

Roundtable on the end point for anonymity for child victims

April 2024

Roundtable on the end point for anonymity for child victims

Report

1. The Cabinet Secretary for Justice and Home Affairs chaired a roundtable on the end point for anonymity for child victims on 20 February 2024 in Edinburgh.
2. The purpose of the event was to bring together experts from across the legal profession, justice agencies, academia, media, third sector and government to participate in an evidence-led discussion. This was intended to inform the Scottish Government's response to questions around the end point of anonymity that were raised in the context of the Children (Care and Justice) (Scotland) Bill¹ and the Victims, Witnesses, and Justice Reform (Scotland) Bill².
3. The following individuals and representatives took part in the roundtable:
 - **Angela Constance MSP** (chair), Cabinet Secretary for Justice and Home Affairs
 - **Julianna Cartwright**, Faculty of Advocates
 - **Cheryl Clark**, Crown Office and Procurator Fiscal Service, Children and Equalities Team
 - **Natalie Don MSP**, Minister for Children, Young People and Keeping the Promise
 - **Anna Donald**, Scottish Government
 - **Carol Eden**, Victim Support Scotland
 - **Megan Farr**, Children and Young People's Commissioner Scotland
 - **Russell Findlay MSP**, Scottish Conservative's justice spokesperson
 - **Mary Glasgow**, Children 1st
 - **Ross Greer MSP**, member of the Education, Children and Young People Committee
 - **Ruth Maguire MSP**, member of the Education, Children and Young People Committee
 - **Brendan McGinty**, Independent Press Standards Organisation
 - **Nick McGowan-Lowe**, National Union of Journalists
 - **Anthony McIlvaney**, Children and Young People's Commissioner Scotland

¹ [Children \(Care and Justice\) \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](#)

² [Victims, Witnesses, and Justice Reform \(Scotland\) Bill – Bills \(proposed laws\) – Scottish Parliament | Scottish Parliament Website](#)

- **John McLellan**, Newsbrands Scotland
 - **Pauline McNeil MSP**, Scottish Labour’s justice spokesperson
 - **ACC Wendy Middleton**, Police Scotland, Criminal Justice Services Division
 - **Audrey Nicoll MSP**, convener of the Criminal Justice Committee
 - **Jules Oldham**, Scottish Women’s Aid
 - **Stephanie Ross**, Crown Office and Procurator Fiscal Service, Children and Equalities Team
 - **Patricia Thom**, Law Society of Scotland
 - **Dr Andrew Tickell**, Glasgow Caledonian University
 - **Kate Wallace**, Victim Support Scotland
 - **Sue Webber MSP**, convener of the Education, Children and Young People Committee
4. The format of the event saw introductory remarks by the Cabinet Secretary, followed by contributions from Kate Wallace of Victim Support Scotland, Dr Andrew Tickell of Glasgow Caledonian University and Nick McGowan-Lowe of the National Union of Journalists. The floor was then opened for a discussion held under the Chatham House Rule, meaning it was agreed the discussion could be reported upon, but any report would be unattributed.
5. This report summarises the Cabinet Secretary’s introductory remarks, the contributions from the three speakers and the subsequent discussion. It then sets out the Scottish Government’s next steps, which have been informed by the discussion at the roundtable, as well as our research on anonymity in other jurisdictions and representations from people with lived experience.

Criminal Justice Division

Scottish Government

March 2024

Part 1: Account of the Roundtable

Background and introductory remarks by the Chair, Cabinet Secretary for Justice and Home Affairs

6. The Cabinet Secretary set out the need for the discussion to be evidence-based and open and frank, given the sensitivities involved. She noted that it was essential to discuss the high-level principles involved, including the right to privacy, recovery, freedom of expression and the principle of open justice. But that it was equally important to recognise the key impact as being the tangible effect on people who had already experienced the massive trauma of losing a child in the most horrendous circumstances.
7. The Cabinet Secretary recognised the wide range of interests and views represented around the table, indicative of the wide range of interests and individuals the subject touches on, and the challenge this brings in scrutinising the impact that any developments would have on these areas and individuals.
8. The Cabinet Secretary set out the importance of learning from the experience of other jurisdictions and the different approaches to anonymity that have been legislated for, to ensure we empower those bereaved families who want to speak about their loved ones to do so freely, without risk or fear of criminalisation.
9. She also noted that the importance of open justice - of justice being seen to be done – must not be downplayed, and we should recognise the role of media reporting in ensuring society both recognises and condemns any act of violence against a child.
10. The Cabinet Secretary explained the purpose of the discussion as being to gather and exchange views, learn from the different areas of expertise around the table and collectively look for ways in which we can better address the concerns that have been raised while respecting the principles of open justice and freedom of expression. One such avenue that she was keen to explore was working with victim support organisations and media representatives to develop a toolkit for those reporting on homicides.

Contribution from Kate Wallace, Victim Support Scotland

11. Ms Wallace set out the background to Victim Support Scotland's (VSS) campaign for anonymity for deceased child victims. VSS was approached by a bereaved parent whose child's death, a number of years on from their murder, was still the

subject of unwanted, intrusive and traumatising media coverage for the parent and their family.

12. VSS had supported the bereaved parent to meet with the Children and Young People's Commissioner for Scotland and the Cabinet Secretary for Justice and Home Affairs.
13. Ms Wallace provided examples of the type of media coverage that a simple online search would produce. Particularly traumatising for bereaved families was the constant juxtaposition of their loved one's picture alongside the person responsible for their death. A further source of distress was the level of detail published, for example, graphic accounts of the harm inflicted on their child and diagrams of their final movements.
14. Ms Wallace emphasised that siblings should not be exposed to this sort of graphic detail – as a consequence, parents have been forced to stop their children accessing the internet for homework and other normal childhood activities for fear of them coming across distressing content and imagery.
15. VSS considers a media toolkit³ to be a positive action but does not consider it the full answer, given it will not address the activities of non-traditional publishers, such as true crime bloggers on social media.
16. Ms Wallace showed attendees an anonymised video from a bereaved parent who described their experience following the murder of their child.
17. The parent set out how the coverage of their child's death was a source of ongoing trauma to them and their family. They explained the lack of privacy: with cameras being thrust into their face, their child's funeral or visits to their shrine not being private, finding things out via the media before their family liaison officer had the opportunity to update them. All this meant their grief and pain was not private and is still not allowed to be private. It also felt very exploitative.
18. The parent described wanting to protect their other child from what was happening, but the intrusion and coverage made that extremely difficult. Details such as their deceased child's name, age, school, area they lived, and their face were all public knowledge. They could not go to the local shops as people would openly discuss the case in front of the victim's young sibling. This attention led to the family moving house, but it continued, leaving them feeling house-bound and unable to watch live TV. Family and friends were contacted by the media and their other child has been targeted at school. This child is now at an age where

³ A media toolkit is a resource to support journalists and editors reporting on a specific topic. Examples discussed at the roundtable included the [Media Guidelines on Violence Against Women](#) produced by Zero Tolerance, with input from the NUJ and others.

they can go out on their own so have a phone – however, this means that they can be at the park with friends and an article about their sibling pops up and their freedom and glimpse of a normal childhood is gone. It has also had a negative impact on the parent's own mental health.

19. The parent also described having to actively seek the removal of media content including TikTok videos, a documentary on a national TV channel and streaming service and the redaction of an appeal judgement that identified the victim and contained graphic details of the circumstances of their death.
20. Ms Wallace urged attendees not to take the human aspect out of policy and legislation and noted that children who are affected by other types of crime are afforded anonymity but not if they die as a result of crime.
21. Ms Wallace gave some context in terms of the number of cases involved. There were 52 homicides in Scotland last year - but an average of 3 children die as a result of crime each year.
22. Ms Wallace highlighted the importance of listening to the voice of lived experience, referencing an open letter from 65 bereaved individuals to the First Minister and Cabinet Secretary calling for anonymity for deceased child victims. This was accompanied by a letter from 16 third sector organisations and an online petition.
23. She also emphasised impact on surviving children, who have the right to a childhood, and the need to give bereaved families choice and control over what information about their child is made public.
24. VSS acknowledges that there are challenges with implementing such a policy but believe none of those challenges are insurmountable. Ms Wallace suggested that there were various legislative opportunities to take forward the changes requested and ensure that the best interests of surviving siblings are paramount.

Contribution from Dr Andrew Tickell, Glasgow Caledonian University

25. Dr Tickell set out what he intended to cover, namely the context, specific issues and examples of international practice that have emerged, and the challenges that would need addressing if we were to legislate in this area.
26. He explained that, since 2020, he had been looking at complainer anonymity in sexual offence cases and had looked at 20 jurisdictions, with a focus on the social media age and how we create anonymity that works. He noted that situations involving children have some important differences to those for adult

survivors of sexual offences, but that there is also read across from his examination of different jurisdictions.

27. Dr Tickell set out the current position in terms of the law on anonymity for child victims and the provisions in the Children (Care and Justice) (Scotland) Bill.
28. He highlighted that issues around jigsaw identification, where the victim is not named but can otherwise be identified by information published, raise much wider issues when it comes to child victims.
29. Dr Tickell explained that death is a public matter in a couple of different senses. Firstly, public authorities report that each of us has died and what we died of. Secondly, there is a social loss for the community to which the person belonged - their absence is noticed and will be discussed. Therefore, there is going to be widespread public knowledge about the fact something has happened.
30. Dr Tickell pointed to a couple of examples from the jurisdictions he had researched – Ireland and Victoria, Australia.
31. He explained that in Ireland in 2020, the courts adopted a radical reinterpretation of existing Irish law that meant deceased child victims were prevented from being identified. This caused a significant backlash - not from media organisations but from surviving families and victims of crime who said they wanted to talk publicly about the circumstances of the crime. There was a desire from families that identification of the perpetrator does not eclipse the memory of the victim. Consequently, Ireland repealed the restrictions on naming children.
32. Victoria adopted rules for victims of sexual crime that meant if they were deceased, they could not be identified without the bereaved family going to court to seek an order to do so. Without such an order, it was a crime for them to say in the media, for example, “that is my daughter, my sister, my son”. This led to protests from bereaved families as to why they should have to go to court to name their child or sibling as a victim. In response, restrictions on deceased person anonymity were removed.
33. Dr Tickell emphasised that, in creating reporting restrictions, we are creating crimes, and it is essential to be alert to this and realistic about the number of people within a community who would be curtailed or caught by reporting restrictions. He noted that the international examples underline the fact that anonymity provisions would make it illegal for a bereaved family member to go on social media and identify their child or sibling as a victim. It could also impact on friends or relatives who are aware that the victim has died and wish to post a message on social media expressing their grief and sympathy with the family.
34. Dr Tickell reflected that, whilst there are a small number of child homicide cases in Scotland every year, it would be a mistake to present it as simply a “perpetrator

versus family members” issue. Data shows that around two-thirds of child homicide victims are killed by a parent. A consequence of anonymity for child victims in such cases would be that the perpetrator would effectively accrue anonymity as a result of killing their own child.

35. Dr Tickell raised the issue of divided families and the challenge of what to do if family members disagree with one another on whether to waive anonymity. This might be particularly challenging where the child’s parents are no longer together, and a balance would have to be found in terms of their rights and those of any surviving siblings.
36. Dr Tickell noted that information is either in the public domain or it is not – there is very little in-between. He highlighted the challenge of keeping information entirely private, particularly given police investigations are public. He explained that when there is a child victim of kidnapping who is subsequently killed, that discovery is likely to have been preceded by a police appeal for information, identifying the missing child. On their discovery, the death will be reported, and it is very hard to see how jigsaw identification would not lead to their identification as a homicide victim.
37. He also set out the example from Victoria, Australia, where there were restrictions on reporting in place, but these were removed following protests from bereaved families and victim support organisations. The amended legislation provided for family members to apply to court for a victim privacy order – they can apply for an interim order and then a permanent order. Anonymity is not automatic but is potentially available. Dr Tickell noted that the Victorian scheme is not without problems, but it does offer one kind of solution.
38. Dr Tickell set out what he had identified as the four possible legislative options, namely:
 - 1) no anonymity for deceased child victims
 - 2) complete anonymity for deceased child victims
 - 3) automatic anonymity that can be waived on application to the court
 - 4) no automatic anonymity but with the option to apply to court for anonymity

Contribution from Nick McGowan-Lowe, National Union of Journalists

39. Mr McGowan-Lowe began by setting out the role of the National Union of Journalists (NUJ). The NUJ represents approximately 24,000 journalists and seeks to protect their livelihoods. It lobbies for ethical and economic frameworks in which responsible journalists can exist and thrive.

40. The NUJ is not a regulator but does have a code of conduct that was established in 1936. He explained that the DNA of the NUJ code had found its way into the codes of regulatory bodies, including the IPSO Editors' Code of Practice and the Impress Standards Code.
41. Mr McGowan-Lowe highlighted two clauses from the NUJ code that were particularly relevant to the discussion. The first being Clause 1, that a journalist, "at all times upholds and defends the principle of media freedom, the right of freedom of expression and the right of the public to be informed." The second is Clause 6, that a journalist, "does nothing to intrude into anybody's private life, grief or distress unless justified by overriding consideration of the public interest."
42. He acknowledged that these clauses can sometimes appear conflicting, and decisions must be made on a case-by-case basis, dependent on the specific circumstances involved.
43. Mr McGowan-Lowe explained that the role of journalists is to report on issues of public interest, and this will undoubtedly involve engaging with people experiencing grief and trauma. He noted that journalists are not amorphous and tend to be part of the community they report on.
44. He noted that in order for them to carry out their role responsibly and with accuracy, journalists will have to make contact with families to try and find out information. At the point they make contact, journalists often do not know how they will be received – it may be sympathetically, where people want to tell their story or, where grief is overwhelming, they may be viewed as adding to the family's distress. The way through that is tact and sensitivity.
45. Mr McGowan-Lowe noted that the involvement of the police has significantly improved things. For example, the police will liaise with the family regarding the release of photos of the victim, which reduces the trauma of the family receiving repeated requests.
46. Mr McGowan-Lowe highlighted that there is talk of legislation, but traditional media is already a heavily regulated industry with a great number of codes of practice. He pointed to the existing complaint mechanisms and the role that has in regulation. An example being a recent case where a journalist approached an individual who was the partner of someone involved in criminal proceedings and who had already said they did not want to co-operate with the press. IPSO ruled that the publication was in breach of the Editors' Code of Practice and the publication was chastised and required to publish the adjudication.
47. He noted that the approach to press freedom and the law had historically been a focus on self-regulation of the industry, rather than bringing in laws that would significantly change the outlook, circumstances and training of journalists.

48. Mr McGowan-Lowe warned that a change in law risked significantly hindering families who wanted to speak out. For example, those wishing to give a statement outside a court or to go on and lobby to change legislation when tragedies have happened.
49. He suggested that what is proposed is a blunt instrument that will hinder proper press reporting and any positive change that can possibly arise from a tragedy. Mr McGowan-Lowe questioned how next of kin would waive the restriction and what would happen when family members were estranged.
50. He noted that what is proposed recognises the problem but does not provide an effective solution to it and would have a fundamentally chilling effect. He added that reporting such as that which took place following the Dunblane tragedy would not be possible; though if something as tragic as that were to happen again it would immediately be the talk of the area and of social media.
51. Mr McGowan-Lowe highlighted the difference between news media and social media in terms of self-regulation. He suggested that any change in law affecting news media, which already has the aim of responsible journalism, would create a gap between reporting via legitimate news media and information published on social media, which would undoubtedly be filled with rumour and speculation. He questioned how social media would be policed in that respect.
52. Mr McGowan Lowe suggested that there are better ways forward than legislation. He noted that the NUJ takes a leading role in reporting on certain issues, for example, through the creation of guidelines on the reporting of domestic abuse. He added that the proper framing of issues is fundamental to enabling society to address and come to terms with tragic events and to work out what needs to be done in the aftermath of such an incident to address any issue raised.
53. Mr McGowan-Lowe noted that there had already been significant change in the past 25 years, though more can be done. He added that the legal changes proposed were too blunt an instrument and reiterated that they would have chilling effect.

DISCUSSION

A: Remarks on the current position

Bereaved families and children's rights

54. There was considerable discussion on the impact that media coverage can have on bereaved families, particularly the acute impact on any child siblings of the victim. It was also noted that the impact on a child where a sibling has been murdered by a relative can be exacerbated by exposure.
55. Some attendees described how, following a homicide, families can be unaware of what is to come and are often shocked by the nature and duration of the media attention, which they must deal with alongside their own grief. Bereaved families have expressed a desire for choice and control in relation to what information is made public.
56. One attendee highlighted a potential risk in relation to a surviving sibling's digital footprint. The sibling won't have any say in reporting; if they sought to establish a new life they could still be linked to reporting and this could lead to increased risks for that individual, particularly in the context of domestic violence.
57. Discussion also focussed on what was described as the right of a surviving sibling to a childhood and how this matter fits with a trauma-informed and rights-based justice framework for children. It was noted that there are Council of Europe guidelines on child-friendly justice, but these do not seem to apply to deceased children.

The press and other media

58. Attendees explored the differences between the regulation of the traditional news media and that of social media. Some attendees felt that, in general, the press is good at self-regulation. An example given was in the context of reporting on incest and the adoption of a non-statutory approach by the press to protect victims – with the perpetrator being named but the offence described as a sexual offence against a minor rather than incest. This helps prevent jigsaw identification of the victim given the nature of the crime.
59. It was acknowledged that, while an individual journalist approaching a family for comment can be in line with guidelines, an accumulation of interests and multiple approaches could be distressing and leave the family feeling under siege.

60. It was also suggested that, while it is possible to apply to companies such as Google for content to be removed, press standards and guidelines are frequently broken on social media. Attendees recognised that it can be very challenging to regulate bloggers and those who self-publish, some of whom are purposely provocative to increase their notoriety.

B: Remarks on possible future position

Possible options

61. Attendees explored some of the possible options to address the issues raised, including both statutory and non-statutory approaches. These included:

- maintaining the current position (i.e. anonymity does not apply to deceased child victims)
- automatic anonymity for deceased child victims with no option to waive
- automatic anonymity for deceased child victims with an option to apply to court for a waiver
- no automatic anonymity for deceased child victims but an option to apply to court for an anonymity order

62. There was discussion of how such approaches could work in practice. Some attendees felt that automatic anonymity with application to court for waiver was the preferred option, given once identifying information is in the public domain, it is difficult, if not impossible, for it to be completely retracted.

63. Other attendees felt that automatic anonymity with an application to court for waiver was inherently problematic due to issues such as requiring bereaved families to go to court to speak about their loved one, differing views within a family and the impact on freedom of expression and open justice – these discussion points are explored further on in this report.

64. There was also discussion of non-statutory options that could sit alongside any of the options set out above. This included reflections on the current role of regulators and how that could be built upon, with reference made to a recent ruling by IPSO which required a publication to publish the adjudication and undergo training on the Editors' Code.

Implications of the options

General

65. It was observed that there is a distinction to be made between contemporaneous reporting of events and that which follows in the aftermath, and how this might impact on bereaved families. It was also noted that it is important to consider real-life scenarios and the consequences - intended and unintended – of any legislative changes.

Waivers

66. With respect to automatic anonymity, there was discussion over how a waiver would work and who would be able to apply to court for a waiver. Some attendees suggested that an application process to waive anonymity could work if managed appropriately. There was also a suggestion that applications to the court to waive restrictions could be via a simple process akin to that for a warrant. Similarly, a simple process such as that could be used for anonymity order application, should anonymity not be automatic.
67. There was discussion regarding the challenges of asking a bereaved family to apply to court to talk publicly about their loved one, with some attendees concerned about the emotional and financial toll of applying to court, as had been borne out in other jurisdictions, and the time such an application process might take.
68. Attendees also touched on who should be able to apply for a waiver and, if there were differing views within a family, whose views should take precedence and on what grounds.

Enforcement

69. Attendees discussed the policing and enforcement of restrictions on reporting, in the short and longer term. Some attendees were concerned about the implications for, and practicalities of, policing a blanket ban on identifying child victims of homicide.
70. Concerns were also raised that anonymity restrictions ran the risk of disproportionately criminalising children and young people as prevalent users of social media, and that it may be easier to influence the behaviour of adults on social media than that of children and young people.
71. There was some discussion around the current policing of anonymity restrictions and whether that had been tested enough, with suggestions that we could look to developments in victim anonymity policy in Northern Ireland and what impact that has had.
72. Attendees also discussed the effectiveness of anonymity across jurisdictions, given high-profile cases are often picked up by international media. It was noted that the anonymity model in New South Wales only applies in that state and not nationwide. It was also noted that other jurisdictions like India and Bangladesh have sweeping restrictions in relation to sexual crime which prevent victims from being identified, but bereaved families have spoken to foreign media to circumvent these laws.

Bereaved families and the rights of the child

General

73. There was discussion over the need for a solution to offer choice and control to bereaved families.
74. It was also noted by some attendees that two-thirds of child homicide victims are killed by a parent and there was a discussion around what this would mean in terms of anonymity and how it might prevent the disclosure of the identity of the perpetrator in such cases. However, other attendees highlighted that child victims already have anonymity in relation to some offences committed against them by a family member, so what is being proposed is not unique in that respect.

Surviving family members

75. Attendees discussed who should be covered by anonymity restrictions and whose rights should be paramount in determining whether anonymity should be applied or waived.
76. Some attendees felt that the rights of surviving child siblings should be paramount, and should be the focus in developing a solution, regardless of what that solution might be.
77. Some attendees suggested that we should consider the privacy rights of the child who has been murdered and how their memory can be protected.
78. There was also the view expressed that consideration should be given to the position of the bereaved parents from the outset and that the views of the person with parental responsibilities and rights should take precedence.

Changing views

79. It was acknowledged that whether, and how, bereaved family members wish to engage with the media may change over time – though can also remain consistent – and that an individual's experience of, and reaction to, trauma and grief is unique. This may result in differing views from the same individual at different stages in the aftermath of a traumatic event.
80. It was also noted that a bereaved family may initially be keen for their child to be identified if that might help with an investigation but find subsequent coverage distressing.

Press and other media

Impact

81. Attendees discussed how future options may impact on the regulation of the traditional news media, in contrast to what was described as the “wild west” of social media. Some attendees were concerned that any legislation had the potential to unfairly penalise traditional news media whilst social media remained largely unregulated and unpoliced.
82. In considering solutions, some attendees thought it helpful to consider the role of press coverage in the investigation and detection of crime and for there to be further discussion on the appropriate level of detail required to be in the public domain.
83. Some attendees also highlighted the risk of creating an information vacuum through anonymity restrictions, which would promptly fill with rumour and speculation via social media and other means of communication.
84. A contrasting view was presented that a blanket restriction could help to create a more level playing field and address complaints from journalists that social media was not as tightly regulated as traditional news media.

Benefits of media coverage

85. There was discussion of some of the benefits of media coverage, particularly in relation to police investigations. It was noted that a good media strategy can be invaluable to the police in appealing for information, calming community concerns and controlling the narrative.
86. The discussion touched on the role of reporting during a criminal investigation and beyond. Some attendees felt that it was important to carefully consider what information it is essential to release for the detection of crime, what is in the public interest and the appropriate level of detail, reflecting on some of the more graphic descriptions of events that have been published.

Part 2: Scottish Government's proposed next steps

1. The discussion at the roundtable highlighted a number of factors and different viewpoints that require further, detailed consideration. There was a consensus that the issues involved are complex sensitive, and require all those around the table to work together to find a solution.
2. Informed by research on anonymity in other jurisdictions, representations from people with lived experience and the discussion that took place at the roundtable, we propose the following next steps:
 - engagement with families bereaved by crime - both directly and through reference groups - to explore the complexities of, and possible solutions to, the issues raised
 - further consideration of options on this issue and how to engage those with an interest, including through a possible public consultation
 - work with victim support organisations and media representatives to develop a toolkit to promote trauma-informed reporting of homicides by the news media



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