Neutral Citation Number: [2014] EWHC 1041 (QB)

Case No: CO/642/2014

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/04/2014

Before :

THE PRESIDENT OF THE QUEEN'S BENCH DIVISION
(SIR BRIAN LEVESON)
MR JUSTICE CRANSTON
MR JUSTICE HOLROYDE

- -

Between :

JC and RT	**Claimants**
- and -	
THE CENTRAL CRIMINAL COURT	**Defendant**
- and -	
(1) CROWN PROSECUTION SERVICE **(2) BRITISH BROADCASTING CORPORATION**	**Interested Parties**
- and -	
JUST FOR KIDS LAW	**Intervener**

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- -

Mr Joel Bennathan Q.C. (instructed by Straw & Pearce, Loughborough)
for the **Claimants**
The Defendant did not appear and was not represented
Mr Max Hill Q.C. (instructed by the Crown Prosecution Service, London)
for the First Interested Party
Mr Gavin Millar Q.C. (instructed by the BBC Litigation Department)
for the Second Interested Party
Mr Ian Wise Q.C. and Ms Maria Roche (instructed by Just for Kids Law)
for the Intervener

Hearing date: 13 March 2014

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Judgment

Sir Brian Leveson P :

This case raises the question whether an order made under s. 39 of the Children and Young Persons Act 1933 ("the 1933 Act") prohibiting the identification of (among others) a defendant under the age of 18 years, can last indefinitely or whether it automatically expires when that person attains the age of 18 years. It has wide implications not only for young defendants but also for victims, witnesses, others concerned in proceedings and, of course, the media.

1. The background can be shortly summarised. On 15 November 2013, the claimants JC and RT, then 17 years of age, appeared at the Central Criminal Court and each pleaded guilty to an offence in early 2012 of joint possession, without lawful reason of an explosive substance contrary to s. 4(1) of the Explosive Substances Act 1883. In the case of JC, the substance was parts for pipe bombs and for RT it was petrol bombs. In both cases, the Crown accepted that they obtained this property without any intention of endangering life or causing serious injury to property.

2. A third defendant, also 17 years of age, admitted similar offences but faced more serious charges, including under the Terrorism Act 2000 in respect of which he was tried. All three had the benefit of an order under s. 39 of the 1933 Act restricting any newspaper or broadcast media outlet from reporting the name, address, school or other identifying particulars that might identify them: this order had been made by the Recorder of London at an earlier hearing.

3. After the pleas of JC and RT had been accepted, the Recorder heard argument as to whether the s. 39 order should continue. He considered that the seriousness of the additional charges against the third defendant meant that he could be named after verdicts of the jury but that the order in relation to the two who had pleaded guilty should continue. He commented that the order in respect of each young man would automatically expire when he became 18.

4. The trial then proceeded against the third defendant alone but the jury could not agree on verdicts and a retrial was ordered. In that event, and having regard to all the circumstances, the Recorder proceeded to sentence JC and RT and, in each case, imposed a community penalty. At the same time, he heard argument as to the effect of the s. 39 order whereupon he held that, as a matter of law and without reconsideration of the facts, the section properly construed provided that the November order would indeed expire on their respective 18th birthdays.

5. By the time of the retrial, all three defendants had, in fact, attained that age. The third defendant, then facing his re-trial, has been named as Michael Piggin: he is over 18 and a defendant in a criminal trial and there was no basis upon which his identity was entitled to protection. As for JC and RT, whose involvement with Michael Piggin was relevant to the latter's trial, they seek to argue that they remain entitled to the protection of the 1933 Act. They thus seek judicial review of the decision of the Recorder that the order expired on their 18th birthdays. On 25 February 2014, permission was granted by Goldring LJ and Ouseley J who gave directions which included reporting restrictions on the claimants' identities pending the hearing of the claim. JC and RT are supported by a charity, Just for Kids Law, who have been given leave to intervene. The BBC (supported by other media organisations, in particular, the press) oppose the application. Although initially neutral, the Crown

Prosecution Service ("CPS") has become concerned about the impact of the Recorder's decision on victims and witnesses: their submissions, therefore, pointed to the difficulties of the ruling.

The Law

6. The background to the 1933 Act is to be found in the Report of the Departmental Committee on the Treatment of Young Offenders (1927), which explained:

> "The Children Act [1908] (section 111(4)) provides that in a juvenile court no person other than the members and officers of the court and the parties to the case, their solicitors and counsel, and other persons directly concerned in the case shall, except by leave of the court, be allowed to attend. Members of the public are excluded and the only exception is made on behalf of *bona fide* representatives of a newspaper or news agency. It was suggested to us by several witnesses that future legislation should provide for the exclusion of the press, but we are not satisfied that this right should be taken away so long as it is not abused. It is obviously undesirable that names and addresses of the children or any other matter should be published that can lead to their identification. In most cases members of the press readily respond to all requests made by the court not to publish this information, but exceptions have been brought to our notice in which such information is still published in spite of requests made by the court. If therefore the exception made in respect of the press is retained, as we think it may well be, the publication of the name, address, school, photograph, or anything likely to lead to identification of the young offender should be prohibited."

7. Although the Report clearly considered the position of the defendant to proceedings, the reach of the 1933 Act is wider. Covering all those under 18 (see the definition of 'child' and 'young person' in s. 107), s. 39 provides:

> "(1) In relation to any proceedings in any court, the court may direct that—
>
> (a) no newspaper report of the proceedings shall reveal the name, address or school, or include any particulars calculated to lead to the identification, of any child or young person concerned in the proceedings, either as being the person by or against or in respect of whom the proceedings are taken, or as being a witness therein:
>
> (b) no picture shall be published in any newspaper as being or including a picture of any child or young person so concerned in the proceedings as aforesaid;
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> except in so far (if at all) as may be permitted by the direction of the court.

> (2) Any person who publishes any matter in contravention of any such direction shall on summary conviction be liable in respect of each offence to a fine not exceeding level 5 on the standard scale.

8. Thus, an order under s.39 order protects any child or young person "concerned in the proceedings": this will include three distinct groups, that is to say, a defendant, a witness, and/or a victim (who may not be a witness, as in the case of a very young child). These different groups or classes may well have different interests and, in particular, there may well be different justifications and arguments that can be advanced in relation to each. For the sake of completeness, it is important to add that s. 57(4) of the Children & Young Persons Act 1963 extends the coverage beyond newspapers to sound and television broadcasts but does not deal with publications in general or comment other than that which constitutes "reports of proceedings". However, the Contempt of Court Act 1981, which focuses on a protection of the court process rather than the long term interests of individuals participating in the process, extends to all publications.

9. In addition, there are automatic restrictions similar to those contained within s. 39(1) of the 1933 Act in relation to all proceedings in the youth courts or an appeal from the youth court: see s. 49(1) as substituted and amended. Other provisions apply in certain circumstances: s. 1(1) of the Sexual Offences (Amendment) Act 1992 provides anonymity from publication to the victims of sexual crime "during that person's lifetime". Children involved in family proceedings are also protected, without any time limit, by a prohibition of publication to the public or any section of the public: s. 97 of the Children Act 1989.

10. Further, it is also necessary to consider the provisions of the Youth Justice and Criminal Evidence Act 1999 ("the 1999 Act") which deals both with children and young persons. Section 46 of the 1999 Act makes provision for an application to the court to give a reporting restriction in relation to a witness (other than the accused) who is over the age of 18 and in need of protection. Eligibility for protection is defined by s. 46(3) and relates to the likelihood of the quality of the evidence or level of cooperation being diminished by reason of fear or distress on the part of the witness in connection with being identified by members of the public as a witness. The protection, however, is identified in the same section in these terms:

> "(6) For the purposes of this section a reporting direction in relation to a witness is a direction that no matter relating to the witness shall during the witness's lifetime be included in any publication if it is likely to lead members of the public to identify him as being a witness in the proceedings.
>
> (7) The matters relating to a witness in relation to which the restrictions imposed by a reporting direction apply (if their inclusion in any publication is likely to have the result mentioned in subsection (6)) include in particular -
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> (a) the witness's name;
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> (b) the witness's address;

> (c) the identity of any educational establishment attended by the witness;
>
> (d) the identity of any place of work, and
>
> (e) any still or moving images of the witness."

11. Subject to what is described as an excepting direction under s. 46(9) where the restrictions impose a substantial and unreasonable restriction on the reporting of the proceedings and it is in the public interest to do so (but not solely because the proceedings have been determined), or revocation by an appeal court pursuant to s. 46(10), the direction lasts for life but does not assist anyone under the age of 18. Thus, however much in need of protection a young person might be, the only presently operative statutory mechanism to protect identity in criminal proceedings is s. 39 of the 1933 Act.

12. I use the words 'presently operative' because, although not in this regard in force (albeit 15 years since the legislation was passed), s. 45 of the 1999 Act is intended to replace s. 39 of the 1933 Act insofar as it impacts on criminal proceedings. With similar excepting directions, it provides:

> "The court may direct that no matter relating to any person concerned in the proceedings shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as a person concerned in the proceedings."

What is significant about this provision, however, is that, even if it was brought into force, it is beyond argument that this protection only extends to those under the age of 18 and not beyond. It is truly remarkable that Parliament was prepared to make provision for lifetime protection available to adult witnesses in appropriate circumstances (because the witness has to be over the age of 18: s. 46(1) of the 1999 Act) but not to extend that protection to those under 18 once they had reached the age of majority even if the same qualifying conditions were satisfied.

13. For the sake of completeness, it is worth adding that the 1999 Act only intends to replace the impact of s. 39 in relation to criminal proceedings: see Schedule 2, para. 2). Its reach in relation to civil proceedings will remain: see, for example, *Briffett v Crown Prosecution Service* [2002] EMLR 12 (per Laws LJ at [11]), and in relation to personal injury litigation *A (A Child) v Cambridge University Hospitals NHS Trust* [2011] EWHC 454 (QB) per Tugendhat J.

14. Against that background, it is necessary to consider the authorities all of which are comparatively recent in origin although none cover the precise circumstances in this case (doubtless because of the unusual combination of a retrial of one co-defendant in circumstances where all attain their majority before that retrial). Thus, in *R (ex parte W, B & C) v Central Criminal Court* [2001] Cr App R 2, this court, prepared also to sit as a Court of Appeal (Criminal Division), considered whether or not a s. 39 order should be maintained after it was lifted following the conviction of three young men, then 17, for murder: it was argued that their anonymity should be preserved pending their appeal. Of one of the defendants 'W', Rose LJ said (at [38]):

> "He is 18 next week. If the Court were to make an order preserving his anonymity, it could only last, in effect, for a week."

15. At the same time, in *Venables v News Group Newspapers* [2001] Fam 430, arising out of media interest in the new identities of the child killers of James Bulger, Dame Elizabeth Butler-Sloss P accepted a concession from both counsel that a s.39 order would expire upon maturity, and so, relying on the inherent jurisdiction of the High Court, granted an injunction to protect any new identity which they might assume.

16. That view of the impact of s. 45 of the 1999 Act (clearly limited to those still under 18) and its relationship with s. 39 of the 1933 Act was similarly reflected in *Re S (A Child) (Identification: Restrictions on Publication)* [2005] 1 AC 593. The House of Lords was there concerned with the powers of the court to make reporting restrictions for a child (the son of the defendant and brother of the victim) who was not (as a matter of law) concerned in the proceedings. Lord Steyn, however, set out s. 39 of the 1933 Act and noted that it was to be replaced by s. 45 of the 1999 Act. Although not specifically concerned with the temporal extent of the provisions, he observed generally (at 605B):

> "For present purposes section 45 is in material respects the same as the extant section 39(1): see section 45(3)".

17. Furthermore, the Court of Appeal (Civil Division) has taken a similar view. In *Clayton v Clayton* [2006] Fam 83. Sir Mark Potter P (with whom Wall and Arden LJJ agreed) considered s.39 of the 1933 Act when dealing with automatic reporting restrictions under section 97 of the Children Act 1989. Sir Mark considered that such orders were temporally limited so as to expire on the cessation of proceedings under the Children Act, and, without deciding the issue in respect of s.39, noted (at para. 60) that similar arguments could arise relating to balancing considerations between the rights of the child and the media under Articles 8 and 10 of the ECHR.

18. The issue was articulated particularly clearly in *T v DPP & North East Press* [2003] EWHC 2408 (Admin), which concerned reporting restrictions under s.49 of the 1933 Act, which, as identified above, is the automatic restriction applicable to proceedings which take place in the youth courts. Sullivan J (as he then was), with whom Brooke LJ agreed, analysed the provisions and concluded (at para. 40):

> "The purpose underlying section 49 is not, in my judgment, to protect the interests of young persons once they have ceased to be such and have become adults. A purposive interpretation of section 49(1) would therefore lead one to the conclusion that any restriction on reporting applies only for so long as the person concerned in the proceedings continues to be a young person as defined in the Act."

19. It is also clear that s. 39 has been strictly construed. In *R v Lee (Anthony William)*, [1993] 1 WLR 103, a child defendant was tried and convicted on two indictments, with the benefit of separate orders under s. 39. The second judge lifted the second s.39 order, but imposed a temporary order to allow for an appeal against conviction. The

court held (at 108D-109A) that the only order a court could make under s.39 is an order in the proceedings before that court.

20. The subject matter of a s.39 order has also been construed strictly and cannot extend to details beyond those allowed by section 39 itself: see *R (ex parte Gazette Media Co Ltd) v Teeside Crown Court* [2005] EWCA Crim 1983 at para. 13. Similarly, only a 'child or young person concerned in the proceedings' may be the subject of an order. This cannot include the identity of adult defendants (Glidewell LJ in *Ex p. Godwin* [1992] 1 QB 190) or children who are not themselves victims, defendants or witnesses (Lord Phillips MR in *Re S* [2003 EWCA Civ 963 at para 93 and *R v Jolleys (ex parte Press Association)* [2013] EWCA Crim 1135).

21. For the claimants, Mr Joel Bennathan Q.C. argued that the plain reading of s.39(1) identified that it spoke only of the conditions precedent for an order being made, at the time such an order is made, and was silent on its expiry. He submitted that any order was therefore indefinite unless discharged or set aside. The observations of Rose LJ in *W, B and C* were obiter and the decision in *T v DPP* did not bind another divisional court.

22. As to this latter submission, *R (ex parte Tal) v Greater Manchester Coroner* [1985] QB 67, considered this question. Goff LJ (giving the judgment of a court also comprising, McCullough and Mann JJ) concluded that, in judicial review, as in the High Court, the principle of *stare decisis* required that, although not bound to do so, the court would follow a decision of a judge of equal jurisdiction unless the decision appeared to be clearly wrong. As for the divisional court, he went on (at 81C) that it would only be "in rare cases that a divisional court will think it fit to depart from a decision of another divisional court exercising this jurisdiction". I have no doubt that this approach is correct.

23. Furthermore, Mr Bennathan submited that the true purpose of the legislation was (or, in light of social change and the influence of the Human Rights Act 1998, is now) to support the rehabilitation of youth offenders. Children and young persons should, he argued, be allowed to 'leave their past behind them'. He referred to the proper balance of Articles 8 and 10 of the ECHR and to the analogous measures contained within the definitive guidelines on sentencing youths (issued by the then Sentencing Guidelines Council) and the provisions of the Rehabilitation of Offenders Act 1974. He also analysed the international legal instruments which the UK had adopted, and the comparative positions in Australia, the United States and Canada. Finally, he pointed to the practicality of the construction for which he contended: rather than children needing to apply for injunctions in the High Court before an unfamiliar judge, the burden would fall on the wealthy institutional media corporations, who would be applying (primarily, at least) to the trial judge familiar with the facts so as to avoid imposition of an order.

24. Mr Bennathan was supported by Mr Ian Wise Q.C. for the intervener with the simple maxim that s. 39 should be construed on the purposive basis: "once a child concerned in proceedings, always a child concerned in the proceedings". The order, he argued, always related to 'child concerned in the proceedings' notwithstanding that the child became an adult and that the proceedings ceased to be active.

25. Mr Max Hill Q.C. for the CPS acknowledged that the CPS Guidance reflected the recent case-law, both as to jurisdiction and extent (see *R (ex parte Y) v Aylesbury Crown Court* [2012] EWHC 1140 (Admin) and *North East Press* and *WBC* (supra) respectively); thus, at the permission stage, it was contended that s.39 and s.49 orders under the 1933 Act expire when the respective subject of the order turns 18 years of age. Before this court, Mr Hill QC explained that the CPS was most concerned at the lack of provision to cater for life-long anonymity for child witnesses (whether or not victims of offences) who were not victims of sexual offences under section 1 of the Sexual Offences (Amendment) Act 1992. As identified above, he pointed to life-long anonymity orders for adult witnesses, pursuant to section 46 of the 1999 Act and the absence of provision for witnesses who testify before they turn 18. In those circumstances, the CPS had shifted its position to favour Mr Bennathan's construction as the only means of overcoming this anomalous lacuna in the legislation.

26. Mr Gavin Millar QC for the BBC began by challenging the premise that the court was required to construe s. 39(1) of the 1933 Act. Rather, he submitted that it was a question of construing the penal sanction in s.39(2): that is to say, would a media organisation who published the name of an adult who used to be a child or young person concerned in the proceedings be in contravention of a s. 39(1) order, and so commit a criminal offence? Penal sections of statutes are to be construed narrowly, in favour of the defendant where there is ambiguity, and it was conceded by the claimants that s.39 was at the very least ambiguous. He argued that both a literal and a purposive interpretation of s. 39 favoured the construction that an order could not cover an adult after the conclusion of proceedings, even though that adult had been under the age of 18 when the s. 39 order in the proceedings was made.

27. Before leaving Mr Millar's submissions, one further issue can be resolved immediately. It appeared to be suggested that an application of the decision in *Clayton* to s. 39 meant that the order ceases when the proceedings are over. In fact, the legislation specifically bites on any newspaper or broadcast report "of the proceedings" whenever that report or broadcast is published. As the President of the Family Division in *Clayton* indicated, different considerations apply in criminal cases to those which arise in the family jurisdiction.

Discussion

28. In my judgment, there is considerable force in the view expressed by Sullivan J in *North East Press* that the purpose of the 1933 Act was to protect young people from publicity during the currency of their youth, and not into adulthood. The glare of publicity arising from contemporaneous reporting of proceedings that themselves are highly stressful is a heavy burden even on adults, and it is sensible that children should usually be protected from that combination. But once the proceedings are over, news reports of proceedings are and always have been less likely and there is no reason to provide the same protection. In my recollection, it has never been suggested that the previous convictions of an adult defendant (or, indeed, witness if that material is admitted) recorded prior to his 18th birthday should not be published because of the 1933 Act. In that regard, it is significant that this point (consequent upon Michael Piggin requiring a re-trial after all three had attained the age of 18 years) has only now arisen for the first time.

29. Furthermore, I do not accept that the true purpose behind the 1933 Act was to aid the rehabilitation of young offenders, allowing them 'to leave their pasts behind them'. One of the significant features of s. 39 is that it makes no separate provision for the treatment of three entirely different classes of children involved in adult criminal courts: as defendants, as victims, and as witnesses. Whilst there may be many reasons for defendants to be concerned with later reports of their criminality (although, as I have said, the point never seems to have been taken), victims and witnesses do not need protection for rehabilitative purposes or to leave their pasts behind them in the same way.

30. I recognise that the accessibility of a newspaper archive online and online records of social media mean that there is a far greater risk of material being available now when, in previous generations, it would have passed into history but, although it might be possible to search earlier anonymous reports of cases and identify the young persons who have now achieved majority, the principle remains unchanged. The question is whether or not Parliament intended to protect adults from possible publication of their criminal conduct when under 18. In that regard, I have no doubt that, whether *obiter* or not, the views of Rose LJ (in *W, B and C*) reflected in other decisions and clearly adopted in *North East Press*, reflecting the law over many decades, cannot possibly be said to be wrong and are rightly to be followed.

31. For my part, I fully recognise the importance of rehabilitation of children, the elevated human rights of children, and the various approaches to this policy issue in Canada, Australia and the United States (all of which share to greater or lesser degrees this jurisdiction's common law approach to criminal justice and to freedom of expression). I do not, however, find this material helpful when seeking to construe the 1933 Act: many of the provisions in Australia and Canada have arisen out of the legislative process rather than intervention by the courts. Neither is it right to conflate, as Mr Bennathan invited us to do, the limitations placed on access to juvenile court files in some states of the USA, with the power of courts to impose reporting restrictions on the media, which is much less possible in the USA than here.

32. As for the international instruments, such as the Beijing Rules, I recognise that where, in the interpretation of the ECHR, the European Court has incorporated them or their values, the duty of English courts to have regard to the ECHR jurisprudence might mean that those instruments may become useful aids to interpretation. But that is not to say that direct reference to them, outside of the use made by the European Court, should be relied upon in domestic cases. In that regard, I endorse the approach taken by Cranston J in *R (ex parte T) v Secretary of State for Justice* [2013] EWHC 1119 (Admin) at paras. 23-32. Such material may be useful in a policy debate, but the courts are concerned with binding or persuasive authorities. Too many of the instruments cited to us were neither binding nor persuasive: they were certainly not authoritative of the question of construction before the court.

33. Neither do I consider that Articles 8 and 10 impact on a purposive interpretation of s. 39. In *North East Press*, the reporting restriction in youth courts under s. 49 of the 1933 Act was automatic. Therefore the balancing of Articles 8 and 10 was effected by the terms of the statute. However, s.39 does not mandate any such order but allows a discretion in the judge: it is the judge who will balance Articles 8 and 10 at and immediately after the trial. There is thus no reason to 'read in' or 'read down' the words of s. 39 using this court's power under s. 3 of the Human Rights Act 1998.

There is no incompatibility of the legislation with human rights, whichever construction is to be preferred.

34. That is not to say that I consider the state of affairs to be satisfactory. Mr Bennathan, Mr Wise and Mr Hill raise powerful arguments in relation to victims, witnesses and persons concerned in criminal proceedings (quite apart from the position of defendants). Thus, it is said that there is simply no reason why, at the very least, they should not have similar potential protection to that afforded to adults pursuant to s. 46 of the 1999 Act who, in the circumstances there described, enjoy life-long anonymity. In that regard, the position will be no better if s. 45 of the 1999 Act is brought into force: not only will it not cover the post-18 position of those who, as adults, would have been entitled to an order under s. 46 but, furthermore, it does not extend protection beyond contemporaneous reporting of proceedings by newspapers or broadcasters.

35. Mr Millar did not have any satisfactory answer to how this lacuna in the law might be addressed, save to point out that victims and witnesses could apply for an injunction (although they would have to do so prior to attaining their majority). The burden of pursuing such an action (to say nothing of the unlikelihood of any one of them being aware of the position or being able to afford the litigation) is real and the difficulty involved in bringing precautionary proceedings not easy to resolve. In short, the solution is entirely unrealistic.

36. It was suggested by Mr Bennathan, Mr Wise and Mr Hill that a broad construction of s. 39 to mean lifelong protection subject to an application to discharge would largely avoid these problems but, in my judgment, there are too many public policy issues involved. In particular, there is no reason which necessarily requires child victims, witnesses, those concerned in proceedings and defendants to be treated in the same way: they have different needs. The statutory scheme for the protection of children and young persons contained within s. 39 simply does not seek to address the different issues that arise.

37. Victims and witnesses need individual and tailor-made protection within the criminal justice system: an example of such a need relates to the victims of female genital mutilation, recently the subject of calls for anonymity. In my judgment, it would be wrong to seek to create a solution out of legislation that was simply not designed to have regard to what is now understood of their needs and to the primacy attached to their legitimate interests. Therefore, it is for Parliament to fashion a solution: the problem requires to be addressed as a matter of real urgency.

38. My conclusion is straightforward. An order made by any court under section 39 of the Children & Young Persons Act 1933 cannot extend to reports of the proceedings after the subject of the order has reached the age of majority at 18. The Recorder of London was correct so to rule and did not make an error of law. Accordingly, this claim for judicial review fails.

Footnote

39. By way of addendum to this judgment, it is worth adding one further point. Although not argued before us, there has been some doubt whether, in England and Wales, it is open to these claimants to commence proceedings for judicial review in relation to

this order: see Archbold, 2014, para. 7-13 (page 1099). That is a reflection of *R (ex parte B (a minor) v Winchester Crown Court* [1999] 1 WLR 788). Simon Brown LJ held that, while those aggrieved by an order restricting publication had a remedy by way of appeal to the Court of Appeal (Criminal Division) under section 159 of the Criminal Justice Act 1988 ("the 1988 Act"), those aggrieved by a failure to restrain publication had no such remedy, and must apply to the trial judge to reconsider that decision: that was a consequence of the operation of s. 29(3) of the Senior Courts Act 1981 that the High Court had no jurisdiction "in matters relating to trial on indictment".

40. This court has, in fact, tended to consider that s.39 orders (and orders discharging such orders) are amenable to judicial review by the child affected (see *R (ex parte S [a minor]) v Leicester Crown Court* [1993] 1 WLR 111; *R (ex parte Barnes) v Inner London Crown Court* [1996] COD 17; *R (ex parte P & S) v Central Criminal Court*; *R (ex parte Perkins) v Harrow Crown Court* (1998) 162 JP 527); *R (ex parte H [a juvenile] v Manchester Crown Court* [2000] 1 WLR 760; *R (ex parte W, B & C) v Central Criminal Court* [2001] Cr App R 2; *R (ex parte T) v St Albans Crown Court* [2002] EWHC 1129 (Admin); *R (ex parte Y) v Aylesbury Crown Court & ors* [2012] EWHC 1140 (Admin) in which Hooper LJ acknowledged that there had been doubts but that it now "seems clear" that there was jurisdiction (see para. 21). That view is entirely consistent with the decision of the Court of Appeal in *R v Lee* [1999] 1 WLR 111).

41. In Northern Ireland, on the other hand, where the Crown Court cannot be judicially reviewed (by virtue of s. 1 of the Judicature (Northern Ireland) Act 1978), the Northern Ireland Court of Appeal has relied upon s. 3 of the Human Rights Act 1998 to read into s. 159(1)(c) of the 1988 Act a right of appeal for the child aggrieved by the withholding or discharge of a s. 39 order: see *R v McGreechan* [2014] NICA 5 [24]. Thus, s. 159 has a different meaning in different jurisdictions, which cannot be sensible. This also points to the requirement of urgent legislative intervention.

Mr Justice Cranston:

42. I agree.

Mr Justice Holroyde:

43. I also agree.

ORDER

UPON the Court hearing leading counsel for the Claimants, the Interested Parties, and the Intervenor;

IT IS ORDERED THAT:

1. The Claimants' claim for judicial review is dismissed;

2. Permission to appeal is refused;

3. The Claimants are to pay the Second Interested Party's reasonably incurred costs of this judicial review claim. The determination of the amount of the Claimants' liability to pay those costs, pursuant to s.26 Legal Aid Sentencing and Punishment of Offenders Act 2012, if any, shall be adjourned generally with liberty to apply to a costs judge;

4. The Claimants' publicly funded costs shall be subject to detailed assessment;

5. The anonymity order granted by Goldring LJ and Ouseley J is extended in order to protect the position until the expiration of the time limited for seeking permission to appeal or the disposal of the application, whichever is the later.