

The Royal Court of Guernsey refused the Defendant's application for sentencing to be held in camera or for permanent reporting restrictions, finding no sufficient grounds to derogate from the principle of open justice. The Court held that neither the Defendant's age nor welfare justified a departure from open proceedings or reporting.

This application was heard in camera. This judgment has been anonymised and redacted to protect the identity of the Defendant. Nothing must be published which identifies the Defendant.

[2025]GRC095

**IN THE ROYAL COURT OF GUERNSEY
(CRIMINAL DIVISION)**

Between:

The Law Officers of the Crown

Prosecution

-and-

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Defendant

(Sentencing in Camera/Reporting Restrictions)

Application by the Defendant for his sentencing hearing to be held in camera or for reporting restrictions

**Anonymised and Redacted
Perfected judgment: 23 December 2025**

Before: Catherine Maureen Fooks, Judge of the Royal Court

Counsel for the Prosecution: Advocate J D McVeigh

Counsel for the Defendant: Advocate S E Steel

Legislation, texts and cases referred to in Decision:

The Human Rights (Bailiwick of Guernsey) Law, 2000

The Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003

The European Convention of Human Rights

IFS v Manor Park (Guernsey) Ltd et al Judgment 13 / 2004

AG v Williams [2023] JRC097

AG v Times Newspapers [1974] AC 273

D v AG [[2022] JRC 228]

Trinity Mirror & Ors, R (on the application of) v Croydon Crown Court [2008] EWCA Crim 50

Re Guardian News and Media Ltd [2014] EWCA Crim 1861

Khuja v Times Newspapers Limited and Others [2017] UKSC 49

R v Nazir Ahmed and others [2023] EWCA Crim 281

Blackstone's Criminal Practice 2025

Background/Introduction

1. This judgment is concerned with an application ("the Application") by the Defendant ("D") represented by Advocate Steel for D's sentencing hearing to be heard in camera or, alternatively, for an order under Section 84 of the Police Powers and Criminal Evidence (Bailiwick of Guernsey) Law, 2003 ("PPACE") that, on a permanent basis, the hearing is not to be reported at all. This judgment has been anonymised and redacted for publication.
2. The Application came about in an unusual way. [The issue was raised by a Probation Officer in an email shortly before the sentencing date].
3. [I was made aware of the issue and gave some directions as to the filing of an application and listing for urgent hearing before the sentencing date]. Advocate Steel filed the application on the day of the hearing. This gave little time for prior reading but counsel wished me to hear the application. A decision needed to be made. This judgment is not as full as I would like but I have considered fully all that has been filed and said and I had started researching the issue as soon as it was raised as I was concerned that it was a very serious application being raised late and in an unconventional way.
4. Although Advocate McVeigh made the initial approach, at the hearing she did not support the Application [redacted].

The basis of the application

5. The only papers I have are the Application itself, the email above and the Social Enquiry Report. It is of note that the Social Enquiry Report does not include reference to the in camera issue nor does it establish any welfare grounds for the Application.

The Applicable Legal Principles

6. I deal first with the issue of an in camera hearing i.e. one excluding the public and the media. There was no dispute between counsel that this Court has an inherent jurisdiction to direct that a hearing be held in camera.
7. In terms of the applicable legal principles, Advocate Steel referred to the position in England as set out in Blackstone's 2025 D3.120ff which refers to the principle of open justice and goes on to set out the caselaw in England on hearings in private. In England the general principle is now statutory and contained in Criminal Practice Direction 2.1.1:

"The general principle is that the administration of justice must be done in public, the public and the media have a right to attend all court hearings, and the media is able to report those proceedings fully and contemporaneously."

8. I drew counsel's attention to the Jersey case of AG v Williams [2023] JRC097 in which MacRae DB (as he was then), on an application for a trial of sexual offences in camera, set out the applicable legal principles in Jersey which were, in terms, the same as in England and founded on the principle of open justice and Article 6 of The European Convention of Human Rights ("ECHR"). It will be seen that I have drawn heavily from this judgment as I consider it to state

the principles which are equally applicable in Guernsey and time has not permitted me to write a fuller judgment in this matter.

9. Of course, the place to start should be with Guernsey sources. Counsel in the case before me indicated that no case concerning the hearing of a criminal trial or sentencing in Guernsey in camera could be found. After the hearing today (and I apologise for overlooking this), I remembered that I had dealt with an application, in camera, to hear confiscation proceedings in private. That judgment has not been published but, in it, I go through the same process as MacRae DB in terms of referring to a Guernsey civil case IFS v Manor Park (Guernsey) Ltd et al Judgment 13/2004 in which Day DB (as he then was) carefully analysed the principle of open justice as applicable in Guernsey and the derogations from that principle made to ensure that justice is done. The judgment, though a civil one, is one which bears reading whenever the issue of privacy in Court proceedings arises. He draws heavily from English caselaw and refers to Jersey case law. Although that judgment does not bind me, I agree entirely with it. There can be no doubt that the principles of open justice are the same in Guernsey as in England, and in Jersey.
10. Article 6 of ECHR incorporated into Guernsey Law by virtue of the Human Rights (Bailiwick of Guernsey) Law, 2000 is engaged and reads:

“In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interest of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice.”

The concept of the principle of open justice can be worded in different ways. In the words of Gross LJ in In Re Guardian News and Media Ltd [2014] EWCA Crim 1861:

“Open justice is both a fundamental principle of the common law and a means of ensuring public confidence in our legal system; exceptions are rare and must be justified on the facts. Any such exceptions must be necessary and proportionate. No more than the minimum departure from open justice will be countenanced.”

It must be noted that he went on to say this:

“open justice must, however, give way to the yet more fundamental principle that the paramount object of the Court is to do justice ...”

The burden of establishing necessity and proportionality lies on the person seeking the order. It is clear that this requires the applicant to file sufficient evidence to justify a derogation from the principle of open justice.

11. In Blackstone’s there is this specific reference to sentencing hearings which I consider to be equally applicable in Guernsey:

“In Billington [2017] EWCA Crim 618, the Court of Appeal (at [32]) emphasised the importance of sentencing judges delivering their sentencing remarks in open court, in order to ensure ‘that the public at large, which includes the press who might cover a sentencing exercise, are made fully aware of the reasons for the sentence passed.’”

12. Advocate Steel conceded that there appeared to be no caselaw to support an application for a hearing in camera based on the personal circumstances of a defendant of the kind he relies upon. The caselaw in Blackstone's is focussed on cases involving terrorism or national security. It is to be noted that even in such cases the English Court uses its powers to sit in camera or to make reporting restrictions sparingly.
13. I turn now to the issue of reporting restrictions. As Day DB observed in IFS, a restriction limited only to the identity is less objectionable than holding the hearing in whole or in part behind closed doors. In other words, any interference with open justice should be as minimal as possible. It is to be noted that even those who are victims of sexual offending or child defendants who might be considered the most vulnerable are afforded anonymity but the cases are held in public.
14. The power to make reporting restrictions in criminal cases in Guernsey is to be found in various pieces of legislation but the one on which Advocate Steel relies is section 84 of PPACE subsections (1) and (2) of which read:

“Power to restrict reports of proceedings.

84. (1) *In relation to any proceedings in any court in the Bailiwick, the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, direct that –*

- (a) the publication of any report of the proceedings or of any part of the proceedings shall be postponed for such period as the court considers necessary for that purpose,*
- (b) the publication of any matter or information in relation to the proceedings shall be prohibited or restricted in such manner as the court considers necessary for that purpose.*

(2) A direction under subsection (1) may be made or revoked at any time by the court.”

15. Again, it is helpful to consider MacRae DB's analysis of the equivalent legislation in Jersey. He observes that the test is specific *“necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings”* which is the same as our PPACE wording. He refers to the English guidance on Reporting Restrictions in the Criminal Courts published in September 2022 and he considers the importance of the balancing of a defendant's Article 8 right to private and family life and the right of freedom of expression enjoyed by the media under Article 10 both of which articles are also incorporated into Guernsey law by the Human Rights Law. He quotes extensively from the House of Lords judgment delivered by Lord Sumption in Khuja v Times Newspapers Limited and Others [2017] UKSC 49 all of which I consider to be directly relevant to the balancing exercise to be conducted here. It must be noted that the application in Jersey related to a trial but the paragraph quoted by MacRae DB in his conclusion from the judgment of Sir Igor Judge in Trinity Mirror & Ors, R (on the application of) v Croydon Crown Court [2008] EWCA Crim 50 at paragraph 32 also refers to sentencing and is clearly entirely on point in the case before me:

“In our judgment it is impossible to over-emphasise the importance to be attached to the ability of the media to report criminal trials. In simple terms this represents the embodiment of the principle of open justice in a free country. An important aspect of the public interest in the administration of criminal justice is of the identity of those convicted and sentenced for criminal offences should not be concealed. Uncomfortable

though it may frequently be for the defendant that is a normal consequence of his crime.”

Paragraph 45 of MacRae DB’s judgment also properly, in my view, sums up what should be this Court’s approach to a request for a reporting restriction in a criminal case based on the impact of reporting on an individual:

“The Court’s duty in criminal proceedings is not to protect the reputation or feelings of defendants and other third parties. It is to protect the administration of justice. As Lord Read said in AG v Times Newspapers [1974] AC 273 at page 294:

“The law on this subject is and must be founded entirely on public policy. It is not there to protect the private rights of parties to a litigation or prosecution. It is there to prevent interference with the administration of justice and it should, in my judgment, be limited to what is reasonably necessary for that purpose. Public policy generally requires a balancing of interest which may conflict. Freedom of speech should not be limited to any greater extent than is necessary but it cannot be allowed where there will be real prejudice to the administration of justice.””

16. On any application for reporting restrictions, the burden is on the Applicant to satisfy the Court that the test is met and to produce adequate evidence to establish the facts underpinning the application.
17. The Application in this case is for a full and permanent ban on reporting but there is an alternative application for an order that D’s identity be protected as it would have been had he been prosecuted as a child. As Advocate McVeigh observed, this Court has dealt with adults who have offended as children and their identity is not protected as they are adults at the time of trial/sentence. It is accepted that there is no statutory provision for such protection apart from section 84. There is provision within the reporting restrictions available for children and young persons namely The Criminal Justice (Children and Juvenile Court Reform) (Bailiwick of Guernsey) Law, 2008 for protection of those who become adults in the course of proceedings but not for adults who have offended as children and been prosecuted after attaining adulthood. There was reference by McRae DB to the case of D v AG [[2022] JRC 228] of which he said:

“The case of D v AG [[2022] JRC 228] was a case involving a defendant who committed the offence in question when he was a child. Different principles apply in such circumstances, and reference in D v AG was made at paragraph 26 to 29 of the provisions of the United Nations Convention on the Rights of the Child which were of relevance in that case. The “General Comment” in respect of children’s rights states that every person under the age of eighteen at the time of the alleged commission of offence must be treated in accordance with the rules of juvenile justice and, pursuant to Article 40 of the Convention, such a person must have their privacy ‘fully respected at all stages of the proceedings.’”

At first blush, this paragraph appears to be relevant to D’s case but it is accepted by counsel that the reference is to those who were juveniles when the proceedings started which is not the case for D. It is said at paragraph 30:

“We do not suggest that such an approach is appropriate in the circumstances of, to take an example, allegations of sexual abuse which come to light years, sometimes decades, later where the alleged offender is treated as an adult for the purposes of the trial process.”

Advocate McVeigh's submission was that this confirms that the case is of no assistance to me. Advocate Steel urged me to view paragraph 30 as confined to the example given and contrasted the position with D's case where there are no victims. I note the English case of R v Nazir Ahmed and others [2023] EWCA Crim 281 which is concerned with the sentencing of adults who committed offences when children. Only one of the defendants was granted anonymity and that was to protect the identity of the victim. Whilst that case concerned sexual offences, the sentencing principles were of broader application. I am satisfied that an adult at the start of proceedings for offences committed when a child has no general right to anonymity.

Counsel's submissions

18. Advocate Steel filed succinct and focussed written submissions, supplemented by oral submissions. As respects the in camera part of the Application, he submitted that this is one of those rare cases which justifies derogation from the principle of open justice, it being necessary and proportionate because: [reasons redacted except reference to D's young age at the time of offending]

D, by virtue of his age, has lost the chance to have his case heard by the Children's Convenor i.e. outside the criminal court system.

19. Advocate Steel acknowledged that the sentencing hearing would mark the end of the proceedings which is relevant to the interpretation of section 84 but he emphasised that D would have been entitled to automatic reporting restrictions had he appeared in Court as a child. He also urged me to treat as significant the fact that the Application derives from the recommendation of an experienced Probation Officer.
20. In my judgment, Advocate Steel struggled to identify what it was about D's case which set D apart from others appearing before the Court and which prejudiced the administration of justice. [Submission redacted]
21. Advocate McVeigh made succinct and helpful oral submissions. [Submission redacted] Advocate McVeigh submitted that this was no different from many who appear before this Court, especially sex offenders.

Discussion

22. I have set out the tests above – for the application for an in camera hearing, that it must be necessary and proportionate to displace the principle of open justice. It will also be rare and exceptional. The test for a permanent reporting restriction (on the whole case) is as contained in section 84 i.e. necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings.
23. I can only describe the evidence as lacking whether considered in relation to the in camera or permanent reporting restriction parts of the Application. The points which Advocate Steel makes about D's age at the time of offending, [other points redacted], will be factored into the Court in its sentencing exercise, especially his age.
24. [Redacted]
25. In essence, all the points made by Advocate are about the impact on D, whereas I have to look at the administration of justice not just D.
26. I do not consider that the fact that the Application was, in effect, suggested by and supported by a Probation Officer gives it any weight. [Redacted] The Application has to be considered on the basis of legal principles.

27. The fact that there is no reported case of an order for in camera hearing or permanent reporting restriction based on impact or even welfare is, in my view, obviously because such matters have not displaced the principle of open justice.
28. Going back to the test for an in camera hearing, there is simply no basis on which this case can be considered one of those rare exceptions to the principle of open justice, such as to make a derogation necessary and proportionate. The hearing must be in open Court.
29. In terms of a permanent restriction on reporting anything about the case, the test in section 84 is nowhere near satisfied. Such evidence as there is about D and not the administration of justice which is concerned with public policy and not the reputation or feelings of individuals. There is no basis for such a restriction. The case can be reported in the usual way.

Decision

30. The Application for an in camera hearing or permanent reporting restriction is refused.

Catherine Maureen Fooks
Judge of the Royal Court

23 December 2025