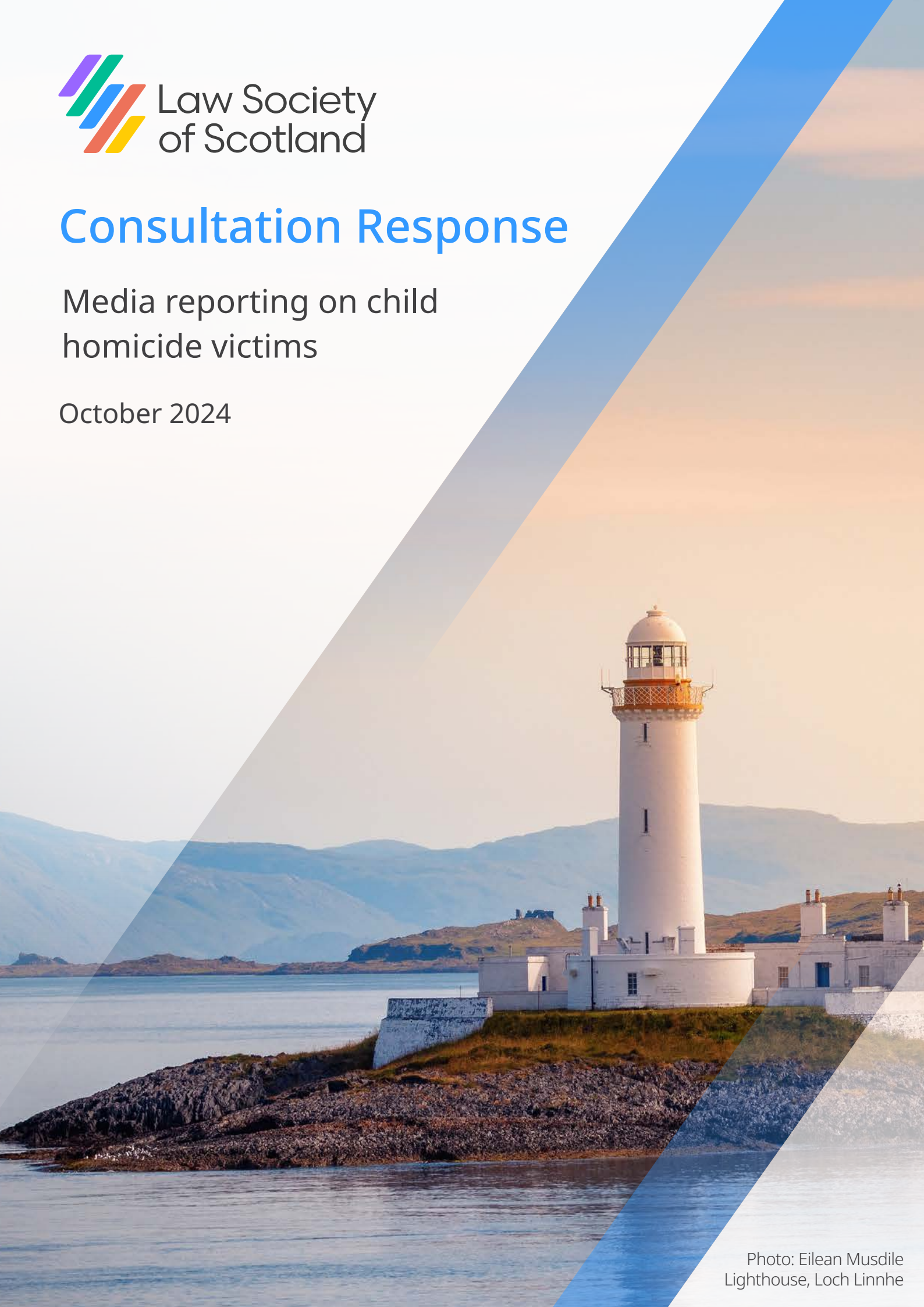


Consultation Response

Media reporting on child
homicide victims

October 2024



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Introduction

The Law Society of Scotland is the professional body for over 13,000 Scottish solicitors.

We are a regulator that sets and enforces standards for the solicitor profession which helps people in need and supports business in Scotland, the UK and overseas. We support solicitors and drive change to ensure Scotland has a strong, successful and diverse legal profession. We represent our members and wider society when speaking out on human rights and the rule of law. We also seek to influence changes to legislation and the operation of our justice system as part of our work towards a fairer and more just society.

Our Criminal Law Committee welcomes the opportunity to consider and respond to the Scottish Government consultation: Media reporting on child homicide victims. The Committee has the following comments to put forward for consideration.

General comments

We note that the consultation aims to explore views on the reporting of homicide of child victims and the impact that those reports may have on the bereaved families. We are of the view that there is a relationship between the principle of trauma-informed justice and the regulation of publication of details of traumatic events related with crime. However, we acknowledge the necessity of considering the impact that any restriction may have on the exercise of the principles of freedom of expression and open justice.

We note a relationship between the consultation's scope and one of the proposed provisions of the [Victims, Witnesses and Justice Reform \(Scotland\) Bill](#). Section 63 of the Bill introduces an offence that penalises the publication of information that leads to the identification of a sexual offence victim. In our [written evidence submission at Stage 1](#) we indicated that anonymity for victims and complainers of sexual offence should continue in perpetuity. We considered that if another person wants to name the complainer or victim after their death, an application could be made to the court seeking the court's approval for setting aside the right of perpetual anonymity. While we understand that provisions in the Bill are focused on victims of sexual offences, our comments may be relevant in cases in which child homicide victims were also victims of sexual offences prior to their death.

We welcomed the opportunity to attend the roundtable event hosted by the Scottish Government on 24 February 2024 for discussing the end point of anonymity for child victims. The discussions held in the roundtable highlighted the importance of considering the impact that restrictions on reporting about child



victims of crime had in international experiences and the necessity of reflecting on the lack of regulation of social media content.

We also welcome the [comprehensive paper prepared by the Criminal Justice Division](#) that contains the analysis of the right of anonymity for victims of crime in comparable jurisdictions such as Ireland, Northern Ireland, Australia (Victoria and New South Wales), Canada and India. We note that in all those jurisdictions, the impact of provisions related to anonymity of victims and the impact that restrictions have in how they deal with the associated trauma have been discussed.

Consultation questions

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

We consider that the reporting of child homicides should be focused on the facts, avoiding speculation and irrelevant details. We appreciate that in some situations, family members want to keep some details of the victims private, such as personal interest, characteristics or activities.

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.

We consider that it is necessary in terms of both UNCRC and ECHR to secure the fair and proper administration of justice in every case, in a manner which respects the rights of both the accused child and child victims and witnesses. Article 3.1 of the UNCRC requires that in all actions concerning children, the best interest of the child shall be a primary consideration. Media outlets must recognise that every child is unique and that there may be different conclusions to the assessment of best interests within different categories of children involved in a case. Those best interests require to be balanced against other factors, such as the highlighted press freedoms in reporting on issues that are assessed to be in the public interest. The UNCRC applies to decision making in relation to all children, including where reporting is in respect of a deceased child.

Parents have statutory duties and responsibilities in law, to ensure that children are safe and free from harm. The conceptual framework of parental rights and responsibilities can be found in the Children (Scotland) Act 1995.

Our understanding is that the scope of the consultation is not focused on preventing reporting on child homicide. However, reporting on a specific event differs from identifying the victim.

In that sense, we are of the view that the right of anonymity should be provided to child homicide victims. However, people who had parental responsibility before the homicide occurs should be able to provide their explicit permission for publishing details that allow the identification of the victim.



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?

According to the international experiences reported by the Criminal Justice Division, in particular, in the state of Victoria – Australia and India, a strict approach to the extension of anonymity to deceased child victims negatively affects the bereaved family.

We recognise that there may be occasions when parents wish to celebrate their child through media reporting or publications in social media. The parent's explicit permission approach proposed would cover those cases, allowing them to communicate what they consider appropriate.

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.

We do not have any views on this question.

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

We are of the view that the scope of the consultation paper does not restrict the reporting of child homicide. We understand that what is aimed at is the identification of the deceased child, including whether that is necessary and proportionate in the overall context of the need to report, balanced with the impact it can have (and has had) on friends, family, and peers (some of whom are most likely to also be children).

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

We do not have further comments on this.

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?

Neither agree or disagree.

The effectiveness of the media toolkit would depend on its content. However, voluntary training or guidelines are not always as effective in changing behaviour as legislative changes.

Question 8: What should such a toolkit cover?

We consider that the media toolkit should cover media values, the limited rationale for identifying a child victim, the potential impact on parents, family and friends, and the potential re-traumatisation that they could suffer with the publications.



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

We consider it important to move to collaboration between those affected by child homicide and those reporting it. We would welcome guidance provided by the Scottish Government, informed by victim and witnesses agencies.

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?

Agree. We refer to our answer to question 9.

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

From the point of a child's death (when it is established that criminality is involved). We consider that anonymity should start with the child's death to achieve the purpose of providing to the bereaved family the control and decision on what they consider appropriate to be published. However, the anonymity could be lifted if it is found that no criminality was involved.

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.

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.



As indicated earlier, we are of the view that the bereaved families should have the choice to decide whether or not they want details pointing to the identification of the deceased child to be published.

Allowing family members to waive anonymity without requiring a court order will allow families that want to celebrate their child through media reporting. This approach will also allow family members to publish information about the deceased child on social media without the need to invest emotional and financial resources in obtaining a court order for doing so.

We are of the view that extra care should be taken when the alleged perpetrator is a parent or carer, to minimise the additional potential distress to siblings and other family members. We note that Dr Andrew Tickell reflected on the roundtable discussion on the end point of anonymity that “data shows that around two-thirds of child homicide victims are killed by a parent”. Accordingly, we consider that some restrictions for waiving anonymity and permitting the publication of identifying information should be implemented when a parent is suspected to be and later found to be the perpetrator.

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

We consider that those who had parental responsibilities before the child’s death should be allowed to waive anonymity. We envisage some cases in which parents that have lost parental responsibility waive anonymity for their own purpose rather than celebrate the child’s life.

We also consider that if people other than those who had parental responsibility wish to name the child victim, they should be able to make an application to the court for obtaining a waiver. This possibility would operate as a safeguard for open justice when there is a public interest issue that arise in the particular case and no permission was granted by the child’s parents. These orders can be made in the same way as indicated in [Section 11 of the Children \(Scotland\) Act 1995](#), where the court may issue an order regulating parental rights which is considered necessary and in the child’s best interests. In those circumstances, we suggest that the court assesses the reasonableness of the application, taking into account, for example, the impact that the identification of the victim may have in other family members, peers and the community.

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

We anticipate some challenges in educating the public on the rationale for the restrictions and their consequences.

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

We consider that wider public understanding is vital. We are of the view that in some cases, public perceptions push or incentivise the press to publish



identification of the child victim and the impact that those publications may have in the bereaved family is overlooked.

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

We consider that noting the main rationale for no identification of the child victim at the end of every reported story can have a positive impact in the public understanding of the anonymity provisions, as it seems to work with the reporting of young offenders.

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

Groups of people using non-mainstream media to access and share news.

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

We think that sharing information via various traditional and alternative media alongside with social media campaign could have a positive impact in accessing those groups.

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

We do not have any views on this question.

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?

Agree. We consider that the application of any extension of anonymity to deceased child victims to the rest of the UK could be very important. Otherwise, people would be able to seek and access the details of the deceased child using English media, negating the effectiveness of the Scottish provisions.

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:

Neither agree or disagree.

Full anonymity restrictions (no waiver)

Disagree. As indicated earlier, we consider important that parents of the deceased child have the choice on the publication of information that allows the identification of the victim. A full anonymity restriction approach will not provide to the bereaved families the control on the situation that we understand they want to have.



Automatic anonymity with option to waive:

Agree. We refer to questions 12 and 13.

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

Neither agree or disagree. We remit to question 12 and 13.

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

Neither agree or disagree.

Full anonymity restrictions (no waiver):

Neither agree or disagree.

Automatic anonymity with option to waive

Neither agree or disagree.

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

Neither agree or disagree.

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

We do not have any views on this question.

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

We do not have further comments.



For further information, please contact:

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