

CARE QUALITY COMMISSION

- v -

HILLGREEN CARE LIMITED

PROSECUTION NOTE ON REPORTING

1. This case is likely to attract significant media interest. That is understandable and appropriate, given that important public interest issues arise. The prosecution acknowledges and intends fully to respect the open justice principle.
2. The purpose of this Note, which will be served on the defendant, the press (through the Alert system) and those responsible for the care of XX, is to provide early notice of the reporting issues that arise in order that those issues may be fully ventilated at the first hearing.

Those Against Whom XX Allegedly Offended

3. XX is not a defendant. However, in the course of these proceedings, the Court will hear allegations that XX committed sexual offences against a number of persons and, indeed, the charge based upon the alleged failure of the defendant to discharge the duty imposed by Regulation 13(1) of the Health and Social Care Act 2008 (Regulated Activities) Regulations 2014 is focused upon one such person, namely YY. The position of the prosecution is as follows.
4. **First**, the allegations made against XX in respect of YY and others are ones to which the Sexual Offences (Amendment) Act 1992 (“the 1992 Act”) applies. Accordingly, the position of the prosecution is that YY and those others are entitled to lifetime anonymity by reason of the operation of section 1(1) of the Act.

5. It is right that the Court of Appeal considered the ambit of section 1(1) in R. v Beale [2017] EWCA Crim 1012 and stated:

“14 However, the right to anonymity, and the duty to preserve it, are clearly qualified by s.1(4). The plain and obvious meaning of the language in s.1(4) is that s.1(1) does not operate to prohibit a report of any criminal proceedings other than those in which a person is accused of the sexual offence in question, or proceedings on appeal from such proceedings.”

6. Read in isolation, this might be thought to mean that section 1(1) bites only in circumstances in which a defendant is actually on trial for the sexual offence in question and that a person who has made an allegation of a sexual offence against him is entitled to anonymity only in that trial or in directly associated proceedings. However, such a reading would plainly be incorrect:

- a. The Court went on in §14 of the judgment to make clear that it was seeking to express a principle applicable to a particular type of case, namely where a complainant in a sexual offences case is subsequently prosecuted for perjury or wasting police time in separate proceedings:

“Criminal proceedings in which a rape complainant is accused of perjury are “other proceedings” for that purpose. No other conclusion is possible. It follows that in enacting s.1, Parliament has legislated to exempt the reporting of proceedings such as those Miss Beale is facing, from the ambit of the right to anonymity conferred by s.1(1).”

- b. Furthermore, the Court stated that the guidance given by the Judicial College on Reporting Restrictions in the Criminal Courts contains an accurate statement of the law. That guidance states, so far as relevant:

“... the media is free to report the victim's identify in the event of criminal proceedings other than the actual trial or appeal in relation to the sexual offence. This exception caters for the situation where a complainant in a sexual offences case is subsequently prosecuted for perjury or wasting police time in separate proceedings. It appears to have been the intention of Parliament, however, that a complainant

would retain anonymity if, during the course of proceedings, sexual offences charges are dropped and other non-sexual offence charges continue to be prosecuted”.

- c. Furthermore, any reading which restricted the operation of section 1(1) beyond the situation described in §6(b) above would be entirely contrary to the purpose of the section, which is that bona fides complainants/victims of sexual offending should be entitled to anonymity.
7. The position of the prosecution is that the proceedings against Hillgreen Care Limited are proceedings in which “a person is accused of the sexual offence in question” because the prosecution does accuse XX of committing the sexual offences in question, even though he is not the defendant. Hence, we repeat that the position of the prosecution is that YY and the other alleged victims of XX’s sexual offending are entitled to lifetime anonymity by reason of section 1(1).
 8. **Second**, in the event that there is any challenge to this position, it should be notified to the prosecution and court ahead of the first court hearing and set out in detail, in writing in accordance with Part 6 of the Criminal Procedure Rules. In the event that the objection is upheld, the prosecution will submit as follows:
 - a. It is settled law that Courts (including a magistrates’ court) have an inherent power, where the circumstances warrant it, to allow information such as a name and/or address to be withheld from the public at a public hearing. There are many acknowledgements of this principle in the authorities, eg. H v Ministry of Defence [1991] 2 QB 103 and R (A) v Lord Saville of Newdigate [2002] 1 WLR 1249. Furthermore, the notes to Part 6 of the Criminal Procedure Rules expressly acknowledge the existence of this inherent power.
 - b. The prosecution submit that the circumstances of this case undoubtedly warrant withholding the true name and address of YY and the other victims of XX. The interference with the Article 2 and

8 rights of those persons that would likely occur if the order sought was not made justifies the limited derogation from the principle of open justice proposed. The derogation is limited because the public will be deprived of no information of significance to an overall understanding of the case.

- c. Section 11 of the Contempt of Court Act 1984 provides that a where a court exercises this inherent power, it may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld:

“11. Publication of matters exempted from disclosure in court.

In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the purpose for which it was so withheld”.

- d. Accordingly, if it comes to it, the prosecution will seek a direction under section 11.

XX Himself

9. We do not know whether XX himself will seek to have his name and address or any other matter withheld from the public and a section 11 direction given. Those representing his interests will no doubt wish to consider whether his rights under Article 2 and/or Article 8 are truly engaged, although if it is proposed to make any argument on the basis of XX’s Article 8 rights, the proper course would seem to be an application to the High Court. The prosecution expresses no view at this stage about whether any order restricting publicity should be made in respect of XX, but once more makes plain that it fully acknowledges the open justice principle.

PAUL GREANEY Q.C.

26th March 2018