



Neutral Citation Number: [2024] EWHC 3307 (Admin)

Case No: AC-2024-BHM-000270

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20 December 2024

Before:

LORD JUSTICE JEREMY BAKER
and
MR JUSTICE JAY

Between:

BSW	<u>Claimant</u>
- and -	
The Crown Court at Birmingham	<u>Defendant</u>
PA Media	<u>Interested</u>
West Midlands Police	<u>Parties</u>
Birmingham Youth Justice Service	
Crown Prosecution Service West Midlands	

Michael Ivers KC and Ramby de Mello (instructed by McGrath & Co) for the Claimant
James Robottom and Danielle Manson (instructed by Birmingham Youth Justice Centre) for
one of the Interested Parties

Hearing date: 18 December 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 20 December 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....
LORD JUSTICE JEREMY BAKER

Lord Justice Jeremy Baker:

1. This is the judgment of the court.
2. On 26 July 2024, following a trial in the Crown Court in Birmingham, BSW was convicted of the murder of Hassam Ali, which took place on 20 January 2024, whilst his co-accused was convicted of his manslaughter.
3. On 1 November 2024, the trial judge sentenced BSW to be detained during His Majesty's Pleasure for a period of 12 years and 84 days, under section 259 of the Sentencing Act 2020, ("the 2020 Act"), whilst his co-accused was ordered to be detained for a period of 5 years, under section 250 of the 2020 Act.
4. Both BSW and his co-accused were born in December 2008, and were therefore 15 years of age at the time of the killing, their convictions and sentence.
5. At the commencement of the proceedings an order had been made under section 45(3) of the Youth Justice and Criminal Evidence Act 1999, ("the 1999 Act"), prohibiting publication of any matter if it was likely to lead members of the public to identify either of the accused as a person concerned in the proceedings.
6. However, shortly before the sentencing hearing, an application was made by PA Media, dated 28 October 2024, for an excepting direction under section 45(5) and (6) of the 1999 Act, whereby it sought an order dispensing with the restriction on identifying the accused as being concerned in the proceedings.
7. Unfortunately, the application had not been forwarded by the court to the parties prior to the sentencing hearing, and those instructed on behalf of the accused requested that the hearing of the application be postponed for a period of a week to allow them to respond. The judge declined the request, on the basis that, "...*the value to the press of the information sought would decline rapidly with the passage of time.*" However, the judge agreed to postpone further consideration of the application until 5 November 2024, and invited the Birmingham Youth Justice Service ("BYJS"), who had been responsible for the preparation of Pre-Sentence Reports in respect of the accused, dated 28 October 2024, to provide him with a report concerning the potential effect of making an excepting direction in relation to them.

8. Following the hearing, those instructed on behalf of the accused provided written submissions opposing the making of the excepting directions, and the BYJS provided letters dated 4 November 2024 expressing the view that,

“The lifting of reporting restrictions may impact upon rehabilitation in custody, impact upon his family and family of his co-defendant.

On balance the Birmingham Youth Justice Service would request that reporting restrictions remain in place.”

9. These matters were considered by the judge who, in a written ruling dated 6 November 2024, determined that whilst the application for an excepting direction in relation to the co-accused would be refused, the application in respect of BSW would be granted; albeit that the order would not come into effect until 8 November 2024, so as to enable those instructed on his behalf to consider any challenge to the making of the order.
10. In the event, those instructed on behalf of BSW applied to the High Court for permission to apply for judicial review of the decision, together with an application for interim relief seeking suspension of the operation of the excepting direction. Whilst the application for interim relief was refused by Chamberlain J on 15 November 2024, the application for permission was adjourned by May J on 20 November 2024, to be listed as a “rolled-up” hearing, whereby if permission is granted the court would proceed immediately to determine the substantive claim. She also directed that the parties should be ready to address the question of whether the result may or would have been different had an alternative procedure been adopted, bearing in mind section 31(2A) of the Senior Courts Act 1981.

The offence

11. In the mid-afternoon of 20 January 2024, BSW and his co-accused were together in Birmingham city centre when they saw Hassam Ali and his friend Mohammed Qadir. In the mistaken belief that Hassam Ali had attacked someone they knew some weeks earlier, BSW and his co-accused began to follow the two of them through the Grand Central shopping centre and then along some streets into Victoria Square.
12. Once in Victoria Square, BSW and his co-accused confronted Hassam Ali and his friend and the four of them exchanged some words, before BSW withdrew a knife

which he was carrying from inside his trousers and thrust the knife into Hassam Ali's chest. The blade passed through Hassam Ali's chest, into his lungs and pierced his heart, leading to a massive loss of blood. Tragically, despite emergency treatment at hospital, he died from the effect of his injuries later that evening.

13. In the meantime, BSW and his co-accused made good their escape on foot. At some point BSW had disposed of the knife at a friend's house and burned the clothes he was wearing. When they were arrested on 23 January 2024, BSW made no comment in interview, whilst his co-accused admitted being present when BSW had stabbed Hassam Ali, but denied any previous knowledge either of the knife or that BSW was going to attack Hassam Ali.

BSW and his co-accused

14. Neither BSW nor his co-accused had any relevant previous convictions.
15. The Pre-Sentence Report relating to BSW was written by Ruth Crisp, who had interviewed BSW on three occasions, and consulted with a wide group of individuals, including BSW's grandparents, his social worker, a clinical psychologist attached to the Integrated Mental Health Team based at the Young Offenders' Institution where BSW was remanded in custody, and representatives from the educational establishments which BSW had attended. Ms Crisp had also had sight of the records relating to BSW at Birmingham Children's Services where he had been known to them since 2009.
16. The report set out BSW's history, including his disruptive childhood, due to inconsistent care by his parents, his mother suffering from difficulties with her mental health, whilst his father had periods of imprisonment. As a result of which, from an early age BSW's care had largely been provided by his grandparents with whom he lived and who had done their best to provide a loving stable upbringing.
17. Ms Crisp stated that the effects of parental abandonment can have deep psychological and emotional effects on children, and can also manifest in behavioural issues. Although, there seemed to be no problem with his behaviour at primary school, there were problems at secondary school from where he was excluded in January 2023 for bringing a knife into school and threatening students with it.

18. Whilst on remand in custody, Ms Crisp noted that despite some speech and language difficulties, which had not as yet been formally assessed, BSW was doing well in his studies, which was being provided to him within smaller groups and within his competency level. She noted that prior to his remand in custody, BSW's grandparents had asked for him to be assessed for ADHD, and she considered that he would benefit from a psychological assessment. She considered that BSW appeared developmentally younger than his chronological age.

19. In relation to his mental health, she stated that,

“...I am not aware of any concerns in relation to his physical or emotional health. (BSW) presents as a relatively resilient child. He appears to be coping as well as could be expected in the prison environment and engaging with the regime. However, it is acknowledged that post sentencing (BSW's) context will significantly change as he comes to terms with the length of time he will be in prison. This will therefore be an area that will be continually monitored.”

20. Ms Crisp noted that BSW had been involved in two incidents within custody where he had assaulted another inmate, at least one of them he explained was due to defending a peer. She stated that this had put his own safety at risk for what she considered to be misguided loyalty and approval. She stated that there was evidence to suggest that BSW had undiagnosed needs which could impact on his thinking and recommended a number of strategies for reducing the risk to him, including a full assessment of language and psychological needs with appropriate intervention, therapeutic support to process past trauma, conflict resolution strategies, building relationships, social skill training, and positive identity.

21. In relation to the offence, BSW had explained that the reason he was carrying a knife was due to the fact that since an incident at school when he was 13 years of age, he always carried a knife with him for protection. He stated that up until the offence, he had only ever taken the knife out after others had threatened him and he had never previously caused injury with the knife, only slashed their clothing. Ms Crisp stated that BSW had expressed remorse for the offence, which she thought seemed genuine.

Sentence

22. In his sentencing remarks, the judge noted that prior to the offence, BSW routinely carried a knife whenever he went into built-up areas and that his co-accused knew that

he was carrying a knife on the day of the murder. He said that there was no justification for BSW having pulled out the knife during the confrontation with Hassam Ali and his friend, nor for having stabbed Hassam Ali with it in the chest, using what the judge described, having watched the CCTV footage, as “*an almost casual thrust of the knife which you delivered to Ali’s chest.*”

23. The judge said that in regard to both BSW and his co-accused it was necessary, as a result of their ages, to have regard to the Sentencing Council’s, “*Sentencing Children and Young Persons Guideline*” together with what this court had said in relation to the sentencing of young people in ZA [2023] EWCA Crim 596.
24. In relation to BSW, the judge stated that under schedule 21 to the 2020 Act, the appropriate starting point in determining the minimum term of detention which he had to serve was 17 years. However, in view of the fact that he had only recently turned 15 when the offence took place, together with everything he had read about his level of maturity, a significant discount from the appropriate starting point was justified.
25. The judge considered that there were no statutory aggravating factors, although he noted that BSW had disposed of evidence in a deliberate attempt to avoid responsibility for his actions. In so far as mitigation was concerned, the judge said that he had concluded, “*not without some hesitation*” that BSW’s intention was to cause really serious injury rather than kill. Moreover, there was a lack of significant premeditation, and he took into account BSW’s disruptive childhood, his expression of remorse and his educational progress whilst in custody.
26. In the event, the judge determined the minimum term of detention to be 12 years and 84 days.
27. In so far as the co-accused was concerned, the judge said that,

“...I conclude on the facts that you knew that (BSW) was carrying the knife, knew that he intended to use it, that you encouraged him to use it on Ali by your words, actions or the support you gave him, that you did so with a view to causing Ali some injury and further that, as a matter of fact, he died from that injury. But I accept that you did not intend, or even envisage, that he would use it to kill Ali or to cause him really serious bodily harm.”

28. The judge stated that under the adult sentencing guideline for manslaughter offences, this was a culpability B case with an appropriate starting point of 12 years' custody. However, that would need to be reduced to take into account that the co-accused was 15 years of age at the time of the offence. Moreover, he was satisfied that he played no physical part in the violence, it was not his knife and that his encouragement was passive rather than active.
29. In so far as mitigating factors were concerned, these included his lack of previous relevant convictions, his genuine remorse, his difficulties with his mental health including his diagnosis of ADHD, his relative immaturity, the fact that he had been bullied both at school and whilst in custody and his hard work whilst in detention which had resulted in him being placed onto the Gold Regime.
30. In the event, the judge imposed a period of 5 years' detention.

Submission in relation to the application for an excepting direction

31. In its written submissions, PA Media, referred to *KL* [2021] EWCA Crim 200, ("*KL*"), and submitted that an excepting direction should be made in this case,

"...having regard to the open justice principle and the gravity and nature of the killing of Muhammed Hassam Ali."

32. In relation to the offence itself it was submitted that the attack on Hassam Ali may have been borne out of revenge for a previous incident concerning someone the accused knew, which the accused perceived had been caused by Hassam Ali. It was pointed out that the knife which was being carried by BSW was a large, two-pronged knife which was described as being the size of the side of a piece of A4 paper, and that BSW admitted regularly carrying a knife, apparently for his own protection. Moreover, whilst the attack itself was carried out in broad daylight in a busy city centre square where families and tourists were present, the accused had sought to hide their own identities.
33. PA Media pointed out that, according to the Office for National Statistics, urban knife-enabled crime was on the increase, and that the naming of those responsible for such offences, particularly involving fatalities, has a powerful deterrent effect. Moreover, not only was the identity of those committing such crimes of proper public interest, but although the accused were presently 15 years of age, they would be in custody for many

years beyond the age of 18 when their anonymity would cease to be protected and the likelihood of reporting at that stage would have dwindled substantially.

34. In their written submissions, those instructed on behalf of BSW, referred to *BGI* [2024] EWCR 5, and submitted that the revenge aspect of the offence had been significantly overplayed and pointed out that the judge had accepted it did not involve a substantial degree of premeditation.

35. In any event, it was submitted that the circumstances of the offence,

“...does not contain the sort of additional element that creates such interest in terms of the defendant himself, the victim or any additional feature of the act itself that takes it outside cases of this sort.”

36. In that regard it was submitted that,

“...there was no sadism involved, no relationship between the parties, no actions after the killing etc of a noteworthy nature.”

Thus, there was no “detestable” feature of the offence, as referred to by this court in *R v Winchester Crown Court* [1999] 1WLR 788, such that to grant the application for an excepting direction in this case would amount to an,

“...effective principle that all homicide cases would result in the lifting of restrictions.”

37. It was pointed out that BSW had had a very difficult upbringing and that his grandparents, who had done their best in difficult circumstances, would be gravely affected by the lifting of the prohibition on his anonymity. It was submitted that the deterrent effect of naming those involved in such offences had been significantly overplayed. Moreover, that although it was acknowledged that BSW’s identity could be reported once he had reached 18, the intervening period of “3 years” were “*absolutely critical years*” in relation to his rehabilitation, which would be negatively impacted by the making of the excepting direction. This being an important factor considering the very great weight which the court was obliged to give to the welfare of a child or young person.

38. It is apparent that the police, by their Senior Investigating Officer, had been requested to consider the application, and their views were set out in a written submission provided by the prosecution, which recorded that,

“I need to balance the following, the principles of open and transparent justice, public confidence in the criminal justice system which includes policing, the gravity of the offence, the potential deterrent effect on young children in Birmingham, wider West Midlands and UK, the age of the defendants, their culpability and the need for them to have an opportunity to reform and reintegrate into society and risks to both the defendants and others connected to the investigation.”

39. The SIO stated that, having reviewed the intelligence assessment, the investigation and the other written submissions,

“There is no specific risk to the defendants from the victim’s family that I am aware of, quite the contrary when reading the FLO policy documents. The intelligence assessment does not identify any other risks that need to be considered. The gravity of the offence is significant and withholding names is almost certain to impact negatively on public confidence in the CJ system and Police. I have considered the need for rehabilitation of the defendants post sentence however this also needs to be balanced with the public interest matters of the public having the right to sufficient information to take reasonable steps to protect themselves in cases as serious as this. Finally, it is my belief that the deterrent effect of naming those responsible in this case would have a powerful deterrent effect which sits in line with policing values and principles.”

40. In these circumstances, the SIO concluded that,

“Whilst each case should be treated on its own merits having taken all of the above factors into consideration then my decision is that the positives of supporting a decision to name the child defendants in this case outweighs any of the negatives. I therefore raise no objections to the written submission by PA Media to remove reporting restrictions in respect of the defendants...”

Ruling

41. In his ruling, the judge, reminded himself of the statutory criteria within section 45 of the 1999 Act and reviewed the relevant authorities, including *R v Crown Court at Winchester ex part B* [2000] 1 Cr App Rep 11, *R(on the application of Y) v Aylesbury Crown Court, CPS, Newsquest Media Group Limited* [2012] EWHC 1140 (Admin), *R v H* [2015] EWCA Crim 1579, *R v Markham* [2017] 2 Cr App Rep (S) 30, *KL*, and *BGI*.
42. Having reviewed the relevant material and the various submissions, whilst the judge refused PA Media's application in relation to the co-accused, he granted it in relation to BSW. In reaching these decisions, he observed that there were significant factual errors in the application for the excepting directions, in that the evidence that the attack on the victim was motivated by revenge was far from unqualified, in that it appeared that the accused were mistaken in their belief that the victim had been involved in some earlier incident involving someone they knew. Moreover, there was no planning involved, and although as a result of the sentence imposed on BSW it was correct that he would remain in custody for many years beyond his 18th birthday, this was not the case with his co-accused.
43. The judge identified the potential benefits to the public interest of making an excepting direction as including,
 - i. the importance of open justice,
 - ii. the interest of the public in knowing the identity of those who committed such serious offences,
 - iii. the serious nature and increasing prevalence of knife crime, and knife-related homicide in particular,
 - iv. the consequent need for deterrence,
 - v. the promotion of public confidence that the criminal justice system is addressing the problem,
 - vi. the need to encourage victims and witnesses to come forward,

and stated that the public interest would be greatly diminished by the passage of time were the reporting of the full facts not possible until after the accused's 18th birthdays.

44. He then identified the factors which sounded against the making of an excepting direction in the case of each accused, bearing in mind the need to consider the effect of their identity becoming known at this stage on their rehabilitation and welfare.

45. In the case of the co-accused, this included the fact that he was convicted of manslaughter rather than murder, and had taken no physical part in the attack upon the victim. The effect of the sentence which the judge had imposed upon the co-accused meant that he would have less than 2 years to serve in custody and would be under 18 upon his release. The fact that the co-accused was a very immature 15-year-old who suffered from ADHD, and that there was evidence that the lifting of reporting restrictions would have a detrimental effect on his mental health. There was evidence that the co-accused had already been the subject of repeated and serious bullying in custody, and there was some risk of vigilantism being directed against his family.
46. In the event the judge concluded that these factors “*comfortably outweighed*” the factors in favour of making the order, such that he had “*no hesitation*” in refusing the application in the case of the co-accused.
47. However, in relation to BSW, the judge considered that the situation was “*...much weaker.*” The judge noted that he had been convicted of murder and would be detained for many years past his 18th birthday. Moreover, there was “*...little evidence in support of the contention that his development or rehabilitation in detention would be significantly harmed by his being named in the press. Against this, the importance of open justice, in my view, is a powerful and decisive consideration.*”
48. The judge concluded that,

“...the effect of maintaining the s45 order would be to impose a substantial and unreasonable restriction on the reporting of the proceedings and it is in the public interest to remove that restriction.”

Submissions

49. On behalf of BSW, five grounds of challenge are pursued against the making of the excepting direction:
- i. That the procedure adopted in this case was unnecessarily rushed, causing unfairness to BSW and leading to an unreasonable decision having been made by the judge.
 - ii. That there was a factual inaccuracy at the heart of the application, namely that this was a pre-planned attack motivated by revenge.

- iii. That there was an unjustified and inconsistent approach taken by the judge in relation to the respective risk of harm to the accused's families.
 - iv. The judge failed to have sufficient regard to BSW's welfare.
 - v. No sufficient reasons were provided by the judge for his decision to remove anonymity from BSW.
50. BYJS, as an Interested Party, has made written submissions supporting BSW's challenge to the making of the excepting order. It is submitted that the judge adopted a procedure to lift the section 45(3) order that was procedurally unfair due to the time limitation which he imposed on the making of the decision, which had the effect of preventing BYJS from appropriately considering the risks involved in identifying the accused and making representations about them to the judge.
51. In those circumstances, it is submitted that this court should now take into account a witness statement which has been prepared by Ruth Crisp, the author of the Pre-Sentence Report, dated 26 November 2024, in which it is submitted those risks have now been identified.

Legal principles

52. The power to make an excepting direction is to be found in section 45(4) and (5) of the 1999 Act, which, together with (6), provides as follows:

“....

(4) The court or an appellate court may by direction ("an excepting direction") dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction under subsection (3) if it is satisfied that it is necessary in the interests of justice to do so.

(5) The court or an appellate court may also by direction ("an excepting direction") dispense, to any extent specified in the excepting direction, with the restrictions imposed by a direction under subsection (3) if it is satisfied—

(a) that their effect is to impose a substantial and unreasonable restriction on the reporting of the proceedings, and

(b) that it is in the public interest to remove or relax that restriction;

but no excepting direction shall be given under this subsection by reason only of the fact that the proceedings have been determined in any way or have been abandoned.

(6) When deciding whether to make—

(a) a direction under subsection (3) in relation to a person, or

(b) an excepting direction under subsection (4) or (5) by virtue of which the restrictions imposed by a direction under subsection (3) would be dispensed with (to any extent) in relation to a person,

the court or (as the case may be) the appellate court shall have regard to the welfare of that person.

....”

53. Moreover, an application for the court to make an excepting direction is subject to the procedure provided for by Part 6 of the Criminal Procedure Rules, to the effect that,

“6.5 – (1) This rule applies where the court can vary or remove a reporting restriction or access restriction.

(2) Unless other legislation otherwise provides, the court may do so

(a) on application by a party or person directly affected; or

(b) on its own initiative.

(3) A party or person who wants the court to do so must –

(a) apply as soon as reasonably practicable;

(b) notify –

(i) each other party, and

(ii) such other person (if any) as the court directs;

(c) specify the restriction;

(d) explain, as appropriate, why it should be varied or removed.

.....”

54. In relation to the issue of press reporting of criminal trials, it has long been recognised that the principle of open justice is fundamental to the rule of law, the importance of which has been emphasised by the appellate courts in a number of cases, not least being *Re S (FC) (a child)* [2005] 1 AC 593 at [34] in which Lord Steyn stated that:

“...[I]t is important to bear in mind that from a newspaper's point of view a report of a sensational trial without revealing the identity of the defendant would be a very much disembodied trial. If the newspapers

choose not to contest such an injunction, they are less likely to give prominence to reports of the trial. Certainly, readers will be less interested and editors will act accordingly. Informed debate about criminal justice will suffer.”

55. Moreover, in *Re Trinity Mirror and others (A and another intervening)* [2008] QB 770 at [32] Sir Igor Judge stated that:

“In our judgement, 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... From time to time, occasions will arise when restrictions on this principle are considered appropriate, but they depend on express legislation and, where a court is vested with discretion to exercise such powers, on the absolute necessity of doing so in an individual case.”

56. However, where, as here, the interests of a child accused are concerned, not only is the court expressly obliged to have regard to their welfare under section 45(6) of the 1999 Act, but the jurisprudence requiring the best interests of the child to be a primary consideration, in accordance with Article 3 of the UN Convention on the Rights of a Child, applies, as does the individual’s right to privacy under Article 8 ECHR. In addition, the court must have regard to the principal aim of the youth justice system namely, to prevent offending by children and young persons as required by section 37 of the Crime and Disorder Act 1998.

57. The tension between the competing interests of, *inter alia*, open justice on the one hand, and the welfare of the child on the other, in the context of identifying those under 18 years of age who have been convicted of murder, has more recently received the attention of this court in a series of cases including *R v Markham and Edwards* [2017] EWCA Crim 739, *R v Aziz* [2019] EWCA Crim 1568 and *KL v R* [2021] EWCA Crim 200, in the latter of which, at [67], the President of the Queen’s Bench Division summarised the relevant principles as follows:

“(1) The general approach to be taken is that reports of proceedings in open court should not be restricted unless there are reasons to do so which outweigh the legitimate interests of the public in receiving fair and accurate reports of criminal proceedings and in knowing the identity of those in the community who have been guilty of criminal conduct.

(2) The fact that the person before the court is a child or young person will normally be a good reason for restricting reports of the proceedings in the way permitted by the legislation; and it will only be in rare cases that a direction under section 45(3) of the 1999 Act will not be given or, having been given, will be discharged.

(3) The reason why removal of a restriction will be rare is the very great weight that the court must give to the welfare of a child or young person.

In practical terms, this means that the power to dispense with anonymity must be exercised with “very great care, caution and circumspection”. See the guidance given by Lord Bingham CJ in the context of the 1933 Act in McKerry v. Teesdale and Wear Valley Justice (2000) 164 JP 355; [2001] EMLR 5 at para 19.

(4) However, the welfare of the child or young person will not always trump other considerations. Even in the Youth Court, where the regime requires that proceedings should be held in private, with the public excluded, the court has power to lift restrictions. When a juvenile is tried on indictment in the Crown Court there is a strong presumption that justice takes place in open court and the press may report the proceedings.

(5) The decision for the trial judge is a case specific and discretionary assessment where, guided by the above considerations, a balance falls to be struck between the interests of the child and the wider public interest in open justice and unrestricted reporting.

(6) When considering a challenge to an excepting direction made by the Crown Court by way of judicial review, the Divisional Court will “respect the trial judge’s assessment of the weight to be given to particular factors, interfering only where an error of principle is identified, or the decision is plainly wrong”: see Markham at para 36.

(7) To this standard public law approach must be added the conventional public law requirements that: (i) a fair process should be adopted by the judge in considering an application remove a restriction; and (ii) the judge should give reasons sufficient to explain why the balance has come down in favour of removal of the restriction. This latter point is particularly important because the judge’s reasons are the only indicator that the parties (and a reviewing court) will have to satisfy themselves that the judge has indeed performed a lawful balancing exercise.”

58. *KL* was a case which, like this one, involved an offender who was 15 years of age when he stabbed to death another young person, albeit there was a gang-related background to the offending and the court made specific reference to the shocking feature of the case, that since the offence had taken place, two of the other young people who had been present when *KL* had stabbed the deceased had also been killed in violent circumstances. In the course of submissions on behalf of the offender in that case, similar submissions were made to those urged on behalf of BSW to the judge in this case, namely that the making of an excepting direction ought to be confined to those offences which had some form of exceptional feature of seriousness.
59. The court dealt with the submission in this way, at [87] and [88] of the judgment,

“87. Finally, we should address the submission that anonymity cannot be removed unless the facts are ‘exceptional’. In our judgment, though the facts in cases such as Markham and Aziz were indeed truly shocking, there is no rule of law or iron clad principle which requires this to be the case before an excepting direction can be made. So, when the Court of Appeal in Aziz observed at para 43 that the crime was regarded by the judge as ‘exceptionally serious’, and explained at para 41, that Markham was ‘exceptional on its facts’ it was not identifying some form of additional condition that had to be satisfied before an excepting direction could be made. In our judgment, this approach is not inconsistent with the principles we have summarised at para 67 above; these give very substantial weight to the interests of the child which is why it will be rare for an excepting direction to be made.

88. The fact that such murders are now so common cannot be sensibly prayed in aid to say that there is nothing ‘exceptional’ about this murder, even if, contrary to our view, there was some form of exceptionality requirement. We note the statistics presented on behalf of the media in this case that knife crime in England and Wales was at a record level in September 2020, and that offences recorded involving a knife or sharp instrument are now at the highest level ever recorded. This issue is clearly a matter of substantial public interest.”

Discussion

60. As we have already set out, Part 6 of the Criminal Procedure Rules requires anyone who seeks to apply to remove a reporting restriction, including the making of an excepting direction under section 45(5) and/or (6) of the 1999 Act, to apply as soon as reasonably practicable, and notify each other party, explaining why it should be removed.
61. As to what will satisfy the requirement of reasonable practicality for this purpose will no doubt vary from case to case, and as the House of Lords in *R v SSHD, ex parte Doody* [1994] 1 AC 531 made clear, what will be required to achieve procedural fairness in any particular case will be context driven, and one of the most significant factors will be the relative importance of the competing interests at stake.
62. In the present case, involving two young people unlawfully stabbing to death another young person in a crowded city centre in broad daylight, the competing interests were of a high order, including the public interest in open justice and unrestricted reporting, and the welfare of the two young accused.

63. In these circumstances, and given the fact that following their trial the accused had been convicted of these offences on 26 July 2024, the application by PA Media for the making of an excepting direction just over three months later, on 28 October 2024, was clearly not made as soon as reasonably practicable, as required by Part 6 of the Criminal Procedure Rules. Indeed, it was only made some four days before the date which had been set for the sentence hearing, on 1 November 2024.
64. This placed the judge in an invidious position, and we can understand his concern not only to proceed to sentence the accused on the date which had been set, but to seek to deal with the application for an excepting direction as soon as possible. However, whilst we have no doubt that the judge was correct to proceed with the sentence hearing on 1 November 2024, as it had been set for a long time and both the victim's family and the accused will have been understandably anxious to know the result, we consider that in the interests of fairness, more time ought to have been afforded to the accused and the BYJS to address the application.
65. Although, the judge was correct to have regard to the fact that, "...*the value to the press of the information sought would decline rapidly with the passage of time*", as was pointed out in *KL* at [23], any such loss in value caused by the passage of time was entirely due to the very late notice of the application, made some four days prior to the sentence hearing, and over three months after the accused's convictions.
66. Moreover, the difficulty with the compressed timetable which was imposed upon the accused and the BYJS was that it risked a decision being made without evidence which it was necessary for the court to take into account when deciding whether to make an excepting direction.
67. We now have before us the material which it is submitted would have been available to the court, had reasonable notice been given of the application for an excepting direction, in the form of the witness statement from Ruth Crisp dated 26 November 2024, and in the course of the hearing we indicated that we were prepared to consider this further evidence *de bene esse*.
68. It is apparent from her witness statement that Ms Crisp has been a probation officer for almost 20 years, and is currently a senior youth justice worker at BYJS. She has been BSW's youth justice worker since his remand into custody in January 2024, and it was in that capacity that she authored the Pre-Sentence Report.

69. She explained that by reason of the provisions of the Children Act 1999, BSW became a “*looked after child*” upon his remand into custody, with the consequence that at the age of 16 he will become a “*relevant child*” and at 18 a “*former relevant child*” such that he will receive continuing support in relation to his welfare. In the meantime, Ms Crisp indicated that she has visited BSW on a monthly basis, and also attended care reviews concerning his welfare.
70. Ms Crisp explained that because of the time-frame in which she had been previously requested to provide details concerning the likely impact of identifying BSW, she had not been able to do so properly. However, she was now able to do so, and that her views are not only her own but reflect those of other professionals who are working with BSW.
71. Ms Crisp went on to identify three main areas of concern arising from the matters which she had set out in the Pre-Sentence Report relating to the significant emotional trauma which BSW had suffered in his childhood, the difficulty which BSW had in processing information and his lack of maturity.
72. Firstly, Ms Crisp is concerned that the negative effect upon BSW of being identified will adversely affect the ability of the professionals who will be undertaking rehabilitative work with him, in that given his difficulties with speech and language, his possible assessment of ADHD and the psychological impact of his childhood trauma, they need to know how best to approach that work, such that unless he engages with those assessments whilst he is a minor, there will be little opportunity again to make a positive impact on him to reduce his future risk.
73. Secondly, given the long term emotional and practical support that his grandparents have given BSW to date, it is vital to BSW’s engagement with the professionals working with him that his grandparents are able to continue to provide that emotional support to him. Ms Crisp is concerned that, having spoken to them on multiple occasions, identifying BSW is likely to have a significant traumatic effect upon his grandparents which may lead them to withdraw that support, which in turn would have a significant detrimental impact upon BSW’s progress.
74. Thirdly, that whilst BSW has already been involved in two incidents involving some degree of violence whilst in detention, there have been significant periods of stability and positive engagement with the professionals working with him. Ms Crisp is concerned that the negative impact on BSW of being identified, is likely to disrupt this positive engagement and consequently the value of the work which can be achieved with him.

75. Overall, Ms Crisp expressed her opinion in the following terms,

“It is really important in my view, if we want to make a positive impact on (BSW’s) future safety and the future safety of other people, that we minimise any potential triggers, including strain on his main family support, whilst getting proper assessments of his learning needs and psychological functioning, in order that there is still the opportunity to make a difference with (BSW) whilst he is a minor, to benefit (BSW), his family but also wider society, otherwise he will continue to be a significant risk to others and also to himself as a consequence of his behaviour.”

76. We are conscious that when considering a challenge to an excepting direction made in the Crown Court by way of judicial review, this court will,

“respect the trial judge’s assessment of the weight to be given to particular factors, interfering only where an error of principle is identified or the decision is plainly wrong”

(*Markham* at [36]). Moreover, that pursuant to section 31(3D) of the Senior Courts Act 1981, the court must refuse permission to apply for judicial review if it appears to be highly likely that the outcome for BSW would not have been substantially different had the conduct complained of not occurred.

77. We have given careful consideration to these matters, and bear in mind that the habitual carrying of knives by some children and young people, and their use to threaten, harm and too often kill others, including those of a similar age to themselves, is a modern day scourge on society and a necessary topic for public debate as to its consequences, causes and prevention, such that it is understandable that the media wishes to inform the debate by the open reporting of such incidents when they occur, especially where, as here, the actions of two 15 year olds, have led to the death of a similarly aged innocent young person.

78. Moreover, we accept that without the media’s ability to identify such offenders, the reporting of this type of offence is less likely to be read by members of the public, and that the naming of those guilty of such serious crimes has a part in promoting effective deterrence.

79. These are important considerations, and we can understand why the judge, on the basis of the evidence he had before him at the time, considered that they outweighed the

interests of BSW. However, given the procedural error which we have identified arising from the compressed timetable which was imposed in this case, we consider that it is necessary for us to consider the balance afresh, and in this regard bear in mind that it is necessary to consider with “*very great care, caution and circumspection*” the power to make an excepting direction.

80. Set against these important considerations relating to the public interest of open justice and unrestricted reporting of criminal trials, are the concerns articulated by Ms Crisp in her recent witness statement about the impact of identifying BSW on his welfare which require to be considered in the context of the matters set out in the Pre-Sentence Report.
81. Although we are conscious that, unlike his co-accused, BSW will be detained in custody for a lengthy period of time beyond his 18th birthday, when he will lose his right to anonymity in any event (this not being a case where a *Venables* type order would be appropriate), there is a period of two years up until he reaches his majority which, in terms of the development of a young person, especially one who has had such a difficult upbringing, lacks maturity and may have complex needs, is a significant period of time.
82. In this regard, we consider that for the reasons provided by Ms Crisp after consultation with a wide range of properly interested parties, including fellow professionals involved in the assessment and rehabilitation of BSW, there is real substance in the particular issues which she has identified concerning BSW’s welfare, and indeed the interests of the wider society. In this regard, we accept that not only is the period of the next two years a significant period of time in terms of duration, but it occurs at a crucial time in BSW’s development when the imperative of rehabilitation requires optimisation, rather than being risked by the damage likely to be caused by his identification.
83. In these circumstances, we are satisfied that had these matters been before the judge, as they ought to have been had proper notice of the application for an excepting direction been given, the outcome would have been substantially different, as the balance would have been in favour of retaining BSW’s anonymity until his 18th birthday, such that the application for an excepting direction in his case would have been refused.

Conclusion

84. Therefore, we will grant leave to bring this application for judicial review and admit the witness statement of Ms Crisp dated 26 November 2024 as evidence in the application. Moreover, as the claimant has succeeded on ground 1, we do not need to consider the remaining grounds.

85. We will quash the excepting direction relating to BSW and, as we have all the material required to decide whether to make an excepting direction in this case, we do not consider it an appropriate use of the court's resources to remit the case to the judge for redetermination. Instead, pursuant to section 31(5)(b) of the Senior Courts Act 1981, we will do so ourselves and, for the reasons we have endeavoured to explain, we refuse the application for an excepting direction in relation to BSW.

86. Before leaving this case, and whilst underlining that under the Criminal Procedure Rules the responsibility to give timely notice of an application to vary or remove a reporting restriction is upon the party making the application, we would just like to add that in addition to what was said in *KL* at [76] as to what the court can do where a child or young person has been convicted of serious offences such as these, it would be helpful for all those involved in such cases, including those representing the parties and others who may have statutory responsibilities for the accused's welfare, to give consideration to the potential issue of identification from an early stage of the proceedings, so that the court is enabled to be equipped with the evidence it will require to make these difficult decisions in a timely manner.