 19.3.4 in *McNae's*, including about payment or offers of payment to witnesses.

36.14.5 Statutory ban on disclosing the identity of a juror

The Juries (Northern Ireland) Order 1996 (SI 1996/1141) makes it an offence in most circumstances to disclose that someone has been or is a juror in Northern Ireland, or has been listed for jury service or selected for inclusion in a jury panel.

There is a defence that the person who made the disclosure had a reasonable belief that it was lawful. A person who commits the offence can be jailed for up to two years and/or fined.

36.14.6 Automatic ban on seeking or disclosing a jury's deliberations

Throughout the UK it is a contempt of court to seek or to disclose any detail of statements made, opinions expressed, arguments advanced, or votes cast by jurors during their deliberations. In Northern Ireland, this ban in section 8 of the Contempt of Court Act 1981. It applies whether the jury was empanelled in a criminal or civil case, or inquest. For further explanation, see 12.3 and 17.10 in *McNae's* about law in England and Wales which is almost identical. Anyone who breaks the ban, including a juror who discloses such information, could be jailed for up to two years and/or fined an amount unlimited by statute.

✻ Remember

A journalist anywhere in the UK who approaches a juror with questions, or photographs or films one, or tries to do that, could be ruled to have thereby committed a contempt of court in common law. For context, see 12.4.

36.14.7 Orders made under the Contempt of Court Act 1981

Courts throughout the UK can make:

- an order under section 4(2) of the Contempt of Court Act 1981 to postpone reporting of all or part of proceedings to avoid a substantial risk of prejudice to those proceedings or other proceedings imminent or pending – for detail see 19.11 in *McNae's,* and 16.7 for grounds on which to challenge such an order
- an order under section 11 of the 1981 Act to permanently ban publication of a name or matter in connection with the proceedings - see 12.5 and 16.11 in *McNae's*, and 36.17.1, on grounds to challenge to such an order

The Judicial Studies Board guide to reporting restrictions includes case law arising from media challenges to these orders.

✻ Remember

Journalists should not report contemporaneously matters discussed by the judge and lawyers in a Crown court trial when the jury is kept out of the courtroom, or any order the judge makes in the jury's absence, unless the judge permits such a report. Also, journalists should be cautious about reporting that a defendant due to be tried on a charge or charges has admitted one or more other charge(s) when arraigned, even though the judge may not have made a section 4(2) order to postpone reporting of any guilty plea. For explanation, see 19.11.1 - 19.11.3 in *McNae's.*

36.14.8 Reporting restrictions for private hearings

As explained in 12.6 and 14.6 in *McNae's*, section 12 of the Administration of Justice Act 1960 makes it a contempt of court to publish what is said in certain types of court hearings which take place in private. Section 12 also makes it a contempt offence to publish a report of the content of any document prepared for use in such a hearing. The types of private hearings specified in section 12 include those concerning a child's upbringing, and so include many family law cases, and cases involving mental health, mental incapacity and national security.

In Northern Ireland a journalist may be permitted to attend such a family case by a judge – see 36.15.2. But the hearing will continue to be deemed 'private' if the public are not allowed to attend, and so the section 12 restrictions will remain in place unless the judge lifts them. For context, see the Additional Material for ch. 14 on ww.mcnaes.com, which refers to family cases in England and Wales, including a case study in which a journalist successfully applied for the section 12 restrictions to be lifted with the consent of the mother in the case, who retained her anonymity.

There are differences in the wording of section 12 as it applies in Northern Ireland, compared to the version applying in England and Wales, as regards mental health and mental capacity cases, in that for Northern Ireland section 12 describes these as proceedings 'brought under the law for the time being in force in Northern Ireland with respect to the care or custody of, or to the property and affairs of, persons suffering from mental illness or other mental disorder'.

36.14.9 Other bans on unauthorised publication of case material

Unauthorised publication of information from a case document or other case material from any type of court proceedings could be punished as a contempt of court, including under the Criminal Procedure and Investigations Act 1996 – see explanation in 12.7 of *McNae's*. Non-parties including journalists can apply for access to case material, to report it – see 36.16.5

36.14.10 Section 46 anonymity orders for witnesses

Criminal courts in Northern Ireland can make an order under section 46 of the Youth Justice and Criminal Evidence Act 1999 to ban any publication from identifying an adult witness in reporting of the case, if that witness is in 'fear or distress' about such identification. For all the circumstances in which the order can be made, see 12.8 in *McNae's* and see 16.14 about grounds on which the order can be challenged. For how a challenge should be made, see 36.17.

The guide to reporting restrictions issued in 2019 by Judicial Studies Board covers section 46 anonymity – see Useful Websites at the end of this chapter for the guide.

36.14.11 Other anonymity orders

The High Court has inherent jurisdiction in common law to make orders permanently banning the identification of people concerned in its cases – for example, children and mentally-incapacitated people - to protect their right to privacy under Article 8 of the European Convention on Human Rights, or to protect another Convention right. It can also use this power to ban anyone publishing the new identity and whereabouts of an offender who has been released from prison after serving a sentence for a notorious crime. For context, see in 1.3.2, 12.9 (where the references to court rules are to those of England and Wales) and 12.10 in *McNae's*, and the Additional Material on www.mcnaes.com for ch. 12 which refers to the Northern Ireland case of offender Kenneth Callaghan.

✻ Remember

Whenever the law automatically or a court by making an order gives a person anonymity in coverage of a case, anyone publishing a report of it must avoid 'jigsaw identification' – that is, the publication of too much detail in a single report or a combination of reports which inadvertently destroys the person's anonymity – see in 10.8 in *McNae's*.

36.14.12 Automatic ban postponing reporting of special measures.

A court in a criminal case can make a 'special measure' direction (order) under Article 7 of the Criminal Evidence (Northern Ireland) Order 1999 (SI 1999/2789) to help a 'vulnerable' or 'intimidated' witness give evidence. For example, the witness may be allowed to testify from behind a screen or by live video link, or all the reporters but one might be asked to leave court during his/her testimony. Article 24 of the 1999 Order allows a court to make an order to bar a defendant representing himself/herself from cross-examining a witness.

Section 47 of the Youth Justice and Criminal Evidence Act 1999 automatically bans anyone from reporting until the conclusion of the case that an Article 7 'special measure' direction or an Article 24 order has been proposed, varied or revoked, and bans reporting of the judge's and lawyers' discussions on such matters, made, varied or revoked, and why, because the jury might be improperly influenced in its verdict if it had such knowledge. Breach of the ban is an offence punishable in Northern Ireland by a fine of up to £5,000. Under this law, the case is concluded if it is determined (by acquittal, conviction or otherwise), or abandoned, as regards all the defendants. For context, see the Additional Material for ch. 12.

For detail of when a court can in a special measure exclude some reporters, see 36.16.2.

36.14.13 Postponement of the reporting of derogatory assertions made in mitigation

In Northern Ireland, the power which a criminal court has to make an order postponing for 12 months the reporting of a derogatory assertion made in a speech of mitigation remains in section 58 of the Criminal Procedure and Investigations Act 1996. In England and Wales the power has been moved to the Sentencing Act 2020, but the section 58 power can be understood by explanation of that analogous law – see 12.14 in *McNae's* and the Additional Material for ch. 12.

36.15 Reporting restrictions for family cases and domestic proceedings cases

A district judge presides in a family proceedings court, often with two lay magistrates. County courts (in family care centres) and the High Court also deal with family cases. For a guide to the family courts published online by the University of Ulster, see Useful Websites at the end of this chapter.

36.15.1 Reporting restrictions in the 1995 Order

An automatic restriction in Article 170(2) of The Children (Northern Ireland) Order 1995 (SI 1995/755) bans the media from identifying a child (anyone aged under 18) as being involved in a case in which a power under the Order can be exercised, a definition which includes a wide range of family law cases, including applications by a local authority for a care order to remove a child from a family home when it is feared there is a significant risk of the child being harmed there, and disputes between estranged parents about where a child should live or about contact rights.

This anonymity provision in the 1995 Order for the child means that the parent(s) and the family as a whole cannot be identified in reports of such cases, by any detail.

The ban is that no person shall publish any material which is intended, or likely, to identify any child as being involved in such proceedings, or an address or school as being that of a child involved in them. The scope of these restrictions can be understood by reading 14.4 in *McNae's* concerning the analogous, automatic restrictions in section 97 of the Children Act 1989 which operates in England and Wales. The ban automatically ends when the proceedings are concluded. But the court can make an order that the anonymity continues.

If a person or organisation is prosecuted for publishing matter which breached a child's anonymity provision in the 1995 Order, it will be a defence to prove that he or she or it did not know, and had no reason to suspect, that the published material was intended, or likely, to identify the child. Breach is punishable by a fine of up to £2,500.

A family court can make an order to lift the anonymity if satisfied that the welfare of the child requires this. On the same welfare ground, the Lord Chancellor can - if the Lord Chief Justice agrees - make a direction (order) lifting the anonymity.

This could happen, for example, if publication of the family's and/or child's names and photographs of the parent or child could assist an appeal made to the public for help to trace a child abducted by one parent in a dispute with the other or to defy the court.

Under Article 170(11) of the 1995 Order, the reporting restrictions in Articles 89 and 90 of the Magistrates' Courts (Northern Ireland) Order 1981 apply to any proceedings in which a power under the 1995 Order can be exercised. This means that reporting restrictions limit what evidence can be reported – see 36.15.3

36.15.2 Reporting restrictions for private hearings involving children

The difficulties for the media of covering Northern Ireland's family court cases involving children are in some respects the same as difficulties faced by a media organisation wanting to cover such cases in England and Wales – the anonymity provision must be honoured and the reporting restrictions in section 12 of the Administration of Justice Act 1960 also normally apply, see 36.14.8, because the default position in law is that family cases involving children are held in private, to help preserve the family's privacy (which means the public cannot attend). For explanation of this position in England and Wales, which is analogous to that in Northern Ireland, see ch. 14 in *McNae's* and the extended version of that chapter on this website.

These reporting restrictions are a major reason why such cases are rarely covered by the media in any of these nations.

In 2017 a review recommended the creation of a single family court in Northern Ireland, to replace the existing family proceedings courts and family care centres (County Court), with the jurisdiction of the High Court preserved only for the most complex or legally sensitive cases. See Useful Websites at the end of this chapter for the review report (any such unified court would use existing courthouses).

Court rules in Northern Ireland do not give journalists a presumptive right to attend family cases (whereas rules in England and Wales do). The 2017 review report said that 'accredited' journalists are often permitted to attend 'private' hearings. But unless the section 12 restrictions are lifted hardly any detail can be reported.

In 2019 a consultation took place on arrangements for a pilot scheme being planned to increase media coverage of family cases in Northern Ireland's High Court, with those in favour of greater transparency hoping that in time there can be more media coverage too of family cases in the lower courts – see Useful Websites at the end of this chapter. When this chapter was completed, the pilot scheme had yet to take place.

36.15.3 Reporting restrictions in domestic proceedings cases

Article 89 of the Magistrates' Courts (Northern Ireland) Order 1981 says that journalists can attend domestic proceedings as defined in Article 88 - for example, matrimonial finance hearings to enforce maintenance orders or applications for

non-molestation orders in domestic violence cases. But Article 89 says (in effect) that for the purposes of taking any evidence of an indecent character in any domestic proceedings, the court may, if it thinks necessary in the interest of the administration of justice or of public decency, exclude any journalist.

Article 90 automatically restricts media reports of domestic proceedings to four categories of information. These are:

- the names, addresses and occupations of the parties and witnesses;
- the grounds of the application, and a concise statement of the charges, defences and counter-charges in support of which evidence has been given;
- submissions on any point of law arising in the course of the proceedings, and decisions of the court on the submissions; and
- the decisions of the court, and any observations made by the court in giving its decisions.

These restrictions are automatic and limit the reporting of evidence – the element of proceedings in which personal matters figure in most detail. Evidence can only be published in the form of quotations from the court's decisions and its observations. Domestic proceedings are a branch of civil law, so the reference to 'charges' is to the grounds asserted for the application being made (for example, that maintenance has not been paid), not to criminal charges. To be sure of complying with these restrictions a media organisation should wait until all evidence in the case has been given before publishing a charge, defence, or counter-charge. This ensures that it knows which is supported by evidence and if any evidence has been withdrawn.

A person who breaches the Article 90 reporting restrictions can be jailed for up to four months or be fined up to £100.

✻ Remember

If any domestic proceeding case involves use or potential use of powers in the 1995 Order relating to a child, such as the making of an interim care order or emergency protection order, or a residence order, the automatic reporting restrictions in Article 170(2) of the Order apply, see earlier, and so the child and therefore his/her family cannot be identified in any report as being involved in the case.

It may be that in domestic proceedings case there will be an allegation or confirmation that domestic violence occurred. Many editors take the view that it is normally unethical to name in a court report a victim of domestic violence, even when the law allows this, unless that person wants to be named.

The Independent Press Standards Organisation (Ipso) includes on its website guidance from the Women's Aid charity about media coverage of domestic abuse cases.

For the 1981 Order and that guidance - see Useful Websites at the end of this chapter.

36.16 Open justice

The fundamental rule in common law that justice should be conducted openly, unless an exceptional circumstance or the nature of the case necessitates a departure from the rule, applies throughout the UK – see 15.1-15.3, and 15.5-15.6 in *McNae's*. This necessity requirement means that any restriction which a court imposes in common law - or by using a discretionary, statutory power - on journalists or the public having access to a court hearing or on what can be reported from it must be necessary for the administration of justice or to protect a person's legitimate rights in some other way. Those sections in the book cite case law on open justice, including references to the media's vital role in upholding it, to the rights of the media and public under Article 10 of the European Convention on Human Rights, and to the purposes (societal benefits) of open justice. Such case law and rights, and – as appropriate in a particular case – one or more of those purposes can be cited in court by a journalist to oppose an access or reporting restriction which is invalid or of unnecessary scope.

Though there are many similarities in the laws of Northern Ireland, England and Wales, the rules for Northern Ireland courts have, compared with court rules and practice directions in England and Wales, less explicit provision to protect open justice. Some such provisions in court rules have already been mentioned in this chapter, concerning preliminary hearings in magistrates' courts in criminal cases.

When considering if a restriction should be imposed or continued, courts should interpret their rules (which are statutory law) strictly in accordance with the necessity principle.

36.16.1 Judicial Studies Board guidance

The guide to reporting restrictions published in 2019 by the Judicial Studies Board of Northern Ireland emphasises the open justice principle, and sets out law and procedure which should be followed by courts when they make decisions on whether journalists (and/or the public) should be excluded from a hearing, or on whether a reporting restriction should be imposed or continued– for example, decisions on anonymity provision.

The judge should hear media representations as soon as possible, the guide says – see too 36.17 on challenges to restrictions.

The guide adds that the media should be notified of a reporting restriction order, saying: 'The Private Office within the Office of the Lord Chief Justice has appropriate procedures for notifying the media that an order has been made and for handling media enquiries.'

It also gives some detail of how accredited journalists can get lists of forthcoming criminal cases, and about the public listing of civil cases.

For the Board's guide, see Useful Websites at the end of this chapter. There is a link there too to the official site for Northern Ireland's rules for magistrates', Crown, County and family courts, and the Court of Judicature (which includes Northern Ireland's Court of Appeal and High Court). Warning: those online versions of the rules may not be fully up-to-date.

Rule 44A of the Crown Court rules (SR (NI) 1979/90)sets out procedure to be followed as regards an application by a prosecutor or a defendant that all or part of a trial be held in camera for reasons of national security or for the protection of the identity of a witness or any other person.

Remember, this chapter cited earlier law on open justice in preliminary hearings in criminal cases.

36.16.2 Statutory law on or affecting open justice

The list of statutory laws below shows some of those which enable a court to exclude the public from a hearing. Under some in the list, a journalist or journalists should be allowed to remain in the courtroom.

Trials involving a serious sexual offence – Section 19 of the Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022 created sections 27A-27F in the Criminal Evidence (Northern Ireland) Order 1999. This new law, when in force, will require a court to make a direction (an order) to exclude the general public from all proceedings in which a defendant is to be tried on indictment for a serious sexual offence (even if the trial also concerns any non-sexual offence), although the public can be present when any verdict is delivered (and there is no such exclusion requirement if the alleged victim is dead). The public must also be excluded from Court of Appeal proceedings in such a case, other than when an appeal-related decision is pronounced (section 27E). Section 27A says that the direction cannot exclude 'bona fide representatives of news gathering or reporting organisations', and so they can remain in court for all the trial (unless excluded under other law), and that right to attend applies to appeal proceedings too. As regards exclusion of the public, this law implements another recommendation of the report by Sir John Gillen.

At least one journalist can remain – Article 13 of the Criminal Evidence (Northern Ireland) Order 1999 says a court can exclude the public and some journalists during the evidence of a witness in a case concerning an alleged sexual, modern slavery, trafficking, domestic abuse or stalking offence, or where there are grounds for believing that the witness has been or may be intimidated by someone other than the defendant, but the court must permit one reporter to remain when that witness gives evidence. Such exclusion is a 'special measure' to help the witness give evidence, and the fact that there has been such exclusion cannot, unless the judge tells the jury about it, be reported until the trial concludes – see 36.14.12. Decisions on 'special measures' are likely to be taken at pre-trial hearings so other statutory law, described earlier, will probably also be in effect to restrict contemporaneous reporting of what is decided about such measures and issues.For anonymity law in sexual and human trafficking offence cases, see earlier, at 36.13.

When a child gives evidence about matters of indecency – Article 21 of the Criminal Justice (Children) (Northern Ireland) Order 1998 empowers a court in any criminal proceedings to exclude everyone not directly concerned in the case when it considers that a child's evidence is likely to involve matter of an indecent

or immoral nature. There is no specific provision for the press to remain but the court can allow that, as the Judicial Studies Board guide points out.

Official secrets trials—see 32.5 in *McNae's* for this exclusion law.

Review of sentence for an informant – Section 75 of the Serious Organised Crime and Police Act 2005 permits a Crown court to exclude the public and press when reviewing a sentence previously imposed on a defendant who pleaded guilty, and who has given or offered assistance—for example, information about a crime—to a prosecuting or investigating agency such as the police, and to impose reporting restrictions about the hearing. The Court of Appeal and Supreme Court have these powers as regards any appeal proceedings about sentence review. The Additional Material for ch. 15 on www.mcnaes.com has detail about this power of exclusion, including about circumstances in which a journalist has a strong argument to oppose exclusion from a sentence review. In England and Wales this law is now in the Sentencing Act 2020.

Closed material procedure – The Additional Material for ch. 15 of *McNae*'s, which is on www.mcnaes.com, has explanation of 'closed material procedure' set out in Part 2 of the Justice and Security Act 2013, which allows a court considering a civil claim to hear evidence in private—and without the **claimant** having access to it—if the court accepts that disclosing it would damage national security.

36.16.3 Journalists tweeting or sending reports from courtrooms

Practice Note 1 of 2016, issued by Northern Ireland's Lord Chief Justice, gives a general permission for 'accredited' journalists to use mobile phones and laptops in courtrooms to report cases by means of 'live text communication', including by tweeting, emailing and texting. Journalists do not need to ask the court's permission for this, but the use of the devices must be silent and not disruptive. A court can decide to ban this use of such devices in a particular case. The Practice Note says there could be such a ban if there is concern that witnesses who are out of court may be informed – because of such 'live', media reporting - of what has already happened in court and, therefore, before they give evidence could be coached or briefed (improperly) by someone on what to say in it; or that information may be posted on social media about inadmissible evidence which may influence members of the jury; or that allowing journalists to use such devices may put pressure on witnesses, distracting or worrying them. For such reasons, it is illegal for members of the public to use such devices in court. For context, see 12.2 in *McNae's* about law in England and Wales on 'live text communication' from courtrooms. For the Practice Note in full - see Useful Websites at the end of this chapter.

36.16.4 Open justice: Note-taking

Practice Note 1 of 2016 says that the default position in Northern Ireland's courts is that anyone in the public gallery (and therefore any journalist who cannot find a place in the press box) can make notes of a hearing on paper unless the judge considers in an individual case there is a compelling legal reason to derogate from

this aspect of open justice and therefore to deny permission. The Note says that if the judge does decide to revoke this general permission to take notes, he/she should state the reason for this. The Note adds that members of the public are not permitted to take notes on electronic devices such as laptops or tablets, but that 'accredited' journalists sitting in the press box are permitted to take notes in all cases and to use electronic devices without notifying the court. See 15.10 in *McNae's* for context – it cites a case in which the High Court of England and Wales upheld the right to take notes in courts there, and refers to grounds on which a judge might ban the public from taking notes but should not, on those grounds, ban journalists from note-taking. That High Court ruling, earlier in 2016, apparently prompted Northern Ireland's Lord Chief Justice to include in the Practice Note this general permission to take notes in court.

36.16.5 Open justice - journalists' access to case material

The Judicial Studies Board's guide acknowledges that the (English and Welsh) Court of Appeal in *Guardian News and Media* established a presumptive right in common law for a journalist to have access to case material placed before the judge and referred to in open court. The right exists if there is a serious journalistic purpose underpinning the request for such access. The right prevails unless the court rules it is outweighed another consideration (for example, national security or someone's rights to privacy). The guide acknowledges this right applies in respect of 'any type of document on the court file and also extends to photographs, video footage, stills and sound recordings which have been shown or played in open court.'

See 15.19 and 15.26 in *McNae's* about the *Guardian News and Media* judgment and the Supreme Court's judgment in *Cape Intermediate Holdings Ltd v Dring (for and on behalf of Asbestos Victims Support Groups Forum UK*) [2019] UKSC. In the latter (a case often referred to as *Dring*) the Supreme Court upheld the presumptive right of access and set out principles for courts to apply when they consider requests by non-parties, including journalists, for copies of case material, and that judgment is binding on all Northern Ireland courts, including coroner's courts, and should be cited by a journalist applying for access to case material. Both these judgments made clear that the right is not dependent on whether the journalist attended the hearing in which the sought-after material was referred to. NB: An important ruling in England and Wales was the High Court's judgment in 2021 that case material can be disclosed to a journalist when the open justice principle can be advanced by disclosure of information which may be 'germane' to a 'serious journalistic story' – such as an investigation by the journalist which is not merely the reporting of the case in which the material featured. See 15.19.3 in *McNae's*. For context, see too 15.28 on privilege.

36.17 Challenges in court

See in 16.6 in *McNae's* on the informal method which can be used to challenge a proposed or actual order to exclude journalists from the court or to restrict reporting. The same method can be used by a journalist to apply for an automatic restriction

to be varied or lifted. The context in 16.6 is the court system of England and Wales but the essence of the method can be used in Northern Ireland's court system.

The Judicial Studies Board guide confirms that an appeal against a Crown court's decision to impose a reporting restriction or refusal to lift it can be made to the Court of Appeal, under section 159 of the Criminal Justice Act 1988. However, the rules for Northern Ireland's courts have, compared with court rules and practice directions in England and Wales, less provision about formal challenges to access or reporting restrictions.

The rules do set out procedure for a challenge in a criminal case to an anonymity order made for adult witness under section 46 of the Youth Justice and Criminal Evidence Act 1999 (section 46 is explained earlier in this chapter - see 36.14.10). The procedure is set out in the rules 149AO-149AQ of the Magistrates' Courts Rules (Northern Ireland) 1984 (SR 1984/225), as amended by the Magistrates' Courts (Amendment No. 2) Rules (Northern Ireland) 2004; rules 6NB-6ND of The County Court Rules (Northern Ireland) 1981 (SR 1981/225); and rules 44J – 44L of the Crown Court Rules (Northern Ireland) 1979 (SR (NI) 1979/90). For grounds of challenge to section 46 orders, see 16.14 in *McNae's*.

The Judicial Studies Board guide covers section 46 anonymity – see Useful Websites at the end of this chapter for the guide and rules.

The guide makes clear that courts should hear as soon as possible representations from the media which challenge the imposition or continuation of any access or reporting restriction.

Case law cited in the guide arising from challenges includes some which originated in Northern Ireland and some referred to in chs. 15 and 16 of *McNae's*, which have a focus on the fundamental and general rule in common law that justice should be open unless an exception in law applies. To find cases in *McNae's* see the book's index or Table of Cases. Reporting restrictions cited in the guide which are in statutes applying throughout the UK are explained further in *McNae's* - see the book's index or Table of Statutes.

The Board's guide says a court (that is, the judge in the particular case) should check what legal basis exists for the proposed exclusion or a restriction, consider if that measure is necessary, and if it is, ensure that the order made to exclude or restrict is 'proportionate' to the legitimate aim of this departure from the open justice rule. For context about 'necessity' and 'proportionality' – see in 15.6 and 16.4 in *McNae's*.

The guide also says, reflecting case law, that the judge should not make such an order without 'clear and cogent' evidence that it is needed, should invite media representations before deciding if such an order should be made, and if an order is made, should put it in writing in precise terms, giving its legal basis, its precise scope, and when it will cease to have effect if it is not to be of indefinite duration.

36.17.1 Bans on identifying defendants

In recent years there has been concern among Northern Ireland's journalists that courts have become more likely to agree with defence lawyers that adults charged with or convicted of offences should be granted anonymity in reports of their

cases because, for example, they were at risk of committing suicide or could face violence in their communities if their identity was published. As explained in 16.9 in *McNae's,* in England and Wales it is exceptionally rare for courts to use any power to ban the media from identifying a defendant, and many journalists consider giving defendants' anonymity is an unacceptable erosion of the open justice principle.

In 2013 the High Court in Belfast permanently banned the media from identifying a man jailed for blackmail and having indecent images of children. The injunction meant that reports could only refer to him as ZY. Mr Justice McCloskey imposed the ban after the man's legal team presented medical evidence that there was a 'real and immediate' risk that if publicly named in connection with his offences he would commit suicide. He had made a suicide attempt in 2010 after an earlier arrest, the court heard. The judge said that the man's right to life under Article 2 of the European Convention of Human Rights prevailed over the media's Article 10 rights – see 16.8 in *McNae's* about these rights. See 16.10 in *McNae's* about the 'real and immediate' risk criterion which must be met before a court grants anonymity to a person on grounds of their safety. It was considered in the House of Lords case of *Re Officer L* ([2007] UKHL 36). That case was from Northern Ireland and was about witnesses, but the criterion is relevant too when defendants apply for anonymity orders. *The Belfast News Letter* (26 January 2013) said of the ZY case that it was 'unprecedented' for anonymity to be granted to a defendant on this ground of suicide risk.

It was revealed in 2014 that 61 alleged sexual offenders had been granted anonymity by Northern Ireland judges making orders, purportedly using the Sexual Offences (Amendment) Act 1992. But as explained in 16.15 in *McNae's,* and as recognised by the Judicial Studies Board guide, there is no power in the Act to grant anonymity to defendants (although the need to retain anonymity which it automatically grants to the victims/alleged victims of such offences may mean that a media organisation cannot for this reason identify the defendant, such as when there is an allegation of sexual abuse against a child who was in the same household as the defendant – for context see 10.8.1 in *McNae's*).

The Gillen report said that in 2016, 2017 and 2018 the number of defendants facing at least one sexual offence charge who had a reporting restriction made in their case was 40, 45 and 31 respectively in the magistrates' courts and 28, 27 and 15 in the Crown court.

Judges in Northern Ireland have used section 11 of the Contempt of Court Act 1981 to give defendants anonymity. For explanation of section 11 orders and grounds on which a court order banning publication of a defendant's identity and/or address can be opposed, drawn mainly from cases in England and Wales, see 12.5, 16.8 and 16.10-16.11 in *McNae's*. For example, the Court of Appeal in England and Wales indicated in one case that it was not exceptional for a defendant to be described as being at risk of suicide or self-harm, when it upheld a High Court decision that a defendant's address could be published (her name could also be published).

Freelance journalist Tanya Fowles, who is also a Local Democracy Reporter, has in Northern Ireland successfully opposed reporting restrictions being made or continued to ban publication of a defendant's name and/or address, including for men accused of sexual offences. Articles about her challenges can be read on the Holdthefrontpage website, www.holdthefrontpage.co.uk. There is a case study about one of her successful challenges in the Additional Material for ch.16 on www.mcnaes.com

36.18 Coroners Courts

The coroners system in Northern Ireland is governed mainly by the Coroners Act (Northern Ireland) 1959 and the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 (SR 1963/199). The system has many similarities to the English and Welsh coroners system, described in *McNae's* chapter 17. For example, the Contempt of Court Act 1981 applies in all three nations to limit what can be published relating to 'active' inquest cases, and automatically bans audio-recording in inquests unless the coroner permits it – see 17.9 and 17.10 in *McNae's*. In Northern Ireland, section 8 of the 1981 Act is the law which protects the confidentiality of an inquest jury's deliberations, and the bans in other law on sketching, photography or filming, audio-recording, and on 'recording' any sound or image from a transmission of a hearing etc., apply because inquests are court hearings – see 36.14. Media reports of inquests are protected in defamation law by absolute privilege or qualified privilege, if the relevant defence's requirements are met – see 22.5 and 22.7 in *McNae's*. A coroner can make an order under section 11 of the 1981 Act or common law to provide anonymity for a witness.

In Northern Ireland, inquests into deaths have the same purpose as those in England and Wales – they ascertain who the deceased person was, and where, when and how he or she died, and enable the coroner to register certain particulars about the death. In Northern Ireland, the inquest's decisions on these matters are officially referred to as 'findings' though – as in England and Wales – the term 'verdict' may be used colloquially as regards what is found to be the cause of death. In Northern Ireland too that finding may be in 'narrative' form rather than a 'short-form' categorisation.

As in England and Wales, some inquests in Northern Ireland consider if historic, found objects are 'treasure' – see Useful Websites at the end of this chapter.

36.18.1 Death inquests with juries

In Northern Ireland the circumstances in which a jury will be used in an inquest into a death are that there is reason to suspect that:

- the person died in prison; or
- the death was caused by an accident, poisoning or disease notice of which is required by any statute to be given to a government department, or to any inspector or other officer of a government department; or

- the death occurred in circumstances the continuance or possible recurrence of which is prejudicial to the health or safety of the public or any section of the public; or
- the coroner thinks it is desirable to have a jury.

As in England and Wales, an inquest jury in Northern Ireland is of at least seven and not more than eleven people.

✻ Remember

In most circumstances it is illegal to identify a person as being or having been a juror in Northern Ireland – see 36.14.5.

36.18.2 Admission to inquests

Rule 5 of the Coroners (Practice and Procedure) Rules (Northern Ireland) 1963 says that every inquest shall be held in public, except that the coroner may direct that the public be excluded from an inquest or any part of an inquest if he/she considers that their exclusion would be in the interest of national security (and that decision would mean journalists would be excluded too).

36.18.3 The airing of evidence

Rule 17 says that a document may be admitted in evidence at an inquest if the coroner considers that there is good and sufficient reason why the maker of the document cannot attend as a witness, or – in the case of a post mortem report – that the medical practitioner's attendance is unnecessary. This means that some witnesses – for example, busy doctors – may not be at the inquest, because their evidence will be accepted in written form.

There is no specific provision in the rules for journalists to see written evidence - for example, a witness statement when the witness has not attended. But if the coroner does not read this evidence aloud, or even if he/she does, a journalist may need - in order to fully and accurately report the inquest - to assert a right to inspect it or to have a copy. See earlier at 36.16.5 about the *Guardian News and Media* and *Dring* judgments. A journalist applying to a coroner to see written evidence or other case material can cite these judgments in support of the application, because they established that in common law journalists have a presumptive right to be given access to help them report the court's proceedings if the material has been referred to in open court. For context, see too 17.5.4.2 in *McNae's* about the Chief Coroner's guidance in England and Wales.

36.18.4 Review of inquest decisions

As in England and Wales – see 17.8 in *McNae's* - a finding or another type of decision made in an inquest in Northern Ireland can be challenged in the High Court.

36.19 Tribunals

Many tribunals are a type of court, and so are covered by the automatic bans on sketching, photography or filming in any hearing or the building in which it is taking place, and in the building's precincts; on audio-recording proceedings; and on 'recording' any sound or image from a transmission of the hearing or of anyone who is participating in it remotely by 'live link' or 'remotely observing' the hearing – see 36.14

The UK administrative justice system which involves the First-tier and Upper Tribunal operates in Northern Ireland to an extent. A range of tribunals are in it, but some are outside it. See ch 18 and its Additional Material on www.mcnaes.com for more detail of this system, and for context concerning laws generally affecting media coverage of tribunal cases (NB: They include each tribunal's rules).

✻ Remember

The findings and decisions of certain types of association– such as those involving people in sport, science, learning and business - about their disciplinary cases can be reported with protection in defamation law, because the statutory defence of qualified privilege applies if its requirements are met. Northern Ireland's new defamation statute has extended this protection to such coverage of the disciplinary findings and decisions of these types of association anywhere in the world (rather than only those in the European Union). For more about the new statute, see 36.20. For explanation of this type of privilege, see 22.7 in *McNae's*.

36.19.1 Industrial tribunals and the fair employment tribunal

Industrial tribunals in Northern Ireland have, in the main, the same functions as the employment tribunals of England and Wales – for example, they rule on claims on unfair dismissal. Such functions are described in 18.7 in *McNae's* and in the Additional Material for ch. 18 on www.mcnaes.com. In Northern Ireland too the chair of such a tribunal is legally trained and is known as an 'employment judge'. The chair is empowered to take some decisions alone though other decisions are taken with the two 'lay' members of a tribunal panel.

The fair employment tribunal exists only in Northern Ireland, as a result of sectarian problems. It hears and determines claims against employers when the claim is that the employer discriminated against the claimant because of religious belief or political opinion.

For more information on both types of tribunal – see Useful Websites at the end of this chapter. They are not part of the First-tier tribunal/Upper Tribunal system but are courts.

The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020 (SR 2020/3), which is a

statutory instrument, contains sets of procedural rules in its Schedules. Most of the rules serve both types of tribunal, having been consolidated and revised from earlier sets. The main rules are the Industrial Tribunals and Fair Employment Tribunal Rules of Procedure. Those of most relevance to journalists are summarised below, and apply to both types of tribunal unless stated otherwise. The rules are online – see Useful Websites at the end of this chapter.

36.19.2 The extent of open justice at industrial tribunals and the fair employment tribunal

At a 'preliminary hearing' the tribunal initially considers the claim, may determine a preliminary issue, makes case management decisions and explores alternative means of resolving the dispute, including conciliation. There may be more than one preliminary hearing. Rule 50 says that preliminary hearings shall be conducted in private, except that when the hearing involves a determination (ruling) or considers striking out a claim, the tribunal may decide that the relevant part or all of hearing will be held in public.

A final hearing is when the tribunal hears evidence to rule on the claim or such parts as remain outstanding. There may be different final hearings for different issues; one for the tribunal to rule on 'liability' – that is, whether the claim succeeds against the employer; another for the tribunal to rule on 'remedy' – for example, to decide how much an employer held liable will be ordered to pay the claimant; or a hearing to decide whether the claimant or employer should pay some of the other side's costs.

Rule 54 says that any final hearing shall be in public. But rule 50, as regards the circumstances when a preliminary hearing or part of it could be held in public, and rule 54 are subject to rule 44 (which concerns privacy and restrictions on disclosure) and rules 91 and 92 (both of which protect national security), which may mean all or part of either type of hearing will be held in private – see below for rules 44, 91 and 92.

Rule 38 says that any witness statement which stands as evidence in chief shall be available for inspection during the course of the hearing by members of the public [and therefore by journalists] attending it unless the tribunal decides that all or part of the statement is not to be admitted as evidence, in which case the statement or that part shall not be available for inspection. Again, rule 38 is subject to rules 44, 91 and 92.

For case law a journalist can cite when arguing to be allowed to see case material at a tribunal, see 36.16.5.

Rule 40 gives the tribunal power to conduct a hearing by use of 'electronic communication' (including by telephone). But the rule has the proviso that 'members of the public' - and therefore any journalist - attending the hearing (which could be by logging or dialling in to an online hearing) are able to hear what the tribunal hears and see any witness as seen by the tribunal.

36.19.3 Rule 44 reporting restrictions

Rule 44 says that an industrial or fair employment tribunal may at any stage of the proceedings, on its own initiative or on application, make an order with a view to preventing or restricting the public disclosure of any aspect of those proceedings, in any of the following circumstances:

- where the tribunal considers it necessary in the interests of justice
- to protect the rights of any person, under the European Convention on Human Rights – for example, to protect someone's privacy (see 1.3 in *McNae's*);
- for the purpose of hearing evidence which is likely to consist of information which, if disclosed would contravene a prohibition imposed by or by virtue of any statutory provision, or would be a breach of confidence, or would, for reasons other than its effect on disputes over pay and conditions, cause substantial injury to the witness's or their employer's business
- when the fair employment tribunal considers that disclosure of any evidence given would be against the interests of national security, public safety or public order; or the disclosure of evidence given by any person would create a substantial risk that she or he or another individual would be subject to physical attack or sectarian harassment.

The rule – as well as giving the tribunal power in the above circumstances to hold a hearing in private, excluding the public and journalists – allows it to order that a person's name be withheld from its public proceedings, so that the name is not used in the hearing or in case documents or the judgment, and/or to make an order banning any report of the case from identifying a specified person, whether this is a claimant, witness or someone else, as being involved in or referred to in the case. The rule also gives the tribunal power, in the circumstances above, to ban the reporting of evidence.

Rule 44 says that in considering whether to make such an order, the tribunal shall give full weight to the principle of open justice and to the Convention Article 10 right to freedom of expression.

It says that any party, or 'other person with a legitimate interest', who has not had a reasonable opportunity to make representations before the order was made, may apply to the tribunal in writing for the order to be revoked or discharged, either on the basis of written representations or, if requested, at a hearing.

A journalist covering the case would have a 'legitimate interest'.

The rule says the order 'shall specify the person whose identity is protected; and may specify particular matters of which publication is prohibited as likely to lead to that person's identification'.

It adds that the order 'shall specify' its duration, and that the tribunal 'shall ensure' that a notice of the fact that such an order has been made is displayed on the notice board of the tribunal with any list of the proceedings taking place, and on the door of the room in which the proceedings affected by the order are taking place.

An order made by an industrial tribunal under rule 44 may draw on the power in Article 13 of the Industrial Tribunals (Northern Ireland) Order 1996 (SI 1996/1921). This allows the tribunal to make a 'restricted reporting order' in a case involving allegations of sexual misconduct. Such an order provides temporary anonymity – as regards publications reporting or referring to the case – for a person or people involved it, as specified in the order. Article 14 of the Order empowers an industrial tribunal to make such a temporary anonymity order for a person or people involved in a case concerning allegations of discrimination on grounds of disability in which evidence of a personal nature is likely to feature. This anonymity provision in Articles 13 and 14 is similar to that which an employment tribunal in England and Wales can bestow in these types of case. Both types of 'restricted reporting order' expire when the tribunal's decision is 'promulgated'. For explanation of the analogous types of order used in England and Wales, and case law about them, see the Additional Material for ch. 18 on www.mcnaes.com.

A media organisation or journalist who breaches an anonymity order made by a tribunal, or an order forbidding disclosure of other information, can be punished for contempt of court. Under rule 44, such orders can be permanently in force. Contempt can be punished by a jail term of up to two years and/or a fine.

✻ Remember

The scope of the Sexual Offences (Amendment) Act 1992 makes it illegal for any publication to include any detail which is likely to identify a person as being referred to in tribunal proceedings as a victim/alleged victim of a sexual or trafficking offence. This automatic anonymity applies irrespective of whether the tribunal has made an anonymity order, and normally lasts for the person's lifetime, and under law due to come into force will be extended to 25 years after their death– see 36.13. The law due to come into force providing anonymity for someone who is accused of a sexual offence but not charged with it will also probably apply if such an allegation is made against a person in a tribunal hearing – see 36.4.1.

36.19.4 National security rules

Rule 91 says that when the claim in the case arises from Crown employment, the Secretary of State, if she or he considers it expedient in the interests of national security, can order an industrial tribunal to hold all or part of the proceedings in private, and/or to conceal the identity of a witness in a case, or the tribunal can on its own initiative take either of these courses of action, and restrict the disclosure of information in documents used in the proceedings.

Rule 92 gives the fair employment tribunal the power to sit in private to protect national security.

The 2020 Regulations include a special set of rules for industrial tribunal cases involving national security matters .These rules can, for example, require the tribunal to keep secret all or part of the reasons for its decisions in the case. These

other rules also empower the Secretary of State to require that a 'special advocate' is appointed and 'closed material procedure' is used in such a case, to withhold security sensitive information from the claimant and her or his lawyers. For explanation of 'special advocate' and 'closed material procedure', see the Additional Material for ch. 15 on this website

36.19.5 The register of tribunal judgements and written reasons

Under the 2020 Regulations a register showing copies of the judgments and 'written reasons' issued in industrial tribunal and fair employment tribunal cases must be available for the public to see without charge at all reasonable hours (Regulation 16 and rule 61), though rules 44, 91 and 92 allow information to be kept off the register to protect national security or a person's privacy (for example, the identity of a sexual offence victim will not be shown).

The register is available for inspection at the Office of the Tribunals in Belfast during office hours.

There is online archive of the 'main decisions' issued since early 2007– see Useful Websites at the end of this chapter.

36.20 Defamation law in Northern Ireland

Defamation cases can be heard in a county court, but – because claimants tend to ask for high amounts in damages, and because of the complexity of cases - are usually heard in the High Court.

When this chapter was being written, the Defamation Act (Northern Ireland) 2022 ('the 2022 Act') was granted Royal Assent, having completed its final stage in the Northern Ireland Assembly in March 2022. It came into force on June 7, aligning Northern Ireland's defamation law more closely with that of England and Wales, described in chs. 20-23 of *McNae's*. Media organisations view the change as reform, because they argue that Northern Ireland's law would otherwise have remained more 'friendly' than that of England and Wales to those suing for damages. The Assembly's stated objectives include that the new law will 'protect the right of journalists to conduct responsible and necessary investigations' and 'make it harder for the rich and influential to chill free speech'.

The new statute:

- in its section 1 created a statutory defence of 'truth', to replace the common law defence of 'justification';
- in its section 2 created a statutory defence of 'honest opinion', to replace the common law defence of 'fair comment' (which was also referred to as 'honest comment');
- in its section 3 created a statutory defence of publication on a matter of public interest, to replace the common law, Reynolds defence;
- extended the scope of the statutory defence of qualified privilege, in a new defence created in section 4 for the publication of peer-reviewed statements

in scientific and academic journals, and of fair and accurate extracts from, and copies and summaries of such statements; and because of amendments in its section 5 to Schedule 1 of the Defamation Act 1996 (in the version of the Schedule applying in Northern Ireland – see later);

- in its section 5 extended the scope of the defence of absolute privilege so that it covers fair and accurate reports of the proceedings held in public of official courts anywhere in the world, by amending section 14 of the 1996 Act (the Northern Ireland version of the section).

In all these respects, this new law for Northern Ireland replicates the law in the Defamation Act 2013, which implemented identical reforms in England and Wales (including to the 1996 Act). These sections of the 2022 Act are, in their key wording, identical to that in relevant sections of the 2013 Act, in which the truth defence is in section 2, the honest opinion defence in section 3, the 'public interest' defence in section 4, and the law which extended the scope of the privilege defences is in sections 6 and 7.

Therefore, the essence of this new law for Northern Ireland can be understood by reading chs. 22 and 23 on defamation defences – for example, how the truth defence requires a publisher to prove that the statement complained-of was 'substantially true'. Good evidence is needed for that proof. Also, Supreme Court judgments mentioned in those chapters (for example, those concerning the operation of the 'public interest' defence in England and Wales) will shape Northern Ireland's common law in respect of the new legislation.

Because of the shared heritage in law, what is set out in many passages of chs. 20 and 21 applies for all three nations – for example, about the repetition rule, inferences and innuendo, about what a claimant must prove for a case to proceed, and about why media organisations may choose to settle a case rather than it proceed to trial.

There is no definition in the 2022 Act (or in the Defamation Act 2013) of what material is 'in the public interest' to publish, but various definitions exist in common law – see ch. 23. NB: the honest opinion defence does not require the published opinion to be on a matter of public interest, whereas the fair comment defence it replaced had this requirement.

36.20.1 Abolition of presumption of jury trial

The 2022 Act abolished the presumption in Northern Ireland's law that a jury should decide the outcome of a defamation trial. Therefore now a judge alone will make that decision in all but a very exceptional case in which one or both parties successfully argue for there to be a jury.

The Defamation Act 2013 abolished in England and Wales the presumption of jury trial, but jury trials were already rare there. A main reason was that jury trials tend to be of longer duration, and so are more costly for the parties than trials decided by a judge. For example, use of a jury tends to limit what pre-trial rulings the judge can make to simplify the trial, because major decisions on the meaning of words are left for the jury. Also, juries need explanations of defamation law.

When this edition of *McNae's* went to press, there had been no jury trial in a defamation case in England and Wales since the 2013 Act came into force. In general, the presumption that there would be a jury trial, should there be a defamation case, was seen as having a 'chilling effect' on what the media published, even when there may have been a strong public interest in publishing allegations. Also, the presumption made media organisations more likely to settle a case, because of the cost factors and unpredictability in what the jury might decide.

36.20.2 Absolute privilege in Northern Ireland

Another reform in the 2022 Act is that the defence of absolute privilege for court reporting is no longer be limited in Northern Ireland to reports of proceedings conducted in UK courts, or at the European Court of Justice, the European Court of Human Rights, or at any international criminal tribunal established by the United Nations or by an international agreement to which the UK is a party. As stated earlier, the 2022 Act has amended section 14 of the Defamation Act 1996 to replicate for Northern Ireland the version applying in England and Wales, and so has extended this privilege in Northern Ireland to a report of a court hearing held anywhere in the world under the law of any nation or territory. In Northern Ireland, as well as in England and Wales, the requirements of this privilege defence are that the report is of proceedings held in public, and that the report is fair, accurate and published contemporaneously – see 22.5 in *McNae's*.

36.20.3 Statutory qualified privilege in Northern Ireland

The 2022 Act has extended the defence of statutory qualified privilege by amending parts of Schedule 1 of the Defamation Act 1996, so that the version applying in Northern Ireland is in key wording identical to that applying England and Wales (see 22.7, which explains the defence's requirements, and Appendix 2 in *McNae's* which sets out the latter version of the Schedule). This means, for example, the privilege protects the fair and accurate reporting of statements issued for the information of the public by a legislature, government or governmental authority anywhere in the world, whereas the former version of the Schedule in Northern Ireland's law only provided the privilege for such reports if the issuing body was in a European Union state. Also, this extended statutory privilege protects fair and accurate reports of a public meeting or press conference held anywhere in the world for the discussion of matter of public concern, not merely those held in the European Union.

36.20.4 Differences in defamation law remain between the jurisdictions

The Northern Ireland Assembly decided against including in the 2022 Act a 'single publication rule' or a statutory definition for the 'serious harm' threshold (see 21.2.3.6, 20.2.1 and 21.2.1 about such statutory law applying in England

and Wales). Northern Ireland judges recognise the common law threshold of seriousness established in *Thornton v Telegraph Media Group* [2010] EWHC 1414 (QB) - see, for example, *Coulter v Sunday Newspapers Ltd* [2016] NIQB 70. The Assembly also decided against adopting the defence in section 5 of the Defamation Act 2013 which offers protection for website operators against liability for readers' postings (see 22.11.3 in *McNae's*). Assembly members expressed doubt about how useful the defence would be. In respect of liability for readers' postings, website operators throughout the UK, including media organisations, have some protection in section 1 of the Defamation Act 1996 (see 22.11 in *McNae's*); and in regulation 19 of the Electronic Commerce (EC Directive) Regulations 2002, and other statutory law, containing 'notice and take down' protection (see ch. 30).

36.20.5 The new law will be reviewed

The 2022 Act contains a section requiring the Assembly to keep under review developments pertaining to defamation law, and to complete within two years of the Royal Assent a report and recommendations on the findings of the review and on the operation of the new legislation.

36.20.6 The Northern Ireland context

Journalists should remember that Northern Ireland's troubled history and fraught political climate means that an untrue statement may well be ruled to have a very harsh defamatory 'sting', which the amount paid in damages or settlement will reflect. For example, in 2019 the High Court in Belfast heard that an ex-councillor who during a live radio interview falsely described an Irish footballer as a 'super Provo' had agreed to pay £63,000 in damages and costs after apologising for the 'heat of the moment' remark (*BBC online*, 19 September 2019). In 2021 a High Court judge ordered Dr Christian Jessen, the celebrity 'TV doctor', to pay £125,000 damages to Arlene Foster, who at that time was Northern Ireland's First Minister and Leader of the Democratic Unionist Party, because of a single tweet. In it he falsely alleged she was having an extramarital affair and that her marriage had broken down. It was retweeted 517 times and 'liked' by at least 3,500 Twitter users (*Foster v Jessen* [2021] NIQB 56).

36.20.7 Rehabilitation of offenders

The Rehabilitation of Offenders (Northern Ireland) Order 1978 has, as regards published references to 'spent' convictions, the same effect in Northern Ireland on defamation law as the Rehabilitation of Offenders Act 1974 has on defamation law in England and Wales, so that effect can be understood by reading ch. 24 in *McNae's*.

See Useful Websites at the end of this chapter for information about rehabilitation periods in Northern Ireland.

36.21 Codes of regulators

As this chapter has already made clear, the Editors' Code of Practice applies to media organisations which are Ipso members in Northern Ireland, and the Impress Code applies to Impress members there. These codes are introduced in ch. 2 in *McNae's*. See the book's index for parts of these codes covered in other chapters. Ofcom regulates broadcasters throughout the UK – see ch. 3 in *McNae's*, and see the book's index for parts of the Ofcom Broadcasting Code covered in other chapters.

Recap of major points

- The law in Northern Ireland, including the courts structure, is broadly the same as in England and Wales, with minor variations.
- Reporting restrictions in Northern Ireland broadly follow those in England and Wales but many of them are contained in Orders made by the Secretary of State rather than in Acts of the UK Parliament.
- Northern Ireland has new defamation law, which media organisations see as a reform.

Useful Websites

https://www.justice-ni.gov.uk/articles/royal-courts-justice#skip-link

Department of Justice about the court system

https://www.judiciaryni.uk/publications/reporting-restrictions

Judicial Studies Board for Northern Ireland guide to reporting restrictions

www.legislation.gov.uk/nia/2022/19/contents/enacted

The Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022

www.justice-ni.gov.uk/sites/default/files/publications/justice/bail-applications-english.pdf

Northern Ireland Courts and Tribunals Service guide to bail

https://www.legislation.gov.uk/nisi/1981/1675/contents

Magistrates Courts' (Northern Ireland) Order 1981

https://www.justice-ni.gov.uk/publications/court-rules-publications

Rules for courts in Northern Ireland

https://www.nidirect.gov.uk/articles/youth-justice

Official guide to Northern Ireland's youth justice system.

www.legislation.gov.uk/nia/2015/2/contents

Human Trafficking and Exploitation (Criminal Justice and Support for Victims) Act (Northern Ireland) 2015

https://www.ulster.ac.uk/familycourtinfo/going-to-court/about-family-courts

University of Ulster guide to family courts

https://judiciaryni.uk/sites/judiciary-ni.gov.uk/files/media-files/Family%20Justice%20Report%20September%202017.pdf

Review Group's 2017 report on family justice

https://ico.org.uk/media/about-the-ico/consultation-responses/2019/2615698/shadow-family-justice-board-sub-commitee-consultation-20190617.pdf

Consultation paper: 'Media access to family courts' pilot scheme

https://www.ipso.co.uk/media/1871/reporting-domestic-abuse-in-the-media.pdf

Women's Aid guidance on reporting domestic abuse

https://judiciaryni.uk/judicial-decisions/practice-direction-12016

Practice Note 1 of 2016

https://www.justice-ni.gov.uk/sites/default/files/publications/justice/coroners-inquest_0.pdf

Northern Ireland Courts and Tribunals Service guidance on inquests

https://www.nidirect.gov.uk/articles/archaeology-and-treasure

Official guidance on treasure

https://www.employmenttribunalsni.co.uk/

Industrial tribunals and the fair employment tribunal

http://www.legislation.gov.uk/nisr/2020/3/contents/made

The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020,

https://www.nidirect.gov.uk/articles/employment-related-tribunals#toc-6

Government information on industrial tribunals and the fair employment tribunal

https://employmenttribunalsni.co.uk/OITFET_IWS/DecisionSearch.aspx

Online archive of 'main decisions' of industrial tribunals and the fair employment tribunal

www.nacro.org

Nacro charity site showing rehabilitation periods for Northern Ireland