

HIGH COURT OF JUSTICIARY PRACTICE NOTE

No. 1 of 2007

ANONYMISING OPINIONS PUBLISHED ON THE INTERNET

This practice note shall come into force on 20th July 2007.

The purpose of this practice note is to advise on the policy of the court on the anonymising of opinions of the High Court of Justiciary and Court of Criminal Appeal that are published on the internet.

General

The general principle is that, subject to specific exceptions, judicial proceedings are heard and determined in public; there should accordingly be public access to judicial determinations including the reasons given for them. The circumstance that publication on the internet gives readier access to judgments to a wider public does not affect that principle.

The purpose of the Court publishing judgments on the internet is to make legal information more available to practitioners, students and members of the public who may be interested in it. Unlike the media, the Court has no separate interest in publishing information about the parties in any case. It follows that, where for some reason information about a named individual cannot be published, steps will be taken to conceal his identity in order to allow legal information to be published.

Contempt of Court Act 1981

Where at any stage of proceedings the Court makes an order in terms of section 4(2) of the Contempt of Court Act 1981, which prohibits publication of a report of the proceedings, the Court may not publish any judgment which relates to those proceedings, while the section 4(2) order is in force.

Where the Court has allowed a name or other matter to be withheld from the public in court and has given directions under section 11 of the 1981 Act prohibiting publication of the name or other matter, that name or other matter will not be revealed in the judgment published on the internet.

Children and Young Persons (Scotland) Act 1937

Where the Court has made a direction under section 46 of the Children and Young Persons (Scotland) Act 1937 that no newspaper, picture or broadcast report shall reveal the name, address or school or include any particulars calculated to lead to the identification of a person under the age of 17 concerned in proceedings, the terms of

the judgment published will omit references to the information specified in the direction.

Criminal Proceedings

In addition to orders under the Contempt of Court Act 1981, where any restriction on information to be published in any newspaper, picture or broadcast report applies under section 47 of the Criminal Procedure (Scotland) Act 1995, any judgment published on the internet will omit any references to the information that is restricted.

Protection of individuals from identification may be appropriate in a wider spectrum of cases. In cases of sexual crime it will usually be sufficient to refer to the victim as “the complainer” or by some other descriptive terms. Where, as for example, in incest, the relationship of the victim and the accused is an integral part of the legal situation, the court may determine it appropriate to use a capital letter to refer to the accused to allow the legal information to be published without identifying the victim. In other cases, the court might achieve that aim by not specifying the exact relationship while publishing the name of the accused.

In some cases it may be necessary for the judgment to contain an unspecific reference to a place or institution where identification may be possible from reference to that particular place or institution.

LORD JUSTICE GENERAL
Edinburgh
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