

Media Reporting on Child Homicide Victims: a Consultation on the Issues

July 2024

MEDIA REPORTING ON CHILD HOMICIDE VICTIMS: A CONSULTATION ON THE ISSUES

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Ministerial foreword



Losing a child in any circumstances is one of the most traumatic experiences a family will ever experience. Where a child dies as a result of a criminal act, this further compounds the trauma and inevitably involves the family in a criminal justice process and associated public and media attention.

This consultation has been prompted by concerns raised by families bereaved by crime about the traumatic impact of ongoing press and social media coverage of the death of their loved one; in particular, where that loved one, tragically, was a child.

Involving families with experience of such terrible loss, we have already taken forward a number of activities to explore this issue. This has included a [roundtable](#) in February 2024 involving victims organisations and media representatives amongst others, meetings with bereaved families and [research](#) undertaken by the Scottish Government on international models of anonymity for deceased victims of crimes.

Family members have told us that they would welcome enhanced reporting and publication restrictions, including anonymity for children who have died as a result of a criminal act. They have said these changes would prevent ongoing distress and protect the wellbeing of child siblings of a child who has been killed.

In considering this sensitive area of reporting, media organisations have highlighted press freedoms, the role of the media in reporting on issues that are in the public interest and how traditional news media already self-regulates when it comes to preserving the anonymity of living victims of crime. The considerable challenges of seeking to manage communication of information by non-journalists online through, for example, social media, have also been highlighted.

I have also heard about the challenges, and, in some cases, the distress faced by families in other countries where reporting restrictions have been put in place that prevented them from talking openly about their loved one.

I am very grateful to all those who have shared their views with us so far, bereaved families in particular. It is clear from those conversations that this subject engages a range of complex issues. It is also clear that this is not an issue on which decisions can, or should, be made without a fuller understanding of the consequences – intended and unintended – of any change in policy or legislation.

It is, therefore, crucial that we examine this issue carefully before we determine how best to respond. Therefore, the purpose of this consultation is to draw together views so that next steps can be informed by a wide range of insights and experiences. It is essential that we build on the evidence base and seek to develop a shared understanding of the issues before any decisions are made on future developments,

though I recognise that there will always be differing views and proposed approaches to the issues raised.

I have made a promise to those I have met with that I will be open and not make commitments that I cannot deliver on. The consultation explores both non-legislative and legislative options – it is not a commitment to progress legislation in this area, rather to explore what could be done. As is evident from the complexity of the issues set out in this consultation, it is not an area in which legislation, if required, could be made at haste.

Fundamental to any change in approach will be the underlying cultural shift that goes hand-in-hand with the move to a more person-centred, trauma-informed justice system – including how events within that system are reported and represented in wider society. I am under no illusion as to the time such a cultural shift will take but I am confident that progress is being made.

This consultation provides you with the chance to contribute to shaping consideration of future policy – adding to the evidence and views that have already been gathered through our research into anonymity in other jurisdictions, the roundtable I chaired and engagement with bereaved families. I welcome your help in ensuring that any decision we make on our approach to this issue is robust, evidence-based, and ultimately the right approach for the people of Scotland.



Angela Constance
Cabinet Secretary for Justice and Home Affairs
July 2024

Responding to this Consultation

We are inviting responses to this consultation by 1 October 2024.

Please respond to this consultation using the Scottish Government's consultation hub, [Citizen Space](http://consult.gov.scot) (<http://consult.gov.scot>). You can [access and respond to this consultation online](https://consult.gov.scot/justice/media-reporting-on-child-homicide-victims) (<https://consult.gov.scot/justice/media-reporting-on-child-homicide-victims>). You can save and return to your responses while the consultation is still open. Please ensure that consultation responses are submitted before the closing date of 1 October 2024.

If you are unable to respond using our consultation hub, please complete the Respondent Information Form and return to:

Media reporting on child homicide victims – Consultation
Criminal Justice Reform
Scottish Government
GW.14
St Andrew's House
Edinburgh
EH1 3DG

If you have been affected by any of the issues discussed in this consultation, information, advice and assistance can be provided by [Victim Support Scotland](#) and [other organisations that provide general and specialist support](#).

Handling your response

If you respond using the consultation hub, you will be directed to the About You page before submitting your response. Please indicate how you wish your response to be handled and, in particular, whether you are content for your response to be published. If you ask for your response not to be published, we will regard it as confidential, and we will treat it accordingly.

All respondents should be aware that the Scottish Government is subject to the provisions of the Freedom of Information (Scotland) Act 2002 and would therefore have to consider any request made to it under the Act for information relating to responses made to this consultation exercise.

If you are unable to respond via Citizen Space, please complete and return the Respondent Information Form included in this document.

To find out how we handle your personal data, please see our [privacy policy](#).

Next steps in the process

Where respondents have given permission for their response to be made public, and after we have checked that they contain no potentially defamatory material,

responses will be made available to the public [on Citizen Space](#). If you use the consultation hub to respond, you will receive a copy of your response via email.

Following the closing date, all responses will be analysed and considered along with any other available evidence to help us. Responses will be published where we have been given permission to do so. An analysis report will also be made available.

Comments and complaints

If you have any comments about how this consultation exercise has been conducted, please send them to the contact address above or [send them to us by email \(reportingconsultation@gov.scot\)](mailto:reportingconsultation@gov.scot).

Scottish Government consultation process

Consultation is an essential part of the policymaking process. It gives us the opportunity to consider your opinion and expertise on a proposed area of work.

You can find all our consultations online [at Citizen Space](#). Each consultation details the issues under consideration, as well as a way for you to give us your views, either online, by email or by post.

Responses will be analysed and used as part of the decision making process, along with a range of other available information and evidence. We will publish a report of this analysis for every consultation. Depending on the nature of the consultation exercise the responses received may:

- indicate the need for policy development or review
- inform the development of a particular policy
- help decisions to be made between alternative policy proposals
- be used to finalise legislation before it is implemented

While details of particular circumstances described in a response to a consultation exercise may usefully inform the policy process, consultation exercises cannot address individual concerns and comments, which should be directed to the relevant public body.

Background

A victim of a criminal offence in Scotland has anonymity if they are under 18. However, legislation in Scotland providing anonymity to child victims is time-limited (until the conclusion of any criminal proceedings or until an individual turns 18, whichever is later) and does not extend beyond death.

During scrutiny of the [Children \(Care and Justice\) \(Scotland\) Bill](#), victim support organisations – and some of the individuals they support – highlighted the traumatic effect on families of intense and continuing media coverage relating to child victims of homicide. This culminated in a campaign for the law to be changed to provide anonymity for deceased child victims, with a particular focus on protecting the privacy of children who have lost a sister or brother to homicide.

Due to the stage in the parliamentary process at which this issue was raised, there was no opportunity for in-depth scrutiny of, or wider public consultation on, what is clearly a complex area that has the potential to impact on a wide range of people. However, the Cabinet Secretary for Justice and Home Affairs and the Minister for Children, Young People and Keeping the Promise committed to considering this issue in more detail through consultation and engagement with people with lived experience, victim support organisations, media organisations and the wider public.

It is essential that the policy developed in this area is evidence-based, learns from what has been done in other jurisdictions, and listens to the voices of those with lived experience of this issue. The Scottish Government has begun developing a body of evidence to inform policy development, including an [evidence paper](#) looking at international approaches to victim anonymity, hosting a roundtable with key interests and publishing a [report](#) of the discussion, and direct and indirect engagement with bereaved families. This consultation seeks to explore some of the complexities that have emerged through this work and to enable all interested parties to contribute their views.

Legislative background

There are currently some statutory restrictions on the reporting of criminal proceedings involving children under the age of 18 in Scotland. The involvement of children may relate to being accused of an offence, being a victim of an offence or being a witness of an offence. [Section 47](#) of the Criminal Procedure (Scotland) Act 1995 prohibits the publication of the name, address, school or any particulars calculated to lead to the identification of any person under the age of 18 who is an accused, victim or witness in criminal proceedings. This includes reporting via sound and TV programmes, as well as newspapers.

Where a person under the age of 18 years is concerned in the proceedings as a witness only, and no one against whom the proceedings are taken is under the age of 18 years, the requirements do not apply unless the court so directs.

Section 47 does not explicitly state that the provisions apply to living persons only, or that they cease to apply on the death of an individual. However, it can be inferred from the wording used in the section, that the reporting restrictions apply to “any

person under the age of 18 years concerned in the proceedings” that the provisions apply to living persons only. As such, this is why the identities of deceased child victims, including images, are regularly reported.

The provisions in section 47 extend to England, Wales and Northern Ireland (though only in relation to proceedings in a court in Scotland). This reflects the UK-wide reach of publishers, broadcasters and news reporting. For example, if this did not operate in this way, then a UK-wide news broadcast at 6 pm would be able to report on the identities of children under 18 involved in a Scottish case whereas the Scottish news broadcast at 6.30 pm would not; that plainly would undermine the policy of anonymity. UK-wide enforcement for communication of information about proceedings that take place in Scotland is therefore essential in ensuring anonymity provisions operate with their intended effect in protecting the identities of under 18s in Scotland. Such UK-enforcement cannot be delivered in legislation made at the Scottish Parliament and would require legislative provision made in the UK Parliament. This would require the co-operation of the UK Government.

There is also provision for the court to make an order prohibiting reporting under [sections 4\(2\)](#) and [11](#) of the Contempt of Court Act 1981, and [section 46\(1\)](#) of the Children and Young Persons (Scotland) Act 1937 – though the latter is applicable to civil proceedings only.

Legislative background – England and Wales

In England and Wales, like Scotland, there is no legal right to anonymity, either automatically, or by way of application, to prohibit the publication of the identity of deceased child victims of a criminal offence. The approach to anonymity laws for living victims in England and Wales aged under 18 differs dependent on whether the case is being heard in the youth court (which is for children and young people aged 10 to 17), or in the (adult) magistrates’ court (which deals with less serious criminal cases) and Crown Court (which deals with the most serious criminal cases).

Reporting restrictions apply automatically to any child who appears in the youth court as a victim or witness in proceedings, as they are ‘concerned in proceedings,’ under [section 49](#) of the Children and Young Persons Act 1933. The automatic restrictions under this section cease to apply on that person’s 18th birthday, however, a court has a specific power to make a lifelong reporting restriction order under section [45A\(2\)](#) of the Youth Justice and Criminal Evidence Act 1999 (“the 1999 Act”) if certain criteria is met.

Child victims and witnesses involved in cases in the adult magistrates’ court or Crown Court are not covered by automatic reporting restrictions, and a discretionary order (under [section 45](#) of the 1999 Act or otherwise, for example, an order under section 11 of the Contempt of Court Act 1981) would need to be sought on their behalf. Lifelong anonymity orders under section 45A of the 1999 Act can also be sought in respect of a victim or witness who is under the age of 18 at the time the criminal proceedings they are involved in commence, again if certain criteria are met.

Neither section 49 of the 1933 Act nor section 45A of the 1999 Act specifies that the restrictions apply to living persons only, or that they cease to apply on the death of

an individual. However, as with the legislative position in Scotland, it can be inferred from the wording used in the section that the reporting restrictions apply to living persons only, given the reference to “any child or young person concerned in proceedings”. The identities of child homicide victims in England and Wales, including images, are regularly reported.

Experience of other jurisdictions

To inform policy development, the Scottish Government researched the approach applied by a number of different jurisdictions in relation to anonymity for child victims of a criminal act extending beyond death. This included Ireland, Northern Ireland, Australia (Victoria and New South Wales), Canada and India. The findings of this research are set out in detail in an [evidence paper](#) provided to the Education, Children and Young People Committee and the Criminal Justice Committee at the Scottish Parliament.

A number of themes emerged from the examination of the approach to anonymity in these jurisdictions. These included:

- **Impact on bereaved families** – The experiences from Ireland, India and Victoria, Australia all illustrated the potential for anonymity for child victims that apply after death to negatively impact on the ability of bereaved families to talk about their loved one – with some measures even being described as “[gag laws](#)”. Concerns were also raised about putting family members through the emotional and financial cost of going to court to seek an order to talk publicly about their deceased relative. In comparison, in New South Wales, anonymity for child homicide victims was seen as protecting family members from the trauma of unwanted publicity and empowering them to decide whether their child’s name was released to media – though with the potential for them having to deal with multiple media outlets wishing to publish details.
- **Open justice and public interest** – Concerns were raised in some jurisdictions about the impact of restrictions on open justice and the potential for offenders to use the child’s privacy rights to conceal their own identity, specifically where the perpetrator was related to the victim.
- **Lack of international consensus on model** – The research highlighted the range of different approaches taken to anonymity across jurisdictions and the challenges of the operation of the differing models in practice, even within the small sample examined. Some apply anonymity automatically and in perpetuity, others restrict it to the lifetime of the person concerned or another specified period, some allow for family members of homicide victims to waive anonymity whilst others require them to go through a court process to do so.

Reflecting the complexities of this area as summarised above, a further concern related to how policy might be developed:

- **Risks of introducing new laws without full consultation** – The potential negative consequences of passing legislation without proper consultation with those impacted – including people with lived experience and media

representatives – was highlighted. In several areas, the legislation was subsequently reformed to ensure families of deceased victims were able to speak publicly about their loved ones without risking breaking the law or having to apply to court for an order to do so.

Key considerations when discussing anonymity

Anonymity for deceased child victims is an emotive and complex issue and has the potential to impact on a wide range of people. This section sets out some of the key themes that have arisen through desk research, discussion with stakeholders, evidence provided to parliament from a range of sources and direct and indirect engagement with people with lived experience.

In considering any policy reform in the area of anonymity for deceased child victims, it is necessary to consider a number of relevant issues to understand the context within which any changes to the current system would operate. There are a number of interconnected aspects which have relevance under the current system and would continue to have relevance in any reformed system. For example, extending anonymity to deceased child victims could impact on the ability of the police or prosecutors to use a media strategy to appeal for information, encourage witnesses to come forward and address community concerns. It could also lead to the identity of perpetrators being shielded where they are related to their victim, as they could not be identified without the risk of the victim being identified.

Exactly how these issues would be assessed in the specific context of different policy options is discussed in more detail at the relevant part of the consultation where these options are set out.

Impact of media coverage on bereaved families

The Scottish Government has heard from people with lived experience about the impact unwanted, intrusive and traumatising media coverage can have on families who have been bereaved through homicide, particularly on other children in the family.

Following a child 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. Some bereaved families recalled having the press on their doorstep and stopping their friends and neighbours to ask them questions and a media presence around the funeral, leaving them feeling unable to leave the house. They described not being able to grieve for their child in private.

Particularly traumatising for bereaved families can be the constant juxtaposition of their loved one's picture alongside the person responsible for their death. Any time a report appears on the perpetrator, even if unrelated to the case involving their child, it can include written and visual reference to their child's death. Their child's image and story can be used in even more tenuous circumstances; for example, reporting of a change in the approach to policing in the area or the occurrence of a similar incident. This can be extremely triggering for families as it cannot be anticipated and can occur years after their child's death. It also serves to drive renewed interest on social media, with people republishing old content.

A further source of distress can be the level of detail published, for example, graphic accounts of the harm inflicted on their child and diagrams of their final movements. Families have spoken of their distress at finding out information via the press or

social media before they have had the opportunity to speak to the Procurator Fiscal, and how this can impact on their grief.

Some families did not object to what they saw as factual reporting, it was other reporting – often described as ‘clickbait’ – containing unnecessary levels of detail, that was distressing.

Another source of trauma can be where there is a comment function under an online article and the nature of some of the comments that are left. It has been suggested that such a function should not be available where the original content relates to a child homicide.

Some families told of avoiding attending court proceedings related to their loved one’s death as they were aware the media would be there, and that the publication of private family matters can leave individuals feeling isolated from their community and support networks.

Parents and grandparents have described the additional challenges they face in protecting young children within the family from often horrific and explicit accounts of their loved one’s death. They feel that media coverage can dictate the timing and circumstances in which they inform their child/grandchild of what has happened, rather than having the privacy and time to do so at a pace that best meets the individual needs of the child.

Families described trying to shield children from such content but as the child grows older, they can access a plethora of content online through a simple search of their family member’s name. The impact that the availability of such information has on the surviving child’s life can be profound, from it being the talk of the school playground to the trigger of seeing a picture of their family member on the front page of a newspaper in their local shop or an internet site, months or even years after their death.

Bereaved families have expressed a desire for choice and control in relation to what information is made public.

It was also acknowledged that a child’s death can have a profound effect on the community in which they lived. This can include children who were friends or contemporaries of the victim and the wider school community. It can lead to a public outpouring of grief as people seek to comprehend what has happened so close to home.

Rights and needs of children bereaved by homicide

It is essential that the rights and needs of children bereaved by homicide are central to any consideration of this issue and examined in the context of the [United Nations Convention on the Rights of the Child \(UNCRC\)](#)

The UNCRC is an international treaty that sets out the fundamental human rights of all children. In January 2024, legislation that incorporates the UNCRC into law in Scotland was passed by the Scottish Parliament. The [UNCRC \(Incorporation\)](#)

[\(Scotland\) Act 2024](#), which commences on 16 July 2024, seeks to deliver a proactive culture of everyday accountability for children’s rights across public services in Scotland. It requires all Scotland’s public authorities to take proactive steps to ensure the protection of children’s rights in their decision-making and service delivery and makes it unlawful for public authorities to act incompatibly with the UNCRC requirements as set out in the Act when delivering a ‘relevant function’ as defined in section 6(2) of the Act.

At the [roundtable](#) there was discussion as to whether, and to what extent, the rights of child relatives of deceased victims are engaged, particularly Article 13 (freedom of expression) and Article 16 (right to privacy) of the UNCRC.

Discussion at the roundtable also included a call for any action on this matter to be compatible with a trauma-informed and rights-based justice framework for children. To ensure such compatibility, a collaborative approach across agencies would be required and a full exploration of links with other programmes of work.

In offering views in response to the questions in this consultation, we would particularly welcome any views specific to the UNCRC requirements where you consider they may be relevant.

Purpose of anonymity

In considering whether anonymity should be extended, it is important to consider what the purpose of anonymity would be in relation to deceased child victims and who it is intended to protect.

There is a general legal principle that an individual’s privacy and reputational rights end at the end of their natural life and are not transferable. This is reflected in other areas of law when it comes to privacy and personal data protection. In a [2022 article](#), [Dr Andrew Tickell](#), a Senior Lecturer in Law at Glasgow Caledonian University who has carried out significant research on anonymity in an international context as co-founder of the [Campaign for Complainers Anonymity](#), noted that most of the jurisdictions he had considered for his research, “... adopt the approach to privacy rights articulated by the European Court of Human Rights, conceptualising privacy rights as “eminently personal and non-transferable”.”

Dr Tickell also noted that such reporting restrictions were exceptions to the general principle of open justice in our courts and represented an infringement of free expression rights under Article 10 of the European Convention on Human Rights (ECHR) – though an infringement that was justifiable in that it was proportionate to the legitimate aim of protecting the rights of living complainers. The question arises whether reporting restrictions that extend indefinitely beyond life in the interests of surviving family members would be considered similarly proportionate. Implications for freedom of expression are discussed in more detail on pages 14 and 15 of this consultation.

During the engagement that has fed into this consultation, there has been a range of views expressed as to the purpose of anonymity and for an extension to deceased child victims. Whilst some commentators consider it is to protect the memory of the

deceased child, others speak to protecting the privacy of surviving child siblings/close relatives – or being a combination of both.

With respect to protecting the privacy of surviving siblings/close relatives, this raises the question as to whether it is the age of the victim – or the age of child relatives – that is the determining factor in respect of who should be protected by any anonymity restrictions. For example, a child whose mother is murdered may be equally affected by media coverage, and the challenges posed to families in terms of a young person accessing distressing content online are the same regardless of the age of the victim. However, there are significant additional challenges to moving away from a model of anonymity that is based on age of the victim as it is unclear how publishers would know that there are child relatives of the victim and which relatives this would incorporate.

Role of reporting in criminal investigations

At the [roundtable](#), it was noted that an effective media strategy – which can include identifying the victim – is invaluable to the police in the investigative process. It enables them to appeal for information and witnesses, which may be essential for the detection and prosecution of a perpetrator.

It also has a role in informing the community and addressing concerns they may have about the level and nature of any criminal behaviour locally. Furthermore, it can ensure that there is not an information vacuum that is then filled by rumour and speculation, particularly via social media, which can lead to inaccurate and misleading information causing alarm and tension for individuals affected and the wider community.

Police Scotland has an established process in place for liaising with families regarding the content of a media strategy, prior to information being released into the public domain. Family Liaison Officers (FLO) are specially trained officers with experience and expertise in providing support to families at challenging and traumatic times. FLOs also have a direct link with the Senior Investigating Officer, should families have questions or need additional support. Through this arrangement, Police Scotland is able to make families aware of what will be released to the media prior to doing so and allows the family to have an input, where at all possible – for example, by choosing to release a specific image of their child.

The nature of investigations may change as a case develops. What started as a missing persons case – with widespread publicity to trace an individual – may, tragically, develop into a homicide investigation. This presents a challenge in terms of the potential anonymity of a child victim, as it would not be possible to retract all identifying information and the identity of the victim will already be widely known, even if their name is not explicitly linked to the homicide investigation.

There is some precedent in this respect, where a missing person is located safe and well but the investigation develops into one of a sexual offence. Publications would have to remove content where possible and refrain from further identification of the victim in order to protect the identity of the victim (currently on a non-statutory basis,

though provisions in the Victims, Witnesses, and Justice Reform (Scotland) Bill – if passed – will place this on a statutory footing).

Freedom of expression

The National Union of Journalists operates under a long-standing [code of conduct](#). There are two specific elements of the code which are particularly relevant in discussion of anonymity.

Clause 1 of the code requires 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.”

Clause 6 of the code requires a journalist “Does nothing to intrude into anyone’s private life, grief or distress unless justified by overriding consideration of the public interest.”

It can be seen there is an inherent tension between these clauses. Questions of what is in the public interest and what may be of interest to the public – two distinct questions – will be asked daily amongst journalists as they work to deliver reporting on issues to the public. Exactly how to approach reporting while balancing these elements of the code depends on the specifics of the issue to be reported.

The right to freedom of expression is not absolute. There are restrictions that operate. For example, the law in Scotland prohibits threatening or abusive behaviour. A person’s freedom to express themselves is restricted in that doing so in a threatening or abusive way could lead to criminal sanction.

The reason why the criminal law provides for sanction against a person expressing themselves in a threatening or abusive way is that it is considered appropriate to limit this element of freedom of expression to reduce harm caused to others. An example of this harm could, for example, be to limit the ability of people to enjoy their own fundamental human rights.

In considering anonymity for deceased child victims of criminal acts, it is important to assess whether the harm caused as a result of communicating such information justifies a criminal sanction.

It is the case that a child sibling could be upset upon sight of reporting of the death of their brother or sister even if the reporting is undertaken in a sensitive and appropriate manner, and this may lead to re-traumatisation. It may be that it is the cumulative effect of multiple reports on the death of a deceased brother or sister over a period of time that is retraumatising, again even if each individual report is conducted in a sensitive and appropriate manner.

In deciding whether a statutory prohibition against such reporting is appropriate with a criminal sanction available for any breach, it is necessary to assess what fundamental rights of child siblings and other family members are engaged if they are exposed to harm as a result of press reporting or information being shared publicly on a deceased loved one (in particular, a deceased child); and whether the

level of harm justifies an approach that either did or did not explicitly criminalise a person communicating information about deceased child victims.

Another aspect of freedom of expression relevant to the issue of anonymity for deceased child victims is that while the code of conduct for journalists regulates how journalists operate, it does not apply to the abundance of ways in which non-journalists (including members of the general public) can publish information to a potentially wide audience. The use of social media, as well as online platforms more generally, can quickly communicate information to many people through mechanisms that simply did not exist until relatively recently.

As the code of conduct does not apply beyond journalists (and noting the code of conduct does not mean names of deceased child victims are kept anonymous in any event), any reforms in this area will need to account for the distinctiveness of the ability of non-journalists to communicate material to large audiences.

Open justice

There is a long history of open justice in Scotland. This principle relates to the importance of the public's ability to understand how the justice system works, including how it responds in dealing with people who break the law. Justice must not only be done but must be seen to be done. The right to a public hearing also forms part of the right to a fair trial under Article 6 of ECHR.

Part of this principle relates to living in a free and democratic society where there is accountability both for people who break the law and those who are involved in enforcing the law. Transparency and reporting of criminal cases is seen as an important aspect to help improve public confidence in the operation of our justice system and the administration of justice, including helping people understand how offenders are dealt with; with the public knowledge of criminal proceedings acting as a deterrent to others.

Depending on the specifics of any reforms, the ability to report on criminal cases by journalists would likely be affected by creating a statutory right of anonymity for deceased child victims. While it may continue to be possible to report on certain cases in general terms, enforcing a right to anonymity would clearly limit the ability to report certain information. This may not just be restricted to the names of child victims.

Thankfully deaths of children as a result of a criminal act are rare in Scotland. However, when such horrific events do occur, evidence suggests that in approximately two-thirds of cases a parent is found responsible. According to the [Homicide in Scotland 2022-23](#) publication, in the ten year period 2013-14 to 2022-23, there were 29 victims aged under 16, of these 18 (or 62%) were killed by a parent.

Depending on the specifics of any reform, if a deceased child victim has anonymity, it is likely anonymity for parents accused of the criminal death of their own child would also have to be provided for in law. This would be necessary to guard against what is termed 'jigsaw identification' of a deceased child victim.

Jigsaw identification means that while one piece of information may on its own seem innocuous, it may lead to the identification of a victim in breach of the anonymity protections when taken together with other information. Were anonymity to be given to deceased child victims, there would be a high risk of jigsaw identification of the child where the alleged perpetrator(s) are the parents, unless anonymity is also extended to the parents or, at the very least, there are limits placed on the reporting of certain aspects of the case. For example, evidence relating to the perpetrator which would reveal they are a parent of the deceased child.

This would place new limits that do not currently exist on open justice. This would require careful consideration of the justification for doing so, balancing a number of competing interests.

Social media

In considering the issues, it is important to take into account the reality of modern media and communication. The role of social media is key to understanding the nature of the significant and sustained intrusion into their lives that bereaved family members have experienced and the impact this can have on them.

It is also key in terms of considering the scope of any measures to introduce anonymity, how these would be enforced, and what consequences that may have. In considering the potential for introducing and enforcing anonymity, any new controls would need to apply in all methods of communication in order to be effective and this would include but not be limited to online methods of communication. Within online communication is social media which can present distinct challenges in terms of enforcement. For example, it is important to recognise that social media is diverse and operates across borders, and the sources of potentially distressing content can sometimes be difficult to pin down. The identity of users of online communication can often be anonymous and present a specific challenge that does not arise in situations where, for example, a printed newspaper in Scotland is published and the identity of the publisher is far easier to identify. In addition, the major internet social media platforms are headquartered overseas, and the specific legal and regulatory levers that they are subject to are reserved to Westminster. These factors limit how much direct control policy developed in Scotland can exert over the regulation of social media content.

The impact of social media on bereaved family members

Social media is the broad term used to describe the various different online services, platforms and apps which facilitate communication and the sharing of information and other content, to both created online networks and communities and to wider audiences. Over the last two decades and more, it has emerged as a substantial and enduring feature of modern media. It continues to grow and evolve as technology and societal preferences change. The social media landscape is varied, examples include: Facebook, X (formerly known as Twitter), YouTube, TikTok, Snapchat and Instagram.

The ease with which information can be published (by anyone with a smartphone and an account, which are almost always free of charge), the speed at which that

can happen (information can be posted immediately and events broadcast in real time), and the reach of that publication (to potentially millions of subscribers, followers or through re-publication) has revolutionised the way in which we share and consume information.

Different demographics within the population use and experience social media differently. Unsurprisingly, as with much technological innovation, children and young people are often at the forefront of its popularity and influence. That can mean that when a child dies as a result of a crime, particularly an older child, social media can become a source of information about the child, their friends and family, that others may seek to investigate and exploit, rapidly sharing personal details and photographs of the child after their death.

Some bereaved family members have reported that the rise of social media has contributed to unprecedented levels of intrusion into their lives, intrusion that does not necessarily subside with time. They have suggested that those who post and share content on social media (including 'citizen journalists' and 'true crime' bloggers, as well as those who have a casual and gratuitous interest in the circumstances of the death of their child), pose an enduring risk to the dignity and privacy of their deceased child and to surviving family members, particularly the child's siblings. That is not to question the motivation of all who engage in social media around issues surrounding deceased child victims: many are motivated by concern and a desire to offer support to those affected, but families have spoken of the toll of perhaps well-meaning, but nonetheless unsolicited and relentless, interest in their lives.

As prominent academics in this field have previously [commented](#), social media with its hallmark of user-generated content, has the ability to turn us all into publishers but it does not turn us all into journalists. Those who post and share content must of course obey the law and act within the terms of service of the relevant platform or service provider, but the overwhelming majority may not appreciate the appropriateness or impact of their social media contributions or have awareness or regard to professional or ethical standards in making them.

Families have seen inaccurate, upsetting and graphic content circulated on social media about their child, the circumstances and details of their death, the investigation and subsequent proceedings. It can be very difficult to have this type of content removed from the internet. Even when measures for removal are successful, families live in the knowledge that the information may have at the very least been seen, if not saved, by countless people, risking repeat publication or disclosure in the future, or being talked about in the communities in which they live.

Social media can therefore become a dangerous place for bereaved family members given the risk of re-traumatisation should they be exposed to distressing material about the death of their loved one or should they themselves become a subject of interest to others because of their relationship to the deceased child. It can be difficult to allow other children in the family to access social media because of the fear and anguish over exposure to upsetting content and what they may learn, sometimes for the first time, about the death of their loved one. Understandably, given social media plays such a prominent role in social connection, particularly

among younger generations, exclusion or even temporary respite from its various outlets can be difficult to maintain in the longer term.

However, it would be wrong to focus only on the challenges that social media brings to those bereaved through crime. For others, it provides a space for comfort and solidarity and a platform through which they can keep the memory of their loved one alive, build connections and networks with others who have experienced similar tragedies and reach out to a community united in grief (or be reached by them). Some will see social media as an opportunity to seek to influence and contribute to the legacy and the public record of the life of their loved child, a record some feel can otherwise become dominated by information surrounding their death and those that caused it.

Examples of the positive impact of social media in this regard include accessing support, raising awareness, campaigning for change and fundraising for charitable causes established or progressed in the memory of a deceased child victim.

Scope of any potential reporting restriction and risk of incidental criminalisation

Any measure that sought to effectively protect the identity of children who died through criminal acts, to ensure that victims and their families are afforded dignity, privacy and respect, would need to be fully informed by the use and reach of social media and would need to be adequately future proofed to allow it to remain effective as technology develops.

Proposals within the [Victims, Witnesses, and Justice Reform \(Scotland\) Bill](#) – currently being considered by the Scottish Parliament – seek to introduce a statutory right to lifelong anonymity for victims of sexual and certain other offences, by introducing reporting restrictions on the publication of information likely to lead to the identification of a victim. The Bill seeks to define publication broadly, avoiding the limitations of applying reporting restrictions to only certain types of publication which can quickly become redundant as technology advances and social trends change. Section 63 of the [Bill](#) proposes the following definition:

““publication” includes any speech, writing, relevant programme or other communication in whatever form, which is addressed or accessible to the public at large or any section of the public (whether on registration, payment, subscription or otherwise)”

This definition includes traditional forms of print and broadcast media, as well as social media and other publicly accessible online forms of communication.

The Bill recognises the risk of ‘jigsaw identification’, the term used to describe identification which has been made possible despite an individual not being named, because of the context and other information referenced. Section 63 of the Bill therefore prohibits publication of information that is likely to lead to the identification of a person being a victim of a prescribed offence which encompasses more than just the direct naming of an individual.

The scrutiny to date of the proposals in the Bill has highlighted the importance of putting in place a legislative framework that effectively incorporates social media, is clear, easily understood and proportionate. Part of being proportionate means ensuring that it does not result in unjust outcomes by incidentally criminalising conduct or where that is an unintended consequence.

Any approach to introduce a measure to provide anonymity to deceased child victims raises a similar set of considerations. In part, that reflects the proliferation of social media and how it is used by society – meaning that there are countless numbers of users who will require to comply with any reporting restrictions or risk being criminalised if they do not. The fairness of that potentially very far-reaching criminalisation requires us to consider some of the issues already discussed in this paper, that the death of a child through criminality is not only an unimaginable loss for that child’s family but is also felt beyond that family, in the community and more broadly in society.

Any approach to reporting restrictions in this area would therefore have to carefully consider the full implications of its scope and the type of conduct it sought to capture, fully addressing the risk and reality of criminalising individuals acting in good faith over social media.

Examples of behaviour within social media that would require careful consideration include:

- family members and friends posting tributes to the child and messages about their own personal grief and loss
- friends and family members posting messages of condolence and support
- friends, family and others circulating information about a funeral or memorial service
- friends, family and others circulating information about fundraising or crowd funding

The practicalities and resources required to enforce any reporting restrictions would also require significant analysis given the number of users of social media, particularly within younger generations.

Cross-jurisdictional issues relating to publication are complex and social media compounds the challenge. A post or an article can originate halfway across the world and be seen and circulated by many millions of people outwith Scotland before it is seen and its impact felt in Scotland. Whilst thankfully rare, there are a number of circumstances in which there may be cross-border or global interest over the death of a child or children in Scotland where they lost their lives through criminal acts; for example, through acts of terrorism. It would seem unsatisfactory, and unrealistic, for information relevant to the identities of those children to be lawfully disclosed and circulated within social media in other jurisdictions (including other parts of the UK), but not in Scotland.

The speed at which social media can share information also poses a risk to the effective operation of measures designed to protect anonymity – particularly where

there is a window of time within which it is not known by those posting about a death of a child, that criminality was involved.

These and other issues require careful consideration and solutions may be found depending on what, if any, legislative framework is put in place to deliver anonymity. The law can of course create statutory defences where a person will not be found criminally liable for breaching anonymity provisions if certain conditions are met, or it could provide for scenarios where anonymity provisions do not apply at all. However, the greater the complexity of any framework, the less assurance it may offer.

It is important for both the effectiveness of the approach and the confidence that society will have in it, that any proposals for criminal law in this area are clear and easily understood, and provide relative legal certainty so that potential consequences are known and foreseeable and that the law is consistently enforced. It is also important to consider what can be achieved without recourse to legislation, through education and guidance.

Question 1: Please share any thoughts you have on how the media currently reports on child homicides.

Question 2: Please share any thoughts you have on any action that could be taken to amend the current position on media reporting of child homicides.

Question 3: To what extent do you think an extension of anonymity to deceased child victims would affect family and friends wanting to talk publicly about their loss?

Question 4: Do you consider that an extension to anonymity would have an impact on the ability of the police to investigate a crime? Please provide details.

Question 5: Do you consider that an extension to anonymity would have an impact on freedom of expression? Please provide details.

Question 6: Do you consider that an extension to anonymity would have an impact on open justice? Please provide details.

What next? Key considerations

What are the options?

This section of the consultation explores options for reducing the trauma that media reporting has on bereaved families, particularly children within the family, taking into account the range of issues discussed in the preceding section and how those issues may impact on the viability and effectiveness of the options available.

Given the complexity of the issues, the range of areas that any reforms may impact on and the cultural and societal change that may be required, it is unlikely that there is one simple solution. Rather it may be that a combination of approaches is required.

The options considered in this section should not be viewed as an exhaustive list and the Scottish Government welcomes any input in this respect, in order to find an approach that reduces the trauma that media reporting has on bereaved families in the most horrific circumstances, whilst maintaining the principle of open justice and the right to freedom of expression.

Non-legislative options

Work is already underway to galvanise a fundamental change in culture in the criminal justice system in Scotland to improve the experiences of victims and survivors, as well as accused persons. This is reflected in the [Vision for Justice in Scotland](#).

The Scottish Government has been considering ways in which it could extend this work beyond the justice system, recognising that the impact of crime on victims and survivors also goes far beyond their experience of the justice system. One such avenue is through engagement with media organisations on how such events are covered and the impact this has on victims, survivors, and bereaved families.

An example of such an approach is the [Reporting of Substance Media Toolkit](#) developed by [Scottish Families Affected by Alcohol and Drugs](#) and [Adfam](#). The toolkit aims to help journalists and editors report on alcohol and drugs with dignity and respect. Anecdotal evidence from the sector is that, whilst the change has been slow, there has been a significant improvement in reporting over the past 20 years in relation to drug use and addiction.

There are also some relevant tools available at present including a Victim Support Scotland [communication guide](#) for those within the criminal justice sector and a [Zero Tolerance](#) media toolkit for journalists and broadcasters reporting on violence against women and girls. There is also the [Editors' Code of Practice](#) monitored and enforced by the Independent Press Standards Organisation (IPSO).

The Scottish Government is committed to working with victim support organisations, media organisations and criminal justice partners to develop a media toolkit to support journalists, editors and broadcasters to ensure reporting involving victims

and bereaved families is done so in a compassionate and trauma-informed manner. Input from people with lived experience will be essential to shaping this work.

There are, of course, limitations to such an approach; some media outlets will be more receptive than others and it may be difficult to reach those publishing content outwith mainstream media. However, the Scottish Government views such a project as a useful tool in starting a wider conversation around media coverage and provoking self-reflection amongst publishers, including those outwith traditional news media and those who consume their output.

The idea of a media toolkit was also welcomed by people with lived experience, with a view that it could be a worthwhile resource if guidelines were sufficiently stringent and adhered to. Bereaved families also provided initial thoughts on what respectful reporting looks like, highlighting the need for:

- empathy
- dignity for the family and deceased
- factual reporting
- limited detail – only necessary information.

Question 7: To what extent do you agree that a media toolkit could support journalists and editors to report on child homicides in a trauma-informed way?

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree

Please give reasons for your answer.

Question 8: What should such a toolkit cover?

Question 9: Are there other non-legislative means of improving how child homicides are reported and information published?

We will also explore with the criminal justice agencies, such as Police Scotland, if there are any non-legislative measures they can take to further help reduce the trauma of media reporting on bereaved families. These organisations often act as a contact point for, and official source of information to, the media - ensuring that the information released is credible and saving bereaved families from having to deal with requests from multiple media outlets (where those families do not wish to engage directly with the media).

Such measures could include further discussions with family members about the type and level of information that is to be released and, in the rare case of a suspected child homicide, only releasing information that is strictly necessary (at an early stage) for the progress of the criminal investigation and/or to address concerns within the community.

Question 10: To what extent do you agree that the Scottish Government should work with the criminal justice agencies to explore non-legislative options to help reduce the trauma of reporting on bereaved families of child homicide victims?

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please give reasons for your answer.

Legislative options

At the roundtable on this topic, four options in relation to legislation on anonymity for deceased child victims were proposed. This section will look at each of these options in turn with regard to the issues set out in the preceding section and some additional factors, namely waiver and enforcement of restrictions.

The options discussed at the roundtable were as follows:

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

Option 1: Maintaining the current position (i.e. anonymity does not apply to deceased child victims)

This option reflects the current practice in Scotland, and in other jurisdictions such as England and Wales. It also reflects that there may be existing tools available that can be sought on a case-by-case basis, such as contempt of court orders, albeit these are not widely used in the circumstances explored in this consultation.

This option on its own would not offer any additional protections to the privacy of bereaved families. Therefore if trauma was to be reduced it would require non-legislative tools to be developed, and a wider discussion to be had, to drive cultural and societal change in the way in which homicides are reported on and the nature of content made and shared by the wider public. Some contributors to the discussion have suggested that a non-legislative approach is not sufficient to drive such a significant change.

It also does not provide bereaved families with a choice as to what information is shared about their loved one – though empowering such a choice could be a focus of guidance developed as part of a media toolkit.

This option has the benefit of being easily understood by those publishing information, whether in a professional or personal capacity. It upholds the right to freedom of expression, the principle of open justice and does not risk criminalising people who wish to talk about the deceased child, whether they are family, friends or from the wider community.

Option 2: Automatic anonymity for deceased child victims, with no option to waive

This option would be a significant departure from current practice in Scotland. It may present similar challenges to circumstances in Ireland, following a strict interpretation of existing reporting restrictions by their Court of Appeal in October 2020. The ruling found that their relevant law had a much broader application than previously understood - determining that reporting restrictions also applied in circumstances where the child was deceased or had turned 18, whereas previously they had been understood to expire upon death.

Following the judgment, a Bill to amend the legislation was introduced to the Seanad Éireann and was signed into law in April 2021. During the Bill's [passage through the Oireachtas](#), Senators highlighted the negative impact the judgment had had on bereaved families and why the Bill was required to rectify the situation:

“The mother of an 11-year-old boy who had been murdered was compelled recently to disguise her identity on television as though she was some type of criminal who could not be identified on the news. By revealing her identity, the identity of her dead child would also have been revealed. It is manifestly unfair to the families of deceased children that the law operates as it does.” [Senator Fiona O'Loughlin, Seanad Éireann debate - Monday, 15 Feb 2021]

This example demonstrates the trauma that can manifest where there is no option for bereaved families to waive the anonymity of their deceased child. Such an option would be in direct contradiction of the ask from bereaved families, that they have a choice as to what information is shared – a unilateral restriction would not offer such choice.

It is questionable whether such an approach would be compatible with the right to freedom of expression, given the need for proportionality in relation to infringements, and with the principle of open justice. As discussed in the section on ‘open justice’ (pages 15 and 16), this is particularly relevant where the perpetrator is a relative of the child, so would benefit from the restriction designed to protect the victim’s identity.

This option may also pose barriers to police investigations, limiting the information that the police can share with the public and therefore the opportunity to appeal for information, encourage witnesses to come forward and address any community concerns.

There are also implications where there are multiple victims in, for example, a school setting. An automatic anonymity restriction would prevent public identification of the school and make reporting on such an incident extremely challenging – thus impacting on the ability to keep the local community informed.

This option could reduce the trauma felt by bereaved families as they would not need to worry about their child being publicly identified or about having to go through a court process to ensure their anonymity. However, it would equally take away any choice from the family regarding whether they can speak publicly about the circumstances of their child's death.

Another benefit of this option is that a blanket ban is easier to communicate to, and be understood by, the wider public. However, the extent of such a restriction brings with it an increased risk of criminalising people who may have a legitimate and well-intentioned reason for talking about the circumstances of the victim's death, not least the bereaved families themselves.

Option 3: Automatic anonymity for deceased child victims, with an option to apply to court for a waiver

Option 3 is similar to the position previously in the state of Victoria, Australia in relation to victims of sexual offences who had died. Victorian legislation was amended in 2020 to make specific provision about the anonymity of deceased victims of sexual crime to extend beyond their natural life. Under those provisions, anyone with a sufficient interest (apart from the person accused of the sexual offence) had to apply to the court for permission to publish identifying information about a victim.

There was a backlash to the amendments from bereaved families who viewed the change in law as effectively a gagging order. The sister of a murder victim was quoted in [contemporary news reports](#) as saying:

"[Families] won't be able to call for justice, they won't be able to comment or express outrage at weak sentencing, they won't be able to speak out when the rapist-murderer makes appeals... And they won't even be able to publicly oppose parole applications. So the victim family member is absolutely gagged."

As a result of opposition to the changes, further amendments were made to the legislation, to make it clear that the prohibition on publishing identifying details of a victim of a sexual offence ends on the victim's death. Legislation also provided a pathway for those close to a deceased victim to seek protection of their loved one's identity, in certain circumstances, by introducing a victim privacy order scheme.

One of the main issues bereaved families had with the original change in law in Victoria was that it would require them to go to court to seek permission to lawfully talk publicly about the circumstances of their relative's death. The emotional and financial toll of such a process on grieving individuals was raised as a key concern.

Automatic anonymity with the option for certain individuals to apply to court to waive the order has the same implications as Option 2 in terms of being a potential barrier to the police investigation, and a challenge to freedom of expression and open justice. Similarly, it would prevent the identification of perpetrators where they were a parent of the victim, due to the risk of jigsaw identification.

There are significant questions in terms of how a waiver process would operate, particularly where families are not in agreement about whether their deceased child's anonymity should be waived. These challenges are discussed in detail in the following section on 'waivers' (pages 28 and 29).

As with Option 2, there would be implications where there are multiple victims in, for example, a school setting. An automatic anonymity restriction would prevent public identification of the school and make reporting on such an incident extremely challenging – thus impacting on the ability to keep the local community informed. It would be further complicated in terms of how a waiver would work should some parents wish to identify their child has having died in an incident when others wished to keep their child anonymous.

Some bereaved families have indicated that this would be their preferred option, in that they view it as giving them some control over what, if any, information is released. However, if such a process were by application to the court, it would ultimately be for a court to determine, balancing the various rights engaged.

This option may also present a challenge in terms of enforcement and potentially criminalising those who do not understand how the waiver process operates or when information can or cannot be lawfully published or shared, particularly members of the public who do not have access to a team of lawyers to check such information.

Option 4: No automatic anonymity for deceased child victims, but an option to apply to court for an anonymity order

Option 4 is similar to the current position in the state of Victoria, Australia, in relation to deceased victims of sexual offences. Provision was made in 2021 to allow any person, including family and friends of a deceased victim, and the media, to publish identifying details of a deceased victim of a sexual offence without fear of committing an offence. It also provided a pathway for those close to a deceased victim to seek protection of their loved one's identity in certain circumstances, via a victim privacy order (VPO) scheme. This involves an application to the court for an order protecting or restricting the publication of identifying details of the deceased victim. An interim order can be applied for and made in advance of a full order.

It has the benefit of offering bereaved families some choice and control over what information is shared and may prevent the ongoing media coverage, many years after a death, that some bereaved families experience.

Such an approach is not without challenge, however. Concerns have been raised by some support organisations and bereaved families that an anonymity order would need to be in place as soon as possible after a death to ensure full anonymity, but that it is not trauma-informed to require bereaved families to make such an application in the immediate aftermath of their child's death.

There would also be issues like that associated with a waiver mechanism, but in this instance for an order protecting or restricting the publication of identifying details. For example, it would require bereaved families to go through the emotional and financial

costs of a court application process. There is also the question of what should happen if families do not agree whether an anonymity order be sought. Equally, in an incident involving multiple child victims, some families may wish to seek anonymity orders prohibiting the publication of identifying information such as the child's school, whereas other families may wish to publicly disclose this information in relation to their child.

This option has similar challenges to Options 2 and 3 in terms of freedom of expression and open justice, though is a more nuanced approach than automatic anonymity from the outset and the court would be the ultimate adjudicator as to whether an anonymity order should be granted.

This option could be challenging to communicate to the wider public where an order has been granted - particularly if there has been reporting identifying the individual prior to the order being sought - thereby increasing the risk of criminalising individuals for breaching an order.

Start point for anonymity restrictions

When considering applying any anonymity restrictions to deceased child victims, the starting point for such restrictions is an important factor. It has been suggested by some that the restrictions need to apply from the point at which the child dies, in order to prevent the child's name being reported publicly. There are a number of challenges to this approach.

It may not be known or even suspected that criminality is involved in the death of the child – this may only become apparent once a postmortem has taken place or the circumstances of their death established. Or it may be that the child was initially a missing person and their identity widely publicised to assist in the search, only for there to be a tragic outcome with the location of the child's body.

In both these circumstances, the child's identity is likely to be public knowledge prior to the anonymity restrictions coming into effect. Whilst it may be possible to prevent any further identifying material being published, it will not be possible to retract all the content that has been published prior to that point.

Another option would be for the anonymity restrictions to apply from the start of criminal proceedings when there is likely to be an increased level of interest and a greater degree of detail released into the public domain. However, given the level of public interest in the death of a child, particularly in those circumstances, the child is likely to have been identified prior to criminal proceedings being commenced. This is particularly the case with social media due to the impact that a child's death will have on a community. It is also questionable whether the wider public would understand or be aware of the point that criminal proceedings are in motion.

The international examples in the [evidence paper](#) demonstrate that there is no consistent approach to the start point for anonymity across the jurisdictions that were researched.

Question 11: If anonymity for deceased child victims was introduced, at what point do you think it should start?

- a) From the point of a child's death (when it is established that criminality is involved)
- b) From the start of criminal proceedings
- c) Other – please provide details

Please give reasons for your choice.

Waiver

Any model for anonymity for deceased child victims that is automatic requires provision to be made for waiving that anonymity, to allow bereaved families to speak publicly about their child without breaking the law and facing criminal sanctions. It is important, therefore, to consider how such a waiver process would work and who would be allowed to apply for a waiver.

There are a number of options for providing for a waiver, as has been legislated for in other jurisdictions (though not always successfully). Options include:

- an application to court to waive the victim's anonymity, with the court making the final decision
- allowing for next of kin to waive the victim's anonymity without being required to apply to court, but once anonymity is waived, any restrictions no longer apply
- allowing for next of kin to waive the victim's anonymity without being required to apply to court, but publishers must seek permission from those next of kin before publishing any identifying information

Each of these options presents different challenges in terms of how they operate and the burden they would place on bereaved families.

In terms of a waiver system via court application, it is hard to envisage a non-traumatising process which would require families to apply to court, and argue either for or against the waiving of reporting restrictions at a time in their life when they may not have the capacity to do so; and this would almost certainly require the instruction of legal representatives. Not all bereaved families will have a unified view on whether they wish the identify of their child to be made public. One parent may wish their child's identity to remain anonymous whilst another may wish to speak publicly about their child, whether it be to remember and celebrate their life or to raise awareness and campaign for a cause linked to their child's death. There is also added complexity where a parent is the perpetrator.

If it is determined that the purpose of anonymity is to protect the privacy of surviving child siblings, their view, where they are of an appropriate age and maturity, would also need to be considered.

It is unclear how the court would determine whose view to place more weight on, given the arguments are likely to be highly emotive and the impact on the

unsuccessful parent or family member traumatic. It is recognised that courts will have experience of dealing with acrimonious family cases.

It is also important to note that, as explored earlier in this consultation and in [the evidence paper](#), experience from other jurisdictions was that bereaved families strongly opposed laws requiring them to apply to court to be able to identify their child as a homicide victim.

If provision was made for next of kin to waive the victim's anonymity without going to court, consideration needs to be given as to how such a waiver would operate. For example, once the victim's identity is waived by a next of kin, would restrictions no longer apply, and publishers be free to publish identifying information? Or would publishers then be required to seek the permission of next of kin to publish identifying information on each occasion they wish to do so? If this was the case, how would such a system operate so as not to see the next of kin having to field multiple requests from different publishers seeking to publish identifying information? This would be further complicated should next of kin have differing views on waiving anonymity. Such questions would require to be fully thought through in the development of a waiver scheme for next of kin.

Question 12: If anonymity is automatic, how should a waiver process operate?

- a) Family members must apply to court to waive anonymity
- b) Family members are allowed to waive anonymity without requiring a court order and all restrictions fall when anonymity is waived
- c) Family members are allowed to waive anonymity without requiring a court order but restrictions do not fall when they do so and those wishing to publish identifying information must seek permission from the family before doing so
- d) Other – please provide details

Please give reasons for your choice.

Question 13: Who should be allowed to waive anonymity/apply for a waiver?

Enforcement and penalties

There was discussion at the roundtable regarding the policing and enforcement of anonymity restrictions in the short and longer term, given content could be produced any number of years after the child's death and published across a wide variety of platforms. Concerns were raised around the implications for, and practicalities of, policing a blanket ban on identifying child victims of homicide.

Concerns were also raised about the risk of disproportionately criminalising children and young people as prevalent users of social media, with 16-to-24 year olds being the [most frequent users](#) of social networking websites and apps. [Research](#) commissioned by the Scottish Sentencing Council found that young people (under 25) are not fully developed and may not have attained full maturity. As a result, they:

- are generally less able to exercise good judgement when making decisions;

- are more vulnerable to negative influences such as peer pressure and exploitative relationships;
- may be less able to think about what could happen as a result of their actions, including the impact on any victim and others affected by those actions; and
- may take more risks.

All these factors could impact on a child or young person's ability to understand anonymity restrictions and to comprehend the risks and consequences of sharing content that is unlawful due to such restrictions.

When creating any new criminal offences, it is essential to determine what the appropriate sanction is for that offence, who is likely to be impacted by the offence and the wider implications for society. When considering sanctions for breaching any new anonymity restrictions, it may be helpful to consider the penalties in place for breaches of similar restrictions in Scottish legislation.

The current penalty for breaching reporting restrictions under the Criminal Procedure (Scotland) Act 1995 and the Children's Hearings (Scotland) Act 2011 is a fine not exceeding level 4 on the [standard scale](#) (£2,500). During scrutiny of the Children (Care and Justice) (Scotland) Bill, stakeholders expressed concern that the current level of penalty did not reflect the significant implications of the offence, nor serve as a deterrent to the potential gains from doing so, especially for larger scale media organisations with access to significant financial resource.

Current penalties for contempt of court, where a person is convicted for breaching a [section 11 order in Scotland under the Contempt of Court Act 1981](#) and that order relates to a solemn case (more serious cases decided by a jury), the maximum sentence that can be imposed is two years' imprisonment and/or an unlimited fine. Where a person is convicted for breaching a section 11 order and that order relates to a summary case (decided by a judge sitting without a jury), under section 15 of the 1981 Act, the maximum sentence that can be imposed is three months' imprisonment and/or a fine not exceeding level 4 on the [standard scale](#) (£2,500). Under the proposals in the Victims, Witnesses, and Justice Reform (Scotland) Bill, the penalties for breaching the anonymity of victims of sexual and other specified offences correspond with those for contempt of court.

As discussed in earlier sections, a wide variety of people would be impacted by the creation of an offence of breaching anonymity restrictions in relation to deceased child victims. This would range from accredited journalists reporting on a child homicide, to bloggers who self-publish content, to friends and families who post messages on public-facing forums in relation to the death of their loved one – with the potential for criminal sanctions for their actions.

Question 14: What do you think are the main challenges to enforcing anonymity restrictions?

Question 15: To what extent do you think it is important that the wider public understand anonymity provisions?

Question 16: What can be done to increase public understanding of anonymity provisions?

Question 17: What group of people do you think it would be hardest to educate about anonymity provisions?

Question 18: How might this group be accessed and educated?

Question 19: What do you think would be an appropriate penalty for breaching an anonymity restriction?

Cross-border application

As noted in the background section, section 47 of the Criminal Procedure (Scotland) Act 1995, relating to anonymity restrictions for (living) child victims, witnesses and accused, extends to England, Wales and Northern Ireland (though only in relation to proceedings in a court in Scotland). This is essential to ensure the effective application of anonymity provisions given the UK-wide reach of publishers, broadcasters and news reporting.

It follows, therefore, that any extension of anonymity to child homicide victims would also be required to extend to the rest of the UK – otherwise you could end up with a situation where, for example, an English-based broadcaster could name a child homicide victim, but a Scottish-based broadcaster could not. It is likely an order under section 104 of the Scotland Act 1998 would need to be agreed with the UK Government in consequence of any Scottish legislative provisions to extend those provisions to the rest of the UK. It is hard to envisage how anonymity provisions could be fully effective without such an order, but such an order would, as UK legislation, be subject to agreement with the UK Government.

Question 20: To what extent do you agree that any extension of anonymity to deceased child victims in Scotland would need to apply to the rest of the UK to be effective?

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please give reasons for your answer.

Final questions and additional comments

The final set of questions seeks views on the options, legislative and non-legislative, that have been set out in the consultation. They also offer the opportunity for any additional comments on the issues being discussed or for alternative options to be suggested.

Question 21: To what extent do you support the options discussed in this paper:

- No anonymity restrictions (i.e.the status quo) but with non-legislative actions, such as a media toolkit:

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree

Please give reasons for your answer.

- Full anonymity restrictions (no waiver):

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree

Please give reasons for your answer.

- Automatic anonymity with option to waive:

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree

Please give reasons for your answer.

- No automatic anonymity but can apply for court order (with the potential for non-legislative actions, such as a media toolkit):

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree

Please give reasons for your answer.

Question 22: To what extent do you think that the legislative options proposed are proportionate and enforceable?

- No anonymity restrictions (i.e. the status quo) but with non-legislative actions, such as a media toolkit:

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree

Please give reasons for your answer.

- Full anonymity restrictions (no waiver):

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree
Please give reasons for your answer.

- Automatic anonymity with option to waive:

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree

Please give reasons for your answer.

- No automatic anonymity but can apply for court order (and potential for non-legislative actions, such as a media toolkit):

Strongly agree
Agree
Neither agree or disagree
Disagree
Strongly disagree

Please give reasons for your answer.

Question 23: Are there other options you think we should explore? Please provide details.

Question 24: Do you have any other comments on this issue that you would like to share with us?

Conclusion

This consultation paper has explored the key considerations and challenges when discussing how we can reduce the trauma of media reporting on bereaved families of child victims. As is evident from the preceding text, this is a hugely complex issue that impacts on a wide range of individuals and communities.

The Cabinet Secretary for Justice and Home Affairs set out in the Ministerial Foreword to this consultation the importance of examining these complex issues carefully, listening to the range of views, building on the evidence base and reaching a shared understanding of the issues. We recognise that there will always be differing opinions, interests and experiences – we may not be able to reach a consensus on all matters, but we must ensure that any decisions we make are considered and evidence-based.

We must ensure that the voices of victims and survivors remain at the heart of the discussion, especially those of children who have lost a family member to homicide. But we cannot ignore the wider consequences of any potential legislative changes on the ability for bereaved families to talk freely about their loved one without fear of criminal sanction, and on freedom of expression and the principle of open justice.

It is essential we find a way forward that addresses the impact on bereaved families whilst avoiding unintended negative consequences for those families and society more widely. This consultation explores a number of options, both non-legislative and legislative, but this is not an exhaustive list and we welcome input on other action that could be taken to address the issues that have been raised. Furthermore, it does not represent a commitment to legislate in this area, rather seeks to explore the options for, and implications of, legislation should it be deemed a necessary and achievable course of action.

Thank you for taking the time to read through and respond to this consultation.

Respondent Information Form

Please Note this form **must** be completed and returned with your response.

To find out how we handle your personal data, please see our [privacy policy](#)

Are you responding as an individual or an organisation?

- Individual
- Organisation

Full name or organisation's name

Phone number

Address

Postcode

Email Address

The Scottish Government would like your permission to publish your consultation response. Please indicate your publishing preference:

- Publish response with name
- Publish response only (without name)
- Do not publish response

Information for organisations:

The option 'Publish response only (without name)' is available for individual respondents only. If this option is selected, the organisation name will still be published.

If you choose the option 'Do not publish response', your organisation name may still be listed as having responded to the consultation in, for example, the analysis report.

We will share your response internally with other Scottish Government policy teams who may be addressing the issues you discuss. They may wish to contact you again in the future, but we require your permission to do so. Are you content for Scottish Government to contact you again in relation to this consultation exercise?

- Yes No

For the purposes of analysing the responses to this consultation it would be helpful to know a bit more about you.

Please note that the question below is optional.

If you are responding to this consultation as an individual, please select any of the following that apply:

- Interested member of the public
- Journalist
- Bereaved family member or friend
- Legal Professional
- Other – please specify:

Questionnaire

Question 1

Please share any thoughts you have on how the media currently reports on child homicides.

Question 2

Please share any thoughts you have on any action that could be taken to amend the current position on media reporting of child homicides.

Question 3

To what extent do you think an extension of anonymity to deceased child victims would affect family and friends wanting to talk publicly about their loss?

Question 4

Do you consider that an extension to anonymity would have an impact on the ability of the police to investigate a crime? Please provide details.

Question 5

Do you consider that an extension to anonymity would have an impact on freedom of expression? Please provide details.

Question 6

Do you consider that an extension to anonymity would have an impact on open justice? Please provide details.

Question 7

To what extent do you agree that a media toolkit could support journalists and editors to report on child homicides in a trauma-informed way?

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please give reasons for your answer.

Question 8

What should such a toolkit cover?

Question 9

Are there other non-legislative means of improving how child homicides are reported and information published?

Question 10

To what extent do you agree that the Scottish Government should work with the criminal justice agencies to explore non-legislative options to help reduce the trauma of reporting on bereaved families of child homicide victims?

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please give reasons for your answer.

Question 11

If anonymity for deceased child victims was introduced, at what point do you think it should start?

- a) From the point of a child's death (when it is established that criminality is involved)
- b) From the start of criminal proceedings
- c) Other – please provide details

Please give reasons for your choice.

Question 12

If anonymity is automatic, how should a waiver process operate?

- a) Family members must apply to court to waive anonymity
- b) Family members are allowed to waive anonymity without requiring a court order and all restrictions fall when anonymity is waived
- c) Family members are allowed to waive anonymity without requiring a court order but restrictions do not fall when they do so and those wishing to publish identifying information must seek permission from the family before doing so
- d) Other – please provide details

Please give reasons for your choice.

Question 13

Who should be allowed to waive anonymity/apply for a waiver?

Question 14

What do you think are the main challenges to enforcing anonymity restrictions?

Question 15

To what extent do you think it is important that the wider public understand anonymity provisions?

Question 16

What can be done to increase public understanding of anonymity provisions?

Question 17

What group of people do you think it would be hardest to educate about anonymity provisions?

Question 18

How might this group be accessed and educated?

Question 19

What do you think would be an appropriate penalty for breaching an anonymity restriction?

Question 20

To what extent do you agree that any extension of anonymity to deceased child victims in Scotland would need to apply to the rest of the UK to be effective?

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please give reasons for your answer.

Question 21

To what extent do you support the options discussed in this paper?

- No anonymity restrictions (i.e the status quo) but with non-legislative actions, such as a media toolkit:
 - Strongly agree
 - Agree
 - Neither agree or disagree
 - Disagree
 - Strongly disagree

Please give reasons for your answer.

- Full anonymity restrictions (no waiver):

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please give reasons for your answer.

- Automatic anonymity with option to waive:

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please give reasons for your answer.

- No automatic anonymity but can apply for court order (with the potential for non-legislative actions, such as a media toolkit):

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please give reasons for your answer.

Question 22

To what extent do you think that the legislative options proposed are proportionate and enforceable?

- No anonymity restrictions (i.e the status quo) but with non-legislative actions, such as a media toolkit:

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please give reasons for your answer.

- Full anonymity restrictions (no waiver):

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please give reasons for your answer.

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- Strongly agree
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- Disagree
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Please give reasons for your answer.

- No automatic anonymity but can apply for court order (with the potential for non-legislative actions, such as a media toolkit):

- Strongly agree
- Agree
- Neither agree or disagree
- Disagree
- Strongly disagree

Please give reasons for your answer.

Question 23

Are there other options you think we should explore? Please provide details.

Question 24

Do you have any other comments on this issue that you would like to share with us?



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