

Adult Defendant Anonymity in Criminal Proceedings

Matthew Elkins asks, should defendant anonymity be granted to prevent reputational damage?

The current position for adult defendants is that the media will generally be able to report the name of a defendant facing a criminal charge. Anonymity will not be granted to defendants on the basis of embarrassment or stigma, harassment or economic loss caused by the publication of their name in criminal proceedings.

If it is true that reputation is the “immediate jewel of the soul” how then is it that we permit it to be sullied before a guilty finding is made? The media’s reporting of defendants’ names is tied to the principle of open justice which impacts upon conflicting rights; the right to privacy, the right to freedom of expression, the right to a fair trial and the nascent right to be forgotten.

As a society we of course place a high value on reputation – our laws on defamation bear testament to this fact – ask any celebrity with a super injunction under his or her belt. Why then, when a prosecuting authority levels an allegation, the principle of open justice is allowed to so decidedly trump the right to privacy and the protection of someone’s good name? If a youth’s identity is generally protected, why not an adult? An adult may have more to lose than a youth having perhaps already forged a life, family, career and reputation. Do the reasons for protecting a youth entirely dissolve once they turn 18? Whilst defendants are presumed innocent, once suspicion is publicly sown it may be difficult to uproot. Significant reputational damage can be caused by a wide variety of allegations, it is not solely reserved for sexual offences.

Criminal solicitors will be aware of the dilemma of advising an equivocal client on the possibility of accepting a caution. Is it better for a client to accept a caution, and therefore a criminal record, or should they take their chances on a trial with the risk, along with being convicted, of finding their name in print? This risk is significantly amplified for a professional who risks forever damaging their reputation by gambling on the relative uncertainty of the trial process and, by virtue of their position, is more likely to be the target of media interest. A not guilty verdict may not rectify the damage done, especially in the internet age where a quick search may reveal unpleasant reading. Even if the acquittal is published, which is not always the case, the vindication may be tainted by extant negative information. Is it fair that a suspect ought to have to factor in the possibility of exposure by the press when



© iStockphoto/Kuema

weighing up the pros and cons of accepting a police caution?

Article 6 of the ECHR does not rule out the possibility of placing limits on the media and could perhaps be read to permit a more expansive view of anonymity. The ECHR says that a trial must be “fair and public” and any judgments must be pronounced publically, but it does not however positively assert that every trial must be reported on by the press. Moreover affording anonymity to a defendant pre-conviction does not entirely prevent the press from reporting on a case.

The April 2015 guide (revised May 2016) on reporting restrictions published by the Judicial College details the compelling arguments in favour of openness:

1. it puts pressure on witnesses to tell the truth;
2. it can result in new witnesses coming forward;
3. it provides public scrutiny of the trial process;
4. it maintains the public’s confidence in the administration of justice;
5. it makes inaccurate and uninformed comment less likely;
6. it has a significant deterrent effect.

Extending anonymity to a wider category of defendant however may not *ipso facto* do away with these advantages. Whilst it would be impractical to require default anonymity for all adult defendants pre-conviction, provision could be made for discretionary anonymity, on grounds of reputational damage, with anonymity rescinded on conviction, or before if it becomes necessary.

External monitoring of Bedlam Hospital used to be used as a justification for the public exhibition of the mentally unwell. Public hangings also used to be viewed by some as a form entertainment, as well as being a

deterrent. Perhaps the media's naming and shaming of a defendant also has its roots in a similar time and culture. Whilst publication of a defendant's name may often be justifiable, is it the case that it is always fair, necessary and proportionate?
