Habeas corpus procedure
A writ of Habeus Corpus may be sought by lawyers, relatives or friends to secure the release of someone they believe to have been unlawfully detained by the police or another official agency. This centuries-old procedure, which involves making an application to the High Court, is now rarely used. ‘Habeas corpus’ is Latin for ‘You shall have the body [person’], which refers to the writ’s requirement that the police or other authorities take the person to the court to justify his/her detention.

Ethical considerations in media coverage of crime
The Press Complaints Commission made clear that normally media coverage of an adult or juvenile’s offending will not breach the Editors’ Code of Practice on privacy grounds, saying: ‘An individual’s criminal behaviour – however low grade – is not generally regarded as part of their private life deserving of protection under the [Editors’] Code of Practice’ (Brian Souter and his son v the Scottish Sun, PCC adjudication issued October 30, 2007).

But it issued a guidance note ‘on the reporting of people accused of crime’ which, as well as warning against publication of conjecture, states: ‘Editors should not rely on the fact that someone has been accused of a criminal offence as justification for publishing material that would otherwise be held to be intrusive, unless the material ought to be published in the public interest or is in some way relevant’.

In adjudications issued on May 15, 2015, Ipso - which has replaced the PCC (see chapter 2 of McNae’s) - robustly upheld the right of the press to report a criminal conviction. These rulings were on complaints brought by Jonathan Hope against the Dumfries and Galloway Standard, Daily Record, Ayrshire Post, and Daily Mirror. Ipso rejected his complaints that the newspapers had reported in 2014 that he was convicted in 2003 under the name ‘Steven Hope’ of downloading child pornography. The reports concerned his involvement in sponsorship of a youth football team, and said that parents of children involved with the team were disgusted to learn of his conviction. His name was on the back of team shirts. Ipso’s complaints committee said: ‘The selection of material for publication is a matter for the discretion of individual editors, provided that such editorial decisions do not engage the terms of the Editors’ Code. It had not been inaccurate to report that the complainant had a previous criminal conviction.’

As illustrated below, media coverage of police ‘raids’ to arrest or search may lead to complaints under the codes about breach of privacy.

Coverage of juveniles in pre-trial investigations
Rule 1.9 of the Ofcom Broadcasting Code, in its section on protecting under-18s, says that in coverage of any ‘pre-trial investigation’ into an alleged criminal offence in the UK broadcasters should pay particular regard to the potentially vulnerable position of any person who is not yet adult who is involved as a witness or victim, before broadcasting their name, address, identity of school or other educational establishment, place of work, or any still or moving picture of them. The rule also warns broadcast journalists that in such coverage ‘particular justification’ is required for a programme to identify any person not yet adult who is involved as a potential defendant.

In 2007 the PCC said a newspaper’s publication of YouTube footage showing, in images which identified him, a 15-year-old youth fire-bombing a freight train did not breach his privacy under clause 6 (Children) of the Editors’ Code because the footage was of an anti-social or criminal act committed in a public place by someone over the age of criminal responsibility. The PCC said one reason for its ruling was that the youth himself had placed the footage into the public domain (A man v Northwich Guardian, adjudication issued September 25, 2007).

In 2014 The Sun was the only mainstream media organisation to name Will Cornick as the 15-year-old pupil arrested for the murder of teacher Ann Maguire. He stabbed Mrs Maguire in front of a class at a
Leeds school. *The Sun* could legally name him early in the police investigation, because this was before he had automatic anonymity in law, which covered him as soon as he appeared in a youth court – see chapter 9. At Crown court he was protected by an anonymity order which the judge lifted after Cornick admitted the murder.

**Children, other relatives and friends of crime suspects or defendants**

The Editors’ Code may be breached if a report of a crime, arrest, police ‘raid’ or court case includes, without sufficient justification, the name of a child of - or other relative or friend of – a crime suspect or of a defendant.

The code says in clause 9:

“(i) Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.

(ii) Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.”

In the event of a complaint about press identification of a relative or friend of a crime suspect, Ipso can be expected to consider, as the PCC did, if the relative or friend was genuinely relevant to the coverage, its tone and whether reference to the relative or friend was proportionate and in the public interest. It is less likely to rule that the code has been breached if the relationship was already widely known.

Clause 9 can be breached in coverage of as crime before any court proceedings, or in coverage of those proceedings. The case studies here deal with both stages, and see also ‘PCC rulings on reports of police raids’, below.

**Case study:** In 2015 Ipso rejected a complaint made by the grandmother of a baby whose father had been jailed for 12 years for inflicting grievous bodily harm on him, leaving him severely disabled and dependent on 24-hour care. The baby’s mother, the complainant’s daughter, was given an 18-month suspended prison sentence for cruelty to him for failing to protect him from his father. The grandmother, now the baby’s legal guardian, complained that *The Grimsby Telegraph’s* coverage of the Crown court proceedings against his parents should not have included the baby’s surname and details of his condition. Ipso said that clause 9 had not been breached because her grandson was genuinely relevant to the coverage, and the judge had not imposed any reporting restrictions. Ipso said that the information reported had been aired in open court, and it was in the public interest to detail the baby’s injuries in order to inform the public about the impact that “shaking” a baby can have on a child (*Mooney v Grimsby Telegraph*, adjudication issued 26 October 2015)

**Case study:** In 2015 Ipso rejected a complaint made against Mail Online by a woman who was a friend of a man charged with burglary and attempted burglary. She had arrived at court with him. She objected to a photograph of her standing behind him having been included in the article reporting the case. Ipso said that the press is generally entitled to photograph those involved in court cases arriving and leaving the court buildings, subject to any other legal restrictions. The inclusion of the woman in the photo was incidental and did not suggest the nature of the relationship between her and the man. She was not referred to in the text of the article, nor was the relationship between her and the man specified. She had not been identified as a friend or relative of the accused man, and the terms of clause 9 were not engaged (A woman v Mail Online, adjudication issued 24 September 2015).

**Case study:** The PCC ruled that the *Daily Mirror* breached clause 9 by identifying a child. His father, Gary Dobson, had been convicted of the murder of Stephen Lawrence. A woman who was Dobson’s former partner complained that coverage included the name and age of their son, who was under sixteen. The woman said her son had been bullied at school following the publication of the article. The PCC said that the son could not reasonably be described as ‘genuinely relevant’ to the story in this instance; he was an innocent party, and the newspaper had not contended that he had previously been publicly associated
with the crime or the legal proceedings against his father (A woman v Daily Mirror, adjudication published 26 March, 2012).

Case study: The Daily Record accepted that it breached clause 9 when its report of a shooting at a man’s home included the name of his young child, who saw the incident (A man v Daily Record, PCC case resolution published April 4, 2011).

Case study: The PCC rejected a complaint by England and Chelsea footballer John Terry that The Sun breached clause 9 by naming him in an article when his mother, Sue Terry, was arrested for shoplifting, for which she received a police caution. Terry’s solicitors said The Sun’s coverage was almost entirely focused on him, although he was not involved in the incidents. The Sun said his mother and mother-in-law, Sue Poole, were cautioned for shoplifting from Tesco, a corporate sponsor of the England team, and Marks and Spencer, supplier of suits to the England football team, which made the crime relevant to his high-profile position as England captain, and in the public interest. It added that both women lived in properties he had bought for them. The PCC said Terry’s relationship to both his mother and Mrs Poole was already in the public domain, not least as part of the high profile coverage of his wedding. Terry could legitimately be made the focus of The Sun’s coverage of the shoplifting incidents because he was one of the highest-earning footballers in the world who, it was said, provided for his family financially. ‘The fact that – despite such wealth – his mother and mother-in-law had been involved in claims of shoplifting was clearly relevant to the matter’ (John Terry v The Sun, adjudication issued 30 April, 2009).

Naming of high-profile relatives
The PCC ruled that the Editors’ Code was not breached if media coverage of an arrest simply reports that the crime suspect is a relative of an important community figure (Sihota v Slough Express, Report 40, 1997).

Codebook
The Editor’s Codebook analyses some of the PCC adjudications on clause 9. The PCC issued guidance which warned in particular that the media should not normally identify the relatives of those accused of sex offences. See Useful Websites, below, for the Codebook and the PCC guidance.

Journalists showing police work including ‘raids’
Guidelines issued by the now defunct Association of Chief Police Officers (ACPO) said there was no law preventing journalists accompanying police on operations, but pointed out that photographers, film crews and other journalists do not have the same legal rights as police to enter private property without the land/property owner’s permission. General guidance issued by the College of Policing says: “It should be remembered that media access to private premises is at the discretion of the owner, legitimate occupier or some other person who can legally authorise access. Media access to private premises is something for the media to negotiate, not the police’. For this general guidance, see Useful Websites, below. In 2016 the College began a consultation about the content of its guidance to the police about relations with the media – check www.mcnaes.com for updates.

Privacy law is explained generally in chapters 26 and 27 of McNae’s, including the public interest defence, and chapter 36 covers trespass law.
Journalists accompanying police or other public agencies on ‘raids’ to arrest or search must normally make clear, to any owner or occupier of the property who is there, that they are journalists – and should normally leave if asked to do so by an owner or occupier. If such a person gives verbal consent for them to be there, this should ideally be recorded on film or audio at the time, so it can be proved later if need be.

Reporting of police operations should not breach contempt laws designed to protect an individual’s right to a fair trial. Contempt of court is explained in chapter 18 of McNae’s. Contempt considerations may mean that photos or footage of a police operation should not, when it is published contemporaneously, show the face of anyone arrested. As chapter 4 of McNae’s explains, there can be also be a libel risk for a media organisation which reveals, by name, photo or footage, the identity of a person who is arrested but not charged.

Ofcom adjudications on programmes featuring police work
If a complaint is made about a broadcaster filming or recording a police operation or routine policing, Ofcom will consider whether the fairness and/or privacy sections of its Broadcasting Code - in particular rules 7.1 and 8.1 - have been breached. These rules are explained in chapters 3 and 27 of McNae’s. The Broadcasting Code’s practice 8.3 states generally that people ‘caught up in events which are covered by the news’ still have a right to privacy. Ofcom guidance warns programme makers that, in covering a police ‘raid’, care must be taken that editorial control remains with the programme company (that is, such control is not passed to the police). See Useful Websites, below, for this guidance.

Case study: Ofcom ruled in 2014 that the Channel 5 programme Police Interceptors breached a man’s privacy by broadcasting footage, which identified him, of when he and another man were stopped on a public road in Spalding, Lincolnshire, by a policeman who searched them on suspicion that they possessed cannabis. The other man was found to have a small bag of cannabis but the complainant did not have any. The programme aired a comment by the policeman that the complainant had been caught in possession of cannabis on a previous occasion. Ofcom said the situation had been sensitive for the complainant, and his privacy had been breached because he had not been committing an offence when the policeman was filmed stopping him, and because the previous occasion - referred to in the policeman’s comment - had not been in the public domain before. On that occasion the complainant had been given a warning and not been prosecuted. The public interest in showing the police at work did not, as regards this footage, outweigh the complainant’s legitimate expectation of privacy (Ofcom Broadcast Bulletin No. 265, 3 November, 2014).

Case study: Ofcom ruled in 2014 that Channel 5’s Criminal Caught on Camera programme did not breach the privacy of a woman shown drunkenly walking through Chester, falling, vomiting, and being arrested because she was drunk and disorderly. The programme used CCTV footage. She complained that friends and family had been able to identify her from what was broadcast. Ofcom ruled that the public interest in showing the work of the CCTV operators and police outweighed her expectation of privacy (Ofcom Broadcast Bulletin No. 252, 14 April 2014).

Case study: Ofcom ruled in 2011 that Channel 5’s Police Interceptors, when featuring the work of a police unit in Sheffield, did not breach the privacy of a woman filmed when she answered her door while wearing a dressing gown. Police wanted to trace a couple who failed to pay a taxi fare. The woman was not involved in that incident, but was filmed when police knocked at several houses around midnight. Her face was obscured in the programme, she was not named and no street address was given. But the programme specified the district and her voice could be heard as she told police she lived alone. She told Ofcom she did not know she had been filmed. Ofcom’s adjudication said her identity would have been discernable to people who knew her, but noted that the programme’s measures to limit infringement of her privacy included obscuring her house number and car registration plate. It did not uphold her complaint, ruling that the public interest in showing the challenges faced by police officers was significant, and that in the case’s particular circumstances the broadcaster’s right to freedom to impart
information outweighed her expectation of privacy (Ofcom Broadcast Bulletin No. 196, 19 December, 2011).

**Case study:** In 2010 an edition of Brit Cops: Frontline Crime, broadcast on the Bravo channel, showed footage – shot from the public highway – of a woman’s home being searched by the Metropolitan police robbery squad, who suspected that a man living there had an illegal sub-machine gun. The woman complained to Ofcom that the filming was unfair because she did not consent to it, and that her privacy was infringed because the footage showed images of her house. No firearm was found nor was anyone living there charged. Ofcom did not uphold her complaint. It said that although in the programme a woman’s voice could be heard in the background, she was not filmed. As her participation in the programme was minor and incidental, the programme-makers were not obliged under the code’s fairness rule to seek her consent. The programme made clear no gun was found, did not implicate her as being involved in any offence and obscured the face of a man who was arrested. Ofcom considered that neither the woman nor her property would have been recognisable to anyone who was not already aware of the ‘raid’. No street name or house number was shown, and the location was described merely as west London, and only the exterior of the house, which was visible from the public highway, was filmed. It ruled she did not have a legitimate expectation of privacy with regard to this filming (Ofcom Broadcast Bulletin No. 154, 22 March, 2010).

**Case study:** Ofcom has said that when a person is filmed either committing an offence or when arrested their expectation of privacy is diminished in light of their actions. It ruled in 2007 that the BBC programme Shops, Robbers and Videotape had not breached the privacy of a man who was filmed openly when police stopped and arrested him in a one-way street along which he had driven, and when he refused to provide a breath sample, and when he was at a police station. The footage broadcast obscured his face and did not identify him (Ofcom Broadcast Bulletin 89, 16 July, 2007).

**Case study:** In 2004 Ofcom upheld a complaint by a woman that she was treated unfairly and her privacy was infringed in both the making and broadcast of an item on the Meridian News regional programme which showed police raiding her house because they suspected that heroin would be found. The cameraman followed police into her garden and from there filmed the interior of the house through an open door. No heroin was found, though ‘drug-taking equipment’ was seized. The footage included a back view of the woman in handcuffs and in her nightwear. Ofcom said it was reasonable for her to expect privacy while handcuffed and in nightwear, and she had told the programme makers she objected to being filmed. Although her face was not shown, she would have been identifiable to people who knew her. The programme was unfair because it did not report that she was not charged with any offence (Ofcom Broadcast Bulletin No. 6, 6 April, 2004).

**BBC Editorial Guidelines on ‘tag-along raids.’**
The BBC Editorial Guidelines cover, in the privacy section, occasions when BBC journalists accompany police, customs, immigration, environmental health officers or other public authorities on ‘tag-along raids.’ The guidelines state that journalists should only go on these when there is a public interest and after careful consideration of editorial and legal issues including privacy, consent and trespass. The guidelines say: ‘When we go on a tag-along raid on private property we should normally:

- ensure people understand we are recording for the BBC
- obtain consent from the legal occupier and stop recording if asked to do so
- leave immediately if asked to do so by the owner, legal occupier or person acting with their authority.’

The guidelines add: ‘Exceptions may include where we have reason to believe illegal or anti-social behaviour is being exposed, or another public interest will justify our continued recording or presence.’ For the BBC Editorial guidelines, see Useful Websites, below.
PCC rulings on reports of police ‘raids’
A complaint to Ipso about a report of a police ‘raid’ is likely to allege breach of clause 2 (privacy) of the Editors’ Code of Practice, and/or of clause 9 (reporting crime) which says that relatives or friends of those accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story. Chapters 2 and 27 of McNaes’s explain the Code in general.

Case study: In 2008 the Press Complaints Commission upheld a woman’s complaint that a newspaper’s report of a police ‘raid’ on her home to search for stolen goods breached clause 2 of the Editors’ Code. The report was illustrated by photographs, including a pixelated shot of the woman’s 17-year-old son, handcuffed and sitting in his bedroom. The article said there were no arrests, but the woman was concerned that a reporter and photographer entered her home and took photographs without her consent. She told the PCC that several people had recognised both her son (despite the pixilation) and her home’s interior. The PCC said taking and publishing the photograph of the inside of the woman’s home was clearly very intrusive, regardless of whether the boy’s face was obscured in the published picture, and there was no adequate public interest justification for this behaviour, bearing in mind that no stolen goods were discovered and no arrests made. It was no defence to rely on the fact that the police invited the paper on the ‘raid’ – it was the responsibility of the editor, not the police, to get the necessary consent for publication or otherwise to comply with the Code when deciding which material to publish (A woman v Barking and Dagenham Recorder, adjudication issued 21 October 2008).

In another adjudication, the PCC said a newspaper report of a police ‘raid’ in which a small amount of cannabis was found in a woman’s home breached the code. She was not charged with any offence. By showing a video and publishing a picture of the interior of her house, without her consent, the report was clearly highly intrusive, particularly because it contained information likely to identify her address, the PCC said, adding that, while it might have been in the public interest to illustrate the police campaign against drugs, the degree of intrusion in this case was out of proportion to any such public interest (Carolyn Popple v Scarborough Evening News, adjudication issued 6 June, 2008).

An adverse adjudication is less likely if the coverage does not include pictures taken inside properties. The PCC did not uphold a complaint by a man who said his privacy was infringed by a newspaper’s report of his arrest during a police ‘raid’ at his home, saying that no photographs showed his home’s interior, and it did not consider that an arrest was a private matter even when, as in this case, no charges followed. The newspaper’s publication of an innocuous photo which only showed his face was not intrusive, the PCC said, adding that reporting on police action was inherently in the public interest and part of an open society unless there were formal reporting restrictions in place (Luke Dann v The Herald (Plymouth), adjudication issued 24 September, 2009).

See also McNaes’s chapter 4 on the dangers of libel when reporting arrests, and chapters 4 and 18 on the dangers of committing contempt of court by, for example, publishing a photo of a suspect or defendant when visual identification is an evidential issue.

Media identification of those assisting the police
Once court proceedings have begun, a court may, under various statutes, prohibit the identification of a witness in any media report of the case. In a youth court case, juvenile witnesses automatically get anonymity. The various laws which can grant anonymity are explained in McNaes’s chapters 9, 10 and 11. For example, it is illegal to identify the victim/alleged victim of any sexual offence.

New identities of police informants
There is also law giving anonymity to police informants, before or after any court proceedings begin, to protect them from violence or intimidation by criminals. Sections 86–89 of the Serious Organised Crime and Police Act 2005 make it an offence, punishable by up to two years in jail, to disclose at any time the new identities (for example, changed names and new addresses) given to informants as part of police protection, or to disclose other protective arrangements.
The Act, which is not aimed specifically at the media, sets out limited defences for anyone accused of disclosing information about the new identity. There is no liability if the disclosure was made with the agreement of the protected person and was not likely to endanger anyone’s safety. Under the Act’s schedule 5 the category of ‘protected person’ can also include an informant’s relatives, or any juror, judge or police officer for whom protective arrangements have been made.

Investigation anonymity orders

Section 74 – 78 of the Coroners and Justice Act 2009 empowers a magistrate – if requested by the police or by public prosecutors – to make, without holding a court hearing, an ‘investigation anonymity order’ to protect a person assisting or willing to assist the police or the National Crime Agency during investigations into murder or manslaughter. The order can be made if the death was caused by a gun or knife and if the person likely to have committed the offence was, when it was committed, aged at least 11 but under 30 and was likely to have then been a member of a similarly aged ‘group’ apparently engaged in crime. This anonymity protection was introduced to counter the intimidating effect of street gang culture among young people, which makes it hard to for police to get information about such killings. This law is not aimed directly at the media, but section 76 of the Act makes it an offence for anyone to disclose (other than internally and officially within an investigating or a prosecuting agency) any information that would or might identify this person to others as someone who is such an informant or willing to be one. The penalty for disclosure is a fine or a jail term of up to five years or both. A person accused of breach of the order will have a defence if he/she did not know and had no reason to suspect that the order had been made or that the information disclosed would breach it; or if the disclosure was made to someone already aware that the person given anonymity by the order was or was willing to be an informant. A magistrate, if requested by a relevant investigating or prosecuting agency or by the person protected by the order can cancel it if there has been a material change of circumstances since it was imposed.

Witness anonymity orders

Sections 86 – 89 in the Coroners and Justice Act 2009 empower a court to make a ‘witness anonymity order’ that the identity of a prosecution witness should not be disclosed to the defendant (and therefore will not be disclosed in court). See Useful Websites, below. Defendants can also apply for an order that the identity of a defence witness should not be disclosed to the prosecution. This law is not aimed directly at the media, but breach of the order by the unauthorised disclosure of a witness’s identity can be dealt with as contempt of court.

Listening to radio messages of the police and other emergency services

Section 48 of the Wireless Telegraphy Act 2006 makes it an offence to listen by radio to any message which that person is not authorised to receive. So it is illegal to use a radio or scanning device to eavesdrop without permission on, for example, police radio networks, or those of other emergency services and air traffic controllers. It is also an offence to disclose information gained by such eavesdropping, unless in a report of such information being aired in court proceedings. See Useful Websites, below, for Ofcom guidance. The radio systems of UK emergency services are encrypted against electronic eavesdropping.

Advertisements for return of stolen goods

The Theft Act 1968, section 23, makes it an offence to publish an advertisement offering a financial reward for the return of stolen or lost goods and including an assurance to the effect that “no questions will be asked” about where such goods have been. Magistrates convicted the advertising manager of a weekly newspaper under this law in 1982, after publication of an advert offering £5 for the return of a “brass, 12 inch coffee grinder.” On appeal, the High Court upheld the conviction, confirming that this was a strict liability offence (Denham v Scott (1984) 77 Cr App R 210).

Useful Websites
http://www.editorscode.org.uk/index.php
Editors Committee and Editors’ Codebook

Press Complaints Commission guidance on the reporting of people accused of crime

http://www.editorscode.org.uk/guidance_notes_10.php
Press Complaints Commission guidance on the reporting of cases involving paedophiles

College of Policing ‘Guidance on Relationships with the Media’

http://www.bbc.co.uk/editorialguidelines
BBC Editorial Guidelines on reporting crime

http://www.bbc.co.uk/editorialguidelines/guidelines/privacy/tagalong-raids
BBC Editorial Guidelines on tag-along raids

http://www.bbc.co.uk/editorialguidelines/guidance/indemnity-forms/access-agreements
BBC Editorial Guidelines on access agreements

http://www.nationalcrimeagency.gov.uk/
National Crime Agency

Crown Prosecution Service guidance for prosecutors on ‘witness anonymity orders’

http://stakeholders.ofcom.org.uk/enforcement/spectrum-enforcement/guidance
Ofcom guidance on illegality of ‘listening in’ to radio and phone messages