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

**Additional material for chapter 37: Northern Ireland**

*Section numbers from McNae’s are used in headings below where content relates directly to content with that heading in the book’s chapter on Northern Ireland. That chapter should be read too, for content not shown here.*

**37.2 Defamation law in Northern Ireland**

Controversially, Northern Ireland has not adopted the Defamation Act 2013, which most of the media see as a reforming measure and which - as parts of *McNae’s* chs. 20-23 explain - is in force in England and Wales. In Northern Ireland older versions of defamation defences remain in force, and new statutory defences in the Act - ‘truth’, ‘honest opinion’, ‘the single publication rule’, the section 5 defence and the ‘public interest’ defence - are not in force.

**The justification defence survives in Northern Ireland**

The common law defence of justification, which survives in Northern Ireland, is very similar to the ‘truth’ defence in the 2013 Act, and therefore its essence can be understood by reading what 22.2 in *McNae’s* says about the ‘truth’ defence. For example, the justification defence requires that the published material complained of can be proved in court to be substantially true, and the standard of proof needed for the defence to succeed is that used in civil cases - the material must be proved true ‘on the balance of probabilities’.

**The honest comment defence survives in Northern Ireland**

The common law defence of ‘honest comment’, formerly known as ‘fair comment’, which survives in Northern Ireland is similar to the ‘honest opinion’ defence in the 2013 Act, described in 22.3 in *McNae’s*. But it should be noted that the main requirements of ‘honest comment’ differ in some respects from those of ‘honest opinion’.

The main requirements of the ‘honest comment’ defence are:

* the published comment must be the honestly held opinion of the person making it (though it may have been published by another party);
* it must be recognisable (that is, to the reader/viewer/listener) as comment rather than as a factual allegation;
* it must be based on provably true facts or privileged material;
* it must explicitly or implicitly indicate, at least in general terms, the facts on which it was based. But the facts might also be so widely known that this is not necessary; and
* the subject commented on must be a matter of public interest.

All these requirements must be met if the defence is to succeed. The third bullet point shows why the justification and privilege defences underpin it.

**Absolute privilege in Northern Ireland**

The defence of absolute privilege for court reporting is 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. The 2013 Act extended this privilege, as regards material published in England and Wales, to a report of a court hearing held anywhere in the world under the law of any nation or territory. There is explanation in 22.5 in *McNae’s* that the general requirements of this defence, in Northern Ireland as well as England and Wales, are that the report is of proceedings held in public, and that the report is fair, accurate and published contemporaneously.

**Qualified privilege in Northern Ireland**

Because Northern Ireland has not adopted the 2013 Act, the scope of the statutory defence of qualified privilege in schedule 1 of the Defamation Act 1996 does not have the amendments made by the 2013 Act.

Below is the text of Parts 1 and 2 of the schedule, paras 1 - 15, as it remains law in Northern Ireland. The general requirements of this defence are explained in 22.7 in *McNae’s.* Note that parts of 22.7 in *McNae’s* describe the schedule as it is in force in England and Wales, as amended by the 2013 Act.

**Schedule 1 of the Defamation Act 1996 as in force in Northern Ireland**

**Part 1: Statements privileged without explanation or contradiction**

1. A fair and accurate report of proceedings in public of a legislature anywhere in the world.
2. A fair and accurate report of proceedings in public before a court anywhere in the world [para. 17 makes clear that this includes the European Court of Justice, the European Court of Human Rights, and any international criminal tribunal established by the United Nations or by an international agreement to which the UK is a party]
3. A fair and accurate report of proceedings in public of a person appointed to hold a public inquiry by a government or legislature anywhere in the world.
4. A fair and accurate report of proceedings in public anywhere in the world of an international organisation or an international conference. [para. 17 limits these definitions to a conference attended by representatives of two or more governments or an organisation of which two or more governments are members, including any committee or other subordinate body of such an organisation]
5. A fair and accurate copy of or extract from any register or other document required by law to be open to public inspection.
6. A notice or advertisement published by or on the authority of a court, or of a judge or officer of a court, anywhere in the world.
7. A fair and accurate copy of or extract from matter published by or on the authority of a government or legislature anywhere in the world.
8. A fair and accurate copy of or extract from matter published anywhere in the world by an international organisation or an international conference. [same definitions as for para. 4]

**Part 2: Statements privileged subject to explanation or contradiction**

1. (1) A fair and accurate copy of or extract from a notice or other matter issued for the information of the public by or on behalf of -
   1. a legislature in any member state [*of the European Union*] or the European Parliament;
   2. the government of any member state, or any authority performing governmental functions in any member state or part of a member state, or the European Commission;
   3. an international organisation or international conference.

(2) In this paragraph ‘governmental functions’ includes police functions.

1. A fair and accurate copy of or extract from a document made available by a court in any member state or the European Court of Justice (or any court attached to that court), or by a judge or officer of any such court.
2. (1) A fair and accurate report of proceedings at any public meeting or sitting in the United Kingdom of -
   1. a local authority or local authority committee;

(aa) in the case of a local authority which is operating executive arrangements, the executive of that authority or a committee of that executive

* 1. a justice or justices of the peace acting otherwise than as a court exercising judicial authority;
  2. a commission, tribunal, committee or person appointed for the purposes of any inquiry by any statutory provision, by Her Majesty or by a Minister of the Crown, a member of the Scottish Executive, the Welsh Ministers or the Counsel General to the Welsh Assembly Government, or a Northern Ireland Department;
  3. a person appointed by a local authority to hold a local inquiry in pursuance of any statutory provision;
  4. any other tribunal, board, committee or body constituted by or under, and exercising functions under, any statutory provision.

(1A) In the case of a local authority which are operating executive arrangements, a fair and accurate record of any decision made by any member of the executive where that record is required to be made and available for public inspection by virtue of [section 22](http://www.lexisnexis.com/uk/legal/search/runRemoteLink.do?langcountry=GB&linkInfo=F%23GB%23UK_ACTS%23section%2522%25sect%2522%25num%252000_22a%25&risb=21_T12654970898&bct=A&service=citation&A=0.6207412922104997) of the Local Government Act 2000 or of any provision in regulations made under that section.

(2) In sub-paragraphs (1)(a), (1)(aa) and (1A)

‘local authority’ means

1. in relation to England and Wales, a principal council within the meaning of the [Local Government Act 1972,](http://www.lexisnexis.com/uk/legal/search/runRemoteLink.do?langcountry=GB&linkInfo=F%23GB%23UK_ACTS%23num%251972_70a_Title%25&risb=21_T12654970898&bct=A&service=citation&A=0.8874518255254527) any body falling within any paragraph of section 100J(1) of that Act or an authority or body to which the [Public Bodies (Admission to Meetings) Act 1960](http://www.lexisnexis.com/uk/legal/search/runRemoteLink.do?langcountry=GB&linkInfo=F%23GB%23UK_ACTS%23num%251960_67a_Title%25&risb=21_T12654970898&bct=A&service=citation&A=0.47259418628392724) applies,
2. in relation to Scotland, a council constituted under section 2 of the Local Government etc (Scotland) Act 1994 or an authority or body to which the [Public Bodies (Admission to Meetings) Act 1960](http://www.lexisnexis.com/uk/legal/search/runRemoteLink.do?langcountry=GB&linkInfo=F%23GB%23UK_ACTS%23num%251960_67a_Title%25&risb=21_T12654970898&bct=A&service=citation&A=0.30157837893368433) applies,
3. in relation to Northern Ireland, any authority or body to which sections 23 to 27 of the Local Government Act (Northern Ireland) 1972 apply; and

‘local authority committee’ means any committee of a local authority or of local authorities, and includes -

1. any committee or sub-committee in relation to which [sections 100A](http://www.lexisnexis.com/uk/legal/search/runRemoteLink.do?langcountry=GB&linkInfo=F%23GB%23UK_ACTS%23section%25100A%25sect%25100A%25num%251972_70a%25&risb=21_T12654970898&bct=A&service=citation&A=0.6106795518891981) to [100D](http://www.lexisnexis.com/uk/legal/search/runRemoteLink.do?langcountry=GB&linkInfo=F%23GB%23UK_ACTS%23section%25100D%25sect%25100D%25num%251972_70a%25&risb=21_T12654970898&bct=A&service=citation&A=0.6713624871447834) of the Local Government Act 1972 apply by virtue of section 100E of that Act (whether or not also by virtue of section 100J of that Act), and
2. any committee or sub-committee in relation to which [sections 50A](http://www.lexisnexis.com/uk/legal/search/runRemoteLink.do?langcountry=GB&linkInfo=F%23GB%23UK_ACTS%23section%2550A%25sect%2550A%25num%251973_65a%25&risb=21_T12654970898&bct=A&service=citation&A=0.12213725671283326) to [50D](http://www.lexisnexis.com/uk/legal/search/runRemoteLink.do?langcountry=GB&linkInfo=F%23GB%23UK_ACTS%23section%2550D%25sect%2550D%25num%251973_65a%25&risb=21_T12654970898&bct=A&service=citation&A=0.06936723784820775) of the Local Government (Scotland) Act 1973 apply by virtue of section 50E of that Act.

(2A) In sub-paragraphs (1) and (1A) ‘executive’ and ‘executive arrangements’ have the same meaning as in [Part II](http://www.lexisnexis.com/uk/legal/search/runRemoteLink.do?langcountry=GB&linkInfo=F%23GB%23UK_ACTS%23part%25II%25num%252000_22a%25&risb=21_T12654970898&bct=A&service=citation&A=0.563520108211611) of the Local Government Act 2000.

(3) A fair and accurate report of any corresponding proceedings in any of the Channel Islands or the Isle of Man or in another member state.

1. (1) A fair and accurate report of proceedings at any public meeting held in a member state.

(2) In this paragraph a ‘public meeting’ means a meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of a matter of public concern, whether admission to the meeting is general or restricted.

1. (1) A fair and accurate report of proceedings at a general meeting of a UK public company.

(2) A fair and accurate copy of or extract from any document circulated to members of a UK public company -

* 1. by or with the authority of the board of directors of the company,
  2. by the auditors of the company, or
  3. by any member of the company in pursuance of a right conferred by any statutory provision.

(3) A fair and accurate copy of or extract from any document circulated to members of a UK public company which relates to the appointment, resignation, retirement or dismissal of directors of the company.

(4) In this paragraph ‘UK public company’ means –

(a) a public company within the meaning of [section 4(2)](http://www.lexisnexis.com/uk/legal/search/runRemoteLink.do?langcountry=GB&linkInfo=F%23GB%23UK_ACTS%23section%254%25sect%254%25num%252006_46a%25&risb=21_T12654970898&bct=A&service=citation&A=0.6334775067653341) of the Companies Act 2006 or

(b) a body corporate incorporated by or registered under any other statutory provision, or by Royal Charter, or formed in pursuance of letters patent.

(5) A fair and accurate report of proceedings at any corresponding meeting of, or copy of or extract from any corresponding document circulated to members of, a public company formed under the law of any of the Channel Islands or the Isle of Man or of another member state.

1. A fair and accurate report of any finding or decision of any of the following descriptions of association, formed in the United Kingdom or another member state, or of any committee or governing body of such an association -
   1. an association formed for the purpose of promoting or encouraging the exercise of or interest in any art, science, religion or learning, and empowered by its constitution to exercise control over or adjudicate on matters of interest or concern to the association, or the actions or conduct of any persons subject to such control or adjudication;
   2. an association formed for the purpose of promoting or safeguarding the interests of any trade, business, industry or profession, or of the persons carrying on or engaged in any trade, business, industry or profession, and empowered by its constitution to exercise control over or adjudicate upon matters connected with the trade, business, industry or profession, or the actions or conduct of those persons;
   3. an association formed for the purpose of promoting or safeguarding the interests of a game, sport or pastime to the playing or exercise of which members of the public are invited or admitted, and empowered by its constitution to exercise control over or adjudicate upon persons connected with or taking part in the game, sport or pastime;
   4. an association formed for the purpose of promoting charitable objects or other objects beneficial to the community and empowered by its constitution to exercise control over or to adjudicate on matters of interest or concern to the association, or the actions or conduct of any person subject to such control or adjudication.
2. (1) A fair and accurate report of, or copy of or extract from, any adjudication, report, statement or notice issued by a body, officer or other person designated for the purposes of this paragraph -
   1. for England and Wales, by order of the Lord Chancellor
   2. for Scotland, by order of the Secretary of State, and
   3. for Northern Ireland, by order of the Department of Justice in Northern Ireland.

[sub-paras 2 and 3 specify the procedure by which such orders shall be made]

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**Open justice and procedure for exclusion or restriction**

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 provision to protect open justice

However, the guide to reporting restrictions published in 2019 by the Judicial Studies Board of Northern Ireland 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 restricted in what they can report about the proceedings – for example, decisions on anonymity orders.

Case law cited in the guide in this context 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. Statutes cited in the guide which apply to all of the UK, such as the Contempt of Court Act 1981, 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 16.3 in *McNae’s*.

The guide also says 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.

The judge should hear media representations as soon as possible, whether about the imposition of any order under consideration or the lifting or variation of any reporting restriction, the guide says.

It 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 media organisations get lists of forthcoming criminal cases, and of the public listing of civil cases.

For the Board’s guide, see Useful Websites, below. 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 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.

See too, below, for law on open justice in preliminary hearings, and see below in 37.4 for detail of law setting out or affecting reporting restrictions which do or may operate in Northern Ireland, including in cases concerning children.

**Challenges in court**

See in 16.6 in *McNae’s* on 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.

**Open justice - journalists’ access to case material**

The Board’s guide acknowledges that the (English and Welsh) Court of Appeal in the *Guardian News and Media* established a presumptive right in common law for a journalist to have access to 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, such as that it would help the reporting of the case. 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 that this presumptive 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 15.16 and 15.23 in *McNae’s* about the effect of the *Guardian News and Media* judgment and of the Supreme Court’s judgment in *Cape Intermediate Holdings*. The latter upheld that presumptive right and set out principles for courts to apply when they consider requests by non-parties, including journalists, for copies of 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.

**Open justice: 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 12.3 in *McNae’s* about law in England and Wales on ‘live text communication’ from courtrooms. For the Practice Note in full - see Useful Websites, below

**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 15.9 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.

**Open justice: one journalist must 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 or trafficking offence, or where there are grounds for believing that the witness has been or may be intimidated, but must permit one reporter to remain in court when that witness gives evidence. For the analogous law applying in England and Wales, see 15.4 in *McNae’s*. For anonymity law in sexual and human trafficking offence cases, see 37.4.5, below.

**Open justice: youth courts**

Article 27 of the Criminal Justice (Children) (Northern Ireland) Order 1998 says that the 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.

**Criminal court procedure in Northern Ireland**

**Bail**

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 (e.g. 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, 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.

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 below for guidance on bail issued by Northern Ireland’s Courts and Tribunals Service.

**Preliminary hearings**

A committal hearing is a type of preliminary hearing in which, after a person is charged with an indictable offence, a district judge (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. Committal hearings have been abolished in England and Wales. There is explanation in 6.1 of *McNae’s* ofthe terms ‘indictable’ and ‘indictable-only’ and 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 magistrates or a district judge decide, in the allocation procedure, that the case is too serious to be tried in the magistrates’ court.

**The planned reform of preliminary hearings**

Northern Ireland has retained committal hearings in its magistrates’ courts. But reforms in the Justice Act (Northern Ireland) 2015 will, when in force, streamline the process.

There will still be two types of committal hearing - a ‘preliminary investigation’ or a ‘preliminary inquiry’. In the former type there is oral evidence given by witnesses, who can be cross-examined, 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.

Law in the Act will mean that a ‘preliminary investigation’ will only take place if the district judge makes a direction to this effect, because he/she rules this is in the ‘interests of justice’ (whereas under current law a defendant can insist on there being a ‘preliminary investigation’ – that is, that witnesses must attend to be questioned - rather than a ‘preliminary inquiry’). Under the Act, a defendant can apply for the direction to be made. Otherwise, or if the application is not granted, there will be a ‘preliminary inquiry’.

The reform is to reduce the number of indictable cases in which witnesses have to give evidence at the preliminary stage. Testifying in court can be a daunting and traumatic experience, especially if the witness is the alleged victim of the offence. The reform is intended to ensure that in most contested cases a witness will give oral evidence only once – at the trial. Also, ‘preliminary investigations’ are difficult to organise, and costly. In the Act defendants will retain the right to make oral representations in a ‘preliminary inquiry’, and there is provision too for a witness to be required to give oral evidence to ‘preliminary inquiry’ if the district judge decides this is ‘in the interest of justice’.

**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.

See 37.4.1 in *McNae’s* for restrictions which automatically or may limit a media report of a committal hearing which is a ‘preliminary investigation’ or ‘preliminary inquiry’. See Useful Websites, below, for the 1981 Order.

The Magistrates' Courts Rules (Northern Ireland) 1984 say in rule 26 (4) that at a ‘preliminary investigation’ hearing the clerk ‘shall make public the nature of the charges by reading aloud and in full at least one charge in each category of the offence charged’. Rule 34 (6) says this should be done too at a ‘preliminary inquiry’ hearing.

Rule 35 (2) 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. Other rules give the court discretion to order that the statement’s contents be read aloud. See Useful Websites, below, for the 1984 rules and 1981 Order.

**The plan for ‘direct committals’**

A part of the Justice Act (Northern Ireland) 2015, when that part is in force, will enable Northern Ireland’s magistrates’ courts to use ‘direct committal’ procedure to send some categories of indictable cases straight to Crown court, beginning with murder and manslaughter cases. Direct committal means there is no consideration in the magistrates’ court of the strength of the evidence, so there will be no ‘preliminary investigation’ or ‘preliminary inquiry’. 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 and 8.3 in *McNae’s*.

The ‘direct committal’ procedure, when the relevant part of the 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. 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.

**37.4 Reporting restrictions**

*NB: Reporting restrictions which do or may apply in respect of preliminary hearings at Northern Ireland’s magistrates’ courts are covered in 37.4.1 of the McNae’s book.*

It is a criminal offence - punishable by a fine – to breach a reporting restriction, and if it is one imposed under the Contempt of Court Act 1981 and the breach is proved to be contempt, the person ruled to be responsible could be jailed for up to two years and/or fined.

**37.4.2 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. Another set, applying to reports of unsuccessful applications for dismissal of charges in cases in which a child is due to give evidence, are in paragraph 5 of Schedule 1 of the Children’s Evidence (Northern Ireland) Order 1995.

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.

For these automatic restrictions, see 9.4 in *McNae’s* for their format as set out in the 1996 Act or, as regards the other sets, their format as set out identically in analogous law in England and Wales. Note what is said there about the need for the journalist to check with the court if there is any doubt about which category of hearing is to be reported.

*See 37.4.2 in the McNae’s book about reporting restrictions automatically applying in respect of a prosecution appeal against a ruling by a Crown court judge which terminates the trial (a ruling which could in effect acquit the defendant).*

**Section 46 anonymity orders for witnesses**

# The Magistrates' Courts Rules (Northern Ireland) 1984, as amended by The Magistrates' Courts (Amendment No. 2) Rules (Northern Ireland) 2004, set out procedure for the making of an anonymity order for a witness under section 46 of the Youth Justice and Criminal Evidence Act 1999, and how a challenge to the continuation of such an order can be initiated. That anonymity provision and grounds on which its imposition or continuation can be opposed are explained in 12.9 and 16.12 in *McNae’s.*

The guide to reporting restrictions issued in 2019 by Judicial Studies Board covers section 46 anonymity – see Useful Websites, below, for the guide.

**Remember!** Whenever the law automatically or a court by making an order gives a person anonymity in respect of an alleged crime and/or a court case, anyone publishing a report of or reference to the crime or case 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* about this danger of illegality.

**37.4.3 Juveniles in court**

In 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 about children. The similarities with Northern Ireland law mean that explanation in *McNae’s* should be helpful. But note than in *McNae’s* the term ‘juvenile’ is often used – for convenience - to refer to someone aged under 18. A person in this age group may in relevant English and Welsh statute be referred to as a child or ‘young person’.

In Northern Ireland, as in England and Wales, it is a criminal offence - punishable by a fine - 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, with reference to *McNae’s*, 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 **Challenging in Courts**, above, for method of challenge.

**Anonymity for children concerned in youth court cases**

Article 22 (2) of the Criminal Justice (Children) (Northern Ireland) Order 1998 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 juveniles concerned in civil proceedings and inquests. Reading 10.5 in *McNae’s,* which explains section 39, gives context.

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 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.

The 1998 Order is online – see Useful Websites, below.

**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 16.11 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.

It can be construed from a decision of the (England and Wales) Court of Appeal that the anonymity automatically ceases to apply when the child reaches the age of 18 - see 10.3.5in *McNae’s*.

**Discretionary power to bestow anonymity for children in other criminal courts**

Article 22 (1) of the Criminal Justice (Children) (Northern Ireland) Order 1998 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

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 the proceedings’ is the same as for Article 22 (2) anonymity, see above. 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 Article 22 (2) anonymity (in youth court cases), 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 above – 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 above.

There is case law from England and Wales outlined in 16.10 in *McNae’s* which can be cited in Northern Ireland, providing grounds on which a journalist can challenge the imposition or continuation of an Article 22 (1) order. The fact that such case law can apply in Northern Ireland is recognised in the guidance on reporting restrictions issued by the Judicial Studies Board - see Useful Websites, below.

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 16.10.1.6 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 10.4.1.1in *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.

**Anti-social behaviour orders imposed on children**

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](http://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.

*ASBO applications in civil proceedings in magistrates’ or county courts*

An (adult) magistrates’ court, sitting in civil proceedings, can impose an ASBO on an adult or child, if persuaded to do so by an application by, for example, a local authority, the Northern Ireland Housing Executive or the police. County courts have similar powers to make ASBOs.

There is no automatic ban on the media identifying a child in a report of an ASBO application in a magistrates or county court, whether or not it results in an ASBO. But Article 8 (1) of the Anti-Social Behaviour (Northern Ireland) 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 above: 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.

*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 Criminal Justice (Children) (Northern Ireland) Order 1998, explained above, 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 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 juvenile. See above 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 to 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](http://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).

*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, above.

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 - meaning it can then be reported as being part of the ASBO application.

*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 above, 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 juvenile defendants in youth court proceedings as regards any charge of breach of an ASBO. But this section does not apply to Northern Ireland. Nevertheless, the media could choose to challenge the continuation of Article 22 (2) anonymity by arguing that it is in the public interest for it to be lifted - see above and the Additional Material for ch. 10 on www.mcnaes.com.

**Anonymity provision for children in civil courts and inquests**

Article 170 (7) of [the Children (Northern Ireland) Order 1995](http://www.legislation.gov.uk/nisi/1995/755/contents) 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 16.10.2 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. 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 a child.

The 1995 Order is online – see Useful Websites, below.

**37.4.4 Domestic proceedings and family cases**

An automatic restriction in Article 170 (2) of The [Children (Northern Ireland) Order 1995](http://www.legislation.gov.uk/nisi/1995/755/contents) 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 14.4in *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 is prosecuted for breach of the anonymity provision in the 1995 Order it will be a defence to 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.

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 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.

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 below, 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, below 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, below.

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 and applications for non-molestation orders to protect a woman from domestic violence. But Article 89 says 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 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.

* 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 above, and so the child and therefore his/her family cannot be identified in any report as being involved in the case.

Also, 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.

For the 1981 Order- see Useful Websites, below.

**Reporting restrictions for private hearings in 1960 Act**

As explained in 12.7 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 a range of family law cases, and cases involving mental health, mental incapacity and national security.

As indicated above, in Northern Ireland a journalist may be permitted to attend a family case by a judge to be an observer. 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 extended version of ch. 14 on this website, which refers to family cases in England, 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 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.’

**37.4.5 Sexual, human trafficking, female genital mutilation and forced marriage offences**

The Sexual Offences (Amendment) Act 1992 automatically bans publication of material which identifies or is likely to identify a person during their lifetime as being a victim/alleged victim of a sexual offence - see 11.1 -11.2 and 11.5 in *McNae’s.* The same Act also automatically bans publication of material which identifies or 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 11.2.3 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, below, 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 sexual or 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*.*

Law also automatically bans publication of material which identifies or is likely to identify a person during their lifetime as being a victim/alleged victim of 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 11.5 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.

As in England and Wales, in Northern Ireland it is illegal to publish material which identifies or 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.

**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. As explained in 16.7 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.

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 16.7 in *McNae’s* about these rights and 16.9 about the ‘real and immediate’ risk criterion. *The Belfast News Letter* (26 January 2013) said it was ‘unprecedented’ for anonymity to be granted to a defendant on this ground. The man sought the injunction in legal action against court reporter Paul Higgins. Northern Ireland’s Courts and Tribunals Service joined Mr Higgins in the unsuccessful attempt to oppose it being made. Mr Higgins also had support from the National Union of Journalists.

In 2013 *The Belfast Telegraph* reported on 26 July that there had been a ‘surge’ in use of orders banning the identification of defendants. In the first six months of that year, 31 defendants had been granted anonymity by means of orders made under section 11 of the Contempt of Court Act 1981, the newspaper said. These included defendants facing drugs charges in the Londonderry area, for whom anonymity was granted because of alleged threat to their lives from the ‘Republican Action Against Drugs’ group. For explanation of section 11 orders and grounds on which anonymity for defendants can be opposed, see 12.6, 16.8 and 16.9 in *McNae’s*.

In August 2015 District Judge Fiona Bagnall ruled that a ban preventing the media from identifying a woman charged with murdering her baby should stay in place, after hearing medical evidence that if coverage of the case identified her it would increase the risk of her committing suicide (*The Belfast News Letter*, 19 August 2015). The ban also meant that the dead baby could not be identified.

In 2016 a district judge at Derry magistrates’ court made an anonymity order for a man accused of supplying heroin (*Derry Journal*, 11 May 2016).

**37.4.5.1 Identifying defendants in sexual offence cases**

It was revealed in 2014 that 61 alleged sex offenders had been granted anonymity by Northern Ireland judges making orders, purportedly using the Sexual Offences (Amendment) Act 1992. But as explained in 16.13 in *McNae’s,* 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 – see 10.8.1and 11.1.3in *McNae’s*). Northern Ireland’s Lord Chief Justice carried out a review of the 61 orders, which led to 15 being deemed invalid. But *The Belfast Telegraph* reported on 24 April 2014 that the rest remained in place.

In August 2014 a district judge used section 11 of the Contempt of Court Act 1981 to temporarily ban the media from identifying a solicitor accused of indecent assault. The ban was later lifted. He was convicted (*Ulster Star,* 21 January 2015; *The Belfast Telegraph*, 29 August 2014).

**Inquests in Northern Ireland**

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. 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 – see 12.4 and 17.10 in *McNae’s* for law in England and Wales which is almost identical. A coroner can make an order under section 11 of the 1981 Act or common law to provide anonymity for a witness – see 12.6 and 17.10 in *McNae’s*. Other law automatically bans any photography or filming in a coroner’s court or its precincts- see 37.4.5.3 in *McNae’s.* Media reports of inquest proceedings, because these are court proceedings, are protected in defamation law by absolute privilege or qualified privilege, if the relevant defence’s requirements are met (see above, **37.2 Defamation law**)

As in England and Wales, some inquests in Northern Ireland consider if historic, found objects are ‘treasure’ – see Useful Websites, below.

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.

**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. In most circumstances it is illegal to identify a person as being or having been a juror in Northern Ireland – see 37.4.5.2 in *McNae’s.*

**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).

**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. See above, **Open justice - journalists’ access to case material,** about the *Guardian News and Media* and *Cape Intermediate Holdings* judgments.A journalist applying to a coroner to see written evidence 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 case material to help them report the court’s proceedings if it has been referred to in open court.

For context, see 17.5.4.2 in *McNae’s* about the Chief Coroner’s guidance in England and Wales*.*

**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.

**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 the extended version of ch. 18 on this website. In Northern Ireland too the chair of such a tribunal is legally trained and is known as an ‘employment judge’, 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, below.

The Industrial Tribunals and Fair Employment Tribunal (Constitution and Rules of Procedure) Regulations (Northern Ireland) 2020, which is a statutory instrument, contains sets of procedural rules. 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.

Both these types of tribunal are courts. Therefore, it is illegal to take photographs of or to film their hearings, and creating such images of the parties in the venue’s precincts is illegal too – see in 37.4.5.2 in *McNae’s.* For other significance of this court status as regards laws of defamation and contempt of court when journalists cover tribunal cases, see 18.5 and 18.6 in the extended version of ch. 18 on this website – for example, it is illegal to audio-record a tribunal’s hearing unless it permits this, and illegal to take photographs or film the hearing or the people involved when they are in the venue’s precincts.

**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 above: **Open justice – journalists’ access to case material**

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.

The rules are online – see Useful Websites, below.

**Tribunal reporting restrictions**

Rule 44 says that a 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 from any person 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 person’s business or employer
* 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 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. 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 18.7.5. in the Additional Material for ch. 18 on [www.mcnaes.com](http://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. 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 identifies, or 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 – see 37.4.5, above.

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 which, for example, can require that all or part of the tribunal’s reasons for its decisions in the case be kept secret. 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

**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).

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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, below.

**Codes of regulators**

The Editors’ Code of Practice applies to media organisations which are Ipso members in Northern Ireland, and the Impress Code applies to its 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.

**Useful Websites**

[**https://www.justice-ni.gov.uk/publications/court-rules-publications**](https://www.justice-ni.gov.uk/publications/court-rules-publications)

Rules for courts in Northern Ireland

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

Northern Ireland Courts and Tribunals Service guidance on bail

[**https://judiciaryni.uk/judicial-decisions/practice-direction-12016**](https://judiciaryni.uk/judicial-decisions/practice-direction-12016)

Practice Note 1 of 2016

[**https://judiciaryni.uk/publications/reporting-restrictions**](https://judiciaryni.uk/publications/reporting-restrictions)

Judicial Studies Board for Northern Ireland guide to reporting restrictions

[**https://www.legislation.gov.uk/nisi/1981/1675/contents**](https://www.legislation.gov.uk/nisi/1981/1675/contents)

Magistrates Courts’ (Northern Ireland) Order 1981

[**https://www.legislation.gov.uk/nisr/1984/225/contents/made**](https://www.legislation.gov.uk/nisr/1984/225/contents/made)

Magistrates' Courts Rules (Northern Ireland) 1984

[**http://www.legislation.gov.uk/nisi/1998/1504/contents**](http://www.legislation.gov.uk/nisi/1998/1504/contents)

The Criminal Justice (Children) (Northern Ireland) Order 1998

[**http://www.legislation.gov.uk/nisi/1995/755/contents**](http://www.legislation.gov.uk/nisi/1995/755/contents)

The [Children (Northern Ireland) Order 1995](http://www.legislation.gov.uk/nisi/1995/755/contents)

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

[**http://www.legislation.gov.uk/nia/2015/2/contents**](http://www.legislation.gov.uk/nia/2015/2/contents)

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

**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**](https://www.nidirect.gov.uk/articles/archaeology-and-treasure)

Official guidance on treasure

[**https://www.employmenttribunalsni.co.uk/**](https://www.employmenttribunalsni.co.uk/)

Industrial tribunals and the fair employment tribunal

[**http://www.legislation.gov.uk/nisr/2020/3/contents/made**](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**](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**](https://employmenttribunalsni.co.uk/OITFET_IWS/DecisionSearch.aspx)

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