

Publicising Sentencing Outcomes

Guidance for public authorities
on publicising information
(including via the internet) about
individual sentencing outcomes
within the current legal framework



SUMMARY

- Verdicts and sentences in criminal cases are given out in open court and are a matter of public record
- There should be a presumption in favour of the police, local authorities and other relevant criminal justice agencies publicising outcomes of criminal cases and basic personal information about convicted offenders so as to:
 - Reassure the public
 - Increase confidence in the CJS
 - Improve the efficiency of the CJS
 - Discourage offending and/or re-offending
- This is not a new concept and this is already happening in many areas
- Providing this information is a legitimate and integral part of activity to engage communities and increase public confidence in criminal justice services
- The internet gives many more opportunities to make information readily available to the public. Alongside this, there are data protection issues
- In the great majority of cases, publication should be straightforward. A small number of cases will raise concerns. This guidance explains those issues to help manage risks.

INTRODUCTION

The Government expects all criminal justice services to be open, transparent and accountable to the people they serve. The police, the prosecution, the courts, probation and prison services should work together to help people understand their work and what the public can expect of them. They should be open about how they are performing and should strive to build confidence in criminal justice services that are fair, effective and above all, working for the public.

These expectations are captured in the Government's criminal justice Public Service Agreement target *Justice for All*.¹

The 2008 Cabinet Office Review 'Engaging Communities in Fighting Crime' (the Casey Review) found that the Criminal Justice System (CJS) can feel too remote from people's everyday lives and that the justice it delivers is not visible enough. The report concluded that:

"Too often the public don't believe that their voice is heard, don't believe wrongdoers face adequate consequences for the crimes they commit, don't believe they are told enough about what happens in the system and, perhaps because of this, they don't believe that crime has fallen when they are told so."

Research shows a strong link between the extent to which the public receive accurate information about the CJS, and their confidence in it. Based on their consultations, the Casey Review team identified 'Justice seen to be done' as a priority for the public, who want: *"to see and hear more about arrests, charges, decisions and sentences... to reassure them that crimes are being brought to justice and to deter potential offenders or re-offenders."*

¹ http://www.hm-treasury.gov.uk/d/pbr_csr07_psa24.pdf

THE POLICY CONTEXT

Verdicts and sentences are given out in open court and are a matter of public record. Copies of the court register, containing the outcomes of criminal cases and details of upcoming court cases, have been available to local newspapers and regularly reported for many years. This long-standing and important feature of local reporting is a vital part of keeping communities informed and, in the summer of 2008, the Justice Secretary abolished fees for making copies of the court register available to newspapers to support and encourage reporting.

In addition, the Policing Pledge, now adopted by all forces, includes a commitment to provide monthly updates on local crime and policing issues, including information on specific crimes and what happened to those brought to justice locally.

In the 'Engaging Communities in Criminal Justice' Green Paper, published in April 2009, the Government repeated its expectation that criminal justice services should give local people more information about what is being done to deal with the problems they raise. In particular, Ministers gave a clear commitment that criminal justice agencies would publicise the outcomes in cases of particular local concern. As a general principle, **there should be a presumption in favour of publicising outcomes of criminal cases** because this would help to:

- reassure the law abiding public that the CJS is fair and effective, by publicising successes;
- increase public confidence in the CJS;
- improve the effectiveness of criminal justice, e.g. by encouraging victims to report crime, and witnesses to come forward; and
- discourage potential offenders and reduce re-offending.

Publicising sentences is part of a set of initiatives to give the public more access to better information about the criminal justice system in a co-ordinated and integrated way. From September 2009, a new national system of

crime maps became operational, giving the public consistent information about local crime levels. These maps are linked to data about offences brought to justice in their criminal justice area. For the first time people can go online, enter their postcode and get up to date information about crime in their area and what action the police are taking. These initiatives will soon be enhanced by the new Courts Results Enquiry Service. The service will provide neighbourhood policing teams, Local Criminal Justice Boards (LCJBs) and local Crime and Disorder Reduction Partnerships (CDRPs) (or Community Safety Partnerships (CSPs) in Wales) with details of specific local cases.

Purpose and scope of this guidance

Easy access to clear and accurate information about the outcome of court cases helps to increase public confidence in the criminal justice system. The Government is supporting the publication of information in various ways, including the reporting of specific sentencing outcomes. There are many misconceptions about the circumstances in which the law allows publication of personal data concerning sentencing outcomes. **The purpose of this guidance is to clarify that, in the vast majority of cases, there is no legal impediment to such publication by the police and local authorities in particular, acting as public authorities that have statutory functions connected with the criminal justice system.**

It aims to:

- clarify the legal issues around publicising sentencing decisions and related personal information;
- set out the powers and responsibilities which agencies and services have to publish information; and
- support robust decision-making by providing a framework for consistent and proportionate local activity to publicise sentencing outcomes to communities.

In the great majority of cases the decision-making process will be straightforward. Front-line staff will routinely take decisions about publicising case outcomes and basic personal information (name, age, offence and summary – rather than full – address) without the need for detailed reference to this guidance. It is generally safe to assume that if a court did not impose reporting restrictions, there is no legal impediment to publicising the outcome of the case. Exceptionally, a particular case may raise specific legal questions or concerns. A checklist and recording proforma for use in such cases is available from OCJR as a tool to help local agencies to reach robust decisions about publishing information in these cases.

This guidance focuses on the legal issues that may affect agencies involved in crime reduction and criminal justice

when giving the public personal information about convicted offenders: for instance, in public meetings, in leaflets or local newsletters, or through a website. (This includes convictions for criminal offences following prosecutions initiated by local authorities, under e.g. environmental protection legislation.)

This guidance is concerned with agencies' direct communication with communities about case outcomes. Specifically, it does not affect the existing long-standing arrangements for the courts to send court registers to the press, which the Government encourages. Nor does it cover the release of personal information about:

- **suspects as part of an investigation**
- **defendants who have failed to appear in court**
- **people who have received anti-social behaviour orders (ASBOs), or any other kind of non-criminal penalty.**

Particular care must also be taken when information about sentencing outcomes includes personal information about victims (see 'exceptional cases' opposite).

It focuses on the practical application of the law. It does not cover all the processes by which local agencies might identify crimes of particular local concern, assemble information about the outcome in those and other cases and communicate that outcome to local people. Further guidance on these issues will follow.

This guidance is also not concerned with agencies' dealings with the media or media reporting of local cases. Except where reporting restrictions are imposed, the media are free to report anything that is said in court. Nor does it cover the publication of information by third parties on free access websites.

Finally, this guidance does not cover disclosure of personal information other than that already released into the public domain during the sentencing process. In particular, it does not set out the additional considerations that may apply when photographs of offenders are published.²

What kind of outcomes should and should not be published?

As they are a matter of public record, the presumption should be in favour of publicising verdicts and sentences of crown and magistrates' courts (including fines and community sentences) in the great majority of criminal cases. It is a reasonable expectation that a member of the public should be able to get information about the outcome of a case, whether as a victim of crime; a witness in a case; a member of a community affected by crime; or someone concerned about local crime.

This guidance does not apply to out of court disposals, such as cautions, conditional cautions, penalty notices for disorder and cannabis warnings. A review of the use of out of court disposals was announced by the Justice Secretary on 9 November 2009. This will consider the issue of whether, and if so in what manner, publicity about out of court disposals would be appropriate.

² 'Guidance on the release of images of suspects and defendants to the media is available from ACPO offices. Guidance on publishing photographs of defendants can be found at http://frontline.cjsonline.gov.uk/_includes/downloads/guidance/general/GDC26_Defendant_Photos.doc.

If reporting restrictions have been imposed in a case, the scope of any publicity must be limited by the terms of the restrictions, which must be adhered to scrupulously. It is important to remember that some courts may have standing reporting restrictions that may not be separately recorded with the outcomes of individual cases. In particular, there is a presumption that reporting restrictions will apply in criminal cases where the defendant is a juvenile (under 18), unless explicitly lifted. Or the court might impose specific restrictions, for example, in order to protect witnesses, or if the defendant is involved in other criminal proceedings where identity may be an issue.

Particular care should be taken if disclosure of a sentencing outcome also reveals personal information about a person other than the offender.

Consideration should be given to whether it would be more appropriate to remove the details of third parties from the published information (see 'exceptional cases' below). If it is decided to publish the information then – in accordance with guidance from the Information Commissioner's Office (ICO) – all such people should be informed. This could include the victim, witnesses, any members of the police service or CPS who will be identified as having been involved in the investigation, and any other individual who may be identified from the information being made available. The communication to such people should include information on who to contact for further information, or any concerns. Where the publicity is going to be through a website, details of how to apply to have information removed from it should also be made available.

Exceptional cases

There may be exceptional cases where disclosure would not be appropriate. **In most cases, if the court has not considered it necessary to impose reporting restrictions, it is safe to assume that disclosure is permissible.**

But there may be cases (for instance, where the relevant facts were not before the court at the time) where the court did not impose

formal reporting restrictions but disclosure could nevertheless cause harm. For example, depending on all the circumstances, it might not be appropriate to release information where:

- It could be used to identify victims or witnesses, especially if this would cause the victim undue embarrassment or distress, or place them at risk of suffering reprisals from friends or associates of the offender, or expose them to unwanted media or public attention. Victims should anyway be consulted about proposed publicity and made aware of possible press coverage (except possibly in cases where there is no 'personal' victim, and/or the crime is already visible to the public – e.g. criminal damage).
- It could be used to identify offenders' families (over and above a surname that they share with the offender), especially if disclosure would place them at risk of harm (e.g. reprisals).
- The offender is known to have a specific vulnerability (e.g. mental health issues or physical ill health), which might mean that publicising the conviction risks unwarranted adverse consequences (i.e. not simply that the offender objects to the publicity). This may arise in particular if the sentence includes a drug or drink rehabilitation order or a mental health disposal.
- Wider disclosure could undermine a police investigation.

Even in such cases, it does not necessarily follow that it is unlawful to disclose any information at all. For instance, it might be possible to address the concern by limiting the information to a small number of individuals (e.g. the community affected by the crime), by giving it out in a meeting or leaflet rather than putting it on a website so it will only be seen by people in the local area and it will be less easy to copy. Or in a particular case, it may be possible to reassure a community by making it known that a conviction for a specific offence has been secured without the need to disclose personal information (for instance, it might be possible to give details of the sentence without disclosing that the sentence involved a mental health disposal).

Risks and safeguards

Publicity should be time limited. The objective is to draw attention to the conviction and sentence when they are handed down, not to provide any kind of on-going record.

As a general rule, information should be removed from websites after a month.

This is in line with the commitment in the Policing Pledge to provide monthly updates to communities.

Where a subsequent appeal against a conviction is successful, details of the original conviction that have been placed on a website should be removed.

Care must be taken to ensure that information published is accurate, to minimise the risk of mistaken identity. Even correct information could lead to an innocent person being wrongly identified by a third party as the offender if, for instance, there is another person locally with the same name and/or the same partial address as the offender.

When details of sentencing outcomes are posted on a website, the page containing the details should also include the following message in a prominent position:

“This information is made available for a limited period in order to promote the openness, transparency and accountability of the criminal justice system to the people it serves. This information is made available solely on the basis that it is for the individual use of the person who has accessed this page. The information on this page must not be stored, recorded, republished, or otherwise processed without the explicit agreement of [name of the public authority].”

The legal framework

The main legal consideration which criminal justice agencies and local authorities must take into account in reaching decisions about disclosing and publicising personal information is the Data Protection Act 1998 (DPA).

In the great majority of cases where basic personal information is being publicised in connection with a criminal case outcome, and no reporting restrictions have been imposed, the Act should not be a barrier to publicising the information.

The DPA applies to “personal data”, i.e. information of which a living individual is the subject or from which a living individual can be identified. Processing of data must comply with the eight principles set out in Schedule 1 to the Act.

In particular, the first principle requires that personal data should be processed fairly and lawfully and, in particular, should not be processed unless at least one of conditions in Schedule 2 to the Act is met. Also, in order to lawfully process sensitive personal data (defined in section 2(g) of the Act to include medical information and information about the commission or alleged commission of an offence), disclosure needs to comply with a condition from Schedule 3 to the Act.

In all but exceptional cases of the kind described above, publishing sentencing outcomes in the manner discussed in this guidance will comply with the first principle in the Data Protection Act. The Information Commissioner's Office (ICO) has expressed the opinion³ that the publication of personal information about convictions is “perfectly possible, without compromising either the Data Protection Act 1998... or placing individual members of the public at risk” as long as “due consideration [is] given to all of the implications and consequences that may impact upon the different parties involved”.

In particular, in all but exceptional cases:

- **Disclosure will generally be ‘fair’, because people who have been convicted of offences can expect that the fact of their conviction will be made public, and there is a legitimate public interest in doing so.**

³ Letter to police Data Protection Officers, 22 April 2009, about publication of offender/offence information on police websites.

- Disclosure by relevant public authorities will generally be ‘lawful’, because it will normally be made by a public authority in connection with the exercise of its functions.⁴
- Disclosure of sentencing information will generally comply with a condition in Schedule 2 of the Act. In particular, in most cases it will fall within paragraph 5(b) (processing necessary for the exercise of any functions conferred on any person by or under any enactment) and paragraph 5(d) (processing necessary for the exercise of any other functions of a public nature exercised in the public interest by any person). In this context, a measure is ‘necessary’ if a pressing social need is involved and the measure is proportionate to the legitimate aim pursued.⁵ It is usually in the public interest – for the reasons described in this guidance – for public authorities to publicise sentencing outcomes, which in the absence of reporting restrictions will already be public, where it is connected to the exercise of their statutory functions.
- Disclosure of sensitive personal information (such as information about criminal convictions) will generally comply with Schedule 3 paragraph 7(1)(b) (processing necessary for the exercise of any functions conferred on any person by or under any enactment), for similar reasons, subject to the points in ‘exceptional cases’ on page 5 and ‘risks and safeguards’ opposite.⁶

The third principle requires that data should be adequate, relevant and not excessive; the fourth principle requires that data should be accurate and up to date; and the fifth principle requires that data should not be kept for longer than necessary. To ensure that these principles are complied with, see ‘exceptional cases’ and ‘risks and safeguards’ opposite.

The eighth principle concerns transfers of data outside the European Economic Area. Even though it may be possible to access information held on a website in non-EU countries, this will generally not engage the eighth data protection principle, given that the information was not directly transferred to people outside the UK.⁷

If disclosure is compatible with the DPA, it will generally also respect the rights of the data subject under Article 8 of the European Convention on Human Rights.⁸

It may be contrary to the Rehabilitation of Offenders Act 1974 to publish information about spent convictions. That Act will not prevent publication of sentencing outcomes if the information is only published for a short period after the sentence is imposed.

⁴ In *R (Ellis) v Chief Constable of Essex Police* [2003] EWHC 1321 (Admin), paragraph 32, the court accepted that an offender naming scheme operated by a police force was devised to assist them in performing their statutory duty under the Crime and Disorder Act 1998 to formulate and implement strategies for reduction of crime in their area. In *R (Stanley, Marshall and Kelly) v Metropolitan Police Commissioner* [2004] EWHC 2229 (Admin), paragraph 21, the court accepted that section 2(1) of the Local Government Act 2000 gives local authorities a legal basis to disclose information about particular individuals who are the subjects of anti-social behaviour orders.

⁵ *Stone v South East Coast Strategic Health Authority* [2006] EWHC 1668 (Admin), paragraph 60; *Ellis*, paragraph 29.

⁶ Compare *Stone*, paragraph 63.

⁷ Case C-101/01 *Lindqvist* [2003] ECR I-12971.

⁸ *Ellis*, paragraph 29.

Further information and queries

Further information about the arrangements for Neighbourhood Policing Teams to obtain court outcome information from the Court Results Enquiry Service can be found in The Policing Pledge: Bulletin (Issue 5, 6 November 2009).

More detailed information about the legal framework referred to in this guidance and a sample decision-making checklist/recording proforma can be obtained from the Engaging Communities Team at:

**Office for Criminal Justice Reform
Race, Confidence & Justice Unit
Zone 8.19
102 Petty France
London SW1P 9AJ
Email: EngagingCommunities@cjs.gsi.gov.uk**

Queries about this guidance should also be directed to the Engaging Communities Team as above.

Alongside this guidance, there is further information on the rationale for publicising sentencing outcomes available in 'Publicising Criminal Convictions: Why the public should know' (a Justice Seen Justice Done policy briefing) available on CJSonline at www.cjsonline.gov.uk

A guide to anti-social behaviour orders is available on the Home Office website.



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