



# Farore Law

- Mini Guide -

## PRIVACY AND ANONYMITY IN COURT FOR VICTIMS OF SEXUAL ABUSE: WHEN IS IT AVAILABLE?

### Victims of sexual crimes: the legal right to anonymity

Section 1 of the Sexual Offences (Amendment) Act 1992 entitles victims of the vast majority of sexual offences to lifelong press anonymity from the moment that the allegation is made.<sup>1</sup>

Nothing about the victim may be published if it is likely to lead members of the public to identify the victim. This means that a civil Court or Tribunal should not publish the name of a claimant in a Judgment (or on the court notice boards) where the facts of the case make reference to the sexual offence the claimant has suffered.

However, not all civil Courts and Tribunals are aware of victims' right to anonymity and so it may be necessary to alert them by letter or email.

### Witnesses in sexual crime cases

The court may grant lifetime anonymity (a "reporting direction") to any adult witness in relation to particular proceedings.<sup>2</sup> A witness will be eligible for a reporting direction if their quality of evidence or level of co-operation is likely to be reduced as a result of fear or distress in connection with being identified by the police.

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<sup>1</sup> Section 1, Sexual Offences (Amendment) Act; Judicial College - Reporting Restrictions in the Criminal Courts (2016) (<https://www.judiciary.uk/wp-content/uploads/2015/07/reporting-restrictions-guide-may-2016-2.pdf>) The extent of the definition of "allegation" (namely, to whom the allegation must be made) is not specified, but in practice this usually means an allegation made to the police.

<sup>2</sup> Section 46, Youth Justice and Criminal Evidence Act 1999 (section 45A for under-18s)

Anonymity for witnesses is not an automatic right. It must be applied for (or otherwise granted by the court of its own accord). The procedure for applying is set out in Part 6 of the Criminal Procedure Rules.

## Victims of sexual crimes: when can their legal right to anonymity be waived?

Victims' entitlement to anonymity is automatic in the vast majority of cases. However, it may be waived under the following circumstances:

- If the victim decides to waive anonymity themselves;
- If the court decides that a waiver is needed to encourage potential trial witnesses to come forward and that the defence is likely to be substantially prejudiced otherwise;<sup>3</sup>
- If a judge is satisfied that not allowing the victim anonymity at trial would impose a substantial and unreasonable restriction upon the reporting of proceedings and that it is in the public interest to relax the right;<sup>4</sup> and/or
- If a convicted defendant has lodged an appeal against the conviction, applies for a waiver of the victim's right to anonymity, and shows that it would be needed to obtain supporting evidence (without which the defendant would suffer substantial injustice).<sup>5</sup>

It is a criminal offence to breach a victim's right to anonymity under the Act.<sup>6</sup>

It should not be assumed that the media understands these requirements. If necessary, lawyers should be instructed to ask the judge to issue a reminder to the media.

## Sexual misconduct in civil law cases

The rules governing privacy and anonymity in all civil proceedings are in rule 39.2 of the Civil Procedure Rules. It states that a court may order that the identity of any **party** or **witness** must not be disclosed if necessary to protect the interests of that party or witness.

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<sup>3</sup> Section 3(1), Sexual Offences (Amendment) Act 1992

<sup>4</sup> Section 3(2), Sexual Offences (Amendment) Act 1992

<sup>5</sup> Section 3(4), Sexual Offences (Amendment) Act 1992

<sup>6</sup> Section 5, Sexual Offences (Amendment) Act 1992. (Note that a prosecution in this regard may only be brought with the consent of the Attorney General.)

When the court is asked to make an order for anonymity or restraint of publication, it should only do so after closely scrutinising the application and considering whether doing so is necessary. If so, the court must then consider whether there is a less restrictive or more acceptable alternative.<sup>7</sup> Even if both parties in a case agree to anonymity, the court will still need to balance the interests at stake, as such a situation will demand particular vigilance.<sup>8</sup>

## Sexual misconduct at work

Section 11 of the Employment Tribunals Act (“*ETA*”) 1996 enables the restriction of publicity in Employment Tribunal cases involving sexual misconduct and sexual offences through using **a reporting restrictions order**.<sup>9</sup> A reporting restrictions order has the effect of preventing the identification of any person affected by (or making) the allegation until the Employment Tribunal reaches a decision on the relevant case.<sup>10</sup>

This order only lasts until a decision has been made. If this is insufficient, then an order may instead be made under the Employment Tribunals (Constitution and Rules of Procedure) Regulations 2013 (known as “Rule 50”).<sup>11</sup> Practically speaking, Rule 50 allows the Employment Tribunal to make a “lifetime” restricted reporting order.

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**This content is intended only as a general guide and does not constitute, nor should be used as a substitute for, legal advice.**

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<sup>7</sup> *JIH v News Group Newspapers Ltd* [2011] 1 WLR 1645, para. 21; confirmed by *V v T* [2014] EWHC 3432 (Ch)

<sup>8</sup> As confirmed in *C v Secretary of State for Justice* [2016] UKSC 2, para.19

<sup>9</sup> Under the *ETA* 1996, “sexual misconduct” has an extremely wide definition that covers all manner of “adverse conduct ... related to sex”. See Section 11(6).

<sup>10</sup> Section 11(1), *ETA* 1996

<sup>11</sup> Schedule 1, paragraph 50



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