

The BJTC Media Law, Regulation & Ethics Handbook 2023

By Tim Crook



Above Logo for UK Broadcast Journalism Training Council <http://www.bjtc.org.uk> and
Royal Courts of Justice in the Strand, London. Image by Tim Crook.

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A dangerous position for a photojournalist reflecting some of the precarity faced by contemporary journalists who have to navigate media law, regulation and ethics. 'A dangerous position' by H.C. White Co. photographer working on column of new building, 250 ft. above ground, New York City in 1907. US Library of Congress.

Introduction

Welcome to a substantially expanded handbook containing so many more resources, updates and additional research. I apologise that it has been more than two years since the last edition. So many changes in media law have taken place. The landscape appears to be changing and the inclines, escarpments and sinkholes metaphorically representing problems and challenges for journalists trying to do their job increasing.

There have been some bright shafts of sunlight: the inauguration of live televising of Crown Court sentencing in England and Wales, and the quite outstanding achievements of family law specialist journalists in negotiating a significant opening of reporting possibilities of family court hearings through transparency orders. Some cases provide the greater promise of freedom of expression and journalist rights gaining in prominence. But there are some setbacks. A consistent maintenance of the Open Justice doctrine may now be more of a hope than a reality. Longstanding immutable principles such as murder victims and people convicted of serious crimes always being identified are no longer being respected.

Secrecy now attaches to most crime suspects even when they are arrested. High Court Judges agreed to retrospective secrecy orders on the seven murder victims of nurse Lucy Letby, after all their names had been published at the time of her first appearance in the Magistrates Court. Anonymity orders were imposed on all of Letby's attempted murder victims and many of her adult colleagues who worked with her. The Metropolitan Police firearms officer charged with murdering London construction worker Chris Kaba in Streatham Hill was granted an anonymity order so 'he can only be identified as NX121' when first appearing at Westminster Magistrates Court in September 2023. The Northern Ireland Assembly passed legislation making it a criminal offence to report anything leading to the identification of persons suspected of sexual offences prior to charge and this anonymity will extend 25 years after their deaths on a retrospective basis. The anonymity of sexual offence complainants will also endure 25 years after their deaths. Judges in the Northern Ireland courts have also been granting in perpetuity anonymity orders for convicted criminals claiming that media publicity gives risk to their self-harming. The Isle of Man Parliament has passed legislation giving sexual offence defendants anonymity unless convicted. The Law Commission of England and Wales has proposed the exclusion of all members of the public with the exception of only one accredited reporter when sexual offence complainants give their evidence in trials.

If you are a student journalist seriously committing yourself to joining this profession, and a teacher, lecturer and instructor in media law at any level, please receive my profound respects for the vital role you are undertaking in preserving and advancing the public interest role of journalism in a democracy. The obligations and duties are more complex, the challenges, threats and difficulties to overcome all the more greater, and so what you do engages discipline, steadfastness, noble and worthy imperatives. All the great journalists who have risked their lives and liberty in handing to your generation the precious freedoms and privileges we exercise and enjoy are hugely grateful.

This electronic book dovetails with the content and depends on the commissioning by Routledge of the *UK Media Law Pocket Book* (<https://www.routledge.com/The-UK-Media-Law-Pocketbook/Crook/p/book/9781138309166>) with the second edition published at the end of November 2022.

If you can, please make sure this title is a book selected for your core course reading list and is ordered for your college or university library. Wherever possible make accurate ALCS data returns on photocopying content should your institution be surveyed. And thank you for buying your own individual copy if you can afford to do so. There is a dynamic, open resource, companion website resource at <https://ukmedialawpocketbook.com> which is continually updated.

This is a dynamic electronic book continually updated between annual editions. Check the website <https://ukmedialawpocketbook.com/about/> for the latest version.

What is new in this edition?

We extend existing topics and expand new areas: data protection law for journalists; the media law of covering local and regional government and professional misconduct hearings; the media law for inquests and fatal accident inquiries; covering family law, courts martial, public inquiries; and the media law of British island jurisdictions such as the Isle of Man and Channel Islands. We discuss media law and Artificial Intelligence. Essential media and regulatory law has been brought forward in the handbook's overall structure and the more discursive chapters have been placed towards the end. It seems I have lost my argument about 'reasonable expectation of privacy for suspects of crime' and so has the journalism industry, but I think it is only right that journalism students should be aware of the 'journalistic perspective' rather than be given what is currently the 'academic legal disciplinary and judicial orthodoxy.' There is also a guide to enabling student journalists gain experience of reporting live court cases in Greater London. I do this as a potential template for any other area of the UK. For daily news on media law and global journalism matters feel free follow my daily X (formerly known as Twitter) feeds at [@ciojournalist](#) & [@libertarianspir](#)



The front of the Central Criminal Court Building at the Old Bailey in the City of London dappled by sunlight with the statuette of the Lady of Justice who does not wear a blindfold. The inscription reads 'Defend the children of the poor & punish the wrongdoer.' Image by Tim Crook.

Key Principles on a Page. Avoiding the six media law sins.

Key notes

1. Libel 2. Privacy 3. Contempt 4. Copyright 5. Criminal 6. <i>Damnum Sine Injuria</i> (ethics/regulation)
1. Libel = serious harm to reputation by online/radio/tv publication including implication and innuendo where meaning is constructed by victim and authorial intention no defence/ commentary/picture juxtaposition always a risk BUT defended through privilege: court/government proceeding = Absolute/high qualified. Public meeting/press conference and release at low qualified level, fairness and accuracy paramount and gist of alleged person's side when demanded required at the low qualified level. Innocent dissemination/Truth (in substance and fact)/Honest Opinion based on true facts or privileged material/Public Interest through neutral reportage (not adopting allegations) editorial decision-making conditions considered/Web operator's system/defence for user generated comments moderated or not moderated- complaints need to be addressed within 48 hours/qualified privilege for academic conferences and papers that are peer-reviewed.
2. Privacy = publishing and intrusive conduct about private information and situations- matters of public interest trumping on balance with intense focus of circumstances including confidential information where there is a reasonable/legitimate expectation of privacy and right to family life/filming, photography & sound recording in private geography without permission.
3. Contempt = publishing in any way to third party (including by social media) creating a substantial risk of serious prejudice to administration of justice when cases are active after arrest/warrant/opening inquest hearing or impeding process of justice by monsterring and thereby intimidating/discouraging witnesses/suspects.
4. Criminal = committing crimes through conduct and publication (intention sometimes is not required to be proved) like contempt, disobeying court orders even when wrong (max 2 years jail/unlimited fine/prosecution by attorney general), but more particularly anything that can lead to identification of sexual offence complainants/young people juveniles (17 & under)/harassing by causing distress on at least 2 occasions/computer and phone interception/bribing/and agreeing to incite a civil servant (police officer/service-person etc.) to commit misconduct in public office. Since 2010 Bribery Act paying, sources for information likely to be an offence (no public interest defence). Media have to consider risk of people who know victims doing their own detective work to put two and two together. This means pixilation, silhouetting and electronic voice distortion is not enough. Actors have to be used. Individual journalists not just editors can be held liable for criminal offences.
5. Copyright = publishing substantial part of image, script, publication, table, database of person/organization without permission unless there is a defence of fair dealing by criticism/review, parody, 'quotation or otherwise', or use in reporting current event BUT photographs excluded from current event defence, rare public interest defence available where image is something so awful/outrageous/depicting wrong and no other way of reporting. Also defence of public domain 70 years after death of author/70 years after death of director/producer/composer/original production (but beware of other layered copyright interests. Only photographs/images put into public domain prior July 1912 are usually safe from copyright liability.
6. <i>Damnum Sine Injuria</i> (ethics/regulation) = being nasty/unpleasant/discourteous/using people instrumentally instead of intrinsically/being on the wrong side of prevailing 'public interest'/coming as close as it is possible to breaching IPSO Editors' Code/Ofcom Code/IMPRESS Code/BBC Editorial Guidelines, the employer's contract/professional trade union's code of honour/not treating other people as you would yourself. This could also be described as moral cynicism at its worst and pushing primary and secondary media law to the very limits while at the same time avoiding actual material consequences.

Brief Over-view of Legal System England & Wales.

See the online [Structure of Courts and Tribunals page](#) on UK Judiciary website. There is also an excellent diagram featuring on page 6 of the guide to the Judicial System of England and Wales at

<https://www.judiciary.uk/wp-content/uploads/2016/05/international-visitors-guide-10a.pdf>

This graphic is not only informative about how the legal system works in terms of the routes of appeal, but it also demonstrates that the England & Wales jurisdiction is among the most complex with one or two extra levels of appeal more than other systems. The disadvantage here is that justice and case histories that could operate as guiding precedents will take longer to be established and in a largely privatized system of access to justice will be every expensive to achieve. Redress and remedies are likely to be available to mainly the rich, powerful and those backed by NGOs, public bodies or sponsors who have the financial gearing to invest in litigation. The guide emphasizes the commitment to Open Justice: 'Open justice is a long-standing and fundamental principle of the legal system of England and Wales. Justice must be done and seen to be done if it is to command public confidence, and so the relationship between the judiciary and courts and the media is a vital one.'

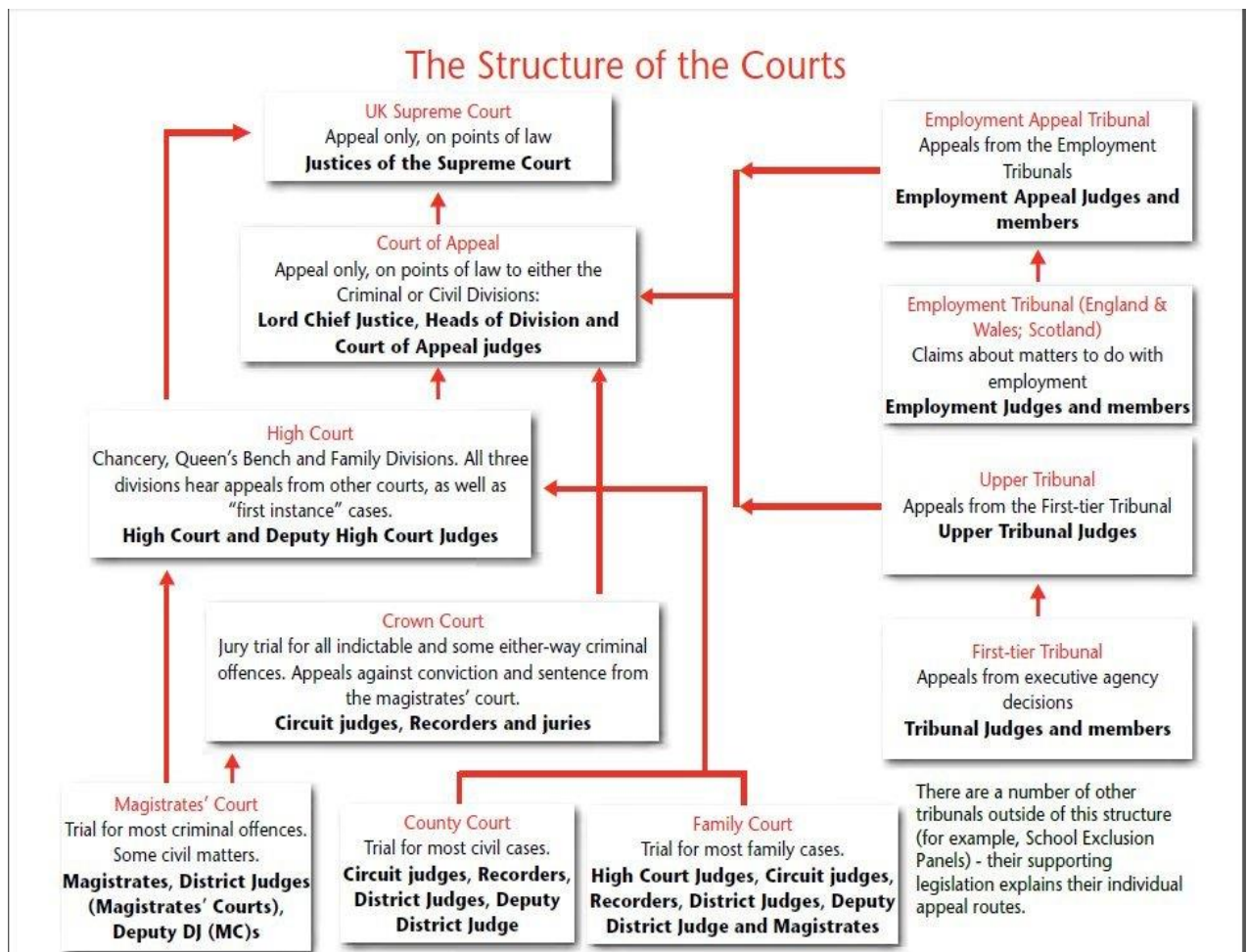


Image by judiciary.gov.uk used for criticism and review. Since the accession of King Charles III, 'Queen's Bench' is now 'King's Bench.' And the system has a [Lady Chief Justice- Dame Sue Carr](#) as of October 2023 who is head of the Judiciary of England and Wales and the President of the Courts of England and Wales.



UK Supreme Court in Parliament Square. Image by Tim Crook

Some basic information about the nature of the legal system in England and Wales.

There are three legal jurisdictions in the United Kingdom. Scotland has its own legal system and so does Northern Ireland though that is more similar to the system in England and Wales. The Scottish Parliament and Northern Ireland Assembly determine media law legislation for their jurisdictions and the relevant case law in their courts take precedence. There are also separate legal jurisdictions of the British Islands; namely Isle of Man and Channel Islands- Bailiwick of Jersey and Bailiwick of Guernsey which are not part of the United Kingdom, but 'Crown dependencies' with defence and foreign policy the separate responsibility of the Westminster Parliament's UK government.

The English and Welsh system affects the vast majority of the UK population. The 2021 census taken in March of that year reveals the resident population was 59,597,300- the largest it has ever been. Scotland's latest census of 2022 has not reported, but the estimated population in 2019 was 5,463,300. Northern Ireland's 2021 census revealed a resident population of 1,295,403.

There are two spheres of law: criminal law and civil law.

Criminal System.

[Crimes are mostly investigated by the police and prosecuted by the independent Crown Prosecution Service \(CPS\) whose head is the Director of Public Prosecutions. \(DPP\)](#)

The police process involves either an on the spot fine, or reporting an offence for minor motoring crimes, or arrest for the more serious offences. After an arrest suspects will be questioned, there will be the collection of evidence and a decision will be made to charge or not by the CPS.

Most crimes are dealt with in [Magistrates Courts](#) that can sit with full-time District Judges or panels of lay magistrates. These courts can sentence to a maximum of 6 months for a single offence and up to one year for two offences. If they think a crime with a high maximum penalty requires harsher punishment they can refer the case to the Crown Court. In March 2015, the cap of £5,000 on fines by Magistrates Courts was lifted. [See the scale of maximum fines for different offences set out by the Sentencing Council.](#)

In 2019 a major reform of criminal justice procedure for lesser crimes was introduced known as '[single justice procedure](#)' or [SJP](#). This has resulted in more than half of all cases in the Magistrates' court being dealt with by a single magistrate in an office rather than a court room accessible to the public and reporters. Most defendants in SJP prosecutions plead guilty through correspondence only and are not required, or indeed allowed to attend. Examples of SJP cases are traffic offences and BBC TV license evasion.

When people are arrested for very serious crimes, known as indictable offences, they appear first at the Magistrates Court and the case is then immediately transferred to [the Crown Court for trial](#).

Trial at the Crown Court takes place in front of a jury of 12 people which decides the facts in terms of a guilty or not guilty verdict. A single judge decides matters of law and imposes the sentence.

The Prosecution have to prove the cases so that the jury are sure- a standard of proof that used to be known as 'beyond reasonable doubt.' If defendants plead guilty, the Crown Court proceeds to deal with the matter with a sentence hearing.

Appeals against sentence and verdict go [the Court of Appeal- Criminal Division](#).

Civil System.

[Civil wrongs in law are litigated by private parties known as the claimant and defendant](#). Legal disputes involving property and services of less than £10,000 are dealt with in the County Court. These claims are administered through the [County Court Money Claims Centre](#). These can be launched online. If a case cannot be dealt with by mediation and goes to hearing, the parties can represent themselves, and the procedure is largely informal. Single judges decide the facts on the balance of probabilities and make any decision concerning damages, or injunction. For claims higher than £10,000 the procedure and hearing is more formal and usually requires the assistance of professional lawyers before a [County Court judge](#). Disputes involving larger potential claims (usually over £30,000) are heard before the High Court that mainly sits in London, but also sits in regional centres such as Birmingham, and Manchester.

The High Court has several divisions: Chancery, Queen's Bench Division, Family and Administrative which can deal with first instance cases for judicial review or appeals on points of law from County and Magistrates courts.

It is very rare for civil actions to be decided by juries. It is now only known to happen in actions for malicious prosecution or unlawful imprisonment.

There is an [Appeal Court Civil Division](#) and further appeals on points of law of general public importance can be heard at the [UK Supreme Court](#). If there are human rights' issues there is recourse to the [European Court of Human Rights in Strasbourg](#).

The United Kingdom left the European Union on 1st January 2020 and consequently rulings of the EU's European Court of Justice are no longer binding on UK courts. It is possible they may continue to be 'influential' but their relevance may be no more than and even less than a ruling of the US Supreme Court. However, under section 2 of the 1998 Human Rights Act, UK courts are supposed to 'take into account' ECtHR rulings. Under section 3 the interpretation of UK legislation 'must be read and given effect in a way which is compatible with the Convention rights.' There continues to be some degree of uncertainty about the impact of the phrase 'take into account' on how UK courts will interpret this. Some media law experts, more sympathetic with the perspective of journalists' rights, suspect the majority of senior judges take into account Strasbourg jurisprudence as if it is binding when it suits claimants and litigants in actions against media publishers, and appear more reluctant to give effect to Strasbourg rulings when it is in the interests of freedom of expression and journalism publishers.

Some Online multimedia resources explaining the operation of the legal system.

[What is the difference between Civil and Criminal Law?](#)

[Watch - Inside the Magistrates' Court- what happens?](#)

[A day in the life of Magistrates' Court by BBC News](#)

[Watch - Inside the Crown Court- what happens?](#)

[What is the Crown Prosecution Service- a presentation by Wil Sprenkel for A'level Criminology](#)

What happens in a real life criminal investigation and how do the police prepare their cases for the CPS before they are given permission to charge criminal suspects.

If available online it could be instructive to watch episodes from the Channel 4 documentary series

['24 Hours in Police Custody' following Bedfordshire CID in real life criminal investigations.](#)

'The landmark documentary series that captures real life drama at its most intense, following police detectives around the clock as they investigate major crimes.'

Warning: You will need to register with Channel 4/All 4 television streaming service to watch online. There is no fee. Please also bear in mind that for privacy and copyright reasons C4 may withdraw access and not archive the full catalogue of documentaries and series in this strand publicly. However, students, lecturers and alumni registered with academic libraries should be able to view the programmes via the Learning on Screen Box for Broadcasts subscription.

England and Wales Courts and Tribunals guide to 'What do I call a Judge?'

<https://www.judiciary.uk/you-and-the-judiciary/what-do-i-call-judge/>

The Justice System in England and Wales

<https://www.judiciary.uk/about-the-judiciary/the-justice-system/>

Structure of the courts and tribunal system in England and Wales

<https://www.judiciary.uk/about-the-judiciary/the-justice-system/court-structure/>

Going to court guide for England and Wales

<https://www.judiciary.uk/you-and-the-judiciary/going-to-court/>

Court of Appeal: <https://www.judiciary.uk/you-and-the-judiciary/going-to-court/court-of-appeal-home/>

High Court: <https://www.judiciary.uk/you-and-the-judiciary/going-to-court/high-court/>

Crown Court: <https://www.judiciary.uk/you-and-the-judiciary/going-to-court/crown-court/>

Magistrates' Court: <https://www.judiciary.uk/you-and-the-judiciary/going-to-court/magistrates-court/>

County Court: <https://www.judiciary.uk/you-and-the-judiciary/going-to-court/county-court/>

Family Court: <https://www.judiciary.uk/you-and-the-judiciary/going-to-court/family-law-courts/>

Tribunals: <https://www.judiciary.uk/you-and-the-judiciary/going-to-court/tribunals/>

Coroners' Court: <https://www.judiciary.uk/about-the-judiciary/the-justice-system/coroners/>

Tim Crook UK Media Law Pocketbook 2nd edition (2022) Guide to Court Reporting- Key Facts and Checklists pages 69 to 94.

Online companion web resource <https://ukmedialawpocketbook.com/2022/05/04/featured-content-6/>

McNae's Essential Law for Journalists 26th Edition (2022) offers several chapters that provide more detailed briefings on the England and Welsh legal system: Chapter 1 'Sources of Law', pages 3-10, Chapter 6 'Crimes- categories and definitions', pages 71-76. Chapters 7 and 8 on Magistrates court hearings, pages 77-98. Chapter 9 'Crown courts and appeal Courts', pages 99-110, Chapter 10 'Juveniles in court proceedings' pages 111-127. Chapter 13, 'Civil courts,' pages 164-172.

The 25th Edition (2020) page references are: Chapter 1 'Sources of Law', pages 3-10, Chapter 6 'Crimes- categories and definitions', pages 71-76. Chapters 7 and 8 on Magistrates court hearings, pages 77-98. Chapter 9 'Crown courts and appeal Courts', pages 99-110, Chapter 10 'Juveniles in court proceedings' pages 111-127. Chapter 13, 'Civil courts,' pages 164-172.



Central Criminal Court (The Old Bailey) Court No 1. Taken with kind permission of the administration. [Michael D Beckwith, CC0, via Wikimedia Commons](#)

[Introduction](#)

[Chapter 1 – Media contempt and reporting crime](#)

[Chapter 2 – Guide to Court Reporting- Key facts and check-list](#)

[Chapter 5 – Protecting Children](#)

[Chapter 6 – Copyright and Intellectual Property](#)

[Chapter 7 – Laws and rules for elections and politics](#)

[Chapter 8 – The Secret World](#)

[Chapter 9 – Scottish and Northern Irish differences and issues](#)

[Chapter 10 – Freedom of Information](#)

[Chapter 11 Social Media Law](#)

[Chapter 12 Links to further online chapters](#)

[Chapter 13 Reporting Local Government and access to meetings](#)

[Chapter 14 Covering Inquests \(and Fatal Accident Inquiries in Scotland\)](#)

[Chapter 15 Covering Public Inquiries](#)

[Chapter 16 Reporting Courts Martial](#)

[Chapter 17 Reporting the Family Courts](#)

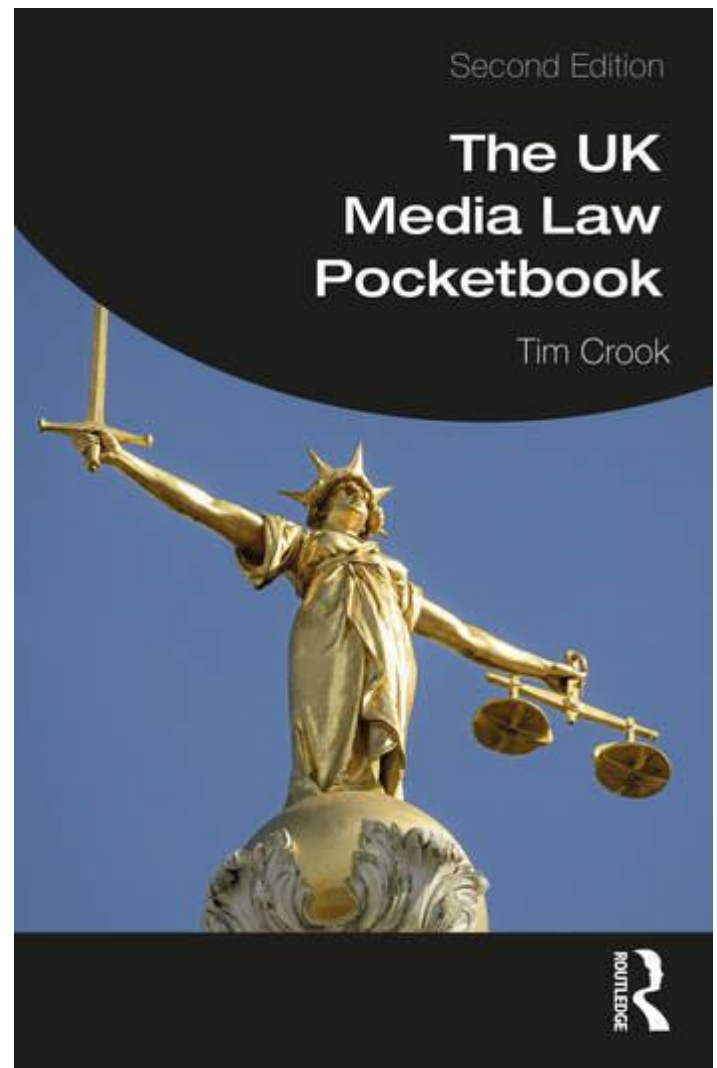
[Chapter 18 Media Law of British Isles jurisdictions of the Isle of Man and the Channel Islands](#)

[Chapter 19 Data Protection Law for Journalists.](#)

[UK Developments in Media Law](#)

[Chapter 3 – Libel, Privacy, Accuracy and Balance](#)

[Chapter 4 – News Gathering, Story Finding and Public Interest](#)



UK Media Law Pocket book 2nd Edition 2022. Online chapters with podcast, videocasts, links from printed text and updated briefings.



The Central Criminal Court in the Old Bailey, London EC4 by Tim Crook

Going to Court- organising court-reporting experience for student and trainee journalists and liaising with the justice system

Managing the placement of students to experience court reporting- some advice and resources.

The UK's legal system needs public confidence and support. Access, qualitative, fair and accurate reporting in the media is a critical factor in furthering the constitutional principle of Open Justice. I believe universities educating and training journalists can encourage judges and court staff to improve and enhance the achievement of this purpose through active liaison and collaboration.

Journalism university tutors should directly reach out to the presiding judges for local court centres and their senior HMCTS managers. In partnership university and judicial institutions can facilitate and achieve trust, understanding, knowledge and in the end become models for the Open Justice provision.

Arrange a meeting. Discuss what can be achieved. Reach out and collaborate. If your university has a Law Department find out what they do and if lines of communication can be synchronized.

Tutors should be prepared to accompany student groups on any formal visits and if a busy timetable prevents this every time, they should certainly enquire, communicate and provide advance information about the student journalist groups, their purpose and presence, along

with reassurance about the quality of education and training in media law being provided to them.

The students need accreditation letters, and when possible student journalist membership press cards from the CIOJ, NUJ and BAJ. (Is there not an advantage in the universities covering the costs for student membership of professional journalism bodies?)

When judges and court staff fully understand that the education and training of student journalists requires attendance and coverage of court hearings and the writing of reports with their assessment, this is more than likely to forge cooperation and most hopefully a symbiosis of appreciation and education. This can surely work both ways.

The USA developed the model many decades ago of media/bench committees at federal, state and city court centres where there would be the opportunity for the various professions to exchange views, thoughts and ideas on how they could all improve and sustain their respective aims. Whatever the decline in the infrastructure of local and regional journalistic coverage, I believe the university journalism and journalism training sectors are in a position to fill the vacuum and revive the function, purpose and extent of court reporting.

Such interaction could also extend to Coroners Courts and Youth Court centres. Yes, only accredited press card carrying professional journalists have access to Youth Courts, but might there be an argument for Youth Courts to permit student journalist reporting presence when accompanied by professional journalist tutors? The Youth Justice system needs understanding particularly at a time when so many young people are the victims and perpetrators of a worrying trend in knife crime.

Student journalists must respect the courtesies and dignity of the court by ensuring they attend on time and avoid excessive disruption of the proceedings when entering and leaving. Only do so during a lull in the proceedings. You should not be moving when the oath is being taken by a witness or juror. And why would any journalist try to enter or leave during a sentencing? Ah...perhaps when they are late! Reporters will find it difficult to do so at such a tense and significant time of the judicial process.

I have previously said that court proceedings are like religious services in churches, temples, mosques and synagogues. There is something sacred and indeed socially and culturally 'spiritual' going on. Due process of the law is purposed to prevent vigilante justice and to ritualize a method of bringing about justice for victims of crimes, their families and communities. So it is sociological, criminological, cultural, and to some extent religious. 'Dieu' or 'God' does appear in the royal arms found in

courtrooms in England and Wales, typically behind the judge's bench, and symbolising that *justice* comes from the monarch and from God whatever the belief systems of the people present. '*Dieu et mon droit*' means 'God and my right.'

It should go without saying that student journalists must dress smartly and appropriately in this environment. A guide to essential reporting published in 2007 observed: 'They won't actually throw you out if you turn up in jeans and a fcuk tee-shirt, but you will find them less than co-operative. Jacket and tie for men, smart outfit for women. No hats or bare shoulders.'

Student reporters should not bring food and drink into the courtroom, and must not use their smartphones and read newspapers, books and magazines during proceedings for personal entertainment. This includes those times when the court is not in session. Lawyers will still be working in the courtroom.

Student journalists should avoid yawning openly, however boring and soporific the case and submissions. Falling asleep and snoring is another big no-no.

Raucous conversation and talking aloud, smiling and laughter should also be avoided during proceedings and adjournments. If you must talk to a colleague, whisper or write something down on paper. There is a risk that your exaggerated facial expressions could be misinterpreted by the relatives of crime

victims and defendants who may be in the public gallery or well of the court.

When the court session begins everyone is expected to stand up when the judge(s) or justices enter and leave the courtroom. It is customary for solicitors, barristers and court officials to bow. You do not have to, but it would not be held against you if you do.

What does the current HMCTS 'General guidance to staff on supporting media access to courts and tribunals' say about student journalist/court reporters?

'Student journalists'

Student journalists will often attend court cases or hearings as part of their training. We should support this as one way to encourage greater court reporting. They are not entitled to sit in press seats but should sit in the public gallery where they are entitled to take notes without permission from the court or judge/magistrate. However, in sensitive cases (such as organised crime), it will help the judge and staff to avoid any misunderstanding if they identify themselves in advance to explain that they plan to do so. Student journalists do need to make an application to the court if they want to use text-based devices to communicate from court. If you receive a request from a student journalist, please speak to the judge presiding over the case or trial. If a lecturer wants to attend court with a group of students to observe a case or hearing, it is good practice (but not mandatory) to let the court know in advance.'

Here is an outline of the information which can be pulled together about the legal system in the Greater London Area as an example of what can be done regionally in other parts of the UK.

The London Magistrates Courts

<https://courtribunalfinder.service.gov.uk/courts/westminster-magistrates-court>

Westminster Magistrates' Court

181 Marylebone Road

London

NW1 5BR

Enquiries:

Enquiries: 020 3126 3050

Opening hours

Court building open: Monday to Friday
9am to 4:30pm, Saturday 9am to 1pm)

Court counter open: Monday to Friday
9am to 11:30am and 1:30pm to 2:30pm

Enquiries: westminster.mc@hmcts.gsi.gov.uk

Lavender Hill Magistrates' Court

176a Lavender Hill

Battersea

SW11 1JU

Opening times

Court open

9am to 4.30pm

Counter open

9:15am to 11am and 1:30pm to 2:30pm

Email

Enquiries

southlondonmc@justice.gov.uk

Telephone

Enquiries

[0300 303 0645](tel:03003030645)

(LMCCC opening hours from 8am to 4pm
Monday to Friday)

Wimbledon Magistrates' Court

The Court House

Alexandra Road

Wimbledon

SW19 7JP

Opening times

Court open

8:30am to 4:30pm

Counter open

9:15am to 11am and 1:30pm to 2:30pm

Email

Enquiries

southlondonmc@justice.gov.uk

Telephone

Enquiries

[0300 303 0645](tel:0300 303 0645)

(LMCCC opening hours from 8am to 4pm
Monday to Friday)

Please note that the administration for
Wimbledon Magistrates Court is run from
the South West Administration Centre
176a Lavender Hill.

Thames Magistrates' Court

58 Bow Road

London

E3 4DJ

Opening times

Counter open

9am to 11am and 1:30pm to 2:30pm

Email

Enquiries

northlondonmc@justice.gov.uk

Telephone

Enquiries

[0300 303 0645](tel:0300 303 0645)

(LMCCC opening hours from 8am to 4pm
Monday to Friday)

Thames is the management centre for
Stratford, Barkingside and Romford
Magistrates Courts.

Barkingside Magistrates' Court

Cranbrook Road

Ilford

IG6 1HW

Opening times

Court open

Monday to Friday 9am to 4:30pm

Counter open

Counter open 9am to 11am and 1:30pm to
2:30pm

Email

Enquiries

northlondonmc@justice.gov.uk

Telephone

Enquiries

[0300 303 0645](tel:0300 303 0645)

(LMCCC opening hours from 8am to 4pm
Monday to Friday)

Romford Magistrates' Court (formerly Havering Magistrates' Court)

Main Road

Romford

RM1 3BH

Opening times

Court open

Monday to Friday 8:30am to 4:30pm.

Email

Enquiries

northlondonmc@justice.gov.uk

Telephone

Enquiries

[0300 303 0645](tel:0300 303 0645)

(LMCCC opening hours from 8am to 4pm
Monday to Friday)

Stratford Magistrates' Court

The Court House
389-397 High Street
Stratford
London
E15 4SB
Opening times
Court open
Monday to Friday: 9am to 5pm
No counter service available
Please visit Thames Magistrates' Court
from 9am to 11am and 1:30pm to 2:30pm
Email
Magistrates court
northlondonmc@justice.gov.uk
Telephone
Enquiries
[0300 303 0645](tel:03003030645)
(LMCCC opening hours from 8am to 4pm
Monday to Friday)

Bromley Magistrates' Court

The Court House
1 London Road
Bromley
BR1 1RA
Opening times
Court open
9am to 5pm Monday to Friday
Counter open
9am to 11am and 1:30pm to 2:30pm
Email
Enquiries
Southlondonmc@justice.gov.uk
Telephone
Enquiries
[0300 303 0645](tel:03003030645)
(LMCCC opening hours from 8am to 4pm
Monday to Friday)

Bexley Magistrates' Court

Norwich Place
Bexleyheath
DA6 7ND
Opening times
Court open
9am to 4:30pm
Counter open
9am to 2:30pm (closed 11am to 1:30pm)
Email
Enquiries
Southlondonmc@justice.gov.uk
Telephone
Enquiries
[0300 303 0645](tel:03003030645)
The management of Bexley Magistrates is
carried out by the administration at
Bromley Magistrates Court.

City of London Magistrates Court

1 Queen Victoria Street
London
EC4N 4XY
Opening times
Counter open
9am to 11:30am and 1:30pm to 2:30pm
Court open
9am to 4:30pm
Email
Enquiries
Southlondonmc@justice.gov.uk
Telephone
Enquiries
[0300 303 0645](tel:03003030645)
(LMCCC opening hours from 8am to 4pm
Monday to Friday)

Willesden Magistrates' Court

448 High Road
London
NW10 2DZ
Opening times

Court open
Monday to Friday: 9am to 5pm
Counter open
9am to 11:30am and 1pm to 2:30pm
Email
Enquiries
northlondonmc@justice.gov.uk
Telephone
Enquiries
[0300 303 0645](tel:0300 303 0645)

Hendon Magistrates' Court
The Court House
The Hyde
Hendon
NW9 7BY
Opening times
Court open
Monday to Friday: 9am to 5pm
Email
Enquiries
Southlondonmc@justice.gov.uk
Telephone
Enquiries
[0300 303 0645](tel:0300 303 0645)

Uxbridge Magistrates' Court
The Court House
Harefield Road
Uxbridge
UB8 1PQ
Opening times
Court open
Monday to Friday: 9am to 5pm
Email
Enquiries
northlondonmc@justice.gov.uk
Telephone
Enquiries
[0300 303 0645](tel:0300 303 0645)

Ealing Magistrates' Court
The Court House
Green Man Lane
Ealing
W13 0SD
Opening times
Court open
Monday to Friday: 9am to 5pm
Email
Enquiries
northlondonmc@justice.gov.uk
Telephone
Enquiries
[0300 303 0645](tel:0300 303 0645)

Highbury Corner Magistrates' Court
51 Holloway Road
London
N7 8JA
Opening times
Counter open
Monday to Friday 9am to 11am and
1:30pm to 2:30pm
Counter open
(Application counter) 9am to 10am
Email
Enquiries
northlondonmc@justice.gov.uk
Telephone
Enquiries
[0300 303 0645](tel:0300 303 0645)

Croydon Magistrates' Court
Barclay Road
Croydon
CR9 3NG
Opening times
Court open
9am to 4:30pm
Counter open
9am to 11am and 1:30pm to 2:30pm

Email

Enquiries

southlondonmc@justice.gov.uk

Payments

Telephone

Enquiries

[0300 303 0645](tel:03003030645)

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Crown Courts listings throughout the country.

<https://www.courtserve.net/courtlists/current/crown/indexv2crowndailies.php>

Create an account for your journalism university/training centre, sign in and Click on relevant crown court e.g. Southwark Crown Court, Inner London Crown Court, Central Criminal Court.

The Tim Wood news agency puts out a daily briefing on the progress of newsworthy cases at the Central Criminal Court at: <https://old-bailey.com/old-bailey-cases-of-interest/>

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The London Crown Courts**Southwark Crown Court**

1 English Grounds

(off Battlebridge Lane)

Southwark

London

SE1 2HU

Opening hours

Court building open: Monday to Friday
8am to 6pm

Court counter open: 9am to 5pm

Email

Enquiries: southwarkcrowncourt@hmcts.gsi.gov.uk

Phone numbers

Enquiries: 020 7522 7200.

Inner London Crown Court

Sessions House

Newington Causeway

London

SE1 6AZ

Opening times

Court open

Monday to Friday 8am to 6pm

Counter open

9am to 5pm

Email

Enquiries

innerlondoncrowncourt@justice.gov.uk

Enquiries

[020 7234 3100](tel:02072343100)

Croydon Crown Court

The Law Courts

Altyre Road

Croydon

CR9 5AB

Opening times

Court open

Monday to Friday 8:30am to 6pm

Crown Office opens

9am to 5pm

Email

Enquiries

croydoncrowncourt@justice.gov.uk

Enquiries

[020 8410 4700](tel:02084104700)

Snaresbrook Crown Court

75 Hollybush Hill
Snaresbrook
E11 1QW

Opening times

Court open

8am to 6pm

Counter open

9am to 5pm

Email

Enquiries

snaresbrookcrowncourt@justice.gov.uk

Telephone

Enquiries

[020 8530 0000](tel:02085300000)

Kingston upon Thames Crown Court

6-8 Penrhyn Road

Kingston-upon-Thames

KT1 2BB

Opening times

Court open

Monday to Friday 8:30am to 6pm

Counter open

Monday to Friday 9am to 5pm

Email

Enquiries

kingstoncrowncourt@justice.gov.uk

Telephone

Enquiries

[020 8240 2500](tel:02082402500)

Wood Green Crown Court

Woodall House

Lordship Lane

Wood Green

N22 5LF

Opening times

Court open

9am to 5pm Monday to Friday;

Counter open

9am to 4pm

Email

Enquiries

woodgreencrowncourt@justice.gov.uk

Isleworth Crown Court

36 Ridgeway Road

Isleworth

TW7 5LP

Opening times

Court open

9am to 6pm

Counter open

9am to 4pm

Email

Enquiries

isleworthcrowncourt@justice.gov.uk

Telephone

Enquiries

[020 8380 4500](tel:02083804500)

Woolwich Crown Court

2 Belmarsh Road

London

SE28 0EY

Opening times

Court open

8:30am to 5pm

Counter open

9am to 4pm

Email

Enquiries

woolwichcrowncourt@justice.gov.uk

Telephone

Enquiries

[020 8312 7000](tel:02083127000)

Serious Fraud Office news

<https://www.sfo.gov.uk/news/>

Serious Fraud Office cases

<https://www.sfo.gov.uk/our-cases/>

and current cases

<https://www.sfo.gov.uk/our-cases/current-cases/>

Royal Courts of Justice cause list online for building complex at Strand/Fleet Street.

<https://www.justice.gov.uk/courts/court-lists/list-cause-rcj>

The Building and history

<https://theroyalcourtsofjustice.com/>

The Royal Courts of Justice, commonly called the Law Courts, is a court building in Westminster which houses the High Court and Court of Appeal of England and Wales. The High Court also sits on circuit and in other major cities.

Strand, London WC2A 2LL

Phone: [020 7947 6000](tel:02079476000)

National links for High Court Centres

<https://www.justice.gov.uk/courts/court-lists>

UK Supreme Court in Parliament Square

<https://www.supremecourt.uk/>

Court sittings

<https://www.supremecourt.uk/visiting/court-sittings.html>

Briefings on current cases

<https://www.supremecourt.uk/current-cases/index.html>

Press and Media Enquiries

<https://www.supremecourt.uk/press-office.html>

For general enquiries, please contact:

The Supreme Court

Parliament Square

London

SW1P 3BD

Switchboard: 020 7960 1500 or 1900

Court News provides reports from Central Criminal Court, other London Crown Courts and tribunals around the country and offer short summaries with intros of ongoing cases at:

<http://courtnewsuk.co.uk>

The Central Criminal Court, the Old Bailey, is a more difficult building to access for student journalists because of a much higher security regime.

<https://www.cityoflondon.gov.uk/about-us/law-historic-governance/central-criminal-court>

Monday to

Friday

9.55am 12.40pm

1.55-3.40pm

Telephone: 020 7192 2739

Email: ccc.enquiries

Address: Central Criminal Court
Old Bailey
London EC4M 7EH

Members of the public are restricted to separate public gallery access and mobile phones, professional digital recorders are not allowed. If you have not made prior arrangements and follow the protocol below, you will be restricted to the public galleries, which are not ideal for practical reporting.

It is highly advisable to make prior arrangements as the tutor for student reporter visits to the Central Criminal Court. Student reporter visits to carry out

reporting inside the courtrooms of the Central Criminal Court normally require a separate letter of accreditation from the lecturer/editor supervisor on letter-headed paper affirming bona fide status and explicitly stating which court cases the student reporter will be covering. This would be shown by the student(s) to security staff at the revolving door entrance. This accreditation would then be validated in a manner advised by the Court to confirm *bona fide* status.

It is always advisable to make prior contact to HMCTS staff at court centres prior to student reporter visits so they have warning and can recognize and accommodate your presence.

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Covering the London Coroners' Courts

City of London Coroner's office

Forthcoming hearings listed at:

<https://www.cityoflondon.gov.uk/services/births-deaths-citizenship-and-marriages/inquest-hearings>

Address: City of London Coroner's Court
Walbrook Wharf
78-83 Upper Thames Street
London EC4R 3TD
020 7332 1598
coroner@cityoflondon.gov.uk

The other coroner areas in London

East London

<https://www.walthamforest.gov.uk/content/coroners-court>

Details of forthcoming inquests are listed on this webpage.

<https://www.walthamforest.gov.uk/births-deaths-and-marriages/deaths/coroners-court/coroners-court>

Her Majesty's Coroners Eastern Area of Greater London

The Eastern District of London Coroner covers five London Boroughs - Waltham Forest, Newham, Redbridge, Havering and Barking and Dagenham.

The Coroners Court

Queens Road

Walthamstow E17 8QP

Email: Coroners@walthamforest.gov.uk

Tel: 020 8496 5000 - listen to the whole voicemail message and for deaths in Waltham Forest, Newham and Redbridge please select option 1. For deaths in Barking & Dagenham and Havering please select option 2

Inner North

St Pancras Coroners Court 020 7974 4545

<https://www.camden.gov.uk/coroners-service>

Poplar Coroner's Court St Pancras

Coroner's Court

127 Poplar High Street Camley Street

London E14 0AE

London N1C 4PP

Tel: 020 7538 1201

Tel: 020 7974

4545

Fax: 020 7538 0565 Fax: 020 7383 2485

View location for E14 0AE View location for N1C 4PP

Forthcoming inquest diaries for Poplar and St Pancras at:-

<https://www.camden.gov.uk/coroners-service#yywe>

Inner East

Poplar Coroners Officer 020 7538 1201
Poplar Coroners Court
127 Poplar High Street
Tower Hamlets

London E14 0AE Tel: 0207 538 0602

https://www.towerhamlets.gov.uk/lgnl/advicesandbenefits/births_marriages_and_deaths/coroner_sudden_death_inve.aspx

Inner South

Her Majesty's Coroner for the Inner Southern District of Greater London
This district includes the boroughs of Greenwich, Lambeth, Lewisham and Southwark.

Southwark Coroners Court

Website page

<https://www.innersouthlondoncoroner.org.uk/>

Court Diary

<https://www.innersouthlondoncoroner.org.uk/court-diary>

Greater London - Inner South London District

Southwark Coroners Court 1 Tennis Street
London Greater London Authority SE1 1YD

Work T: 020 7525 4200

Fax: 0207 378 8401

Inner London South Coroner's Court, 1 Tennis Street, London, SE11YD.

Press Inquiries to

CoronersClerk.Enquiries@southwark.gov.uk

Inner West- Westminster Coroner's Court

<https://www.rbkc.gov.uk/contactsdirectory/az.aspx?orgid=1736&&ba=show>

Jurisdiction covers the boroughs of Wandsworth and Merton, the Royal Borough of Kensington & Chelsea and the City of Westminster.

Westminster Coroner's Court 020 7641 1212

65 Horseferry Road

LONDON

SW1P 2ED.

(Currently being refurbished alternately located 33 Tachbrook Street Pimlico

LONDON

SW1V 2JR)

Telephone 020 7641 1212

Email hdavies@westminster.gov.uk

North London

Forthcoming hearings and lists on this page: <http://www.haringey.gov.uk/births-death-and-marriages/registering-death/coroners>

HM Coroner's Court for North London, covering Haringey, Barnet, Brent, Harrow and Enfield.

Greater London - Northern London District

29 Wood Street Barnet London Greater London Authority EN5 4BE

Work T: 020 8447 7680

Barnet Coroner's Court

For general enquiries please

email court.clerk@hmc-northlondon.co.uk

Barnet Coroner's Court 020 8447 7680

South London

<http://southlondoncoroner.org>.

(Forthcoming hearings listed- names only)

South London Coroner's Service, 2nd

Floor, Davis House, Robert

Street, Croydon CR0 1QQ

Main switchboard: 020 8313 1883

e-mail: info@southlondoncoroner.org

Croydon, Bexley, Bromley and Sutton

Coroner's Court 020 8313 1883

<http://southlondoncoroner.org/press-and-media/>

Very good Frequently Answered

Questions page:

<http://southlondoncoroner.org/faqs/>

West London

<https://www.westlondoncoroner.org/>

Fax: 020 8753 6803

West London District Coroner's Court 020 8753 6800

25 Bagley's Lane SW62QA

<https://www.westlondoncoroner.org>

Listing of hearings

<https://www.westlondoncoroner.org/court-diary.php>

For deaths in Ealing or Hillingdon

Email: ealingandhillingtoncoroners@lbhf.gov.uk

Telephone: 020-8753-5777 / 020-8753-2760 / 020-8753-4275

For deaths in Richmond or Kingston

Email: richmondandkingstoncoroners@lbhf.gov.uk

Telephone: 020-8753-5135 / 020-8753-6797 / 020-8753-2205

For deaths in Hammersmith, Fulham or Hounslow

Email: hfandhousnlowcoroners@lbhf.gov.uk

Telephone: 020-8753-2161 / 020-8753-6220 / 020-8735-2502

Coroner's Clerks

(press and general enquiries)

Email: hmcroner@lbhf.gov.uk

Telephone: 020-8753-4422 / 020-8753-1427

Journalists should not pre-judge the conclusion of an inquest unless the cause of death is beyond doubt and unarguable. Coroners do not appreciate the media reporting that somebody has taken their own life before an inquest has been held into their death. For example, when a body has been found in a river it is obviously not a foregone conclusion that they drowned themselves, or that they have actually died from drowning.

Discretion and sensitivity is needed when reporting the details of inquest proceedings. News publishers are not obliged to reproduce the graphic details of how people met their deaths.

Excessive reporting of gruesome and intimate information about people's injuries and illnesses will lead to accusation of gratuitous exploitation of the narrative which would cause unnecessary offence and hurt to grieving relatives.

English statutory law does in fact ban publication of indecent, medical, surgical or physiological details calculated to injure public morals, but as yet this 1926 provision has never been tested by prosecution.

Whenever reporting inquests about suicide please include the following information:

In the UK and Ireland, the Samaritans can be contacted on 116 123.

<https://www.samaritans.org/how-we-can-help-you/contact-us>

Papyrus are contactable on 0800 068 41 41 or by texting 07786 209 697, or emailing pat@papyrus-uk.org.

Prevention of young suicide <https://www.papyrus-uk.org>

In the US, the National Suicide Prevention Hotline is 1-800-273-8255.

In Australia, the crisis support service Lifeline is on 13 11 14.

Hotlines in other countries can be found at: <http://www.suicide.org/international-suicide-hotlines.html>

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London County and Family Courts (and Greater London region)

Central London County Court
County Court at Central London,
Thomas More Building
Royal Courts of Justice
Strand
London
WC2A 2LL

Opening times

Court open
Monday to Friday 9am to 4pm
Counter open
By Appointment only on 0207 947 7502

Email

Enquiries
Enquiries.centallondon.countycourt@justice.gov.uk

Enquiries

[0300 123 5577](tel:03001235577)

Bromley County Court and Family Court

Address

Court House
College Road
Bromley
BR1 3PX

Opening times

Court open
Monday to Friday 9am to 4pm
Counter open
By appointment only

Email

Enquiries
Enquiries.bromley.countycourt@justice.gov.uk

Family court

Family.bromley.countycourt@justice.gov.uk

Telephone

Enquiries
[0300 123 5577](tel:03001235577)

Central London County Court (Bankruptcy)

Address

Room 1.05
1st Floor, Thomas More Building
Royal Courts of Justice
Strand
London
WC2A 2LL

Opening times

Counter service by appointment only
Court open
9am to 4pm

Email

Enquiries
rcjbankclccdhearings@justice.gov.uk

Enquiries

rcjcompngenclcc@justice.gov.uk

Telephone

Enquiries

[020 7947 6448](tel:02079476448)

Clerkenwell and Shoreditch County Court and Family Court

Address

The Gee Street Courthouse

29-41 Gee Street

London

EC1V 3RE

Opening times

Court open

Monday to Friday from 9am to 4pm

Counter open

By appointment only for urgent work.

Email

Enquiries

enquiries.clerkenwellandshoreditch.countycourt@justice.gov.uk

Family court

family.clerkenwellandshoreditch.countycourt@justice.gov.uk

(Including C100 applications)

Telephone

Enquiries

[0300 123 5577](tel:03001235577)

Civil court

[0207 250 7294](tel:02072507294)

Croydon County Court and Family Court

Address

The Law Courts

Altyre Road

Croydon

CR9 5AB

Opening times

Court open

Monday to Friday 8am to 6pm.

Counter open

By appointment only.

Email

Enquiries

enquiries.croydon.countycourt@justice.gov.uk

Listing

hearings.croydon.countycourt@justice.gov.uk

Family court

CroydonCty.PublicLaw@Justice.gov.uk

County court

croydonurgentapp@justice.gov.uk

(Urgent Private law & Family Law act injunctions)

Telephone

Civil court

[0300 123 5577](tel:03001235577)

(All queries are to be in writing or through the helpdesk)

Dartford County Court and Family Court

Address

Home Gardens

Dartford

DA1 1DX

Opening times

Counter open

For urgent matters only by prior appointment

Court open

Monday to Friday, 09:00 to 16:00

Email

Enquiries

enquiries.dartford.countycourt@justice.gov.uk

(Civil Enquiries)

Family.Dartford.CountyCourt@justice.gov.uk

(Family Enquiries)

Telephone

Enquiries

[0300 123 5577](tel:03001235577)

(from 9am to 5pm)

Kingston upon Thames County Court and Family Court

Address

Hearing Centre
St James Road
Kingston-upon-Thames
KT1 2AD

Opening times

Counter open
By appointment only
Court open
Monday to Friday 9am to 4pm

Email

Enquiries
Enquiries.kingston.countycourt@justice.gov.uk

Enquiries

[0300 123 5577](tel:03001235577)

Romford County Court and Family Court

Address

2a Oaklands Avenue
Romford
RM1 4DP

Opening times

Court open
Monday-Friday 9am-4pm
Counter open
10am to 2pm, by appointment for urgent business only.

Email

Family court
family.romford.countycourt@justice.gov.uk

Enquiries

civil.romford.countycourt@justice.gov.uk

Telephone

Enquiries

[0300 123 5577](tel:03001235577)

Wandsworth County Court and Family Court

Address

76-78 Upper Richmond Road
Putney
SW15 2SU

Opening times

Court open
Monday to Friday 9am to 4pm
Counter open
By appointment only

Email

Enquiries
enquiries.wandsworth.countycourt@justice.gov.uk

Telephone

Enquiries
[0300 123 5577](tel:03001235577)

Watford County Court and Family Court

Address

10 King Street
Watford
WD18 0BW

Opening times

Court open
Monday to Friday 9am to 4pm
Counter open
10am to 2pm (by prior appointment only).

Email

County court
enquiries.watford.countycourt@justice.gov.uk

(for Civil (County Court) matters)

Willesden County Court and Family Court

9 Acton Lane
Harlesden
NW10 8SB

Opening times

Court open

Monday to Friday 9am to 4pm

Counter open

By prior urgent appointments only to do so Tel. 020 8963 8212

Email

Enquiries

Enquiries.willesden.countycourt@justice.gov.uk

Telephone

Enquiries

[03001235577](tel:03001235577)

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London Youth Courts (and Greater London region)

The youth courts in London do not operate in discrete and separate court centres. They are accommodated in existing Magistrates Courts.

The South West London Youth Court sits at Wimbledon Magistrates' Court.
Youth court code: 6577.

The West London Youth Court sits at Ealing Magistrates' Court and Uxbridge Magistrates' Court.
Youth court code: 6578.

The North West London Youth Court sits at Willesden Magistrates' Court.
Youth court code: 6571.

The North London Youth Court sits at Highbury Magistrates Court and receives cases from the London Boroughs Islington / Camden / Haringey / Enfield / Hammersmith & Fulham / City

of Westminster / Royal Borough of Kensington & Chelsea.
Youth court code: 6572.

The East London Youth Court sits at Stratford Magistrates' Court. Where youths appear with adult defendants they will appear at Thames Magistrates.
Youth court code: 6574.

The North East London Youth Court sits at Barkingside and Romford Magistrates' Courts.
Youth court code: 6573

The South London Youth Court sits at Croydon and Bromley Magistrates' Courts.
Youth court codes: 6575 and 6576.
Cases from Croydon and Sutton are heard in Croydon and cases from Bromley & Southwark, Lambeth & Lewisham boroughs are heard in Bromley.

There is a special terminology to be adopted when reporting the youth courts. Young people appearing (In England and Wales they will be aged 17 and under) do not plead guilty or not guilty. They should be represented as admitting or denying offences.

In youth courts there are findings of guilt and these should not be described as convictions. Youths are not sentenced. They are made the subject of a court order.

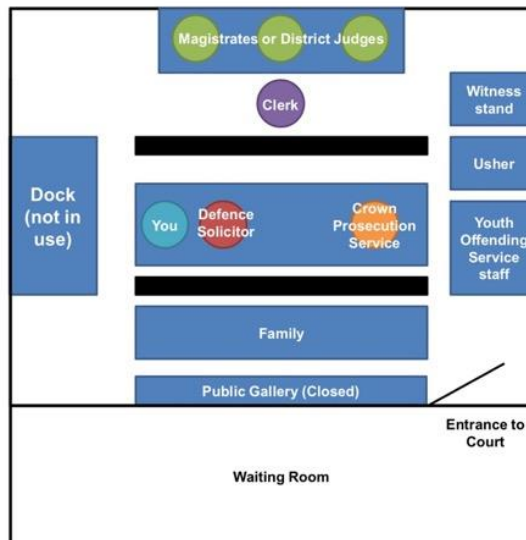


Diagram of a Youth Court lay-out courtesy of the Barking and Dagenham Youth Justice Service.

The process in Youth Courts is less formal and the process is determined by panels of specialist magistrates. Parents are normally present. The public are prohibited by law from attending. Do bear in mind that Youth Courts will not be familiar with the presence of journalists. Their attendance is very rare. Consequently, the possession of a press card and proper accreditation with courtesy and understanding would be advised when seeking to gain access.

Section 49 of the Children and Youth Persons Act 1933 imposes an automatic ban on identifying any young person involved in Youth Court proceedings and including any information that could lead to their identification and that of their schools.

See:

<https://www.legislation.gov.uk/ukpga/Ge/o5/23-24/12/section/49>

‘No matter relating to any child or young person concerned in proceedings to which this section applies shall while he is under the age of 18 be included in any publication if it is likely to lead members of the public to identify him as someone concerned in the proceedings.’

The prohibition relates specifically to the following information about youths involved in the process: ‘(a) name, (b) his address, (c) the identity of any school or other educational establishment attended by him, (d) the identity of any place of work, and (e) any still or moving picture of him (includes any likeness).’

There is a provision under Section 49(4A) that ‘If a court is satisfied that it is in the public interest to do so, it may, in relation to a child or young person who has been convicted of an offence, by order dispense to any specified extent with the restrictions.’ When doing so they will have to take into account the welfare of the young person in a human rights balancing act with Article 10 Freedom of Expression and the future welfare and interests of the young person are expected to be given ‘great weight’ in that balancing exercise.

It is important to appreciate that ‘bona fide representatives of newspapers or news agencies’ are entitled to report Youth Courts as a statutory right under section 47(2)(c) of the Children and Young Persons Act 1933. See: <https://www.legislation.gov.uk/ukpga/Ge/o5/23-24/12/section/47>



Entrance to New Scotland Yard adjacent to the Old Scotland Yard on London's Victoria Embankment. Image by Tim Crook



A panorama of London's Whitehall and Houses of Parliament in Westminster. Image by Tim Crook

Some useful online links and resources to reporting court cases in England and Wales

Ewing v Crown Court Sitting at Cardiff & Newport & Ors [2016] EWHC 183 (Admin) (08 February 2016)

<https://www.bailii.org/ew/cases/EWHC/Admin/2016/183.html>

HMCTS: General guidance to staff on supporting media access to courts and tribunals

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1094686/HMCTS314_HMCTS_media_guidance_June_2022_v2.pdf

HMCTS Reporters' Charter, May 2022

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1074233/HMCTS702_Reporters_Charter_A4P_v4.pdf

HMCTS media guidance – managing high profile cases (accessible version)

<https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals/hmcts-media-guidance-managing-high-profile-cases-accessible-version>

Jurisdictional guidance to support media access to courts and tribunals: Criminal courts guide (accessible version)

<https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals/jurisdictional-guidance-to-support-media-access-to-courts-and-tribunals-criminal-courts-guide-accessible-version>

General guidance to staff on supporting media access to courts and tribunals

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1094686/HMCTS314_HMCTS_media_guidance_June_2022_v2.pdf

Jurisdictional guidance to support media access to courts and tribunals: Civil court guide

<https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals/jurisdictional-guidance-to-support-media-access-to-courts-and-tribunals-civil-court-guide-accessible-version>

Pdf file version at:

https://assets.publishing.service.gov.uk/media/5e5d439ed3bf7f06f75dffc5/HMCTS_media_guidance_-_Civil_Court_Guide_March_2020.pdf

Jurisdictional guidance to support media access to courts and tribunals: Family courts guide

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1074298/HMCTS707_media_guidance_-_Family_Court_Guide_MAY_2022_V1.pdf

Jurisdictional guidance to support media access to courts and tribunals: Tribunals guide

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1103102/HMCTS751_media_guidance_-_Tribunals_Court_Guide_11_Sept_2022.pdf

UK Supreme Court: <https://www.supremecourt.uk/>

Watch UK Supreme Court live: <https://www.supremecourt.uk/live/court-01.html>

UK Supreme Court current cases: <https://www.supremecourt.uk/current-cases/index.html>

UK Supreme Court archive of decided cases: <https://www.supremecourt.uk/decided-cases/index.html>

The Court of Appeal (Civil Division) – Live streaming of court hearings

<https://www.judiciary.uk/you-and-the-judiciary/going-to-court/court-of-appeal-home/the-court-of-appeal-civil-division-live-streaming-of-court-hearings/>

HMCTS Guidance on broadcasting sentencing hearings by the media and the Crown Court (Recording and Broadcasting) Order 2020

<https://www.gov.uk/guidance/broadcasting-crown-court-sentencing>

CourtServe – Court & Tribunal Lists: <https://www.courtserve.net/>

HMCTS telephone and video hearings

<https://www.gov.uk/guidance/hmcts-telephone-and-video-hearings-during-coronavirus-outbreak#media-access-to-proceedings>

HMCTS Guidance to staff on supporting media access to courts and tribunals

<https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals>

Society of Editors ‘Old Bailey allows journalists to cover criminal cases from home in legal first’ March 26 2020

https://www.societyofeditors.org/soe_news/old-bailey-allows-journalists-to-cover-case-in-legal-first/

Making hearing lists more accessible to court and tribunal users

<https://insidehmcts.blog.gov.uk/2022/02/01/making-hearing-lists-more-accessible-to-court-and-tribunal-users/>

IPSO guidance on court reporting for journalists and editors

<https://www.ipso.co.uk/media/2168/ipso-court-reporting-guidance.pdf>

HTFP Law Column: IPSO releases court reporting guidance

<https://www.holdthefrontpage.co.uk/2022/news/law-column-ipso-releases-court-reporting-guidance/>

Reporting Restrictions in the Criminal Courts – fifth edition update 21st July 2023

<https://www.judiciary.uk/guidance-and-resources/reporting-restrictions-in-the-criminal-courts-fifth-edition-update/>

Judicial College Reporting Restrictions in the Criminal Courts 5th Edition July 2023

<https://www.judiciary.uk/wp-content/uploads/2023/07/Reporting-Restrictions-in-the-Criminal-Courts-July-2023.pdf>

Broadcasting Crown Court sentencing Guidance on broadcasting sentencing hearings by the media and the Crown Court (Recording and Broadcasting) Order 2020.

<https://www.gov.uk/guidance/broadcasting-crown-court-sentencing>

Broadcasting from the Crown Court Inside HMCTS Posted by: Rachael Collins, Posted on: 19 August 2022 <https://insidehmcts.blog.gov.uk/2022/08/19/broadcasting-from-the-crown-court/>

Broadcasting of sentencing remarks in the Crown Court July 28, 2022

<https://www.judiciary.uk/broadcasting-of-sentencing-remarks-in-the-crown-court/>

The recorded sentencing remarks hosted by Sky News on YouTube

<https://www.youtube.com/channel/UCF3HqeLrCkZgARQfyqj1m-g>

Sections 198 and 199 Police, Crime, Sentencing and Courts Act 2022 allows the Lord Chancellor to empower the Court to direct the electronic transmission of images or sounds of proceedings of all kinds for the purpose of enabling persons not taking part in the proceedings to watch or listen to them, though onward recording and broadcasting is prohibited.

Transmission and recording of court and tribunal proceedings-

<https://www.legislation.gov.uk/ukpga/2022/32/part/13/crossheading/transmission-and-recording-of-court-and-tribunal-proceedings>



Royal Courts of Justice at the junction of the Strand and Fleet Street in London- a large court complex accommodating the High Court, and Court of Appeal Civil Division and Court of Appeal Criminal Division of the legal system of England Wales.

The Court of Appeal Civil Division is now live-streamed on YouTube. Criminal appeals can be televised for broadcasting.

Image by Tim Crook.

Exploring Media Law, Regulation and Ethics

There are 3 dimensions to the subject:

- 1) **Primary Media Law**- statute (acts of Parliament/legislation) and case law/precedent-rulings of courts/judiciary. In the UK we still reference and take into account the jurisprudence (case law) via the Human Rights Act 1998 of the European Court of Human Right in Strasbourg.
- 2) **Secondary Media Law**- regulation by statutory and industry bodies enforcing codes of ethics/editorial guidelines such as: Ofcom (tv & radio); the Independent Press Standards Organisation (IPSO) for print and online media, and the case law and guidance of its predecessor body The Press Complaints Commission (PCC); BBC for BBC employees and independent production companies making programmes for the BBC). **[The Royal Charter on the Press established after the Leveson Inquiry Report of 2012, has set up a Press Recognition Panel that in late 2016 approved IMPRESS as an independent 'Leveson compliant' regulator of print and online media. From April, 2017 most BBC content became subject to regulation by Ofcom. The Information Commissioner's Office (ICO) also regulates a Data protection and journalism code of practice.**
- 3) **Professional moral values and ethics**- Your employer, peers, professional trade union/institute/association, personal conscience, social community and religion.

But we start with an:

Introduction to main themes of Media Law

Any journalist working and publishing in the United Kingdom is operating in a country that was ranked 26 in the World Press Freedom Index for 2023. Reporters Without Borders said it was concerned about: 'Worrying legislative proposals, the approval of Julian Assange's extradition to the United States, and the treatment of journalists covering protests marred the UK's press freedom record in 2022.'

See: <https://rsf.org/en/country/united-kingdom>

This is the Reporters Without Borders report for 2023:

'Media landscape

The British media landscape continues to suffer from a lack of pluralism, with just three companies – News UK, Reach, and Daily Mail and General Trust – dominating the national newspaper market, concentrating power and influence in very few hands. Public service broadcaster the BBC continues to come under pressure, with the issue of its funding heavily politicised.

Political context

A restrictive political climate impacted press freedom in the UK in 2022. Despite government assurances that media freedom is a priority, legislative proposals with worrying implications for journalism continued to move through parliament. The arrest of journalists covering protests were also a chilling development in a country in which journalists have generally been able to operate freely. The home secretary's approval of a US request to extradite Julian Assange is a further source of alarm.

Legal framework

The misuse of UK courts to pursue journalists and the proliferation of SLAPPs (Strategic Lawsuits Against Public Participation) continue to boost London's reputation as the defamation capital of the world. While the government has promised anti-SLAPP measures, delays to formally introducing them continue to impact the UK's press freedom record. There are also concerns about proposed bills in the parliamentary process which risk criminalising investigative journalism.

Economic context

Budgetary pressures aggravated by the pandemic have left many outlets forced to close their newsrooms or drastically reduce the number of staff. The threat of costly libel action and the precarious nature of freelancing have prevented many independent media outlets and freelance journalists from taking on sensitive investigations or forced them to crowdfund for legal support. The growth of initiatives to support local democracy reporting has been a welcome development over recent years.

Sociocultural context

Journalists in the UK are largely free to work without significant cultural constraints, though political polarisation increasingly exposes individuals to criticism and intimidation, especially online. In Northern Ireland, where divisions have deepened since the Belfast Agreement in 1998, journalists covering organised crime and paramilitary activities remain at risk. A shadow remains cast by lingering impunity for the 2001 murder of Sunday World journalist Martin O'Hagan.

Safety

The safety of journalists remains a concern in Northern Ireland, where they face threats for reporting on organised crime and paramilitary activities.

No one has yet been sentenced for the murder of Lyra McKee in Derry in April 2019, though two suspects are expected to go on trial in 2023. The publication of a National Action Plan for the Safety of Journalists in March 2021 was a welcome step, but needs to be followed up with concrete actions.'

See the RSF YouTube global summary 'journalism threatened by fake content industry' <https://youtu.be/W8y2wXCi5qE>

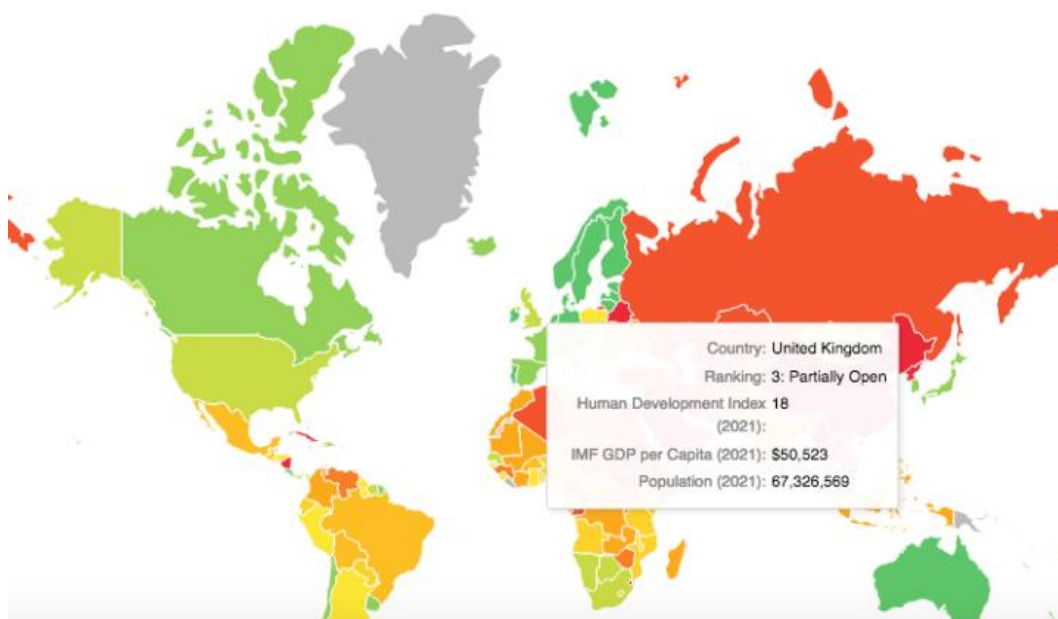
Index on Censorship and Liverpool John Moore's University inaugurated a new ['Index Index- mapping the free expression landscape across the world'](#) in January 2023.

'The Index Index is a pilot project that uses innovative machine learning techniques to map the free expression landscape across the globe to gain a clearer country-by-country view of the state of free expression across academic, digital and media/press freedoms.

Working with experts in machine learning and journalism from Liverpool John Moores University (LJMU), Index on Censorship has launched this pilot project to allow everyone to scour the

globe to see where free expression is adequately protected or most at risk based on data compiled from leading and trusted indices and metrics.'

This system measurement placed countries in a league table according to a digital rank, academic rank and media rank. The study describes the **United Kingdom as only 'partially open' (3 out of 4)** in every key area measured.



The UK is placed below advanced economies including Australia, Israel, and Japan and European neighbours such as Austria, Belgium, France, Germany, and Denmark are ranked higher than the UK.

In the Index ranking for January 2023, the UK is placed 50th between Tunisia and the United States.

Countries/Nations	Overall	Academic freedom	Digital freedom	Media/Press freedom
Panama	3	4	4	3
Romania	3	2	2	3
Senegal	3	4	5	3
Seychelles	3	4	5	3
South Africa	3	2	2	3
Suriname	3	4	4	3
Taiwan	3	4	3	3
Trinidad and Tobago	3	2	3	3
Tunisia	3	4	3	3
United Kingdom	3	3	3	3
United States of America	3	4	3	3
Vanuatu	3	3	4	3
Argentina	4	2	3	4
Armenia	4	4	2	4

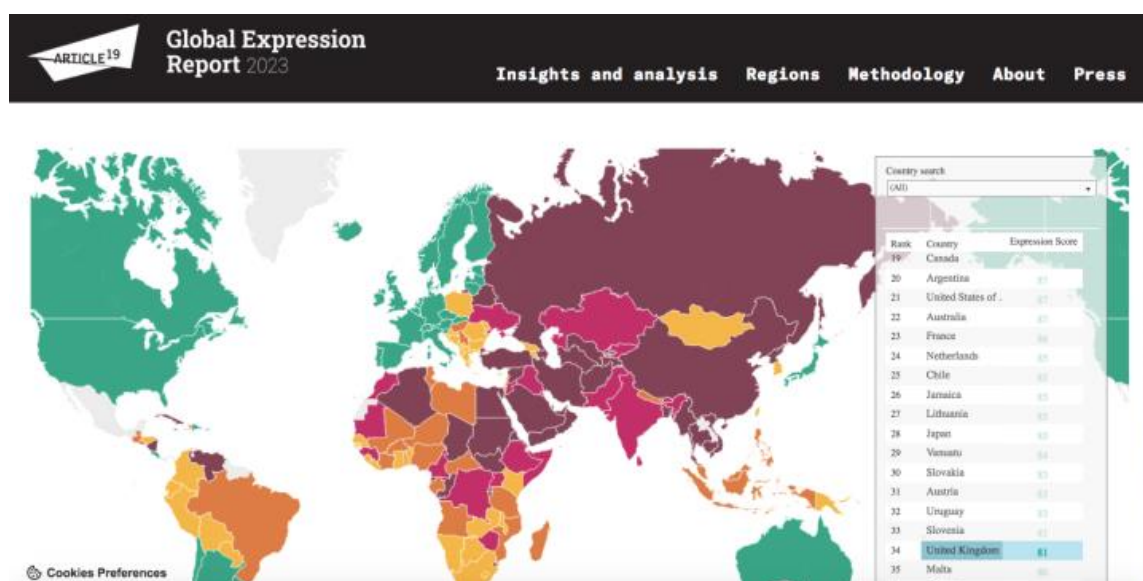
Article 19 is another NGO researching and maintaining a Global Index or measurement of media freedom and freedom of expression.

In July 2023 it reported that the United Kingdom was classified as 'open' but ranked 34 and placed lower than comparable European nations such as Ireland (8), Germany (9) and France (23). Denmark and Sweden were positioned as the two most open countries in both the region and globally.

See: <https://www.globalexpressionreport.org/>

Media Release on report: <https://www.article19.org/resources/the-global-expression-report-2023/>

Article 19 explained that the global outlook shows '80% of us have less freedom of expression than we had a decade ago. That's more than 6 billion people in more than 80 countries. The Global Expression Score (the mean average of country scores) has seen a 6-point decline since 2012, but the Human Score (weighted by population) – which shows the real cost of that loss – has dropped 13 points in just 10 years.'



See the Global Expression Report for 2022 <https://www.article19.org/wp-content/uploads/2022/06/A19-GxR-Report-22.pdf>

Global Expression Report for 2021 <https://www.article19.org/wp-content/uploads/2021/07/A19-GxR-2021-FINAL.pdf>

Press Gazette report and analysis: 'Freedom of expression lower for 80% of global population than 20 years ago.' See: <https://pressgazette.co.uk/media-audience-and-business-data/freedom-of-expression-2023/>

In this article Article 19's executive director Quinn McKew observed about the UK:

"We continue to see a government that is incredibly hostile to the exercise of individuals right to dissent that is exacerbated by all the anti-protest laws. All of these are being housed under this kind of 'war on woke'. But it's not a 'war on woke', it's a war on people's ability to speak and to say things that are unpopular and that's the fundamental reason why freedom of expression is considered a protected right, because it's saying things that are unpopular leads to change, leads to calling out of corruption and leads to calling out of discrimination.

“Unfortunately, with things like the continued curbs on the rights to protest, the Online Safety Bill which puts incredible amounts of surveillance on individuals, and the continued push to withdraw from the European Convention on Human Rights, the entire environment in the UK for full protection of human rights and civil rights in particular is increasingly hostile and becomes more worrying.”

Press freedom in the UK is, however, a bright spot, with McKew saying the UK is continuing to make “good progress” on legally combating SLAPPs (strategic lawsuits against public participation) – lawsuits aimed at silencing criticism.

“The fact that anti-SLAPP amendments have been added to the Economic Crime and Corporate Transparency bill is great and a real step forward,” she said.

“This is happening at the time that we’re seeing the anti-SLAPP directive work in the EU pulling back from making really positive strides. So the UK is continuing to push all of this which is great to see. We’d like to see it, of course, expand beyond thinking that anti-SLAPP regulation and laws should be put in place just for economic crimes, but should be more broadly applied so that journalistic freedom is not impinged in this way.”

She added: “The UK press is still very robust and very diverse. I think sometimes the robustness and diversity of the press can mask some of the other underlying problems when it comes to freedom of expression in the country.”

There is no constitutional guarantee of media freedom in UK legislation. Article 10 freedom of expression from the European Convention on Human Rights is highly qualified with conditions, restrictions and penalties, and equally balanced with other rights, and the interests of ‘national security or public safety’.

Conduct and publication is controlled by primary media law in the form of acts of Parliament and case law made by the courts, and secondary media law from a range of regulators:

Ofcom stands for the Office of Communications. It is a statutory regulator for licenced broadcasters and can fine, suspend and remove the licence of broadcasting publishers. Ofcom is a large and complex government funded body constituted by legislation. It has a direct responsibility and impact on the regulation of the content of broadcast radio, television and ‘on demand’ bulletin services. Video-on-demand services include TV catch-up, online film services and those providing a library of archive content. The main home page of Ofcom is at: <http://www.ofcom.org.uk/> . However, your main interest will be in the regular publications of adjudications on investigations into complaints about radio, television and on demand services at <https://www.ofcom.org.uk/tv-radio-and-on-demand> . Ofcom enforces a Broadcasting Code that contains rules which TV and radio broadcasters must follow, and includes the rules for video-on-demand service providers. This is set out at <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code> . The nature of full BBC regulation by Ofcom from 3rd April 2017 is set out at in the [BBC regulation and Operating Framework published by Ofcom](#).

IPSO is a regulator refusing to be recognised by the statutory Press Regulation Panel. It describes itself as ‘the independent regulator for the newspaper and magazine industry in the UK’. Most of the country’s print and online media groups contract into its content regulation including the publishers of the *Sun*, *Times*, *Sunday Times*, *Daily/Sunday Telegraph*, *Daily Mail/Mail on Sunday*, *Daily/Sunday Mirror*, *Sunday People*, *Daily/Sunday Express*, the *I* newspaper, and regional/local newspaper groups. It has the power to fine for breaches of the

Editor's Code and can order corrections. It has started an arbitration scheme for media law disputes where claimants can pay a fee that is capped at £100 and potentially achieve damages of up to £60,000 and recover costs up to £25,000. The details are set out at:

<https://www.ipso.co.uk/arbitration/> IPSO argues that its arbitration scheme is an excellent alternative to media law litigation because it's low cost with a one-off fee of £100, it helps to keep other costs down, it's quicker than taking a matter to court, and it reduces inequality as it puts you and the newspaper on an equal footing.

IPSO adjudicates on the largest number of complaints made against journalists in the UK and its rulings are regularly published at: <https://www.ipso.co.uk/rulings-and-resolution-statements/>

IMPRESS is a regulator recognised by the PRP and is being substantially funded by the family trust of Max Mosley- a media standards campaigner. It describes itself as 'the first truly independent press regulator in the UK'.

It has established through consultation its own code of standards and ethics which can be downloaded and examined online at <https://www.impressorg.com/standards/impress-standards-code/our-standards-code/>. IMPRESS has also written a detailed guidance on the interpretation of its Standards' Code which it describes as 'a modern Code that aims to assist journalists by promoting and supporting their work. It also aims to protect the public from invasive journalistic practices and unethical news reporting. The Code is practical and responsive to emerging challenges in the digital era including issues like verifying the authenticity of sources and information and using content from social media.'

IMPRESS is running a low-cost arbitration scheme, and has the advantage that those media publishers agreeing to be regulated by IMPRESS will not be subject to exemplary (punitive) damages in media law cases, or the risk of having to pay the legal costs of all sides even if successful. While in 2013 a Conservative government pledged to remove this legislative jeopardy from the statute book, the Labour, LibDem and SNP political parties support the implementation of all sections of the 2013 Crime and Courts Act and so-called 'Leveson Inquiry compliant regulation.' The politics of print/online regulation issues remain divisive and unstable. Micro publishing businesses that do not turn over more than £2 million per year, or do not have more than 10 employees, will not be subject to these penalties under the 2013 Crime and Courts Act.

IMPRESS has also begun to investigate complaints and issue adjudications.

See: <https://www.impressorg.com/standards/complaints/complaint-decisions/>

The *Guardian and Observer*, *Independent online*, *London Evening Standard*, and *Financial Times* are significant publishers who have not yet agreed to be regulated by any external body. Should any of them join IMPRESS, then the UK newspaper and magazine industry is likely to have the confusing situation of two active and rival regulators operating with mainstream journalism publishers and adjudicating with separate codes of ethics and standards.

The BBC employs the largest number of journalists of any publishing organisation in the UK, and although subject to full future Ofcom content regulation from 2017, still obliges its employees to comply with BBC Editorial Guidelines.

<http://www.bbc.co.uk/editorialguidelines/>

The Information Commissioner's Office regulates the Data Protection Acts, the EU's General Data Protection Regulation, known as GDPR, and Freedom of Information Act. In particular if you process digital information about other individuals for journalistic purposes your employing publisher or you yourself as a freelance you are obliged to register with the ICO under the Data Protection Act 2018. You can find out if you are exempt by carrying out [a registration self-assessment](#). For most individuals and organisations that qualify as 'Micro organisations' the annual registration fee as at 2021 is £40.

<https://ico.org.uk/>

The Information Commissioner fined the Daily Telegraph £30,000 for misusing the data it had collected from its subscribers so that it could send hundreds of thousands of emails on the day of the general election urging readers to vote Conservative.

See: [Telegraph fined £30,000 over email urging readers to vote Tory. Editor's message asking hundreds of thousands of readers to oppose the most 'leftwing Labour leader for a generation' crossed a line, says watchdog.](#)

From the 25th May 2018, the ICO became responsible for enforcing a new data protection regime in the UK combining GDPR with the new Data Protection Act 2018 (DPA 2018).

See: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

More detail on the GDPR implications for journalists and data protection law is explored later on in the guide. The Information Commissioner does provide a guide on the legal duties of data controllers. See: <https://ico.org.uk/for-organisations/uk-gdpr-guidance-and-resources/controllers-and-processors/controllers-and-processors/what-are-controllers-and-processors/>

In particular journalists should make sure any of their working personal data, particularly of contacts and sources, is kept securely and that would require the encryption of information being transported on USB keys/memory sticks that are easily lost and misplaced. The ICO has a statutory duty to regulate the journalism industry with a Data Protection and Journalism code which was submitted to the Secretary of State for the Department of Science, Innovation and Technology for approval on 6 July 2023. See: <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2023/07/ico-submits-data-protection-and-journalism-code-of-practice-to-the-secretary-of-state/>

Summary of **Secondary Media Law Codes and Guidelines**

IPSO Editors' Code of Practice in one page pdf document format

<https://www.ipso.co.uk/media/2032/ecop-2021-ipso-version-pdf.pdf>

The Editors' Codebook 144 pages pdf booklet 2023 edition

<https://www.editorscode.org.uk/downloads/codebook/codebook-2023.pdf>

IMPRESS Standards Guidance and Code 72 page 2023 edition

<https://www.impress.press/wp-content/uploads/2023/02/Impress-Standards-Code.pdf>

Ofcom Broadcasting Code Applicable from 1st January 2021 <https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code> Guidance briefings at

<https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/programme-guidance>

BBC Editorial Guidelines 2019 edition 220 page pdf

<http://downloads.bbc.co.uk/guidelines/editorialguidelines/pdfs/bbc-editorial-guidelines-whole-document.pdf> Online <https://www.bbc.com/editorialguidelines/guidelines>

ICO Data Protection and Journalism Code of Practice pdf <https://ico.org.uk/media/for-organisations/documents/4025760/data-protection-and-journalism-code-202307.pdf> and

ICO Data Protection and Journalism Code of Practice Reference notes pdf

<https://ico.org.uk/media/for-organisations/documents/4025761/data-protection-and-journalism-code-reference-notes-202307.pdf>

These short summaries and guidance on media law must not be regarded as constituting professional and qualified legal advice. Media law is in many parts an extremely complicated specialism of the law and should you have the misfortune of finding yourself in difficulties it is important you receive professional and qualified advice.

In the face of the many legal and regulatory jeopardies you face, it might be prudent to adopt a defensive journalism strategy if you are not backed by expert media law resources and advice and employed by a news publisher with long pockets and budgets which is prepared to fund legal defence and intervention policy. You should also bear in mind that crowd-funding is a recourse usually only available to those whose politics happen to be popular and fashionable.

I would suggest a media law survival strategy represented by the acronym, **SPECTACULAR**, with the letters standing for the following principles. This also featured in the chapter on media law in the second edition of Paul Bradshaw's *The Online Journalism Handbook: Skills to Survive and Thrive in the Digital Age*.

S is for Serious implications if you transgress media law. Not only can you be financially ruined if sued- you could be criminally prosecuted, fined or even jailed.

The basic detail- key information and points you need to understand:

Civil litigation is pursued by a privatised profit led legal profession in the United Kingdom that operates with very high costs. Legal fees charged by English media lawyers have been researched and surveyed as being in the region of well over 100 times that charged in European countries. Damages awarded and agreed are generally seen in Europe as disproportionate, but in this country many lawyers think they are fair and justly remedying. From April 6th 2019 success fees were [no longer recoverable in defamation and privacy claims](#). Media law firms have continued to [consider the viability of conditional fee arrangements \(CFAs\) for claims with a high likelihood of success](#). After The Event ("ATE") insurance, which protects claimants from paying their opponents' legal costs in the event of a lost claim remains recoverable only from the damages awarded and not from the losing party. Nevertheless the price of defending cases such as journalist Carole Cadwalladr's libel case with Aaron Banks can be very high. She was successful in the High Court trial but lost one key issue in the appeal and despite generous crowd-funding faces a costs order in range of six figures. BBC News report 'Carole Cadwalladr ordered to pay £1.2m costs in Aaron Banks libel trial' see: <https://www.bbc.co.uk/news/uk-65644475>

Most media law crimes are strict liability, which usually means that the prosecution does not have to prove intention, with construction of meaning by subjective interpretation of the alleged victim, or objective interpretation by judges. The UK judiciary has been observed by sociologists as being majority male, white, privately and Oxbridge educated and operating as a self-perpetuating elite. Efforts have been made to achieve greater diversity, but a recent research report by Manchester University and the much respected Keir Monteith KC concludes the legal system of England and Wales in 2022 is institutionally racist. See: 'New report uncovers 'institutional racism' in the justice system' at <https://www.manchester.ac.uk/discover/news/new-report-uncovers-institutional-racism-in-the-justice-system/>

The first woman 'Lord Chief Justice', Dame Sue Carr, would be appointed 15th June 2023. See: <https://www.judiciary.uk/dame-sue-carr-has-been-appointed-the-lord-chief-justice-of-england-and-wales-from-1-october-2023/>

The size of audience (i.e. how many X [formerly known as Twitter] Instagram and TikTok followers you have and your Facebook privacy setting), traditional readers, listeners, viewers, and number of Internet site visitors will be mitigation on damages and criminal penalty, but not a defence. If defamatory comments streaming under your web postings (damaging to reputation- generally known as libel) have not been moderated (i.e. not checked editorially or legally prior to going live), this does not guarantee you are immune from legal problems. European case law is beginning to be ambiguous about whether it makes any difference to have moderation or not; particularly if the trolling verges on hate crime abuse.

See: [DELFI AS v. ESTONIA - 64569/09 - Grand Chamber Judgment \[2015\] ECHR 586 \(16 June 2015\)](#) An English case has confirmed that the criminal courts can order the banning of social media reporting of sensitive criminal trials because X/Twitter and Facebook postings cannot be detached from comments and replies. See: [British Broadcasting Corporation & Eight Other Media Organisations, R \(on the application of\) v F & D \[2016\] EWCA Crim 12 \(11 February 2016\)](#)

In theory, there may be defences for what you do, but the power of the state/private claimant and their lawyers' costs are so great, 'the chilling effect' (in the USA it is called SLAPP- strategic lawsuits against public participation) means it is easier, less risky, and cheaper to surrender, settle and apologise for trying to tell the truth (well, what you think is the truth). The alternative is to remain silent- generally seen as self-censorship and compliance in a climate of fear.

In England and Wales, where the legal profession is well over 90% privatised and there is less eligibility for legal aid than at any time since the Second World War, if you were courageous (and/or foolish?) enough to defend and represent yourself, Citizens Advice Bureaux are over-stretched and if you are lucky you might have volunteer *pro bono* lawyers to advise you, but most of these are likely to be law students or the newly qualified.

From time to time there are campaigns to make the UK media laws 'more liberal' and less claimant friendly. The 2013 Defamation Act for England and Wales was an example of this. More recently the focus has been on combatting SLAPPs. The UK government introduced legislation in 2023 to attempt to achieve this.

See <https://www.gov.uk/government/news/crackdown-on-criminals-silencing-critics-to-be-added-to-economic-crime-bill> However, on closer inspection the protection will only apply to

libel cases covering allegations of 'economic crime.' In reality, I would advise journalists to remain wary of academics and politicians making claims of progress in so-called media law reform. This is because the subjective value judgement will be determined by how you define 'progress' and the issue of 'progress for whom?'

The burden of proof in defamation and privacy litigation remains with the media defendant. The unequal problem of legal costs intimidation and jeopardy has not gone away. All media lawyers know that a letter representing a client who is powerful and rich which threatens an economically disadvantaged author and publisher is more than likely to result in concession and apology whatever the merits of a case.

More stringent professional disciplinary regulation may turn out to be a more effective or equally useful method of curbing 'Strategic Lawsuits Against Public Participation' SLAPPs or 'lawfare' by the rich and powerful against journalists and publishers.

The Solicitors' Regulation Authority (SRA) in November 2022 explained regulatory action would be taken against firms of solicitors 'seeking to threaten or advance meritless claims, including in pre-action correspondence, and including claims where it should be clear that a defence to that type of claim will be successful based on what you know.' See: SRA issues new warning on solicitors using SLAPPs <https://www.lawgazette.co.uk/news/sra-issues-new-warning-on-solicitors-using-slapps/5114434.article>

Whatever gains were achieved by statutory public interest defence and others in the 2013 Defamation Act were lost in the widening vista of privacy law telescoping into defamation jurisprudence. The majority of political parties in the UK want punitive legislation for media publishers resisting compliance and a surrender to Royal Charter approved press regulation.

The UK courts were happy to engage judicial activism in case law to recognise a wide ambit of the right to media privacy in case law via Article 8 of the European Convention of Human Rights following enactment of 1998 Human Rights Act, but are not prepared to do the same for the right to state information in FOI via Article 10 freedom of expression.

While television now gives the public and media access to some sentencing by Judges in the Criminal Courts of England and Wales, there are more and more controls on the detail and factual reality of what can be reported of criminal cases. And when these are challenged the message from the Court of Appeal is unfortunately rather discouraging.

Having said all this, there is a theoretical intellectual constituency in UK academia usually enthusiastically adhering to 'critical theory' which sincerely believes 'mainstream' media publishers and journalists wield huge power in publication dynamics and when they make mistakes the consequences 'ruin people's lives.' Media law and the values and legislative and case law changes they advocate seek to achieve greater equality before the law. This is an ongoing debate and everyone, including students of media law, are entitled to and must be respected for their opinions.

It is also very important to understand that anything you do and publish in the cyber-digital sphere is subject to another dimension of control and liability. This is the private contract you have with the private corporation that hosts your communications. The terms and conditions of global Internet businesses such as X (former known as Twitter), Google, Meta/Facebook, TikTok and Wordpress offer additional legal duties and liabilities. Your service could be withdrawn with devastating consequences when your work and archives have not been backed up. In July 2016, the *Guardian* reported that writer and artist Dennis Cooper learned that his Gmail account had been deactivated – along with the blog that he had maintained for 14 years. He complained that the decision meant two of his transgressive novels had been taken off the Internet along with what was described as censorious ‘erasing of an unfinished book.’

See: <https://www.theguardian.com/books/2016/jul/14/dennis-cooper-google-censorship-dc-blog>

Meta/Facebook and X/Twitter in recent years have frequently been in the firing line for closing accounts and removing material from users without prior notice.

The decision by YouTube to halt the streaming of TalkRadio over allegedly problematic COVID-19 health discussion [is a most recent example of the exercise of private corporate power and censorship in online communications](#). It silenced and closed down what is regarded as a mainstream radio broadcaster in the UK regulated by Ofcom.

YouTube’s ban on the output of TalkRadio for about 12 hours was justified on the grounds that its internal ‘moderation’ and regulatory infrastructure had decided there were breaches of its ‘community guidelines’ in relation to discussion of COVID-19 health information.

The implications of this incident are serious. The digital Radio station had been given no warning and there was considerable delay over their learning what had been responsible for the alleged breach. The removal of this transmission was an exercise of much more draconian and peremptory disciplining than could be applied if the complaint had been made to the national broadcast regulator Ofcom. [The position of TalkRadio is that it is Ofcom-licensed and a properly regulated broadcaster with robust editorial controls in place, which always take very great professional care to balance debate](#). Ofcom could have only investigated this post-broadcast with a considerable amount of more ‘due process’ in terms of communicating the complaint and content problem, giving an opportunity to TalkRadio to make their representations, and publicly publish an adjudication in a Broadcast Bulletin with accountability, transparency and public scrutiny of the process.

P is for Privacy- have you invaded somebody's reasonable expectation of privacy without public interest justification? If you expose private intimacies to do with sexuality, education, and family matters, then you could be breaking the law.

The basic detail- key information and points you need to understand:

Privacy is also about intrusive conduct about private information and situations. The UK courts measure the principle of freedom of expression in terms of public interest against privacy rights. This is an equal balancing exercise with an intense focus on the circumstances of each case. Questions that will be asked will include whether there was a duty and entitlement to confidentiality. Article 8 of the ECHR convention talks about the right to home, family and

correspondence. The concept of media privacy is so wide-ranging it can include filming digital video on a smartphone at a private location without permission. The victory by Sir Cliff Richard against the BBC indicates the privacy rights extend to the anonymity of individuals subject to police investigation. See: [Richard v The British Broadcasting Corporation \(BBC\) & Anor \[2018\] EWHC 1837 \(Ch\) \(18 July 2018\)](#). This restriction has been consolidated with the cases [Sicri v Associated Newspapers Ltd \(Rev 1\) \[2020\] EWHC 3541 \(QB\) \(21 December 2020\)](#) and [ZXC v Bloomberg LP \[2020\] EWCA Civ 611 \(15 May 2020\)](#). And finally the ruling of the UK Supreme Court in February 2022 in ZXC which determined unanimously that the expectation of privacy of crime suspects can only be overridden by a compelling public interest justification. See: <https://www.supremecourt.uk/cases/docs/uksc-2020-0122-judgment.pdf>. This will mean that such identification would need to be signed off and approved by media lawyers and the highest level of editorial leadership. This precedent does not mean that there will be anonymity for all crime suspects prior to charging.

Media law students and their tutors will be aware of instances where this is not the case. For example, the high profile political figures in the SNP in Scotland arrested, questioned and released in a Police Scotland inquiry into the party's finances have been identified by the media though they were not named in police media releases. ZXC is an English case and the precedent does not apply in the Scottish legal jurisdiction. Mainstream media did identify the alleged murderer of two 19 year-old students and a van driver stabbed to death in Nottingham prior to charging in June 2023. Mainstream publishers, including the *Guardian*, have identified a prominent BBC music presenter during the developments of a police inquiry into sexual offence allegations made against him. Such decisions will have to have been judged by those making them to have met the high public interest threshold. However, it should be obvious that the risk of getting such decisions wrong carries serious consequences in terms of any privacy litigation arising. In 2023 the BBC investigating a public figure arrested and questioned by police for two serious sexual offences was subject to a High Court injunction preventing any identification on the basis of future media contempt of court with a clear indication the injunction would also have been imposed under the ZXC doctrine of reasonable expectation of privacy. See: *WFZ v British Broadcasting Corporation* [2023] EWHC 1618 (KB) (29 June 2023) at <https://www.bailii.org/ew/cases/EWHC/KB/2023/1618.html>

It can be argued that the application of the reasonable expectation of privacy tort for crime suspects is by no means consistent. In September 2023, there has been intense media speculation and political debate about alleged Chinese spies working as researchers in the Westminster Parliament. One national news publisher identified a man arrested over such allegations. Many others did not, but carried full reports of his denials. In the same month media celebrity Russell Brand has been subject to detailed allegations of serious sexual offences by Channel 4 Dispatches documentary and *The Sunday Times* and *Times*. The follow-up coverage has included a report that the Metropolitan Police are investigating an additional and separate complaint of indecent assault arising from the publicity.

E is for Ethics- the Editors' Code set for IPSO is regarded as a benchmark on ethical and legal communication.

The basic detail- key information and points you need to understand:

There is no harm studying and respecting the IPSO code at: <https://www.ipso.co.uk/editors-code-of-practice/> [The Editors' Codebook](#) is also a very important and useful resource elucidating the interpretation of the Code's clauses and discussing relevant case histories and complaints adjudications. For broadcasters it is very important to respect and understand [Ofcom's Broadcasting Code](#).

The BBC's Editorial Values and Standards at <http://www.bbc.co.uk/editorialguidelines/> are also very influential. They are the first base for standards and duties for anyone working for the BBC. You need to bear in mind that from 2017 Ofcom was given powers to regulate all of the BBC's content.

Outside any legal obligations in law and regulation, you should also consider moral and ethical values. Professional reputation and audience loyalty will be jeopardised by a publication policy and behaviour that is unpleasant and unfair and only just stops short of breaching law and regulation. It is known by the Latin expression *damnum sine injuria*. This is about being nasty, discourteous, unpleasant, using people instrumentally instead of intrinsically, and not treating other people as you would yourself. Professional associations such as the [National Union of Journalists](#) and [Chartered Institute of Journalists](#) have a separate code of ethics that sets standards that are in addition to law and regulation.



Journalism is often implicated in acute issues of moral philosophy. Jeremy Bentham (1747-8 to 1832) founder of utilitarianism who said the 'fundamental axiom' of his philosophy was the principle that 'it is the greatest happiness of the greatest number that is the measure of right and wrong.'

You might like to consider alternative codes of ethics from the English-speaking world that are influential beyond the narrow prism of British journalism. The US Society of Professional Journalists approves and publishes a code that is much more grounded on moral and ethical

principles than the mere pragmatism of staying on the right side of existing law. An example of an ethical maxim not normally emphasised in UK journalism codes is: 'Boldly tell the story of the diversity and magnitude of the human experience. Seek sources whose voices we seldom heard'. See: <https://www.spj.org/pdf/spj-code-of-ethics-bookmark.pdf>

The US Radio, Television, Digital News Association updated its code of ethics in 2015 to take into account the 21st century ecology of digital online journalism, and a specific standard unique to online communications is: "Trending," "going viral" or "exploding on social media" may increase urgency, but these phenomena only heighten the need for strict standards of accuracy'. See: http://www.rtdna.org/content/rtdna_code_of_ethics

C is for Contempt of court- protecting the right to a fair trial without prejudice from media coverage or as a former Attorney General once said: 'trial by Google'.

The basic detail- key information and points you need to understand:

The key question to ask is have you created a substantial risk of serious prejudice, or impeded a fair trial, or breached court orders postponing or prohibiting publication? If you have, you might find yourself on the jail sport of the Monopoly board.

Contempt of court is a specific criminal offence in the UK with a maximum jail sentence of two years and unlimited fine. It involves publishing in any way to a third party, including by social media, seriously prejudicial information when criminal cases are active after an arrest, warrant for arrest, or opening of an inquest hearing. It can also be impeding the process of justice by monsterring an arrested suspect and any form of threatening or intimidation of witnesses.

It is, therefore, very important to avoid using online media to comment on any ongoing legal case; whether civil or criminal after arrests, or warrant for arrests have been issued or when litigation is being heard in court. As an individual, you may be unlikely to be aware of any special and additional reporting restrictions that are only known at editor or media lawyer level. Although there are defences to some media law crimes of 'unintentional publication' case law has indicated that the legal system shows little sign of compassion or interest in your 'ignorance of the law,' or indeed that you were not directly informed, or had knowledge of a reporting restriction. It will be assumed that you should have shown 'good faith' in finding out, and your professional status should be such that you had been properly trained about the risks.

'C' is also for criminal behaviour by committing crimes through conduct and research leading up to your publication. This could be harassing anyone by causing distress on at least two occasions, computer and phone interception, and bribing people for information through treating, or promising favours. This is covered by two criminal offences in the UK: agreeing to incite a civil servant, including police officers, or members of the armed forces, to commit misconduct in public office, and since 2010, the Bribery Act means that in some circumstances paying sources for information could be a crime with no public interest defence. The Computer Misuse Act 1990 is another piece of legislation making it a crime, for example, to use somebody's computer without their permission to obtain information, or to 'hack' into another person's computer, smartphone or digital tablet having guessed, or obtained their password without their knowledge.

T is for Testing your copy rigorously for any possible breach of media law and ethics before publication. Read, re-read and re-read again. If in doubt, leave it out, seek advice and never,

ever take anything for granted. Professional decision making in any form of journalism requires legal checking. You need to be risk averse. You need to be defensive. You need to be professional. The risks in media law come from all directions and are often unexpected. If you have an instinct that something is wrong- trust it and act on it. In 2014 the senior journalism editors at the BBC had no idea that reporting the information about a global celebrity being investigated by the police with televised footage of the raid and search of his home in England would be judged a breach of privacy law. They would have had in mind a professional belief that such factual information was ordinarily in the public interest and due to a precedent from 1964 set by the House of Lords Judicial Committee (then the UK's highest court) could not be subject to libel litigation. Yet the privacy litigation which followed determined that they failed to take into account the celebrity's reasonable expectation of privacy rights in balance with the public interest of freedom of expression reporting as well as libel and media contempt issues. They could not show that they did so and this would cost the BBC millions of pounds in damages and legal costs.

A is for Anonymity- in the UK there are many classes of persons who have anonymity for life because of their involvement in criminal processes or legal proceedings. They are often victims or witnesses.

The basic detail- key information and points you need to understand:

All sexual offence complainants have anonymity for life, so do victims of people trafficking, forced marriages, female genital mutilation, known as FGM, blackmail victims where the menaces are embarrassing, children (aged 17 and under) in court cases, and teachers accused of offences against their students prior to being charged. The list is not exhaustive. It includes the identity of jurors in criminal trials and anything concerning their verdict deliberations. Victims of people trafficking criminal offences were given statutory anonymity in 2016 and there is a growing lobby to ensure that victims of 'revenge porn' have the same legal protection. The anonymity applies as soon as the complaint about the crime is made.

In recent years [Section 46 of the Youth Justice and Criminal Evidence Act 1999](#) is being increasingly used to provide lifelong anonymity for adult victims of other crimes and key prosecution and defence witnesses. During the trial of nurse Lucy Letby at Manchester Crown Court all of the infant children murder and attempted murder victims were anonymised through reporting restrictions which also extended to their parents and professional doctors and consultants giving evidence. Section 46 of the YJCA 1999 explains that the power to give a reporting direction in relation to the witness can be applied if it is 'likely to improve—(i)the quality of evidence given by the witness, or (ii)the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case.'

There is a real risk that this trend, if continued, will extend to many more adult victims of crime when they are expected to give evidence and other witnesses in criminal trials. Such a practice can fundamentally undermine the media's ability to accurately and effectively report criminal court proceedings. The engagement of local and regional media will be seriously affected if they are unable to extrapolate a local angle on the identity of any victim of crime.

All media publishers have to carefully consider the risk of people who know the victims doing their own detective work to put two and two together. This means pixilation, silhouetting and

electronic voice distortion are not enough. Actors have to be used. Individual journalists not just editors can be held liable for criminal offences. It is very important to avoid including any kind of specific detail that could enable anyone to make the identification.

What was in the public domain and not subject to a reporting restriction last week or yesterday may not be the case today or tomorrow, and you may not know about it. The English legal system sometimes somersaults between identification and anonymity; for example, in the search for missing youths who could be the victims of sexual offences. The investigating authorities may release names and images in the public interest to secure their safety. As soon as this is done, and the arrest of the suspect has been made, all forms of media must then delete and remove anything identifying the victims previously made public. What is public knowledge yesterday, may be contempt of court and a serious criminal offence today. In the Lucy Letby murder case, the identity of the murdered infant children was at first widely published following her appearance at the Magistrates' Court. But just over a month later the imposition of reporting restrictions in relation to the victims' parents who were potential witnesses at the future trial meant there was a retrospective imposition of secrecy/privacy.

C is for Copyright or Intellectual property. This is a legal protection for the creation of work and includes a large range of media content.

The basic detail- key information and points you need to understand:

You should not steal other people's intellectual property; particularly in words, images and music. The best defence is to always get permission for using other people's creative work. Breach of copyright is publishing the substantial part of image, script, publication, table, database belonging to another person or organization without permission unless there is a defence of fair dealing by criticism or review, parody, 'quotation or otherwise', or use in reporting a current event.

However, you must always remember that digital images and photographs are excluded from the reporting current event defence. You might have a very rare public interest defence where an image discloses something so awful, outrageous, and wrong there is no other way of reporting it. You may also have the defence that the material is now in the public domain because the publication is 70 years after the death of the author, 50 years after the date of a broadcast, 70 years after the public release of a sound recording (from 1st January 1963), and 70 years after the death of the director, screenplay author and composer of an original film production. Media publications such as films and online websites often have multiple layered copyright interests where the duration varies. Only photographs and images put into the public domain prior to July 1912 are absolutely safe from copyright liability. Computer programmes, coding, and software are also copyright protected.

The Creative Commons license is a vital defence and enabling facility for the use of in copyright images and multimedia in online publications. For more detail on the different categories of license available see: <https://creativecommons.org/licenses/>

You need to be cautious about siphoning information from online databases for the purposes of using infographic style software to produce data journalistic designs and lay-outs. In the UK database owners are entitled to 'database rights' under an EU 1996 Database directive that was implemented in English law a year later. Commercial databases are often updated and this

means that the 15 year duration is extended when this happens. While the EU Database *sui generis* protection ended for databases made commercially available after 1st January 2021, [the government has indicated it will legislate to continue the protection in future UK law.](#)

U is for Unreasonable- if your language is, then there is a risk you are ringing media law alarm bells.

The basic detail- key information and points you need to understand:

Communications on electronic networks such as on the Internet or social media like Twitter make you liable under section 127 of the 2003 Communications Act to criminal prosecution for messages that are 'grossly offensive or of an indecent, obscene or menacing character'. That could mean up to 6 months of imprisonment and a fine of up to £5,000. In 2011, over 1,200 people were prosecuted under this law. By 2014 the figure had risen to over 1,500 with 55 individuals jailed. Examples have included tweeting jokes at airports that have been misunderstood. What you think is a strong opinion could be seen as 'grossly offensive' by the police, Crown Prosecution Service and Director of Public Prosecutions. Actual convictions in Scotland [reached a peak of 974 in 2013 and dropped to 567 in 2018.](#) The Met Police released figures on arrests, charges and prosecutions for the [period between April 2018 and May 2022.](#)

Section 127 can also be used for 'message stalking' that you might regard as protesting or a campaign if it can be proved that your electronic utterances are 'for the purpose of causing annoyance, inconvenience or needless anxiety to another.'

Section 1 of the Malicious Communications Act 1988, that applies to old mail as well as electronic communication, makes it a criminal offence with the same penalties as above, to 'threaten', message indecently, grossly offensively, or with false, or believed to be false information on the part of sender.

In 2013 the DPP finalised guidelines on when it is not in the public interest to prosecute menacing messaging. Prosecutions are likely if social media communication contains 'a credible threat of violence, a targeted campaign of harassment against an individual or which breaches court orders'. The 'grossly offensive' category is expected to be reserved for racial/gendered orientation or hate crime abuse.

See: [Social Media - Guidelines on prosecuting cases involving communications sent via social media.](#)

In January 2021 Ofcom announced that [it was adjusting its definition/meaning of 'Hate Speech' to take into account the rubric of the European Union Charter on Human Rights.](#) It would now embrace:

'All forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, social origin, gender, sex, gender reassignment, nationality, race, religion or belief, sexual orientation, colour, genetic features, language, political or any other opinion, membership of a national minority, property, birth or age.'

L is for Libel- attacking anyone's reputation in a serious and inaccurate way can lead to litigation.

The basic detail- key information and points you need to understand:

Libel is anything said by image or words that causes serious harm to the reputation of anyone or indeed a business and company by any form of media publication- even an email.

Tweets, re-tweets, blogs, TikTok communications, Facebook, Instagram images or digital video, WhatsApp messaging, YouTube, Vimeo, text messaging & 'status' notices and emails 'copied' and 'distributed' to more than a second party i.e. beyond the traditional single mail correspondent can be libellous and represent publications in terms of English law. The old rule was the letter seen by one person was not a libel publication unless opened by a butler or secretary.

The libel can be committed by implication, innuendo and jigsaw juxtaposition identification e.g. any reader connects a fragment of information online to something said on the radio, television or in a newspaper. You do not even have to name people to get into trouble or even explicitly state or repeat an allegation. The House of Commons Speaker's wife, Sally Bercow, was successfully sued for libel for one tweet when she asked why a former Tory politician was 'trending' and added 'innocent face.' This was deemed to be libel by jigsaw identification/implication because allegations of child abuse had been broadcast by the BBC, and on the Internet, and somebody the BBC did not name was being identified in blogs and social media.

The libellous meaning is constructed by the victim and your authorial intention is no defence. In multimedia you have to watch out for something general and libellous being said in commentary being connected to illustrative 'wallpaper' still or moving images with specifically identifiable people in the *mise en scène* of the imagery.

But there are defences. For example, there are privileged shields where your information and reporting is derived from court or government proceedings. This gives you absolute or high qualified privilege. Public meetings, press conference and press releases have a privilege at a lower qualified level. Fairness and accuracy are paramount and you must publish the gist of a person subject to defamatory allegations if they demand it. Other defences include innocent dissemination, truth in substance and fact, honest opinion based on true facts, or publication in the public interest. You could have the defence of neutral reportage provided the language of the reporting is balanced and you are not shown to adopt and agree with the libellous allegations being reported. Editorial decision-making conditions are considered in the evaluation of the public interest defence. There is also a specific web operator's defence for user generated comments whether they are moderated or not. Complaints need to be addressed within 48 hours. The Defamation Act 2013 introduced a qualified privilege for academic conferences and papers that are peer-reviewed. It is very important to appreciate that malice on your part will probably defeat many of these defences. Malice means deliberately setting out to harm somebody usually to an unlawful extent.

A is for Attitude- keep it professional and cautious. It does not mean you have to 'self-censor' and sacrifice your freedom of expression. You can write in an angry way, but your anger needs to be channelled through truthful and lawful writing that is in the public interest. The interest needs to be more than just what interests the public. And being abusive, menacing and threatening is likely to be unlawful.

R is for Rights- other people's, which under the Human Rights Act 1998 are protected in so many ways. Article 10 Freedom of Expression as a right is equally balanced with Article 8 right to privacy and Article 6 right to a fair trial. At its extreme digital, analogue printed, and digital online communications could threaten somebody's right to life under Article 2 and right not to be subject to inhuman and degrading treatment under Article 3. Read them and understand them at: <http://www.legislation.gov.uk/ukpga/1998/42/schedule/1>

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The added Online dimension of media law makes the subject asymmetrical. This means that it intersects myriad dimensions of private, public, analogue, digital, UK and international forms of law and regulation. It also means it is dynamic, complex, and changing.

For the past thirty to forty years UK media law has been substantially influenced by European law and the rulings of the European Court of Human Rights in Strasbourg and the European Court of Justice at Luxembourg. UK courts have to 'take into account' rulings of the ECHR derived from the European Convention on Human Rights and Fundamental Freedoms which became statutory UK law with the passing of the 1998 Human Rights Act and came into force from October 2000. Since the UK joined what was then the European Common Market in 1972, all rulings of the ECJ (the European Union Court) had been binding on UK courts. However, the UK's exit as of 1st January 2020 and end of transition period 1st January 2021 means that this is no longer the case.

Another unstable and ambiguous aspect of media law is that there are often no clear right and wrong decisions on publication. They are merely arguable in law and not certain. Lawyers will be happy to be paid to argue the issues in courtrooms, but you personally, and your employing publisher, may not care to pay for the huge costs involved. In the digital online information age, we are also experiencing an intense transition and combination of production between analogue printed media and online digital media. The law does not necessarily have an answer and clear policy for both dimensions of publication.

It can also be argued that media law is a very political subject. The development of media laws and the impact of civil litigation can be construed as the result of social and political activism. The son of Britain's Fascist leader during the 1930s, Max Mosley, had performed a major role in funding legal action by 'media victims' and tabloid news coverage perceived as 'ruining people's lives.' He had been a significant funder of the media victim campaigning body 'Hacked Off' and his family foundation had provided most of the funding (reported to be up to £3 million) to the alternative press and online regulator IMPRESS.

See: <https://newsmediauk.org/blog/2016/03/09/nma-why-impress-should-not-be-granted-recognition-as-an-approved-press-regulator/> Mr. Mosley was a controversial figure. He was a former racing driver, Parachute Regiment territorial, qualified barrister specializing in intellectual property law, based in Monaco, former head of Formula One Racing and successful claimant against the *News of the World* Newspaper in 2008 after it had published surreptitious footage of his involvement in an S&M party he had paid £30,000 to take part in. He has been pursuing litigation at the European Court of Human Rights to establish a legal obligation for news publishers to inform potential media privacy victims prior to publication. The ECtHR ruled that

this would be detrimental to freedom of expression. Mr. Mosley sought to appeal the issue to [the Grand Chamber, but was unsuccessful.](#)

See: [MOSLEY v. THE UNITED KINGDOM - 48009/08 \[2011\] ECHR 774 \(10 May 2011\).](#)

Other aspects to his controversial identity related to his family history. His father, Sir Oswald Mosley, married Diana Mitford, in a ceremony in Germany attended by Joseph Goebbels and Adolf Hitler. Sir Oswald was detained for several years during World War Two. As a young man in the late 1950s and early 60s, Max Mosley, was involved in his father's Union Movement, though he has distanced himself from the politics of his youth. Thus, a multi-millionaire had taken a significant role campaigning against media abuse of power that had led to the closing down of what was the UK's most successful and largest circulation Sunday newspaper, the establishment of the Leveson Inquiry, high profile and expensive police inquiries into journalistic behaviour, and legislation curtailing and controlling what had been described as 'the excesses' of media publication and conduct.

Mosley killed himself 23rd May 2021 after being diagnosed with terminal cancer. The evaluation of his contribution to public life can be represented by [his obituary by Peter Frost in the Morning Star](#) and [report following his death in the Sun newspaper](#) and articles about his political past by the [Daily Mail](#) and [Guardian](#) in 2018.

Similar action by wealthy donors has impacted on the role of sensationalist and media privacy harming media publishers in the USA. In 2016, the online site, Gawker, shut down after 13 years following an award of damages against it of \$140 million for breaching the privacy of Hulk Hogan whose real name is Terry Bollea. The late *Guardian* editor, Peter Preston, argued: 'The collapse of the libertarian, scandalous news site has secretly relieved some less aggressive media companies. But the implications are truly ominous.'

See: <https://www.theguardian.com/media/2016/aug/28/gawker-gone-cant-look-other-way-press-freedom>

As New York Times writer, Farhad Manjoo, explained Gawker's demise was due to the fact that 'Nine years ago, Peter Thiel, a wealthy and secretive Silicon Valley investor, read something about himself online that he didn't appreciate. He apparently vowed revenge, eventually carrying out a plan to fund lawsuits against Gawker Media, the publisher that upset him, culminating this week with the shuttering of the flagship Gawker.com.' See: http://www.nytimes.com/2016/08/25/technology/gawkers-gone-long-live-gawker.html?_r=1

Peter Thiel is the billionaire co-founder of PayPal. Thiel secretly funded Hulk Hogan's legal case in Florida with around \$10m. He was motivated by the fact that in 2007 Gawker had published a story revealing that he was gay. Thiel told the *New York Times* 'it's less about revenge and more about specific deterrence.' He said the story about his own sexuality was one of many that had 'ruined people's lives for no reason'. And like Max Mosley in England, he decided to help fund 'victims' of the site to mount legal cases against Gawker. See: <https://www.theguardian.com/media/2016/may/26/paypal-co-founder-peter-thiel-admits-bankrolling-hulk-hogan-gawker-lawsuit>

Recommended specialist media law books:

The latest editions of:

UK Media Law Pocketbook by Tim Crook, [2nd Edition 2022, Routledge](#). Companion website at: <https://ukmedialawpocketbook.com/> [First edition was in 2013].

McNae's Essential Law For Journalists, edited by Sian Harrison & Mark Hanna, [26th Edition in 2022, Oxford University Press](#). (New edition expected in the summer 2024)

McNae's Essential Law For Journalists, edited by Mark Hanna and Mike Dodd, [25th Edition in 2020, Oxford University Press](#).

Media & Entertainment Law by Ursula Smartt, [5th Edition, 2022, Routledge](#).

Online and Social Media Law For Journalists by [Cleland Thom and David Porter 2019](#).

Law for Journalists by Frances Quinn, [6th Edition 2018, Pearson](#).

Comparative Media Law and Ethics by Tim Crook, 1st Edition 2009, Routledge [New edition planned for 2023-4].

The Editors' Codebook, edited by Jonathan Grun, Edition (latest edition 2023, an electronic book downloadable from: <https://www.editorscode.org.uk/downloads/codebook/codebook-2023.pdf>)



This used to be the number one court at Bow Street Magistrates in London's Soho district where the Chief Metropolitan London Stipendiary Magistrate would preside. It was taken before the First World War (1914-18) and the statutory prohibition on taking photographs in court, though in fact it shows the court being made ready for a hearing.

The more detailed briefings begin with 3) **Professional moral values and ethics**
As journalists and media communicators we are expected to:

1: Understand that media communication involves the exercise of power and responsibility ;
2: Our conduct and communication has consequences and we have a duty to consider the impact of what we do and how we communicate in relation to the people we interview and meet, and our audience. Our fellow human beings should be treated intrinsically rather than instrumentally . This means respecting people for who they are rather than how useful they can be for us .
3: In our relationship of communication we are expected to show respect for other individuals and carefully evaluate any justification we may have to cause harm and offence . We should strive to be fair in our behaviour and publishing;
4: As we live and work in a democratic society with an independent judiciary we are expected to abide by and respect the rule of law even if we disagree with the nature of any existing laws;
5: In news reporting we are expected to avoid allowing our personal opinions and politics to influence our construction of stories and representation of opinion;
6: In news reporting we are expected to aspire to impartiality with an acknowledgement that objectivity is rarely achievable in its absolute degree;
7: We are expected to be transparent about any conflict of interest in our journalism and accountable for our behaviour and communication;
8: We are expected to develop our professional skills to do our job to a high standard so that our audience can trust our ability, judgment and the content we produce in all the different media in which we work.

It is very difficult to apply in **absolutely positive and negative terms** the values of **right and wrong** and **good and bad** in journalistic conduct and communication. Human life teaches us the reality of having to negotiate **ambiguities**. This means that the values 1 to 8 are aims that we strive for. There is nothing original in these concepts.

For example, in 2015, the BBC pledged to uphold the following **values** to its audience and [the matrix has been archived in a resource for the School Report project.](#)

Truth and accuracy Accuracy means not only getting the objective, verifiable 'facts' right but accurately reporting opinions expressed by those who you report.	Independence The BBC's obligation to its audiences means journalists have to be able to show the independence of their decision-making and do all they can to eliminate doubt about it.	The public interest In the public interest or what the public's interested in - the difference is crucial. And, of course, there are many different audiences with variable interests.

Accountability Being accountable to BBC audiences means being able to show good reasons for your decisions. Why you must listen to your audience and acknowledge your mistakes.	Impartiality The BBC's Charter and Agreement requires BBC journalism to be impartial - it's part of the contract with audiences. Find out what this means to journalists in their daily decision-making.	BBC values The BBC's ethics and values are non-negotiable for every journalist; from the most junior to the most experienced.

Understanding and applying principle and aim number 4: **respecting the rule of law**.
 What does that mean and what are the potential ambiguities?

It is a professional necessity that journalists learn about media law to the highest standard possible. It is a requirement of all industry/professional accreditation, and no media publisher is going to employ a journalist without accomplished and reliable applied legal knowledge. However, journalists rarely have the power to make the laws they have to comply with. Legislation and court rulings sometimes leave **uncertainty** about the application of law and how to comply with it.

This was the case with the phone hacking law- the Regulation of Investigatory Powers Act of 2000. When the first prosecution of a journalist and private investigator was being decided in 2006, there was argument amongst lawyers that the statute did not make it a criminal offence to listen to a mobile phone message stored on an account after it had been heard by the subscriber without his/her permission. The situation was not clarified by the Appeal Court until 2013.

However, it would appear a number of journalists eavesdropped on phone messages believing that they were not committing an actual criminal offence. In the legal profession, this is seen as ***damnum sine injuria*** meaning the worst conduct in moral terms and causing damage just short of breaking an actual law. In terms of ethics, it is clear that such activity is **immoral**, an **intrusion into somebody else's privacy**, and there would need to be a very strong **public interest** to justify such behaviour if it were not a criminal offence.

It is the equivalent of opening a cabinet in a stranger's house and reading a file of intimate letters or opening somebody's mail without their permission. Everyone knows that such actions are immoral, unethical and unacceptable.

Here is an example of interpretation of the law at one time being **ambiguous**, but the ethical position is certainly not.
 Can you think of a situation when phone hacking might be morally justified?
 An example might be when a mailbox message contains information that is a matter of life and death to a subscriber who is unconscious or in a coma. The action would still be a criminal offence, but it is hoped that the Crown Prosecution Service/Director of Public Prosecutions would choose not to prosecute since to do so would not be in the **public interest**.

Understanding and applying principle and aim number 6: **impartiality**. What does that mean and what are the potential ambiguities?

The BBC has spent much money, time and anguish defining, developing and debating the concept. It can be understood as avoiding the intention and appearance of bias, trying to be balanced, or fair and proportionate in representing all sides to an issue. It can also be perceived as avoiding the alienation and marginalizing of minorities. It can mean verifying the assertion of facts, seeking the point of view and opinion of somebody or an organization facing allegations, and fairly reporting the reply.

It can also be seen as part of a process of achieving trust with your audience that you are not propagandizing rather than reporting; that you are not deliberately, or through laziness, omitting important and relevant facts, and opinions.

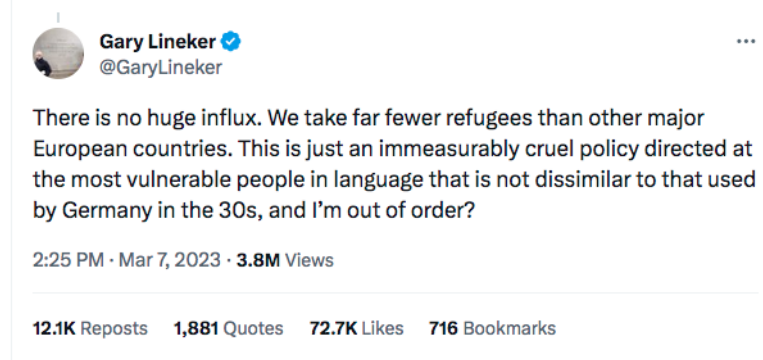
Since it is now accepted that philosophically it is very difficult to achieve an absolute notion of objectivity in journalism on the basis we are all socially influenced and conditioned subjects, it is more than likely that applying the principle of impartiality presents many potential ambiguities. Here are some examples.

1. It has been argued that global warming and its evolved theory of climate change enjoys a near consensus among the world's scientists and conclusions of peer-reviewed papers. More recently the balance was said to have been 95% supporting the theory and only 5% dissenting. It follows that a news report or feature could be misleading the audience by representing the argument in terms of a balanced debate with an equal amount of space and significance given to both sides of the argument. It might even be argued that the dissenting view may not have any place in a broadcast programme on the subject. A similar line of thinking could be applied to the controversy over the MMR vaccine that was said to have discouraged parents immunizing their children and creating the conditions for the resumption of measles and whooping cough in young children; sometimes leading to death from these diseases. However, an adherent to the writings of the 19th century political theorist and philosopher John Stuart Mill would argue that the tyranny of majority opinion should not silence minority voices because truths can be postulated in the form of half-truths and history informs us that a lone voice such as Galileo, asserting that the world was not flat, turned out to be correct. It may well be the case that majority truths should collide with what are seen as minority 'errors'. This is a time-honoured debate in media/journalism ethics. There are no guaranteed formulas and solutions, but the value of proportionality, fairness and open-mindedness combined with social responsibility are all values to bring to bear in the argument and discussion.
2. At election time what are our ethical duties in reporting and representing extremist and minority parties? The vast majority of professional journalists in a liberal democratic society would not be enthusiastic about reporting the opinions of political groups advocating racist and bigoted ideology. But ignoring, suppressing and censoring this facet of political life would challenge, would it not, the pledge to report and communicate impartially? In fact, UK broadcasters, under statutory Ofcom regulation, have a duty to identify that such politicians are candidates standing in an election. How does the journalist and its publication determine the extent of such coverage? The practice in Britain is to ensure a proportion of balanced coverage to political parties which is equal to the support they received in the previous election. But this has led to complaints of

exclusion and discrimination from parties enjoying a major boost/improvement in opinion polls. This has also hindered 'Independents' in Mayoral elections who had no previous electoral candidature and therefore no previous results to found a calculation for coverage. The print and online media in the UK have no legal obligations to provide fair and balanced coverage of all the parties standing in elections. The ethical position becomes more awkward and ambiguous in situations where minority extremist parties spouting an ideology that was previously offensive (e.g. racist or xenophobic) become supported by the mainstream in opinion polls. What should the journalist and media do? Maintain or heighten critical and questioning coverage, or ignore the extent of popularity? The former might be seen discriminatory and biased if the style of coverage was more critical for one party and less for another. The latter can be seen as unethical and unprofessional in not only being biased, but also failing to report factually the extent of public support for a political group.

3. At any time and in any social, political and cultural context there is consensus that some opinions and values are not expected to be communicated with in terms of impartiality. For example, what moral justification has anyone to be impartial about violent crime? Nobody would be expected to have an impartial attitude to genocide or rape. But these taboos may not necessarily endure as universalizable or immutable values. Prior to 1967 homosexuality was a crime in the United Kingdom and so was abortion. Prior to 1991 rape in marriage was not a crime. And prior to these legal changes for centuries social attitudes tolerated and encouraged the exercise of what has now become regarded as unconscionable actions, attitudes, prejudices and discrimination. Abortion remains a subject where the arguments for and against are part of a legitimate debate. Anyone arguing that men or women have a right to rape their partners in marriage is likely to be greeted with contempt and outrage. Discrimination on the grounds of gender or sexual orientation is now unlawful. In non-Muslim countries, hostile and satirical visual depictions of the prophet Mohammed may be regarded as discourteous, and rude, but not unlawful. In Islamic states, such expression is not tolerated and regarded as insulting and unlawful. Denying the Holocaust in the USA is protected by the free speech First Amendment of the country's written constitution. In France and Austria, countries where so many of its citizens were victims of the Final Solution during the Second World War, such communication is regarded as a hate crime and meriting criminal prosecution. Impartiality, therefore, shifts its parameters and boundaries, sometimes referred to as 'red lines' or 'crossing the Rubicon', across time in terms of history and place in terms of geographical location and cultures.
4. In recent years the BBC has found itself under attack over the issue of impartiality. There have been a number of significant case histories, which have been much debated.
Gary Lineker 2022 and 2023. The sports broadcaster Gary Lineker is regarded more as on-air talent rather than a professional journalist. For the sixth consecutive year he was the BBC's only star to earn more than £1m in the year 2022-2023 as disclosed in the corporation's annual report. Should he be held to the same impartiality standards as the BBC's professional journalists? [In October 2022 the BBC's Executive Complaints Unit decided he broke BBC impartiality rules](#) in a tweet about the Conservative Party. He posted a story about then Foreign Secretary Liz Truss urging a boycott of the Champions League final in Russia and added 'And her party will hand back their donations from

Russian donors?’ In March 2023 he was ‘taken off air’ over a tweet about the Government’s policy dealing with migrants which he described as ‘awful.’



The associated political row that followed, protest and support from Gary Lineker’s colleagues, resulted in the [BBC's culture and media editor Katie Razell writing an analysis](#) titled: ‘BBC and Gary Lineker: Tweets decision comes at high price for BBC.’ [By March 13th 2023 the BBC's Director-General Tim Davie announced](#) that the presenter would be returning to air and there would be ‘a review led by an independent expert – reporting to the BBC – on its existing social media guidance, with a particular focus on how it applies to freelancers outside news and current affairs.’

Naga Munchetty September 2019. [The BBC Breakfast host was found to have breached guidelines by criticising Donald Trump's motives after he said four female politicians should "go back" to "places from which they came"](#). The corporation said its editorial guidelines "do not allow for journalists to... give their opinions about the individual making the remarks or their motives for doing so - in this case President Trump". After a storm of protest against the decision the BBC’s director general [Lord Hall reversed the decision](#). He told staff that Munchetty's words were not ‘sufficient to merit a partial uphold’ of the complaint against her. He reiterated that ‘racism is racism and the BBC is not impartial on the topic.’ Ofcom [decided not to investigate Munchetty's exchange](#) with co-host Dan Walker, saying it did not break its broadcasting rules around impartiality. The regulator also criticized what it saw as the BBC's ‘lack of transparency’ over its handling of the original complaint.

Emily Maitlis May 2020. The BBC decided that an introduction about Downing Street political advisor Dominic Cummings on the BBC Two programme *Newsnight* [did not meet the required standards of due impartiality](#). The programme began with presenter Emily Maitlis saying ‘the country can see’ he had ‘broken the rules.’ The BBC said it should have made clear the remarks were ‘a summary of the questions we would examine’ about the prime minister's aide. The Independent reported that the BBC [had received over 24,000 complaints about the introduction](#). Press Gazette [reported that the BBC's head of news said that the monologue about Dominic Cummings belonged ‘more on the op-ed page in a newspaper’](#) than as the introduction to ‘an impartial broadcast programme.’ In March 2021 [Ofcom decided not to pursue investigating a complaint of breaching ‘due impartiality’ and explained](#): ‘we also considered that the presenter’s opening remarks had the potential to be perceived by some viewers as an expression of her personal view on a matter of major political controversy and major matter relating to current public policy. In light of the action already taken by the BBC, we did not consider the programme raised issues warranting investigation. However, we have reminded the

BBC that when preparing programme introductions in news programmes, which are designed to catch the audience's attention –particularly in matters of major political controversy –presenters should ensure that they do not inadvertently give the impression of setting out personal opinions or views.'

BBC's new social media guidance 28th September 2023. The BBC said the guidance strikes a balance between freedom of expression and impartiality and [followed a review by former TV executive John Hardie](#), which looked at the BBC's guidance covering "individual use of social media" in relation to those working as on-air freelancers outside of News, Current Affairs and Factual journalism. Hardie spoke to more than 80 people, both inside and outside the BBC as part of the review in [the preparation of his 54 page report](#). The report seeks ensure:

- Those working in news and current affairs (across all Divisions) and factual journalism production, along with all senior leaders, have a particular responsibility to uphold the BBC's impartiality through their actions on social media and so must abide by the strictest rules on impartiality;
- Those presenting Flagship Programmes on the BBC carry a particular responsibility to respect the BBC's impartiality, because of their profile on the BBC. This responsibility extends to their use of social media, during the periods when these Flagship Programmes are on air, and for a two-week window before and after the transmission of each series they present;
- Other BBC staff or freelancers are not required to uphold the BBC's impartiality through their actions on social media. They are however required to respect civility in public discourse and to not bring the BBC into disrepute.

The new guidance stipulates that while a programme is on air and for a two-week window before and after the series, presenters working on Flagship Programmes must not:

- Endorse or attack a political party (including parties in government or opposition).
- Criticise the character of individual politicians in the UK.
- Comment on any issue that is a matter of political debate during the election period for UK general elections and referendums in any part of the UK.
- Take up an official role in campaigning groups or become involved in fundraising for campaigning.

The guidance has the following rules for encouraging civilised public debate on social media – which covers anyone working for the BBC:

- Do treat others with respect, even in the face of abuse.
- Do not use offensive or aggressive language and do conduct yourself with courtesy.
- Do take particular care when commenting on the issues that provoke the greatest debate.
- Do not attack individuals, even when you disagree with their views.
- Do be careful with rebuttals – they can feed conflict
- Do not criticise your colleagues in public. Respect the privacy of the workplace and the confidentiality of internal announcements
- Do not be drawn into ill-tempered exchanges, or exchanges that will reflect badly on you, or the BBC.
- Do not promote law breaking.

The new social media guidance has been criticised for not effectively dealing with the embarrassment that social media communications made by presenters such as Gary Lineker

can cause the BBC. See: Mail online 28th September 2023 [‘Fury after BBC gives Gary Lineker the green light to air his anti-Tory political views on social media despite Nazi tweet row - as MPs warn new rules will mean ‘open season’ for Beeb stars’](#) and Stephen Pollard in the Jewish Chronicle 28th September 2023 [‘It’s 5-0 to Gary Lineker as BBC capitulates over rules for presenters.’](#)

US Public radio perspective on impartiality. It is certainly instructive to consider how the doctrine of professional impartiality is observed and regulated by equivalent public service broadcasters in the English-speaking world. National Public Radio in the USA [maintains a detailed section of its Ethics Handbook online dealing with the subject of impartiality](#) and sets out as a general principle the argument that ‘the public deserves factual reporting and informed analysis without our opinions influencing what they hear or see. So we strive to report and produce stories that transcend our biases and treat all views fairly. We aggressively challenge our own perspectives and pursue a diverse range of others, aiming always to present the truth as completely as we can tell it.’ The NPR doctrine in impartiality seeks to ensure: ‘Impartiality in our personal lives; awareness that a loved one’s political activity may create a perception of bias; impartiality as citizens and public figures; adherence to the guideline don’t sign, don’t advocate, don’t donate; not serving on government boards and commissions and ensuring that standards of impartiality also apply to social media.

NPR advises its journalists covering the news to ‘stick to reporting and analysis. We should not tread beyond well-supported conclusions based on our reporting and should not present opinions as fact. Our aim is to give the public the evidence to weigh and develop their own opinions, without the intrusion of ours.’ NPR is aware that it is not possible to separate the style of journalistic language from professional ethics. Consequently, ‘when language is politicized, seek neutral words that foster understanding.’

Impartiality and Professor Roy Greenslade. In March 2021 the former City University journalism ethics professor, Guardian and Evening Standard columnist and Daily Mirror editor Roy Greenslade wrote articles for the Sunday Times and British Journalism Review article justifying his support for terrorism by the Provisional IRA. The [BJR article was titled ‘What I did in the war’](#) and introduced as ‘The IRA’s terror campaign in support of Irish unification was supported by a figure at the heart of the UK newspaper industry. He explains why.’ Mr Greenslade’s position and articles were condemned by the journalist Stephen Glover who wrote a feature headlined [‘IRA backer Roy Greenslade and the Republican cell at heart of Guardian who went to war... on me.’](#) One of his former students Tom Goodenough wrote an article in the Spectator asking the question [‘Why did I pay £9,000 for Roy Greenslade to lecture me on media ethics?’](#) Mr Greenslade resigned what had become his Emeritus Professorship at City University. The Chartered Institute of Journalists criticised his support for terrorism while holding the positions he did in journalism explaining that they undermined respect for the significance of journalistic independence, impartiality, transparency and honesty. The violence perpetrated by the Provisional IRA cost the lives of news photographer Ed Henty covering the City of London Bishopsgate truck bomb in 1993 and Daily Express journalist Philip Geddes in the Harrods car bomb of 1983. The Institute’s position was that it is professionally incompatible for any journalist, let alone a national newspaper editor and Professor of journalism ethics, to lead a double life of propagandising one side in any armed conflict with a fake identity while at the same time working for news publishers seeking to report on it. The Institute believed this is about the safety of journalists as well as trust in the integrity and fairness of reporting and publication

coverage. The CloJ made it clear that in journalism ethics a journalist cannot and should not be a double-agent for any government or paramilitary group using violence to further their political ends. Former Guardian editor Alan Rusbridger said [Roy Greenslade ought to have been 'frank about his own political beliefs and attachments'](#) when writing about Northern Ireland matters, and the Guardian apologises to a woman who complained about an article he wrote criticising her involvement in a television documentary that investigated her allegation of rape by a member of the IRA. Press Gazette published [a long feature exploring the implications of his admission of support for the IRA for his past journalism.](#) Might there be an argument made for Roy Greenslade that his revelation, very much at the end of his active career in journalism and academia, was a courageous and honest one and he should be given credit for clarifying the tension in personal beliefs and professional purpose during this historical period of the 'The Troubles' in Northern Ireland?

Understanding and applying principle and aim number 8: Duty to develop **Professional skills** to do our job to a **high standard**. What does this mean and what are the potential ambiguities?

The professional journalist has a duty to develop a high standard of skills in order to fulfil the duties of effective, reliable and trustworthy communication to the audience. This is an ethical dimension not usually highlighted in standard media and journalism ethics books. Acquiring an operational skill in shorthand is an example of the professional ethic in achieving a high accomplishment of a practice skills portfolio. Shorthand contributes towards accuracy. It is essential when reporting in environments where electronic recording devices are not permitted and its use extends from accuracy to fairness and then to complying with legal obligations.

The accurate shorthand note is the evidence that your version of the truth is reliable. It is the typography of the first draft to witnessing history. Being seen to use shorthand is also an advertisement to interviewees that you are committed to a professional standard of accuracy and aide-mémoire note-taking.

Further key media journalist skills that build trust and confidence and show respect to the audience include writing, presentation, appropriate and sensitive editorial decision-making and operational skills with media technology.

The radio journalist who is not competent in operating the hand-held digital recording device or multi-media smart-phone could be said to be disrespecting people interviewed. Their time is wasted if sound, video and images are unusable. Their representation is flawed and undermined by poor quality.

Presentation in voice and appearance contributes authority and clarity as well as a positive disposition to any audience.

This means that the professional journalist has an ethical obligation to hone, polish, practice, and improve every aspect of essential practice skills. Precision, good style, scansion, euphony, appropriate use of adjectives and adverbs (if at all) narrative exposition, intro/lead-in and headline writing, writing that avoids under-estimating or over-estimating the intelligence of the audience are important factors in consolidating an ethical relationship with employer, colleagues, contributors in research and interviewees. If the communication is obscure, confused, slapdash, illiterate, incoherent, patronizing and

over-simplistic journalists and media communicators risk jeopardizing the trust and loyalty of their reading, listening and viewing audiences.

The paradox and ambiguity of this realm of ethics emerges when journalists are subjected to social and employment conditions to hinder the development of skills through lack of training and investment in new technology. Rationalization, cutbacks and exploitative employment practices can leave professional journalists over-stressed, exhausted through over-work and surrounded by colleagues who have been employed without the necessary experience and qualifications. Professionalism in skills and value can also be undermined by an employing culture within a media institution that is overwhelmed by competitive pressures to 'cut corners' and legitimize unethical and potentially unlawful practices. This is where it is argued that professional journalists should be supported by the ethic of a conscience opt-out to enable them to reject instructions without reprisal in employment and the law should support those who insist in refusing to comply with unethical and illegal newsroom cultures.

We now move onto 1) **Primary Media Law-**

Journalists need to be aware of four major areas of the law when reporting and writing articles:

1. **The Law of Media Contempt:** Ensuring people have a fair trial
2. **Defamation (Libel):** Ensuring that people's reputations are not unfairly damaged by inaccurate and malicious information.
3. **Privacy.** Demonstrating respect for the right to privacy (family, home and correspondence and private information)
4. **Copyright and Intellectual Property.** Avoiding infringing other people's rights of property in information and publication.

There are many criminal sanctions for journalists who break media law and draconian punishment and embarrassment through secondary media law and ethics regulation, for example, by IPSO and Ofcom.



A news photograph of an all-woman jury trying a criminal case in a USA court in the early twentieth century. Taking and publishing such an image in the UK now would be a serious contempt of court.

Media Contempt

As previously explained media contempt law in the UK is designed to prevent lay jurors being exposed to serious prejudice after criminal or inquest cases become active. The substantial risk period is live after any suspect has been arrested, or in the case of a coroner's inquiry, an inquest has been formally opened.

Publications that have been found by the courts to be in contempt include: publishing previous convictions; suggesting the defendant has confessed; suggesting accusations of more serious crimes or crimes they are not facing; suggesting arrested suspects are guilty; saying something so bad about them that you could seriously prejudice the mind of any potential juror against them; joining in a media crowd mentality of libelling and demonizing somebody arrested in a police inquiry or wanted by warrant for arrest.

Section 2(2) of the 1981 Contempt of Court Act explains that what constitutes media contempt is a 'publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.'

The size of an online audience can be quite small to trigger a media contempt conviction. This was the case in 2011 when the *Daily Mail* and *Sun* newspapers were fined for publishing online photographs of a man on trial for murder and pictured him holding a handgun. The prosecution determined that there had been 190 unique visitors to the images in Sheffield where the trial was being held before the papers removed them. See: [Attorney General v Associated Newspapers Ltd & Anor \[2011\] EWHC 418 \(Admin\) \(03 March 2011\)](#)

The Divisional Court observed: 'The criminal courts have been troubled by the dangers to the integrity of a criminal trial, where juries can obtain such easy access to the internet and to other forms of instant communication. Once information is published on the internet, it is difficult if not impossible completely to remove it.'

There are many other case law examples of media contempt convictions. One such case is the Attorney General's successful prosecution of the Condé Nast GQ magazine that published an article by Michael Wolff during the phone hacking trial of former *News of the World* editors Andy Coulson and Rebecca Brooks. See: [HM Attorney General v The Condé Nast Publications Ltd \[2015\] EWHC 3322 \(Admin\) \(18 November 2015\)](#)

The Lord Chief Justice ruled that the article 'implied that Mr. Rupert Murdoch was a participant in the phone hacking, that the defendants must have been aware of the phone hacking, that the defence was being funded by him and conducted on the defendants' instructions so as to protect his interests, but in a way that might also secure their acquittal.' He imposed a fine of £10,000 with £50,000 to pay in legal costs.

Contempt explained

Contempt carries criminal sanctions such as an unlimited fine and maximum jail sentence of two year's imprisonment on conviction at the High Court. Prosecutions can also be taken at Magistrates Court level. So, it is always worth remembering that once someone has been arrested for a crime, or a warrant has been issued for their arrest, and until proceedings are over, you may not 'create a substantial risk of serious prejudice' for example by:

- a. publishing previous convictions;
- b. suggesting the defendant has confessed;
- c. suggesting accusations of more serious crimes or crimes they are not facing;
- d. suggesting they are guilty;
- e. saying something so bad about them that you could prejudice a potential juror against them;
- f. joining in a media crowd mentality of libelling and demonizing somebody arrested in a police inquiry or wanted by warrant for arrest.

New case-law has expanded the duty set out in f., already present in the 1981 Contempt of Court Act statute, to avoid 'impeding' the administration of justice by demonising or 'monstering' a suspect through critical depiction of a suspect's character/personality such that other equally significant suspects will not be investigated and the police enquiry will be diverted/undermined or adversely affected.

You need to be clear that media contempt applies after a criminal justice process becomes 'active' under the 1981 Contempt of Court Act and the 'Strict Liability Rule' applies.

The relevant sections of the Act are sections 1 and 2, and at 2(4) the reference to Schedule 1 of the Act when a case becomes 'active.' <https://www.legislation.gov.uk/ukpga/1981/49>

In criminal investigations this is set out in section 4 of Schedule 1 as:

'4 The initial steps of criminal proceedings are:—

- (a) arrest without warrant;
- (b) the issue, or in Scotland the grant, of a warrant for arrest;
- (c) the issue of a summons to appear, or in Scotland the grant of a warrant to cite;
- (d) the service of an indictment or other document specifying the charge;
- (e) except in Scotland, oral charge;

You need to be aware that media coverage of the story carries the risk of being in contempt of court defined as: 'conduct [...] tending to interfere with the course of justice in particular legal proceedings regardless of intent to do so.' That means lack of intention ('I didn't mean it') is no defence.

Problematical media content needs to be judged according to the 'substantial risk'- taking into account the 'fade factor' between publication and potential trial by jury which is determined by the size of the audience communicated to and the timing of publication, and whether it is 'seriously' prejudicial.

These factors were considered in great detail in the AG's prosecution of newspapers for their coverage after the arrest of Michael Fagan who trespassed at Buckingham Palace in 1982. For the Sunday Times to say he was charged with a more serious offence than was the case (wounding instead of actual bodily harm) in relation to an argument with his stepson prior to the Buckingham Palace shenanigans, and for the Daily Star to say that he had confessed to drinking a bottle of wine in the Palace (the subject of the burglary charge) when he had not were deemed 'seriously' prejudicial and the fact factor was not enough to distance jury reception of the information and remembering this when they were sworn in to try him. The Divisional Court also decided that media contempt could be committed if the publication prejudiced the prosecution as well as the defence case.

The ruling by the Divisional Court in Attorney-General v Times Newspapers and others (1983) was reported in the Times 12/2/83.

The Mail on Sunday published an article suggesting a homosexual liaison between him and one of the Queen's police bodyguard, but the Divisional Court said the security of the Queen was a matter of serious public concern and the risk of prejudice, though undoubtedly present, was incidental; The Mail on Sunday was therefore protected by s.5 the 1981 Contempt of Court Act where:

'5 Discussion of public affairs.

A publication made as or as part of a discussion in good faith of public affairs or other matters of general public interest is not to be treated as a contempt of court under the strict liability rule if the risk of impediment or prejudice to particular legal proceedings is merely incidental to the discussion.'

This defence could be very useful if a court case was accompanied by demonstrations outside the court building. Cases sometimes cue wider debates about social and political issues. Parliament intended to prevent the incidence of court proceedings shutting down public interest discussion. However, the defence has important elements that need to be engaged in order to succeed. Key issues to be decided include answers to the following questions:

Discussion in good faith of public affairs?

Matters of general public interest?

Risk of impediment or prejudice [...] merely incidental to the discussion?

It was decided that the Section 5 defence was not available to the far-right activist Stephen Yaxley-Lennon, also known as Tommy Robinson, in the contempt prosecution discussed further on. It might be worth noting that if public order issues spilled over into the public gallery of a courtroom, anything libellous by anyone in the public gallery said would not necessarily be guaranteed the absolute privilege protection in libel. Privilege attaches to protagonists in a court case e.g. witnesses, advocates and defendants.

Another very important test case to consider is AG v Mirror and Sun in respect of the coverage of the arrest of retired teacher Christopher Jefferies in 2011. Seriously prejudicial media coverage can also 'impede' the administration of justice by preventing witnesses

coming forward that can assist the police investigation or properly exonerate a wrongly arrested suspect. Mr Jefferies was considered to have been ‘monstered’ and ‘vilified’ so badly his Article 6 right under the Human Rights Act to a fair trial had been impeded.

See: [HM Attorney-General v MGN Ltd & Anor \[2011\] EWHC 2074 \(Admin\)](#)

There was a time when media contempt was no longer observed in its breach with a much more severe policy of prosecutions by the former Tory/LibDem coalition government Attorney General Dominic Grieve QC and the DPP between 2010 and 2014. This included prejudicial coverage after arrest and where nobody was even charged, publication of a prejudicial image online only that was taken down soon after the complaint, prejudicial coverage after the return of part-verdicts with the jury still deliberating on lesser charges, and prejudicial commentary behind a paywall after a trial had begun. There was also a clampdown on non-professional media publication in social media by jurors- several were jailed. Failure to observe reporting restrictions at the Magistrates Court also led to successful prosecution.

Media contempt prosecutions of mainstream journalism publishers by the Attorney-General at the time of writing are rare. This can be interpreted as either higher standards of reporting, publication and media law advice by in-house lawyers, and/or a more lenient policy on the part of recent Attorney-Generals. I would venture the explanation is more of the former than the latter.

In addition to media contempt law, journalists in the UK need to be aware of additional restrictions and protections afforded to criminal suspects prior to formal charge. This has developed as civil privacy legal protection for all potential criminal suspects and statutory protection for suspects who happen to be teachers when investigated for committing offences against their pupils/student prior to ever being charged.

The statutory protection for teachers is covered by Section 13 of the Education Act 2011. This provides statutory anonymity for life unless the teacher is ever charged, or unless they waives their right to anonymity in writing.

See: <https://www.legislation.gov.uk/ukpga/2011/21/section/13/enacted>

‘(1) This section applies where a person who is employed or engaged as a teacher at a school is the subject of an allegation falling within subsection (2).

(2) An allegation falls within this subsection if—

(a) it is an allegation that the person is or may be guilty of a relevant criminal offence, and

(b) it is made by or on behalf of a registered pupil at the school.

(3) No matter relating to the person is to be included in any publication if it is likely to lead members of the public to identify the person as the teacher who is the subject of the allegation.’

The English and Welsh Appeal Court and High Court have fully established a reasonable expectation of privacy that being investigated for crime prior to being charged is private information.

This protected a sitting Conservative MP in the Westminster Parliament from being identified in the media after being accused of raping a woman. The Met Police decided not to proceed with the case.

These are the three key court precedents developing this protection.

[Sicri v Associated Newspapers Ltd \(Rev 1\) \[2020\] EWHC 3541 \(QB\) \(21 December 2020\)](#)

[ZXC v Bloomberg LP \[2020\] EWCA Civ 611 \(15 May 2020\)](#)

[Richard v The British Broadcasting Corporation \(BBC\) & Anor \[2018\] EWHC 1837 \(Ch\) \(18 July 2018\)](#)

The Sir Cliff Richard case is given more detailed analysis later in the Handbook. The rule now is very clear:

‘... those who have simply come under suspicion by an organ of the state have, in general, a reasonable and objectively founded expectation of privacy in relation to that fact and an expressed basis for that suspicion.’

These cases have made clear that professional news media will not succeed with a defence of ‘public interest’ if they show no evidence that there was editorial engagement of the balancing exercise of considering the suspect’s privacy rights as well as the public interest in reporting the investigation of serious crime.

The BBC was unable to show this in relation to the Sir Cliff Richard case. The judge in that case heard evidence that the reporter responsible for investigating and naming Sir Cliff had been told off the record by the police that it was unlikely the inquiry would result in him being charged for sex offences against a child.

The judge said the BBC would have breached privacy even with an unsensational copy report in a news bulletin rather than the spectacular use of a media helicopter filming the South Yorkshire police raiding his apartment in Berkshire.

The claimant in the Sicri case was a suspect in the awful Ariana Grande concert terrorism attack at Manchester Arena. Suicide bomber, Salman Abedi, detonated an improvised explosive device in the foyer, murdered 22 and injured more than 800 people, many of them children and young people.

Mr Justice Warby decided the MailOnline was not entitled to identify Alaedeen Sicri:

'The claimant had a right to expect that the defendant would not publish his identity as the 23-year-old man arrested on suspicion of involvement in the Manchester Arena bombing. By 12:47 on 29 May 2017, the defendant had violated that right; it had no, or no sufficient public interest justification for identifying the claimant.

It continued to do so.

Later, another publisher (The Guardian) did the same or similar. But the claimant's right to have the defendant respect his privacy was not defeated or significantly weakened by the fact that others failed to do so. He is entitled to compensation. The appropriate sum is £83,000 in general and special damages.'

It is also important to appreciate that even if a suspect is a major public figure with the global resonance of, for example, Sir Cliff Richard, the very fact that the media in other legal jurisdictions are publishing the name and identity is no defence for doing so. This can be very frustrating for publishers in England and Wales when identification is happening as close as Scotland or the Republic of Ireland.

What happens abroad does not necessarily increase public interest justification.

Justice Neuberger in the UK Supreme Court case of *PJS v The Sun* in 2016 said: 'There are claims that between 20% and 25% of the population know who PJS is, which, it is fair to say, suggests that at least 75% of the population do not know the identity of PJS.'

On that footing, the Supreme Court restrained wider disclosure of the name and to this day the identity of PJS remains protected by court order.

[PJS v News Group Newspapers Ltd \(Rev 1\) \[2016\] UKSC 26 \(19 May 2016\)](#)

The media law situation in this area has been controversial and problematic. It was apparent that many UK news publishers identified the police officer Wayne Cousins when he was the suspect in the kidnapping and murder case of Sarah Everard in March 2021 and by implication the woman living at the officer's home address in Deal who was arrested for assisting an offender. Yet the Met Police, clearly for legal reasons, officially did not name the officer. This police policy continued in a later announcement from the Metropolitan Police Commissioner who referred to the arrested suspect as one of their officers though again without formal confirmation of his actual name and identity. BBC News [did not name the officer](#). No doubt the BBC was particularly conscious of the implications of the Sir Cliff Richard case that had cost them so dearly. However, other broadcasters, subject to Ofcom regulation, such as [Sky News](#) and [ITV news](#) avoided naming the arrested officer. There was some irony that the [BBC News review](#) of the daily national newspapers displayed the identification of officer via the images of their front pages.

On 16th February 2022, the UK Supreme Court clarified any remaining ambiguity in *ZXC v Bloomberg* with a unanimous ruling giving criminal suspects full privacy rights.

From the court's press summary:-

'The Respondent ("ZXC") is a US citizen who worked for a company which operated overseas. He and his employer were the subject of a criminal investigation by a UK Legal Enforcement Body (the "UKLEB"). During that investigation, the UKLEB sent a confidential

Letter of Request (the “Letter”) to the authorities of a foreign state seeking, among other things, information and documents relating to ZXC. The Letter expressly requested that its existence and contents remain confidential.

The Appellant (“Bloomberg”), a well-known media company, obtained a copy of the Letter, on the basis of which it published an article reporting that information had been requested in respect of ZXC and detailing the matters in respect of which he was being investigated. After Bloomberg refused to remove the article from its website, and following an unsuccessful application for an interim injunction, ZXC brought a successful claim against Bloomberg for misuse of private information.

ZXC claimed that he had a reasonable expectation of privacy in relation to: (1) the fact that the UKLEB had requested information relating to him in the context of its investigations, and (2) the details of the matters that the UKLEB was investigating in relation to him. The first instance judge held that Bloomberg had published private information that was in principle protected by article 8 of the European Convention on Human Rights (the “ECHR”); and that in balancing ZXC’s rights against those of Bloomberg under article 10 ECHR, the balance favoured ZXC. Bloomberg’s appeal against that judgment was dismissed by the Court of Appeal. Bloomberg now appeals to the Supreme Court.

Judgment

The Supreme Court unanimously dismisses the appeal. It holds that, in general, a person under criminal investigation has, prior to being charged, a reasonable expectation of privacy in respect of information relating to that investigation. Lord Hamblen and Lord Stephens give the sole joint judgment, with which the other Justices agree.’

Full bailii.org ruling on this link: [United Kingdom Supreme Court >> Bloomberg LP v ZXC \[2022\] UKSC 5 \(16 February 2022 \)](#)

[Press Summary](#) [Issues & Facts](#)

The reporting restrictions made by the High Court and the Court of Appeal remain in force.

Hilary Term
[2022] UKSC 5
On appeal from: [2020] EWCA Civ 611

JUDGMENT

Bloomberg LP (Appellant) v ZXC (Respondent)

before

Lord Reed, President
Lord Lloyd-Jones
Lord Sales
Lord Hamblen
Lord Stephens

JUDGMENT GIVEN ON
16 February 2022

Heard on 30 November and 1 December 2021

Appellant
Antony White QC
Clara Hamer
(Instructed by Reynolds Porter Chamberlain LLP (London))

Respondent
Tim Owen QC
Sara Mansoori
Edward Craven
(Instructed by David Byrne)

The full UK Supreme Court case [resources page for Bloomberg LP \(Appellant\) v ZXC \(Respondent\)](#)

The full ruling in Bloomberg v ZXC as downloadable pdf file
[bloombergvzxcuksc-2020-0122-judgmentDownload](#)

Reaction and analysis:-

Press Gazette reports: [‘Bloomberg Supreme Court defeat means criminal suspects have media anonymity before charge.’](#)

Hold The Front Page report: [‘The Society of Editors has hit out after the UK Supreme Court ruled that a person under criminal investigation has a reasonable expectation of privacy prior to charge.’](#)

Guardian reports: [‘Bloomberg loses landmark UK supreme court case on privacy. Media will find it harder to publish information about people in criminal investigations.’](#)

5RB report and analysis of [‘Supreme Court judgment on criminal suspects’ privacy rights: ZXC v Bloomberg.’](#)

Sun newspaper Editorial: [‘Decision to protect the privacy of ALL suspects puts public in far greater danger.’](#)

UK Media Law Pocketbook 2nd Edition (2022) covers ‘Media Contempt Law and Reporting Crime in Chapter One, pages 3 to 68.

Companion online resource for this chapter at

<https://ukmedialawpocketbook.com/2022/05/04/blog-post-title-2/>

McNae’s Essential Law for Journalists 26th Edition (2022) covers the theme of media contempt law in Chapter 5 ‘Crime- media coverage prior to any court case’, pages 66-77, and Chapter 19 ‘Contempt of Court’, pages 305-332.

McNae’s Essential Law for Journalists 25th Edition (2020) covers the theme of media contempt law in Chapter 5 ‘Crime- media coverage prior to any court case’, pages 61-70, and Chapter 19 ‘Contempt of Court’, pages 261-283.

Covering the Courts.

Most of the newsworthy cases you are likely to cover will be at the Crown Court, or High Court of Justiciary in Scotland where lay juries (12 in England & Wales and 15 in Scotland) will decide the facts in terms of the verdict (guilty or not guilty in England & Wales/guilty, not guilty, or not proven in Scotland).

Where the accused has admitted the offence(s) and there is not going to be a trial, you will be attending a sentencing hearing for which there are unlikely to be many restrictions.

But where a not guilty verdict has been declared, the presence of a jury will mean you have to take great care in observing media contempt law until **all** the verdicts have been returned.

Most sensational criminal cases begin with a **first and only appearance at the Magistrates court**. This is likely to be a journalistic assignment when you are a general reporter and unless reporting restrictions are lifted (all defendants have to agree) you must comply with these very specific rules.



Westminster Magistrates' Court 2012 by [GrimsbyT](#), [CC BY-SA 3.0](#), via Wikimedia Commons



Westminster Magistrates' Court Crest 2011 image taken 2012 by [GrimsbyT](#), [CC BY-SA 3.0](#), via Wikimedia Commons

You can only report the following from **what you see and hear of the proceedings in front of you**:

- (a) the identity of the court and the name of the justice or justices;
- (b) the name, age, home address and occupation of the accused;
- (c) in the case of an accused charged with serious or complex fraud cases, any relevant business information which includes:

- (i) any address used by the accused for carrying on a business on his own account;

- (ii) the name of any business which he was carrying on his own account at any relevant time;

- (iii) the name of any firm in which he was a partner at any relevant time or by which he was engaged at any such time;

- (iv) the address of any such firm;

- (v) the name of any company of which he was a director at any relevant time or by which he was otherwise engaged at any such time;

- (vi) the address of the registered or principal office of any such company;

- (

- vii) any working address of the accused in his capacity as a person engaged by any such company; and here “engaged” means engaged under a contract of service or a contract for services.

- (d) the offence or offences, or a summary of them, with which the accused is or are charged;

- (e) the names of counsel and solicitors engaged in the proceedings;

- (f) where the proceedings are adjourned, the date and place to which they are adjourned; [This is usually to a Crown Court]

- (g) the arrangements as to bail; [Note- like with previous restrictions NOT the objections or any arguments about bail]

- (h) whether a right to representation funded by the Legal Services Commission [used to be called legal aid] as part of the Criminal Defence Service was granted to the accused or any of the accused.

In most first hearing serious crime cases being transferred to the Crown Court you will **NOT be allowed to publish the names or addresses of witnesses, which was allowed previously.**

You can report what goes on outside the court, but what you report from beyond the proceedings **is subject to the Contempt of Court Act- meaning nothing that creates a substantial risk of serious prejudice or impedance to the administration of justice.**

Reporting criminal court cases: some simple ground rules

- a. Never report anything said in the absence of the jury until after all the verdicts have been returned.
- b. Stick to reporting accurately what is said in court and do not paraphrase using exaggerated, dramatic and sensationalist language, avoid comment, and never present allegations as fact.
- c. Make sure your reports are fair and accurate. To be fair involves putting the other side of the story. Make sure you state that the defendant(s) has pleaded not guilty, and the trial is continuing at the end of the day.
- d. Always comply with reporting restrictions, reporting prohibitions and postponements. For a detailed briefing on the comprehensive details of these restrictions, download, read and follow the Judicial College's guide to reporting restrictions in the criminal courts (England and Wales). See: <https://www.judiciary.uk/wp-content/uploads/2023/07/Reporting-Restrictions-in-the-Criminal-Courts-July-2023.pdf>

Check and update the guide every year so you are briefed on the latest extension of restrictions, which in recent years have included anonymity for alleged victims of people trafficking, and victims of FGM (female genital mutilation).

It also important to appreciate that anonymity provisions controlling the reporting of the British legal systems are continually expanding. In the civil arena, the higher courts have begun sustaining anonymity for people who have died. This included the identity of a 50 year-old woman who was reported as saying she had lost her 'sparkle' and no longer wished to have life-sustaining medical treatment. In April 2016, the Court of Protection agreed to a continuation of the court order banning identification in order to protect the privacy interests of surviving relatives. See: [V v Associated Newspapers Ltd & Ors \[2016\] EWCOP 21 \(25 April 2016\)](#)

In another Court of Protection case in June 2016, a high court judge came to a similar decision in respect of any reporting of the identity of a woman in a minimally conscious state (MCS) after she had died. See: [M v Press Association \[2016\] EWCOP 34 \(23 June 2016\)](#)

Anonymity was also continued in the case of a three-and-a-half-month-old baby who had died following civil litigation over his treatment. Another court sustained anonymity for a 14-year-old teenage girl from London who wished to be preserved in a cryogenic state in America after her death from cancer. See the case of [JS \(Disposal of Body\), Re \[2016\] EWHC 2859 \(Fam\) \(10 November 2016\)](#)

The judge postponed reporting of the case until one month after her death to give time for her family to grieve. An indefinite court injunction prevents any identification of the girl, her family, or the hospital trust and staff involved in the case.

- e. Never ever publish anything that can lead to the identification of somebody involved in legal proceedings who is aged 17 and under unless the court specifically allows it. (Scotland used to have a bar of 15 and under, but in 2015 they raised it to 17 for young people who are the accused, victim or witness in criminal proceedings to make it the same as in England and Wales. See: <https://www.scotcourts.gov.uk/current-business/court-notice/contempt-of-court-orders/reporting-restrictions-children-under-18>)

f. Never ever publish anything that is likely to lead to the identification of anyone complaining of a sexual offence unless they agree to be identified and that agreement is in writing [range of sexual offences includes voyeurism, indecent exposure, 'flashing' and has substantially expanded] The spectrum of sexual offences providing anonymity for victims is available online in [Section Two of the Sexual Offences Act 1992](#) and notice the references to extending the anonymity to any offence under [sections 15 to 21, 47 to 53, 66, 67, 70 and 72 of the Sexual Offences Act 2003](#).

g. You also need to watch out for special court orders banning identification of frightened witnesses, and undercover police, intelligence and customs officers. Blackmail victims (where the menaces are embarrassing) have common law anonymity for life as soon as they make the complaint.

h. Go out of your way to check if there are any special reporting bans/orders relating to the legal case and/or proceedings that you are covering. Keep proof of any emails and contacts demonstrating your efforts to carry out this checking.

Publishing anything that identifies anyone complaining of a sexual offence is a criminal offence if only one person can identify that individual from what you have reported. You will have no defence even when the person making the connection has been playing at private detective.

For reporting restrictions in Northern Ireland [consult the online guide provided by the Judicial Studies Board of the province](#).

The Scottish Courts and Tribunal service has published [a detailed guide for dealing with the media and reporting access to court hearings](#).

You need to be accredited when visiting court complexes to cover cases. It is advisable to join a professional journalists' association such as the NUJ, CloJ or BAJ and be in possession of a press/media card. At the very least have a letter of accreditation from your editor, or tutor (if still a journalism student).

You should be able to use smartphone devices, tablets and laptop computers to make notes, email or text reports and Tweet live reports, but always remember that it would be a criminal offence if you were to use your device to record sound or digital video. Broadcast facilities are being slowly introduced in some courtrooms, but they are organised by complex installation and processes of approval and control. Download, study and keep the Lord Chief Justice of England's guidelines on courtroom tweeting at: <https://www.judiciary.gov.uk/wp-content/uploads/JCO/Documents/Guidance/lcbc-guidance-dec-2011.pdf>

The right to take notes in a courtroom is essential for any reporter and you should have a polite reference point confirming this, should a judge or court service staff try to stop you. The 2016 case of *Ewing v Cardiff Crown Court* determined that courts should have a very good reason to make orders preventing note-taking in the public gallery. The case involved a non-journalist, but asserted note-taking as part of the open justice

principle. See: [Ewing v Crown Court Sitting at Cardiff & Newport & Ors \[2016\] EWHC 183 \(Admin\) \(08 February 2016\)](#)

Social Media Controls

Unlike in the USA, which has a constitutional First Amendment, the British Courts have greater powers to prohibit and ban the reporting of legal proceedings in all kinds of digital and analogue media. In 2016 the Court of Appeal became so concerned about the overwhelming abuse and prejudice being communicated in comments on social media sites during a murder trial, it decided to halt reporting on those platforms. This was because the mainstream media were unable to disable the comment streams of their reports communicated on social media platforms such as Facebook and Twitter. The first trial of the two 14 year-old-girls, accused of torturing and murdering a 39-year-old woman called Angela Wrightson, had been stopped, and a retrial ordered in another city.

See: [British Broadcasting Corporation & Eight Other Media Organisations, R \(on the application of\) v F & D \[2016\] EWCA Crim 12 \(11 February 2016\)](#)

The court approved a court order made by the trial judge to media publishers not to place any report of the trial of the girls on their respective Facebook profile page or pages, to refrain from issuing or forwarding tweets relating to the trial, and to disable the ability for users to post comments on their respective news websites.

The identification of children tried in the adult courts will always be a matter of discretion on the part of the trial judge who has a statutory duty to balance Open Justice with the interests of the welfare of the child. One dispute over whether child killers could be named after conviction and sentence concerned the prosecution of 15-year-old Stan Lucas Markham and Kim Edwards for the murder of Kim's mother and 13-year-old sister in Spalding. See: [Markham & Anor v R \(Rev 1\) \[2017\] EWCA Crim 739 \(09 June 2017\)](#)

The trial judge decided this was an exceptional case and there was a strong public interest in full and unrestricted reporting. The decision was challenged by the defendants' lawyers and the organization 'Just Kids for Law.' In a ruling of the Court of Appeal Criminal Division in June 2017, Sir Brian Leveson said there was: 'no evidence before us that reporting their identities would adversely affect the future rehabilitation of the appellants, and, thus, be contrary to the welfare of a child, which would give rise to a weighty consideration in the balancing of competing considerations in the assessment that we must make. The reality is that anonymity lasts only until 18 years of age and both appellants face a very considerable term of detention that will stretch long into their adult life.'

However, it can be argued that there is a trend developing in the British legal system to protect young offenders even beyond the time they reach the age of 18 with perpetual anonymity.

At the age of 14, RXG plotted to murder police officers in Australia on Anzac Day, instructing an Australian jihadist to launch attacks during a 2015 parade. At the time the

teenager from Blackburn in Lancashire was Britain's youngest terrorist and had sent encrypted messages to Sevdet Besim telling him to kill officers at the remembrance parade in Melbourne. Shortly before his 18th birthday, RXG's lawyers asked the High Court to grant him lifelong anonymity to protect his rehabilitation. In a judgment in July 2019, Dame Victoria Sharp granted RXG lifelong anonymity, saying that 'if he were named, he will never escape being associated with his past offending.' See: [RXG v Ministry of Justice & Ors \[2019\] EWHC 2026 \(QB\) \(29 July 2019\)](#)

The 13 and 14 year old murderers of Angela Wrightson in Hartlepool were handed life sentences at Leeds Crown Court in 2016 and told they must serve a minimum of 15 years behind bars. At the end of the trial, judge Mr Justice Globe refused to lift reporting restrictions preventing the media from identifying the killers, due to their vulnerability. Their anonymity automatically expired when they turned 18, but their lawyers asked a High Court judge in October 2020 to grant them lifelong anonymity. In February 2021, Mrs Justice Tipples granted the pair - known only as D and F - permanent injunctions, preventing them from being identified. See: [D & Anor v Persons Unknown \[2021\] EWHC 157 \(QB\) \(04 February 2021\)](#)

Other examples of perpetual anonymity for notorious convicted criminals include:

Jon Venables and Robert Thompson who were 10 when they abducted, tortured and murdered two-year-old James Bulger in Liverpool in February 1993. On their release at the age of 18 they received perpetual anonymity protection in relation to their new identities. In 2019, the High Court rejected a bid by Ralph and Jimmy Bulger, James's father and uncle, to vary the order in respect of Venables to allow the publication of any names used by him before he was recalled to prison in 2017 for possession of indecent images of children. See: [Venables & Anor v News Group Papers Ltd & Ors \[2019\] EWHC 494 \(Fam\) \(04 March 2019\)](#)

Mary Bell who was aged 10 and 11 when she strangled two small children in Newcastle in 1968, and was later convicted of manslaughter by reason of diminished responsibility. In 2003, she applied for lifelong anonymity to prevent the press publishing her new identity. Dame Elizabeth, the same judge who granted Venables and Thompson lifelong anonymity, said Bell's 'fragile mental health' would be 'seriously exacerbated if she were to be identified and pursued by the press or members of the public'. See: [X \(A Woman Formerly Known As Mary Bell\) & Anor v O'brien & Ors \[2003\] EWHC 1101 \(QB\) \(21 May 2003\)](#)

Maxine Carr whose then boyfriend Ian Huntley murdered Holly Wells and Jessica Chapman in Soham, Cambridgeshire, in August 2002. She was sentenced to three and a half years in prison in 2003 after being found guilty of conspiring to pervert the course of justice in giving Huntley a false alibi. The High Court made an injunction to protect her new identity in 2005, with Mr Justice Eady saying such an order was 'necessary to protect life and limb and psychological health.' See: [Carr v News Group Newspapers Ltd & Ors \[2005\] EWHC 971 \(QB\) \(24 February 2005\)](#)

The Edlington brothers were convicted of grievous bodily harm for torturing and humiliating two young boys in South Yorkshire in 2010. The pair, who were 10 and 11 at the time, strangled their victims, hit them with bricks, made them eat nettles and forced them to sexually abuse each other in a 90-minute ordeal. In 2016, two days before the younger brother's 18th birthday - when his anonymity would have automatically expired - the High Court granted the pair lifelong anonymity, with Sir Geoffrey Vos saying 'they would be at extremely serious risk of physical harm' if their identities were revealed. See: [A & B v Persons Unknown \[2016\] EWHC 3295 \(Ch\) \(19 December 2016\)](#)

Reporting Restrictions and the problems in challenging them or breaching them

Parliament has a habit of extending and widening the categories of people involved in court cases who are entitled to statutory anonymity. Here is more detail on alleged victims of forced marriages, alleged victims of people trafficking, and alleged victims of FGM (female genital mutilation).

Victims of forced marriages have anonymity for life and the protection is similar to that offered to sexual offence complainants.

Anything published that could lead to their identification would be enough to attract a prosecution and criminal conviction for the journalists and publication responsible. It is important appreciate that UK authorities have a tendency to prosecute the individual journalist or editor found culpable and not the news organisation.

Section 173 of the Policing and Crime Act 2017.

<https://www.legislation.gov.uk/ukpga/2017/3/part/9/chapter/1/crossheading/forced-marriage-anonymity-for-victims/enacted>

Prohibition on the identification of victims in publications

(1) This paragraph applies where an allegation has been made that an offence of forced marriage has been committed against a person.

(2) No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person's lifetime.

Only forced marriage victims aged 16 and above can consent in writing to waive their anonymity.

Anonymity was extended to the victims of female genital mutilation [by section 71 of The Serious Crime Act 2015](#), which provides a ban on reporting the victim of FGM from the time of the allegation and for life. The legislation states: 'No matter likely to lead members of the public to identify the person, as the person against whom the offence is alleged to have been committed, may be included in any publication during the person's lifetime.' Similarly only FGM victims aged 16 and above can consent in writing to waive their anonymity.

The list of sexual offences in the 1992 Act has been extended to include all victims (and alleged victims) of any offence [under section 2 of the Modern Slavery Act 2015](#). Offences

under the Modern Slavery Act encompass a wide range of human trafficking crimes, such as exploitation for the purposes of indecent photographs of children, illegal organ donation, trafficked sex workers, forced labour and domestic servitude.

One of the most common reporting restrictions under the 1981 Contempt of Court Act is usually under section 4(2) which amounts to a postponement of publication of proceedings to a certain time in the future when it is judged that media prejudice impact on a jury has passed.

The current Lord Chief Justice of England and Wales, Lord Burnett of Maldon (as of February 2021) in [Sarker, R v \[2018\] EWCA Crim 1341 \(13 June 2018\)](#) made it clear that in order to preserve Open Justice judges in criminal trials were obliged to consider less draconian alternatives to shutting down the entire reporting of trials.

Consider Lord Burnett's observations on Open Justice:

'When dealing with applications for reporting restrictions, the default position is the general principle that all proceedings in courts and tribunals are conducted in public. This is the principle of open justice. Media reports of legal proceedings are an extension of the concept of open justice.

i) In one of the first cases decided under the 1981 Act, Lord Denning MR noted that open justice and freedom of the press are "two of our most fundamental principles": *R -v- Horsham Justices ex parte Farquharson* [1982] QB 762, at 793H. At common law, the court has no power to make an order postponing the publication of a report of proceedings conducted in open court; any such power must be conferred by legislation: *Independent Publishing Co Ltd* at [67] per Lord Hoffmann.

ii) Attending court in person is not practical for any but a handful of people, and live-streaming and broadcasting of court proceedings remain restricted. The only way that citizens can be informed about what takes place in most of our courts is through media reports. In that way the media serve both as the eyes and ears of the wider public and also as a watchdog: *In re S* at [18] per Lord Steyn.

iii) Full contemporaneous reporting of criminal trials (and other legal proceedings) promotes public confidence in the administration of justice and the rule of law: *In re S* at [30].

iv) On a practical level, the public nature of court hearings (and media reports of them) fulfils several objectives: (1) it enables the public to know that justice is being administered impartially; (2) it can lead to evidence becoming available which would not have been forthcoming if reports are not published until after the trial has completed or not at all; (3) it reduces the likelihood of uninformed or inaccurate comment about the proceedings; and (4) it deters inappropriate behaviour on the part of the court (and we would add others participating in the proceedings): *ex parte Kaim Todner* at 977E-G per Lord Woolf MR.

v) On the rare occasions when a court is justified in sitting in private, both the public and media are prevented from accessing the proceedings altogether. Reporting restrictions are different. The proceedings are there to be seen and heard by those who attend court, but they cannot be reported. Reporting restriction orders, albeit not as great a departure from open justice as the court sitting in private, are nevertheless "direct press censorship": *Khuja* at [16] per Lord Sumption.

v) Reporting restrictions orders are therefore derogations from the general principle of open justice. They are exceptional, require clear justification and should be made only when they are strictly necessary to secure the proper administration of justice: Practice Guidance (Interim Non-disclosure Orders) [2012] 1 WLR 1003 at [10]; they are measures of last resort: In re Press Association [2013] 1 WLR 1979 at [13] per Lord Judge CJ.

vii) Any derogation from open justice must be established by clear and cogent evidence: Scott -v- Scott [1913] AC 417, at 438–439 per Viscount Haldane LC; Practice Guidance (Interim Non-disclosure Orders at [13].’

The Lord Chief Justice also advised all Crown Court Judges to adopt ‘The proper approach to a section 4(2) postponement order application.’ He said a clear articulation of the approach to be adopted ‘is to be found in the judgment of Longmore LJ in Sherwood at [22] (which was approved by the Privy Council in Independent Publishing Co Ltd at [69]).

i) The first question is whether reporting would give rise to a substantial risk of prejudice to the administration of justice in the relevant proceedings (see paragraph 32 below). If not, that will be the end of the matter.

ii) If such a risk is perceived to exist, then the second question arises: would a section 4(2) order eliminate it? If not, there could be no necessity to impose such a ban. On the other hand, even if the judge is satisfied that an order would achieve the objective, he or she would still have to consider whether the risk could satisfactorily be overcome by some less restrictive means. If so, it could not be said to be "necessary" to take the more drastic approach: ex parte Central Television plc at 8D-G per Lord Lane CJ.

iii) If the judge is satisfied that there is indeed no other way of eliminating the perceived risk of prejudice; it still does not necessarily follow that an order has to be made. The judge may still have to ask whether the degree of risk contemplated should be regarded as tolerable in the sense of being "the lesser of two evils". It is at this stage that value judgments may have to be made as to the priority between the competing public interests; fair trial and freedom of expression/open justice: ex parte Telegraph plc at 986B-C.]’

Courts also have a habit of wrongly imposing restrictions/orders under Section 11 of the 1981 Contempt Court Act. These should be limited to:

‘Publication of matters exempted from disclosure in court.

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

Such orders should not apply to any name that has not been withheld from the public in proceedings before the court. If the identity has been revealed during the court proceedings the order would not be appropriate. If somebody’s health or life is at risk any application for restrictions should address Article 2 of the Human Rights Act (right to life) and the provisions of section 46 of the Youth Justice and Criminal Evidence Act 1999

where a court may restrict publication of an adult witness's identity because: 'if the quality of his evidence or his co-operation with the preparation of the case is likely to be diminished by reason of fear or distress in connection with identification by the public as a witness.'

If a judge has made a mistake by not imposing an order that should have been imposed, or using the wrong legislation to do it, it would be taking a grave risk to defy the court's wrongly made order and intentions. This was demonstrated clearly in the 2007 case of [Times Newspapers Ltd. & Ors v R. \[2007\] EWCA Crim 1925 \(30 July 2007\)](#). A Downing Street civil servant and House of Commons researcher were prosecuted under the Official Secrets Act over communication of confidential discussion between UK PM and US President. During the trial the content of the transcript was revealed in open court when it should have been kept from the public before the proceedings. The trial judge made an order under the wrong legislation but the Appeal Court decided it was the purpose of the retrospective direction, that this was legitimate and should be sustained.

In July 2019 the far-right political activist Stephen Yaxley-Lennon, also known as Tommy Robinson, was found to be in contempt of court after filming outside Leeds Crown Court in May 2018. During a trial still being heard with a jury he live-streamed the video on Facebook with information that breached reporting restrictions under Section 4(2) of the 1981 Contempt of Court Act. He also approached defendants and told his followers to "harass them".

The media contempt consisted three breaches of the law:

1. Publishing information that was subject to a restriction prohibiting any reporting of the trial until a later, related trial had concluded;
2. Publishing a video encouraging his followers to harass the defendants, creating a substantial risk that their rights would be seriously impeded;
3. Illegally photographing and intimidating defendants as they entered court.

See the ruling of the Divisional Court at:

<https://www.judiciary.uk/wp-content/uploads/2019/07/ag-v-yaxley-lennon-jmt-190709.pdf>

He was subsequently jailed for nine months.

<https://www.judiciary.uk/wp-content/uploads/2019/07/yaxley-lennon-decision-on-penalty-190711.pdf>

While Robinson/Yaxley-Lennon was not a professional journalist his attempt to politically propagandize by using social media to 'report' information that interfered with the administration of justice highlights the clear boundaries that the UK judiciary intends to set for media contempt law.

He was not afforded any defence or protection under Section 5 of the 1981 Contempt of Court Act.

Recording live proceedings inside the courtroom or remote proceedings by video-streaming, YouTube or Microsoft Teams.

Section 9 of the 1981 Contempt of Court Act creates [a contempt of court for anyone to make sound recordings of court proceedings without the leave of the court, and to ever broadcast such a sound recording.](#)

Mail On Sunday feature journalist Marcia Angela Johnson was prosecuted and convicted for sound recording on her smartphone at Southwark Crown Court in October 2019 and received a suspended prison sentence and fine. See: [Mail on Sunday features writer avoids jail after recording court hearing on phone.](#)

There are two prohibitions on video copying court proceedings. The Criminal Justice Act 1925 made it a criminal offence to use photography inside a courtroom or on the court precincts. [And Schedule 25 of the Coronavirus Act 2020](#) made it a criminal offence to 'make, or attempt to make— (a) an unauthorised recording, or (b) an unauthorised transmission' of any kind of remote hearing in terms of video or audio. These offences are inserted into Section 85 of the Courts Act 2003 and similar offences are created in relation to any recordings of remote hearings at the First Tier Tribunal and Upper Tribunal.

Unfortunately, BBC South East decided to record Microsoft Teams remote proceedings of a judicial review hearing at the High Court towards the end of 2020 and despite there being notice given of the restrictions: 'It is a contempt of court, a criminal offence, for anyone else to make a recording of any part of these proceedings [...] although we are conducting the hearing remotely, it is a formal court process and everyone should behave as they would if they were physically in court.'

The BBC was fined £28,000 for contempt of court for recording the proceedings and actually broadcasting a clip during news bulletins. The ruling stated that the BBC had succumbed to 'collective brain freeze' and that it 'beggars belief' nobody at any stage of the process realized that what was happening was in fact unlawful.

The full judgement is available at: [Finch, R \(On the Application Of\) v Surrey County Council \[2021\] EWHC 170 \(QB\) \(03 February 2021\)](#)

And: [In the matter of a Contempt application of the court's own initiative pursuant to CPR 81.6. 2 February 2021](#)

Earlier in 2020 the High Court had to deal with a breach of restrictions on distributing/disseminating live Zoom links to a libel trial in [Gubarev & Anor v Orbis Business Intelligence Ltd & Anor \[2020\] EWHC 2167 \(QB\) \(06 August 2020\)](#)

'The judge found that there had been misconduct in the form of a breach of section 41 of the Criminal Justice Act 1925 and/or section 9 of the Contempt of Court Act 1981 and/or disobedience to paragraph 8 of an Order which he had made in the proceedings on 14 July 2020, in that for 3 days in July 2020 video/and or audio of the proceedings at the trial of the action was live streamed to a number of individuals outside the jurisdiction

(including the United States, Cyprus and Russia) without the Court's permission and without any application being made for such permission. At that stage, the judge had been given a list of 7 people who had used a Zoom link in remote locations to access the trial, and information that possibly 2 more had done so.'

Reporting the legal system- steps to improve 'Open Justice' and facilitate professional journalists

In England and Wales Her Majesty's Courts and Tribunal Service is now fully guided on relations with the media covering the legal system. HMCTS has agreed on the publication of several briefings for different parts of the system. Some of the common protocols include an understanding of the role of the professional journalist in respect of their training, knowledge, and needs. This is set out at the beginning of the [General guidance to staff on supporting media access to courts and tribunals](#) which was first published in 2020.

'Most journalists covering court and tribunal hearings will have had training in media law as part of wider professional qualifications and so should be familiar with legal issues relating to reporting proceedings.

The law sets out clearly what can and cannot be published in respect of criminal and other proceedings and it is newspapers and other media organisations themselves, not HMCTS, that carry the legal obligation to make sure that these are met.

Our job in HMCTS is to facilitate and support the media attending proceedings, and to provide relevant information asked for by journalists (following the guidelines set out in this document). Sometimes these requests are made under the pressure of production deadlines, and we should recognise this.'

The main badge of accreditation has been identified as the UK Press Card:

'The recognised accreditation to identify a bona fide journalist is the UK Press Card issued under a scheme operated by the [UK Press Card Authority](#). There are currently 12 organisations that issue press cards including the BBC, the National Union of Journalists, the News Media Association and the Foreign Press Association. These are issued only to professional journalists and have standard, copyrighted characteristics as you can see at <https://www.ccsi.co.uk/Press/UKPressCardAuthorityPoster.pdf> '

The general guidance presents a commitment in respect of basic listing information:

'Bona fide media organisations and journalists who request lists and registers should be issued proactively with the full magistrates' court lists routinely and without charge. At a minimum, the lists should contain each defendant's name, age, address and, where known, his profession and the alleged offence. Courts will not breach data protection legislation by providing the media with such information.'

There is further recognition about the rights of professional journalists to make text-based broadcasts from the courtroom:

‘Unlike the public, the media do not need to apply to use text-based devices to communicate from court. This includes using live broadcasting on Twitter and other social media networks, texting and emailing and using internet-enabled laptops. Use of devices should however not cause a disturbance or distraction. The judge or magistrate always retains full discretion to prohibit live, text based communications from court, in the interests of justice.’

In December 2022 HMCTS agreed [a Reporters’ Charter for covering court hearings](#). The right to Tweet report has already been referenced in this handbook in respect of [a practice direction issued by Lord Chief Justice Igor Judge in 2011](#). However, the final paragraph does make clear: ‘Permission to use live, text-based communications from court may be withdrawn by the court at any time.’

Here are the direct links to the various guides in the England and Wales jurisdiction now available guiding court staff in their liaison with professional journalists:

HMCTS [media guidance – managing high profile cases \(accessible version\)](#)

Jurisdictional guidance to support [media access to courts and tribunals: Criminal courts guide \(accessible version\)](#)

General guidance to [staff on supporting media access to courts and tribunals](#)

Jurisdictional guidance to support [media access to courts and tribunals: Civil court guide](#)

Jurisdictional guidance to support [media access to courts and tribunals: Family courts guide](#)

Jurisdictional guidance to support [media access to courts and tribunals: Tribunals guide](#)

HMCTS even has a policy on supporting the training of student journalists with supervision from their lecturers:

‘Student journalists will often attend court cases or hearings as part of their training. We should support this as one way to encourage greater court reporting. They are not entitled to sit in press seats but should sit in the public gallery where they are entitled to take notes without permission from the court or judge/magistrate. However, in sensitive cases (such as organised crime), it will help the judge and staff to avoid any misunderstanding if they identify themselves in advance to explain that they plan to do so.

Student journalists do need to make an application to the court if they want to use text-based devices to communicate from court. If you receive a request from a student journalist, please speak to the judge presiding over the case or trial. If a lecturer wants to attend court with a group of students to observe a case or hearing, it is good practice (but not mandatory) to let the court know in advance.’

Another significant resource for court reporting; particularly in the criminal courts is to have access on the smart-phone to the [Judicial College’s fifth edition of the guide to reporting restrictions in the criminal courts of England and Wales](#).

The Crown Prosecution Service (operating in England and Wales) operates a 'Media protocol' to ensure greater openness in the reporting of criminal proceedings. This is an agreed policy between the CPS, the police and media representatives to improve the representation of evidence and trial content both during and after newsworthy criminal proceedings have taken place- usually in the Crown Court. The main advantage for the media of the [joint protocol](#) for working together is that CPS officials and centres have experience and understanding of the needs of the media in a democratic society and professional media have access to prosecution materials.

There are four key principles involved in this arrangement:

1. 'The aim of the CPS is to ensure that the principle of open justice is maintained - that justice is done and seen to be done - while at the same time balancing the rights of defendants to a fair trial with any likely consequences for victims or their families and witnesses occasioned by the release of prosecution material to the media.
2. Prosecution material which has been relied upon by the Crown in court and which *should* normally be released to the media, includes:
 - Maps/photographs (including custody photos of defendants)/diagrams and other documents produced in court;
 - Videos showing scenes of crime as recorded by police after the event;
 - Videos of property seized (e.g. weapons, clothing as shown to jury in court, drug hauls or stolen goods);
 - Sections of transcripts of interviews/statements as read out (and therefore reportable, subject to any orders) in court;
 - Videos or photographs showing reconstructions of the crime;
 - CCTV footage of the defendant, subject to any copyright issues.
3. Prosecution material which may be released after consideration by the Crown Prosecution Service in consultation with the police and relevant victims, witnesses and family members includes:
 - CCTV footage or photographs showing the defendant and victim, or the victim alone, that has been viewed by jury and public in court, subject to any copyright issues;
 - Video and audio tapes of police interviews with defendants, victims and witnesses;
 - Victim and witness statements.
4. Where a guilty plea is accepted and the case does not proceed to trial, then all the foregoing principles apply. But to ensure that only material informing the decision of the court is published, material released to the media must reflect the prosecution case and must have been read out, or shown in open court, or placed before the sentencing judge.'

It can certainly be argued that this protocol serves to enhance the nature of court reporting; particularly in serious and high public interest cases.

Accessing the courts in England and Wales

The [UK Supreme Court](#) in Parliament Square at (the highest court in the land which decides often very high profile cases) broadcasts its hearings online with [streaming them from its website](#). The Supreme Court also [provides useful information background on its current appeals](#). Furthermore, the court maintains an [impressive archive of appeal hearings and judgments](#).

This is also the case with the Appeal Court, Civil Division from the Royal Courts of Justice on YouTube via the website <https://www.judiciary.uk/you-and-the-judiciary/going-to-court/court-of-appeal-home/the-court-of-appeal-civil-division-live-streaming-of-court-hearings/>

Journalists have access to an impressive national resource of court lists by registering on <https://www.courtserve.net> Courtserve explains: 'We receive and process over 3,000 lists from the Crown and Magistrates' Courts every week. We also distribute over 1,800 lists every week from the Royal Courts of Justice, the Rolls Building, the County Courts (civil & family) and all Employment Tribunals.' This is an invaluable resource for finding out about court hearings in London and at all regional Crown Court, Magistrate, County Court, and High Court centres across the country.

During the COVID lockdown, HMCTS developed an infrastructure of giving access to journalists so they could apply to join court hearings at the High Court in London remotely by applying via an email address provided in the court listings provided by Courtserve.

This option has been subsequently continued for accredited professional journalists to improve their access to some Crown Court hearings and improve the potential for reporting coverage.

The special arrangements were [first published in March 2020 and later updated in November of that year](#).

HMCT service explained:

'Where accredited journalists wish to report on proceedings remotely then they should put in a request to the relevant court as set out above. There have been some early [examples where courts have enabled the media to have remote telephone and video access to hearings](#).

UK Media Law Pocketbook 2nd edition (2022) provides for resources and guidance in the printed book Chapter 2 'Guide to Court Reporting- Key Facts and Checklist pages 69-94, and Chapter 1 'Media Contempt and Reporting Crime pages 3-68. Please also reference the companion website resources at:

[Chapter 1 – Media contempt and reporting crime](#)

[Chapter 2 – Guide to Court Reporting- Key facts and check-list](#) and the online [Chapter 17 Reporting the Family Courts](#)

McNae's Essential Law for Journalists 26th Edition (2022) provides several detailed chapters on court reporting and restrictions. These include Chapter 7 and 8 on reporting summary and most serious cases from magistrates courts, pages 84-108, Chapter 9 'Crown courts and appeal courts' pages 109-121, Chapter 10 'Juveniles in court proceedings', pages 123-140, Chapter 11 'Anonymity for victims and alleged victims of sexual offences, human trafficking, female genital mutilation and forced marriage offences', pages 142-160, Chapter 12 'Court reporting, other restrictions', pages 162-182, Chapter 13 'Civil courts and reporting restrictions', pages 184-192. Chapter 14 'Family courts and restrictions', pages 194-202, Chapter 15 'Open Justice and access to court information', pages 204-243, Chapter 16 'Challenging the courts', pages 245-281, Chapter 18 'Tribunals and public inquiries' pages 296-303, and Chapter 19 'Contempt of court', pages 305-331.

McNae's Essential Law for Journalists 25th Edition (2022) provides several detailed chapters on court reporting and restrictions. These include Chapter 7 and 8 on reporting summary and most serious cases from magistrates courts, pages 77-98, Chapter 9 'Crown courts and appeal courts' pages 99-110, Chapter 10 'Juveniles in court proceedings', pages 111-127, Chapter 11 'Anonymity for victims and alleged victims of sexual offences, human trafficking, female genital mutilation and forced marriage offences', pages 128-146, Chapter 12 'Court reporting, other restrictions', pages 146-163, Chapter 13 'Civil courts and reporting restrictions', pages 164-172. Chapter 14 'Family courts and restrictions', pages 173-181, Chapter 15 'Open Justice and access to court information', pages 182-211, Chapter 16 'Challenging the courts', pages 212-242, Chapter 18 'Tribunals and public inquiries' pages 255-260, and Chapter 19 'Contempt of court', pages 261-283.

Introduction and development of live televising of Crown Court sentencing in England and Wales- One year on after allowing broadcasting of sentencing in the Crown Court.

Pages 39 to 42 of Chapter 1 of the printed book *UK Media Law Pocketbook 2nd Edition* 2022 has a section on broadcasting and online coverage of the courts and following the inauguration of televising sentencing in the Crown Court for the first time at the Old Bailey 28th July 2022, the practice has been gathering what might be described as 'gradual momentum.'

Photography and filming in criminal courts was outlawed by legislation in section 21 of the Criminal Justice Act 1925. Before then press photographers would surreptitiously take pictures using hidden cameras. Judges, lawyers and court staff usually knew when they were taken because the press would simulate an outbreak of false coughing to mask the sound of camera shutter clicking.

Consequently, we have rare historical images of defendants in court below, which have not been permitted in the current developing of courtroom televising in the English and Welsh legal system.



Evelina Haverfield and Emmeline Pankhurst seated in the dock at Bow Street Magistrates' Court 1909.
[LSE Library, No restrictions, via Wikimedia Commons](#)



Dr. Hawley Harvey Crippen and Ethel Le Neve appearing at Bow Street Magistrates in 1910 on remand for the murder of Dr. Crippen's wife after their extradition from Newfoundland, Canada. Image Library of Congress.



Very rare photograph of Dr. Hawley Harvey Crippen in the dock of the Number One Court at the Central Criminal Court in 1910. The photographer would have had to have been in the well of the court standing on the far end of the benches to the left of the dock.

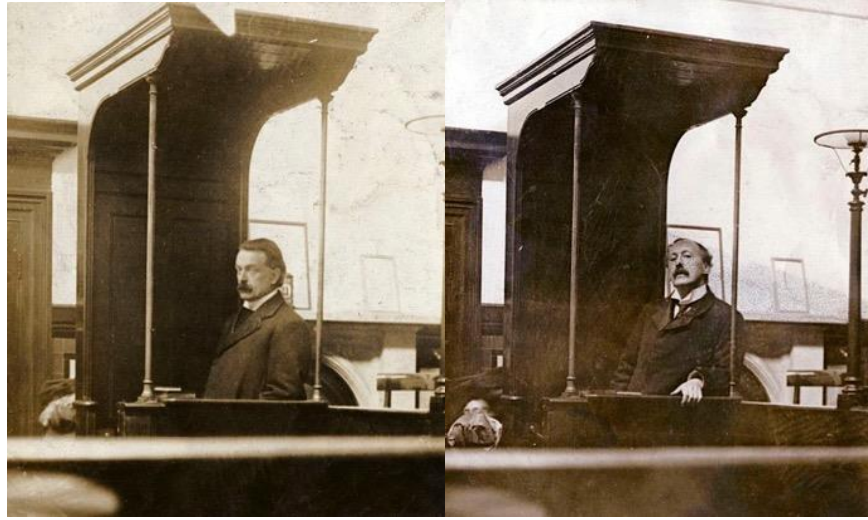


It is highly unlikely that a picture of a children's court such as this would ever be permitted by any legal jurisdiction. This very rare image was taken in the USA in 1902. The small child, presumably accused of some kind of criminal offence, is surrounded by lawyers and officials and being 'dealt with' by a judge sitting on the court bench. The accused child is so small the judge can only barely see the top half of his face. He seems to be holding a rolled up mat and other belongings under his arm.

[George Grantham Bain Collection US Library of Congress and public domain.](#)

These very rare images of high profile witnesses during a criminal trial are again unlikely at present to be permitted in the current development of televising of Crown Court criminal proceedings in England and Wales.

They were taken during a trial of suffragettes at Bow Street Magistrates in 1908 and have been archived by the London School of Economics.



A sensational high profile trial of Suffragettes at Bow Street Magistrates Court in 1908 involved the calling of evidence from the [Chancellor of the Exchequer David Lloyd George](#) (left). The future Prime Minister was the target of 'direct action' including the bombing of his weekend home in 1913. [Home Secretary Herbert Gladstone](#) (right) who was the son of previous Liberal Party Prime Minister William Ewart Gladstone.
London School of Economics Library. Public Domain.



Frederick and Emmeline Pethick Lawrence, Emmeline Pankhurst and (Mabel Tuke) at Bow Street Magistrates in 1912.
[London School of Economics Library. Public Domain.](#)

The head of law at ITV news, John Battle, who is also chair of the UK Media Lawyers' Association, has been given credit for successfully leading the campaign for this development over many years. The guidance on who can and how to apply to televise sentencing is set out at: <https://www.gov.uk/guidance/broadcasting-crown-court-sentencing>

Authorised media organisations approved for broadcasting the sentencing are the BBC, ITN, Sky and PA Media. Any one of them needs to apply to the trial judge 5 days in advance of the sentencing hearing. No one else can film, broadcast or take photos of any hearing at any time. These 'authorised media' can make their footage, including photographic stills from the filming available to other media publishers.

The judge makes a provisional decision at least 2 days before the hearing, and a final decision on the day of the hearing and all this decision making happens outside the courtroom. The prosecution, defence, victim or his/her relatives cannot make representations and there is no right of appeal against the judge's decision. The sentencing judge decides whether sentencing can be broadcast live or not and will take into account any reporting restrictions that are in place.

If reporting restrictions do cover some of the content of a sentencing, 'there will be a short delay before broadcast to comply with reporting restrictions' and it is recognised 'authorised media may need to edit footage before it's broadcast.' The copyright in the footage is retained by The Ministry of Justice, but the MOJ is not responsible for maintaining and transmitting the recordings on media platforms such as YouTube.

Key rules that have to be complied with:

1. Only the judge and their sentencing remarks can be filmed. Authorised media cannot film any other court user – including defendants, victims, witnesses, jurors and court staff.
2. Apart from those authorised media organisations identified (BBC, ITN, Sky and PA Media) and approved of by the Lord Chancellor 'No one else can film, broadcast or take photos of any hearing at any time.'

How HMCTS and the Ministry of Justice explained this historic development for the Crown Court System in England and Wales. 'Broadcasting from the Crown Court' See:

<https://insidehmcts.blog.gov.uk/2022/08/19/broadcasting-from-the-crown-court/>

Sky's hosting platform of Crown Court Sentencing. See:

<https://www.youtube.com/channel/UCF3HqeLrCkZgARQfyqj1m-g>

Note to student/trainee journalists. Watching these sentencing recordings offers a good opportunity to practice your shorthand or alternative method note-taking in real-time and then to check accuracy and news/journalistic relevance. You could also set yourself a time deadline of writing up your reports as further practice.

Examples of televised sentencing since July 2022 (Click on the YouTube link beneath the screenshot of sentencing judge/ruling judge):-

Man jailed for life in first TV court sentencing 28th July 2022 From the number One Court of the Central Criminal Court.



<https://youtu.be/pUxrgS2hNpQ>

Woman jailed for 34 years for murdering and decapitating friend 28th October 2022 at the Central Criminal Court, London otherwise known as the Old Bailey.



<https://youtu.be/AptXLIsHI6M>

Mother and boyfriend jailed for life over killing of teenage son 7th November 2022 at Leeds Combined Court Centre.



<https://youtu.be/wcmEt-4VIVM>

Reservoir Dogs attacker gets further 15 years for murdering partner 22nd November 2022 at Bristol Crown Court.



<https://youtu.be/qoGkqbN6vwE>

Necrophiliac killer gets further four years for abusing dead women. 9th December 2022 at the Central Criminal Court, London also known as the Old Bailey.



<https://youtu.be/luhHDtjhiXs>

Judge sentences Anne Sacoolas over Harry Dunn death. 9th December 2022 at the Central Criminal Court, London, also known as the Old Bailey.



https://www.youtube.com/live/7ju_3B-ezxQ?feature=share

Serial offender gets 38 year minimum jail term for brutal murder of Zara Aleena 9 Dec 2022 Central Criminal Court.



<https://youtu.be/dLRccBxEwAg>

Double jeopardy killer gets 25 years for 1975 rape and murder of teenage victim. 13th January 2023 at Huntingdon Law Courts.



<https://youtu.be/gWI2BNI7dcc>

Appeal Court- Criminal Division Sentence increased for rickshaw death crash driver. 25th January 2023.



<https://youtu.be/Mg5mYmwZV9Q>

Pair jailed for 35 years for £4.6m murder and fraud plot. 1st February 2023, Central Criminal Court.



https://youtu.be/ZCjdiDkxU_A

Serial rapist and ex-Met officer David Carrick jailed for at least 30 years 14 Feb 2023 Southwark Crown Court.



<https://youtu.be/p7l0qB6GIX0>

Son gets life sentence for fatal attack on mother 14 Feb 2023 Central Criminal Court



<https://youtu.be/yz3gFjAVkT0>

Embassy spy who sold secrets to Russians jailed for more than 13 years 17 Feb 2023 Central Criminal Court.



<https://youtu.be/rF257M5to-I>

Parents jailed for manslaughter after disabled teen's death, 2nd March 2023 Old Crown Court.



<https://youtu.be/diY8GdkhTXI>

Wayne Couzens gets 19 months for indecent exposure in months before Sarah Everard killing, 6th March 2023 at the Central Criminal Court.



<https://youtu.be/NKSau-dAGt8>

Woman, 22, jailed for eight-and-a-half years for false abuse and grooming gang claims, 14th March 2023, Preston Combined Court Centre.



<https://youtu.be/2XhQjsJCSqc>

14-year minimum term for bed mix-up murderer. 1st April 2023 CANOLFAN CYFIAWNDER TROSEDDOL CAERNARFON CRIMINAL JUSTICE CENTRE



<https://youtu.be/4XrloYOeB4U>

Gunman who shot dead Olivia Pratt-Korbel, 9, jailed for at least 42 years. 4 Apr 2023 MANCHESTER CROWN COURT (CROWN SQUARE)



<https://youtu.be/JbnBBhEhgzo>

Mum and stepdad jailed over fatal attack on two-year-old daughter. Mr Justice Griffiths at Swansea Crown Court 26th April 2023.



<https://youtu.be/lrP92GRddHg>

Nigerian politician, wife and medic jailed over organ harvesting plot. Mr Justice Johnson 9th May 2023 at the Central Criminal Court.



<https://youtu.be/pD-Xg6YNZ4w>

Knifeman, 17, detained for murder of 'defenceless' 14-year-old. First televised sentencing of a serious juvenile offender in the adult courts where anonymity reporting restrictions have been lifted. Judge Sarah Munro KC 10th May 2023 at the Central Criminal Court.



https://youtu.be/FsFVyp_Its

Teenagers get life for killing boy, 16, in mistaken identity attack. Judge Sarah Munro KC at the Central Criminal Court again on the same day (10th May 2023) at the Central Criminal Court.



https://youtu.be/_ga9uUkATVc

Double killer gets third life sentence for sexually abusing boy. The Recorder of Nottingham, Judge Nirmal Shant KC at Nottingham Crown Court 11 May 2023.



https://youtu.be/fdc5MP_Sfz4

Killer of Nikki Allan, 7, jailed for at least 29 years three decades on. Mrs Justice Lambert at Newcastle Quayside Law Courts 24 May 2023.



<https://youtu.be/NiFeXMw8YCE>

Parents jailed for life over murder of 10-month-old Finley Boden. Mrs Justice Tipples at Derby Combined Court Centre 27 May 2023.



<https://youtu.be/DyOeq2YyPQE>

Mother and partner jailed for toddler's violent death. A mother and her partner were jailed over the death of her 15-month-old son, who was shaken and beaten to death. 28 May 2023 Central Criminal Court before Mr Justice Sweeting.



<https://youtu.be/mj1fJZ7N4Rs>

Life sentence for teen terrorist who plotted attack on police and soldiers. The Recorder of London, Judge Mark Lucraft KC at the Central Criminal Court 2nd June 2023.



<https://youtu.be/DSR6vsLB4xM>

Killer, 15, gets 12-year minimum term for knife murder. 15 Jun 2023 Newcastle Quayside Law Courts before Mr Justice Martin Spencer.



<https://youtu.be/hTqWZ48AAGk>

Musician jailed for 15 years for killing student in “Mafia stiletto” stabbing. The Recorder of Manchester, Judge Nicholas Dean KC at Manchester Crown Court 19th June 2023.



https://youtu.be/D_HoNNI8ObA

Government’s Rwanda asylum plan is unlawful, Court of Appeal rules. 29 June Royal Courts of Justice.



<https://youtu.be/47pMIRkkztw>

Gunman who killed Elle Edwards in Christmas Eve pub shooting jailed for at least 48 years. Mr Justice Goose 8 Jul 2023 at Liverpool Crown Court.



https://youtu.be/EGx_Z8mtur0

People smuggler jailed for more than 12 years over Essex lorry deaths. Mr Justice Garnham 14 Jul 2023 at the Central Criminal Court.



<https://youtu.be/16hoiUOBqnI>

Teenagers sentenced to total of 34 years for mistaken identity knife murder. Mr Justice Choudhury at Wolverhampton Crown Court 14 Jul 2023.



<https://youtu.be/YUwDDHhOMMo>

Whole life term for killer who shot police officer Matt Ratana. Mr Justice Johnson at Northampton Combined Crown and County Courts. 27 July 2023.



<https://youtu.be/5QuNbQZIAps>

Rape conviction quashed for man who spent 17 years in jail. 28th July 2023 at the Royal Courts of Justice London.



<https://youtu.be/0ICRwDv8scs>

Operators fined £14m over Croydon tram disaster failings. Mr Justice Fraser at the Central Criminal Court, 28th July 2023.



<https://youtu.be/01UFllat9N4>

Stepfather and mother jailed over brutal death of baby Jacob Crouch. Mr Justice Kerr at Derby Combined Court Centre 4th August 2023.



<https://youtu.be/SqZXzxxQRf8?si=X6wI48o8wr-7KnG6>

Killer nurse Lucy Letby gets 14 whole-life sentences. Mr Justice Goss at Manchester Crown Court 21st August 2023.



https://youtu.be/BQZa8erLTtE?si=zcVWRr_WSkYufgTM

Court of Appeal (Criminal Division) in July 2022 when the Lord Chief Justice of England and Wales presented judgement in linked appeals concerning the issue of 'whole life terms.'



<https://youtu.be/AqNywGhQscI>

Expense fraud MP Jared O'Mara loses bid to appeal jail term. Royal Courts of Justice, Court of Appeal: Criminal Division 27 Sept 2023.



https://youtu.be/8RDSclLwxBI?si=erfteh4E_82Kx-Uj

Dame Sue Carr sworn in as first Lady Chief Justice of England and Wales at the Royal Courts of Justice 2nd October 2023.



<https://youtu.be/A508Anhgyes?si=hcbZIIhEG1c7QTWw>

Windsor Castle intruder gets nine years' custody for plot to kill the Queen. Mr Justice Hilliard at the Central Criminal Court 6th October 2023



<https://youtu.be/2dDou1UqKJM?si=OFOBtU3ftys89K5M>

What is the current law in respect of broadcasting the courts in England and Wales?

The new edition of the Judicial College Guidelines on reporting restrictions in the Crown Court (2022) sets this out under section 5(7) at pages 45 and 46:-

Live-streaming, broadcast and electronic transmission of court proceedings

The statutory prohibitions on the recording and transmission of court proceedings do not apply to the transmission of video and audio of court hearings into a second courtroom, or to another location in England and Wales which is designated as an extension of the court.

Not infrequently in criminal proceedings which attract a high level of public and press interest a second courtroom will be made available to permit a greater number of people to follow the proceedings in this way.

Until 2022, however, the general rule was that the statutory prohibitions on taking and publishing photographic images and sound recordings of court proceedings meant that courts had no power to allow their proceedings to be electronically transmitted to the general public. Any exception to this general prohibition requires further legislation. There are four exceptions where Parliament has intervened to permit the live-streaming or electronic transmission of court proceedings.

- First, s.47 Constitutional Reform Act 2005 creates an exception to the general rule for proceedings in the Supreme Court, which are broadcast online on the Supreme Court Live service.²⁰⁹
- Secondly, the Crime and Courts Act 2013 s.32 empowers the Lord Chancellor to make regulations disapplying the prohibitions on making sound recordings and photographic images, thereby permitting the live-streaming of court proceedings. To date, orders have been made permitting the live-streaming of:
 - Public hearings before the full court of the Court of Appeal.
 - Sentencing remarks of certain specified judges in the Crown Court, with the permission of the relevant judge.
- Thirdly, the Coronavirus Act 2020 made temporary amendments to the Courts Act 2003, in light of the impact of the coronavirus pandemic, to enable certain criminal proceedings to be conducted by means of video or audio link and to permit the 'broadcast' of criminal proceedings conducted wholly by means of video or audio, for the purpose of enabling members of the public to see and hear the proceedings. As this power was limited to proceedings conducted 'wholly' by video or audio link, it follows that it did not confer power to permit live-streaming of criminal court proceedings which took place in person, or partly in person. This power did not allow a court conducting a fully remote hearing to permit a TV production company to record and then re-broadcast the proceedings.²¹⁴
- Fourthly, the Police, Crime, Sentencing and Courts Act 2022 replaces the temporary powers under the Coronavirus Act with permanent amendments to the CJA 1925, CCA 1981 and the Courts Act 2003. These allow the Lord Chancellor to empower the Court to direct the electronic transmission of images or sounds of proceedings of all kinds for the purpose of enabling persons not taking part in the proceedings to watch or listen to them, though onward recording and broadcasting is prohibited.

There is now an extensive infrastructure of televised broadcasting of Appeal Court Civil Division cases from the Royal Courts of Justice with streaming on YouTube though permission is not given for the material to be broadcast and re-used by the media:

[Court of Appeal - Civil Division - Court 63](#)

[Court of Appeal - Civil Division - Court 70](#)

[Court of Appeal - Civil Division - Court 71](#)

[Court of Appeal Civil Division - Court 73](#)

[Court of Appeal - Civil Division - Court 74](#)

[Court of Appeal - Civil Division - Court 75](#)

[Court of Appeal - Civil Division - Court 76](#)

On 28th July 2023 ITN's head of legal and compliance John Battle wrote an article for Press Gazette on how the success of filming in UK courtrooms is restoring trust in justice: 'Cameras in courts one year on: An unqualified success.'

See: <https://pressgazette.co.uk/comment-analysis/cameras-in-courts-one-year-on-an-unqualified-success/>

Two judges whose sentencing has featured in live televised hearings in the past year, His Honour Judge Mark Lucraft, the Recorder of London, and Mrs Justice Cheema Grubb, have offered their views on the project in a Ministry of Justice media release: 'One year of broadcasting of sentencing remarks in the Crown Court.'

See: <https://www.judiciary.uk/one-year-of-broadcasting-of-sentencing-remarks-in-the-crown-court/>

Legal journalist Joshua Rozenberg KC has also written an excellent analysis and review of one year of televising the sentencing in English courts for *Law Society Gazette*: '[Letting the public see how the public law works.](#)' (pages 12 to 13)



HHJ Lucraft speaks about the anniversary of live broadcast of sentencing remarks

<https://youtu.be/uoB4TUDFhQA>



Mrs Justice Cheema-Grubb - One Year of Broadcasting Sentencing Remarks Anniversary

<https://youtu.be/6fy7PCnuaMs>

The outgoing Lord Chief Justice of England and Wales Lord Burnett expressed his views on Open Justice and televising the courts in a speech to the Commonwealth Magistrates' and Judges' Association in Cardiff in September 2023.

He said: "The question when considering the live-streaming or broadcasting of additional types of case or parts of cases, in my view, should be: why not?"

He supported the common law tradition of Open Justice in identifying judges and parties and resisting anonymization which is the practice in civil and Roman law jurisdictions.

He observed the European Court of Human Rights had not named the duty judge who temporarily prevented the UK from sending asylum-seekers to Rwanda last summer — "something that is alien to the common law tradition."

See: London Evening Standard 12th September 2023 '[Strong argument to go further with cameras in courts, says Lord Chief Justice. Lord Burnett said the broadcasting of sentencing in some criminal cases had been 'successful beyond our expectations'.](#)

Also reported in Standard's sister [online national publication The Independent](#).

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Is there a shift in the Open Justice paradigm towards more reporting restrictions in relation to adult witnesses, victims/complainants as witnesses (beyond the category of statutorily protected sexual offence complainants) and by default deceased victims related to the witnesses?

The question raises a debate that may or may not be taken up by professional journalist organisations, media publishers and their media lawyers.

A number of cases indicate that Section 46 of the Youth Justice and Criminal Evidence Act 1999 is becoming the agency for more restrictions than were issued in the past.

An example is present in the unsuccessful challenge by the Pembrokeshire Herald and BBC in respect of the trial of a teacher whose defence succeeded with evidence provided to the jury by his professional colleagues.

See: [Pembrokeshire Herald, Re \(leave to appeal\) \(Rev1\) \[2021\] EWCA Crim 1165 \(27 July 2021\)](#)



Neutral Citation Number: [2021] EWCA Crim 1165

Case No: 202101701 B5

IN THE COURT OF APPEAL (CRIMINAL DIVISION)
ON APPEAL FROM THE CROWN COURT AT SWANSEA
HHJ Catherine Richards
T20200229

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/07/2021

Before :

LORD JUSTICE WARBY
MRS JUSTICE CHEEMA-GRUBB
and
MR JUSTICE MURRAY

Regina
- v -
James Oulton

In the matter of an application by the Pembrokeshire Herald for leave to
appeal under s 159 Criminal Justice Act 1988

The Herald argued the Section 46 order giving these adult witnesses anonymity for life was exceptional ‘as it would in effect prohibit significant reporting of the defence case.’ The problem for the newspaper is that procedurally it had appealed against the reporting restriction after the time allowed to do so.

However, Lord Justice Warby made pertinent observations about the merits of their case: ‘Decisions about reporting restrictions are evaluative in nature, involving a balancing exercise akin to the exercise of a discretion; although the fact that Convention rights are engaged means that review of the decision under challenge must be intense, the appellate court will be slow to interfere...’

The Appeal Court supported the trial judge’s approach to the issues:

‘Her rulings make plain that she had gained a detailed and intimate knowledge and understanding not only of the evidence, but also of many of the personalities involved, the procedural and other dynamics of the case, and the social and cultural context in which it was being heard. We do not agree that she substituted her own judgment for that of the editor, in deciding what deserved to be published. She took a judicial decision about what reporting it was necessary in the interests of justice to prevent. On our reading of her rulings, the Judge was very much alive both in April and in May to the specific rights in play, and brought the necessary intense focus to bear upon them. She was much better placed than this Court, and – with respect – better placed than the Herald, to evaluate the evidence and to assess the appropriate weight to attach to the competing considerations.’

It might also be relevant to cite the unsuccessful challenge by media organisations of a Section 46 order in 2013 which prevented publication of images of an adult witness and those of her children in a manslaughter trial.

This was the case of [ITN News & Ors v R. \[2013\] EWCA Crim 773 \(21 May 2013\)](#)

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England and Wales Court of Appeal (Criminal Division) Decisions

You are here: [BAILII](#) >> [Databases](#) >> [England and Wales Court of Appeal \(Criminal Division\) Decisions](#) >> [ITN News & Ors v R. \[2013\] EWCA Crim 773 \(21 May 2013\)](#)
URL: <http://www.bailii.org/eng/australia/ewca/crim/2013/773.html>
Cite as: [2013] WLR(D) 187; [2014] 1 WLR 199; [2013] EWCA Crim 773; [2013] EMLR 22; [2013] 2 Cr App R 22; [2014] Crim LR 375; [2014] WLR 199

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Neutral Citation Number: [2013] EWCA Crim 773
Case No: 20130193981

IN THE COURT OF APPEAL CRIMINAL
DIVISION ON APPEAL FROM NOTTINGHAM CROWN COURT
MRS JUSTICE THIRLWALL

Royal Courts of Justice
Strand, London, WC2A 9LL
21/05/2013

Before:
THE LORD CHIEF JUSTICE OF ENGLAND AND WALES
MR JUSTICE ROYCE
MR JUSTICE GLOBE

Between:
ITN News and Others
- and -
R

Appellants

Defendant

Ms H Rogers QC and Mr C McCarthy for the Appellants Mr D Farrer QC and Mr J House for the Crown
Miss G Irving QC for the Intervener on behalf of Lisa Willis, the Mother Mr Ian Wise QC for Derby City Council (Intervener on behalf of the Children)

Hearing dates: 1st May 2013

The Court of Appeal Criminal Division, and Lord Chief Justice at the time upheld the trial judge's decision to issue the order:

'(1) no photograph, pseudo photograph or other image of

(a) Lisa Willis

(b) Her children or any of them (with or without Lisa Willis)

Shall be published in any way which connects them or any of them (whether through reports of these proceedings or otherwise howsoever) to the case of R v Michael Philpott, Mairead Philpott and Paul Mosley.'

The media argument was that the witness had previously appeared in ITV programmes with her children. But the witness said she wanted the protection in relation to media publicity in the different context of being the witness in a traumatic criminal trial. The media could still identify her by name.

The Lord Chief Justice observed:

'...the criminal courts must control their own processes, and the fact that the family court may protect the identity of the children, is not sufficient on its own to deprive the Crown Court of the jurisdiction under s.46. The eligibility conditions may be established as here, where publication of the photographs of her children would be likely to lead to the identification of the mother, and the risks would be likely to impact on the quality of the mother's evidence at trial. As Mr David Farrer QC for the Crown observed, the order offered "reassurance to a witness to preserve the integrity of his or her evidence". In our view reference in the order to the children was integral to the eligibility test as it applied to their mother.'

The new Judicial College Guide to Reporting Restrictions in the Criminal Courts 2022 rather pointedly takes up the implication of the Court of Appeal Ruling in the Pembrokeshire Herald case and others at paragraph 6.2.

'However, most decisions in relation to reporting restrictions – including decisions as to anonymity, and in relation to the publication of judgments – are evaluative decisions, involving a balancing exercise, which are akin to the exercise of a discretion. When considering an appeal against such a decision, the appellate court will be slow to interfere.'

Does this amount to discouraging appeals by media organisations under Section 159 of the Criminal Justice Act 1988?

The Judicial College Guide explains the ambit of Section 46 orders at paragraph 4.3 on page 26. Some of the key and relevant factors that may be inviting an increase in the application and imposition of such orders are underlined:

'Section 46 YJCEA 1999 gives the court power to restrict reporting about certain adult witnesses (other than the accused) in criminal proceedings on the application of any party to those proceedings.

The witness protected by the order may be the complainant or any other witness.

The Court may make a reporting direction that no matter relating to the witness shall during his/her lifetime be included in a publication if it is likely to lead members of the public to identify him/her as being a witness in the proceedings. Again, publication of the name, address, educational establishment, workplace or a still or moving picture of the witness is not of itself an offence, unless its inclusion is likely to lead to his/her identification by the public as a witness in the criminal proceedings.

A s.46 order may also restrict the identification of children where it would lead to the identification of the adult in question.

An adult witness is eligible for protection if the quality of his/her evidence or his/her co-operation with the preparation of the case is likely to be diminished by reason of fear or distress in connection with identification by the public as a witness. The applicant for an order under s.46 must explain why a reporting direction would improve the quality of the witness' evidence or level of cooperation.

Quality of evidence relates to its quality in terms of completeness, coherence and accuracy. Factors which the court must take into consideration include the nature and circumstances of the offence, the age of the witness, any behaviour towards the witness by the defendant or his/her family or associates and the views of the witness.'

Section 46 YJCEA 1999 restrictions have provided anonymity for the adult victim in a causing GBH by dangerous driving trial, and adult witnesses and child victims in the murder/attempted murder trial of nurse Lucy Letby which is analysed in detail in a further briefing.

The balancing exercise being determined is between the interests of administering justice and the open justice of reporting proceedings fairly and accurately. It may well be the case that the evaluative consensus on the balancing exercise of these rights when they are in conflict with each other is changing compared to what news organisations may have expected in the past.

The Judicial College 2022 guide at page 17 made the following observation about restrictions protecting children:

‘The welfare of the child must be given very great weight and it will rarely be the case that it is in the public interest to dispense with the reporting restrictions.’ It highlighted the view ‘It is wrong for the court to dispense with a child’s prima facie right to anonymity as an additional punishment, or by way of “naming and shaming.”’

The inclusion of the phrase ‘very great weight’, which I have underlined in the quotation, could have been the anticipation of a proposed and then abandoned Bill of Rights Bill which provided for a statutory ‘great weight’ standard for freedom of expression. There can be no doubt that the phrase ‘very great weight’ outweighs, to forgive the pun, ‘great weight.’

S (a child) 2004- Significant Judicial Committee of the House of Lords case law (equivalent of current UK Supreme Court) which gave precedence to open justice and freedom of expression when balanced with the interests of a child who was not party to the proceedings.

When writing about this case now, we are inevitably conscious it is 18 years old, but the ruling of Lord Steyn should be supportive of court reporting journalists and their publishers faced with reporting restrictions which prevent identification of defendants and their alleged victims.

HOUSE OF LORDS

SESSION 2003–04
[2004] UKHL 47

on appeal from [2003] EWCA Civ 963

OPINIONS
OF THE LORDS OF APPEAL
FOR JUDGMENT IN THE CAUSE

In re S (FC) (a child) (Appellant)

ON
THURSDAY 28 OCTOBER 2004

[S \(a child\), Re \[2004\] UKHL 47 \(28 October 2004\)](https://www.bailii.org/uk/cases/UKHL/2004/47.html)
<https://www.bailii.org/uk/cases/UKHL/2004/47.html>

This is a 19 page judgement given by Lord Steyn with four other Law Lords (Lord Bingham of Cornhill, Lord Nicholls of Birkenhead, Lord Hoffmann, and Lord Carswell) in agreement. The issue to be decided was whether a Family Division High Court Judge was right or wrong to refuse to injunct the media from identifying a mother charged with murdering her 9 year old son by poisoning on the grounds of the psychological harm that would be caused to the mother's younger son who was eight years old- referred to in the proceedings as 'CS'.

Could a restriction imposed on the media not to identify the alleged murder victim's younger brother mean that they should not be allowed to identify the mother, her husband, the alleged murder victim, their photographs, and other facts such as the home address of the family and school attended by the alleged murder victim? The implication of such restrictions is the concertina effect in closing down publication of other facts usually regarded as essential to the reporting of criminal trials.

It could also be described as an oppressive secret justice shadow doctrine where the best interests of peripheral individuals in a criminal trial are virtuously upheld to the detriment of the public interest in freedom of expression to receive and communicate accurate and fair reporting of court proceedings.

This was a clash between open justice Article 10 freedom of expression rights for the media and public, and Article 8 privacy rights for the alleged murder victim's younger brother.

This was also a test of the applicability of reporting restrictions in the criminal courts when imposed to protect the interests of children **who are not party to the proceedings.**

One Crown Court judge had imposed an order under Section 39 of the Children and Young Person's Act stating: 'prohibiting publication of information calculated to lead to the identification of the child [alleged murder victim's younger brother]. The judge stated that publication of the family's surname would be considered an act calculated to lead to such identification.'

Another Crown Court judge discharged the order after representations from a local newspaper, The Romford Recorder, stating 'section 39 was inapplicable to the case because the child was not a "child concerned in the proceedings, either as being the person by or against or in respect of whom the proceedings were taken, or as being a witness therein."

Section 39 orders under the CYPA 1933 have since been replaced with Section 45 orders under the Youth Justice and Criminal Evidence Act 1999.

Lord Steyn said: ' For present purposes section 45 is in material respects the same as the extant section 39(1): see section 45(3). As the words, which I have italicised, make clear section 39(1) is not engaged in the present case. My reason for referring to it is, however, the reflection that, in regard to children not concerned in a criminal trial, there

has been a legislative choice not to extend the right to restrain publicity to them. This is a factor which cannot be ignored.'

The Family Division High Court Judge, Mr Justice Hedley initially granted an application for an injunction sought by the guardian of 'CS', and this included preventing 'any person "publishing any particulars of or information relating to any part of the proceedings before any court which may or is calculated to lead to the identification of the said child"'.

Lord Steyn observed: 'The order was clearly designed to prohibit publication of the name of the mother and the deceased child in any report of the impending criminal trial. It is common ground that the order also prevented publication of any photographs of the mother or deceased child.'

The Romford Recorder applied for a modification of the order to prevent the potential censorship applying to any reporting of the mother's forthcoming criminal trial.

Mr Justice Hedley agreed and explained:

"First I recognise the primacy in a democratic society of the open reporting of public proceedings on grave criminal charges and the inevitable price that that involves in incursions on the privacy of individuals. Secondly, I recognise that Parliament has in a number of statutes qualified that right to report and, in the context of this case, most notably in section 39 of the 1933 Act; where a set of circumstances arise not covered by those provisions the court should in my judgment be slow to extend the incursion into the right of free speech by the use of the inherent jurisdiction. Thirdly, I have to recognise that not even the restrictions contended for here offer real hope to CS of proper isolation from the fallout of publicity at this trial; it is inevitable that those who know him will identify him and thus frustrate the purpose of the restriction. Lastly, I am simply not convinced that, when everything is drawn together and weighed, it can be said that grounds under article 10(2) of the ECHR have been made out in terms of the balance of the effective preservation of CS's article 8 rights against the right to publish under article 10. I should add, although it is not strictly necessary to do so, that I think I would have come to the same conclusion even had I been persuaded that this was a case where CS's welfare was indeed my paramount consideration under section 1(1) of the 1989 [Children] Act."

The case went to the Court of Appeal which decided by a majority of 2 to 1 to sustain Justice Hedley's ruling.

At the Judicial Committee of the House of Lords, counsel for the guardian of 'CS' submitted:

"the majority [at Court of Appeal] misapplied the principle of proportionality in a case of competing rights under the ECHR and in so doing exposed a vulnerable child to interference with his private and family rights. In outline her submissions were as follows. The child had a right to respect for his private and family life in that he was entitled to expect the state to provide, by way of his access to the court, protection against harmful publicity concerning his family. The child has a right to protection from publicity which

could damage his health and well-being and risk emotional and psychiatric harm. Recognising that the subject matter of the trial is a matter of public interest counsel for the child submitted that a proportionate response would be to permit only newspaper reports which do not refer to the family name or incorporate photographs of family members or the deceased. ‘

Lord Steyn explained the methodology in carrying out a balancing act when Article 10 and Article 8 rights under the European Convention of Human Rights come into conflict with one another (author has underlined and emboldened key points):

‘First, neither article has as such precedence over the other. Secondly, where the values under the two articles are in conflict, **an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary**. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, **the proportionality test must be applied to each**. For convenience **I will call this the ultimate balancing test**. This is how I will approach the present case.’

Here are some key paragraphs from Lord Steyn’s ruling that could be of assistance to journalists, their news publishers and counsel if needing to appeal or make applications to overturn or vary similar reporting restrictions.

Paragraph 18: ‘In oral argument it was accepted by both sides that the ordinary rule is that the press, as the watchdog of the public, may report everything that takes place in a criminal court. I would add that in European jurisprudence and in domestic practice this is a strong rule. It can only be displaced by unusual or exceptional circumstances. It is, however, not a mechanical rule. The duty of the court is to examine with care each application for a departure from the rule by reason of rights under article 8. ‘

Paragraph 25: ‘But it is necessary to measure the nature of the impact of the trial on the child. He will not be involved in the trial as a witness or otherwise. It will not be necessary to refer to him. No photograph of him will be published. There will be no reference to his private life or upbringing. Unavoidably, his mother must be tried for murder and that must be a deeply hurtful experience for the child. The impact upon him is, however, essentially indirect.’

Paragraph 27: ‘The interference with article 8 rights, however distressing for the child, is not of the same order when compared with cases of juveniles, who are directly involved in criminal trials. In saying this I have not overlooked the fact that the mother, the defendant in the criminal trial, has waived her right to a completely public trial, and supports the appeal of the child. In a case such as the present her stance can only be of limited weight.’

Paragraph 28: ‘Article 10 is also engaged. This case is concerned with the freedom of the press, subject to limited statutory restrictions, to report the proceedings at a criminal trial without restriction. It is necessary to assess the importance of this freedom. I start with a

general proposition. In *Reynolds v Times Newspapers Limited* [2001] 2 AC 127 Lord Nicholls of Birkenhead described the position as follows (200G-H):

“It is through the mass media that most people today obtain their information on political matters. Without freedom of expression by the media, freedom of expression would be a hollow concept. The interest of a democratic society in ensuring a free press weighs heavily in the balance in deciding whether any curtailment of this freedom bears a reasonable relationship to the purpose of the curtailment.”

These observations apply with equal force to the freedom of the press to report criminal trials in progress and after verdict.

Paragraph 29: ‘The importance of the freedom of the press to report criminal trials has often been emphasised in concrete terms. In *R v Legal Aid Board ex parte Kaim Todner (A firm)* [1999] QB 966, Lord Woolf MR explained (at 977):

“The need to be vigilant arises from the natural tendency for the general principle to be eroded and for exceptions to grow by accretion as the exceptions are applied by analogy to existing cases. This is the reason it is so important not to forget why proceedings are required to be subjected to the full glare of a public hearing. It is necessary because the public nature of the proceedings deters inappropriate behaviour on the part of the court. It also maintains the public’s confidence in the administration of justice. It enables the public to know that justice is being administered impartially. It can result in evidence becoming available which would not become available if the proceedings were conducted behind closed doors or with one or more of the parties’ or witnesses’ identity concealed. It makes uninformed and inaccurate comment about the proceedings less likely . . . Any interference with the public nature of court proceedings is therefore to be avoided unless justice requires it. However Parliament has recognised there are situations where interference is necessary.”

At paragraph 30, Lord Steyn said: ‘A criminal trial is a public event. The principle of open justice puts, as has often been said, the judge and all who participate in the trial under intense scrutiny. The glare of contemporaneous publicity ensures that trials are properly conducted. It is a valuable check on the criminal process. Moreover, the public interest may be as much involved in the circumstances of a remarkable acquittal as in a surprising conviction. Informed public debate is necessary about all such matters. Full contemporaneous reporting of criminal trials in progress promotes public confidence in the administration of justice. It promotes the values of the rule of law.’

Lord Steyn then set out the harmful consequences of granting the injunction in paragraphs 32 to 36:

‘32. There are a number of specific consequences of the grant of an injunction as asked for in this case to be considered. First, while counsel for the child wanted to confine a ruling to the grant of an injunction restraining publication to protect a child, that will not do. The jurisdiction under the ECHR could equally be invoked by an adult non-party faced

with possible damaging publicity as a result of a trial of a parent, child or spouse. Adult non-parties to a criminal trial must therefore be added to the prospective pool of applicants who could apply for such injunctions. This would confront newspapers with an ever wider spectrum of potentially costly proceedings and would seriously inhibit the freedom of the press to report criminal trials.

33. Secondly, if such an injunction were to be granted in this case, it cannot be assumed that relief will only be sought in future in respect of the name of a defendant and a photograph of the defendant and the victim. It is easy to visualise circumstances in which attempts will be made to enjoin publicity of, for example, the gruesome circumstances of a crime. The process of piling exception upon exception to the principle of open justice would be encouraged and would gain in momentum.

34. Thirdly, it 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.

35. Fourthly, it is true that newspapers can always contest an application for an injunction. Even for national newspapers that is, however, a costly matter which may involve proceedings at different judicial levels. Moreover, time constraints of an impending trial may not always permit such proceedings. Often it will be too late and the injunction will have had its negative effect on contemporary reporting.

36. Fifthly, it is easy to fall into the trap of considering the position from the point of view of national newspapers only. Local newspapers play a huge role. In the United Kingdom according to the website of The Newspaper Society there are 1301 regional and local newspapers which serve villages, towns and cities. Apparently, again according to the website of The Newspaper Society, over 85% of all British adults read a regional or local newspaper compared to 70% who read a national newspaper. Very often a sensational or serious criminal trial will be of great interest in the community where it took place. A regional or local newspaper is likely to give prominence to it. That happens every day up and down the country. For local newspapers, who do not have the financial resources of national newspapers, the spectre of being involved in costly legal proceedings is bound to have a chilling effect. If local newspapers are threatened with the prospect of an injunction such as is now under consideration it is likely that they will often be silenced. Prudently, the Romford Recorder, which has some 116,000 readers a week, chose not to contest these proceedings. The impact of such a new development on the regional and local press in the United Kingdom strongly militates against its adoption. If permitted, it would seriously impoverish public discussion of criminal justice.'

Journalists and their editors may justifiably argue that these are compelling arguments. Sadly, the situation for British journalism since 2004 has greatly

deteriorated. There are many less local newspapers in terms of the number published, their circulation and journalists working for them.

This is the result of ‘Big Tech’ harvesting the major proportion of what was their print advertising income, an exponential decline in printed newspaper readership as a social value and economic market, and the digitisation of communications without any equivalent sustaining model of economic viability for online news publishing.

Many journalists and editors would argue that the problem Lord Steyn described as ‘The process of piling exception upon exception to the principle of open justice’ has in fact occurred, is being ‘encouraged’ by higher court rulings and has ‘gained in momentum.’

There is also an argument that however costly it is for news organisations to challenge reporting restrictions recent court rulings actually discourage them from doing so.

Has public discussion of criminal justice been impoverished as well? Is there less court reporting now in local, regional and national media publications? Has informed debate about criminal justice suffered? These are now questions which beg urgent answers. Contemporary journalists and editors may argue that the answer to all three questions is in the affirmative.

Returning to Lord Steyn’s conclusion. He supported Mr Justice Hedley’s approach to ‘the ultimate balancing test’ at paragraph 37:

‘Given the weight traditionally given to the importance of open reporting of criminal proceedings it was in my view appropriate for him, in carrying out the balance required by the ECHR, to begin by acknowledging the force of the argument under article 10 before considering whether the right of the child under article 8 was sufficient to outweigh it.’

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House of Commons Justice Committee report ‘Open justice: court reporting in the digital age’ published 1st November 2022

Some of the rhetorical questions raised in the analysis of Lord Steyn’s ruling in *S (a child)*, *Re* [2004] UKHL 47 above have been addressed in this report by the House of Commons Justice Committee which received a range of submissions of evidence from qualitative and qualified sources.

The Committee’s report provided a wide range of recommendations set out across 45 paragraphs:-

Conclusions and recommendations



House of Commons
Justice Committee

Open justice: court reporting in the digital age

Fifth Report of Session 2022–23

Report, together with formal minutes relating to the report

Introduction

1. We would encourage every family court in England and Wales to invite their local MPs to visit so that they can hear accounts of the issues facing the family justice system from those who are responsible for delivering justice on a daily basis. (Paragraph 2)
2. The Lord Chancellor and the Lord Chief Justice should consider producing a White Paper that clarifies and publicises the right of the public to attend court hearings and access information on court proceedings in the digital age. (Paragraph 11)
3. Open justice is a common law principle, and it is for the courts to determine its requirements in particular cases. However, responsibility for deciding how the principle should operate should not be left to the courts alone. Deciding the proper limits of open justice can often give rise to significant policy questions that Government and Parliament can only tackle through legislation. (Paragraph 19)
4. The internet and social media are changing the way that the public access court proceedings, which is making the work of the courts more accessible; but this also presents dangers for the administration of justice. In the digital age, it is vital the Government, Parliament and the Judiciary work together to ensure that a balanced approach to open justice is achieved so that public scrutiny of justice can be secured without damaging the quality of the justice administered in the courts. (Paragraph 20)

Court reporting in the digital age

5. The well-documented decline in the news media's coverage of the courts, particularly the Magistrates' courts, is concerning. In acting as the eyes and ears of the public, the media perform a vital role in keeping the public informed on the operation of the justice system. (Paragraph 32)
6. The decline in court reporting has had a negative effect on open justice in England and Wales. (Paragraph 33)
7. As the public receives less information through the media on the work of the courts, HMCTS should do more to enable the courts to communicate information on court proceedings directly to the public. In addition, HMCTS needs to use technology

and organisational reform, building on the work done with Courtsdesk News, to provide the media with the information it needs in a consistent manner, as soon as possible, to facilitate court reporting. HMCTS should also pilot the use of regional communication and information officers to support media and public access to hearings. Furthermore, the decrease in the media's coverage of the courts also strengthens the case for the re-establishment of a courts' inspectorate, which could help to identify wider issues within the justice system, particularly in the Magistrates' courts and the Family Court, which are not well covered by the media. (Paragraph 33)

The barriers to open justice

8. The evidence from the Bureau of Investigative Journalism on its experience of attempting to access possession hearings presents a concerning picture of the practical reality of open justice in England and Wales. The legal and constitutional status of open justice is immaterial if journalists face the sort of hurdles experienced by the Bureau of Investigative Journalism. Those barriers have the potential to create a chilling effect for journalists and the public by discouraging them from exercising their right to attend hearings. Everyone working within the justice system, especially judges and court staff, has a role to play in translating the principle of open justice into reality. (Paragraph 39)
9. We welcome the publication of the Reporters' Charter, which for the first time sets out the rights and obligations of journalists reporting on court proceedings. We note, however, that the rights of access that flow from the principle of open justice are not exclusively for reporters—it is vital that members of the public are also aware of their right to attend proceedings and access information. (Paragraph 40)
10. HMCTS should publish a citizens' charter that outlines the public's rights to access information on the courts. (Paragraph 40)
11. The Reporters' Charter helpfully directs the media to the MOJ press office and the Judicial Press Office to deal with enquiries and issues on accessing court proceedings and information. There should be a single point of contact for all accessibility and open justice inquiries from the media and from the public. The Lord Chief Justice told us that, if a journalist encounters an issue accessing a court, he or she should "get in touch with their local court and ask why". In reality, at present there is no formal official mechanism for the media or the public to raise accessibility enquiries or complaints in relation to the courts. The creation of regional communication and information officers within HMCTS could provide that point of contact for reporters and the public. The courts' inspectorate, as we proposed in our report on court capacity, could have a specific remit to examine the operation of open justice. (Paragraph 41)
12. HMCTS should institute a programme of open days to encourage the public to visit their local courts, for example during Justice Week. This programme should be used to improve the awareness of both the public and HMCTS staff of the public's right to attend court proceedings. Furthermore, there should be a programme to encourage schools to organise visits to their local courts to improve public legal education. (Paragraph 42)

13. Every court should list an email address on its website to enable the media and the public to request access to remote hearings. (Paragraph 44)
14. Remote hearings are still a relatively new and innovative feature of the justice system in England and Wales. The evidence to our inquiry suggests that there is a problem with a lack of coherence and consistency in relation to the ability of the media and the public to access remote court hearings. (Paragraph 49)
15. We recommend that HMCTS gathers and publishes data on requests to observe proceedings remotely. In particular, it would be useful to know the number of requests received and the number of requests granted by jurisdiction. (Paragraph 49)
16. HMCTS should ensure that the Crown Court provides the same level of information to journalists on the outcome of cases as is currently provided by the Magistrates' court. (Paragraph 57)
17. We welcome the planned digitisation of the publication of court and tribunal lists and the consolidation into a single service in one location. (Paragraph 59)
18. We request further information on when this service will go live and what improvements are planned to the level of information on the lists and the accessibility of the service. We recommend that HMCTS considers whether the proposed digital portal should be expanded to include all court information, including results, reporting restrictions and court documents. (Paragraph 59)
19. The Committee would welcome an update on the work being undertaken by the Civil Procedure Rule Committee to improve access to documents in civil proceedings. (Paragraph 64)
20. The Government and HMCTS should establish a streamlined process for accessing court documents, including courts lists, using a digital portal modelled on Public Access to Court Electronic Records (PACER) in the United States. This should also be used to inform the media of reporting restrictions, including automatic restrictions and notice of applications for reporting restrictions. (Paragraph 72)
21. The Government and HMCTS should conduct, or ask the Law Commission to conduct, a comprehensive review on access to documents referred to in open court and propose legislation if necessary to clarify the position. (Paragraph 73)
22. Reporting restrictions play a key role in securing the fairness of the justice system. However, it is clear that there is inconsistency in the courts' approach to notifying the media when restrictions are in place, and they are often not effective at ensuring compliance, particularly on social media. This is an important example of where the modernisation of the infrastructure of open justice is long overdue (Paragraph 82)
23. The proposed new digital portal should also enable access to a centralised database of reporting restrictions on cases. (Paragraph 82)
24. The current situation on court transcripts is unsatisfactory. (Paragraph 87)
25. HMCTS should explore whether greater use of technology, such as AI-powered transcription, could be piloted to see whether it can be used to reduce the cost of producing court transcripts. HMCTS should also consider whether the sentencing remarks in the Magistrates' courts could be routinely recorded and transcribed on

- request. HMCTS should also review its existing contracts for transcription services to ensure that transcripts are more accessible to the media and the public. (Paragraph 87)
26. We welcome the establishment of the National Archives Find Case Law Service. However, this service should represent the first step in improving the public accessibility of judgments. (Paragraph 93)
 27. HMCTS should reform the way that judgments are collected, stored and published so that there is less reliance on commercial legal publishers. The judgments of courts are the product of a publicly funded justice system and the public, the media and the legal sector should not have to pay significant sums for access. (Paragraph 93)
 28. All Crown Court sentencing remarks should be published in audio and/or written form. HMCTS should ensure that the necessary resources are made available to enable sentencing remarks to be published. (Paragraph 97)
 29. We are concerned over whether the Ministry of Justice has allocated sufficient funding to ensure that the court reform programme can overcome some of the barriers to public and media access to information on courts. We ask the Government to provide a status update on any ongoing projects that are designed to enhance open justice, outlining how much funding has been allocated to deliver them and providing a date by which they will be completed. (Paragraph 98) Court reform and open justice
 30. We welcome the new legislative framework for remote observation of court proceedings. The combination of this framework and improvement of the technological facilities of courts has the potential to enhance open justice by making it easier for the public and the media to observe proceedings. (Paragraph 109)
 31. It is right that judges are in control of the decision as to whether to allow remote observation. In some cases, judges will find these decisions difficult to make. It is crucial therefore that the effect of this new framework is evaluated. The concerns raised by the Lord Chief Justice and the Senior President of Tribunals, in particular in relation to the impact on court resources and the potential for unauthorised transmissions, will need to be followed up by an evaluation of how this new framework is operating in practice. (Paragraph 110)
 32. HMCTS should commission an evaluation in June 2023 to examine how the new framework has worked in its first year of operation. (Paragraph 110)
 33. The power to allow the transmission of proceedings to designated livestreaming premises has great potential to enable more people to observe court proceedings and enhance open justice. If students were able to observe cases in classrooms and lecture halls, or if community centres could host livestreams of court proceedings, the accessibility of court proceedings would be greatly enhanced. (Paragraph 111)
 34. We welcome the broadcasting of Crown Court sentencing remarks. It is a positive step for both open justice and the public understanding of sentencing. (Paragraph 118)
 35. More widely, we recommend that HMCTS and the Judiciary commission research to determine which civil and criminal proceedings could be suitable for broadcast

and video archiving. In principle, we would support the extension of broadcasting and recording to civil trials that do not involve oral evidence. In the criminal context, the broadcast and recording of sentencing in Magistrates' courts could also be beneficial. However, we do not support the broadcasting of any elements of criminal trials other than the sentencing remarks of the judge. (Paragraph 119)

36. The changes to criminal procedure in the Judicial Review and Courts Act 2022 should be carefully monitored. After one year of their operation, the Ministry of Justice should initiate an evaluation of how the changes are operating in practice, including their impact on open justice. (Paragraph 125)
37. The potential effect of these changes on open justice might also be mitigated by ensuring that the relevant information that would have otherwise been said in open court is documented and published online in a timely fashion. (Paragraph 126)
38. We remain concerned by the Single Justice Procedure's lack of transparency. (Paragraph 130)
39. The Government should review the procedure and seek to enhance its transparency by ensuring that any information that would have been available had the cases been heard in open court is published in a timely fashion. (Paragraph 130)
40. The Government should clarify and strengthen the governance structures on open justice. The Senior Data Governance Panel should be formalised and its powers and remit should be defined and published. It is vital that the decisions made by the Panel are as transparent as possible. The positive work of the Media Working Group should be built upon and it should be empowered to make recommendations that are then considered and decided upon by the Senior Data Governance Panel. A separate court information user group should be established to represent the interests of groups other than the media, such as court observers, NGOs, researchers and law tech that can also make recommendations that are considered and decided upon by the Senior Data Governance Panel. (Paragraph 134)

The Family Court

41. We agree with the President of the Family Division that there should be a review of section 12 of the Administration of Justice Act 1960. In our view section 12 of the Act should be reviewed and reformed so that it can be replaced with a much more targeted measure that respects the principle of open justice. The Government should ask the Law Commission to produce a proposal for the reform of section 12 of the Administration of Justice Act 1960 that provides a better balance between transparency and confidentiality. (Paragraph 145)
42. In broad terms, we support the Transparency Review's principal recommendation that media representative and bloggers should be able to report, subject to the relevant restrictions, on the cases they observe in the Family Court. We would caution, however, that given the decline in the number of court reporters in recent years, it is unclear whether media outlets will necessarily dedicate greater resources to reporting on the family courts as a result of these changes. We look forward to seeing the results of the pilots. (Paragraph 152)

43. We welcome the commitment to produce more informative family court lists. The success of the proposed pilot will depend on journalists and bloggers being able to identify cases that will generate wider public interest. (Paragraph 153)
44. We welcome the Transparency Review's proposal to set a target of every judge publishing 10% of their judgments. If achieved, this would make a significant contribution to the transparency of the Family Court and to open justice. It is crucial that the public and the media are able to access a greater number of judgments from the Family Court. However, we share the concern raised by witnesses as to whether sufficient resources will be allocated to enable the proposed anonymisation unit to function as effectively as it needs to in order to ensure that a consistent and representative number of judgments are published and to minimise the number of anonymisation errors. (Paragraph 155)
45. His Majesty's Court and Tribunal Service should ensure that the requisite resources are provided to enable the establishment of an anonymisation unit that facilitates the publication of at least 10% of Family Court judgments without the risk of identification of the parties involved. (Paragraph 155)

Here is a selection of pertinent written evidence provided by experienced court reporting journalists, news organisations and journalism bodies.

PA Media <https://committees.parliament.uk/writtenevidence/41211/html/>

The Chartered Institute of Journalists

<https://committees.parliament.uk/writtenevidence/40531/html/>

Kirk, Mr Tristan (Courts Correspondent, London Evening Standard)

<https://committees.parliament.uk/writtenevidence/40146/html/>

Media Lawyers Association

<https://committees.parliament.uk/writtenevidence/40481/html/>

Casciani, Dominic (Home and Legal Correspondent, BBC News)

<https://committees.parliament.uk/writtenevidence/40488/html/>

Gardham, Duncan (Journalist, Freelance)

<https://committees.parliament.uk/writtenevidence/40142/html/>

Dearden, Lizzie (Home Affairs and Security Correspondent, The Independent)

<https://committees.parliament.uk/writtenevidence/40118/html/>

The Bureau of Investigative Journalism

<https://committees.parliament.uk/writtenevidence/40572/html/>

Pennink, Ms Emily (Old Bailey Correspondent, PA Media)

<https://committees.parliament.uk/writtenevidence/40083/html/>

Ministry of Justice Open Justice Consultation 2023

In May 2023, the Ministry of Justice opened a consultation on Open Justice. See: <https://www.gov.uk/government/consultations/open-justice-the-way-forward/call-for-evidence-document-open-justice-the-way-forward>

A research document 'Open Justice: the way forward Call for Evidence' was released 10th May at:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1155744/open-justice-cfe.pdf

The call for evidence ended 7th September 2023 and invited contributions on a wide range of topics: Open Justice; listings; accessing courts and tribunals; remote observations and livestreaming; broadcasting; Single Justice Procedure; publication of judgments and sentencing remarks; access to court documents and information; data access and reuse; and public legal education.

See Law Society Gazette 'Court photography ban under review in transparency drive' at: <https://www.lawgazette.co.uk/practice/court-photography-ban-under-review-in-transparency-drive/5116009.article>

The consultation highlights that there are so many complex and enduring constitutional issues largely unresolved in respect of Open Justice in the legal system of England and Wales.

The implications and impact of the reporting restrictions in the trial of nurse Lucy Letby at Manchester Crown Court only serve to intensify these as the following briefing and analysis amplifies.

Lucy Letby trial and Open Justice- explaining the restrictions and their implications for the English and Welsh Criminal Justice system.

The reporting restrictions imposed by judges in the criminal justice process and trial of convicted serial child killer Lucy Letby have been unprecedented and controversial.

There has been no case in British legal history, or indeed as far as I am able to establish in the history of English speaking common law legal jurisdictions such as Australia, New Zealand, Canada, and USA where the identity of seven murder victims, and ten attempted murder victims have been censored, and further reporting restrictions have given life-long anonymity to nine of the adult prosecution witnesses; namely doctors and nurses who worked alongside Lucy Letby on the neonatal unit at the Countess of Chester hospital.

The restrictions were imposed as a result of legislation passed by Parliament in 1999- the Youth Justice and Criminal Evidence Act, specifically section 45 'Power to restrict reporting of criminal proceedings involving persons under 18'

See: <https://www.legislation.gov.uk/ukpga/1999/23/section/45> , and section 46 'Power to restrict reports about certain adult witnesses in criminal proceedings.'

See: <https://www.legislation.gov.uk/ukpga/1999/23/section/46>

The restrictions in respect of the attempted murder victims could have been much more draconian in terms of running for the lifetime of the victims had the court made orders under Section 45A of the legislation 'Power to restrict reporting of criminal proceedings for lifetime of witnesses and victims under 18'.

See: <https://www.legislation.gov.uk/ukpga/1999/23/section/45A>

The degree of secrecy and censorship even extended to the return of the guilty verdicts by the jury. It seems the trial judge Mr Justice Goss, imposed an order under Section 4(2) of the 1981 Contempt of Court Act preventing the media from reporting any of the verdicts until all had been returned by the jury or it was clear they were unable to return verdicts on some of the charges, which was the case in respect of some of the attempted murders. This means there were several days when Lucy Letby had been found guilty of murder, but neither the professional media, nor indeed anyone else were permitted to report this to the general public.

The nature of the censorship is and was a form of discrimination. If you as a member of the public or a journalist (with proper accreditation) could physically gain access to any of the proceedings, you would have been able to hear the names and full identities of everyone mentioned in court. And you would have heard the return of guilty verdicts before they were all reported.

But the public gallery space in the courtroom was very limited and there would have been the added problem of actually finding the location of the murder trial. The public listing of the trial even omitted the name of the defendant. It is not clear whether this was also on the direction of the judge.

Court 7 - sitting at 10:30 am

THE HONOURABLE MR JUSTICE GOSS

Trial (Part Heard)

T20217088

07WZ1014618

Order Made Under S46 Reporting Restriction, Order made under s45, Youth Justice and Criminal Evidence Act 1999

There are still major problems analysing and reporting on the reporting restrictions themselves. I have asked journalists who reported the trial if they might send me copies of the court orders, directions and indeed the ruling of the judges.

It is understandable that they cannot because they say to do so would breach the restrictions themselves and they do not wish to be criminally prosecuted for breaching them.

Qualified barristers and solicitors would be able to see the unredacted rulings naming the murder and attempted murder victims and adult witnesses given anonymity under the legal privilege they enjoy as officers of the court.

While the trial was in progress I asked for information on the reporting restrictions and whether there had been any challenges by media publishers. Those I asked said they were unable to assist me. An email sent the Media Lawyers' Association did not elicit any reply.

I have asked if the trial judge Mr Justice Goss and another High Court judge, Mrs Justice Steyn, who made one of the key rulings in respect of child victims, would be prepared to release their rulings to the National Archives, and HM Judiciary website in order to assist the teaching of media law and more accurately inform discussion and analysis of the reporting bans.

As a media law lecturer and solely for the purposes of teaching journalism students and trainee journalists, I do not want or indeed need to know the identities restricted. I would like access to the reasoning and summary of the challenges made by counsel for the media publishers' consortium. Would not this be possible with redacted court rulings? This is a longstanding practice on the part of courts at all levels.

The trial judge had gone on very well deserved leave given the fact he had presided over a highly sensitive, high profile, complex, demanding and long criminal trial. A decision was going to be made when he returned from holiday.

What we understand about these restrictions at the moment has to be based on reports by the *Guardian* and *Telegraph* newspapers. The *Guardian* seems to be neutral on whether they should have been imposed though discloses it supported the applications by a media consortium of journalism publishers, which also included the BBC, to challenge them. The *Telegraph* is very critical of the restrictions and their reports include comments by Geoffrey Robertson KC and the former Lord Chancellor and Secretary of Justice Sir Robert Buckland KC.

The censorship continues with a fair proportion of the parents of the victims giving extensive multimedia interviews providing great detail about their feelings and views about Letby and the NHS executives of the NHS trust which employed her.

This extends to the intense public interest and political debate about what kind of public inquiry should be held. Will the public inquiry continue the censorship? To what extent will the head of the inquiry be bound by the judicial decisions of Mrs Justice Steyn and Mr Justice Goss?

If media groups did challenge the reporting restrictions before both judges and were unsuccessful, why did they not appeal these decisions to the Court of Appeal Criminal Division, which they could have done under section 159 of the 1988 Criminal Justice Act <https://www.legislation.gov.uk/ukpga/1988/33/section/159> ?

I will try to address these issues. First here are the headlines and links to the Guardian and Telegraph articles:

Guardian 18th August 2023 by Helen Pidd: 'Lucy Letby trial: why the babies remain anonymous. None of the 17 babies involved in the trial have been named and nine hospital staff cannot be identified.'

See: <https://www.theguardian.com/uk-news/2023/aug/18/lucy-letby-trial-why-babies-remain-anonymous>

Telegraph 18th August 2023 : “Rare anonymity orders on Lucy Letby witnesses ‘will have chilling effect on future cases’ Highly unusual reporting restrictions were imposed despite victims and families being widely named when the nurse was first charged.” (Behind paywall)

See: <https://www.telegraph.co.uk/news/2023/08/18/lucy-letby-court-trial-witnesses-granted-anonymity/>

Former Lord Chancellor and Justice Secretary Robert Buckland said: ‘Criminal trials need to be open to secure justice for the public. Imposing reporting restrictions may now have a negative impact on the ability of the press to report an accurate version of events.’ (Behind paywall) 18th August 2023

See: <https://www.telegraph.co.uk/news/2023/08/18/criminal-trials-open-secure-justice-for-public-lucy-letby/>

Telegraph newspaper editorial 18th August 2023 (behind paywall) ‘A Crime of Unimaginable Horror’

See: <https://www.telegraph.co.uk/opinion/2023/08/18/a-crime-of-unimaginable-horror/>

The reporting of the attempted murder babies’ names was restricted under section 45 of the Youth Justice and Criminal Evidence Act 1999, while the names of the parents who were potential witnesses for the prosecution were restricted under section 46 of the Youth Justice and Criminal Evidence Act 1999 by Mrs Justice Steyn on 15th January 2021.

This followed a special hearing to rule on the reporting restrictions held during December 2020, two years before the trial before a jury even began.

It is presumed that this was not reported because it would have been covered by a reporting restriction under Section 4(2) of the 1981 Contempt of Court Act postponing reporting until the end of the future trial.

However, the restrictions imposed by Mrs Justice Steyn appear to have been retrospective. They were banning publication of information already placed in the public domain.

According to the *Telegraph*:

1. The murder victims had already been ‘widely named’ when Lucy Letby was first charged and when she first appeared at Warrington Magistrates’ Court on November 12th 2020;
2. This was done lawfully by the Magistrates Court. It has always been custom and practice and something of an immutable in Open Justice terms that alleged murder victims, even children, are identified as part of the public domain and historical record.

According to a report by the *Chester Standard* and other local media ‘District Judge Nicholas Sanders imposed an order restricting the reporting of the names of the surviving babies subject to the attempted murder charge.’ This would have been done under Section 45 of the Youth Justice and Criminal Evidence Act.

The *Telegraph* reports that the application for reporting restrictions on the identity of the parents of the murder victims, which would render the identity of the infant murder victims anonymous, was made by the prosecution:

1. 'The decision followed highly emotional arguments put forward **by the police and prosecutors** on behalf of the families that claimed the press would report the trial in an "irresponsible manner", unless names were removed.'
2. 'There was also an inaccurate comment in one statement submitted to the court, suggesting the media had "released" the names of the murder victims into the public domain, when in fact that was done by the magistrates' court.'
3. 'In a concerted bid to persuade a judge of the need for blanket anonymity, pro forma application forms were submitted on behalf of the families, stressing the negative impact press coverage would have on them.'
4. '...the prosecution argued the ability of the victims' parents to give evidence would be severely affected if they were named in any coverage of the trial.'
5. Mrs Justice Steyn agreed saying: 'the quality of evidence given by each of these witnesses is likely to be diminished by reason of fear or distress on the part of the witness in connection with being identified.'
6. '...lawyers for a number of Letby's colleagues also successfully applied for anonymity, arguing that their mental health would suffer if they were identified.'
7. 'Despite one lawyer warning that replacing the names of so many people with letters risked turning the trial into "alphabet soup", the [Trial] judge granted anonymity orders for all those who applied.'
8. 'Throughout the trial the victims were identified only as Babies A to Q, making it difficult for members of the public to follow the evidence easily.'
- 9.

The Guardian's North of England Editor, Helen Pidd, made the following points in her report on the restrictions:

1. Mrs Justice Steyn banned publication of anything that could lead to the identification of the only living children [attempted murder victims] until their 18th birthdays. Thus the orders were under section 45 and not section 45A of the Youth Justice and Criminal Evidence Act. Had they been under section 45A they would have been lifetime orders in perpetuity.
2. These children were born in either 2015 or 2016 and were between six and eight years old at the time of the hearing in 2020. Some were living with profound disabilities – partly, the prosecution argued, as a result of Letby's actions.
3. The order also prohibited the publication of anything that could lead to the identification of the parents as witnesses in the proceedings, including the surnames of the deceased babies. The law is such that no court has the power to specifically anonymise the identity of any murder victim, but the anonymity can be imposed by the shadow and impact of a restriction order in respect of their parent or other family member who is a party to the proceedings by way of witness, victim of another charge or defendant.
4. Consequently the nature of Mrs Justice Steyn's order had the effect of preventing publication of the dead children's identities, because of the sibling groups and the

fact their parents would be giving evidence. Among the 17 babies were three sets of twins and one set of triplets.

5. Some of the parents 'wanted the restrictions not just to ban publication of their names and addresses but also details of their jobs, their ethnicities or nationalities, their medical conditions and the circumstances of their children's conception, gestation and births.'

6.

Helen Pidd's report makes some more interesting points about the hearing before Mrs Justice Steyn.

1. A coalition of media outlets through counsel argued that if such wide-reaching restrictions were imposed, the case would be impossible to properly report.
2. The Judge partially agreed, 'ruling that it was relevant that one of the parents involved worked as a GP – given their medical knowledge – and it was not in itself an identifying feature. She thought the same about nationality and ethnicity.
3. 'The judge also allowed the media to report that the triplets were naturally conceived and identical, on the grounds that such detail would be unlikely to lead to the identification of the living triplet or their parents.'
4. 'Although Steyn's order allowed the media to report the first names of the dead babies, media organisations agreed it would be better not to name any of the children involved in the case. Each baby was allocated a letter from A to Q to protect their identities. They were named chronologically.'

5.

There is no doubt that Mrs Justice Steyn and Mr Justice Goss had the statutory powers to make the orders that they made.

The real damage to the Open Justice principle is clearly the censorship of identities of the murder victims. But close analysis of the terms of Section 46 of the Youth Justice and Criminal Evidence Act demonstrates the wide degree of discretion granted to the court (I have put in bold those parts I think may have been relevant in the Letby case):

'(3)For the purposes of this section a witness is eligible for protection if the court is satisfied—

(a)that the quality of evidence given by the witness, or

(b)the level of co-operation given by the witness to any party to the proceedings in connection with that party's preparation of its case, is likely to be diminished by reason of fear or distress on the part of the witness in connection with being identified by members of the public as a witness in the proceedings.

(4)In determining whether a witness is eligible for protection the court must take into account, in particular—

(a)the nature and alleged circumstances of the offence to which the proceedings relate;

(b)the age of the witness;

(c)such of the following matters as appear to the court to be relevant, namely—

(i)the social and cultural background and ethnic origins of the witness,

(ii)the domestic and employment circumstances of the witness, and

(iii) any religious beliefs or political opinions of the witness;
(d) any behaviour towards the witness on the part of—
(i) the accused,
(ii) members of the family or associates of the accused, or
(iii) any other person who is likely to be an accused or a witness in the proceedings.
(5) In determining that question the court must in addition consider any views expressed by the witness.

And under section 46(8) 'in determining whether to give a reporting direction the court shall consider—(a) **whether it would be in the interests of justice to do so**, and (b) **the public interest in avoiding the imposition of a substantial and unreasonable restriction on the reporting of the proceedings**.

The media only had recourse to section 46(8)(b) in challenging the probity, evidence and force of the prosecution's application.

One only has to put oneself in the position of the court where the prosecution is saying the cooperation of its witnesses is diminished and so is the quality of their evidence if they are named. And the witnesses themselves are providing detailed statements evidentially setting out why this is the case. Is it really in '**the interests of justice**' to allow that to happen?

As for measuring the public interest in '**a substantial and unreasonable restriction on the reporting of the proceedings**.' Are the reporting bans 'a substantial' restriction to reporting the proceedings? Preventing the identification of murder and attempted murder victims, and key prosecution witnesses such as physicians and medics who worked with the defendant, would certainly be so.

In view of the risk to the interests of justice by not allowing the anonymity, are the substantial restrictions to the reporting reasonable in these circumstances? Could the prosecution and trial have proceeded successfully without the reporting restrictions?

Here are the points of criticism made by Geoffrey Robertson KC and Sir Robert Buckland KC as well as the *Telegraph* by way of editorial. They are more generic in terms of the consequences of such a trial taking place with these restrictions in place:

1. The imposition of far-reaching and highly unusual reporting restrictions led to the abandonment of the 'sacred principle' of open justice and this will have 'a chilling effect' on future court cases.
2. Geoffrey Robertson: 'Open justice is the most sacred of all British legal traditions, yet in this case it was abandoned because witnesses and victims said they felt discomfort about being identified;'
3. 'Their claim to privacy was allowed to outweigh the public right to see justice done. But this is not a question of balancing these two irreconcilable values: open justice should always prevail except in cases of national security or where victims would be seriously harmed;'

4. 'That appears not to be the case here and the very fact these secrecy applications succeeded will doubtless encourage more attempts to suppress information about what goes on in court.'
5. 'It was unsatisfactory that in this case the application was made by the prosecution, the agent of a state that should be proud of its open justice tradition;'
6. Sir Robert Buckland argued the reporting restrictions 'may now have a negative impact on the ability of the press to report an accurate version of events. If, as the lead consultant in the neonatal unit where she worked now alleges, hospital bosses failed to investigate allegations against Letby and tried to silence doctors, and that he raised concerns in October 2015, after some children had already been killed, the ability of the press to name victims would allow the public to understand the full timeline of events;'
7. 'The principle of open justice is fundamental to our system – it reflects the principle that justice must be seen to be done. The overwhelming general presumption is that the names of witnesses and defendants are matters of public record, available for use by the media. Public knowledge of, and confidence in, the administration of justice is enhanced by comprehensive media reporting. Clear and accurate news reporting of our courts is part of the lifeblood of journalism in the UK;'
8. 'The starting point must be open justice. Much more should always be required before reporting restrictions are imposed, or we risk more criminal trials being veiled by an impenetrable shroud of secrecy.'
9. The *Telegraph* editorial said anonymising the murder victims had 'blunted our ability to understand the true impact of the alleged failings; [of the NHS]'
10. 'Normally, murder victims are named in court, including children, because it is judged to be in the public interest that the details of horrifying crimes such as this should be made known and, tragically, there is no longer any question of privacy;'
11. The *Telegraph* argued: 'Media organisations already face strict guidelines to ensure that court hearings are covered responsibly. Automatic reporting restrictions exist in law on such matters as publishing the identity of complainants in cases involving a sexual offence, modern day slavery or female genital mutilation allegations, as well as of child defendants and witnesses in youth courts. Yet in the Letby case, the limitations went further. As well as restrictions on naming the children who were murdered, the parents were also granted anonymity under section 46 of the Youth Justice and Criminal Evidence Act, to ensure that publicity did not affect the quality of their evidence.'
12. 'It is possible to feel both the greatest sympathy for the families who had their lives ruined by Letby, along with the witnesses who had to recall the circumstances surrounding her unspeakable acts, and be concerned that the decision has established a dangerous principle and that public knowledge of events has been hindered in this particular case.'
13. 'Courts have consistently ruled that it is perfectly legitimate, and indeed in the public interest, that witnesses and victims of crime should be named. In 2017, the Supreme Court held that media reporting should be permitted, after the end of a major sexual abuse conspiracy trial, of the identity of a man referred to in the proceedings who was arrested but not charged with sex offences. Thus, media freedom outweighed his right to privacy.'

14. 'Anything else is likely to result in only the partial coverage of important cases – with the potential result that misinformation is allowed to spread. Ultimately, access to, and dissemination of accurate and vital information is the best way to shine light on the most disturbing elements of British society, as well as on failing systems.'

I would assume there are very few professional journalists and court reporters who would argue with the points and arguments put forward by Geoffrey Robertson KC, Sir Robert Buckland KC and the *Telegraph's* editorial. Yet, why did the media coalition which usually pools its financial and legal resources in cases such as this, not mount an appeal under Section 159 of the 1988 Criminal Justice Act? [I am presuming they did not in the absence of any evidence or reference to a Section 159 Court of Appeal Criminal Division ruling on the Letby reporting restrictions in the National Archives or at <https://www.bailii.org/>] And might there have been a shift in values over the generations and time about the respective priorities in the Open Justice balancing exercise? This may well be the case when it is clear from a *Press Gazette* article on reporting the trial that some journalists assigned to reporting the case did not object to the restrictions being imposed.

The right to appeal Crown Court reporting bans was won after a test case challenge by myself when I was a young court reporter at the Central Criminal Court around 40 years ago. Geoffrey Robertson KC was my counsel at the Divisional Court when the NUJ and Liberty (then known as NCCL) supported my campaign to overcome the lack of any appeal rights for journalists and media publishers to challenge reporting restrictions imposed by Crown Court Judges.

The case went to Strasbourg and after a preliminary indication the UK legal system was in breach of the European Convention of Human Rights the UK government agreed to settle the action by legislating for an appeal mechanism. Unfortunately, the reform contained flaws which I strongly argued against at the time. One of which is that under Section 159(1) 'the decision of the Court of Appeal shall be final.' This was ten years before the 1998 Human Rights Act.

I thought it was absurd and discriminatory that critical issues about freedom of expression should have a reduced ceiling in terms appeal. Why should Open Justice issues in the Crown Court not be adjudicated for ruling precedents at UK Supreme Court level if necessary? [At that time the highest court in the UK was the judicial committee of the House of Lords.] In practice they can be, usually if media appellants are able to use judicial review as their mechanism of appeal.

And there are several higher court precedents which would appear to place Open Justice and freedom of expression on a higher plane of pragmatic priority than privacy rights. The *Telegraph* referred to the case of [PNM v Times Newspapers Ltd & Ors \[2017\] UKSC 49](#) (19 July 2017) By 5 to 2, UK Supreme Court Justices ruled in favour of Times Newspapers, The Oxford Mail & Others. PNM was 'a prominent figure in the Oxford area. He was arrested at about the same time as the nine and was released on bail on terms (among others) that he surrender his passport. The reason for his arrest was that one of the complainants had told the police that she had been abused by a man with the same,

very common, first name. However, she failed to pick him out at an identity parade. He was later told by the police that he would be released from arrest without charge but that the case would be kept under review. That remains the position. Police investigations are continuing, but PNM has never been charged with any offence, and there is no present reason to believe that he ever will be.' [Paragraph 3]

He was frequently referred to by name in the criminal trial of others and he repeatedly sought and secured court reporting orders under the 1981 Contempt of Court Act preventing publication of his name.

Lord Sumption provided the majority ruling that he was not entitled to privacy protection in these circumstances. At paragraph 16 he explained what was at stake constitutionally: '...restrictions on the reporting of what has happened in open court give rise to additional considerations over and above those which arise when it is sought to receive material in private or to conceal it behind initials or pseudonyms in the course of an open trial. Arrangements for the conduct of the hearing itself fall within the court's general power to control its own proceedings. They may result in some information not being available to be reported. But in Convention terms they are more likely to engage article 6 than article 10. Reporting restrictions are different. The material is there to be seen and heard, but may not be reported. This is direct press censorship.'

[Paragraph 34(5)] 'The policy which permits media reporting of judicial proceedings does not depend on the person adversely affected by the publicity being a participant in the proceedings. It depends on (i) the right of the public to be informed about a significant public act of the state, and (ii) the law's recognition that, within the limits imposed by the law of defamation, the way in which the story is presented is a matter of editorial judgment, in which the desire to increase the interest of the story by giving it a human face is a legitimate consideration. PNM's identity is not a peripheral or irrelevant feature of this particular story.'

Another influential precedent is from the Judicial Committee of the House of Lords in [S \(a child\), Re \[2004\] UKHL 47](#) (28 October 2004) and has been analysed in detail earlier. The issue here was whether the ruling of the High Court Family Division over the privacy rights of an 8 year-old boy took precedence over the right of the media and public to the Open Justice identification of the boy's mother as being a murder defendant accused of the murder of his 9 year-old brother by salt poisoning. In Lord Steyn's ruling Open Justice in the criminal proceedings was given the pragmatic priority.

At paragraph 30 he said: 'A criminal trial is a public event. The principle of open justice puts, as has often been said, the judge and all who participate in the trial under intense scrutiny. The glare of contemporaneous publicity ensures that trials are properly conducted. It is a valuable check on the criminal process. Moreover, the public interest may be as much involved in the circumstances of a remarkable acquittal as in a surprising conviction. Informed public debate is necessary about all such matters. Full contemporaneous reporting of criminal trials in progress promotes public confidence in the administration of justice. It promotes the values of the rule of law.'

At paragraph 34 he said:

‘Thirdly, it 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.’

At paragraph 36 he said:

‘Fifthly, it is easy to fall into the trap of considering the position from the point of view of national newspapers only. Local newspapers play a huge role. In the United Kingdom according to the website of The Newspaper Society there are 1301 regional and local newspapers which serve villages, towns and cities. Apparently, again according to the website of The Newspaper Society, over 85% of all British adults read a regional or local newspaper compared to 70% who read a national newspaper. Very often a sensational or serious criminal trial will be of great interest in the community where it took place. A regional or local newspaper is likely to give prominence to it. That happens every day up and down the country. For local newspapers, who do not have the financial resources of national newspapers, the spectre of being involved in costly legal proceedings is bound to have a chilling effect. If local newspapers are threatened with the prospect of an injunction such as is now under consideration it is likely that they will often be silenced. Prudently, the Romford Recorder, which has some 116,000 readers a week, chose not to contest these proceedings. The impact of such a new development on the regional and local press in the United Kingdom strongly militates against its adoption. If permitted, it would seriously impoverish public discussion of criminal justice.’

The ‘Alphabet Soup’ syndrome in excessive reporting restrictions rendering the reporting of court cases useless is very much represented in [Guardian News and Media Ltd & Ors, Re HM Treasury v Ahmed & Ors \[2010\] UKSC 1 \(27 January 2010\)](#) where Geoffrey Robertson KC was the lead advocate for the media group appeal.

Lord Rodger’s rather famous opening paragraph highlighted ‘a widespread phenomenon’ in the British legal system. See:

“Your first term docket reads like **alphabet soup**.” With these provocative words counsel for a number of newspapers and magazines highlighted the issue which confronts the Court in this application. In all the cases down for hearing in the first month of the Supreme Court’s existence at least one of the parties was referred to by an initial or initials. Thanks to the relevant Practice Note, the same goes for the very last case heard by the House of Lords (*BA (Nigeria) v Secretary of State for the Home Department* [\[2009\] UKSC 7](#); [\[2009\] 3 WLR 1253](#)) and the very first judgment handed down by the Supreme Court (*In re appeals by Governing Body of JFS* [\[2009\] UKSC 1](#); [\[2009\] 1 WLR 2353](#)). See *Practice Note (Court of Appeal: Asylum and Immigration Cases)* [2006] 1 WLR 2461. Indeed, so deeply ingrained has the habit of anonymisation become that the judgment of the Court of Appeal in *AM (Somalia) v Entry Clearance Officer* [\[2009\] EWCA Civ 634](#) was published under that name, and came on appeal to the Supreme Court under the same name, even though Maurice Kay LJ had begun his judgment by saying that anonymity was

unnecessary. At the hearing of the appeal that assessment proved to be correct. See *Mahad v Entry Clearance Officer* [\[2009\] UKSC 16](#); [\[2010\] 1 WLR 48](#).'

That was then- 2010. What kind of vocabulary is available to substantially expand the problem or 'phenomenon' as much bigger and wider than 'widespread' in 2023?

The Alphabet Soup case concerned three appellants 'A, K and M' who were brothers in their thirties. On 2 August 2007 each of them was informed that the Treasury had reasonable grounds for suspecting that he was, or might be, a person who facilitated the commission of acts of terrorism.

This was freedom of expression Open Justice versus the appellants' claim to their rights under article 8 of the European Convention on Human Rights and Fundamental Freedoms to respect for their private and family life.

At Paragraph 63 Lord Rodger made the following observation:

'What's in a name? "A lot", the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique, and the European Court holds that article 10 protects not only the substance of ideas and information but also the form in which they are conveyed: *News Verlags GmbH & Co KG v Austria* (2000) 31 EHRR 246, 256, para 39, quoted at para 35 above. More succinctly, Lord Hoffmann observed in *Campbell v MGN Ltd* [\[2004\] 2 AC 457](#), 474, para 59, "judges are not newspaper editors." See also Lord Hope of Craighead in *In re British Broadcasting Corp'n* [\[2009\] 3 WLR 142](#), 152, para 25. This is not just a matter of deference to editorial independence. The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive.'

At paragraph 71 Lord Rodger outlined how M had engaged in strong public debate behind the privilege of his anonymity by issuing a press release through his solicitors criticising the UK government:

'It is unusual, to say the least, for individuals to enter a debate, using highly charged language and accusing the Government of dishonouring a pledge, but at the same time to insist that they should have the right to hide behind a cloak of anonymity. It is also unusual for someone to assert the need for the press to respect his private and family life by not reporting his identity while simultaneously inviting them to report his version of the impact of the freezing orders on himself and members of his family. The public can hardly

be expected to make an informed assessment of the argument if they are prevented from knowing who is making these points and, therefore, what his general stance is.' The media group won this appeal. But as most journalists and specialist media lawyers will fully recognise one or two steps forward for Open Justice and Freedom of Expression in the higher courts can often be followed by one or two steps backward.

On 15th September 2023, the *Daily Mail* ran the story on its front page "Brave 19-year-old woman locked in legal battle with doctors who wanted to withdraw life-preserving treatment has died - but still cannot be named: Heartbroken family say 'even in the hour of our grief, we are gagged' by reporting restriction."



See: <https://www.dailymail.co.uk/news/article-12519801/Brave-19-year-old-woman-locked-legal-battle-doctors-wanted-withdraw-life-preserving-treatment-died.html>

The case of 'ST' in the Court of Protection was one of hundreds of cases in the UK courts where parties are anonymised with letters. It is possible to track the nature and extent of anonymity orders in the High Court of England and Wales at <https://www.judiciary.uk/judgment-types/anonymity-order/>

The *Daily Mail* and other publications did report on the successful application by 'ST's' family to the court to permit her proper identification as Sudiksha Thirumalesh on 22nd September 2023.

See: <https://www.dailymail.co.uk/news/article-12549597/Teenager-19-bravely-fought-doctors-attempts-withdraw-life-support-tragic-death-battled-abroad-experimental-treatment-FINALLY-named-judge-lifts-gagging-order.html>

BBC News 22nd September 2023 'BBC News reports: "Family of ill teen say they were 'brutally silenced' by courts' at: <https://www.bbc.co.uk/news/health-66893040>

The complex case was initially reported by the Court of Protection by way of public ruling as A NHS Trust v ST & Ors [2023] EWCOP 40 (25 August 2023)

See: <https://www.bailii.org/ew/cases/EWCOP/2023/40.html>

Whither a Lucy Letby trial Open Justice appeal?

Of course, in the Lucy Letby case the circumstances are different, as they always tend to be when new issues arise in the tension between freedom of expression Open Justice and privacy rights and the administration of justice. In PNM and R: S (a child) the request for restrictions came from third parties. They were not parties to the criminal proceedings. In Letby, the request for censorship strongly citing the demands under the administration of justice argument came from the Prosecution and the police with the support of those people who would benefit from being shielded. The restrictions did fundamentally engage the parties in the trial- alleged victims and prosecution witnesses.

The Alphabet Soup case of 2010 was not a criminal trial and more in the manner of high court proceedings with the request for anonymity being made by respondents or appellants in respect of designation under terrorism financial regulation. Mrs Justice Steyn and Mr Justice Goss are experienced and respected High Court judges who in their decision on the reporting restrictions were following the rule of law. As has been demonstrated they derived their powers from existing statute. Is it not possible the 'media coalition' properly evaluated the likelihood and consequences of an appeal?

To deal with this issue, I would recommend an addressing of this further question: Would a Court of Appeal Criminal Division have seriously overturned two High Court Judges who imposed reporting restrictions on the basis they were asked for by the prosecution because the administration of justice needed them to ensure the quality and cooperation of key witnesses in a trial of a nurse accused of seven murders and ten attempted murders? If your answer to the question is no, then the decision not to appeal can be considered perfectly reasonable.

Recent Section 159 appeals by the media to the Court of Appeal Criminal Division have not been particularly encouraging. In [Pembrokeshire Herald, Re \(leave to appeal\) \(Rev1\) \[2021\] EWCA Crim 1165 \(27 July 2021\)](#) a weekly newspaper sought to challenge Section 46 orders in the trial of a teacher whose defence succeeded with evidence provided to the jury by his professional colleagues.

The Herald argued the Section 46 order giving these adult witnesses anonymity for life was exceptional 'as it would in effect prohibit significant reporting of the defence case.'

The Court of Appeal rejected the appeal and said: “Decisions about reporting restrictions are evaluative in nature, involving a balancing exercise akin to the exercise of a discretion; although the fact that Convention rights are engaged means that review of the decision under challenge must be intense, the appellate court will be slow to interfere...”

And in 2013 [ITN News & Ors v R. \[2013\] EWCA Crim 773 \(21 May 2013\)](#) was another unsuccessful appeal against a Section 46 order which prevented publication of images of an adult witness and those of her children in a manslaughter trial.

It is possible to make some positive observations about the media reporting of the Lucy Letby trial. Those UK reporters assigned to cover this extraordinarily long and complicated case have represented the profession of journalism to the highest standards. An example of bringing outstanding ‘Open Justice’ where reporting restrictions had substantially reduced it has been the Lucy Letby Trial Podcast published by the *Daily Mail* with weekly reporting and production by Daily Mail northern correspondent Liz Hull and broadcast journalist Caroline Cheetham.

See: <https://podcasts.apple.com/gb/podcast/the-trial-of-lucy-letby/id1653090985>

By 28th August 2023 there had been 59 episodes downloaded by millions. Episode 47 covered the subject of Open Justice with an interview with Mike Dodd- ‘former reporter and long term advisor to the Press Association (now PA Media).

See: <https://podcasts.apple.com/gb/podcast/the-trial-of-lucy-letby/id1653090985>

Nevertheless, it can be argued that Open Justice in the British criminal justice system is in a very bad place as a result of this case. The Section 45 orders under YJCEA 1999 for the attempted murder child victims are standard practice and began being imposed almost by default by the District Judge at the Magistrates Court as they are in most criminal courts. Is there now ever a case where youth victims of crime in the adult courts are ever identified? That is a rare phenomenon.

Even before the Lucy Letby trial, Section 46 anonymity orders under YJCEA 1999 for adult witnesses and indeed adult victims of crime beyond the statutory automatic categories of sexual offence complainants, victims of FGM, Forced Marriage, Slavery and People Trafficking have been spreading. An example during the past year included an adult victim of a causing injury by dangerous driving offence. He had been a passenger in the speeding car and lost a leg in the collision.

Police forces have been and will continue to use the possibility, and what may well become the potential likelihood, of anonymity at trial to persuade reluctant witnesses that they will not necessarily face the embarrassment or discomfort of media publicity by agreeing to give evidence. They cannot guarantee something which only the court has the discretion to provide, but as in the Letby case, they can explain to the potential witnesses of the advantages of making a statement with grounds that qualify under Section 46(2) to 46(5) of the Youth Justice and Criminal Evidence Act legislation.

All families of murder victims are potential witnesses because of the system’s requirement for victim impact statements following conviction. Consequently, the restrictions in the

Letby trial do provide a precedent for more orders which 'shadow' impact on identifying murder victims. The reports of the content of the victim's family statements in the Lucy Letby case reveal a disturbing trend to justify censorship on the basis of anticipating allegedly harmful media coverage rather than actual and specific evidence of coverage which creates a substantial risk of serious prejudice.

What is the threshold of risk that the courts are assessing in respect of the impact of media coverage on a witness? Is it so they are sure or believe it is more likely than not that media coverage undermines or will undermine the quality of a witness's evidence and willingness to cooperate and give evidence?

Lucy Letby was convicted of seven murders and six attempted murders. The jury was unable to reach verdicts in respect of four other attempted murder charges. The anonymity means that seventeen potential local weekly newspapers were unable to fully report on a crime victim from their areas being involved in this high profile trial.

While we can be sure it was never the intention of anyone, anonymising crime victims does dehumanise their presence in media coverage. It dissolves the essence of human interest and potential sympathy, empathy and understanding.

One of the administration of justice purposes of identifying witnesses in criminal trials and for there to be accurate and fair reporting of what they say is that the public scrutiny enhances the qualities of veracity and integrity. Reporting of such proceedings serves to protect the administration of justice in preventing miscarriages of justice. It means potential witnesses either for the prosecution or the defence could come forward with vital evidence.

One of the risks of too much secrecy in criminal trials and the anonymising of trial participants is that the lack of key and specific information undermines the credibility and confidence of the public in the trial process. The development of any significant conspiracy theories and beliefs about the trial could be evidence that the undermining of public confidence in the trial process is already underway.

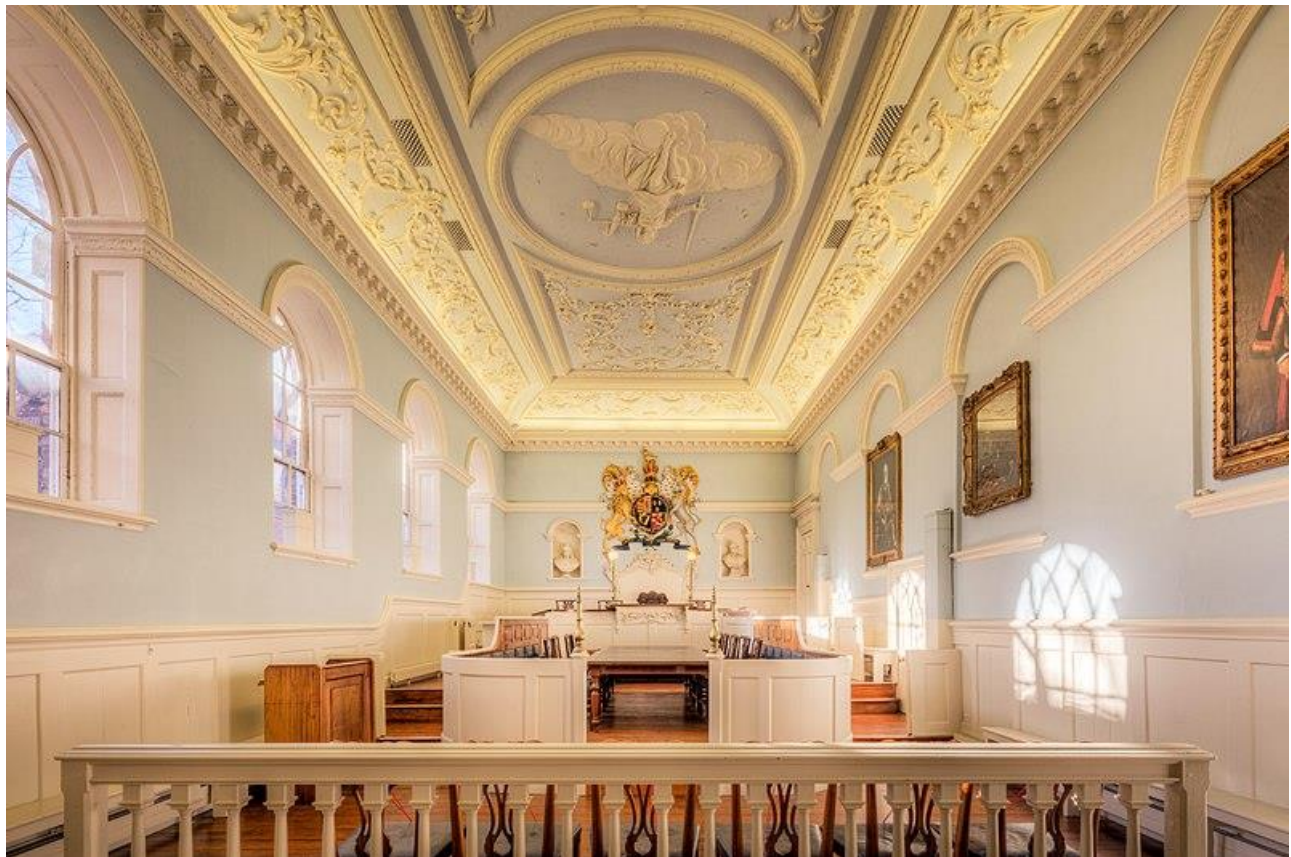
It is depressing that the families of Lucy Letby's victims had such a negative and fearful anticipation and view of the media's role in covering criminal trials. This may be part of an unfortunate and wider pattern of demonising and delegitimizing professional journalism. The Lucy Letby trial highlights the need for journalists covering court cases to do everything they can to be vigilant about the importance of Open Justice and to do everything they can to persuade the courts they are covering to maximise openness and identification of trial participants, particularly defendants, victims, prosecution and defence witnesses notwithstanding the automatic anonymity categories.

Those journalists present, and their legal representatives should they be necessary, are still entitled to persuade judges to listen to and respond to their arguments for Open Justice, to adopt and engage in restrictions which in all the circumstances are the least restrictive on open, accurate and fair reporting. The reporting of the Lucy Letby trial by

dedicated and consummate professional court reporting journalists has been a model on how to negotiate a complex nexus of reporting restrictions.

Press Gazette 29th August 2023 'Reporting restrictions and writing through tears: The 'incredibly complex' task of reporting Lucy Letby trial. Witnesses in the case were unusually given anonymity without reasons of national security or a risk to life.' See: https://pressgazette.co.uk/media_law/journalists-reporting-lucy-letby-trial-reporting-restrictions/

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The courtroom inside Beverley Guildhall. Located in [Beverley](#), [East Riding of Yorkshire](#), England.

[https://upload.wikimedia.org/wikipedia/commons/2/2a/Beverley Guildhall Courtroom.jpg](https://upload.wikimedia.org/wikipedia/commons/2/2a/Beverley_Guildhall_Courtroom.jpg)

[Michael D Beckwith](#), CC0, via Wikimedia Commons

Anonymity in the Magistrates Court, Open Justice victory for journalists 17th March 2023 ruling of the Administrative High Court

Not all Open Justice disputes end badly for professional media news organisations. A judicial review of restrictions sought at Westminster Magistrates Court proved to have a positive outcome.

This was a Section 11 1981 Contempt of Court Act order made at Westminster Magistrates for withholding a name in a Proceeds of Crime Act 2002 hearing. The challenge was first made by submissions in court from Martin Bentham, Home Affairs Editor of the Evening Standard and Koos Couvée, Senior Reporter with ACAMS MONEYLAUNDREING.COM. But they were only able to make their submissions after the hearing applying for the reporting restriction order was held in private from which they were excluded. And the notice news organisations were given about the order being applied for was distributed the night before.

The issue was further taken up by the BBC with a formal application to discharge the order. The journalist Martin Bentham and Leading Counsel for the BBC, Jude Bunting KC (instructed by in-house legal team) made submissions and successfully persuaded the District judge to lift the order.

The Judicial Review was made by the person who sought anonymity 'MNL'. In an important ruling for professional journalism, the High Court ruled that Open Justice had to prevail in this case over Article 8 privacy rights.

MNL, R (On the Application Of) v Westminster Magistrates' Court [2023] EWHC 587 (Admin) (17 March 2023)

See: <http://www.bailii.org/ew/cases/EWHC/Admin/2023/587.html>

And the judgement by Lord Justice Warby and Mr Justice Mostyn includes persuasive observations on journalists' and news publishers' rights to be given proper notice and the opportunity to challenge such orders when they are applied for.

Lord Justice Warby's introduction- paragraphs 1 and 2

1. This is a claim for judicial review of a decision of the Westminster Magistrates' Court to lift an order anonymising the claimant in connection with a claim for forfeiture of assets brought by the National Crime Agency (the NCA) against three other individuals under the Proceeds of Crime Act 2002. The main issue is whether the judge erred in law when resolving a conflict between the imperatives of open justice and the rights of a non-party to respect for his private life.
2. The claimant was neither a party nor a witness in the forfeiture proceedings, but he does have some connections with the respondents to those proceedings. Before the hearing began, having learned that prejudicial references to him were likely to be made and fearing the reputational consequences, he applied for an anonymity order. The District Judge made such an order, heard the forfeiture proceedings and gave a public judgment in favour of the NCA which referred to

the claimant but did not name him. Thereafter, on the application of the BBC the judge discharged his earlier order. The claimant challenges the judge's decision as flawed in law. He contends that we should set aside the decision of the judge, re-make the decision and restore the anonymity order.

Key *ratio decidendi* at paragraph 41, sub-paragraphs 5 to 7:

(5) The next stage is the balancing exercise. Both the judge's decisions expressly turned on whether it was "necessary and proportionate" to grant anonymity. That language clearly reflects a Convention analysis and the balancing process which the judge was required to undertake. The question implicit in the judge's reasoning process is whether the consequences of disclosure would be so serious an interference with the claimant's rights that it was necessary and proportionate to interfere with the ordinary rule of open justice. It is clear enough, in my view, that he was engaging in a process of evaluating the claimant's case against the weighty imperatives of open justice.

(6) It is in that context that the judge rightly addressed the question of whether the claimant had adduced "clear and cogent evidence". He was considering whether it had been shown that the balance fell in favour of anonymity. The cases all show that this question is not to be answered on the basis of "rival generalities" but instead by a close examination of the weight to be given to the specific rights that are at stake on the facts of the case. That is why "clear and cogent evidence" is needed. This requirement reflects both the older common law authorities and the more modern cases. In *Scott v Scott* at p438 Viscount Haldane held that the court had no power to depart from open justice "unless it be strictly necessary"; the applicant "must make out his case strictly, and bring it up to the standard which the underlying principle requires". *Rai* (CA) is authority that the same is true of a case that relies on Article 8. The Practice Guidance is to the same effect and cites many modern authorities in support of that proposition. These include *JIH v News Group Newspapers Ltd* [2011] 1 WLR 1645 where, in an often-cited passage, Lord Neuberger of Abbotsbury said at [22]:

"Where, as here, the basis for any claimed restriction ultimately rests on a judicial assessment, it is therefore essential that (a) the judge is first satisfied that the facts and circumstances of the case are sufficiently strong to justify encroaching on the open justice rule ..."

(7) In my opinion, the closing passage of the judgment under review reflects the conclusion arrived at by the judge after conducting the necessary balancing process. This was that, in the light of all the facts and circumstances that were apparent to him at that time, the derogation from open justice that anonymity would represent was no longer shown to be justified as both necessary for the protection of the claimant's Article 8 rights and proportionate to that aim.'

Mr Justice Mostyn's ruling in paragraphs 48 to 56 set out what was wrong about the procedure and denial of natural justice to the press/media:

48 In *DPP v Shannon* [1975] AC 717, 766 Lord Simon of Glaisdale recalled that the father of English legal history, F.W. Maitland, "was wont to observe how rules of substantive law have seemed to grow in the interstices of procedure"[1].

49 Procedural rules exist for a purpose, and that purpose is to ensure that every legal cause is despatched not merely efficiently, but fairly. Procedural rules are not so much

directed to ensuring that the content of a judicial decision is just – that is what the substantive law achieves – but that the way it is reached is fair. In their interstices they incorporate and promulgate the elementary rule of natural justice, mirrored in Article 6 of the European Convention of Human Rights, that everyone has the right to a fair hearing. 50 A fair hearing means not only that your judge is not biased (*nemo iudex in causa sua*) but that you are heard (*audi alteram partem*). And being heard means not merely that you are allowed to participate in a hearing that affects you, but, critically, that you are given reasonable notice of it.

51 We know that the claimant was warned in the second half of September 2021 that the NCA intended to make allegations against him in forfeiture proceedings brought against monies held in UK bank accounts by members of JF's family. The claimant therefore had over a month to take whatever steps he judged necessary to protect himself. The choice he made was to apply for a reporting restriction order ("RRO") on the afternoon of 28 October 2021. Astonishingly, that was the day immediately before the commencement of the substantive forfeiture trial. No explanation has been offered for this delay.

52 The notice given to the NCA was therefore not even of one clear day. It was so short that had the NCA decided to contest the application it is doubtful that it would have been able to assemble its case in the time left. However, that evening the NCA agreed not to refer to the claimant by name in the proceedings.

53 The press were not served until that evening, and so, to all intents and purposes had no notice at all.

54 The following day the application was heard in private. The press were not allowed into the hearing. The NCA did not contest the application. Obviously, the Respondents (JF's family members) did not contest it. The press were then provided with a copy of the draft order and two journalists were allowed to make oral submissions after the hearing had concluded, and without having heard the submissions on behalf of the claimant. The order records that the court only heard counsel for the claimant and for the parties but the note of the judge's judgment states that he heard detailed submissions from the press. The procedure is utterly bizarre.

55 The consequence of what looks like a strategic decision to give almost the shortest possible notice to the NCA, and in reality none to the press, was that the application for the RRO was effectively uncontested. Allowing the press to make submissions after the hearing was over does not amount to much of a contest.

56 In my judgment, this process did not meet the requirements of natural justice.

At paragraph 75 he strongly criticised the decision to hold the reporting restriction order application in private with the press excluded:

75. The RRO application was heard by the judge in private in the absence of the press. We have not been told how that came about, but this was an exceptional course to take and could only be justified if the application could not fairly be heard in the presence of the press. Ordinarily, that will not be so as the media will offer undertakings not to publish the hearing papers or, if necessary, reporting restrictions can be imposed to protect any confidential evidence. It is not as if this was one of those cases where the evidence disclosed intimate personal information which the claimant could justifiably wish to withhold from the media. I do not understand why the press were not able to attend the hearing and were only allowed to make oral submissions after it was over.

He further adds at paragraphs 90 and 91:

'90 ...I am not surprised, on the facts of this case, that the initial anonymity order was discharged.

91 My only surprise is that the anonymity order was granted in the first place on 29 October 2021. In my judgment, for reasons of procedural unfairness as well as a distinct lack of merit, it should never have been granted.'

This is a very significant victory by the BBC on behalf of journalism and Open Justice rights in the UK and great respect and thanks are due to journalists Martin Bentham and Koos Couvée for doing their best to challenge and resist what was going on at Court and then the BBC and KC Jude Bunting for the strength of advocacy provided at Westminster Magistrates and the High Court.

The ruling has been analysed comprehensively by media lawyer Sam Brookman for Hold The Front Page Jaffa Law Column: 'A victory for open justice as Judicial Review fails.'

See: <https://www.holdthefrontpage.co.uk/2023/news/law-column-a-victory-for-open-justice-as-judicial-review-fails/>

The case has also been reported by Press Gazette: "BBC and Evening Standard win right to identify man in 'dirty money' trial."

See: <https://pressgazette.co.uk/media-law/azerbaijani-laundromat-court-open-justice/>

After the media groups challenging the order successfully resisted an appeal on May 16th 2023, it was possible to identify 'MNL' and this resulted in high profile coverage in the London Evening Standard and BBC programmes and online.



See: 'Millionaire Tory donor and business tycoon Javad Marandi linked to major money laundering operation' at: <https://www.standard.co.uk/news/uk/conservative-tory-party-donor-javad-marandi-conran-shop-anyahindmarch-money-laundering-nca-b1081279.html>

BBC News 'Javad Marandi: Tory donor's link to massive money laundering probe.' See: <https://www.bbc.co.uk/news/uk-61264369>

Press Gazette: "BBC and Evening Standard win right to identify man in 'dirty money' trial." See: <https://pressgazette.co.uk/media-law/azerbaijani-laundromat-court-open-justice/>



SCENE FROM "TRIAL BY JURY," AT THE ROYALTY THEATRE.

Engraving of Gilbert and Sullivan's Trial by Jury. 1875

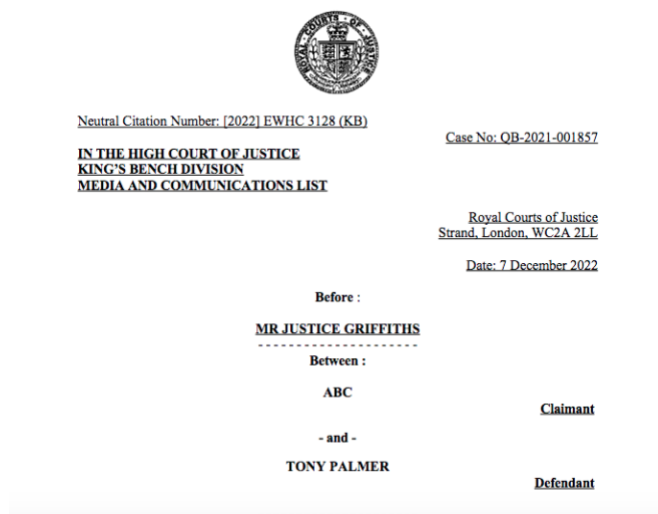
https://commons.wikimedia.org/wiki/File:Trial_by_Jury_-_Chaos_in_the_Courtroom.png

[David Henry Friston](#), Public domain, via Wikimedia Commons

Keeping reporting files and the importance of accurate and professional shorthand as a journalist/reporting skill when covering the courts.

A High Court ruling on 7th December 2022 is a substantial victory for a freelance court reporter in London whose diligent professionalism in keeping accurate and dated notebooks and applying the Teeline shorthand skill in his work clearly contributed to his defence.

Tony Palmer is described in the ruling of [ABC v Palmer \[2022\] EWHC 3128 \(KB\) \(07 December 2022\)](#) as 'a freelance journalist who is a member of the National Union of Journalists and who sells reports of court hearings to national newspapers and posts them on a blog he runs called Square Mile News. The Claimant brings this action as a result of a report by the Defendant which purported to be of the hearing of her case at the Magistrates Court and which he posted on his blog, Square Mile News ("the Blog Post") dated 13 May 2015.'



The case relates to a report from a magistrates court case where the claimant pleaded guilty to fraud and received a suspended prison sentence. Seven years after reporting her case and publishing it, Mr Palmer faced litigation for misuse of private information, harassment, breach of the General Data Protection Regulation, and a claim from the woman that she had the right to be forgotten because her conviction was now spent under the Rehabilitation of Offenders Act.

Mr Palmer successfully defended himself and the action against him did not succeed on any of the grounds. The following quotations from Mr Justice Griffiths demonstrate how well Mr Palmer accomplished his assertion of not only his professionalism but the right of journalists to report open criminal court hearings fairly and accurately:

Paragraph 11:-

'I accept Mr Palmer's evidence that he makes his living as a journalist and court reporter. He works alone. He showed me a National Union of Journalists press card valid for the period including the date of Ms C's plea and sentencing hearing. He has been a journalist

since 1988. Apart from his working experience, his only training has been in Teeline shorthand, which he learned in about 2010. He sells stories to national newspapers, such as the Sun, the Mirror, the Star, the Daily Mail, the Daily Express, the Times, the Telegraph and the Evening Standard. He showed me some articles with his name “Tony Palmer” as the byline, reporting court cases. He also posts court reports on his blog, Square Mile News, a website which he runs alone and is proud of (“SMN”). When he has failed to gain the interest of the printed press for his reports, he leaves them on SMN. His SMN reports may state, as the Blog Post in issue in this case did, “Exclusivity Option – Contact [email address] for sole rights to story and removal”...He explained that the notice on SMN was to encourage national papers to buy and run his stories, and to assure them that, if they did, they could have them as exclusives and the stories would be removed from SMN in order to give them that exclusivity.’

The claimant alleged Mr Palmer was not in court to report her case. He was able to counter this because between paragraphs 14 and 17:

‘Mr Palmer’s evidence is, however, compelling on this point. I was shown an email from HMCTS sending him the Magistrates Court list for the week commencing 12 May 2015 and I was shown the attached copy list itself, which included both Ms C’s case and another case in the same building on the same day which Mr Palmer reported on, under his Tony Palmer byline, in a national newspaper. He got the cause list in order to spot cases that it might be worth his while to attend and report on.

I was also shown his Teeline shorthand notes of the hearing, and the original notebook from which the photocopies in the bundle were made. In his oral evidence, he read out the meaning of the notes and it was obvious (Teeline being a relatively simple system in which many characters are self-explanatory even to the untrained reader) that his explanation of what they meant was correct. The notes sounded exactly as one would expect a court hearing to go, starting with the submissions of the prosecutor, continuing with the submissions of the defence, and concluding with the sentencing remarks of the District Judge.

I was also shown copies of photographs taken by Mr Palmer of defendants whose stories he had decided to write up which he took outside court. He explained that having a photograph enhances the value and interest of his stories to potential buyers from the national newspapers. These photographs were all grouped together on his Apple Mac (in a screenshot) under the correct date 12 May 2015 in a series of 8 photographs. The first 3 were of the person in the other case on that day which Mr Palmer did successfully sell as a bylined report in a national paper, which I was shown. The next four of the Claimant, of which the most distinct was used in the Blog Post.

I am therefore satisfied on the evidence that Mr Palmer did personally attend the hearing of Ms C’s case as he claims, that he took a contemporaneous Teeline note of the proceedings, and that he took the photograph of Ms C himself. She accepts that it is a photograph of her.’

The claimant also challenged the accuracy of Mr Palmer’s reporting. The High Court judge examined and analysed his notebook meticulously. Again the quality of his

journalism and reporting are commendably evaluated and recognised across paragraphs 20 to 26:

‘The notes start with the date, 12 May. They note the relevant Magistrates Court, using the first three letters of the place (which I will not set out) as an obvious abbreviation. They note cases from the cause list which might be of interest to Mr Palmer, including, specifically, the case which he did get published in a national paper, and Ms C’s case. Then the name of the prosecutor in Ms C’s case, Sue Obeney, is noted. I accept Mr Palmer’s evidence that he either got this name by asking on the day, or because she was the regular prosecutor for local authorities in this court, and he was himself a regular reporter in this court (as press reports corroborate), and knew her name before the case began. After notes of the cases before Ms C’s case (including the case which he successfully sold under his byline), Ms C’s surname is in the notes. The prosecution opening of the facts is then noted down. These notes cover 3 pages (starting in the middle of electronic page 127 of trial bundle “Evidence 2”, and ending in the middle of page 130, with prosecution costs claimed at £26,500). They closely correspond to what Mr Palmer subsequently included in his Blog Post report.

From the middle of page 130 to the bottom of page 131 are Mr Palmer’s Teeline notes of the defence submissions on behalf of Ms C. They begin (picking up from something noted in the prosecution opening of the facts) “She does have OCD, mental health issues”, “she ended up having to share with other people, and her OCD”, “She claimed for borough she wasn’t living in to top up her benefit to allow her to reside in her self contained flat”, “now receives extra benefit for OCD”, “£5,300 overpayment”, “PIP [Personal Independence Payment] eligible”, “£325 per week extra PIP”, “£20 disability”, “Housing Benefit now £250 per week”, “She’s rated at high end of disability”, “She cares for her younger brother, and has been given two-bedroom flat so her 11 year old brother can live with her”, “Employment Support Allowance of £300 per fortnight”.

I am satisfied that all these things were said, as noted, by Ms C’s own legal representative in open court when making submissions on her behalf to the District Judge. I reject Ms C’s claim that they were not said and that there was no reference to her OCD or mental health issues, or to her brother.

Finally, the Teeline note of this hearing concludes (p 132 of the electronic bundle) with the sentencing remarks of “Wattam”, i.e. District Judge Wattam. There is a note of him referring to “the significant degree of sophistication and you supplied false details. Your offending was quite deliberate and dishonest.” The sentence passed is noted (correctly) as “4 months [imprisonment] suspended for 12 months”, with “£25 costs, £80 victim surcharge”. The name of Ms C’s legal representative is noted, again correctly, as “Ms Goodwin, defence”.

The hearing took place, as I have said, on 12 May 2015.’

When Mr Justice Griffiths analysed his published report of the hearing he said: ‘I am satisfied that this was an honest and accurate report of the hearing.’

At paragraph 84, the judge vindicated his decision to repost the report after the claimant began making allegations about his reporting:

'I consider that the necessary exercise of Mr Palmer's legitimate rights of freedom of expression and information outweighed Ms C's rights to privacy and other rights at this time, because she was actively making false claims about him and about events which he had witnessed. The Blog Post was his version of events, and it was a true version. I also take into account that the harm to her was limited to her own reaction to knowing the Blog Post was up, since no-one else was interested in it and no-one else, so far as the evidence shows, was looking at it so many years after 2015, except in connection with Ms C's own complaints. This point is particularly strong since Google had de-listed it in 2017 and it was therefore not easy to find.'

The significance of his case is the importance of court reporters, and indeed all journalists, in maintaining their professional discipline in keeping accurate, dated and reliable shorthand notes of their work.

[Sam Brookman analysed this case for the The Hold The Front Page Jaffa media law column 20th December 2022.](#) Sam Brookman rightly sees significance in the Judge's following observation at paragraph 75:

'The essential record in this respect was his reporter's notebook. He retains all of these routinely, and operates on the basis that they should be kept for at least 7 years. That is in my judgment reasonable, given that normal limitation periods are 6 years and claims may be issued at the end of that period and not served immediately. Mr Palmer's retention of records has enabled this trial to be conducted on the basis of good evidence. It is fortunate that he did retain his notebook, in particular. Otherwise, the untrue evidence of Ms C that he was not there, and that things that he reported were never said in court, might not have been so easily disproved. When, as in this case, there is a stark conflict of oral evidence, the retention of documentary records is vindicated.'

Ms Brookman commends the journalist defendant since: 'the fact remains Mr. Palmer was able to defeat a highly unmeritorious claim based on the Claimant's "untrue evidence", because he had been so meticulous in keeping his background materials.'

Sam Brookman concludes her column by saying 'if you ask me how long a notebook should be kept, my answer will always be: "the longer the better"!'.

I am pleased to say that in the printed text of the book at 2.15 on page 86 I recommended: 'Always keep your notes and background papers on any cases you report for up to six years after the event. **There is a case for keeping them until you retire.**'

There is also another serious implication of this case. Although the professional court reporter was successful, the experience can hardly be a pleasant one for any court reporting agency to reflect on.

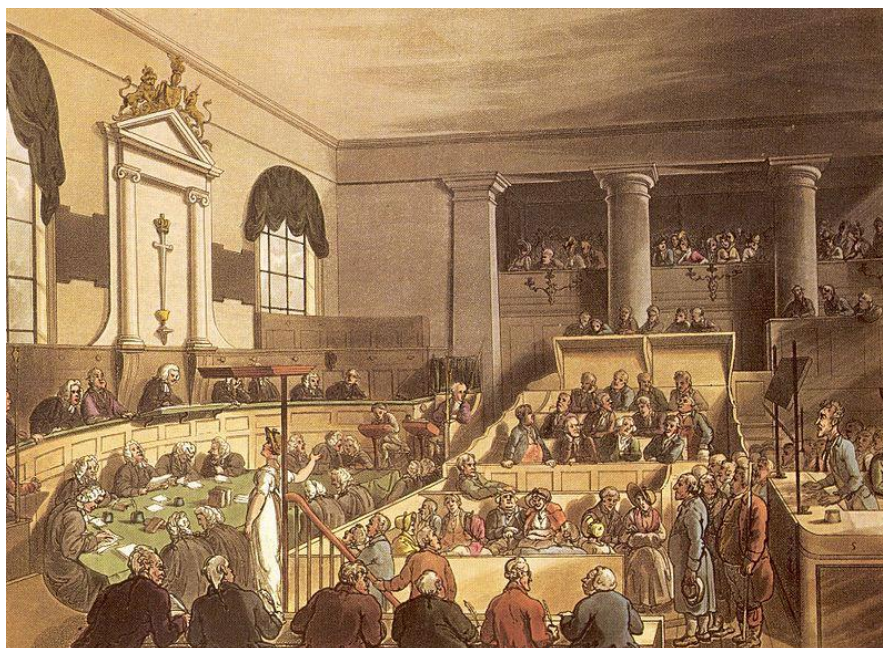
There has been a collapse in the number of independent court reporting agencies covering the courts in the UK for journalism publishers. Maintaining a website of the headlines and opening paragraphs of cases covered would be an essential marketing tool.

If they are at risk of misuse of private information actions at the County and High Court combined with detailed challenges of the accuracy of court reports, the viability of maintaining such a service must surely be open to question.

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Court hearing of a dispute in which a doctor refuses to pay his tailor for some highly unsatisfactory breeches. Coloured etching by T. Rowlandson, 1802, after G.M. Woodward. [See page for author, CC BY 4.0](#), via Wikimedia Commons & <https://wellcomecollection.org/works/qhw4vgbp>



"The Old Bailey, Known Also as the Central Criminal Court", from Volume 2 of The Microcosm of London: or, London in Miniature. 1808. [Thomas Rowlandson and Augustus Pugin](#), Public domain, via Wikimedia Commons

Open Justice issues in the Northern Ireland legal jurisdiction

Challenging anonymity orders applied for by defendants on the grounds publicity increased the risk of their self-harming

Northern Ireland court reporter and Local Democracy journalist Tanya Fowles has been seeking to halt a developing trend for courts issuing anonymity orders for trial defendants who say that publicity may cause them to self-harm.

She has been challenging and campaigning against the practice for many years. In November 2021, she succeeded in resisting an application by lawyers representing a woman seeking a life-long anonymity order following convictions for fraud and money-laundering offences.

In addition, District Judge Bernie Kelly at Armagh Magistrates Court rejected an application for anonymity due to the risk of self-harm in respect of a man accused of attempted sexual communication with a child.

The Judge was reported saying: 'I appreciate this is a balancing critique of rights but I always quote the tagline of the Washington Post – Democracy Dies in Darkness. Never truer words were spoken. Light must be shone into the dark recesses, to ensure the public can have confidence and all of us are answerable. As far as I'm concerned the press is the Fourth Estate and are essential to ensuring the other three branches of our constitution do so in a fit and proper way.'

However, [there have been other cases where lifelong anonymity](#) in Northern Ireland courts have been sustained for convicted sex offenders on the basis of publicity being accepted as a threat to their mental health.

In June 2023 Tanya unsuccessfully sought the support of Northern Ireland's most senior judge to reverse the legal jurisdiction's unique position of providing this protection to paedophiles beyond the practice of giving lifelong anonymity to exceptional convicted prisoners in notorious murder cases.

She argues that prisoners making such threats in their mitigation would be eligible for immediate placement on the Supporting Prisoners At Risk scheme to prevent self-harm and such orders are disproportionate and contrary to what lifetime anonymity is usually reserved for.

Tanya Fowles, who works for the Enniskillen-based weekly the Impartial Reporter, [received the BBC's Local Democracy Reporter of the Year award in 2022](#) in recognition of her challenging bids by court defendants, including convicted paedophiles, to have reporting restrictions imposed on their cases. She also received a special award from

the Council of the Chartered Institute of Journalists in 2023 for her Open Justice vigilance and campaigning on behalf of the profession of journalism.

See the following Hold The Front Page reports:

[Reporter slams 'ridiculous' decision to give car vandal lifetime anonymity](#) (26 July 2023)

[Judge refuses to back reporter's fight against paedophile's lifelong anonymity](#) (22 June 2023)

[Reporter thwarts murder case secrecy bids after double court fight](#) (2 June 2023)

[Second paedophile wins lifelong anonymity after suicide threat](#) (23 April 2023)

[Judge slams colleague after journalists barred from naming alleged fraudster](#) (27 Feb 2023)

[Press barred from naming alleged abuser over 'paedophile hunters' threat risk](#) (17 Feb 2021)

[Reporter to fight alleged paedophile name ban after probing police evidence](#) (26 Apr 2021)

[Judge sides with journalist over bid to keep alleged sex offender's address secret](#) (31 Aug 2021)

[Alleged sex abuser fails in secrecy bid after judge's error](#) (13 Oct 2021)

[Reporter hits out after judge withdraws right to name paedophile](#) (11 Mar 2022)

[Reporter demands top judge acts on defendants' 'self-harm' secrecy bids](#) (28 Oct 2021)

[Court reporter wins six-year fight as judge slams self-harm anonymity bids](#) (19 Nov 2021)

[Court reporters warned to expect 'deluge' of paedophile anonymity bids](#) (06 Apr 2022)

[Journalist who battled spurious criminal secrecy bids named top LDR](#) (14 Nov 2022)

[Fraudster named after reporter blocks lifetime secrecy bid](#) (20 Dec 2022)

New legislation in Northern Ireland passed which makes it a criminal offence to report anything leading to the identification of persons suspected of sexual offences prior to charge. This legislation came into force 28th September 2023

[The Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022](#) has provisions across Sections 12 to 18 which criminalise any publication leading to the identification of people accused of sexual offences unless they are charged by investigating police. This mirrors the UK legislation anonymising teachers prior to charge.

However, it is unique in extending the anonymity for people accused of sexual offences for 25 years after their deaths. The legislation is also different from the rest of the UK in extending anonymity for 25 years after the deaths of sexual offence complainants. Anyone wishing to discharge these restrictions has to make an application to a Magistrates Court and this includes living sexual offence complainants and anyone accused of such crimes who has not been charged.

The legislation was given Royal Assent 27th April 2022 and Sections 1 to 11, 12 to 18, and 19 have been commenced and became applicable law 28th September 2023.

See: Sexual offences: changes in privacy and anonymity protections for victims and suspects at: <https://www.justice-ni.gov.uk/news/sexual-offences-changes-privacy-and-anonymity-protections-victims-and-suspects>



Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022

2022 CHAPTER 19

An Act to make provision about and in connection with sexual offences; regulate particular matters relating to cases of trafficking or exploitation; and amend certain rules of law and procedure for the purpose of protecting people from harm. [27th April 2022]

BE IT ENACTED by being passed by the Northern Ireland Assembly and assented to by Her Majesty as follows:

These unusual statutory provisions are the result of the Northern Ireland Assembly taking into account the recommendations of [Sir John Gillen's report in 2019](#) who investigated the law and serious sexual offences in Northern Ireland.

[The report itself is 714 pages](#) and takes many original and internationally law comparative approaches to the issues investigated. At this stage it is useful to mark the following proposed changes that are particularly relevant to journalists and publishers:

[Section 8.](#) Sexual offence complainants in Northern Ireland will have additional anonymity beyond their lifetime- 'during the period of 25 years beginning with the date of the complainant's death...'

[Section 9.](#) During the 25 years following the sexual complainant's death, interested parties may apply to a magistrates court to disapply or vary the anonymity. These would include 'persons interested in publishing matters', the late complainant's representative, or a family member. The court would have the power to revoke and vary the anonymity: (a) in the interests of justice, or (b) otherwise in the public interest

[Section 10.](#) Penalties for breaching the anonymity are a maximum of 6 months imprisonment and/or a Level 5 fine which used to be £5,000 but after legislative change in 2015 became unlimited.

[Section 12.](#) Statutory anonymity for anyone suspected of having committed a sexual offence in Northern Ireland unless charged by the police. 'No matter relating to the suspect is to be included in any publication if it is likely to lead members of the public to identify the suspect as a person who is alleged to have, or is suspected of having, committed the offence.'

The legislation when commenced will be retrospective. The anonymity will last '25 years beginning with the date of the suspect's death. Information protected includes:

- a) the suspect's name;
- (b) the suspect's address;
- (c) the identity of any school or other educational establishment attended by the suspect;
- (d) the identity of any place of work;
- (e) any still or moving picture of the suspect.

[Section 13.](#) This section sets out the sexual offences that apply and includes abuse of position of trust, possession of extreme pornographic images, and possession of a paedophile manual.

[Section 14.](#) This section sets out how the restriction can be disapplied during the suspects' lifetimes and 25 years after their deaths.

This legislation indicates that journalists and publishers cannot rely on the written consent of the suspect. Both suspect or the Chief Constable of Police Service Northern Ireland have the only *locus standi* to make the application while the suspect is alive. Following the suspect's death 'a person interested in publishing matters', representative of the suspect or a member of the suspect's family are able to apply to the Magistrates Court to disapply or vary the duration of the anonymity within the 25 year period.

[Anonymity of suspects- Sections 11 to 18 inclusive](#)

[Section 19.](#) This provides the courts in Northern Ireland trying sexual offences and any appeal arising to exclude the public from the proceedings. An exception to the exclusion includes 'bona fide representatives of news gathering or reporting organisations.'

Northern Ireland's Department of Justice provided the following '**Media guidance for editors: Legislative changes for information**' on 28th September 2023.

(i) **Extended Anonymity of Victim and Complainants** - [Sections 8 to 11 of the Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022](#)[\(external link opens in a new window / tab\)](#) ('the SOTV Act'). Currently, under the Sexual Offences (Amendment) Act 1992 publication of anything that would help identify the victim or complainant of a sexual offence is prohibited during their lifetime. The SOTV Act amends the 1992 Act to extend these reporting restrictions for 25 years after their death. From commencement on 28 September 2023, anonymity for 25 years after their death will apply to all living victims or complainants of sexual offences regardless of when the sexual offence took place. Where a victim or complainant has died 25 years or less before the commencement date, the extended anonymity will apply. The penalty for breach of anonymity has been increased to up to 6 months' imprisonment and applies to both

lifelong and extended anonymity after the death of the victim. Applications can be made to the magistrates' court to dis-apply or modify the reporting restrictions after death.

(ii) **Anonymity of the Suspect** [Sections 12 to 18 \(external link opens in a new window / tab\)](#) of, and [Schedule 3 \(external link opens in a new window / tab\)](#). These provisions allow for the anonymity of the suspect in a sexual offence case up to the point of their charge. Where a suspect is not subsequently charged, his or her anonymity will be protected during their lifetime and for 25 years after their death. Under the new law, it will be an offence to publish anything that would lead to the identification of the suspect, punishable with up to six months' imprisonment. A suspect is defined as a person against whom an allegation of having committed a sexual offence has been made to the police or whom the police are investigating in connection with a sexual offence but where no allegation has been made. Once a suspect has been charged with a sexual offence the protection of anonymity ends. On commencement on 28 September 2023, the anonymity provisions will apply retrospectively. Applications to dis-apply or modify the reporting restrictions can be made to the magistrates' court.

(iii) **Exclusion of the public from Crown Court** - [Section 19 Justice \(Sexual Offences and Trafficking Victims\) Act \(Northern Ireland\) 2022 \(external link opens in a new window / tab\)](#) Where a sexual offence case is tried on indictment in the Crown Court, only certain persons are allowed to remain in the court. Before the trial, the court must make an exclusion direction which will specify those who are allowed to remain in the court. Under an exclusion direction, all persons are excluded from the court with the exception of those as prescribed in the SOTV Act:

- Members and officers of the court;
- Persons directly involved in the proceedings. This includes: the complainant, the accused, legal representatives acting in the proceedings, any witness while giving evidence in the proceedings, any person acting in the capacity of an interpreter or other person appointed to assist a witness or an accused and members of the jury;
- A relative or friend of the complainant nominated by the complainant and specified in the direction. Only one person may be nominated. A relative or friend of the accused nominated by the accused and specified in the direction. Only one person may be nominated;
- Bona fide representatives of news gathering or reporting organisations;
- Any other person specified in the direction as a person excepted from the exclusion.

Where the complainant in the sexual offence case has died before the start of the trial an exclusion direction does not apply. An exclusion direction has effect from the beginning of the trial until the proceedings, in respect of each serious sexual offence to which the trial relates, have been determined (by acquittal, conviction or otherwise) or abandoned. If the trial continues in respect of other non-sexual offences, the exclusion direction no longer applies. The exclusion direction does not apply during any time when a verdict is being delivered in relation to the accused. The public are allowed to be in the court when a verdict is being delivered.

(iv) **Exclusion of the public from appeal hearings – [\(external link opens in a new window / tab\)](#)****Section 19 Justice (Sexual Offences and Trafficking Victims) Act (Northern Ireland) 2022**[\(external link opens in a new window / tab\)](#). The provisions also place a duty on the Court of Appeal to make an exclusion direction before the start of an appeal hearing or a hearing on an application for leave to appeal against a conviction or sentence (or both) for a serious sexual offence. The exclusion provisions do not apply to proceedings on applications for leave to appeal which are considered by a single judge mechanism on papers submitted. With the exception of the following, the guidance above on exclusion of the public from the Crown Court also applies to the exclusion of the public from appeal hearings:

- Where the complainant has died before the start of the hearing, an exclusion direction does not apply. Where the complainant has died after the hearing has commenced, the exclusion direction continues to apply;
- The exclusion direction does not apply when the following decisions of the court are being pronounced: A decision to grant or refuse leave to appeal; a decision on an appeal; a decision to grant or refuse leave for the Director of Public Prosecutions (DPP) to make a reference on the grounds of undue leniency; a decision on a reference on the grounds of undue leniency by the DPP.'

The media lawyer Sam Brookman analysed the commencement of the Northern Ireland legislation for the regular Jaffa Law Column at Hold The Front Page 3rd October 2023 'NI takes lead on anonymity for sexual offence suspects.'

See: <https://www.holdthefrontpage.co.uk/2023/news/law-column-ni-takes-lead-on-anonymity-for-sexual-offence-suspects/>

She made the point that statutory anonymity for sexual offence suspects does not substantially change the law because since the sequence of privacy cases such as Richard v BBC, Sicri v Associated Newspapers and ZXC v Bloomberg, the UK Supreme Court consolidated the precedent of the reasonable expectation of privacy for all crime suspects.

However, she points out 'the main difference created by the statutory measures in Northern Ireland is that the potential penalty for publishers is far more severe – a criminal conviction and up to 6 months in prison' and 'The right to claim civil damages will not have been affected.' That is not the case in the Scottish jurisdiction though.

While recognising a laudable aim in 'victims to have greater confidence in the criminal justice system' Sam Brookman raises the issue 'what price open justice? Some might be asking whether the NI Assembly [has] gone too far and forgotten the importance of open justice. And is this just a start, with this Act being a precedent which the other home countries will follow?'

The commencement of these new and unique laws applying in Northern Ireland has attracted some critical coverage in other journalistic publications.

Mail Online 29th September 2023 'New anonymity law for suspected sex offenders which would have made it illegal to call Jimmy Savile a paedophile comes into force in Northern Ireland.'

See: <https://www.dailymail.co.uk/news/article-12572853/New-anonymity-law-paedophiles-Northern-Ireland.html>

Belfast Telegraph 28th September 2023 'New laws granting anonymity to suspects in sexual offence cases come into force in NI.'

See: <https://www.belfasttelegraph.co.uk/news/northern-ireland/new-laws-granting-anonymity-to-suspects-in-sexual-offence-cases-come-into-force-in-ni/a1224888762.html>

Belfast Telegraph 29th September 2023 "New NI anonymity laws 'would have prevented reporting of Savile allegations'"

See: <https://www.belfasttelegraph.co.uk/news/northern-ireland/new-ni-anonymity-laws-would-have-prevented-reporting-of-savile-allegations/a146787537.html>



Courtroom European Court of Human Rights

https://commons.wikimedia.org/wiki/File:Courtroom_European_Court_of_Human_Rights_01.JPG

Adrian Grycuk, CC BY-SA 3.0 PL, via Wikimedia Commons



Former inmate at Ravensbrück concentration camp testifying at Nuremberg Medical Trial
[Office of Military Government for Germany \(U.S.\)](#), Public domain, [via Wikimedia Commons](#).

Reviving common law media contempt- Attorney-General's intervention in the Russell Brand scandal September 2023

On 22nd September The Attorney General for England and Wales [issued a media release](#) titled 'Media Advisory Notice: Russell Brand' which 'confirms the requirement not to publish material which could prejudice any potential criminal investigation or prosecutions.'

It stated:

'Following the airing of "Russell Brand: In Plain Sight: Dispatches" on 16 September 2023, there has been extensive reporting about Russell Brand. The Attorney General, the Rt Hon Victoria Prentis KC MP, wishes to amplify the importance of not publishing any material where there is a risk that it could prejudice any potential criminal investigation or prosecutions.

Publishing this material could amount to contempt of court.

Editors, publishers, and social media users should take legal advice to ensure they are in a position to fully comply with the obligations to which they are subject under the common law and Contempt of Court Act 1981. The Attorney General's Office is monitoring the coverage of these allegations.'

This advisory precipitated what can be described as a furious reaction from newspapers, journalism bodies and commentators.

On 25th September 2023, Sean O'Neill of the Times wrote a 'Thunderer' editorial in the paper headlined: 'Attorney-general is showing contempt for press freedom.' He said:

'The Attorney General is either poorly informed about the law of contempt or has taken it upon herself to issue a thinly veiled threat intended to have a chilling effect on reporting of the Brand allegations.'

He added: 'As a journalist for more than 35 years, I have always understood that contempt of court "bites" when proceedings are active (i.e. there has been a summons, an arrest or a charge). There have been no arrests in this case. No one has been interviewed by detectives. There are no active proceedings that can be prejudiced.'

The editorial continued: 'Prentis's intervention is a shocking overreach. It is not her job to tell reporters to stop reporting on issues where there is merely the "potential" for criminal proceedings.'

He concluded: 'The attorney-general's censorious warning has no basis in law. She should withdraw it immediately.'

On the same day the Telegraph reported "Contempt of court warning on Russell Brand coverage 'worrying and unnecessary.' Society of Editors questions advice from Victoria Prentis, the attorney general, not to publish material that could prejudice investigations.' Dawn Alford, executive director of the Society of Editors told the paper 'journalists were "well versed" in contempt of court laws.' The article also quoted media law expert and consultant David Banks 'I expect that newspapers and their lawyers will be treating this advice with a pinch of salt.'

And the very influential law journalist and qualified solicitor Joshua Rozenberg, who is an honorary KC and honorary bencher of Gray's Inn, said of the Attorney General's warning: 'some very strange things being said about contempt of court' and 'For the time being, we can surely put common-law contempt back in its box.'

Press Gazette waded in with the article 25th September 2023: 'Attorney General makes Russell Brand contempt warning despite no active proceedings. Russell Brand has not been arrested, nor is any criminal investigation currently taking place.'

See: <https://pressgazette.co.uk/media-law/attorney-general-russell-brand-contempt-warning/>

And on the following day Press Gazette's editor Dominic Ponsford published a further article seeking to clarify the media law surrounding the Russell Brand developing story: 'Russell Brand investigation: Why Met Police issued statement to media despite privacy rules.'

See: <https://pressgazette.co.uk/comment-analysis/russell-brand-met-police-statement-privacy-rules/>

What the media coverage demonstrates is that the journalism profession does have an excellent command and understanding of [the 1981 Contempt of Court Act](#).

This introduced a statutory regime for media contempt which between sections 1 and 5 sets out the rudiments of a strict liability rule that operates from the time a case is active.

Schedule 1 of the act sets out the times when criminal proceedings are active: 'The initial steps of criminal proceedings are:— (a) arrest without warrant; (b) the issue, or in Scotland the grant, of a warrant for arrest; (c) the issue of a summons to appear, or in Scotland the grant of a warrant to cite; (d) the service of an indictment or other document specifying the charge; (e) except in Scotland, oral charge;'

And at (f) there are some very rare further circumstances where a criminal case becomes active again 'the making of an application under section 2(2) (tainted acquittals), 3(3)(b) (admission made or becoming known after acquittal), 4(3)(b) (new evidence), 11(3) (eventual death of injured person) or 12(3) (nullity of previous proceedings) of the Double Jeopardy (Scotland) Act 2011 (asp 16).' This just goes to show how complicated statutory and indeed common law contempt law can be.

There are specialist law books on contempt law. The latest fourth edition of *Borrie and Lowe on Contempt* (2010) is 778 pages long and costs £736.00.



Contempt of Court Act 1981

CHAPTER 49

ARRANGEMENT OF SECTIONS

Strict liability

Section

1. The strict liability rule.
2. Limitation of scope of strict liability.
3. Defence of innocent publication or distribution.
4. Contemporary reports of proceedings.
5. Discussion of public affairs.
6. Savings.
7. Consent required for institution of proceedings.

Other aspects of law and procedure

Strict liability means that intention is no defence and media contempt is defined as a publication which 'creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.'

If Parliament intended this legislation to abolish the common law of contempt, it would say so. But, it does not. Common law contempt still applies. See Section 6 'Savings' of the 1981 Contempt of Court Act:

‘Nothing in the foregoing provisions of this Act—(a) prejudices any defence available at common law to a charge of contempt of court under the strict liability rule; (b) implies that any publication is punishable as contempt of court under that rule which would not be so punishable apart from those provisions; **(c) restricts liability for contempt of court in respect of conduct intended to impede or prejudice the administration of justice.**’

Mainstream media publications and their editors like to refer to *McNae’s Essential Law for Journalists* as ‘the media law bible.’ But even the bible of media law still has sections and references on common law contempt. See pages 306-7, 164, 169 and 330 of the 26th edition (2022) and pages 262-3, 148 and 153 of the 25th (2020) edition.

And the *UK Media Law Pocketbook* 2nd edition at pages 11, 17, 35, 57 and 78 deals with common law contempt matters though much more briefly.

One purpose in retaining common law media contempt would be to deal with situations where there is a campaign to make allegations against somebody in order to apply pressure for the authorities to arrest and prosecute and with the campaign intending to generate so much prejudice that a future fair trial is in doubt.

If it can be proved a journalist or media publisher intended to create as much prejudice to achieve this purpose, there could be common law contempt liability.

The Attorney General would have to be able to prove intent at the criminal standard of proof. A future court trying the journalist/publisher would be a panel of judges and not a jury.

The key test cases on common law contempt prosecutions of journalists and news publications are more than 30 years old. But that does not mean the law has changed in any way.

The AG would have to prove specific intent where the accusation is that of interference with particular legal proceedings. Any potential prosecution for media law contempt will depend on the circumstances. For example, has a legal process already begun with the announcement of an actual police investigation? Can it be shown that journalists and news publishers have been heedless or reckless to the obvious risk of prejudice and can this be equated with intent.

It can be argued that a journalist could be in contempt at common law if (a) they desired to interfere with the due process of justice or (b) they did not desire it but must have realised it was highly probable or (c) they neither desired it nor realised it was highly probable, but recognised it was a possibility and deliberately took a risk or, possibly (d) they were heedless of a perfectly obvious risk. These possibilities were actually set out at page 92 in the 11th edition of *McNae’s Essential Law for Journalists* (1990).

The *Sun* was fined £75,000 in 1988 for contempt at common law when during 1986 they offered to fund a private prosecution of a doctor on a charge of raping an eight-year-old girl, and then published two articles with details of the allegation.

In one of the articles the newspaper had identified the doctor and accused him of other indecencies. Two of the *Sun*'s articles had been headlined: 'He's a real swine' and 'Beast must be named, says MP.'

The proceedings were not active under the 1981 Contempt of Court Act, but the court decided criminal proceedings were imminent at common law. During the private prosecution, the doctor was accorded anonymity and evidence and information previously published about him was legally inadmissible. The Divisional Court decided when the *Sun* published its articles, a criminal prosecution was virtually certain to begin in the near future and an intention to prejudice the future trial had been established.

The doctor was in fact acquitted after a trial at Chelmsford Crown Court.

Lord Justice Watkins said: 'The need for a free press is axiomatic, but the press cannot be allowed to charge about like a wild unbridled horse.' He continued: 'It has, to a necessary degree, in the public interest to be curbed. The curb is in no circumstance more necessary than when the principle that every man accused of crime shall have a fair trial is at stake. It is a principle which, in my experience, newspaper proprietors and editors are usually as alert as anyone to avoid violating.

There may not have been in fact, as was suggested, another case quite like this, but the kind of threat which the articles complained of posed to the proper administration of justice is by no means novel, as reports of previous cases of criminal contempt committed by publishers of newspaper articles show.

The respondents here had very much in mind particular proceedings which they were determined, as far as it lay within their power and influence, to ensure took place.'

To those who might argue now that the common law of media contempt is redundant and has been supplanted by statutory law, it might be useful to call in mind the observations of Lord Justice Watkins in his 1988 ruling:

'The common law surely does not tolerate conduct which involves the giving of encouragement and practical assistance to a person to bring about a private prosecution accompanied by an intention to interfere with the court of justice by publishing material about the person to be prosecuted which could only serve to and was so intended to prejudice the fair trial of that person. This is especially so where the publisher of them makes it plain that he believes the person referred to in the articles is guilty of serious crime, that he is deserving of punishment for that, and that he has committed some other similar crime. The common law is not a worn-out jurisprudence rendered incapable of further development by the ever increasing incursion of parliamentary legislation. It is a lively body of law capable of adaptation and expansion to meet fresh needs calling for the exertion of the discipline of law.'

This precedent indicates that the circumstances in which a criminal contempt at common law could be committed were not necessarily confined to those in which proceedings were either pending or imminent.

See: Attorney General v News Group Newspapers Ltd - [1988] 2 All ER 906

In 1987 the *Independent*, *Evening Standard*, and *London Daily News* were held in contempt of court at common law and each later fined £50,000 for publishing material from Peter Wright's book *Spycatcher*. In 1990 the fines were discharged, but convictions confirmed. At the time of their publication interim injunctions were in force preventing the *Observer* and *Guardian* from publishing the material. The Court of Appeal held there could be contempt of court at common law if there was an attempt to impede or prejudice the administration of justice. It was well established that an act which interfered with the course of justice was capable of constituting a contempt of court.

Furthermore, the court's power to commit for contempt where the conduct complained of was intended to impede or prejudice the administration of justice was saved by Section 6(c) of the 1981 Act, and accordingly, where the court had made orders to preserve the subject matter of an action pending trial, a third party who knew of those orders but who nevertheless destroyed or seriously damaged that subject matter would be guilty of criminal contempt if in doing so he intended to impede or prejudice the administration of justice.

See: Attorney General v Newspaper Publishing plc and others — [1987] 3 All ER 276

In 1991 the *Sport* newspaper and its editor were found not guilty of contempt after they published the previous convictions of a rapist being sought by the police abroad for questioning about a missing schoolgirl. The case was not active and no warrant for arrest had been issued, though the police had specifically asked the media not to publish the suspect's previous convictions.

The editor justified his actions and defiance of police advice on the basis that the rapist was 'on the run and a danger to other women.' Publisher and editor were acquitted because the court held the AG had not proved intent beyond reasonable doubt. There was no specific knowledge of the whereabouts of the suspect at the time of the publication and it was argued that his arrest and the criminal proceedings arising could not be said to be apparently imminent.

See: Attorney General v Sport Newspapers and others [1992] 1 All ER 503.

In a largely forgotten contempt of court prosecution by the Attorney General against *Private Eye* magazine and its editor Ian Hislop in 1990, the Court of Appeal eventually ruled that both respondents had committed contempt by common law and the statutory provisions of the 1981 Contempt of Court Act.

In 1989 Sonja Sutcliffe had been suing the magazine for libel over allegations about her dealings with newspapers covering the arrest and prosecution of her husband Peter Sutcliffe for multiple murders. He was known as 'The Yorkshire Ripper.' The libel case was to be tried by jury and the magazine had published articles in February 1989 about the impending case.

The Court of appeal judges ruled the articles went beyond fair and temperate criticism or a private warning before trial of possible cross-examination. They held Mrs Sutcliffe up to public obloquy, were untrue, defamatory and designed to deter her from proceeding with her action by what amounted to threats to expose her to cross-examination on her alleged knowledge of her husband's murderous activities and her alleged fraud on the social security authorities.

The court decided they accordingly amounted to improper pressure on Mrs Sutcliffe to abandon her claim against the defendants, notwithstanding the defendants' belief at the time of publication that the articles were true or that they would be entitled to cross-examine her on the matters contained in them by way of justification.

The court ruled there was also a risk that potential jurors at the trial of the action might be prejudiced by the articles.

In these circumstances the court decided the articles gave rise to a substantial risk that the course of the proceedings would be seriously impeded or prejudiced and amounted to a contempt both at common law and under the Contempt of Court Act 1981. The Attorney General's appeal was accordingly allowed and the defendants each fined £10,000.

Lord Justice Nicholls in his ruling observed: 'I do not understand how a responsible editor came to do this. This is not an instance of fair and temperate criticism. A journal was using its own columns to publish highly defamatory material, and make threats, with the view thereby of putting pressure on a plaintiff to abandon a claim—against itself—which was in the warned list and due to be heard within two or three months. Such conduct does no service to the cause of the freedom of the press. It was, I much regret to have to say, an abuse of that freedom.'

On the subject of the boundaries of the 1981 Contempt of Court Act and media contempt at common law, Lord Justice Nicolls said: '...the 1981 Act left untouched, and outside the strict boundaries set for the strict liability rule, cases such as the present one, where the conduct was intended to impede or prejudice the administration of justice ... in my view publication of these two articles by Private Eye was a serious contempt of court at common law.'

See: **Attorney General v Hislop and another [1991] 1 All ER 911**

In the light of these old test cases and precedents, there is no reason why new circumstances could arise where the Attorney General may wish to respond with a move

to protect the administration of justice where it was felt that the media had become by their investigations some kind of proxy police, prosecutor, and then judge and jury.

It is a long time since the last media contempt common law case, but we cannot rule out the development of a new more contemporary precedent which is not something any journalist or news publisher would like be at the centre of.



Emmeline Pankhurst and Emmeline Pethick Lawrence leaving court, c.1908-1912.
[LSE Library](#)

Defamation also usually known as libel

Libel in England & Wales has been reformed by the Defamation Act 2013, and expected to be enacted (come into force) in the autumn of this year. A libellous statement is defined as being **'words, pictures, visual images, gestures or any other method of signifying meaning.'** Damage will be presumed rather than materially evaluated in terms of financial harm (apart from bodies operating for profit) The 2013 Defamation Act also gives courts a general power to order a summary of its judgment to be published, (a kind of right of reply or correction after winning an action) and order the removal of a libellous statement or the cessation of its distribution. 'Libel tourism' by persons not domiciled in the UK or an EU member State is being discouraged so that where a publication has 5,000 copies distributed in Britain but 100,000 in Australia, the law encourages Australia to be the appropriate jurisdiction to hear the action.

Prior restraint by court injunction- courts preventing the first publication of libellous articles and statements is rare in Britain. The 1891 court case of *Bonnard v Perryman* established the principle that when a publisher defendant declares they intend to defend the libel on the basis that it is true and can be justified, prior restraint should not be given in order to respect freedom of expression. If the publisher subsequently loses the libel trial, they are at risk of being ordered to pay aggravated and quite possibly exemplary (punitive) damages. Lord Chief Justice Coleridge said: 'the importance of

leaving free speech unfettered is a strong reason in cases of libel for dealing most cautiously and warily with the granting of interim injunctions.'

Defamation carries civil law sanctions such as being sued for huge amounts of money and having to pay lawyers huge amounts in fees. [As already mentioned a research study in 2008 demonstrated that lawyers in England charge 140 times more than in other European countries.] Despite recent reforms libel is an extremely vulnerable risk factor in journalism and media communication. Unlike in any other form of civil proceedings, **the burden of proof is on the media defendant**. The problem of successful claimants being able to sue on conditional fee arrangements with 100% uplift on lawyers' fees has been removed, but after event insurance is still available for cases deemed to have a likely chance of success.

Defamation: **four basic definitions in common law:**

- a. what you write exposes someone to hatred, ridicule and contempt
- b. what you write lowers the estimation of right thinking people generally
- c. what you write damages someone in their trade, profession or office
- d. what you write causes people to shun and avoid your subject

The Defamation Act 2013 states 'a statement is not defamatory unless its publication **has caused or is likely to cause serious harm to the reputation of the claimant,**' and 'harm to the reputation of a body that trades for profit is not "serious harm" unless it has caused or is likely to cause the body **serious financial loss.**' Bodies that trade for profit are usually companies and corporations.

There has been some legal nuancing of the significance and meaning of the expression 'serious harm.' An early High Court case suggested that it might favour media defendants in giving the meaning of 'serious' a high threshold.

See: [Cooke & Anor v MGN Ltd & Anor \[2014\] EWHC 2831 \(QB\) \(13 August 2014\)](#) Mr Justice Bean said the new serious harm requirement 'raises the bar over which a claimant must jump'. The serious harm can be obvious in relation to the words when, for example, calling somebody a paedophile, or terrorist. Claimants are now expected to demonstrate damage to reputation as perceived by others.

A later case of *Lachaux v Independent Print Ltd* went to the UK Supreme Court with a ruling in 2019 on this issue. Lord Sumption said: "This shows, very clearly to my mind, that it not only raises the threshold of seriousness... but requires its application to be determined by reference to the actual facts about its impact and not just to the meaning of the words." He said: "The reference to a situation where the statement 'has caused' serious harm is to the consequences of the publication, and not the publication itself. [...] It points to some historic harm, which is shown to have actually occurred. This is a proposition of fact which can be established only by reference to the impact which the statement is shown actually to have had. [...] It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated. The same must be true of the reference to harm which is 'likely' to be caused." See: [Lachaux v Independent Print Ltd & Anor \[2019\] UKSC 27 \(12 June 2019\)](#)

What this means in practice is that libel claimants now have to prove serious harm to their reputation as a matter of fact in order to bring a successful cause of action for libel under the Act.

The Section One reform in the 2013 Defamation Act and UK Supreme Court ruling in *Lachaux* means only cases where statements causing serious harm to the claimant's reputation will be successful. It will now be necessary for claimants to consider to whom the statement was actually communicated, and the impact of that communication. They have to assess if serious harm to their reputation was caused in fact and not just presumed by the construction of meaning in the alleged libel.

It is clear then that Judges, not you, decide what is capable of being defamatory. This is the approach they take:

The legal principles relevant to meaning ... may be summarised in this way: (1) The governing principle is reasonableness. (2) The hypothetical reasonable reader is not naïve but he is not unduly suspicious. He can read between the lines. He can read in an implication more readily than a lawyer and may indulge in a certain amount of loose thinking but he must be treated as being a man who is not avid for scandal and someone who does not, and should not, select one bad meaning where other non-defamatory meanings are available. (3) Over-elaborate analysis is best avoided. (4) The intention of the publisher is irrelevant. (5) The article must be read as a whole, and any 'bane and antidote' taken together. (6) The hypothetical reader is taken to be representative of those who would read the publication in question. (7) In delimiting the range of permissible defamatory meanings, the court should rule out any meaning which, 'can only emerge as the produce of some strained, or forced, or utterly unreasonable interpretation...'... (8) It follows that 'it is not enough to say that by some person or another the words might be understood in a defamatory sense.' (taken from Sir Anthony Clarke MR in [Jeynes v News Magazines Limited \[2008\] EWCA Civ 130](#) at [14])

Identification: even if you do not name someone explicitly, if it is possible to work out who you are talking about, you are in trouble. In other words, the construction of understanding a libel can be achieved by jigsaw identification between different media platforms and publications making one liable with the other.

The most famous 'Twibel' in recent years involved the wife of the House of Commons speaker, Sally Bercow, who in 2012 had tweeted 'Why is Lord McAlpine trending? *Innocent Face*'. The late Lord McAlpine had been wrongly accused of historic sexual abuse. The court decided Ms Bercow had libelled by innuendo in the context of multimedia coverage elsewhere.

See: [McAlpine v Bercow \[2013\] EWHC 1342 \(QB\) \(24 May 2013\)](#)

The implications of Twibel have been brought home to the journalist and broadcaster Katie Hopkins who refused an invitation to apologize after wrongly defaming food writer Jack Monroe. She applied for an insolvency agreement to avoid bankruptcy in order to

deal with hundreds of thousands of pounds in damages and legal costs arising from two Tweets she published in 2015.

See: [Katie Hopkins applies for insolvency agreement to avoid bankruptcy](#)

See also the ruling in the case: [Monroe v Hopkins \[2017\] EWHC 433 \(QB\) \(10 March 2017\)](#) & [Monroe v Hopkins \(Rev 1\) \[2017\] EWHC 645 \(QB\) \(28 March 2017\)](#)

Publication to a third party; not just a newspaper or magazine, sending a postcard with a defamatory comment is good enough.

A golden rule of testing your copy: Imagine you are the most sensitive person being criticized and think the very worst interpretation of what could be misunderstood by the language you have used in your copy.

Bane and antidote: When evaluating your copy consider the worst possible 'reading' of your material (known as the bane), make your assessment on one quick and immediate reading (the natural and ordinary meaning expected of your audience), then look for any antidote in terms of putting the other side, indicating that the bane is ridiculous, meaningless satire that nobody would believe, and contextualisation which would ensure that any reasonable reader would not derive any defamatory meaning.

Separating fact from comment: Facts have to be proved and if defamatory are the most dangerous parts of your copy. Comment should be opinion, honestly held and based on true facts or allegations made in legally privileged contexts.

Avoid alleging and/or imputing defamatory motive: Not even the prosecution has to prove motive in a criminal trial. It is almost impossible to prove unless admitted. There is a famous legal quotation about how impossible it is to guess the state of man's mind as it would be to guess the state of his digestion.

Examples of libel:

Saying somebody has lied about something means you are saying they have deliberately been untruthful. The verb 'lie' implies an intention which it is very difficult to prove in law and in libel the burden of proof is on you. The claimant does not have to prove they did not lie. So you might be able to prove that they were mistaken in what they said, but how could you prove that they intended to say something they knew to be wrong?

Reporting somebody saying that somebody else lied about something is the same as you're saying the other person lied. Repeating or reporting a libel by attribution still makes you liable to libel.

This means that the old sayings 'think before you open your mouth' or in the 21st century 'think before you tweet or text, 'talk with your brain and not your heart', 'when in doubt leave it out', 'never take anything for granted', are wise counsels and can save your career as well as your financial wellbeing. A former editor of the *Guardian* (when it was based in Manchester) was C.P. Scott and his famous maxim 'Comment is free, facts are sacred', is widely quoted. In media law you should remember that in libel 'facts when substantially true are free, comment when not honest opinion is expensive.'

Online Libels

Online libels are now taking up much more of the business of the courts. *Easeman v Ford* is an example of a case where a filmmaker had successfully sued an activist and blogger for 'a long-running and extensive campaign of online vilification and harassment.'

See: [Easeman v Ford \[2016\] EWHC 1576 \(QB\) \(29 June 2016\)](#)

Another case concerned two South Korean sports journalists and rose from postings on Facebook and Instagram. See: [Kim v Lee \(Rev 1\) \[2021\] EWHC 231 \(QB\) \(09 February 2021\)](#)

'This claim for libel arises from the publication by the Defendant of eight posts on Facebook and Instagram between 6 and 11 December 2018. At the material time, both the Claimant and the Defendant worked in the UK as football reporters and journalists for Korean media companies, delivering English and European football news to South Korea and to the Korean community in this jurisdiction. For the Claimant, this was a part-time job alongside his primary occupation as a church pastor in New Malden, Surrey.'

There are a number of libel risks peculiar to online production and communication. When tweeting be careful about any juxtapositions with hashtags. If you are reporting about an identifiable individual you should avoid any association of that person with #murder, #crooks etc. When you are producing online postings be very cautious about labelling files with language that is potentially defamatory. Such information is readable in some browsers when activated by the curser, and file properties are usually discoverable by right clicking.

The same is true when embedding information in cascading stylesheet online platforms that you might think is hidden. In reality, the inclusion of such linkage in 'alternative text', or click through urls could generate defamatory meaning. If you have an apparently innocent image of somebody that clicks through to a visual image communicating something despicable or scandalous then it could be argued that you are constructing an online defamation.

Hyperlinks to libelous web-pages on their own should not constitute a repetition of a libelous posting unless the libel is summarized and stated in the phrase encapsulated in the link, or it is quite clear there is a context of encouraging people online to visit the libelous page with the intention of damaging somebody's reputation.

Libel Defences

You may be able to avoid getting sued if any of the following apply:

1. It has come from a senior police officer or government department –you may have qualified privilege [subject to explanation or contradiction] Conditions include fairness & accuracy without malice. The qualified privilege under 2013 Defamation Act now applies to governments anywhere in the world; authorities anywhere in the world performing governmental functions, and international organisations or international conferences.

2. It was said in open court, or in the Houses of Parliament –you should have absolute privilege for court reports and high qualified privilege for parliamentary reports. High qualified privilege means it can only be defeated by malice. Key conditions include fairness and accuracy. Absolute privilege enables you to report malicious statements made in evidence and requires that the reports are ‘contemporaneous’- i.e. published to nearest deadline in respect of court reports. The absolute privilege in court reporting also applies to foreign courts and international courts and tribunals. Qualified privilege also applies to legislatures anywhere in the world.

3. It was said at a public meeting [held for a lawful purpose] –you should have qualified privilege (fair, accurate, and in the public interest) but you need to get or at least be receptive to the side of the person being attacked and report the gist of that if provided. This is what being subject to contradiction or explanation means. Again, the conditions of fairness and accuracy are required. This defence has been extended to public meetings abroad.

4. It was said at a press/media conference provided this satisfied the recognized conditions of a public meeting above. This means that any member of the media had access to the conference. This could be in the street or on private premises. This excludes one to one interviews. Press/media releases accompanying the conference attract the privilege provided the content is not substantially different from what was said at the conference. Your report has to be fair and accurate. The defence has been extended to press conferences abroad.

5. The statement you are reporting is substantially true. The defence will succeed if your report contains substantially untrue imputations that ‘do not seriously harm the claimant’s reputation.’ Remember **you have to prove this defence.**

6. You are reporting an ‘honest opinion’ such as in a review or editorial. The defence needs the following conditions: i **it is opinion**; ii report/publication **includes ‘in general or specific terms, the basis of the opinion’**; iii ‘an honest person could have held the opinion’ **based on a ‘fact which existed at the time the statement complained of was published’**, or **‘anything asserted to be a fact in a privileged statement published before the statement complained of.’** This means the opinion could be based on allegations made in a court case, in Parliament, in a peer-reviewed statement in a scientific or academic journal, or in a publication satisfying the new public interest defence under section 4 of the Defamation Act 2013. What does the ‘honest’ part of the defence mean? It means the defence **fails if the author of the statement did not hold the opinion**, or if the **reporter/publisher ‘knew or ought to have known that the author did not hold the opinion.’**

Get all this right, then you might be let off the hook.

7. You might have a **public interest defence** under section 4 of the Defamation Act 2013. Public interest is not defined in the Act, but the courts have set out ideas in case histories and they include:

“What it is in the public interest that the public should know and what the publisher could properly consider that he was under a public duty to tell the public”;

“In a simpler and more direct way, whether the public was entitled to know the particular information”;

“The interest is that of the public in a modern democracy in free expression and, more particularly, in the promotion of a free and vigorous press to keep the public informed”;

"The general obligation of the press, media and other publishers to communicate important information upon matters of general public interest and the general right of the public to receive such information... there must be some real public interest in having this information in the public domain." This last quotation was from Baroness Hale in *Jameel v Wall Street Journal* in 2006 and she added: "This is, as we all know, very different from saying that it is information which interests the public - the most vapid tittle-tattle about the activities of footballers' wives and girlfriends interests large sections of the public but no-one could claim any real public interest in our being told all about it."

This defence is available to the **publication of facts and opinions**.

For the defence to succeed you need to prove that you **'reasonably believed that publishing the statement complained of was in the public interest.'** In doing that you will be entitled to argue **'allowance for editorial judgement.'** This is likely to be informed by previous court definitions of 'responsible journalism', which was known as the 'Reynolds' defence and had been developed by 3 key case histories: See: [Reynolds v. Times Newspapers Ltd and Others \[1999\] UKHL 45 \(28th October, 1999\)](#) [Jameel & Ors v. Wall Street Journal Europe Sprl \[2006\] UKHL 44 \(11 October 2006\)](#) and [Flood v Times Newspapers Ltd \[2012\] UKSC 11 \(21 March 2012\)](#)

The criteria for responsible journalism included: giving fair opportunity for people criticized to give their side of the story, reporting a gist of this; evaluating the reliability of your source who might have an axe to grind, and avoiding sensationalist language and bias.

The critical thing in the field of defamation is if in doubt get professional legal advice before publication.

8. Qualified privilege in being a statement published in a scientific or academic journal, The conditions are: i statement must relate to scientific or academic matter; ii statement was peer-reviewed by editor and one or more persons with academic expertise relating to the scientific/academic matter/issue; iii malice will defeat the defence.

9. Innocent defamation. This is available under section 1 of the 1996 Defamation Act and applies when as the journalist/publisher you had no warning or reasonable anticipation that the libel would be communicated on your media platform- this could be a live broadcast or website. The conditions will be developed by case law, but at the time of writing there is little of it available. The defence hinges on the concept of responsibility for publication and will be satisfied if in defence you can show that **you took reasonable care in relation to the publication**, and you did not know, and had no reason to believe, that what you did caused or contributed to the publication of a defamatory statement.

The defence has to square with the statute stating that it is necessary that you are 'not the author, editor or publisher of the statement complained of.' In practice if you are responsible for an internet publication you should have a "notice and take down policy." You need to remove potentially defamatory material from public access as soon as you have been given notice of the complaint. This is both European and UK law. The Internet Service Provider is usually not regarded as liable as long as the 'take down' is engaged promptly to remove libellous material when notified. Furthermore, the defence is likely to be unavailable if comments and user generated material is editorially moderated prior to publication.

10. Operator of Website Defence (enacted by Section 5 of 2013 Defamation Act in January 2014)

This is a new defence for the operators of websites where a defamation action is brought against them in respect anything posted on their websites, which they were not responsible for. Website operators no longer have to pre-moderate reader comments. This is a 'report and remove' system that people can use if they believe they have been defamed on a website message board.

The system enables website operators to deal with all initial correspondence in-house. This will save legal fees.

As a result of the new guidelines, website operators should:

- Have a robust, written complaints policy
- Designate and train staff to deal with complaints correctly, and within the new timescales. Timing is critical
- Acknowledge and deal with complaints promptly – preferably by email, in order to comply with the 48-hour deadline
- Give website users clear instructions on how to complain, and who to. This may mean providing a Report Abuse button
- Update their website terms and conditions to reflect the new arrangements
- A website operator providing message boards is advised to register users before they are allowed to make a post
- Registration should include taking their names and contact details
- Users should be told, before they accept site terms and conditions, that the operator may divulge their details if they post anything defamatory
- Keep proper written records of complaints, with the dates and times of actions taken.

This looks like a complicated defence, needing the involvement and interpretation by media lawyers, and it may be best to evaluate web publication defence strategies for libel in terms of 1996 Defamation Act innocent dissemination. However the rules for this defence say it will not be necessarily lost when Internet postings are moderated.

See the full detail of the guidelines that website operators need to comply with in order to engage this defence: <http://www.legislation.gov.uk/ukdsi/2013/9780111104620>

11. Neutral Reportage. This has been codified in the Defamation Act 2013 within the public interest defence. Essentially this is neutral reporting of a row/dispute where the sides are libelling each other. Your reporting has to remain neutral by avoiding any explicit or implicit language indicating that you agree or support the defamatory statements. For example, an investigative journalist writing a book about allegations of corruption against police detectives cannot have the defence if he entitles his book 'Bent Coppers.' Section 4(3) of the Defamation Act 2013 gives the defence further statutory underwriting: '(3) If the statement complained of was, or formed part of, an accurate and impartial account of a dispute to which the claimant was a party, the court must in determining whether it was reasonable for the defendant to believe that publishing the statement was in the public interest disregard any omission of the defendant to take steps to verify the truth of the imputation conveyed by it.' This means when impartially and accurately reporting a spat where libels are being spun, you are not obliged to investigate and confirm the truth of what is being said.

Successful media libel defence case histories

Although very expensive to defend- usually in terms of risking over a million pounds in damages and costs, the post 2013 Defamation Act climate has not always been 'claimant friendly.'

Two Conservative Party politicians have been defeated in high profile libel litigation.

In November 2014 Mr Justice Mitting ruled against the Tory Chief Whip, Andrew Mitchell who had denied calling police officer Toby Rowland 'a pleb' when stopping him from riding through Downing Street security gates without getting off his bicycle. Mitchell had sued the *Sun* for publishing the allegation and PC Rowland had sued Mr Mitchell for accusing him of lying. See: [Rowland v Mitchell \[2014\] EWHC 4015 \(QB\) \(27 November 2014\)](#)

In November 2015 Mr Justice Warby ruled in favour of the *Sunday Times* after the former Suffolk South MP Tim Yeo sued the paper for the allegation that he was prepared and had offered to act in breach of the MPs' Code of Conduct by acting as a paid

Parliamentary advocate for a foreign energy company, while chair of the Commons Energy and Climate Change Select Committee.

See: [Yeo v Times Newspapers Ltd \[2015\] EWHC 3375 \(QB\) \(25 November 2015\)](#)

One of the more difficult cases the Sunday Times successfully defended involved property developer and an alleged figure in organized crime, David Hunt. In July 2013, Mr Justice Simon found in favour of the newspaper which had described Mr Hunt as 'a crime lord' in a ruling that turned on the prior Defamation Act 2013 Reynolds defence of responsible journalism. See: <http://www.5rb.com/wp-content/uploads/2013/07/david-hunt-v-times-newspapers-ltd-5.pdf>



Federal Administrative Court in Leipzig, Germany at night.

[https://commons.wikimedia.org/wiki/File:Federal_Administrative_Court_Leipzig_at_night_1_\(aka\).jpg](https://commons.wikimedia.org/wiki/File:Federal_Administrative_Court_Leipzig_at_night_1_(aka).jpg)
André Karwath aka Aka, CC BY-SA 2.5, via Wikimedia Commons.

Being sued for publishing false but not libellous information: Malicious Falsehood

1. Publications that cause **material financial harm to businesses** through the communication of knowingly false, though not necessarily defamatory information can be sued for using the law of 'Malicious Falsehood.' The civil wrong of malicious falsehood operates on the basis that it is substantially different to libel, and some journalists would argue that freedom of expression would be improved by some of its criteria applying to libel.
2. Malicious falsehoods are statements which themselves are not defamatory but are untrue and cause damage. An example would be to say that a rival expert in your field has retired when you know this not to be the case. He/she would lose business and be harmed financially, but there is nothing intrinsically defamatory about saying somebody has retired. Malicious falsehoods often arise when trade/business competitors make false claims about each other's services and products. For example, deliberately and falsely stating your competitor's prices are more expensive than your own could be a malicious falsehood.

3. Necessary ingredients for malicious falsehood include:
 - 1) **Burden of proof is on the claimant**, not on the defendant in terms of establishing that the **allegation is untrue**;
 - 2) Allegation must have been '**calculated to cause pecuniary damage**' to the claimant's 'office, profession, calling, trade or business.'
 - 3) Allegation must have been **published maliciously**.
4. In many respects, malicious falsehood mirrors the position of libel in the USA in terms of public interest claimants: it can only succeed when the claimant proves financial damage, falsity and either reckless disregard for the truth, or actuation by malice. It is also similar to the US tort of 'false light' - where there is a remedy for damages over non-defamatory information that is wrong and damaging.
5. Its existence and operation in the English legal system can leave media defendants subject to the double jeopardy of being sued for libel and malicious falsehood.
6. Useful precedents:

See: [Spring v Guardian Assurance \[1994\] UKHL 7 \(07 July 1994\)](#)

The key legal issue related to 'is whether one who supplies a defamatory reference about a person in response to a request from a concern with which that person is seeking employment is liable in negligence to the subject of the reference if it has been compiled without reasonable care.' Effect of the House of Lords ruling is that it would not be legally malicious to be negligent without an intention to cause harm, but it would be legally malicious to combine negligence with an intention to injure.

Kaye v Robertson from the English Court of Appeal in 1991 is probably the most famous malicious falsehood action of modern times; largely for reasons beyond malicious falsehood and being the seed for media respect for the right to privacy. The remedy allowed by the courts was the damage to the actor Gordon Kaye's commercial/professional office in it being posited by the Sunday Sport that he would have agreed to an interview with a tabloid reporter while recovering from a catastrophic brain injury in his hospital bed. See: [Kaye v Robertson & Anor \[1990\] EWCA Civ 21 \(16 March 1990\)](#)

A rare Court of Appeal ruling on malicious falsehood in [2022 in the case of George v Cannell & Anor](#) appears to have provided some flexibility in interpreting and applying the phrase 'calculated to cause pecuniary damage.'

Lord Justice Warby supported the argument that a claimant need only prove that it was 'inherently probable' that the complained of statements would cause financial loss, rather than having to prove that they probably had caused such loss.

He extracted from case law the view that the word "calculated" in S.3(1) [of the 1952 Defamation Act] does not mean "intended", but "objectively likely."

The court agreed this was a forward looking interpretation and further supported the contention an award for injury to feelings could be granted in circumstances where the Claimant was unable to establish actual financial loss.

The ruling prompted [Tony Jaffa in the Hold The Front Page Law Column to ask the question: 'Has the Court of Appeal made malicious falsehood the new libel?'](#)

Lord Justice Warby said at paragraph 70: 'The remedy for those in the position of these defendants is to avoid conspiring to utter false, malicious, and financially damaging statements, or to settle the claim promptly if discovered to have done so. I am not persuaded that giving s.3 its natural meaning is likely to have a significant chilling effect on truthful and honest speech. Experience suggests that claims for malicious falsehood are relatively rare and that the main brakes upon them are the need to prove falsity and, in particular, malice. This is notoriously hard to plead (allegations of malice are frequently struck out at the interim stage) and to prove. There are safeguards against abuse, including the Jameel jurisdiction.'

It would appear that the Appeal Court judge's view is that these nuanced changes are not going to open the floodgates and create a new frontier in media law.

UK Media Law Pocketbook 2nd Edition (2022) covers defamation law in detail in Chapter 3 between pages 100 and 119.

McNae's Essential Law for Journalists 26th Edition (2022) offers detailed chapters on defamation, libel, slander, malicious falsehood and obscenity across chapters 20 to 25 and pages 333-400.

McNae's Essential Law for Journalists 25th Edition (2020) offers detailed chapters on defamation, libel, slander, malicious falsehood and obscenity across chapters 20 to 25 and pages 287-348.



Number One Court of the United Kingdom Supreme Court in Parliament Square London. Image UKSC.



Exterior of the United Kingdom Supreme Court in Parliament Square London. Image UKSC.

The relevance of the Reynolds 1999 criteria to the statutory public interest defence in Section 4 of the 2013 Defamation Act

Section 4(6) of the 2013 Defamation Act states: 'The common law defence known as the Reynolds defence is abolished.'

But does it mean that journalists should ignore the ten criteria that for many years have been seen as a bedrock of ethical and professional obligations in ensuring the protection against wrongly damaging somebody's reputation?

They founded the concept of the developing common law public interest defence. Precedents twisted and turned on whether all should be satisfied for the defence, or it was a matter of each case on its merits and context.

What appears to be happening in libel cases where the statutory public interest defence is put forward is that High Court judges of first instance are evaluating the success or failure of the defence on whether key and relevant criteria from [Lord Nicholls' 10 Reynolds case criteria](#) were complied with.

The Reynolds criteria became known as the responsible journalism defence. Indeed, this is how Lord Nicholls defined it four years after the Reynolds ruling in 1999.

In a ruling of the Judicial Committee of the Privy Council- [Bonnick v Morris in 2003](#) he said:

‘Stated shortly, the **Reynolds privilege** is concerned to provide a proper degree of protection for responsible journalism when reporting matters of public concern. Responsible journalism is the point at which a fair balance is held between freedom of expression on matters of public concern and the reputations of individuals. Maintenance of this standard is in the public interest and in the interests of those whose reputations are involved. It can be regarded as the price journalists pay in return for the privilege. If they are to have the benefit of the privilege journalists must exercise due professional skill and care.’

‘Depending on the circumstances, the matters to be taken into account include the following. The comments are illustrative only.

1. The seriousness of the allegation. The more serious the charge, the more the public is misinformed and the individual harmed, if the allegation is not true.
2. The nature of the information, and the extent to which the subject-matter is a matter of public concern.
3. The source of the information. Some informants have no direct knowledge of the events. Some have their own axes to grind, or are being paid for their stories.
4. The steps taken to verify the information.
5. The status of the information. The allegation may have already been the subject of an investigation which commands respect.
6. The urgency of the matter. News is often a perishable commodity.
7. Whether comment was sought from the plaintiff. He may have information others do not possess or have not disclosed. An approach to the plaintiff will not always be necessary.
8. Whether the article contained the gist of the plaintiff’s side of the story.
9. The tone of the article. A newspaper can raise queries or call for an investigation. It need not adopt allegations as statements of fact.
10. The circumstances of the publication, including the timing.’

Lord Nicholls added: ‘This list is not exhaustive. The weight to be given to these and any other relevant factors will vary from case to case.’

In the end, can it not be argued that operation of the statutory public interest defence is not that different from the old and ‘abolished’ common law defence?

Looking at [the statutory 2013 Defamation Act defence](#) media defendants need to be under no illusions that unlike their compatriots in the USA, the onus is on them to defend and indeed prove this defence on the balance of probabilities.

The statutory defence offers the rubric that the media defendant is entitled to it if they ‘reasonably believed that publishing the statement complained of was in the public interest.’

Under Section 4(3) criterion 4 of Reynolds is negated when the court may ‘disregard any omission of the defendant to take steps to verify the truth of the imputation conveyed by

it.’ But this only applies where the publication ‘was, or formed part of, an accurate and impartial account of a dispute to which the claimant was a party.’

Notice the qualifications- the report needs to be ‘an accurate and impartial account of a dispute.’

When judging whether the media defendant had a reasonable belief the publication was in the public interest, a ‘court must make such allowance for editorial judgement as it considers appropriate.’

And the defence is available ‘irrespective of whether the statement complained of is a statement of fact or a statement of opinion.’

Recent case law points to Judges regularly applying Reynolds’ criterion 7- ‘Whether comment was sought from the plaintiff [claimant]. He may have information others do not possess or have not disclosed.’

It is known as the right to reply. It is very much there in some professional journalist codes. Mr Justice Nicklin in a [2021 ruling between the newspapers The Independent, i, and the Evening Standard and Bruno Lachaux](#) said the newspapers should have verified the allegations because of their seriousness. And he criticised the failure to contact the claimant for comment, and to include his response in the articles.

Here are some of the key passages:-

Paragraph 173. ‘As a result of the failure to carry out any verification and the failure to contact the Claimant, the Independent Article did not contain anything by way of rebuttal from the Claimant or include his version of events. That was a serious failure in basic journalist good practice and a breach of the Defendants’ Code. This was not a case in which it could be concluded that the Claimant could have nothing valuable to contribute by way of response or answer. The only justification advanced for not contacting the Claimant was that he was not the (main) subject of the article. The Claimant was plainly a subject of the article and, in terms of likely reputational harm, likely to be the main casualty from its publication. Leaving aside the instruction in the Defendants’ Code that it was important “to abide not only by the letter but also [its] spirit”, the terms of the article squarely engaged the obligation to put the story to the Claimant. Beyond the argument that the Claimant was not the subject of the article, none of the First Defendants’ witnesses suggested that there was any other justification for not complying with this “good journalistic practice.”’

Paragraph 177. ‘The fact that the Claimant was libelled by the Independent Article was not a product of a carefully reasoned editorial judgment; it was a mistake, as was the failure to approach him for comment. Those involved in the original decision to publish simply failed to recognise the Claimant as someone who was likely to suffer serious reputational damage as a result of publication of the Independent Article. Even allowing for hindsight bias, this is not a borderline case. The First Defendant has failed to demonstrate that a belief that publication of the Independent Article was in the public

interest was reasonable. The First Defendant's s.4 defence in respect of the original publication of the Independent Article fails on this ground as well.'

The judge had explained in his analysis of the law that 'providing they are not treated as any sort of 'checklist', the **Reynolds** factors will remain potentially relevant when assessing whether a defendant's belief that publication was in the public interest was objectively reasonable.'

Mr Justice Nicklin relied on the speech of Lord Wilson in the [Serafin v Makievizc case of 2020](#):

"In [**Flood -v- Times Newspapers Ltd** [\[2012\] 2 AC 273](#)] ..., the defendant published an article taken to mean that there were reasonable grounds to suspect that the claimant, a police officer, had corruptly taken bribes. The allegation was false. This court held that the defendant nevertheless had a valid defence of public interest. Lord Phillips of Worth Matravers, the President of the court, said at [26] that in that case analysis of the defence required particular reference to two questions, namely public interest and verification; at [27] that it was misleading to describe the defence as privilege; at [78], building on what Lord Hoffmann had said in the **Jameel** case at [62], that the defence normally arose only if the publisher had taken reasonable steps to satisfy himself that the allegation was true; and at [79] that verification involved both a subjective and an objective element in that the journalist had to believe in the truth of the allegation but it also had to be reasonable for him to have held the belief. Lord Brown at [113] chose to encapsulate the defence in a single question. "Could", he asked, "whoever published the defamation, given whatever they knew (and did not know) and whatever they had done (and had not done) to guard so far as possible against the publication of untrue defamatory material, properly have considered the publication in question to be in the public interest?". Lord Mance at [137], echoing what Lord Nicholls had said in the **Reynolds** case at p.205, stressed the importance of giving respect, within reason, to editorial judgement in relation not only to the steps to be taken by way of verification prior to publication but also to what it would be in the public interest to publish; and at [138] Lord Mance explained that the public interest defence had been developed under the influence of the principles laid down in the European Court of Human Rights."

It is also significant that Mr Justice Nicklin recognised how Lord Wilson extracted from the guidance and wording of the 2013 Defamation Act legislation the observation that: 'the Explanatory Notes to the Defamation Act 2013 stated that the intention behind s.4 was to: "reflect the common law as recently set out in the Flood case and in particular the subjective and objective elements of the requirement now both contained in subsection 1(b)."'

This is a key factor about the statutory public interest defence. It needs to reflect the latest common law established prior to its enactment. This must be the discussion of the Reynolds criteria/privilege/responsible journalism defence in [the Flood v Times UKSC ruling of 2012](#).

This ruling has been carefully analysed by [Tony Jaffa in 'Law Column: Bruno Lachaux and the Public Interest defence' for Hold The Front Page.](#)

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Number Three Court in the UK Supreme Court building in Parliament Square, London. Image: UKSC

Case law developments in libel

Ruling on interpretation of the serious harm of libel in the media ‘echo chamber’ of a defendant’s supporters. Court of Appeal Civil Division England and Wales 28th February 2023.

Banks v Cadwalladr (Rev1) [2023] EWCA Civ 219 (28 February 2023)

See: <https://www.bailii.org/cgi-bin/format.cgi?doc=ew/cases/EWCA/Civ/2023/219.html>

More links:- Court summary <https://www.judiciary.uk/wp-content/uploads/2023/02/Banks-v-Cadwalladr-summary-280223.pdf>

Full judgement <https://www.judiciary.uk/wp-content/uploads/2023/02/Banks-v-Cadwalladr-judgment-280223.pdf>

Ruling given by Lord Justice Warby with the other two Appeal Court judges in agreement.

Lord Justice Warby’s summary of the issues is set out in paragraphs 1 to 11.

1 The claimant sued the defendant for libel in a talk (“the TED Talk”) and a tweet (“the Tweet”) each of which suggested that the claimant had secretly broken the law on electoral funding by taking money from a foreign power and lied about the matter. The TED Talk and the Tweet were published online to a substantial audience in this jurisdiction. By the time of trial official investigations had found no evidence that there had been any such breach of the law. A defence of truth had been abandoned. The defendant

had apologised. But she relied on the statutory defence of publication on matters of public interest.

2 The trial judge dismissed both claims, holding that although the initial publication of the TED Talk had caused serious harm to the claimant's reputation it was protected by the public interest defence; later publication of the TED Talk was not so protected but had not caused serious harm and was therefore not actionable; as for the Tweet, its publication would have been protected by the public interest defence to the same extent as the TED Talk but none of it was actionable anyway as it had not caused any serious harm to the claimant's reputation. The claimant now appeals.

3 The appeal raises three issues about the interpretation and application of section 1(1) of the Defamation Act 2013 ("the 2013 Act"). This provides that "a statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant". This is sometimes referred to as the serious harm requirement.

4 **The first issue concerns the meaning of section 1(1) and its relationship with section 4(1) of the 2013 Act in a case of continuing publication.** Section 4(1) provides that "[i]t is a defence to an action for defamation for the defendant to show that (a) the statement complained of was, or formed part of, a statement on a matter of public interest; and (b) the defendant reasonably believed that publishing the statement complained of was in the public interest.". Where the defendant has a public interest defence which falls away, is the fact that the first, lawful phase of publication caused serious harm to the claimant's reputation enough as a matter of law to justify a judgment for the claimant in respect of the second phase?

5 The trial judge said that it is not. She held that in such a situation it is necessary for the claimant to prove that that publication *in the second phase* has caused serious harm or is likely to do so. The claimant challenges that conclusion but in my view it was correct. The effect of section 1(1) of the 2013 Act is that a statement is only to be regarded as defamatory if and to the extent that its publication causes serious harm to reputation or is likely to do so; publication that does not cause serious harm and is not likely to do so is not actionable. **The judge was therefore right to consider whether the claimant had shown that the second phase of publication of the TED Talk had caused serious harm to the claimant's reputation or was likely to do so.**

6 **The second issue is whether the judge's approach to the question of whether serious harm was established was wrong in law.** The claimant makes three main points on this issue. He argues that the judge failed to focus on the actual scale of the publication with which she was concerned, looking instead at how it compared with the scale of other publications; that her conclusion that harm was diminished because most of those to whom the relevant publications were made were in the defendant's "echo chamber" was legally wrong or untenable on the evidence; and that her finding that harm was reduced because many of the publishees were people whose opinion of the claimant was of "no consequence" to him was also wrong in law. The judge is said to have made all three mistakes when dealing with the TED Talk and with the Tweet.

7 **I am not persuaded that the judge made the first of the alleged mistakes, but I have concluded that she did make the second and the third of them.** If what the judge meant by the term "echo chamber" was that most of the publishees were people who disliked or had a generally low opinion of the claimant that was irrelevant to the

question she had to decide. If, as I believe, what she meant was that in the minds of most publishees the claimant already had a bad reputation for the specific misconduct of taking foreign money in breach of electoral law and lying about it the evidence did not allow such a finding. The judge's finding that harm to the claimant's reputation in the eyes of these publishees was of "no consequence" to him was also unsustainable. If she meant that the claimant did not care what these publishees thought, that was legally irrelevant to the issue of whether serious reputational harm was established. **There was no evidence to support a conclusion that others' adverse opinions of the claimant were of "no consequence" to him in the sense that they could have no practical impact upon his life.**

8 The third issue is whether these errors of principle invalidate the judge's overall conclusions and her decision to dismiss both claims. The claimant argues that they do, and that on a proper application of the law to the facts of the case it was not open to the judge to dismiss either claim. He says the only legitimate conclusion is that the serious harm requirement was satisfied and so there should be judgment for the claimant. This argument is advanced in respect of the TED Talk and the Tweet.

9 **I would accept these submissions so far as the TED Talk is concerned. The TED Talk conveyed a serious allegation, involving dishonesty and breach of electoral law, which was inherently likely to cause serious reputational harm.** On any view there was extensive publication of the TED Talk in this jurisdiction in phase two. The judge rejected the defendant's attempt to show that the claimant had a pre-existing bad reputation. Her own reasoning about an "echo chamber" and the lack of any "consequence" was unsound as I have said. There was nothing else to act as a counterweight to the natural inference that publication in phase two had caused serious harm to the reputation of the claimant. **The precise measure of that harm remains to be assessed but it is not possible to conclude that it was not "serious".** To that extent, I would allow the appeal against the dismissal of the claim in respect of the TED Talk.

10 **The position in respect of the Tweet is different.** Although it conveyed the same serious imputation as the TED Talk the judge found that its publication peaked at or near the time it was first posted, after which it fell further and further down the defendant's timeline, as one would expect. For 10 months any publication was protected by the public interest defence. **In my judgment, whatever might be said about harm caused by the initial phase of publication, there was no basis for any inference that there was any publication of the Tweet in phase two that caused any serious reputational harm.** To that extent the judge was clearly right. I would therefore uphold her decision in respect of the Tweet and dismiss that aspect of the appeal.

At paragraphs 66 and 67 Lord Justice Warby amplified on his decision about serious harm in respect of continuing publication of the Ted talk after official investigations had determined that Arron Banks had not secretly broken the law on electoral funding by taking money from a foreign power and lied about the matter.

'66 Nonetheless, so far as the TED Talk is concerned, I have concluded that the judge's errors do fatally undermine her conclusion. In my judgment, if those errors are put to one side it was an inevitable inference from the evidence before the judge that publication of the TED Talk after 29 April 2020 caused serious harm to the reputation of the claimant.

There was little direct evidence of harm, but as the judge held this was “unsurprising” given the well-known difficulties of obtaining such evidence: see *Economou v De Freitas* [2018] EWCA Civ 2591, [2019] EMLR 7 at [28] and [31]. This was, as the judge also held, “a serious talk on a serious subject” given by “an award-winning journalist” on an “authoritative and credible international platform”. In these circumstances the inference that serious harm was caused flows from the inherent gravity of the allegation and its natural tendency to cause serious reputational harm, coupled with the judge’s own findings as to the scale of publication in this phase, taken at its lowest.

67 As for the gravity of the allegation, I would endorse the judge’s summary. It was one of “serious, repeated dishonesty ... about a secret relationship he had with a potentially hostile foreign power.” Beyond this, the claimant was accused of acting in breach of the law on electoral funding, which is a significant additional element. As I have indicated, the judge implicitly found that initial publication of the TED Talk in this jurisdiction was in the order of 1 million views. She estimated that the scale of publication after 29 April 2020 was about a tenth of what went before. The implicit finding is therefore that the TED Talk was viewed in this jurisdiction at least 100,000 times in Phase Two. That is broadly equivalent to the circulation of a broadsheet national daily newspaper. Those are weighty considerations. Given the claimant’s prominent role in public life and business a conclusion that there was serious harm to his reputation must follow. There is nothing about the circumstances of publication or the identity or characteristics of the publishees that could undermine such a conclusion.’

An analysis of this ruling by Eloise Spensley for the Jaffa Law column of Hold The Front Page 8th March 2023

‘Law Column: TED Talk and serious harm – latest guidance from the Court of Appeal’
See: <https://www.holdthefrontpage.co.uk/2023/news/law-column-ted-talk-and-serious-harm-latest-guidance-from-the-court-of-appeal/>

‘Thus, Mr. Banks had, in fact, satisfied the serious harm test, so he had a claim in libel after all. And Ms. Cadwalladr had no defence once the NCA and Electoral Commission decided as they did. In his ruling, Lord Justice Warby stated that “reasoning about an “echo chamber” and the lack of any consequence was unsound...there was nothing else to act as a counterweight to the natural inference that publication in phase two had caused serious harm to the reputation of the Claimant.”

Both parties responded to the judgment by claiming victory, claims which, to some extent, are both true. The dispute is not yet over, because a number of consequential matters have to be determined, principally the level of damages to be awarded to Mr. Banks, whether he is entitled to an injunction, and whether the Court can (or should) make an order against the TED organisation over which the parties were agreed that Ms. Cadwalladr has no control. And that’s before the parties and the Court have to deal with the very difficult issue of costs.’

Analysis by 5RB ‘Arron Banks wins Cadwalladr TED Talk appeal.’

See: <https://www.5rb.com/news/arron-banks-wins-cadwalladr-ted-talk-appeal-2/>

‘Warby LJ, with whom Sharp P and Singh LJ agreed, held that Steyn J had been correct in principle to reconsider the issue of serious harm in relation to the period after Ms

Cadwalladr's public interest defence fell away. The Court held that the Judge had also not been wrong to dismiss the claim in respect of Ms Cadwalladr's tweet. However, the Judge had erred in ruling that the continuing publication of Ms Cadwalladr's TED Talk had not caused serious harm to Mr Banks' reputation. Warby LJ said that the Judge had had no proper basis to find that the publishees of Ms Cadwalladr's statements were within her "echo chamber" and of "no consequence" to Mr Banks, and so wrong to find no serious harm to Mr Banks' reputation as a result. Serious harm was an inevitable inference from the inherent gravity of the allegation and the scale of publication.'

On 18th of May 2023 Press Gazette, PA Media and other news publishers reported: 'Arron Banks awarded £35,000 damages and 60% of his costs after Cadwalladr libel ruling appeal', see: https://pressgazette.co.uk/media_law/arron-banks-wins-carole-cadwalladr-libel-appeal/ and the BBC reported 'Carole Cadwalladr ordered to pay £1.2m costs in Arron Banks libel trial' see: <https://www.bbc.co.uk/news/uk-65644475>

The Observer wrote an editorial: 'on the high costs order against Carole Cadwalladr', observing 'The effect on public interest journalism could be chilling.'
See: <https://www.theguardian.com/commentisfree/2023/may/20/carole-cadwalladr-arron-banks-high-costs-order-editorial> and 'Observer's Carole Cadwalladr facing heavy legal costs in Arron Banks case. Criticism over latest development in long-running libel dispute between the leading Brexit backer and the journalist.'
See: <https://www.theguardian.com/media/2023/may/20/observers-carole-cadwalladr-facing-heavy-legal-costs-in-arron-banks-case>

There are reports that Cadwalladr is intending to appeal the costs burden on the basis that it amounts to a chilling effect such as to breach Article 10 freedom of expression.
See: 'Carole Cadwalladr to appeal against ruling that she pay Arron Banks's legal costs' at <https://www.theguardian.com/uk-news/2023/may/23/carole-cadwalladr-to-appeal-ruling-that-she-pay-legal-costs-in-arron-banks-case> and 'Cadwalladr seeks Supreme Court ruling over 'chilling' Arron Banks £1m costs order' at: https://pressgazette.co.uk/media_law/carole-cadwalladr-arron-banks-supreme-court/

The media lawyer Eloise Spensley analysed the implications of the high costs order against Cadwalladr in the Hold The Front Page Law Column: "Final ruling in Banks v. Cadwalladr a 'dark day for press freedom.'" The judge ruled that Mr. Banks was entitled to recover 60% of his legal costs. Initial reports suggest that this sum will equate to more than a million pounds.

Ms Spensley concludes if Cadwalladr 'is correct in characterising the outcome of the litigation as "a dark day for press freedom in the UK" and an "arbitrary and punitive ruling" resulting in "many abuses of power which will never see the light of day," then journalists and publishers will rightly be concerned.'
See: <https://www.holdthefrontpage.co.uk/2023/news/law-column-final-ruling-in-banks-v-cadwalladr-a-dark-day-for-press-freedom/>

On 25th May 2023 Mr Justice Saini gave judgment in a high profile libel trial over allegations published in an online website combined with Tweets.

The case concerned the naturalist Chris Packham who sought libel damages against the authors of the online *Country Squire Magazine* alleging he had misled people into donating to a tiger rescue charity.

The case is interesting in its evaluation of serious harm by online and social media publication, the engagement of truth and public interest defences and the successful defence by the third defendant on the grounds he was merely a proof-reader for the articles in dispute and he had only retweeted the libellous allegations and not been responsible for their original content.

See: Packham v Wightman & Ors [2023] EWHC 1256 (KB) (25 May 2023) at <https://www.bailii.org/ew/cases/EWHC/KB/2023/1256.html>
From judiciary UK website <https://www.judiciary.uk/wp-content/uploads/2023/05/Packham-v-Wightman-Judgment-250523.pdf>



Neutral Citation Number: [2023] EWHC 1256 (KB)

Case No: QB-2021-001227

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 25/05/2023

Before :

THE HONOURABLE MR JUSTICE SAINI

Between :

CHRIS PACKHAM CBE

Claimant

- and -

(1) DOMINIC WIGHTMAN
(2) NIGEL BEAN
(3) PAUL READ

Defendants

Between paragraphs 1 to 8, Mr Justice Saini provides an introduction to the overview:

1. 'This is the trial of a defamation claim in which the Claimant ("Mr Packham"), a naturalist, television presenter and campaigner, sues three individuals in respect of articles published on the website of an online publication called Country Squire

Magazine (“CSM”), and by way of social media including Twitter. The claim concerns three separate and unrelated matters.

2. The first concerns the tigers Girona, Mondo, Antonella, Natasha and Zoppa (“the Tigers”), that once performed in a Spanish circus (Circo Wonderland) but were later either “re homed” or “rescued” (depending on one’s perspective) and given what have been called “forever homes” in an animal sanctuary (“the Sanctuary”) on the Isle of Wight. The Sanctuary is associated with Mr Packham and is operated by the Wildheart Trust (“the Trust”). Mr Packham is a trustee of the Sanctuary. He is alleged to have made fraudulent statements during 2018 in order to raise money from the public to fund the Tigers’ journey from Spain to the Sanctuary, and for their subsequent care in their new home. This was the focus of the trial. I will call this the “Circus Big Cats Allegation”.
3. The second subject of the claim is a statement made by Mr Packham to raise money from the public for the Sanctuary during the Covid-19 Pandemic in March 2020. He is alleged to have acted fraudulently in concealing insurance payments, or availability of insurance, from potential donors which made such a statement misleading and dishonest by omission. I will call this “the Insurance Allegation”.
4. The third subject is a statement made by Mr Packham, during COP26 in Glasgow in November 2021, which concerned Muirburns. A Muirburn is the Scottish term for the practice of burning off old heather to encourage new growth. Mr Packham is said to have falsely stated that this practice has the effect of burning peat below the heather, thereby releasing harmful carbon into the atmosphere. I will call this “the Muirburn Allegation”.
5. On its website, CSM describes itself as “a platform for voices from the overlooked Great British Countryside” and professes a hope “to be a beacon for Truth in a world where moral relativists often have the loudest voices.” In broad terms, CSM’s slant is pro-field sports and before me has been called a voice for “traditional” countryside management. It has previously published articles critical of Mr Packham and those who share his views on animal welfare and nature conservation issues.
6. The First Defendant (“Mr Wightman”, or “D1”) is the editor of CSM. He accepts responsibility for each of the publications, including those made by social media. Mr Wightman is an asset manager by profession. He explains that CSM was set up as an online magazine in 2016 by him and two other “Brexiteers” to illuminate what they perceived as the injustice of the undemocratic positions taken by some “Remainers” at that time, and to partake in the campaign to see through the national referendum result, using “the cloak of the Brexit-voting ‘countryside’ to help achieve its aims”. He describes CSM and himself as “conservative”. CSM is said to be principally focussed on current affairs and politics with about a fifth of its articles covering countryside issues. He described the magazine as a “humble blog”. That said, on his own evidence, certain of the articles in issue in these proceedings were read by numbers going into the 170,000s on Facebook.
7. The Second Defendant (“Mr Bean”, or “D2”) is an IT consultant. Together with Mr Wightman, he accepts responsibility for the publications in CSM attributable to him and all his social media postings.
8. The Third Defendant (“Mr Read”, or “D3”) is a retired computer programmer. He puts in issue any legal responsibility for the publications. He argues that he acted

as a form of “proof-reader” in relation to the First to Fourth Articles and not as an author or editor of them. Although he was named in the by-line to these articles, together with D2, he says that was a decision made by D1 and D2, by way of a “thank-you” gesture to reflect his free proof-reading assistance. D3 says it was not reflective of any wider responsibility or role in drafting or making publication decisions. He admits sending the retweets pleaded against him but raises a number of defences to liability.’

9.

Paragraphs 205 to 207 set out the judge’s decision on the amount of damages to be awarded against defendants one and two and a conclusion on liability for the libels:

205. I turn to quantum. I was referred to a number of awards in other cases involving imputations of dishonesty. Each case must however depend on its own facts and I am not limited by the cap which Mr Packham placed on the amount sought in his Claim Form. Having regard to the data before me as to the extent of publication, the nature of the allegations, the attempt to seek his dismissal from the BBC through making them, the evidence of Mr Packham as to the effect on him, and my findings as to additional conduct, I award the sum of £75,000 in respect of the Circus Big Cats Allegation. I award £10,000 in respect of the Insurance Allegation, and £5,000 in respect of the Muirburn Allegation. Those allegations are less serious in context and were not the subject of repetition. I also bear in mind the need to ensure that any overall damages award is proportionate given that free speech interests are implicated.

XI. Conclusion

206. Mr Packham’s defamation claims against Mr Wightman and Mr Bean succeed. Mr Packham did not commit any acts of fraud or dishonesty. I will enter judgment for damages against Mr Wightman and Mr Bean in the sum of £90,000.00. I understand that they do not oppose injunctive relief.

207. The claims against Mr Read are dismissed. I will hear further argument in relation to additional relief including orders under section 12(1), and section 13(1), of the Defamation Act 2013, and in relation to costs.

Chris Packham was represented by counsel Jonathan Price and Claire Overman.

Paul Read’s defence as advocated by Mr David Price KC is analysed and evaluated by the judge between paragraphs 53 and 76 and while the arguments are specific to the circumstances and facts of this case, the ruling could be influential to libel defendants in the future arguing that they were proof-readers and not authors or editors of online publications and the issue of serious harm in relation to retweets.

Sam Brookman has analysed the ruling for the Law Column of Hold The Front Page from the aspect of best journalistic practice to approach the subject of a story for their comment prior to publication. She concludes:

‘Whilst this case came down to more than the Defendants’ failure to approach Mr Packham for comment, in other cases such a failure could very well be the deciding factor for the public interest defence.

Every journalist is aware that best practice demands you should approach the subject of an article for comment prior to publication, and provide them with a reasonable amount of time in which to respond. Of course, commercial pressures will often mean that taking the time to make that approach for comment is not easy – after all, news is a “perishable commodity” – but if you don’t, make sure you have an exceptionally good reason for not doing so.’

Law Column: Approaching for comment, the Public Interest defence, and the Packham case by Sam Brookman Published 13 Jun 2023.

See: <https://www.holdthefrontpage.co.uk/2023/news/law-column-approaching-for-comment-the-public-interest-defence-and-the-packham-case/>

Coverage by mainstream media

BBC News- ‘Chris Packham wins libel claim against website’ see: <https://www.bbc.co.uk/news/uk-england-hampshire-65707076>

Guardian- ‘Chris Packham awarded £90,000 damages in libel case. Naturalist wins claim over articles on Country Squire Magazine website that accused him of lying about charity’ see: <https://www.theguardian.com/uk-news/2023/may/25/chris-packham-wins-libel-claim-against-website-that-accused-him-of-lying>

Mail Online- “Triumphant Chris Packham calls for tougher punishment for ‘online abuse and hate crimes’ as he wins £90,000 libel battle over claims he ‘manipulated’ the public into donating to wildlife charity” see: <https://www.dailymail.co.uk/news/article-12124575/Chris-Packham-calls-tougher-punishments-victims-online-abuse-hate-crimes.html>

High Court judge stops high profile defamation action and criticises the claimant saying ‘witness statements in litigation are not to be used for settling scores or advancing some wider agenda.’ (Court ruling 7th June 2023)

Mr Justice Nicklin is the head of the High Court media list and in *Amersi v Leslie and others*, he said the litigation brought by businessman Mohamed Amersi claiming his reputation had been seriously harmed by publication of memos to a former lord chancellor, Sir David Lidington, was ‘fanciful and devoid of reality.’

He observed: ‘The claimant’s case of serious harm to his reputation is not based on any properly premised inference. It is speculative and optimistic guesswork.’

108 page ruling of *Amersi v Leslie & Anor* [2023] EWHC 1368 (KB) (07 June 2023) available at <https://www.judiciary.uk/wp-content/uploads/2023/06/Amersi-v-Leslie-judgment-070623.pdf>

And:

[Amersi v Leslie & Anor](https://www.judiciary.uk/wp-content/uploads/2023/06/Amersi-v-Leslie-judgment-070623.pdf) [2023] EWHC 1368 (KB) (07 June 2023)



Neutral Citation Number: [2023] EWHC 1368 (KB)

Case No: QB-2021-004630

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 7 June 2023

Before :

THE HONOURABLE MR JUSTICE NICKLIN

Between :

Mohamed Amersi

Claimant

- and -

(1) Charlotte Leslie
(2) CMEC UK & MENA Limited

Defendants

Media coverage:-

Guardian: 'Conservative donor has defamation case against Tory MP struck out. Mohamed Amersi criticised by high court judge for his conduct in proceedings against Charlotte Leslie.'

See: <https://www.theguardian.com/politics/2023/jun/07/conservative-donor-has-defamation-case-against-tory-mp-struck-out>

Independent: 'Millionaire Tory donor's libel action against ex-MP thrown out in 'landmark' ruling. Exclusive: Verdict comes after long-running legal battle between multi-millionaire donor and former Tory MP.'

See: <https://www.independent.co.uk/news/uk/home-news/tory-donor-press-freedom-mohamed-amersi-b2353216.html>

Law Society Gazette: 'High-profile defamation case dismissed by judge.'

See: <https://www.lawgazette.co.uk/news/high-profile-defamation-case-dismissed-by-judge/5116258.article>

This is a long and complicated ruling in terms of detail. The alleged libels were in memos. The judge described the parties in paragraphs 5 and 6.

(1) The parties

5. In the Particulars of Claim in this action, the Claimant describes himself as a "businessman and philanthropist". The Claimant is the founder of the Conservative Friends of the Middle East and North Africa Limited, a company limited by guarantee, incorporated on 21 January 2021, which aims to promote a better relationship between the Conservative Party, the UK Government and the Middle East and North Africa ("COMENA").

6. The First Defendant is a former member of Parliament and the managing director of the Second Defendant. The Second Defendant is a company limited by guarantee, incorporated in March 2019. According to evidence filed by the Defendants, however, the organisation, the Conservative Middle East Council ("CMEC"), has been in existence for

over 40 years. It was established by the former Foreign Secretary, Lord Carrington, on the instruction of the then Prime Minister, Margaret Thatcher. Its purpose was to forge and maintain relationships between the Conservative Party and the Middle East and North Africa region and included organising events, debates, facilitating interaction between Conservative MPs and Middle Eastern embassies in the United Kingdom and arranging fact-finding missions to the region for Conservative MPs. CMEC is associated with, but no longer formally affiliated to, the Conservative Party.

The judge's view on whether there had been serious harm to his reputation caused by the publication of the memos to Sir David Lidington is set out in paragraphs 191 and 192: '191. The case of serious harm to reputation caused by publication of the Memos to Sir David will be as evidentially hopeless at trial as it is now. There can be no real prospect of the position improving before trial and there is no material dispute of fact that would require to be resolved at trial. It has not been suggested by the Claimant that there is any real possibility of something turning up in disclosure. Sir David has refused to get involved and so the prospect that he will provide a witness statement for the Claimant must be somewhere between remote and nil. Even if the Claimant were, by use of a witness summons, to compel Sir David's attendance at the trial of this claim to answer questions as to the impact that the publication of the Memos had on the reputation of the Claimant, Sir David has already made clear that he cannot now differentiate between harm caused by the Memos and subsequent press coverage of the Claimant. Had the Claimant approached Sir David for a witness statement when he received the 14 May Documents, that problem might have been overcome. This is perhaps one of the pitfalls of adopting what I have found to be a tactical approach to the conduct of these defamation proceedings adopted by the Claimant.

192. Overall, the Claimant's case that his reputation has been seriously harmed (or is likely to be) as a result of publication of the Memos to Sir David Lidington is fanciful and devoid of reality. The Claimant's case of serious harm to his reputation is not based on any properly premised inference. It is speculative and optimistic guesswork. Applying the merits test, the time has come to bring an end to this part of the Claimant's claim. Allowing it to continue would not serve the overriding objective. Permission to amend is refused for the case of serious harm to reputation alleged to have been caused by Publications 3 and 4 to Sir David Lidington.'

Mr Justice Nicklin's conclusion and criticism of the claimant can be seen at paragraphs 240 and 241:

'240. Nevertheless, there are several aspects of the conduct of the Claimant – many of which were relied upon by the Defendants – that give real cause for concern as to (1) whether his pursuit of these proceedings has been genuinely to seek vindication rather than some other impermissible collateral purpose(s) and (2) whether he has sought to obtain this vindication at proportionate cost.

(1) First, the delay in commencing the defamation proceedings (and then taking almost the maximum permitted period to serve the claim) is inconsistent with a desire to seek prompt vindication. The Claimant had sufficient information to commence a libel claim, substantially in the form in which it has now been advanced, after receipt of the 14 May Documents. The failure to do so has not been adequately explained.

(2) Second, the Claimant has adopted an exorbitant approach to the litigation (including the Data Protection Claim) and has refused to provide information about his costs to the Court. When this defamation claim was finally commenced, it advanced multiple causes of action (including several to unidentified publishees) that substantially added to the complexity (and likely cost) of the proceedings without adding anything of tangible benefit that a more restrained approach to selection of the causes of action could not have achieved. A litigant suitably concerned about the costs of the litigation – having proper regard to the overriding objective – would not have acted in this exorbitant way. Given the overlap of defamatory meanings, the cost of pursuing multiple causes of action was likely to be wholly disproportionate to any benefit that the Claimant could legitimately achieve. Whilst conducting the proceedings in this manner, the Claimant has steadfastly refused to provide accurate information about his incurred costs to the Court (see [43] and [47]-[49] above), including on the ground that the information was confidential. It is difficult to treat that submission seriously when the Claimant was willing to share the figure of his costs with a journalist (for publication) (see [18] above).

(3) Third, in his interview with Mr Burgis, given at some point before 7 July 2021, the Claimant said that he intended to “take [the First Defendant] to the cleaners” and that once the Data Protection Action had been completed, he intended to commence a libel action. This demonstrates that, at least by early July 2021, the Claimant fully intended to bring a further claim against the Defendants for libel (which he did not finally serve until April 2022). Subjecting a person to successive civil claims can be a hallmark of abusive conduct: see *Henderson -v- Henderson* (1843) 3 Hare 100. Without good reason, a claimant is expected to bring all his/her civil claims against a defendant in one action. The Claimant could and should have brought his libel action when he commenced his Data Protection Action. The decision to proceed first with the Data Protection Claim was, I am satisfied, both deliberate and tactical. A claimant who was genuinely interested in vindication is unlikely to have delayed as the Claimant did. Pursuit of two sets of proceedings has also taxed the resources of the Court and the Defendants beyond what was justifiable.

(4) Fourth, the Claimant’s interviews in the media (particularly the Observer Article – see [23] above) – and some parts of his witness statements filed in these proceedings – strongly suggest that the Claimant has treated this libel action as providing him with an opportunity also to seek to embarrass (and possibly to punish) the Conservative Party for, as he perceives it, having wronged him. That is not a legitimate purpose of civil proceedings for defamation.

241. For the reasons I have explained, I do not need to resolve whether the Claimant has pursued this libel action for an impermissible collateral purpose. What I am entitled to conclude is that, by conducting the proceedings in the way I have identified, the Claimant has exhausted any claim he might have on the further allocation of the Court’s resources to this action. Although I have concluded that no purpose would be served by giving the Claimant a further opportunity to replead his claim, I am also satisfied that it would not serve the overriding objective to permit the Claimant to do so. As a result, this claim is at an end.’

-O-

March 2023 High Court ruling in an alleged ‘Twibel’- libel case arising from a Tweet.

Versi v Husain (aka Ed Husain) (Rev1) [2023] EWHC 482 (KB) (03 March 2023)

See: <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/KB/2023/482.html>

Between:

1MIQDAAD VERSI Claimant

2- and -

3MOHAMED HUSAIN (AKA ED HUSAIN) Defendant

Ruling by His Honour Judge Lewis. Outcome of the trial of preliminary issues concerning the meaning of a Tweet, whether it is fact or opinion and whether Tweet is defamatory of the claimant.

Paragraphs 1 to 7 set out what the case was about:

1 The claimant is the former director of media monitoring at the Muslim Council of Britain and describes himself as a campaigner in his own right against Islamophobia, particularly with regards to the representation of Muslims.

2 The defendant is an author, academic and an adviser to western governments on Islamist extremism, terrorism and national security.

3 The claimant has sued the defendant for libel in respect of a tweet posted by the defendant on 21 November 2020 (“the Tweet”).

4 The claimant issued proceedings on 17 November 2021, a few days before the expiry of the limitation period. He seeks damages of at least £25,000 and an injunction preventing republication of the words complained of, or similar words defamatory of the claimant.

5 On 28 April 2022, Nicklin J directed that there be a trial of the following preliminary issues pursuant to CPR 3.1(2)(i) and (j) and CPR PD 53B para 6: (i) the natural and ordinary meaning of the statement complained of; (ii) whether the statement complained of is (or includes) a statement of fact or opinion; and (iii) whether the statement is defamatory of the claimant at common law.

The Tweet

6 The Tweet was a “quote tweet” in which the defendant republished an earlier tweet of the claimant, with his own comment added.

7 A copy of the Tweet as it would have appeared to readers is set out in the schedule to this judgment. The text was as follows:

“Pipe down, you

pro-Hamas

pro-Iran

pro-gender discrimination

pro-blasphemy laws

pro-secretarian

anti-Western

'Representative' of an Islamist outfit.

[Embedded tweet in box] Miqdaad Versi – 1h

Why does Fraser Nelson – a man who as editor is accountable for so much anti-Muslim hate propagated in the Spectator – think it is appropriate to explain Islamophobia to a Muslim woman?... Show this thread"

The court's decision is set out in paragraphs 48, 49 to 53 and 57 to 61

Paragraph 48 on meaning.

I am satisfied that the natural and ordinary meaning of the Tweet is as follows:

- a. The claimant has expressed views that are supportive of the repressive regime in Iran, gender discrimination, blasphemy laws and sectarianism and which are anti-Western.
- b. The claimant has expressed views that are supportive of Hamas, a militant Islamist group with known links to violence.
- c. The claimant holds extremist, Islamist views. His endorsement of such views is so objectionable that he has no place participating in this public debate.

Paragraphs 49 to 53 on Fact or opinion?

49 The relevant law was summarised by Nicklin J in Koutsogiannis at [16].

50 I agree with both parties that the Tweet contains statements of fact, namely that the claimant has expressed views that are supportive of Hamas, Iran, gender discrimination, blasphemy laws and sectarianism and that he has been the representative of an organisation.

51 Whilst the term "anti-Western" could be taken in some contexts as a value judgement on the claimant's views, in this case it was included within a list of factual matters, and I agree with the parties that it would be understood to be a statement of fact.

52 Stating or implying that someone holds extremist views may be a statement of fact, or of opinion. It will depend on context. It is important to remember that the Tweet was sent as part of a debate on Twitter on the politics of the Middle East in which participants were expressing their opinions on the views of others. The Tweet would have been understood by the ordinary reader as being the author's evaluation of the claimant's public statements. It was a comment, or expression of opinion, on the views expressed by the claimant.

53 I am satisfied, therefore, that the statement complained of comprised factual statements about the claimant, and an opinion in respect of them. If looked at in terms of

the natural and ordinary meaning, limbs (a) and (b) are statements of fact, whereas (c) is an expression of opinion.

Paragraphs 57 to 61 on whether the Tweet was defamatory.

‘57 We live in a modern, diverse society which recognises the importance of freedom of thought, and of expression. Whilst there is a broad consensus within society on matters such as the rule of law, on many issues of public policy there is not. Our democratic process relies on robust debate and discussion and allowing the free expression of views. Not all views will be mainstream, and at every election there are candidates who stand on platforms that reflect the range of views in society, including from both ends of the political spectrum. Ordinarily, right-thinking members of society generally would not think less of someone for simply expressing their views on a matter, or disagreeing with another.

58 A statement about someone’s views is only defamatory if it attributes views that would lower a person in the estimation of “right-thinking people generally”, and a statement is not defamatory if it would only tend to have an adverse effect on the attitudes to the claimant of a certain section of society, see *Monroe* at [50]. In *Monroe*, Warby J explained that the judge’s task is to determine whether the behaviour or views that the offending statement attributes to a claimant are contrary to common, shared values of our society [51].

59 The defendant says that the meaning is not defamatory at common law because the defendant is advancing a criticism as to the effect of the claimant’s views. The same point was raised in *Mughal v Telegraph Media Group Limited* [2014] EWHC 1371 (QB). Tugendhat J considered that the claimant’s views were not violent views but were ones which tended nevertheless to have dangerous consequences. That was not defamatory of the claimant since the criticism was as to the effect of his views, and not of his character. This is not the position here. The criticism being made is of the claimant’s views, not the effect of those views. Furthermore, it was a criticism of the claimant having expressed those views.

60 In this case I am satisfied that the natural and ordinary meaning conveyed by the Tweet was defamatory by the standards of the common law.

61 Whilst stating that a person holds some of the views identified in the Tweet would not in itself be defamatory, the Tweet needs to be looked at in its entirety. Right thinking members of society generally would deplore those who express views in support of Hamas, as a militant Islamist group with known links to violence. It is also contrary to the common or shared values of our society to express extremist views that are so objectionable as to undermine the legitimacy of the claimant’s own participation in public debate. Attributing such views to the claimant would lower a person in the estimation of “right-thinking people generally”. The imputation is one that would tend to have a substantially adverse effect on the way that people would treat the claimant, and their attitude towards him.’

Libel ruling in social media case where the judge finds for a defendant alleging sexual assault by blog and Facebook postings.

King's Bench Division. William Hay v Nina Cresswell. Ruling by Mrs Justice Heather Williams 26th April 2023 in favour of the defendant.

Hay v Cresswell [2023] EWHC 882 (KB) (26 April 2023)

See: <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/KB/2023/882.html>

The judge set out a summary of the case in paragraphs 1 to 9:

'1.Mr Hay brings a claim for libel against Ms Cresswell in relation to her June and July 2020 publication of allegations that he had sexually assaulted her on the night of 27 – 28 May 2010 after the two had met in a nightclub in Sunderland.

2.Whilst there is some dispute about the precise meaning of the defendant's publications, it is accepted that she alleged a violent sexual assault on the part of the claimant and that these words bore a defamatory meaning. It is also admitted that the claimant sustained serious harm. However, Ms Cresswell relies upon defences of truth and/or that the publications were on a matter of public interest. To a more limited extent she also relies upon a defence of qualified privilege.

3.The claimant is a tattoo artist. He says that the publications caused him great embarrassment, distress and damage to his reputation. He seeks general damages and also injunctive relief. A claim for aggravated damages is not pursued and no claim is made for financial loss.

4.The publications that form part of the claim are as follows:

i) On 4 June 2020 the defendant published a blog on the telegra.ph website ("the telegra.ph publication");

ii) On 29 June 2020 the defendant contacted the claimant's girlfriend and business partner, Emma Sweeney, by way of a Facebook message, attaching the telegra.ph publication ("the FB message publication");

iii) On 3 July 2020 the defendant emailed Ms Sweeney ("the email publication")

iv) On 22 July 2020 the defendant published two posts on Facebook ("the FB posts publications");

v) On 22 July 2020 the defendant published a post on Instagram and shared the post to an Instagram story ("the Instagram publications").

5.The Amended Particulars of Claim also relied upon the defendant's Twitter post of 22 July 2020. However, this post did not name the claimant and the pleading did not rely upon extraneous material from which it was said that the claimant would have been identified as its subject. During the course of the trial, Mr Coulter indicated that he did not pursue the claim in relation to this post.

6.The defendant says that her primary intention in publishing these materials was to alert women who could otherwise become victims of sexual assault at the hands of the claimant, in particular in the context of his work as a tattooist. In summary, she says that in May 2010, when she was a 20 year old student, she met the claimant in 'Passion'

nightclub, via a mutual friend, Richard Beston, and that he seriously sexually assaulted her as he was walking her home.

7. Further or alternatively, the defendant relies upon the defence in section 4 of the Defamation Act 2013 ("the 2013 Act") that the publications complained of were or formed part of statements on a matter of public interest and she reasonably believed that publishing them was in the public interest, given that she reasonably believed the claimant had assaulted her and given the prevalence of sexual abuse within the tattoo industry and the need to protect women from this.

8. In relation to the FB message publication and the email publication only, the defendant also avers that the publications are protected by qualified privilege as she had a duty to communicate these matters to Ms Sweeney as the claimant's employer or business partner, and Ms Sweeney had a duty to receive them, given the claimant would routinely come into intimate contact with unaccompanied female clients in the course of his tattooing work.

9. The claimant does not admit that the defendant was sexually assaulted on her way home from the nightclub and he maintains that if such an assault occurred, he was not the perpetrator and the defendant's allegation in this regard is a deliberate fabrication on her part. Accordingly, he says that her truth defence and her public interest defence must fail. Furthermore, that the publications to Ms Sweeney were not on occasions of qualified privilege and, in any event the defence fails as the defendant acted maliciously in publishing knowingly false allegations.'

The judge concluded at paragraphs 215 to 217:

'Overall conclusion and outcome

For the reasons that I have identified above I conclude that:

215) The natural and ordinary meaning of the defendant's publications in relation to the claimant is that the claimant had violently sexually assaulted her;

216) This imputation was substantially true; the defendant has proved that the claimant sexually assaulted her in that manner in the early hours of 28 May 2010 in the circumstances that I have described. Accordingly, the statutory defence of truth provided for by section 2(1) of the Defamation Act 2013 is established;

217) Additionally, the defendant has established the defence in section 4 of the 2013 Act as she has shown that: the statements complained of were on a matter of public interest; that she believed this to be the case at the time of publishing them; and that her belief was reasonable in all the circumstances that I have discussed.

In light of these conclusions the claim fails and it is unnecessary for me to determine the further defence of qualified privilege. The question of remedy does not arise.

The parties will have the opportunity to address consequential matters by way of written submissions.'

Much attention has been given to the successful defence provided by Nina Cresswell under the public interest provision of Section 4.

The case has been reported journalistically by the Times (behind a paywall) ‘MeToo accuser wins landmark libel ruling after sex assault claim; at: <https://www.thetimes.co.uk/article/metoo-accuser-wins-landmark-libel-ruling-after-sex-assault-claim-pr06kc27d> and the Guardian ‘Sexual assault victim who named her attacker in blog defeats his libel action’ at: <https://www.theguardian.com/law/2023/apr/26/nina-cresswell-named-sexual-assault-attacker-blog-defeats-billy-hay-libel-action> and ‘My healing can start, says sexual assault victim after libel win’ at: <https://www.theguardian.com/society/2023/apr/29/nina-cresswell-sexual-assault-libel-win>

The Guardian reported her solicitor Tamsin Allen: ‘Allen said it was the first case of an abuser suing their victim for libel in which a public interest defence under the Defamation Act had succeeded. This applies when the statement complained of was on a matter of public interest and the defendant reasonably believed that publishing it was in the public interest, even if it turns out to be untrue.’

Legal analysis has been provided by The Good Law Project which supported Nina Cresswell. See: ‘WIN: Nina Cresswell wins libel case against William Hay who sexually assaulted her and then tried to silence her in court’ at: <https://goodlawproject.org/update/win-nina-cresswell/>, her counsel Jonathan Price at Doughty Street Chambers “‘Tattoo MeToo’ libel claim won by sexual assault survivor’ at: <https://www.doughtystreet.co.uk/news/tattoo-metoo-libel-claim-won-sexual-assault-survivor> and her solicitors Bindmans ‘Bindmans client and sexual assault survivor wins libel action.’

See: https://www.bindmans.com/knowledge-hub/news/bindmans-client-wins-libel-action/?utm_content=buffer5dce6&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer

To what extent does this case provide a useful precedent for journalists and news publishers wishing to engage the public interest defence in terms of ‘reasonable belief’ on the part of the defendant?

The issue has been analysed in detail by Hold The Front Page media lawyer Sam Brookman. See: ‘Law Column: An interesting victory for truth and public interest defences’ at <https://www.holdthefrontpage.co.uk/2023/news/law-column-an-interesting-victory-for-truth-and-public-interest-defences/>

Sam Brookman concludes with a note of caution: “In terms of the public interest defence, whilst Mrs Justice Williams makes some assertions which might be helpful to publishers, it must be remembered that it is the publisher’s reasonable belief that publication is in the public interest which is key. In this case Ms Cresswell was the publisher, but if the publisher is a media organisation it is the Editor’s and journalist’s belief which will be key, and in those cases there will likely still be the expectation that the subject of the accusation is approached for comment, or that any relevant balance is added to an article.”

Solicitors' Regulation Authority (SRA) using professional disciplinary rules to curb and prevent law firms pursuing legal action that might threaten free speech or the rule of law

More stringent professional disciplinary regulation may turn out to be a more effective or equally useful method of curbing 'Strategic Lawsuits Against Public Participation' SLAPPs or 'lawfare' by the rich and powerful against journalists and publishers.

The SRA in November 2022 explained regulatory action would be taken against firms of solicitors 'seeking to threaten or advance meritless claims, including in pre-action correspondence, and including claims where it should be clear that a defence to that type of claim will be successful based on what you know.'

The warning has been issued 'to guard against getting involved in abusive litigation aimed at silencing legitimate critics.'

Solicitors have been warned it would be a gross breach to mislead recipients of correspondence:

'Examples of abusive conduct or misuse of the legal system include bringing cases or allegations without merit, making unduly aggressive and intimidating threats, or claiming misleading outcomes such as exaggerated cost consequences or imprisonment in a civil claim.' This includes pre-action letters.

See: 'SRA issues new warning on solicitors using SLAPPs'

<https://www.lawgazette.co.uk/news/sra-issues-new-warning-on-solicitors-using-slapps/5114434.article>

'SRA wants statutory designation to encourage reporting of SLAPPs'

<https://www.lawgazette.co.uk/sra-wants-statutory-designation-to-encourage-reporting-of-slapps/5114475.article>

The use of professional regulatory standards in the legal profession is a well-established method of achieving a change in social legal practices identified as being problematic to the process of justice.

The disrupting and prejudicial use of photographing and filming court proceedings during the trial of Bruno Hauptmann for kidnapping the child of Charles Lindburgh in 1935 was curbed by a rule passed and enforced by the American Bar Association in 1937.

This acted as a brake on broadcasting coverage of courtroom proceedings until 1981 when the Supreme Court ruling in *Chandler v Florida* on First Amendment grounds declared that states would be entitled to experiment with televising court proceedings.

See: 'ABA Repeals Its 1937 Canon Against Cameras in the Courtroom'
<https://www.washingtonpost.com/archive/politics/1982/08/12/aba-repeals-its-1937-canon-against-cameras-in-the-courtroom/2418b074-dbe0-4aac-acf6-ff0b6b71f5b4/>

Chandler v. Florida, 449 U.S. 560 (1981) state could allow the broadcast and still photography coverage of criminal trials. See: <https://tile.loc.gov/storage-services/service/ll/usrep/usrep449/usrep449560/usrep449560.pdf> & <https://www.oyez.org/cases/1980/79-1260>

UK government announced 13th June 2023 that 'Judges will be given greater powers to dismiss lawsuits designed purely to evade scrutiny and stifle freedom of speech through government amendments to the Economic Crime and Corporate Transparency Bill.'

See: <https://www.gov.uk/government/news/crackdown-on-criminals-silencing-critics-to-be-added-to-economic-crime-bill>

The government explained:

'Definition of an economic crime SLAPP

For the purposes of section (Strategic litigation against public participation: requirement to make rules of court) a claim is a "SLAPP claim" if—

- the claimant's behaviour in relation to the matters complained of in the claim has, or is intended to have, the effect of restraining the defendant's exercise of the right to freedom of speech
- the information that is or would be disclosed by the exercise of that right has to do with economic crime
- that disclosure is or would be made for a purpose related to the public interest in combating economic crime
- any of the behaviour of the claimant in relation to the matters complained of in the claim is intended to cause the defendant—
 - harassment, alarm or distress
 - expense
 - any other harm or inconvenience
 - beyond that ordinarily encountered in the course of properly conducted litigation

SLAPPs legislation will only apply to England and Wales.

Coverage in UK media

Guardian: 'UK judges to be given powers to dismiss oppressive Slapps lawsuits at early stage. Amendments to bill address concerns that strategic lawsuits against public participation stifle free speech.'

See: <https://www.theguardian.com/law/2023/jun/13/uk-judges-to-be-given-powers-to-dismiss-oppressive-slapps-lawsuits-at-early-stage>

Financial Times (behind paywall): ‘Judges in England to gain new powers in clampdown on abusive litigation. Long-awaited restrictions on ‘Slapp’ suits will cover only economic crime cases.’ See: <https://www.ft.com/content/2a9607c5-c1be-47c8-8fcd-027b5cbf4c42>

Hold The Front Page: ‘Editors welcome plan to protect journalists from ‘intimidating’ legal threats.’ See: <https://www.holdthefrontpage.co.uk/2023/news/editors-welcome-plan-to-protect-journalists-from-intimidating-legal-threats/>

A further development in the SLAPP issue took place in September 2023 when the UK government announced it was setting up a ‘task force’ to address the problems.

See: ‘**Government-led task force launched to protect journalism from SLAPPs** Culture Secretary Lucy Frazer writes for Press Gazette about a new task force to tackle the rise of SLAPPs.’

Press Gazette 13th September 2023 at:

https://pressgazette.co.uk/media_law/government-led-task-force-protect-journalism-from-slapps/

It was reported that the task force would meet every two months and is expected to commission research to investigate the prevalence of SLAPPs against journalists, draw up plans for specialist training for judges and law professionals to help them recognise and throw out SLAPPs, and develop guidance to support journalists and publishers.

The Culture Secretary Lucy Frazer was quoted as saying: ‘The health of our democracy relies on journalists and investigators having the freedom to criticise the powers that be.’

The UK Government media release on the subject: ‘New plans to stop journalists being silenced by baseless lawsuits.’

See: <https://www.gov.uk/government/news/new-plans-to-stop-journalists-being-silenced-by-baseless-lawsuits>

The government claims: ‘New taskforce will build on work in Economic Crime Bill to ban SLAPPs in British courts. Journalists will be better protected exposing the crimes of powerful figures under plans for a new government-led taskforce to clamp down on obstructive and costly legal action designed to silence critics.’

This was followed up by an open letter from journalism NGOs and editors calling for a standalone bill on SLAPPs to ‘ensure journalists and public watchdogs are able to continue their work without risking legal harassment.’ The letter argued the anti-SLAPP amendment to the Economic Crime and Corporate Transparency Bill ‘does not go far enough as it only covers claims relating to the “public interest in protecting society from economic crimes”...The next step must be a standalone Anti-SLAPP Bill to extend protections to everyone who speaks out in the public interest.’

See:

Press Gazette 21st September 2023 ‘UK’s top editors call for standalone anti-SLAPP bill. Signatories to the letter include the editors of The Sun, The Guardian, the FT and Private Eye’ at: https://pressgazette.co.uk/media_law/slapps-editors-kings-speech-standalone-bill/

‘Society of Editors joins over 60 editors in calling on UK Government to commit to a standalone anti-SLAPP law’ at: https://www.societyofeditors.org/soe_news/society-joins-over-60-editors-in-calling-on-uk-government-to-commit-to-a-standalone-anti-slapp-law/

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Title: Courtroom art, Federal Building, Anchorage, Alaska
<https://www.loc.gov/pictures/item/2010719249/> Creator(s): [Highsmith, Carol M., 1946-](#), photographer

Reform of Defamation Law in Scotland and Northern Ireland

Since the last edition legislation in Scotland and Northern Ireland has gone a long way towards achieving some synchronicity with the defamation law of England and Wales and the statutory reforms introduced by the 2013 Defamation Act.

The Scottish Parliament passed the Defamation and Malicious Publication (Scotland) Act with Royal Assent 21st April 2021. See:
<https://www.legislation.gov.uk/asp/2021/10/contents>

The key provisions on defamation are set out in Section One:

Actionability and restrictions on bringing proceedings

1. [Actionability of defamatory statements](#)
2. [Prohibition on public authorities bringing proceedings](#)
3. [Restriction on proceedings against secondary publishers](#)

4. [Power to specify persons to be treated as publishers](#)

Defences

5. [Defence of truth](#)

6. [Defence of publication on a matter of public interest](#)

7. [Defence of honest opinion](#)

8. [Abolition of common law defences and transitional provision](#)

See: The new Scots law of defamation in 2021 by Lindsays at:

<https://www.lindsays.co.uk/news-and-insights/insights/the-new-scots-law-of-defamation-in-2021>

“You can’t say that about me” – an overview of the new defamation law in Scotland by Thorntons at:

<https://www.thorntons-law.co.uk/knowledge/you-cant-say-that-about-me-an-overview-of-the-new-defamation-law-in-scotland>

As well as defining defamation as needing to cause serious harm, the act set out the statutory defences of truth, which must be proved; public interest; honest opinion, which must be based on facts; and the protection of absolute or qualified privilege covering statements made in court or in an academic journal.

The act introduced into Scottish law the [civil wrong of malicious publication](#) which covers content that is not defamatory but could harm business interests, such as wrongful allegations that goods are of poor quality.

The legislation accommodates the new realities of online publishing in terms of liability. It also extends the potential remedies from damages to allowing a defendant to publish the court’s judgement, a settlement statement to be read out in open court, and ordering the operator of a website to remove the defamatory statement in its entirety or to issue a notice that the statement is subject to court proceedings.

Furthermore, the extent of anxiety and distress caused by libel can be taken into account by the Scottish courts when deciding how much to award in damages.

As with English libel, the act requires defamation to be a statement published to a third party rather than just to the person who is the subject of it. The time limit for bringing defamation and malicious publication cases has been reduced to within one year of the first publication rather than three years.

The Northern Ireland Assembly passed the [Defamation Act \(Northern Ireland\) 2022](#) which substantially reforms the law of libel in this legal jurisdiction, though does not fully mirror the reforms in the England and Wales 2013 Defamation Act.

The Act adopts some of the English libel reforms. Consequently, there are statutory defences for public interest, truth, honest opinion, peer-reviewed statement in scientific or academic journal, and abolition of presumption of trial by jury. However, unlike in England and Wales, and Scotland claimants do not have to prove serious harm and every day that a defamatory statement remains online is considered a new publication.



Defamation Act (Northern Ireland) 2022

2022 CHAPTER 30

An Act to amend the law of defamation.

[6th June 2022]

Here is the structure of the legislation with its sixteen sections.

[Introductory Text](#) [Defences](#)

- 1.Truth
- 2.Honest opinion
- 3.Publication on matter of public interest
- 4.Peer-reviewed statement in scientific or academic journal etc
- 5.Reports etc protected by privilege

[Jurisdiction](#)

- 6.Action against a person not domiciled in the UK

[Trial by jury](#)

- 7.Trial to be without a jury unless the court orders otherwise

[Summary of court judgment](#)

- 8.Power of court to order a summary of its judgment to be published

[Powers of the court](#)

- 9.Powers of the court

[Slander](#)

- 10.Special damage

[Review of defamation law](#)

- 11.Review of defamation law

[General provisions](#)

- 12.Interpretation

- 13. Consequential amendments and savings etc
- 14. Commencement
- 15. Short title

The new legislation has been impressively analysed and discussed by Tony Jaffa for Hold The Front Page with the column titled [‘Are libel law reforms enough?’](#) and also by Ciaran O’Shiel and Holly Johnston for the Informm website with the headline [‘The Defamation Act \(NI\) 2022, A Swing and a Miss.’](#)



Two photographers taking each other's picture with hand-held cameras while perched on a roof] <https://www.loc.gov/pictures/item/89713376/> Date Created/Published: [between 1909 and 1932]

Privacy Law and misuse of private information

1. The Human Rights Act 1998 means freedom of expression is balanced with the right to respect for privacy. The English and European courts recognize that private information cannot be reported unless it is in the public interest.
2. No go areas include the nature of health treatment and state of health, education, sexuality, family life and personal relationships.
3. It now means that people who do not give permission to be photographed in public, and are not the subject of a public interest story, are entitled to privacy protection.
4. The principle of when media privacy law applies is when any individual has 'a reasonable expectation of privacy.'
5. Privacy as an European legal concept means dignity, honour, reputation (overlapping with libel) identity, family life, home space, and privacy communications (correspondence, email, mobile, Skype, palm computer devices etc.)
6. It goes without saying the privacy concept underpins the fact that intercepting anyone's mobile, mail, email and communications devices is a criminal offence and so is giving bribes or impersonating anyone to unlawfully obtain private information. It is also a criminal offence and civil wrong to 'harass' anyone on the basis of causing distress on at least two separate occasions.
7. This means that any journalist and media body committing a criminal offence can also be sued in the civil courts for the invasion of their privacy.
8. The European Court of Justice ruled in 2014 that EU citizens are entitled under a 'right to be forgotten' to ask data processing Internet search engines to remove links to pages that contain old, inaccurate or even just irrelevant data about them. Any legal obligation to remove such information does not apply to online journalistic publishers and their archives. Despite the UK leaving the European Union with end of transition year 1st January 2021, 'the right to be forgotten' concept had been recognized in English legal jurisprudence and case law. See [ABC v Google Inc \[2018\] EWHC 137 \(QB\) \(01 February 2018\)](#)
9. It needs to be remembered that in the UK privacy and freedom of expression are balanced equally. This can lead to the May 2015 Supreme Court case of pianist James Rhodes whose autobiography was blocked by publication because of concern about the impact of his revelations about being abused as a child on his own children. Although he won the case, the fact that his book had been subject to prior restraint through such a long and complex process of litigation indicates how freedom of expression can be held in abeyance until the courts decide the issue. See: [Rhodes v OPO & Anor \[2015\] UKSC 32](#)

Public Interest

The most extensive definition of public interest that can be used to defend against media law actions can be found in the IPSO Editors' Code of Practice:

'The public interest includes, but is not confined to:

Detecting or exposing crime, or the threat of crime, or serious impropriety.

Protecting public health or safety.

Protecting the public from being misled by an action or statement of an individual or organisation.

Disclosing a person or organisation's failure or likely failure to comply with any obligation to which they are subject.

Disclosing a miscarriage of justice.

Raising or contributing to a matter of public debate, including serious cases of impropriety, unethical conduct or incompetence concerning the public.

Disclosing concealment, or likely concealment, of any of the above.

There is a public interest in freedom of expression itself.

The regulator will consider the extent to which material is already in the public domain or will or will become so.

Editors invoking the public interest will need to demonstrate that they reasonably believed publication - or journalistic activity taken with a view to publication – would both serve, and be proportionate to, the public interest and explain how they reached that decision at the time.

An exceptional public interest would need to be demonstrated to over-ride the normally paramount interests of children under 16.'

This definition is very significant for UK journalists because their statutory defence for the purposes of journalism under section 32 of the 1998 Data Protection Act is dependent on any processing of private data being in the public interest.

There is a possibility there could be an increase in litigation against journalists and publishers for processing data for the purposes of journalism that could be argued to be private information. Actions could be successful where it can be shown that the data process controllers could not reasonably believe the information being processed is in the public interest.

See: [Top media law QC says Sun could face action under Data Protection Act over front-page pic of six-year-old Kai Rooney](#)

Academics and media lawyers are beginning to call this 'the new libel' meaning that where libel litigation is more difficult to succeed when harm to reputation has to be serious, actions based on data processing of private information which harms personal dignity is more likely to succeed.

Two Conflicting Privacy Standards

In an information age that is understood to be globalized, it has to be accepted that there is no single globalized standard for what is permissible in communicating private information.

UK and European law ordinarily allows legal prohibition of communicating truthful information if it is 'private'. This is not the situation in the US where such legal censorship would be unconstitutional under the First Amendment. This resulted in the 2016 Supreme Court ruling sustaining a court injunction against the English and Welsh media publishing anything that could identify a celebrity connected to a US publication revealing gossip about his private relationships. See: [PJS v News Group Newspapers Ltd \(Rev 1\) \[2016\] UKSC 26 \(19 May 2016\)](#)

The difficulty of this division in the exercise of information rights is that it is not even possible to identify in this guide the name of the US publication regularly revealing scandals concerning public figures that it would be unlawful to publish in England and Wales. It also means that in

the English and European context digital online publishers will be subject to a stricter control on content that their visitors and readers will be easily able to access elsewhere.

Another division has emerged in relation to what is known as the 'right to be forgotten' through the data processing of Internet search engines. The European Court of Justice ruled in 2014 that EU citizens are entitled under a 'right to be forgotten' to ask Internet search engines to remove links to pages that contain old, inaccurate or even just irrelevant data about them. Any legal obligation to remove such information does not apply to online journalistic publishers and their archives. It applied specifically to Google in terms of it being seen as a 'data processor' rather than publisher.

See: [Mario Costeja Gonzalez v Google Spain and Google \(Judgment of the Court\) \[2014\] EUECJ C-131/12 \(13 May 2014\)](#)

Google has been forced to set up a system of receiving and deciding requests. See: <https://support.google.com/legal/answer/3110420?rd=2>

The right to be forgotten does not extend to search engine operations beyond the European Union, but efforts are being made to prevent EU Internet users by-passing right to be forgotten removals, and in England, the Information Commissioner has directed Google to sever links to professional media sites that report successful right to be forgotten decisions.

Up until May 2015 the BBC set up a resource of [BBC web pages which have been removed from Google's search results](#). However, after June 2015 it does not appear to have been continued.

The 'right to be forgotten' principle has been substantially extended in English privacy law with the ruling against Google in April 2018 in which a businessman was given the right to have his past criminal wrong-doing concealed by anyone using the search engine. His right of anonymity even extended to his litigation to achieve this aim. Mr Justice Warby gave the businessman known as 'NT2' full anonymity and ordered Google to de-list published news reports about his conviction by its Internet Search Engine. The judge said: 'In short, anonymity is required to ensure that these claims do not give the information at issue the very publicity which the claimants wish to limit. Other individuals and organisations have been given false names in this judgment for the same reason: to protect the identities of the claimants.' The ruling explained what NT2 wished to have covered up: 'NT2 was involved in a controversial business that was the subject of public opposition over its environmental practices. Rather more than ten years ago he pleaded guilty to two counts of conspiracy in connection with that business, and received a short custodial sentence. The conviction and sentence were the subject of reports in the national and local media at the time. NT2 served some six weeks in custody before being released on licence.

The sentence came to an end over ten years ago. The conviction became "spent" several years ago. The original reports remained online, and links continued to be returned by Google Search. NT2's conviction and sentence have also been mentioned in some more recent publications about other matters, two of them being reports of interviews given by NT2. In due course, NT2 asked Google to remove such links.'

See: [NT 1 & NT 2 v Google LLC \[2018\] EWHC 799 \(QB\) \(13 April 2018\)](#)

Privacy Case Histories Turning on the Interests of Children

In January 2013, the third husband of the Oscar winning British actress Kate Winslet won a privacy action against the Sun over the publication of images taken of him at a private party that had previously been posted on Facebook. Mr Justice Briggs said: 'The question is whether the publication of the Photographs, or of a more detailed description of their contents than the fact that the claimant is depicted partially naked, would add anything beyond mere titillation. In my judgment it would not'.

He said the threat to publish them 'comes very shortly after the belated discovery by the media of the claimant and Miss Winslet's recent marriage, at a time when the claimant finds himself in a temporary blaze of largely reflected publicity'.

The judge also engaged the issue of there being no possible reason for exposing Kate Winslet's 'children to a real risk to additional embarrassment or upset from the nationwide publication of photographs (or their contents) depicting their other carer behaving in a foolish and immature manner when half naked'. See: [Rocknroll v News Group Newspapers Ltd \[2013\] EWHC 24 \(Ch\) \(17 January 2013\)](#)

This case highlights the sensitivity of the English courts to any matters that concern the interests of children. Hence the 2014 ruling in favour of singer Paul Weller who objected to the MailOnline publishing a photograph of him with his three children taken in a public place in Los Angeles. See: [Weller & Ors v Associated Newspapers Ltd \[2014\] EWHC 1163 \(QB\) \(16 April 2014\)](#)

The 2016 UK Supreme Court case of PSJ v The Sun on Sunday also concerned itself with the potential harm to the claimant's children of any media exposure of the celebrity's personal sexual relationships being made public. See: [PJS \(Appellant\) v News Group Newspapers Ltd \(Respondent\)](#)

Lady Hale observed: 'It is simply not good enough to dismiss the interests of any children who are likely to be affected by the publication of private information about their parents with the bland statement that "these cannot be a trump card". Of course they cannot always rule the day. But they deserve closer attention than they have so far received in this case, for two main reasons.

First, not only are the children's interests likely to be affected by a breach of the privacy interests of their parents, but the children have independent privacy interests of their own. They also have a right to respect for their family life with their parents.

Secondly, by section 12(4)(b), any court considering whether to grant either an interim or a permanent injunction has to have "particular regard" to "any relevant privacy code". It is not disputed that the IPSO Code, which came into force in January, is a relevant Code for this purpose.'



Meghan Markle v The Mail on Sunday 2021- Controversy

Lord Justice Warby explained that the actress Meghan Markle became the Duchess of Sussex after her marriage to Prince Harry. He said in his ruling that the relationship with her father, Thomas Markle, 'was difficult at the time.' Three months after the wedding, on 27th August 2018, she sent her father a five-page letter. In September 2018, Mr Markle sent a letter in reply. The privacy action arose from the later reproduction of large parts of her letter in articles published in the *Mail on Sunday* and *MailOnline*.

The existence of her letter first became public on 6th February 2019, when it was mentioned in an eight-page article appearing in the US magazine *People* under the headline: "*The Truth About Meghan – Her best friends break their silence*". Thomas Markle provided the letter or a copy of it to the Mail. On 9th February 2019, they published in print and online five articles which quoted extensively from the letter. The headline across pages 4 and 5 of the *Mail on Sunday* said: "*Revealed: the letter showing true tragedy of Meghan's rift with a father she says has 'broken her heart into a million pieces'*".

Megan complained that the publication of the Mail articles misused her private information, and an infringed her copyright in the letter.

Her lawyers argued that letter's contents were private; this was correspondence about her private and family life, not her public profile or her work; the letter disclosed her intimate thoughts and feelings; these were personal matters, not matters of legitimate public interest; she enjoyed a reasonable expectation that the contents would remain private and not be published to the world at large by a national newspaper; and the Mail's conduct in publishing the contents of the letter was a misuse of her private information.

The Mail countered that the contents of the letter were not private or confidential and Meghan had no reasonable expectation of privacy. It said any privacy interest she enjoyed was slight, and outweighed by the need to protect the rights of her father and the public at large.

The judge gave a summary ruling in favour of Meghan Markle on the privacy and copyright actions. He said: 'the disclosures were manifestly excessive and hence unlawful. There is no prospect that a different judgment would be reached after a trial. The interference with freedom of expression which those conclusions represent is a necessary and proportionate means of pursuing the legitimate aim of protecting the claimant's privacy.'

In relation to the Mail's defence on copyright, Lord Justice Warby said: 'the defendant's factual and legal case on this issue both seem to me to occupy the shadowland between improbability and unreality. The case is contingent, inferential and imprecise. It cannot be described as convincing, and seems improbable.'

The full ruling is available at:

[HRH The Duchess of Sussex v Associated Newspapers Ltd \[2021\] EWHC 273 \(Ch\) \(11 February 2021\)](#)

The court case was part of a continuing sensationalist narrative about Prince Harry and Megan Markle's decision to move to the USA and end their working relationship with the British Royal Family.

The key significance in this ruling is that the defence to a high profile privacy claim has been struck out with summary judgment given on the main issues, including copyright.

It is rare for this to happen when defences were being advanced by the media publisher which adamantly argued should have been decided after a full trial of the evidence. The case has also provided a precedent on the privacy adhering to a private letter and the meaning of 'correspondence' in Article 8 of the ECHR.

It is unlikely Meghan Markle would have succeeded if she had pursued her case in the US legal system.

The US First Amendment would have given Associated Newspapers as the publisher of the Mail on Sunday and MailOnline much greater public interest justification for the use of her correspondence; particularly as her father's freedom of expression rights would have been given greater value and prominence in the issues being decided.

Lord Justice Warby further ordered that the [Mail on Sunday must publish a front-page statement about the Duchess of Sussex's success in her copyright claim against the newspaper with a further more detailed notice on page 3 of the paper.](#) The judge further ordered that a declaration that it lost the case needed to be published on the home page of its web publication MailOnline for seven days. The Duchess's lawyers had asked for the MailOnline statement to remain on the home page for six months. He set out in his ruling the content of the front page notice as:

'The Duchess of Sussex wins her legal case for copyright infringement against Associated Newspapers for articles published in The Mail on Sunday and posted on Mail Online – see page 3.'

He also set out the detail of the content of the statement to be published on page 3 of the printed newspaper and remain on the home page of MailOnline for seven days:

'The Duchess of Sussex

Following a hearing on 10-20 January 2021, the Court has given judgment for The Duchess of Sussex on her claim for copyright infringement. The Court found that Associated Newspapers infringed her copyright by publishing extracts of her handwritten letter to her father in The Mail on Sunday and in Mail Online.

There will be a trial of the remedies to which the Duchess is entitled, at which the court will decide whether the Duchess is the exclusive owner of copyright in all parts of the letter, or whether any other person owns a share.'

The MailOnline statement required 'these additional words at the end of the first paragraph, hyperlinked to the judgment and summary: "The full judgment and the Court's summary of it can be found here."

He explained:

'...the coverage of the case in MailOnline has not been very informative about the issues in the case and how they were resolved. The coverage could be read as suggesting that judgment in the claimant's favour on privacy "WITHOUT a trial" (sic) is a startling and unusual one, and that the entire question of whether the claimant owned any copyright was to go to trial. (The article said, "Mr Justice Warby ruled the issue over ownership of copyright of the letter she wrote to Mr Markle can be decided at trial".) There was a sentence in the article inviting readers to "read the [Summary Judgment] in full here", with a link to the full text on the judiciary website. But this was far from conspicuous. It came at the very end of a long article, running to over 1,100 words, which contained reporting and criticism of the judgment, and reports on other features of the litigation. Until guided to it by Counsel, I had failed to spot the link when reading the MailOnline article. There was no link to the two-page summary of the Summary Judgment that I prepared, which was also on the judiciary website, the purpose of which was to help readers follow its structure and easily identify and understand my conclusions.

I also place some weight on the fact that the defendant saw fit to continue the publication on MailOnline of articles that I had held to be a misuse of private information and an infringement of copyright, making them accessible (so it appears) to anyone from anywhere in the world. This cannot be accidental, or an oversight. In the absence of any explanation, I am tempted to infer that it is a form of defiance. But I do not need to make a finding.'

This outcome shows that the courts in the UK are now prepared to use their powers to determine how their court rulings are presented and represented editorially by unsuccessful

media defendants in privacy and copyright actions. This injunction by a court to have information actually published in a losing media publication, with clear directions as to font size and positioning, has been described as unprecedented.

Prince Harry v The Sun and phone hacking

The UK Media Law Pocketbook 2nd edition at page 123-4 explains that Mr Justice Warby's ruling was upheld by the Court of Appeal. Dame Victor Sharp, President of the Queen's Bench Division said: 'The contents of the letter were private when it was written and when it was published, even if the claimant, it now appears, realised that her father might leak its contents to the media.' Associated Newspapers decided not to appeal and agreed a settlement, which included paying undisclosed damages and costs over the breach of copyright and £1 for breach of her privacy.

Court of Appeal ruling listed as: HRH the Duchess of Sussex v Associated Newspapers Ltd [2021] EWCA Civ 1810 (02 December 2021)

See: <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2021/1810.html>

At page 124 of the printed text of UK Media Law Pocketbook 2nd Edition (2022) I wrote 'at the time of writing there does not appear to have been media law litigation where media publishers have succeeded when sued by members of the Royal Family.

On 27th July 2023 a key member of the Royal Family actually lost part of an action in media law against a UK national newspaper organisation, which is something of a rare phenomenon.

The Duke of Sussex, more commonly known as 'Prince Harry' was unsuccessful in pursuing litigation on phone hacking against News Group Newspapers, the publishers of the Sun newspaper.

However, the judge did find in favour of the claimant in being able to pursue an action for misuse of private information through unlawful information gathering such as use of private investigators. The action against News Group Newspapers/Sun is part of a portfolio of litigation by the Duke of Sussex.

He departed from Royal Family convention in June 2023 when he became the first senior member of the royal family to testify in court in more than a century. He testified in a separate phone hacking lawsuit against the publishers of the Reach/Daily Mirror in which he is seeking 440,000 pounds (\$563,000).

The same judge, Mr Justice Fancourt also presided in that case, the first of the Duke of Sussex's three unlawful information gathering cases against British tabloid publishers to go to trial. The judge was expected to rule on this issue later in 2023. Another judge is deciding on a similar lawsuit against the publishers of the Associated Newspapers/Daily Mail.

See the summary of Mr Justice Fancourt's ruling 27th July 2023 at:

<https://www.judiciary.uk/wp-content/uploads/2023/07/Duke-of-Sussex-v-NGN-summary-270723.pdf>

The full ruling (40 pages) is available to download at: <https://www.judiciary.uk/wp-content/uploads/2023/07/Duke-of-Sussex-v-NGN-Judgment-270723.pdf>

British and Irish Legal Information Institute online hosting of full judgment at:

[Duke of Sussex v News Group Newspapers Ltd \[2023\] EWHC 1944 \(Ch\) \(27 July 2023\)](#)

There has been an apparent contrast in the way the Guardian and BBC reported the outcome compared with the Mail Online and Telegraph:

See examples of the different journalism reports:

Guardian: 'Prince Harry's lawsuit against Sun publisher can go to trial, judge rules. High court rules prince's claims of illegal information gathering can proceed but phone-hacking allegations cannot.' See: <https://www.theguardian.com/uk-news/2023/jul/27/prince-harrys-lawsuit-against-sun-publisher-can-go-trial-judge-rules>

BBC News: 'Prince Harry set for court showdown with The Sun publisher. The Duke of Sussex is to take The Sun's publisher to court over claims it used illegal methods to gather information on him.' See: <https://www.bbc.co.uk/news/uk-66322279>

Mail Online: 'Prince Harry's phone hacking case against The Sun's publisher and claim of 'secret agreement' between Buckingham Palace and the Press is thrown out by a judge – but other claims against paper will go to trial.' See: <https://www.dailymail.co.uk/news/article-12343855/Prince-Harrys-phone-hacking-case-against-Suns-publisher-thrown-judge-claims-against-paper-trial.html>

Telegraph (behind paywall): 'Prince Harry's phone hacking claim against Sun publisher thrown out by judge. Only part of the Duke of Sussex's lawsuit will now go to trial at the High Court, which is due to begin in January next year.' See: <https://www.telegraph.co.uk/royal-family/2023/07/27/prince-harry-sun-publisher-lawsuit-trial/>

This case was about a motion by News Group Newspapers to have all of the Duke's claims struck out with summary ruling in their favour on the grounds they were out of time because his claims were made beyond the six year limit for civil litigation under the 1980 Limitation Act.

Between paragraphs 7 to 11 of the summary of his ruling, Mr Justice Fancourt explains why the Duke cannot amend his claim and the phone hacking case will be struck out:

'7. The Duke's original pleaded case was that he was unaware until about 2018 that he had a claim to bring, save in relation to one isolated occasion of phone-hacking in 2006.

8. In March 2023, the Duke made a witness statement explaining that there was a secret agreement, which he said required him only to bring a claim against News Group at a much later time, when it would be admitted by News Group or settled with an apology. He said that he did not bring his claim in about 2012 because he relied on this secret agreement.

9. The Duke only made an application to amend his pleaded case to rely on the secret agreement during the hearing of News Group's application, in April 2023.

10. The Duke's proposed amended case did not reach the necessary threshold of plausibility and cogency for permission to be granted to amend his case at this stage. There was no witness or documentary evidence to support what the Duke claimed. It raised for the first time a case that was inconsistent with the existing pleaded case. Despite the attempts of the Duke's lawyers to enable both cases to proceed, the attempt to do so failed.

11. Accordingly, permission to amend the Duke's pleaded case was refused.'

The judge goes on to say at paragraphs 16 and 17 the trial of the other allegations of unlawful gathering of personal information will proceed:

'16. In relation to the other Unlawful Acts, however, the decision is that the Duke has a realistically arguable case at trial that he did not by 27 September 2013 know (and could not reasonably have found out) enough about blagging of his confidential information and the commissioning of private investigators to do other alleged Unlawful Acts, to believe then that he had a worthwhile claim.

17. Whether the Duke issued his claim for these other Unlawful Acts too late is one of the many issues in the claim that will have to be decided at trial, in 2024 or 2025. The judgment does not decide that the Duke's claim in respect of them was issued in time: it only decides that it is not sufficiently clear at this stage that it was issued too late.'

In the full ruling Mr Justice Fancourt deals with his view of the Duke's evidence at paragraph 75:

'The evidence in support of the pleaded case is limited to that of the Duke. It is not strong evidence. The Duke is unable to identify between whom the secret agreement was made, or even who it was who told him about it. His case is that it might have been Gerrard Tyrrell, a solicitor at Harbottle & Lewis who acted for the Royal Family, or it might have been "someone else at the Institution". The originally pleaded case was that the Duke became aware through legal advisers to his family in about 2018 that he could bring a claim against NGN; but by the intended amendment, that is to be changed to his becoming aware that he could bring a claim in 2017 after permission was given by The Queen. Given that Gerrard Tyrrell was acting on behalf of the Duke in 2012 – in connection with phone hacking and another matter – one might have expected to see some evidence from Mr Tyrrell, or from Ms Osman or Sir Christopher Geidt, giving support to the Duke's factual case, but there is none.'

At paragraph 82 the judge observe: '...the problem with the Duke's pleaded case is that there is nothing other than his rather vague and limited evidence to support it: there is no documentary evidence that supports a case about 2012 and his reliance; there is no evidence from those acting for the Royal Family at the time who might have been expected to support his account, if it is correct; and his own previously pleaded case and evidence in other cases are inconsistent with it.'

And at paragraph 91 the judge rules:

'For all the reasons that I have given, I am unable to conclude that there is a sufficiently plausible evidential basis for the new case based on the secret agreement to justify the grant of permission to amend at a late stage of the proceedings. The lack of credibility arises from:

the unexplained lateness of the plea, linked to the nature of the estoppel plea; the improbability of a secret agreement being made in the particular terms pleaded; the inconsistency with the Duke's currently pleaded case, which is twice supported by statements of truth, and with his evidence in other proceedings, supported by a statement of truth; the absence of any explanation for the new factual case being raised; and the absence of any other witness or documentary evidence to support it.'

Clearly there are further significant hearings to take place and rulings to be made in the campaign of media law litigation being run by the Duke of Sussex against the News Group, Associated Press and Reach newspaper groups and the Handbook will do its best to report on their outcomes in future years.

The tension between Open Justice and Privacy

In July 2017, the UK Supreme Court ruled that a man previously known as PNM and 'a prominent figure in the Oxford area' could be identified by the media as having been arrested by the police in a 2012 child grooming enquiry known as Operation Bullfinch. Five years before he had been given police bail, released, told that his case would be kept under review and never charged. A Magistrates court had prevented his identification when named in court proceedings for nine other men charged and he continued to be referred to during their Old Bailey trial. PNM did not feel it was right that he should become collateral damage as a result of being named and associated in a criminal trial arising from an enquiry where he been effectively cleared of any wrongdoing. PNM and his lawyers fought for his right to be protected from exposure through the privacy laws from 2012 to 2017. Five out of the seven Supreme Justices decided that the right to Open Justice prevailed in these circumstances. Lord Sumption said: 'The material is there to be seen and heard, but may not be reported. This is direct press censorship.'

The ruling in [PNM v Times Newspapers Ltd & Ors \[2017\] UKSC 49 \(19 July 2017\)](#) revealed for the first time that PNM's actual name was Tariq Khuja. He always protested his innocence. A victim who had told police detectives that she had been raped by somebody called Tariq had not picked him out in an identity parade, and she did not believe her rapist was in the line-up. It remains to be seen whether this Supreme Court ruling will halt an increasing trend for privacy injunctions in criminal proceedings. In one case the media had been prevented from reporting a criminal investigation into financial crime where the owner of the company had been interviewed under caution and in another, a court order prevents the media identifying a witness in a criminal investigation.'

Key useful background facts about UK Privacy

a. The law developed because the Human Rights Act 1998 (enacted from October 2000) placed a statutory obligation on the UK judiciary that courts and tribunals must apply the European Convention of Human Rights to its decisions (Section 6) and '**must take into account** any judgment, decision, declaration or advisory opinion of the European Court of Human Rights and any decision of the Committee of Ministers of the Council of Europe (the non EU body that runs the ECtHR) (Section 2) Under Section 6 it is 'unlawful for a public authority to act in a way which is incompatible with a Convention right,' and public authority

includes any court or tribunal. Under Section 12 Freedom of Expression, UK courts have to carry out an equal balancing act between Article 8 Privacy and Article 10 Freedom of Expression with an intense scrutiny of the facts in each case. They have to consider the extent to which there was public interest for the material to be published, and have particular regard for freedom of expression and for any privacy code.

Under Section 3 of the Act UK legislation has to be interpreted so that it 'must be read and given effect in a way which is compatible with the Convention rights.'

b. Prior restraint by injunctions became possible in privacy actions because of the idea that privacy was like a cube of ice. Once exposed to the heat of exposure it would melt and be lost forever. However, the practice became controversial due to hearings being in secret, the media not being notified or represented to argue for freedom of expression, and 'superinjunctions' preventing any reporting of the fact that an injunction had been applied for and granted. There had also been an increase in anonymity for the parties involved in privacy actions. The *Guardian* newspaper had complained that a court injunction and superinjunction relating to a report on the activities of the corporation Trafigura and its disposal of chemical waste in third world countries prevented their ability to even report discussion of it in Parliamentary proceedings [see <http://www.theguardian.com/world/2009/oct/16/trafigura-carter-ruck-the-guardian>]. A report of a Parliamentary committee chaired by the Master of the Rolls, Lord Neuberger, in 2011 'on super-injunctions, anonymity injunctions and open justice,' observed 'Super-injunctions are now only being granted, for very short periods, and only where this level of secrecy is necessary to ensure that the whole point of the order is not destroyed.' The report recommended that 'When anonymised orders are made, the court has and should wherever practicable provide a reasoned judgment for its decision,' and follow procedure and guidelines to 'enable the media to be informed about applications in advance as Parliament envisaged when it passed section 12 of the Human Rights Act 1998.'

c. The right to respect for privacy became consolidated in May 2004 when at the UK's then highest court, the Judicial Committee of the House of Lords (after 2009 this was replaced by the UK Supreme Court) ruled that the supermodel Naomi Campbell had had her privacy breached when the *Daily Mirror* linked a published photograph of her in a Chelsea Street with her receiving therapy at Narcotics Anonymous for an addiction illness. [[Campbell v MGN Ltd \[2004\] UKHL 22 \(6 May 2004\)](#)] One of the Law Lords, Baroness Hale explained that the issue at stake was not trivial: 'The information revealed by the article was information relating to Miss Campbell's health, both physical and mental. Drug abuse can be seriously damaging to physical health; indeed it is sometimes life-threatening.' In her assessment of the public interest in freedom of speech she observed: 'The political and social life of the community, and the intellectual, artistic or personal development of individuals, are not obviously assisted by pouring over the intimate details of a fashion model's private life.'

It is important to note that on appeal to the ECtHR in 2010 the UK House of Lords decision on privacy/breach of confidence was upheld, but the fact that the media defendant Mirror Group Newspapers had to pay nearly £1 million in legal costs through the conditional fee agreement success fees system was a breach of Article 10 Freedom of Expression. [MGN LIMITED v. THE UNITED KINGDOM - 39401/04 \[2011\] ECHR 919 \(9 June 2011\)](#).

In June 2004 at the ECHR in Strasbourg, Princess Caroline of Monaco won a case over the persistent photographing of her in public and private locations where there was deemed to be no public interest. [\[VON HANNOVER v. GERMANY - 59320/00 \[2004\] ECHR 294 \(24 June 2004\)\]](#) The court ruled: 'The present case does not concern the dissemination of "ideas", but of images containing very personal or even intimate "information" about an individual.

Furthermore, photos appearing in the tabloid press are often taken in a climate of continual harassment which induces in the person concerned a very strong sense of intrusion into their private life or even of persecution.'

In a concurring opinion Judge Zupancic observed: '...it is impossible to separate by an iron curtain private life from public performance. The absolute incognito existence is the privilege of Robinson; the rest of us all attract to a greater or smaller degree the interest of other people [...] I believe that the courts have to some extent and under American influence made a fetish of the freedom of the press.'

d. Political contestation in UK Privacy. Media privacy has developed out of the common law of confidentiality that protects individuals, businesses, corporations and even government bodies. The Human Rights Act 1998 and British law interlocking with European Court of Human Rights law meant that the confidential legal obligations between two parties could be extended to third party publishers via the legal duty of the judiciary as a public authority to apply the rights enshrined in the European Convention on Human Rights and fundamental freedoms. Privacy as a right became enforceable through judicial remedy in an horizontal vector between individual and individual via the vertical vector of the individual to the state in the form of the courts as a public authority. The European legal principles of i) the infringement of the human right being clearly proscribed by an existing law ii) there needing to be a proportionate interference with the human right and iii) the requirement of a pressing social need in the context of a democratic society for the interference with any human right had to be applied in the balancing act in any intense focus on the facts of any case where there was a conflict between Article 8 Privacy and Article 10 Freedom of Expression.

e. The political and jurisprudential struggle remains in a state of flux. It is neither certain nor predictable. For example, in [A v B & C \[2002\] EWCA Civ 337 \(11th March, 2002\)](#) a privacy battle between the then premiership footballer Gary Flitcroft and the *Sunday People* newspaper over revelations about his private life in respect of extramarital affairs, the Court of Appeal ruled freedom of expression should take precedence. The then Lord Chief Justice Lord Harry Woolf said: 'A public figure is entitled to a private life. The individual, however, should recognise that because of his public position he must expect and accept that his actions will be more closely scrutinised by the media. Even trivial facts relating to a public figure can be of great interest to readers and other observers of the media. Conduct which in the case of a private individual would not be the appropriate subject of comment can be the proper subject of comment in the case of a public figure. The public figure may hold a position where higher standards of conduct can be rightly expected by the public. The public figure may be a role model whose conduct could well be emulated by others. He may set the fashion. The higher the profile of the individual concerned the more likely that this will be the position. Whether you have courted publicity or not you may be a legitimate subject of public attention. If you

have courted public attention then you have less ground to object to the intrusion which follows. In many of these situations it would be overstating the position to say that there is a public interest in the information being published. It would be more accurate to say that the public have an understandable and so a legitimate interest in being told the information. If this is the situation, then it can be appropriately taken into account by a court when deciding on which side of the line a case falls. The courts must not ignore the fact that if newspapers do not publish information which the public are interested in, there will be fewer newspapers published, which will not be in the public interest. The same is true in relation to other parts of the media.'

After the Campbell and Von Hannover cases in 2004, injunctions against the media for anonymous claimants about infidelity became common. The superinjunction would prohibit publication about the very existence of the injunction. This was seen as killing off the tabloid 'kiss and tell' genre of story. Even media journalist celebrities such as Andrew Marr and Jeremy Clarkson later admitted to obtaining superinjunctive privacy relief about their private lives.

The media would win some cases, but lose others and it became apparent that publishing private information with what was seen as 'trivial' tabloid style entertainment public interest justification became an expensive and risky enterprise.

The legal process often concerned leading sports celebrities such as Premiership soccer players. Some selected case histories:

1. Loreena McKennitt- successful privacy injunction by the folk singer against former friend and employee Niema Ash who wished to publish a book including descriptions about McKennitt's private life. [McKennitt & Ors v Ash & Anor \[2005\] EWHC 3003 \(QB\) \(21 December 2005\)](#) was upheld by Court of Appeal. Mr Justice Eady had said: "Even where there is a genuine public interest, alongside a commercial interest in the media in publishing articles or photographs, sometimes such interests would have to yield to the individual citizen's right to the effective protection of private life."

2. Lord Browne of BP v *Mail on Sunday*/Associated Newspapers. Mr Justice Eady decided BP's shareholders had the right to know that Lord Browne had lied in court. But they did not need to know the details of his personal conversations with ex-boyfriend Jeff Chevalier, which remained private. See: [Browne v Associated Newspapers Ltd \[2007\] EWHC 202 \(QB\) \(09 February 2007\)](#).

3. Prince of Wales v Associated Newspapers. Mr Justice Blackburne balanced Articles 8 and 10 of the Human Rights Act and found that Privacy was stronger than Freedom of Expression in the case of publishing the prince's diary. See Court of Appeal: [Associated Newspapers Ltd v HRH Prince of Wales \[2006\] EWCA Civ 1776 \(21 December 2006\)](#)

4. Douglas v *Hello!* House of Lords 2007. After a complex series of litigation and rulings, the UK's highest court ruled that Michael Douglas and Catherine Zeta-Jones were entitled to collect damages against *Hello!* magazine for publishing surreptitiously taken images of their

wedding when they had made a commercial prior exclusive arrangement for *OK!* Magazine on the grounds of breach of confidence. See: [Douglas & Ors v. Hello! Ltd & Ors \[2007\] UKHL 21 \(02 May 2007\)](#).

5. Max Mosley- privacy injunction failed because intrusive video of orgy had already been published by the *News of the World*, but privacy action on substantive issue of intrusion succeeded with £60,000 damages. See: [Mosley v News Group Newspapers Ltd. \[2008\] EWHC 1777 \(QB\) \(24 July 2008\)](#)

6. Tiger Woods- privacy injunction in December 2009, but ineffective because all of the information already in global public domain after US coverage where the First Amendment freedom of expression and media has precedence.

Guardian report: 'Tiger Woods uses English law to injunct new revelations. US media free to publish material banned in UK. Concern that decision makes mockery of courts.'

See: <https://www.theguardian.com/sport/2009/dec/11/tiger-woods-law-injunction-media>

7. John Terry- privacy injunction over extra-marital affair with girlfriend of fellow team-player, but lifted after media appeal. See: [Terry v Persons Unknown \(Rev 1\) \[2010\] EWHC 119 \(QB\) \(29 January 2010\)](#).

8. Ryan Giggs- privacy injunction, but breached by Twitter publication. First ruling by Mr Justice Eady when Giggs was referred to as 'CTB' see: [CTB v News Group Newspapers Ltd & Anor \[2011\] EWHC 1232 \(QB\) \(16 May 2011\)](#) and [CTB v News Group Newspapers Ltd & Anor \[2011\] EWHC 1334 \(QB\) \(23 May 2011\)](#). A year later Mr Justice Tugendhat gave permission for Giggs to be named and observed: 'The way that this case has been conducted by the parties has done much to undermine confidence in the administration of justice.' See: [Giggs v News Group Newspapers Ltd & Anor \[2012\] EWHC 431 \(QB\) \(02 March 2012\)](#)

9. Rio Ferdinand- unsuccessful privacy action over *Sunday Mirror* article about his extra-marital affairs. See: [Ferdinand v MGN Ltd \(Rev 2\) \[2011\] EWHC 2454 \(QB\) \(29 September 2011\)](#)

10. Fred 'The Shred' Goodwin- Royal Bank of Scotland Chief Executive, privacy injunction over extra-marital affair with colleague in the bank, later partially lifted when injunction contested. Mr Justice Tugendhat said: '...what is of interest to the public is not the same as what it is in the public interest to publish. Newspaper editors have the final decision on what is of interest to the public: judges have the final decision what it is in the public interest to publish.' He prevented the media from identifying the colleague with whom Goodwin had conducted his affair and further observed: 'The circumstances of injunctions applied for out of hours on the telephone are not favourable to a considered development of the law...To the extent that media defendants choose not to submit evidence and argument to the courts, judges will find it difficult to develop the law of privacy to meet the needs of society.' See: [Goodwin v NGN Ltd \[2011\] EWHC 1437 \(QB\) \(09 June 2011\)](#)

11. In early February 2012 the ECtHR is said to have re-balanced the recognition of public interest when Caroline Von Hannover lost a case concerning photographs taken of her in public by German magazines, and a well-known German television actor was unsuccessful in

claiming privacy over the exposure of his minor drug possession offending. A Grand Chamber of the ECtHR did not find that photographs of Caroline and her family in a public street in St Moritz breached their right to privacy because of the general public interest in the health of Prince Albert. The judges ruled that the German courts had 'carefully balanced the right of the publishing companies to freedom of expression against the right of the applicants to respect for their private life. In doing so, they attached fundamental importance to the question whether the photos, considered in the light of the accompanying articles, had contributed to a debate of general interest. They also examined the circumstances in which the photos had been taken.' See: [Von Hannover v. Germany \(no. 2\) 40660/08 \[2012\] ECHR 228 \(7 February 2012\)](#)

In the case of the German actor and his minor drug convictions, the Grand Chamber of the ECtHR reaffirmed the principle 'Freedom of expression constitutes one of the essential foundations of a democratic society and one of the basic conditions for its progress and for each individual's self-fulfilment...it is applicable not only to "information" or "ideas" that are favourably received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb. Such are the demands of pluralism, tolerance and broadmindedness without which there is no "democratic society".' The court observed in its reasoning: 'that the articles in question concern the arrest and conviction of the actor X, that is, public judicial facts that may be considered to present a degree of general interest. The public do, in principle, have an interest in being informed – and in being able to inform themselves – about criminal proceedings, whilst strictly observing the presumption of innocence'

See: [AXEL SPRINGER AG v. GERMANY - 39954/08 \[2012\] ECHR 227 \(7 February 2012\)](#).

12. Some media lawyers are arguing that these key rulings of the ECtHR mean that the pendulum on British privacy is swinging to allow reporting of infidelity where public figures have a role model function. But these 2 cases suggest the boundaries and interpretations of public interest and private right continue to vary and fluctuate.

In August 2012, former England soccer manager Steve McClaren lost in his bid to injunct the *Sun* over a story alleging he had had an extramarital affair. Mr Justice Lindblom gave his reasons the following month and said: 'the claimant belongs to the category of those from whom the public could reasonably expect a higher standard of conduct. Even if one allows for the degree of difference there must be between the position of a former manager and that of a serving captain of England's football team, he is clearly still a prominent public figure who has held positions of responsibility in the national game.' See: [McClaren v News Group Newspapers Ltd. \[2012\] EWHC 2466 \(QB\) \(05 September 2012\)](#)

As discussed and referenced above in January 2013, the third husband of the Oscar winning British actress Kate Winslet won a privacy action against the *Sun* over the publication of images taken of him at a private party that had previously been posted on Facebook. Mr Justice Briggs said: 'The question is whether the publication of the Photographs, or of a more detailed description of their contents than the fact that the claimant is depicted partially naked, would add anything beyond mere titillation. In my judgment it would not.' He said the threat to publish them 'comes very shortly after the belated discovery by the media of the claimant and Miss Winslet's recent marriage, at a time when the claimant finds himself in a temporary blaze of largely reflected publicity.' The judge also engaged the issue of there being no possible

reason for exposing Kate Winslet's 'children to a real risk to additional embarrassment or upset from the nationwide publication of photographs (or their contents) depicting their other carer behaving in a foolish and immature manner when half naked.' See: [Rocknroll v News Group Newspapers Ltd \[2013\] EWHC 24 \(Ch\) \(17 January 2013\)](#)

13. The Right To Be Forgotten. As indicated and discussed earlier in May 2014 the European Union Court of Justice asserted the 'right to be forgotten' allowing individuals to force removal of links to web articles. The EU court has 'direct effect' in UK media law and represented a sobering reminder that British publishers are increasingly becoming subject to European developments in media law and regulation, particularly with regard to privacy, data protection and data processing. The case involved a Spanish lawyer who objected to Google linking to old information about an unpaid debt. The ruling opened the floodgates for people demanding that links to old news about them online should be deleted. It does not mean that news publishers will be under a duty to remove archived articles. It applies specifically to Google in terms of it being seen as a 'data processor' rather than publisher. For the full text of the ECJ ruling in Google Spain and Google see: [Mario Costeja Gonzalez v Google Spain and Google \(Judgment of the Court\) \[2014\] EUECJ C-131/12 \(13 May 2014\)](#).

Google were forced to set up a system of receiving and deciding requests. By July Google was having to deal with 1,000 demands every day. In September 2014 Press Gazette reported that more than 80 stories across the national press and BBC websites had been subject to 'right to be forgotten' removals. (<http://www.pressgazette.co.uk/more-80-stories-across-national-press-and-bbc-have-right-be-forgotten>) The right to be forgotten does not extend to any legal duty for journalistic publishers to remove online articles even from their archives. However, the implications of the ruling are that individual online users would find it harder to access information about people they were carrying out 'searches' on. The EJC ruling does not apply to Google's search engine operations outside the European Union. The case coincided with the UK Information Commissioner's Office (ICO) carrying out its public consultation on new guidance on data protection and the media and the publication of 'Data protection and journalism: a guide for the media' in September 2014.

This is downloadable available at: <https://ico.org.uk/for-organisations/guide-to-data-protection/>

By 2015 the Information Commissioner's Office was taking a more pro-active and interventionist approach to applying Data Protection law when it was judged that a continuing online media publication that had been de-linked from the Google search engine still needed a public interest justification. The Chartered Institute of Journalists became concerned after the [2018 ruling in NT2 v Google](#) that the English High Court was setting a trend that would disassemble [the online index of public record of journalistic coverage of past criminal convictions](#).

14. Paul Weller on behalf of his children v MailOnline (Associated Newspapers) 2014. The ruling by Mr Justice Dingemans was seen as a significant development of UK privacy media law in barring the interference of privacy rights of children photographed in a public place, anywhere in the world. Associated Newspapers were refused leave to appeal to the UK Supreme Court so the precedent stands. See: [Weller & Ors v Associated Newspapers Ltd](#)

[\[2014\] EWHC 1163 \(QB\) \(16 April 2014\)](#) The article was titled: "A family day out... Paul Weller takes wife Hannah and his twin sons out for a spot of shopping in the hot LA sun." The photographs were taken on 16th October 2012 by an unnamed photographer in Santa Monica, Los Angeles, California, United States of America. The photographs were of Paul Weller and the children out shopping in the street, and relaxing at a café on the edge of the street.

The first child shown in the photographs was Dylan Weller ("Dylan"), then aged 16 years. Dylan was misdescribed in the photographs as Hannah Weller, who is Paul Weller's wife. The other children shown in the photographs were the twins John Paul ("John Paul") and Bowie Weller ("Bowie"), then aged 10 months, sons of Paul Weller and Hannah Weller. All three children were the claimants acting by their father and litigation friend Paul Weller.

The article was illustrated with seven photographs which showed, among other matters, the faces of Dylan and the twins. The claimants contended that the pictures of the children's faces should have been pixelated and took the proceedings for damages for misuse of private information and breach of the Data Protection Act, and an injunction. The MailOnline denied that the publication of the unpixelated photographs was wrongful, or that the Claimants were entitled to any relief.

The judge said: 'these photographs were intrusive as they showed a range of emotions shown by the children on a family outing with their father.' This is how he approached his legal reasoning: 'In my judgment the balance comes down in favour of finding that the article 8 rights override the article 10 rights engaged. These were photographs showing the expressions on faces of children, on a family afternoon out with their father. Publishing photographs of the children's faces, and the range of emotions that were displayed, and identifying them by surname, was an important engagement of their article 8 rights, even though such a publication would have been lawful in California. There was no relevant debate of public interest to which the publication of the photographs contributed. The balance of the general interest of having a vigorous and flourishing newspaper industry does not outweigh the interests of the children in this case. I consider that, although the interpretation of the Editors' Code is not for me, this conclusion is consistent with the approach set out in the Editors' Code which recognises that private activities can take place in public, and that editors should not use a parent's position as sole justification for the publication of details of a child's private life. For these reasons, I find that the Claimants have established their claims for misuse of private information'. In respect of the Data Protection Act claim he said: 'It is common ground that the claim for infringement of the Data Protection Act stands or falls with the claim for wrongful misuse of private information. In the light of my finding above I find that the claims for breach of the Data Protection Act are established'.

He concluded: 'I find that there was a misuse of private information in the publication, from 21 to 22 October 2012, by MailOnline of photographs showing the faces of the Claimants on a family outing with their father. There was also a breach of the Data Protection Act. I have made awards of damages of £5,000 for Dylan, £2,500 for John Paul and £2,500 for Bowie, and I have made no award of aggravated damages. The undertaking not to publish the photographs again should be offered to the Court to provide clarity for the parties. I do not grant any other injunctive relief.'

UK Media Law Pocketbook 2nd Edition (2022) Chapter Three – Libel, Privacy, Accuracy and Balance, relevant pages on privacy 119 to 133. Online companion website at: <https://ukmedialawpocketbook.com/2021/12/18/featured-content-5/>

McNae's Essential Law for Journalists 26th Edition (2022) provides several chapters on breach of confidence and privacy; namely: Chapter 4 'Journalism avoiding unjustified intrusion', pages 45-64, and Chapters 26 and 27, pages 402-432.

McNae's Essential Law for Journalists 25th Edition (2020) Chapter 4 'Journalism avoiding unjustified intrusion', pages 41-58, Chapters 26 and 27, pages 351-374.



Self portrait of photographer Carol M. Highsmith, via a broken mirror that she photographed during the Willard Hotel restoration. Washington, D.C. Creator(s): [Highsmith, Carol M., 1946-](#), photographer. US Library of Congress. Reproduction Number: LC-DIG-highsm-16608 (digital file from original) LC-HS503-6959 (b&w film transparency) Rights Advisory: No known restrictions on publication. Call Number: LC-HS503- 6959

Privacy Case Law Developments

News Group Newspapers for the Sun successfully defends privacy action to enable them to illustrate their investigation into a couple making substantial profits selling PPE to the government during the COVID pandemic.

A Court of Appeal ruling 19th May 2023 enabled the Sun newspaper and other publications such as the Mail Online and Private Eye Magazine to continue publishing images of Richard and Sarah Stoute while on holiday and in proximity to a villa in the Caribbean they have bought following the profits made by their company Full Support Healthcare Ltd selling PPE in government contracts.

Stoute & Anor v News Group Newspapers Ltd [2023] EWCA Civ 523 (19 May 2023)

See: <https://www.bailii.org/ew/cases/EWCA/Civ/2023/523.html>

Courts and Tribunals Judiciary judgments 'May 19, 2023 Stoute and Stoute -v- News Group Newspapers Limited' See: <https://www.judiciary.uk/judgments/stoute-and-stoute-v-news-group-newspapers-limited/>

Mr Justice Johnson's ruling 17th January 2023 in favour of the Sun's news website sustaining his refusal to restrain publication of two photographs of the Claimants arriving at a restaurant on a public beach and 'the claimants are not likely to succeed at trial in showing that the publication of the two photographs involved a breach of a reasonable expectation of privacy.'

See: <https://www.5rb.com/wp-content/uploads/2023/03/Judgment-for-Website-Stoute-v-News-Group-Newspapers-Ltd-.pdf>

See 5RB's analysis of this ruling and report of the Court of Appeal Outcome at: <https://www.5rb.com/case/stoute-v-news-group-newspapers-limited/> and <https://www.5rb.com/news/appeal-dismissed-in-stoute-v-ngn/>

The Private Eye coverage has been [online with the headline](#) 'Taking the PPE. Covid profiteering' and printed in the Issue 1599 and the following articles have been published in the Sun and Daily Mail both in their printed editions and online:

Mail Online 1st and 2nd January 2023 'Frolicking at their Caribbean island hideaway: The couple who netted £2 billion from PPE contracts after their firm became the biggest beneficiary of NHS protective clothing deals.'

See: <https://www.dailymail.co.uk/news/article-11590919/Couple-netted-2-billion-PPE-contracts-splash-Caribbean-surf.html>

Sun 31st December 2022 and updated 5th January 2023 'LIVING IT UP Ex-nurse whose firm netted £2billion PPE contracts enjoys luxury life in Caribbean.'

See: <https://www.thesun.co.uk/news/20909304/nurse-ppe-billions-caribbean/>

Sun 7th January 2023 'HAPPE XMAS Ex-nurse and husband who pocketed billions from NHS PPE deals swig £250 bottles of fizz in winter Caribbean break.'

See: <https://www.thesun.co.uk/news/20974181/nurse-husband-billions-nhs-ppe-caribbean-break/>

In the Court of Appeal ruling Lord Justice Arnold explained at paragraph 1 the key legal issue to be decided:

'The principal issue on this appeal is whether the Claimants ("Mr and Mrs Stoute") have a reasonable expectation of privacy in respect of photographs taken of them by paparazzi on a public beach and published by the Defendant ("NGN") in The Sun on Sunday. Mr Justice Johnson held for the reasons given in his judgment dated 17 January 2023 [2023] EWHC 232 (KB) that Mr and Mrs Stoute were unlikely to establish that they had a reasonable expectation of privacy, and he therefore refused Mr and Mrs Stoute's application for an interim injunction to restrain further publication of the photographs pending the trial of Mr and Mrs Stoute's claim for misuse of private information. Mr and Mrs Stoute appeal with permission granted by Warby LJ.'

In paragraphs 2 to 5, the ruling sets out the background of why the claimants became the subject of media interest:

'The facts

2. The following account of the facts is taken largely from the judge's judgment, which in turn was based on two witness statements made by Mrs Stoute and the correspondence between the parties, NGN not having filed any substantive evidence. I have added a few details from Mrs Stoute's statements.
3. Mrs Stoute was formerly a nurse. In 2002 Full Support Health Care Ltd ("FSH") was incorporated by Mrs Stoute and her parents to sell personal protective equipment ("PPE") to NHS and private hospitals. It is now owned and run by Mr and Mrs Stoute. In the accounting period to March 2019, FSH's profits were just over £800,000. In March to July 2020 there was a huge demand for PPE as a result of the Covid-19 pandemic. FSH secured government contracts worth about £2 billion.
4. Mrs Stoute's evidence is that, since 2021, there has been a lot of press interest in her, Mr Stoute and FSH, and that they have worked hard with their lawyers to protect their privacy. She says that, prior to the events giving rise to the present dispute, there were only a few photographs of them available online from the FSH website, from when she gave evidence to the Public Accounts Committee and in an article in The Sunday Times.
5. In late 2021 Mr and Mrs Stoute bought a second home which abuts a public beach in Barbados. They also bought a boat. Mr Stoute's family is from Barbados. Mr and Mrs Stoute have three children now aged 16, 18 and 23. On 26 December 2022 Mr and Mrs Stoute went to stay at their second home, together with their children, several adult friends and their friends' children.'

Lord Justice Arnold's 24 page ruling concludes at paragraph 65 and 66:

65. It follows that the judge made no error in concluding that it was unlikely that Mr and Mrs Stoute would be able to establish that they had a reasonable expectation of privacy

in respect of the publication of the photographs. Even if he was wrong about that, however, he made no error in concluding that the balance of the risk of injustice favoured the refusal of an injunction. Counsel for Mr and Mrs Stoute submitted that the judge had failed correctly to apply PJS as to the effect of further publication of material that has already entered the public domain, but the judge directed himself in accordance with PJS.

Given that the photographs had been published three times in two national newspapers, both in print and online, he was entitled to conclude that Mr and Mrs Stoute would suffer little additional irreparable damage in the event of further publication of them before trial and that the balance favoured refusal of an injunction.

Conclusion

66. For the reasons given above I would dismiss this appeal. I would nevertheless endorse what the judge said at [37]:

Judgment Approved by the court for handing down. *Stoute v NGN*

“This does not mean that the defendant or others may publish any pictures of the claimants with impunity. It just means that the claimants have not established their case in respect of the application for an injunction that they have made. It is entirely possible that there are pictures in the possession of the defendant or others which would, if published, amount to an actionable tort.”

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New legal ground in protecting the anonymity of crime suspects on 29th June 2023 by imposing an injunction against the BBC which prevents identification of a high national and international public profile person, referred to as WFZ, who is under active criminal investigation for serious criminal sexual offences.

Mrs Justice Collins issued the injunction on the main ground that ***the court is sure to a criminal standard of proof that there would be a substantial risk of serious prejudice to the administration of justice.***

The judge made clear that she would have also granted the injunction on the basis that identification of the claimant by the BBC would have been a misuse of his private information since he has reasonable expectation of privacy about having been arrested and questioned in a police inquiry prior to being charged. This was the starting point for the UK Supreme Court ruling in *ZXC* in February 2022.



Neutral Citation Number: [2023] EWHC 1618 (KB)

Case No: KB-2023-002567

**IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
MEDIA & COMMUNICATIONS LIST**

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 29/06/2023

Before :

THE HONOURABLE MRS JUSTICE COLLINS RICE

Between :

WFZ

Claimant

- and -

The British Broadcasting Corporation

Defendant

Mr Justin Rushbrooke KC & Mr Jacob Dean (instructed by Farrer & Co LLP) for the
Claimant
Mr Adam Wolanski KC & Ms Hope Williams (instructed by BBC Litigation Department) for
the Defendant

See: WFZ v British Broadcasting Corporation [2023] EWHC 1618 (KB) (29 June 2023)
at <https://www.bailii.org/ew/cases/EWHC/KB/2023/1618.html>

See full pdf file of ruling at <https://www.bailii.org/ew/cases/EWHC/KB/2023/1618.pdf>

The judge said it was exceptional that she had heard the case in private.

The BBC informed the court it intended to report that at least a quarter of businesses in the sector in which the Claimant works have had employees investigated by the police for serious sexual offences, yet despite this the sector does not have any policies or procedures for employees who are accused of violence against women, nor any consistency of approach to allegations.

The reports would also use the Claimant's case 'as a stark illustration of these issues'. The BBC was going to report the Claimant has been investigated by the police and arrested in respect of the allegations, since it is important to explain that his employer knows that this is the position and has taken no action.'

The summary of the background in paragraphs 5 to 7:-

5. The Claimant is a man with a high public profile.
6. On 5th June 2023, a journalist in the BBC's News Investigation team, wrote him a 'Right of Reply' letter about an investigation the BBC had conducted into sexual misconduct allegations against him. It said they had spoken to a number of women who had given detailed accounts of behaviour by him including the commission of serious sexual offences. It said they intended to identify him in their reporting of this investigation. Although none of the complainants had agreed to be identified in the report, information about dates and places was provided to enable the Claimant to identify them. The letter set out the content of the allegations of four

identifiable complainants, in brief, but explicit, form. It also referenced information provided by friends of the complainants and others. It recorded that the Claimant had been arrested in relation to allegations made by two of the complainants and interviewed under caution in relation to those of a third, and that police investigations were continuing.

7. The Claimant thereupon sought an urgent interim non-disclosure injunction, without having issued an application or claim.

The Claimant was granted the interim injunction by Mr Justice Nicklin 8th June pending hearing the parties before Mrs Justice Collins Rice.

The key factor in deciding whether to grant an injunction on the grounds of protecting the claimant's reasonable expectation of privacy is whether 'he will probably ('more likely than not') succeed at the trial. In general, that should be the threshold an applicant must cross before the court embarks on exercising its discretion, duly taking into account the relevant jurisprudence on article 10 and any countervailing Convention rights.'

The Judge drew on two aspects of the recent UK Supreme Court ruling in ZXC, one of which was at paragraph 13 of her ruling:

...the UKSC's confirmation, at [146], that '*as a legitimate starting point, a person under a criminal investigation has, prior to being charged, a reasonable expectation of privacy in respect of information relating to that investigation...*'. The nature of and rationale for that proposition are considered in more detail at [64]-[73]. Its rationale is that '*publication of such information ordinarily causes damage to the person's reputation together with harm to multiple aspects of the person's physical and social identity such as the right to personal development, the right to establish and develop relationships with other human beings and the outside world all of which are protected by article 8 of the ECHR... The harm and damage can on occasions be irremediable and profound.*'. That rationale, and the '*negative effects of publishing information that a person is under criminal investigation*' and the '*resulting uniform general practice*', are further expanded on at [80]-[89]. But the Court emphasised that it is a general rule or legitimate starting point only, not a legal rule or presumption; it does not replace the need for evidence and for fact-specific inquiry in every case. And much may turn on what the information and the investigation are *about*, and in particular how far they include information of an 'intimate and personal nature'.

Between paragraphs 17 and 27, the judge explored the previous case law concerning contempt of court. The potential legal ground for issuing the injunction would be derived from the 1981 Contempt of Court Act's strict liability rule that a contemptuous media publication would have to be a substantial risk of serious prejudice to justice and Article 6 of the Human Rights Act and European Convention which protects the right to a fair trial.

At paragraph 27 she explained: 'The authorities are in any event clear that courts should be slow to grant injunctions restraining contempt of court on a *quia timet* (prospective) basis. '*It is the wise and settled practice of the courts not to grant injunctions restraining the commission of a criminal act – and contempt of court is a criminal or quasi-criminal*

act – unless the penalties available under the criminal law have proved to be inadequate to deter the commission of the offences’ (Pickering v Liverpool Daily Post at 381-2). Again, ‘... the courts should not award him such an injunction except in a clear case where there would manifestly be a contempt of court for the publication to take place’ (A-G v BBC [1981] AC 303 at 311-2).’

The judge said the case was active in terms of criminal proceedings because at paragraphs 33 and 34:

‘Police arrested the Claimant in 2022 on suspicion of a serious sexual offence following one of the complainants’ allegations. They released a statement to the media identifying the offence. The Claimant was not identified but the place of his arrest was. They later released another statement saying he had been further arrested on suspicion of two serious sexual offences alleged to have been committed against a different woman. The Claimant was bailed shortly afterwards. The police later confirmed it was taking no further action in relation to one of the alleged offences.

The police subsequently interviewed the Claimant under caution in relation to a third complainant, on suspicion of committing a sexual offence the year before. They issued a statement to that effect.’

The judge said at paragraph 51:

‘But the BBC naming the Claimant in connection with criminal investigations into allegations of serious sexual offending would undoubtedly be a substantial game-changer. The step up from rumour and gossip to a researched and substantiated breaking and rolling news item on a professional and edited national platform is one of orders of magnitude. The decision to identify would itself be a major and high-impact news story in its own right.’

The judge explained why she believes naming the claimant by the BBC in their reporting would be a contempt of court between paragraphs 66 and 70:

66. The question I must start with is whether I can be *sure* that what I have called the bare minimum intended publication here – naming the Claimant in connection with his arrest and a police investigation into multiple allegations of (similar) serious sexual offending – is a publication which creates a substantial risk that the course of justice in the proceedings in question will be seriously impeded or prejudiced.

67. My answer is that I can and must. This is a clear case. The risk that the course of justice in the criminal proceedings will be seriously impeded or prejudiced is substantial and manifest. The case is distinguished by the exceptional, and truly enormous, degree of publicity and public reaction I am entirely satisfied publication by the BBC would generate. It would be wholly naïve to proceed on any other basis and it was not seriously suggested that I should. I do not accept that that publicity could be managed satisfactorily or at all, including by any of the means indicated by the BBC. The identification of the Claimant in however a broad or allusive a manner in connection with the subject matter of its report would ignite a fire it could not hope to control and which would permanently disfigure him in the public mind.

The BBC could not in the circumstances of this case avoid causal responsibility by pointing to others who may fan the flames of the fire it would deliberately have set. Even if responsible and regulated publishers reported nothing else at all over and above the bare minimum content the BBC proposes, the harm is inevitably done. The reality of modern public discourse must be faced. The BBC's naming of the Claimant, not least *because* it is a national public service broadcaster, would inevitably be perceived as authorising unrestrained debate subject only to the anonymity of the complainants (which itself might be short-lived). That would bring into play all of the forensic problems set out above in an acute form, and risk irreparable harm to the forensic objectivity essential for any fair criminal trial.

68. I am entirely satisfied on the evidence provided, and by reference to what I regard as its inevitable consequences, that the proposed publication creates a *substantial* risk that the course of justice in the live criminal proceedings currently under way will be seriously impeded or prejudiced by it. That is because, in the respects and for the reasons set out, I am satisfied it creates a *substantial* risk of impeding or prejudicing the necessary efforts to ensure that *all* the evidence, and *only* the evidence, properly forensically relevant to the trial of any criminal charges brought will be available to a jury. It consequently also creates a *substantial* risk of interfering with the proper making of the charging decisions themselves, depending as they do on the evidential prospects. I do not consider these risks capable of ultimately being mitigated by jury management or other measures in a way which would bring it below the substantial, because of the magnitude of the publicity and obloquy I am *sure* would be created by publication before the reporting restrictions attendant on post-charge proceedings have had a chance to be applied, and before any court apart from this one has had an opportunity to manage criminal proceedings in this case in a way which ensures they will be fair.
69. I am therefore sure now, and that the Claimant would establish at trial, that the publication should not be allowed *in a form which identifies him or enables him to be identified* – that is to say, the publication of the ‘specified information’ which the BBC has undertaken until now not to publish – because to do so would amount to a contempt of court. It is not suggested that any further evidence of potential assistance to the BBC is likely to become available before a trial of the Claimant's claim. Certainly, the course of the criminal proceedings themselves will continue to evolve, and the substance of the Claimant's claim may be overtaken by events in due course. But that is not my concern on this application.
70. In reaching my conclusion, I have had particular regard to the importance of the Convention right to freedom of expression, especially in the context of press freedom, and to the undoubted public interest in the subject matter of the proposed publication in general. The BBC has a story which brings a legitimate and serious issue of general public concern to attention. I intervene with great reluctance, and *only* to the extent that the BBC wishes to illustrate its story by identifying a man currently under arrest. In that respect alone, Parliament has provided that, on the facts I have before me, the press's freedom to publish and the public's ‘right to know’ are definitively outweighed by the powerful public interest in criminal justice, not least where very serious charges may be brought, and not least in the interests

of obtaining justice for complainants if they are. That, as well as a suspect's interests, is the public interest specifically protected by the Contempt of Court Act.

At paragraph 77, Mrs Justice Collins Rice confirmed in her ruling that if the injunction had not been granted on the ground she was sure publication would have been a substantial risk of serious prejudice and impedance to justice, she would have granted it on the grounds of reasonable expectation of privacy and the precedent set by ZXC in February 2022:

'First, I have no hesitation in adopting the ZXC 'starting point' that there is a reasonable expectation of privacy in criminal allegations in the period between arrest and charge, for all the reasons set out in that case. I reject the BBC's assertion that that starting point is of relevance only to a case in which, like ZXC itself, information has been obtained (a) in breach of confidence and (b) wholly as a result of criminal investigation by organs of the state. The former contention posits a *necessary* relationship between confidence and privacy which, for the reasons set out in ZXC itself, does not exist in law. I accept that the circumstances in which and the purposes for which any information comes into the hands of the publisher is a relevant *Murray* factor, and I consider that below. But I see no reason in law, principle or practice why the ZXC starting point is to be excluded unless breach of confidence is established. Its rationale, as explained in the case, is entirely independent of the origins of the information and is based on the *consequences* of identifying a suspect between arrest and charge and the harm it can do – harm and damage to human autonomy that '*can on occasions be irremediable and profound*'. '

Her decision was set out in paragraphs 89 and 90:-

- I grant the Claimant's application to restrain publication of the information which has been subject to the BBC's undertakings until now – that is, publication of the BBC's report in a form which identifies him or enables him to be identified as the subject of active criminal proceedings.
- The BBC's editorial choice is therefore either to publish its report now without identifying the Claimant, or to await charging decisions (either way) when a fully informed and balanced decision can be taken about the competing interests that might then be engaged. That is a fair and proper choice, and one to which it is rightly constrained by law.

What are the implications of this ruling for professional journalism?

The courts in England and Wales through judicial activism derived from the Human Rights Act and ECtHR jurisprudence have over the last 23 years severely limited the reach and possibilities of professional journalistic practice in covering crime and questionable moral conduct by public figures and stories which were regarded as being in the public interest- not just in terms of what interested the public- meaning their news and journalistic publication audiences.

The House of Lords ruling in *Lewis v Telegraph* in 1964 made it clear there could be no successful libel action taken against news publications which identified people helping

the police with their enquiries and therefore being person suspect of and investigated for crime.

ZXC and other privacy cases subverted this precedent because reasonable expectation of privacy encompassed impact and damage to reputation by the very fact of publishing the truth of a police investigation and or arrest.

Media contempt law usually operated without the intervention of prior restraint injunctions.

Prosecution was only by the consent and at the behest of the Attorney General.

This would take place after publication deemed to have been judged *prima facie* as creating substantial risk of serious prejudice to the administration of justice.

Media contempt law had no tradition of being pursued and enforced by prior restraint injunction on the part of private claimants until now.

Mrs Justice Collins Rice engaged predictive and prospective reasoning for what she judged to have been a future media contempt that could only be convicted at some future trial according to the criminal standard of proof. That is a huge leap and reach of legal adjudication.

The judge made only one reference to what now appears to be a redundancy in respect of protection for the media in prior restraint interventions.

At paragraph 62 she observed 'If a suspect is not charged – and if he has not yet been arrested – then the law of defamation is the principal restraint on publication and claimants face a high hurdle indeed at the interlocutory stage (the 'rule in *Bonnard v Perryman*' [1891] 2 Ch 269).'

The hurdle established in that case is a claimant will ordinarily be unable to obtain an interim injunction to restrain an apprehended alleged defamatory publication where a defendant states an intention to raise an affirmative defence.

But the developments in privacy law which telescope libel into privacy in terms of harm to reputation by the publication of true and false private information have surely circumvented this vital freedom of the press protection.

Media lawyers and academics have been discussing the death of the *Bonnard v Perryman* rule for some years now. See the 5RB publication online 'How to get a libel injunction By Adam Speker KC' at: <https://www.5rb.com/article/libel-injunction/>

WFZ did not seek an injunction in libel. He had no need to. As the judge explained, he would have succeeded in the context of the ZXC privacy regime. Now he has been successful in what I would suggest is an extension of prior restraint powers in media contempt law.

I would argue that the chilling effect on freedom of expression in professional journalism will be immense.

And the furore over the high profile BBC presenter accused of paying a teenager for indecent images highlighted the problem and mischief of legal restraint effectively censoring freedom of expression public knowledge exposing wholly innocent individuals and indeed groups of people to rumour and unfounded suspicion.

The law now allows WFZ to remain protected and anonymous in perpetuity should the police decide not to charge him with any offence.

This is also the case with ZXC. We shall never know if the huge time and resources deployed by the BBC and Bloomberg into long form investigative journalism served any purpose.

And if the public interest of their efforts, and like those of other journalistic publishers, is negated and obviated by no prospect of impactful publication as a result of legal restraint and apprehension of expensive litigation, then what is the point of their existence and their for public benefit inquiries?

Here lies the substantial deficit in democratic accountability and pressing social needs and purposes that arise when freedom of expression is subtracted and denuded in the equal balancing act with other rights extant in the Human Rights Act and European Convention.

Useful articles and additional references discussing this case.

Mail Online 'Fresh fears about the gagging of the media arise after a 'high public profile' man wins a High Court bid for anonymity ahead of a BBC broadcast. The man won an interim injunction to prevent the BBC from identifying him.' See: <https://www.dailymail.co.uk/news/article-12253145/High-public-profile-man-wins-High-Court-bid-anonymity-ahead-BBC-broadcast.html>

BBC and PA Media: "Court injunction stops BBC from naming 'high profile' man accused of sex offences. The judge acknowledged the BBC's story was on 'a legitimate and serious issue of general public concern.'" See: https://pressgazette.co.uk/media_law/bbc-stopped-naming-man-accused-sex-offences-high-court/

Informm Online: 'High Court grants injunction to restrain publication of information concerning an arrest for sexual offences.' See: <https://inform.org/2023/06/29/news-high-court-grants-injunction-to-restrain-publication-of-information-concerning-an-arrest-for-sexual-offences/>

Media Lawyer Eloise Spensley analysed the case for the Hold The Front Page Jaffa Law Column 11th July 2023 'High Court grants high profile injunction on grounds of contempt.' See: <https://www.holdthefrontpage.co.uk/2023/news/law-column-high-court-grants-high-profile-injunction-on-grounds-of-contempt/>

She concluded: 'The BBC is reportedly considering their position, so we may yet see this case come before the Court of Appeal. But an appeal carries its own risks, so there can be no certainty that an attempt will be made to overturn this High Court judgment. It would be fascinating to be able to eavesdrop on those deliberations, but as we all know, patience is a virtue. But whether there is an appeal or not, what the decision in *WFZ* shows is that the trend of giving anonymity to those being investigated by the police, continues apace. It's all rather worrying.'

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There were no issues of reasonable expectation of privacy for the suffragette being arrested in London for her protesting for the rights of woman in Edwardian Britain. Image George Bain news agency. US Library of Congress.

Hurbain v Belgium ruling at Grand Chamber of European Court of Human Rights risks creating privacy liability for online news court reports.

The court confirmed the decision of the 3rd Section lower Chamber that the right to be forgotten concept in Article 8 privacy can be extended to the anonymization of online newspaper archives. To do so is not a breach of Article 10 Freedom of Expression.

Hurbain v Belgium Grand Chamber ruling. Legal summary.

See: <https://hudoc.echr.coe.int/?i=002-14115>

Full ruling in English. See:

<https://hudoc.echr.coe.int/eng?i=001-225814>

Original first Chamber ruling HURBAIN v. BELGIUM - 57292/16 (Judgment : No Freedom of expression-{general} : Third Section) French Text [2021] ECHR 544 (22 June 2021)

See: <https://www.bailii.org/cgi-bin/format.cgi?doc=/eu/cases/ECHR/2021/544.html>

Previously, case law in [Gonzales v Google Spain](#), at the EU's European Court of Justice in 2014 had established the principle of such privacy protection to being limited to delisting of online data processing search engines. In the UK this was confirmed in UK domestic law in [NT 1 and NT 2 v Google in 2018](#) where the parties seeking delisting were anonymised by court order in the litigation.

[Biancardi v Italy in the first section ECtHR in 2021](#) extended the reach of privacy protection to 'de-indexing' of an online news site, which effectively means that on request individuals mentioned and referred to in news articles can make privacy requests, followed by litigation in the courts if necessary, for the removal of 'tags' in search engine optimisation.

The first ECtHR ruling in June 2021 in the Hurbain case (Patrick Hurbain was the editor of the Belgium newspaper *Le Soir*) was in favour of the doctor in Belgium known as G. G had been under the influence of alcohol when he killed two people and injured three others by his driving in 1994. He was convicted in 2000 and received a suspended jail sentence of two years.

In Belgium law his criminal conviction was 'rehabilitated' by 2006. *Le Soir* published the electronic archive of the printed 1994 report in 2008.

The ECtHR judgment in 2021 sought to downplay the impact on journalism publishers.

In the last paragraph at 134 it stated: 'The Court wishes to make it clear that the conclusion it reaches cannot be interpreted as implying an obligation for the media to check their archives systematically and permanently. Without prejudice to their duty to respect privacy during the initial publication of an article, it is for them, with regard to the archiving of the article, to carry out a verification and therefore to balance of rights at stake only in the event of an express request to this effect.'

The Grand Chamber ruling on July 4th 2023 tried to do something similar with an added legal opinion from Judge Frédéric Krenç (at page 86 and paragraphs 32 to 35) that he

did not believe the judgment 'sacrifice[s] press freedom in favour of an undue and dangerous focus on the right to respect for private life, by forcing news publishers to systematically anonymise their archives.'



GRAND CHAMBER

CASE OF HURBAIN v. BELGIUM

(Application no. 57292/16)

JUDGMENT

Art 10 • Freedom of expression • Newspaper publisher ordered to anonymise online archived version of lawful article published twenty years earlier, on grounds of "right to be forgotten" of driver who caused a fatal accident • Need to preserve integrity of press archives • Clarification of scope of "right to be forgotten online", a non-autonomous right linked to the right for respect for reputation • Establishment of criteria and rules for balancing the various rights at stake • Account taken by national courts of the nature and seriousness of the judicial facts reported on in the article, the lack of topical, historical and scientific interest and the fact that the person concerned was not well known • Continued online availability of article without restrictions apt to create "virtual criminal record" in view of the rehabilitation of the person concerned and the considerable time elapsing since publication of the original article • Anonymisation did not impose excessive and impracticable burden on publisher, while constituting the most effective means of protecting the privacy of the person concerned • Balancing of competing interests by the domestic courts in accordance with the Convention requirements • Interference proportionate and limited to what was strictly necessary

The Grand Chamber ruling introduced the case at paragraph 1:

'The present case concerns a civil judgment against the applicant, the publisher of the Belgian daily newspaper *Le Soir*, ordering him to anonymise, on grounds of the "right to be forgotten", the electronic online version of an article in the archives which mentioned the full name of G., the driver responsible for a fatal road-traffic accident in 1994. In his application the applicant relied on Article 10 of the Convention.'

As with the judiciary in most European countries, including the UK, there is a strong argument that the majority of judges and lawyers engaged in media law and journalism rights do not fully understand the practical realities and principled exigencies and purposes of professional journalism in a democratic society.

The stubborn commitment to 'the balancing exercise' and the idea that rights must compete on equal terms in respect of freedom of expression with interference being judged to be 'proportionate' and 'limited to what was strictly necessary' is continually leading to the diminishing and decaying role of freedom of the media and expression in everyday life.

Unless the UK Parliament, or nation parliaments and assemblies in Scotland, Wales and Northern Ireland legislatively extend the qualified privilege in court and crime reports to privacy as well as libel, there is more than likely to be an exponential growth in formal requests for anonymising, and indeed removal of archive court and crime reports, backed up by litigation.

This is a major attack on the Open Justice principle since it posits the idea that truth is a diminishing law of return in the context of the passage of time. It loses its value retrospectively in favour of rehabilitation and the right of individuals with a criminal and questionable past not to be burdened by anyone seeking to find out about who they were and what they had said and done.

Philosophically, morally and indeed jurisprudentially it is extraordinary that judges should control history by adopting the postmodernist idea that identity is divorced from the past and something to be constructed through censorship.

It is a potential bonanza for the largely privatized and profit led media lawyer profession. There is the likelihood that news publishers with free to access and subscription online archives, and indeed, library services, both public and commercial, which would include the British Library, will need to set up an infrastructure to receive right to be forgotten requests.

This will need to be backed up by a rational and legally reasonable and accountable adjudication decision-making process, and then the resources to defend potential litigation when anyone is unhappy with a refusal to de-list, anonymize or delete.

I raise the issue of deletion because as most litigation proceeds on the unique and particular circumstances of a case, it is virtually inevitable deletion of an entire archive article will be the next frontier in privacy litigation in the domestic courts of signatories to the ECHR convention and consequently to the ECtHR in Strasbourg.

The argument could well be made in relation to a crime or court report that redaction/anonymisation cannot effectively prevent identification, and/or the nexus of surrounding information will always lead to the identification of an individual seeking the right to be forgotten.

And might there also be a leap of this legal liability from the online and digitised platform to printed paper and written documentary form?

The ruling seriously impacts on the work of academic historians. How are they to navigate sources where past publication in the public interest is censored, redacted, and 'fact mutilated?'

They may well enter the frame for potential litigation should their publications meet the similar threshold identified in Hurbain where the contested information- the identity of a convicted criminal responsible for killing two people in a road collision- supposedly 'had

no topical, historical or scientific interest', was 'not well known', and the individual concerned had been caused 'serious harm' by the 'virtual criminal record' being continually available online for what was judged to be an excessive length of time since the original publication.

It is not as if the Grand Chamber judges had not been warned of the consequences of deciding Article 10 had not been breached.

There had been an intervention in the case from UK publishers Times Newspapers and Guardian News and Media and other press freedom organisations. They submitted that forcing news websites to remove archive material would not be a 'proportionate restriction on freedom of expression,' since this is an 'essential component of modern-day newsgathering and reporting.' See paragraphs 162 to 166 and pages 57 to 59 of the ruling. The potential mischief and negative impact of this case is shared by the NGO Article 19. See 'European Court of Human Rights: A blow to integrity of media archives' See: <https://www.article19.org/resources/european-court-of-human-rights-a-blow-to-integrity-of-media-archives/>

Making 'Privacy'/'Private Use' Decisions when editing and publishing photographs

As with so many media publication decision making the professional ethics and private morality are often bound up with existing and developing law.

When does reality and the imperative to report face pressure and, indeed obligation, to give way to self-censorship, or perhaps even recognition of the rule of law?



This is an iconic image from the Warsaw Ghetto uprising of 1943 and of the Holocaust directed against European Jewry by the German Nazi regime. Do privacy rights belong to an historical photograph taken by the SS as part of their report on the liquidation of the Ghetto and murder of Jewish men, women and children? Does it matter if the child raising his hands later died in a concentration camp, or survived to be an adult? In his moment of terror and persecution he has no control and are we entitled to gawk and stare at this terrible injustice and outrage of human dignity even 70 or more years later? Holocaust historians have investigated the identity of the child. See:

<http://www.holocaustresearchproject.org/nazioccupation/boy.html>

As is clear, there is much debate about who the boy actually was. He was 'self-identified' as seven-year-old Tsvi Nussbaum. After the war, Nussbaum moved to Israel, and then to the United States, where he worked as a physician in New York City. See: http://www.ihr.org/jhr/v14/v14n2p-6_Weber.html Would it matter if Dr. Nussbaum insisted that the photograph was not used because of the impact of post-traumatic stress disorder every time he saw it in contemporary media?

The parents and families of two 11 year-old-girls Holly Wells and Jessica Chapman have repeatedly asked the media not to republish the image of them wearing Manchester United FC shirts shortly before they were murdered by their killer Ian Huntley in 2002. The photograph was originally released to the media in the search for them and before their bodies had been found. Would such use of the image, that can be easily found online, now constitute a breach of the Data Protection Act, misuse of private information and breach of Article 8 Human Rights? The image in the BBC archive system is labelled 'Do-Not-Use.' Many years after their murders [it is still featured in online features published by mainstream news publications.](#)

What would be the situation in respect of an of two substitute girls used in a reconstruction by the police after their disappearance?

Questions to be answered would certainly revolve around public interest justification- even in respect of using the photograph of the actual two murder victims. These substitute girls would now be young adult women. Would they not have privacy rights in the use of their image when children for a specific public interest purpose in 2002, but not necessarily so in a feature article about the murder investigation in 2019?

The MailOnline decided to use the original picture of Holly and Jessica in a 2016 article about an 18-year-old woman who had discovered that Ian Huntley was, in fact, her father.

See: <http://www.dailymail.co.uk/news/article-3682494/How-Ian-Huntley-real-father-Aged-14-Samantha-Bryan-googled-school-project-saw-photograph-revealed-truth.html> If you were the MailOnline editor what public interest justification could you advance to justify the inclusion of the image?

Harold Evans' iconic book on news photography *Pictures on a Page* (London: William Heinemann, 1978) featured many images showing the moment or near moment of death that were chosen in the historical context as significant news photographs worthy of publication in different cultural and national contexts. They included Communist regime secret policemen

being executed during the Hungarian uprising in Budapest 1956, a girlfriend smiling at a press photographer while her boyfriend lay dying from drowning in Italy, and a mother and child jumping out of a burning apartment in New York City. The mother did not survive. During the Tet offensive in Saigon in 1968, at the height of the Vietnam War, a South Vietnamese General executed a captured Vietcong guerilla. This was depicted in shocking black and white news photograph as well as colour news film footage. What are your views on whether it would be possible to justify publication in the public interest according to contemporary Ethics codes?



This is a screen-grab from a YouTube posting removed for 'violating YouTube's policy on violent or graphic content' and 'isn't available any more' at <https://www.youtube.com/watch?v=iU83R7rpXQY>

The sequence showed the moment the fatal bullet strikes the head of US President Jack Kennedy in Dallas in 1963. The amateur footage filmed by Jack Zapruder was withheld from the public domain until several years after the assassination. Is there any justification for publishing this sequence and any screen grab image of when the fatal bullet strikes the President's head?

To pixilate or not?

In 2016 three members of family holidaying in Newquay, Cornwall were washed into the sea by a wave. The father and young daughter did not survive despite being rescued by the RNLI. Consider the coverage in the MailOnline in August 2016 at: <http://www.dailymail.co.uk/news/article-3756265/She-s-peacefully-resting-daddy-Two-year-old-girl-swept-sea-Newquay-father-dies-hospital.html>

The images included indicate contemporary application of pixilation policy on the grounds of ethics, regulation and law. Can you break down the principles, primary and secondary media law applying? An image was published showing emergency medical treatment being given on the quayside to the father and daughter who both died in the incident. There is clear photographic editing to conceal the identification of the people being given emergency aid. The article also includes a family photograph showing the adult parents, but concealing the faces of their children.

It is likely that the MailOnline would have been applying the Editors' Code of Practice applied by IPSO regulation which states under clause 4 that in stories involving personal grief or shock, 'enquiries and approaches must be made with sympathy and discretion and publication handled sensitively.' Furthermore, under clause 6 (iii) 'concerning children it is also possible that consideration was given to the principle that children under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult' had consented. The parents at this stage were clearly not in a position to be consulted. The father had died and the mother was dealing with the most dreadful shock and grief.

The desperately sad images of Aylan Kurdi who drowned while trying to migrate from Turkey to EU territory in 2015 became emblematic of the Syrian refugee crisis. Was the inclusion of these images justified in terms of ethics? Some news publishers pixelated Aylan's face.

The images were originally taken by Nilüfer Demir, a Turkish photographer for the Dogan News Agency.

They achieved considerable global impact when re-tweeted by Peter Bouckaert of Human Rights Watch who in the film in this Time online posting at <http://time.com/4162306/alan-kurdi-syria-drowned-boy-refugee-crisis/> argues that now Aylan should be given back his dignity with the media removing the pictures of his dead body from circulation.

The Paul Weller case of 2014 seems to indicate that private zone of law protection applies to children in public spaces where there is a reasonable expectation of privacy. And the fact that they are the relatives of celebrity is not regarded as in the public interest.

McNae's Essential Law for Journalists 26th Edition (2022) explores the media law relating to taking photographs at Chapter 35 'Right to take photographs, film and record between pages 511-516.

McNae's Essential Law for Journalists 25th Edition (2020) explores the media law relating to taking photographs at Chapter 36 'Right to take photographs, film and record between pages 459-464.

But the position of Wayne Rooney and his children appears to receive different treatment by tabloid news publishers. Is it because Mr. Rooney and his wife have previously decided to make their children part of a public presentation and profiling ritual?

No effort had been made to pixelate the children when they and Coleen Rooney had been the victims of a crime in news coverage by the Daily Mirror on August 11th 2016. See: <http://www.mirror.co.uk/3am/celebrity-news/coleen-rooney-takes-kids-stroll-8611678>

Wayne Rooney selected his son Kai as a mascot in the packed 'stadium of dreams,' at Manchester United's Old Trafford and the photograph has pride of place in the article in MailOnline 16th March 2015.

See: <http://www.dailymail.co.uk/tvshowbiz/article-2996738/Wayne-Rooney-walks-son-Kai-Old-Trafford-pitch-official-mascot-ahead-Man-United-s-win-Tottenham.html>

To what extent has he forfeited his young son's privacy rights?



This brings us to the front page of the *Sun* after England had been defeated by Iceland in the European Championship with their manager resigning immediately after. The paper decided to include on its front page the picture of Kai Rooney holding his head in despair and showing distress over his father being on the losing side. See below in the section on Data Protection Law for journalists the view of the leading media lawyer, Hugh Tomlinson KC, who analysed the *Sun* newspaper illustrating its front page report in this way in terms of data protection law.



Data Protection Act 2018

Data Protection Law for Journalists

Data Protection Law is developing as a significant additional dimension of liability, jeopardy and obligation for journalists and indeed anyone processing data professionally in the digital age where so much private information can be stored and gathered with speed and on smaller hardware digital data processing devices.

An example of litigation which resulted in a settlement and payment of damages is a report by media lawyer chambers 5RB in November 2022 when Channel 5 television ‘made a statement in open court apologising to Ms Amel Fridhi for featuring her in an edition of the reality show Can’t Pay? We’ll Take it Away!’ Ms Fridhi and her family were evicted from their home. The High Court Enforcement Agents (bailiffs) who carried out the eviction wore bodycams and microphones owned by Brinkworth, the production company engaged by Channel 5 to make Can’t Pay.

She believed that the bodycams were only being used for the personal protection of the bailiffs; she had no idea that the video and audio collected in this manner was to be included in a television programme. This was a clear example of misuse of private information using digital processing of information.

(See: <https://www.5rb.com/news/substantial-damages-for-reality-show-victim/>)

The Information Commissioner’s Office, known as the ICO, regulates the Data Protection Acts, the UK’s General Data Protection Regulation, known as GDPR, and Freedom of Information Act, and is gaining importance and power as an additional statutory regulator of journalistic conduct and content and this is likely to develop with future implementation and regulation of a new statutory code legislated for in the 2018 Data Protection Act. Brexit and the UK’s leaving of the European Union did not abolish UK GDPR as it stood in the EU legal context at the time of enacting the 2018 legislation. UK GDPR replaces EU GDPR.

Anyone processing digital information about other individuals for journalistic purposes, any employing journalistic publisher, and even individual freelances researching future story/feature publication involving the personal information of others is legally obliged to register with the ICO under the Data Protection Act 2018.

It is possible to find out any entitlement to exemption by carrying out a registration self-assessment. For most individuals and organisations that qualify as ‘Micro organisations’ the annual registration fee as at 2023 is £40 with discount for those doing so online. It could be argued that this amounts to a back-door method of state licensing and registering of journalists and journalist publishers. The funds raised underwrite the development of the ICO’s regulatory bureaucracy.

There is now a growing body of case law demonstrating direct regulatory and punitive intervention by the Information Commissioner. This includes a fine imposed on the Daily Telegraph of £30,000 for misusing the data it had collected from its subscribers so that it could send hundreds of thousands of emails on the day of the general election urging

readers to vote Conservative. (See: <https://www.theguardian.com/media/2015/dec/21/telegraph-fined-email-conservatives>).

From the 25th May 2018, the ICO became responsible for enforcing a new data protection regime in the UK combining GDPR with the new Data Protection Act 2018 (DPA 2018). (See: <https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>).

On 6th July 2023 the ICO finalised and submitted the ICO Code of Practice on Data Protection and Journalism to the Government and Parliament for approval and implementation by statutory instrument.

The Code of Practice itself is 41 pages long (See: <https://ico.org.uk/media/for-organisations/documents/4025760/data-protection-and-journalism-code-202307.pdf>) and the accompanying reference notes or guidance 47 pages long (See: <https://ico.org.uk/media/for-organisations/documents/4025761/data-protection-and-journalism-code-reference-notes-202307.pdf> – considerably shorter than the drafts provided earlier for consultation.

However, it could be said that the completed code and reference guide combines to be nearly the equivalent of the 93 page draft.

The Information Commissioner John Edwards said: ‘The crucial public interest role served by the media and its power is the reason journalism is covered by data protection law. The law includes important provisions that enable journalism, whilst also protecting people by ensuring that personal information is used lawfully.’

He re-affirmed that ‘A free media is at the heart of any healthy democracy – keeping us informed, encouraging debate and opinion, and entertaining us. It is a crucial part of the fundamental right to freedom of expression and information. A free media is also often called the public’s watchdog because of its role in uncovering wrongdoing and holding the powerful to account.’

The significance for all journalists and indeed their media lawyers is that under Section 12 of the Human Rights Act, the ICO Code of Practice for journalists becomes the fifth reference document that UK courts will need to take into account when adjudicating litigation pitching a conflict between Article 10 Freedom of Expression and Article 8 Privacy Rights.

Eloise Spensley of the *Hold The Front Page* Jaffa Media Law Column analysed this development 25th July 2023 ‘ICO publishes code of practice on data protection and journalists’ (See: <https://www.holdthefrontpage.co.uk/2023/news/law-column-ico-publishes-code-of-practice-on-data-protection-and-journalists/>) and warned: ‘Dry though it is, data protection cannot be ignored, and when breaches of the law are alleged, it’s a painful process to get to the bottom of what happened – and even more painful to try to extricate yourself from the problem. Trust me, I’ve been there!’

The professional challenge for journalists is in meeting the criteria for the exemption code so that the collection and processing of personal information in researching stories and content does not breach Data Protection Law. There is some concern that this is easier said than actually done. The ICO code says:

‘To apply the exemption, you must: use personal information for a journalistic purpose; act with a view to the publication of journalistic material; and reasonably believe both that: publication would be in the public interest; and complying with a specific requirement would be incompatible with your journalistic purpose.’

The potential *Achilles Heel* here is in failing to fulfil all those criteria in the heat of the growing complaints culture and process of litigation. The other worry is the judgements made about what the journalist considers ‘a reasonable belief’ to be ‘in the public interest’ and a ‘reasonable belief’ that complying would not be compatible with journalistic purpose’ will be made by non-journalists and this could go up the legal chain of precedent.

See below some more detailed analysis of the concern about how Data Protection Law is expected to impact on journalistic freedom and practice.

The highlights in the Code which need to be fully recognised and implemented:

Section 2 of the code says: ‘**Demonstrate how you comply**’ and ‘You cannot apply the journalism exemption to the requirement to demonstrate how you comply. However, if you meet the criteria to apply the exemption, you no longer have to comply with the specific requirement to consult us if a Data Protection Impact Assessment (DPIA) reveals a high risk you cannot mitigate.’

The obligations increase and multiply in proportion to the size of the publisher and journalist organisation.

Section 3 of the code says: ‘**Keep personal information secure**’ and ‘You cannot apply the journalism exemption to the requirement to keep personal information secure. However, if you meet the criteria to apply the exemption, you no longer have to comply with the specific requirement to tell people affected by a data breach when there is a high risk.’

Section 4 of the code says: ‘**Use personal information lawfully**’ and ‘If you meet the criteria to apply the journalism exemption, you can rely on it to make sure your use of personal information is lawful, rather than relying on one of the usual data protection lawful bases, such as legitimate interests or consent. This section of the code sets out what the legislation says and how to comply when you are not applying the exemption.’

Section 5 of the code says: ‘**Use personal information fairly**’ and ‘If you meet the criteria to apply the journalism exemption, you no longer have to comply with the requirement to use personal information fairly. This section of the code sets out what the legislation says and how to comply when you are not applying the exemption.’

Section 6 of the code says: **‘Use personal information transparently’** and ‘If you meet the criteria to apply the journalism exemption, you no longer have to comply with the requirement to use personal information transparently. This section of the code sets out what the legislation says and how to comply when you are not applying the exemption.’

Section 7 of the code says: **‘Use accurate personal information’** and ‘If you meet the criteria to apply the journalism exemption, you no longer have to comply with the requirement to use accurate personal information. This section of the code sets out what the legislation says and how to comply when you are not applying the exemption.’

Section 8 of the code says: **‘Use personal information for a specified purpose’** and ‘If you meet the criteria to apply the journalism exemption, you no longer have to comply with the requirement to use personal information for a specified purpose. This section of the code sets out what the legislation says and how to comply when you are not applying the exemption.’

Section 9 of the code says: **‘Use only the personal information you need.’** and ‘If you meet the criteria to apply the journalism exemption, you no longer have to comply with the requirement to use only the personal information you need. This section of the code sets out what the legislation says and how to comply when you are not applying the journalism exemption.’

Section 10 of the code says: **‘Keep personal information only for as long as you need it’**. and ‘If you meet the criteria to apply the journalism exemption, you no longer have to comply with the requirement to keep personal information only for as long as you need it. This section of the code sets out what the legislation says and how to comply when you are not applying the journalism exemption.’

Section 11 of the code says: **‘Be clear about roles and responsibilities’** and ‘You cannot apply the journalism exemption to the specific requirements in this section. However, if the criteria to meet the exemption is met, you no longer have to comply with the general principles for restricted transfers of personal information.’

Section 12 of the code says: **‘Help people to use their rights’** and ‘If you meet the criteria to apply the journalism exemption, you no longer have to comply with the specific rights people can exercise relating to their personal information, except for rights about automated uses of personal information. This section of the code sets out what the legislation says and how to comply when you are not applying the journalism exemption.’ It might be wise to be highly cautious about engaging with Artificial Intelligence technology and processes with personal information data when researching stories since these could be interpreted as ‘automated uses of personal information.’

Section 13 of the code covers the application of **the journalism exemption** across pages 37 to 40.

These pages need to be studied and evaluated with great care and anticipation.

This is because they state the parameters and boundaries about what the ICO views as the methodology of determining ‘public interest’ and ‘reasonable belief.’

These are the key jurisprudential qualifiers in meeting the criteria for the journalism exemption.

At 13.11 and 13.12 the code explains:

‘13.11 However, journalism is not limited to professional journalists and media organisations. For example, members of the public may carry out journalism, typically online. This is sometimes known as “citizen journalism”.

13.12 The exemption can also apply when you use personal information for journalism, as well as another purpose. For example, a campaign group can use personal information for both journalism and campaigning.’

Section 14 ‘Complaints, enforcement and investigations’ informs journalists and their publishers: ‘People have the right to complain to you, us, and the courts about how you have used their personal information’ and at 14.8 the ICO last sentence of the code concludes rather bleakly: ‘We can also investigate and prosecute criminal offences when we consider it is in the public interest.’

The code’s accompanying reference document requires the same care and attention. In particular the guidance for compliance with the journalism exemption code across pages 34 to 36 provides great detail and scale of referencing to case law.

Case example 13 – Freedom of Information Act 2000 (FOIA) – definition of journalism (paragraph 13.9 of the code) [UK Supreme Court Sugar \(Deceased\) v BBC and another \[2012\] UKSC 4](#)

Case example 14 – DPA 1998 – definition of journalism (paragraph 13.9 of the code) [High Court NT1 & NT2 v Google LLC and ICO \[2018\] EWHC 799 \(QB\)](#)

Case example 15 – Data Protection Directive 95/46 – definition of journalism (paragraph 13.9 of the code) [ECJ Satamedia \(Case C-73/07\)](#)

Case example 16 – Data Protection Directive 95/46/EC – definition of journalism (paragraph 13.9 of the code) [ECJ Buivids \(C-345/17\)](#)

Case example 17 – DPA 1998 – meaning of “acting with a view to publication” (paragraph 13.13 of the code) [Court of Appeal Campbell v MGN Limited \[2002\] EWCA Civ 1373](#)

Case example 18 – DPA 1998 – meaning of “reasonable belief” (paragraph 13.15 of the code) [High Court NT1 & NT2 v Google LLC and ICO \[2018\] EWHC 799 \(QB\)](#)

Case example 19 – DPA 1998, Misuse of Private information – editorial discretion (paragraph 13.16 of the code) [House of Lords Campbell v MGN \[2004\] UKHL 22](#)

Case example 20 – Misuse of private information – editorial discretion and evidence to demonstrate decision-making (paragraph 13.16 and 13.17 of the code) [High Court Sicri v Associated Newspapers Ltd \[2020\] EWHC 35 41 \(QB\)](#)

Case example 21 – DPA 1998. Misuse of private information – public interest and proportionality (paragraph 13.18 of the code) [House of Lords Campbell v MGN Ltd \[2004\] UKHL 22](#)

Case example 22 – ECHR – Importance of the right to freedom of expression and information, and the role of the press (paragraph 13.20 of the code) [Sunday Times v UK \(No.2\) 26 November 1991](#)

Case example 23 – DPA 1998 and Misuse of Private information – Importance of right to privacy (paragraph 13.22 of the code) [House of Lords Campbell v MGN \[2004\] UKHL 22](#)

Case example 24 – ECHR and HRA 1998 – balancing Article 8 and Article 10 rights (paragraph 13.22 of the code) [House of Lords In re S \(A Child\) \[2004\] UKHL 47](#)

Case example 25 – DPA 1998 – meaning of “incompatible with a journalistic purpose”(paragraph 13.26 of the code) First-Tier Tribunal [True Vision Productions \(TVP\) v ICO \(EA 2019 0170\)](#)

To list 13 precedents as guidance on the application of the journalism exemption might be considered as a useful indicator of any future framework for the ICO’s position in future litigation. Does it help or obfuscate, does it simplify or overcomplicate? These questions are a matter of open debate. The journalism industry and their legions of media lawyers may be justified in thinking the future road for journalism in data protection law is going to be hard, rocky and not so secure.

Background history to Information Commissioner’s engagement with journalists and their publications.

The Information Commissioner provided a guide in 2014 for journalist/media bodies setting out their legal duties as data controllers. (See: <https://ico.org.uk/media/for-organisations/documents/1552/data-protection-and-journalism-media-guidance.pdf>) In particular, journalists have to make sure any of their working personal data, particularly of contacts and sources, is kept securely and that usually requires the encryption of information being transported on USB keys/memory sticks that are easily lost and misplaced and operation of smartphones and computer hardware devices.

Particular care is needed in email and social media communications to avoid accidental copying in of email addresses and batch email lists (the reply all facility) which unlawfully distributes private information to more than a single intended recipient or limited and closed confidential group.

GDPR is now a recurrent adjunct to privacy litigation in media law which is evident in High Court rulings in this area of the law where there will be claims for compensation pursuant to Article 82 of the General Data Protection Regulation (EU) 2016/679 for the unlawful processing of a claimant's personal data. This additional frontier and dimension of media law will inevitably engage an increasing level of professional media law instruction and protection for professional journalists and their employing/commissioner publishers.

The greater involvement of the ICO in journalism conduct and publication is a result of the Leveson Inquiry which reported in 2012. The ICO's media guidance published in 2014 acknowledges this when saying 'In the report of the Leveson Inquiry into the culture, practices and ethics of the press, Lord Justice Leveson recommended that the ICO: "should take immediate steps, in consultation with the industry, to prepare and issue comprehensive good practice guidelines and advice on appropriate principles and standards to be observed by the press in the processing of personal data."'

The 2018 House of Commons briefing paper 'Press regulation after Leveson' published in 2018 (See: <https://researchbriefings.files.parliament.uk/documents/CBP-7576/CBP-7576.pdf>) clearly indicates that Parliament supported this development through the 2018 Data Protection Act and the ICO's Journalism Code is a statutory obligation arising from the legislation. (See Section 124 Data protection and journalism code <https://www.legislation.gov.uk/ukpga/2018/12/section/124/enacted>).

The journalism industry and its editors are concerned that the statutory code is going to elaborate and increase a double or even triple jeopardy for privacy related litigation in journalism practice of all kinds as this new form of statutory regulation could overlap with the regulation of licenced broadcasters by Ofcom, journalism publishers by IPSO and self regulation by the BBC. Some degree of overlapping may also take place with the Press Charter recognised regulator IMPRESS. (See: 'New privacy code will endanger Press freedom, editors say' <https://www.dailymail.co.uk/news/article-11556341/New-privacy-code-endanger-Press-freedom-editors-say.html> and the Information Commissioner's response at <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/12/blog-commissioner-responds-to-misdirected-criticism-of-journalism-code/>).

The ICO has undertaken two periods of consultation during 2021 and 2022 over the draft code which has been published in its full form of 93 pages (See: <https://ico.org.uk/media/about-the-ico/documents/4018647/journalism-code-draft-202110.pdf>) and an 'at a glance' draft briefing consisting of 6 pages (See: <https://ico.org.uk/media/about-the-ico/consultations/4021554/ico-draft-journalism-code-at-a-glance.pdf>) The latter in style and layout bears some resemblance to the UK Editors Code of Practice.

The key aspect of the ICO's Journalism Code and engagement of journalists in data protection law is the effectiveness of the 'journalism exemption' in protecting legitimate and public interest practice from liability to subject requests, litigation and statutory regulatory intervention and discipline.

Under the Data Protection Act 2018, journalists are exempted from compliance with certain requirements providing they can satisfy the two-step test of: the processing being carried out with a view to the publication by a person of journalistic, academic, artistic or literary material, and the data controller at the publisher reasonably believes that the publication of the material would be in the public interest. (See Part 5 Exemptions etc based on Article 85(2) for reasons of freedom of expression and information <https://www.legislation.gov.uk/ukpga/2018/12/schedule/2/enacted>).

The exemption applies if: journalists use personal data for journalism; act with the intention or hope of publishing journalistic material; reasonably believe publication is in the public interest; and reasonably believe that complying with a specific part of data protection law is incompatible with journalism. Journalists and their publishers are going to need to provide proof that these criteria were complied with if legally challenged. The exemption cannot apply to anything that is not an integral part of the newsgathering and editorial process.

The major test of the fairness of the code and the evaluation of exemption compliance will be how the courts and the ICO evaluate and adjudicate journalists' 'reasonable belief publication is in the public interest.' The ICO draft 'at a glance' guide advises: 'A reasonable belief is one you are able to justify in a reasonable way. Deciding what is "in the public interest" involves considering the circumstances, balancing arguments for and against, and judging how the public interest is best served overall. The exemption applies if you reasonably believe that a specific part of data protection law must or should be set aside because complying with it disproportionately restricts your journalistic activity.'

In practice journalists and journalism publishers would be wise to retain documentation and a data/record trail which demonstrates evidentially the consideration of the public interest. It would need to strike an appropriate balance between freedom of expression and privacy rights (reasonable expectation of privacy) and take into account the general public interest in freedom of expression, any specific public interest in the subject matter, the level of intrusion into an individual's private life, including whether the story could be pursued and published in a less intrusive manner and the potential harm that could be caused to individuals.

Specific evidence of assessing the relative proportionality in balancing freedom of expression and privacy rights would be helpful. It cannot be in the public interest to disproportionately or unthinkingly interfere with an individual's fundamental privacy and data protection rights.

The ICO draft code recognises that when someone is charged with a crime, the open justice principle means there is generally an expectation of transparency, although this data may become private with the passage of time. But the code advises: 'You should make sure you can justify your decision to use any personal data in view of the risk of harm and publish data that is proportionate to the public interest.'

The draft code states that when photographs or filming may be particularly intrusive by their nature: 'You must consider whether it is fair to use the data, even if the person is in a public place.' The draft code accepts 'Using covert surveillance, subterfuge or similar intrusive methods may be justified in the context of journalism but you are likely to need to use the journalism exemption and if the criteria applies, the journalism exemption can remove the usual requirement to use personal data fairly.'

An example of a news publisher's compliance notice and policy in respect of Data Protection Law is set out for the *Isle of Man Examiner's* website *Isle of Man Today* at <https://www.iomtoday.co.im/service/privacy-and-cookies-510941>. The newspaper is owned by Tindle Newspapers Ltd and the notice explains how the paper and its website will collect, use, share, disclose or otherwise process the personal data of its readers. The policy publishes online how data will be used for journalistic purposes in the context of the GDPR exemption: '...data will be used for the researching, compiling and publishing of articles in print and online. Such information will need to be retained for legal reasons, for follow-up articles, for a paper trail for correspondence, for points of contact, and for other reasons associated with the running of a newspaper and its associated website.' The newspaper explains that on: 'Accuracy: For journalistic work, we follow the IPSO Code of Conduct to ensure compliance with the GDPR.'

Clear evidence of data protection law being present in UK privacy litigation emerged in the case of Paul Weller on behalf of his children v Mail Online (Associated Newspapers) in 2014. The ruling by Mr Justice Dingemans was seen as a significant development of UK privacy media law in barring the interference of privacy rights of children photographed in a public place, anywhere in the world.

The judge said: 'It is common ground that the claim for infringement of the Data Protection Act stands or falls with the claim for wrongful misuse of private information. In the light of my finding above I find that the claims for breach of the Data Protection Act are established'. He concluded: 'I find that there was a misuse of private information in the publication, from 21 to 22 October 2012, by Mail Online of photographs showing the faces of the Claimants on a family outing with their father. There was also a breach of the Data Protection Act.'

(See <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2014/1163.html>).

In 2016 Press Gazette carried an article by the leading media lawyer Hugh Tomlinson KC who analysed data protection law in respect of the Sun newspaper illustrating its front page report on the England football team's humiliating defeat at the hands of Iceland with a photograph of Wayne Rooney's six-year-old son, Kai, in tears. Several other pictures of Kai at the match appeared in the Sun Online. He argued a data controller who 'processes a photograph showing a crying child cannot reasonably believe that publication of this photograph would be in the public interest' and consequently 'if Mr and Mrs Rooney wished to take action over the Sun's front page, they would have a strong claim under the DPA. If the photograph has had an impact on Kai himself he would be entitled to damages for distress.'

(See: <https://pressgazette.co.uk/media-law/top-media-law-qc-says-sun-could-face-action-under-data-protection-act-over-front-page-pic-of-six-year-old-kai-rooney/>)

Where the journalist is working as part of an organisation it is the belief of the data controller that counts, not the individual journalist. The data controller must be able to demonstrate that it had a belief about the public interest, i.e. that the issue of public interest was actually considered. It should be able to show, too, that it was considered at the time of the relevant processing of personal data and not just after the event.

Data Protection Law and the future enforcement of the ICO's Journalism Code most likely requires journalists and their publications to qualify for the statutory exemption by proving a reasonable belief that publication was in the public interest. This can be achieved if the organisation or freelance journalist has: clear policies and procedures on public interest decisions; can show that those policies were followed; can provide a cogent argument about the public interest; and has complied with any relevant industry codes. It can be argued that this requires a considerable systematisation and legal compliance check-list record in the everyday practice of journalism.

In May 2014 the European Union Court of Justice asserted the 'right to be forgotten' allowing individuals to force removal of links to web articles. The EU court had 'direct effect' in UK media law and represented a sobering reminder that British publishers are increasingly becoming subject to European developments in media law and regulation, particularly with regard to privacy, data protection and data processing. The case involved a Spanish lawyer who objected to Google linking to old information about an unpaid debt. The ruling opened the floodgates for people demanding that links to old news about them online should be deleted. It does not mean that news publishers will be under a duty to remove archived articles. It applies specifically to Google in terms of it being seen as a 'data processor' rather than publisher. (For the full text of the ECJ ruling in Google Spain and Google see: Mario Costeja Gonzalez v Google Spain and Google (Judgment of the Court) [2014] EUECJ C-131/12 (13 May 2014))

See: <https://www.bailii.org/eu/cases/EUECJ/2014/C13112.htm>).

Google were compelled to set up a system of receiving and deciding requests. By July 2014 Google was having to deal with 1,000 demands every day. In September 2014 Press Gazette reported that more than 80 stories across the national press and BBC websites had been subject to 'right to be forgotten' removals. (See: <http://www.pressgazette.co.uk/more-80-stories-across-national-press-and-bbc-have-right-be-forgotten>)

At present the right to be forgotten does not extend to any legal duty for journalistic publishers to remove online articles even from their archives. However, the implications of the ruling are that individual online users would find it harder to access information about people they were carrying out 'searches' on. The EJC ruling does not apply to Google's search engine operations outside the European Union.

By 2015 the Information Commissioner's Office was taking a more pro-active and interventionist approach to applying Data Protection law when it was judged that a continuing online media publication that had been de-linked from the Google search engine still needed a public interest justification. Mr Justice Warby (as he then was) produced a ruling in 2018 which applied the implications of Gonzales into English data protection law jurisprudence in NT 1 & NT2 v Google.

See: <https://www.bailii.org/ew/cases/EWHC/QB/2018/799.html>

Journalists may argue that this development of data protection law will have the effect of disassembling [the online index of public record of journalistic coverage of past criminal convictions](#).

As explored in Chapters 3 and 11, there have been developments in ECtHR law at Strasbourg which underlines the potential legal duty of journalistic online publishers to remove private data tags in html coding after receiving a right to be forgotten data protection request, and a future Grand Chamber ruling on the case of Hurbain v Belgium where an ECtHR court ruled a journalist publisher, Le Soir newspaper, was obliged to anonymize the name of a convicted criminal in an archived crime report. (See Biancardi v Italy 2021 <https://www.bailii.org/eu/cases/ECHR/2021/972.html> and <https://www.bailii.org/eu/cases/ECHR/2021/544.html>).

The very nature of journalistic practice involves communications and gathering of information from confidential sources and from individuals who have a reasonable expectation of the protection of that confidentiality in the context of privacy law. This means it is likely ICO regulation of the future Journalism Code may lead to investigations and potential penalties for journalists and their organisations who fail to honour promises and the professional obligation to protect sources.

This is where Data Protection duties to protect personal data have failed and its loss led to the risk of harm to people exposed.

Data protection law requires journalists and their publishers keep personal data secure; protecting personal data against unauthorised or unlawful use and accidental loss, destruction or damage, maintain organisational security measures and physical security; be able to restore personal data if there is a security incident and review and keep security measures up-to-date.

The most serious recent investigation by the ICO of a media organisation's compliance with the journalism exemption in Data Protection Law was the case of True Vision Productions v ICO. TVP filmed the documentary called 'Child of Mine' in 2017, an observational programme about the experience and aftermath of stillbirths. The TVP team recorded visual and audio CCTV of expectant mothers having medical consultations when they were concerned about the health of their babies. The ICO fined the production company £120,000 under 1998 Data Protection Act legislation.

(See: <https://ico.org.uk/media/action-weve-taken/mpns/2614746/true-visions-productions-20190408.pdf>). The Tribunal found that the purpose of the recording was to capture the

moment when the mother was informed that her baby had died. TVP did not ask for the consent of the mothers prior to recording the consultations because to receive informed and effective consent, the mothers would have needed to be told that there was a prospect that their babies had died.

TVP lost the case because it was judged that the production had 'failed on the issue of transparency.' The Tribunal ruled that hand-held cameras could have been used instead of CCTV, and this would have made the mothers aware that they were being recorded. This would have 'prevented the collection and retention of data without the mother being aware it was taking place.' The ICO Monetary Penalty Notice for £120,000 was reduced to £20,000 by the Tribunal because the breach was deemed to be non-deliberate, TVP had considered privacy rights prior to filming, and the breach did not warrant putting a company out of business.

(See <https://holdthefrontpage.co.uk/2021/news/law-column-data-protection-and-the-journalism-exemption-in-practice> and <https://www.5rb.com/wp-content/uploads/2021/02/True-Vision-Productions-v-Information-Commissioner-2021-UKFTT-2019-0170-GRC-08-January-2021.pdf>).

The media lawyer specialist chambers 5RB said one of the lessons of this case is that 'journalists must consider what can be done to maximise fairness', even if it is reasonable to believe that full compliance with sensitive data protection cannot be achieved. 5RB also explained 'This was the first and only occasion on which the ICO imposed an MPN on a media organisation under the DPA 1998. Under the DPA 2018, the ICO requires the permission of the Court before an MPN can be imposed in respect of processing for the special purposes.'

(See: <http://5rb.com/case/true-vision-productions-ltd-v-information-commissioner/>).

The Data Protection Act 2018 sets out a criminal offence under section 170 for the 'Unlawful obtaining of personal data'

(See: <https://www.legislation.gov.uk/ukpga/2018/12/section/170/enacted>)

Journalists have the following potential defences where the unlawful obtaining of personal data: was necessary for the purposes of preventing or detecting crime; in the particular circumstances, was justified as being in the public interest; the person acted (ii) with a view to the publication by a person of any journalistic, academic, artistic or literary material, and (iii) in the reasonable belief that in the particular circumstances the obtaining, disclosing, procuring or retaining was justified as being in the public interest. All of these criteria appear to be required.

Section 171 of DPA 2018 has created a new offence of re-identification of de-identified personal data. This takes place where personal data that has been anonymised by a data controller is later amended to reveal the data without consent. This could affect journalists

and researchers who use software to remove the redaction on documents. To use such software, without consent, would be a criminal offence.

(See: <https://www.legislation.gov.uk/ukpga/2018/12/section/171/enacted>).

There are no custodial sentences in respect of offences under DPA 2018 and no powers of arrest; all offences are punishable only by a fine. From 2017, the maximum cap of £5,000 for fines in the Magistrates Court for summary offences was lifted in order to apply the principle that the 'punishment fits the offender.'

The UK Supreme Court ruled in the case of *Lloyd v Google* in November 2021 that section 13 of the DPA 1998 cannot reasonably be interpreted as conferring on a data subject a right to compensation for any (non-trivial) contravention. Google successfully defended a group action for a large data breach and it is seen as a favourable ruling for data controllers which is likely to act as a brake against any deluge of opt-out claims for mass infringements of data protection law. This and other first instance cases indicate that the UK courts are not prepared to permit data privacy laws to be used in speculative or legally misconceived actions.

(See <https://www.bailii.org/uk/cases/UKSC/2021/50.html> and <https://www.supremecourt.uk/cases/uksc-2019-0213.html>).

There is increasing concern in 2023 about the ICO's interventions on Data Protection Law and how it relates to journalistic conduct and practice. Journalism industry bodies fear this will have a negative impact on open justice and freedom of expression custom and practice.

This became evident when it emerged that College of Policing plans to give the green light to police forces wishing to keep names of suspects accused of many serious offences secret was the result of advice from the Information Commissioner on data protection law. The College of Policing proposed guidance that forces no longer 'should' name those charged with crimes including indecent exposure, domestic violence or child sexual abuse, instead advising that individuals 'can be named'. This plan was U-turned after considerable public outcry from journalist publishers.

The College of Policing's head of communications Matt Peck [said that amendments had been proposed by the Information Commissioner's Office to take account of evolving data protection law.](#) The current APP (Authorised Professional Practice) on Media Relations is set out at <https://www.college.police.uk/app/engagement-and-communication/media-relations>.

The public row over the proposed changes is effectively summarized in the article published by *Police Professional* ["No changes to police media relations guidance without consultation, says college after 'deep concerns' raised."](#) (See: Hold The Front Page ['New police guidance would making naming of suspects optional.'](#) Press Gazette ['Police could keep names secret after charge under new draft guidelines. The proposed guidance](#)

states that forces “can” name charged suspects. The current advice is they “should.”
Rebecca Camber wrote for Mail Online: ‘Secret justice and how the Nicola Bulley fiasco is driving the police to make another catastrophic error.

Mike Sullivan wrote for the Sun: ‘Cop plans to stop public knowing who has been charged with crime could let rapists like David Carrick carry on attacking.’)

The Information Commissioner fined the social media platform TikTok 12.7 million pounds 4th April 2023 for misusing children’s data. The ICO found that more than one million UK children under 13 estimated by the ICO to be on TikTok in 2020, contrary to its terms of service. Personal data belonging to children under 13 had been used without parental consent and TikTok “did not do enough” to check who was using their platform and take sufficient action to remove the underage children that were.

See: <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2023/04/ico-fines-tiktok-127-million-for-misusing-children-s-data/> The initial fine had been set at £27 million.

See: <https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/09/ico-could-impose-multi-million-pound-fine-on-tiktok-for-failing-to-protect-children-s-privacy/>

Taking into consideration the representations from TikTok, the regulator decided not to pursue the provisional finding related to the unlawful use of special category data. Special category data includes: ethnic and racial origin, political opinions, religious beliefs, sexual orientation, Trade union membership, genetic and biometric data or health data.

UK data protection law says that organisations that use personal data when offering information society services to children under 13 must have consent from their parents or carers. Companies who breach the UK GDPR and/or the Data Protection Act can be fined up to £17.5 million or 4% of the company’s annual global turnover, whichever is higher. Information Commissioner, John Edwards said: ‘I’ve been clear that our work to better protect children online involves working with organisations but will also involve enforcement action where necessary. In addition to this, we are currently looking into how over 50 different online services are conforming with the Children’s code and have six ongoing investigations looking into companies providing digital services who haven’t, in our initial view, taken their responsibilities around child safety seriously enough.’

See ICO’s Children’s code at: <https://ico.org.uk/childrenscode>

This is just one of several setbacks in state regulation of TikTok across the global sphere. See Arab News ‘TikTok hit with UK fine, Australia government ban’ at:

<https://www.arabnews.com/node/2281316/media> Italy’s competition watchdog had opened an investigation into TikTok for failing to enforce its own rules on removing “dangerous content” related to suicide and self-harm. Australia joined a list of Western nations banning the Chinese-owned apps from government devices. The United States has been urging TikTok to split from its Chinese parent company, Bytedance. See the Guardian’s analysis by Kevin Rawlinson: “How TikTok’s algorithm ‘exploits the vulnerability’ of children.” See:

<https://www.theguardian.com/technology/2023/apr/04/how-tiktoks-algorithm-exploits-the-vulnerability-of-children>

Links

Office of Information Commissioner (ICO) Data Protection and Journalism Code of Practice 2023

<https://ico.org.uk/media/for-organisations/documents/4025760/data-protection-and-journalism-code-202307.pdf>

Accompanying reference notes or guidance

<https://ico.org.uk/media/for-organisations/documents/4025761/data-protection-and-journalism-code-reference-notes-202307.pdf>

UK Government Data Protection

<https://www.gov.uk/data-protection>

Data Protection Act 2018- Table of contents and explanatory notes

<https://www.legislation.gov.uk/ukpga/2018/12/contents/enacted> and

<https://www.legislation.gov.uk/ukpga/2018/12/notes/division/1/index.htm>

UK Information Commissioner's guide to GDPR

<https://ico.org.uk/for-organisations/guide-to-the-general-data-protection-regulation-gdpr/>

ICO Data protection and journalism: a guide for the media (2014)

<https://ico.org.uk/media/for-organisations/documents/1552/data-protection-and-journalism-media-guidance.pdf>

ICO draft code of practice about using personal data for journalism 'at a glance' version 2022

<https://ico.org.uk/media/about-the-ico/consultations/4021554/ico-draft-journalism-code-at-a-glance.pdf>

Full draft ICO Data journalism code of practice (93 pages 2021)

<https://ico.org.uk/media/about-the-ico/documents/4018647/journalism-code-draft-202110.pdf>

Mail Online: 'New privacy code will endanger Press freedom, editors say'

<https://www.dailymail.co.uk/news/article-11556341/New-privacy-code-endanger-Press-freedom-editors-say.html>

Society of Editors: 'Journalists must be exempt from data protection laws, warn editors.'

https://www.societyofeditors.org/soe_news/journalists-must-be-exempt-from-data-protection-laws-warn-editors/

UK: ICO responds to criticism of draft Data Protection and Journalism Code of Practice

<https://www.dataguidance.com/news/uk-ico-responds-criticism-draft-data-protection-and> &
<https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/12/blog-commissioner-responds-to-misdirected-criticism-of-journalism-code/>

House of Commons Briefing paper- 'Press regulation after Leveson' 2018

<https://researchbriefings.files.parliament.uk/documents/CBP-7576/CBP-7576.pdf>

Section 124 Data Protection Act 2018- 'Data protection and journalism code'

<https://www.legislation.gov.uk/ukpga/2018/12/section/124/enacted>

Data Protection Act 2018- Part 5 Exemptions etc based on Article 85(2) for reasons of freedom of expression and information

<https://www.legislation.gov.uk/ukpga/2018/12/schedule/2/enacted>

5RB Media and communications law: 'Substantial damages for reality show victim.'

<https://www.5rb.com/news/substantial-damages-for-reality-show-victim/>

Telegraph fined £30,000 over email urging readers to vote Tory. Editor's message asking hundreds of thousands of readers to oppose the most 'leftwing Labour leader for a generation' crossed a line, says watchdog.

<https://www.theguardian.com/media/2015/dec/21/telegraph-fined-email-conservatives>

ICO regulation leading to imposition of a fine of £120,000 on television production company sustained though substantially reduced after Tribunal System (Information Rights) hearing. Hold The Front Page Jaffa Law column 'Law Column: Data protection and the journalism exemption in practice.'

<https://holdthefrontpage.co.uk/2021/news/law-column-data-protection-and-the-journalism-exemption-in-practice>

True Vision Productions Ltd and the Information Commissioner First Tier Tribunal (Information Rights) 2021

<https://www.5rb.com/wp-content/uploads/2021/02/True-Vision-Productions-v-Information-Commissioner-2021-UKFTT-2019-0170-GRC-08-January-2021.pdf>

ICO Monetary Penalty Notice imposed on True Vision Productions Ltd for £120,000

<https://ico.org.uk/media/action-weve-taken/mpns/2614746/true-visions-productions-20190408.pdf>

5RB analysis of the True Vision Productions v ICO case

<http://5rb.com/case/true-vision-productions-ltd-v-information-commissioner/>

Paul Weller on behalf of his children v Mail Online (Associated Newspapers) 2014

<https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/QB/2014/1163.html>

Press Gazette: 'Top media law QC says Sun could face action under Data Protection Act over front-page pic of six-year-old Kai Rooney.'

<https://pressgazette.co.uk/top-media-law-qc-says-sun-could-face-action-under-data-protection-act-over-front-page-pic-of-six-year-old-kai-rooney/>

European Court of Justice Mario Costeja Gonzalez v Google Spain and Google (Judgment of the Court) [2014] EUECJ C-131/12 (13 May 2014)

<http://bailii.org/eu/cases/EUECJ/2014/C13112.htm>

Press Gazette 2014 "More than 80 stories across national press and BBC have 'right to be forgotten'"

<http://www.pressgazette.co.uk/more-80-stories-across-national-press-and-bbc-have-right-be-forgotten>

NT 1 & NT 2 v Google LLC [2018] EWHC 799 (QB) (13 April 2018)

<https://www.bailii.org/ew/cases/EWHC/QB/2018/799.html>

BIANCARDI v. ITALY – 77419/16 (Judgment: No Article 10 – Freedom of expression-{general}: First Section) [2021] ECHR 972 (25 November 2021)

<https://www.bailii.org/eu/cases/ECHR/2021/972.html>

HURBAIN v. BELGIUM – 57292/16 (Judgment: No Freedom of expression-{general} : Third Section) French Text [2021] ECHR 544 (22 June 2021)

<https://www.bailii.org/eu/cases/ECHR/2021/544.html> (ruling in French only)

Information note on Hurbain v. Belgium – 57292/16

<https://hudoc.echr.coe.int/fre?i=002-13318>

Criminal Offences under 2018 Data Protection Act- Section 170 'Unlawful obtaining etc of personal data' and 171 'Re-identification of de-identified personal data'

<https://www.legislation.gov.uk/ukpga/2018/12/section/170/enacted> and
<https://www.legislation.gov.uk/ukpga/2018/12/section/171/enacted>

Lloyd v Google LLC [2021] UKSC 50 (10 November 2021)

<https://www.bailii.org/uk/cases/UKSC/2021/50.html> and
<https://www.supremecourt.uk/cases/uksc-2019-0213.html>

College of Policing plans to give the green light to police forces wishing to keep names of suspects accused of many serious offences secret following advice from the Information Commissioner on data protection law.

<https://www.dailymail.co.uk/news/article-11896345/Police-open-consultation-media-plans-suspects-names-secret.html>

Police Professional “No changes to police media relations guidance without consultation, says college after ‘deep concerns’ raised.”

<https://www.policeprofessional.com/news/no-changes-to-police-media-relations-guidance-without-consultation-says-college-after-deep-concerns-raised/>

Press Gazette ‘Police could keep names secret after charge under new draft guidelines. The proposed guidance states that forces “can” name charged suspects. The current advice is they “should.”’

<https://pressgazette.co.uk/media-law/police-media-guidelines-charged-people/>

5RB Media and Communications Lawyers Back to Basics – Introduction to GDPR Webinar By Ben Hamer & Chloe Strong. 12 November 2021

ICO fines TikTok £12.7 million for misusing children’s data

<https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2023/04/ico-fines-tiktok-127-million-for-misusing-children-s-data/>

ICO could impose multi-million pound fine on TikTok for failing to protect children’s privacy

<https://ico.org.uk/about-the-ico/media-centre/news-and-blogs/2022/09/ico-could-impose-multi-million-pound-fine-on-tiktok-for-failing-to-protect-children-s-privacy/>

ICO Children’s Code for Digital online services

<https://ico.org.uk/for-organisations/childrens-code-hub/>

Arab News: ‘TikTok hit with UK fine, Australia government ban’

<https://www.arabnews.com/node/2281316/media>

Guardian’s analysis by Kevin Rawlinson: “How TikTok’s algorithm ‘exploits the vulnerability’ of children.”

<https://www.theguardian.com/technology/2023/apr/04/how-tiktoks-algorithm-exploits-the-vulnerability-of-children>

5RB talks Back to Basics GDPR. Ben Hamer presents the essentials of GDPR. This webinar is moderated by Chloe Strong. Following the recording of this Back to Basics talk the Supreme Court has handed down its judgment in Lloyd v Google which reversed the decision in the Court of Appeal and found that ‘loss of control’ damages are not recoverable for claimants in Data Protection Act claims. The ramifications of this are discussed further in the 5RB talks - Lloyd v Google webinar. See: <https://youtu.be/ehpzy4SovJI>

5RB Back to Basics talk – Misuse of Private Information webinar By Luke Browne & Julian Santos. 14 Oct 2021 See: <https://youtu.be/gykrGmNC8To>

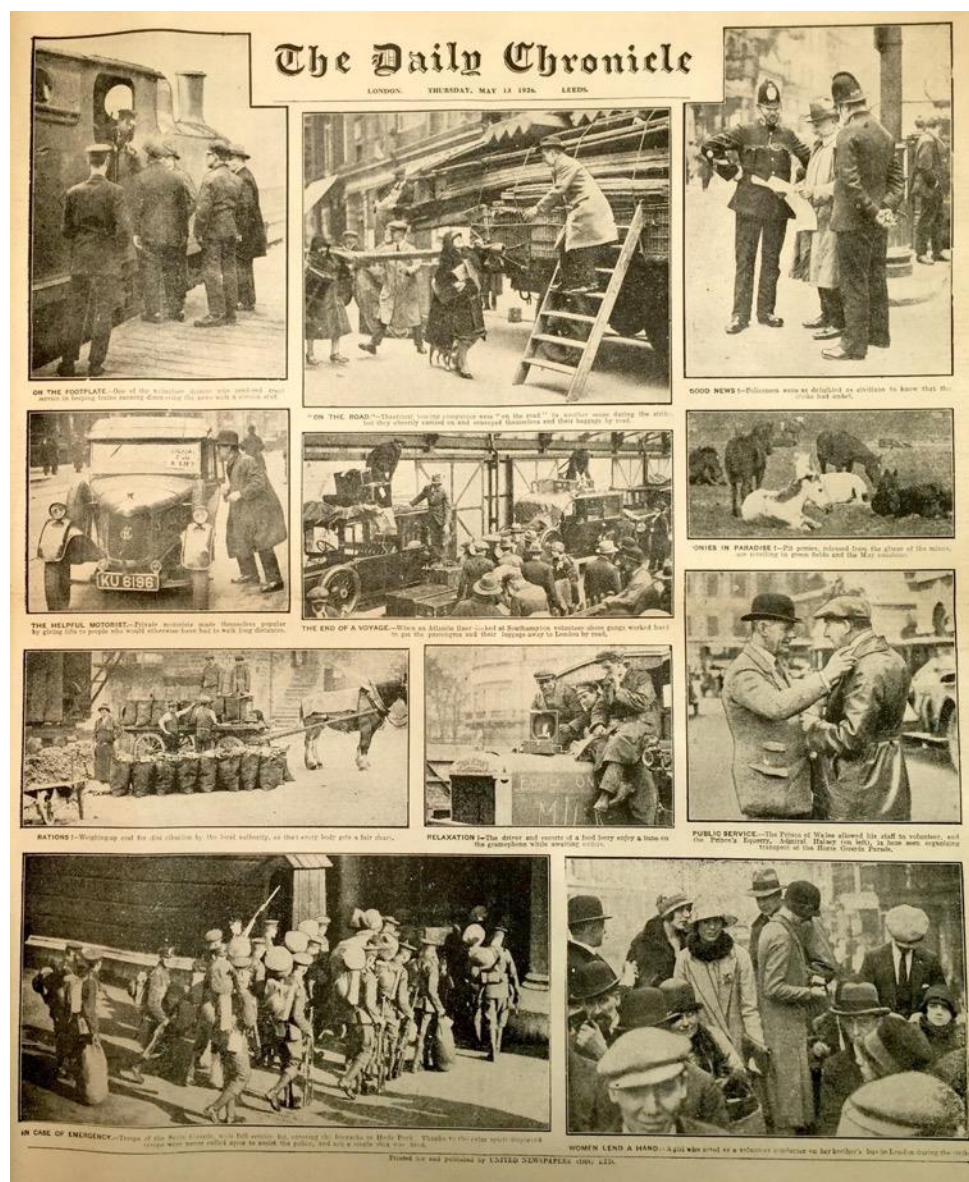
5RB talks – Lloyd v Google Supreme Court decision With Jonathan Scherbel-Ball, Felicity McMahon & Jonathan Barnes KC Format: Webinar Date: 12 Nov 2021 See:

<https://youtu.be/sBqJSAs-4c>

UK Media Law Pocketbook 2nd Edition online Chapter Nineteen – Data Protection Law for Journalists at <https://ukmedialawpocketbook.com/2021/12/03/chapter-nineteen-data-protection-law-for-journalists/>

McNae's Essential Law for Journalists 26th Edition (2022) chapter 28 on 'Data Protection' pages 432 to 441.

McNae's Essential Law for Journalists 25th Edition (2020) 'Data Protection' at Chapter 28, pages 375-380.



The back page of the *Daily Chronicle* for 13th May 1926 was traditionally a composite of news photographs illustrating the big stories of the day. UK copyright legislation during the 20th century sought to give greater protection for photographic images.

Copyright/Intellectual Property

Copyright resides in two main categories of expression:

1: Authorial/primary works. LDMA standing for- Literary, Dramatic, Musical and Artistic.

2: Entrepreneurial/derivative/secondary works. SFBCT standing for- Sound recordings, Films, Broadcasts, Cable programmes, Typographical works.

Copyright law in the UK is derived from the 1988 Copyright, Patents and Designs Act, its amendments since then and European Union Directives on copyright and intellectual property.

Copyright does not protect slogans, facts, news, ideas or information, but it does offer protection in the way they are expressed. Tables and listings of information are a copyrighted expression of selected facts. So is computer coding, software and online digital databases.

Copyright takes effect as soon as copyright protected material is created.

It is the information you select and the way you arrange that information that makes it unique. In order for material to have copyright protection it has to result from independent intellectual, or creative effort. In other words, you must have put some work into it.

Copyright lasts for the duration of the author's life plus 70 years for literary, dramatic or musical works. The situation is the same for directors, screenplay authors and musical directors of films, 70 years for sound recordings and 25 years for published typographical editions.

Copyright in databases lasts for 70 years in the case of identifiable authors who have made them with intellectual effort and creativity, and 15 years for databases of information produced as the result of investment. The UK's Intellectual Property Office has recently published a new guide on duration. See: [Copyright Notice: Duration of copyright \(term\) Published 15 January 2021](#).

There is copyright in iconic designs that are the logos of public and private corporations. For example, the design of the London Underground map is copyrighted. Photographing and publishing images of banknotes is a criminal offence unless you comply with the reproduction conditions set out by the relevant authority e.g. The Bank of England.

See: <https://www.bankofengland.co.uk/banknotes/using-images-of-banknotes>

Journalists have 'a fair dealing' defence if they use quotations and material during the course of reporting current events, criticism or review, and where only the less than substantial part of a literary, dramatic, musical or artistic work is used. What 'less than substantial' means varies from case to case but the general principle is that it is not excessive beyond the purpose of reporting, or reviewing, and does not undermine a copyright owner's commercial interests. It is a matter of quantity and quality.

It is necessary that the quotations are attributed. It should be fairly obvious that publishing the substantial part or key, identifying element of a copyrighted work without permission undermines the defence.

In *Fraser-Woodward v BBC* in 2005, the High Court decided that 14 photographs of David Beckham and his family taken by a celebrity photographic agency had been used for the purposes of criticism and review in a documentary about tabloid journalism. The judge observed: 'Apart from one which was on screen for about 4 seconds, they were shown for no

more than 2 or 3 seconds each, and some of them less than that. On occasions, they were shown as part of a brief still image; on others the camera panned quickly across them or zoomed in relation to them’.

See: [Fraser-Woodward Ltd v British Broadcasting Corporation Brighter Pictures Ltd \[2005\] EWHC 472 \(Ch\) \(23 March 2005\)](#)

In another case in that year the court decided that the Sun newspaper had not satisfied the criticism and review concept. In a half page advertisement of its new TV listings magazine it had also reproduced without permission the cover of a rival TV listings title.

See: [IPC Media Ltd v News Group Newspapers Ltd \[2005\] EWHC 317 \(Ch\) \(24 February 2005\)](#)

Facts re-written do not amount to a breach of copyright. Blatant lifting of the original work (i.e. another story) with the same words, skill, labour and judgment of the original journalist is a breach of copyright, but rewriting a news story broken by a rival publisher is unlikely to be so.

In 2001 the Sunday Telegraph was not allowed to depend on Article 10 freedom of expression rights when defending a breach of copyright action involving the former leader of the Liberal Democrats, Paddy Ashdown. The newspaper’s political editor had included substantial sections of Mr. Ashdown’s confidential note of a meeting with the Prime Minister. The quotations went much further than those normally incorporated in a news report.

See: [Ashdown v Telegraph Group Ltd \[2001\] EWCA Civ 1142 \(18 July, 2001\)](#)

In theory, there is ‘a public interest’ defence for copyright under common law and the 1998 Human Rights Act, but it is rarely recognized. The threshold for refusing to enforce copyright on public interest grounds would be ‘if the work, (the images) were immoral, scandalous, contrary to family life, injurious to public life, public health and safety or the administration of justice.’ A small claims court judge ruled in favour of a regional newspaper that had copied images from a website showing the activities of urban explorers in derelict buildings because they illustrated police concern that crimes were being committed.

Image Issues

You cannot usually publish a picture without permission from the copyright holder. You should ensure you use images online that you and your colleagues have originated yourself. If you are relying on a Creative Commons license for an image derived from Wikipedia, Wikimedia, Flickr, Pinterest, or Google images, make sure that you comply with all the specific terms. See: <https://creativecommons.org/>

The licenses usually require a specific attribution such as:

‘Creative Commons 10th Birthday Celebration San Francisco’ by tvol is licensed under CC BY 2.0’. When publishing on an online platform you can do a number of things that show respect and courtesy to the CC licensing. For example, in Wordpress editing you can embed the url of the source image hosting so that it clicks through. You should use captioning to fulfil attribution, and hyperlinking can also act as source acknowledgement.

Copyright law still applies to photographic images distributed by Twitter, Instagram, or other social media platforms such as Facebook.

The raiding by mainstream news publishers of private social media domestic images for use in news stories because of some misconceived idea of a wider public interest in news stories has become an increasing problem and prompted the online journalism trade website Press Gazette to produce a guide [Taking photos from social media: What news publishers need to know](#). On 13th October 2023 there was a sobering case history of [news publishers having to pay out thousands of pounds to the owner of a Croydon bus-stop arrest video](#).

The fair dealing defence for news and current affairs does not apply to images. Image fair dealing only relates to criticism and review. This should mean that you can use images to illustrate your genuine criticism or review of a photographic exhibition or book of photographs. But your selection and publication should not be so excessive that you would defeat the purpose of anyone visiting the exhibition or buying the book of photographs.

Getty Images does provide a qualified embedding licence for public interest and news event use on websites. That only permits linking to their images without any right to modification and certainly not copying. Commercially run news publishers operating for profit may not be permitted to use the embedding option. See: [Embed images for your non-commercial website or blog in three easy steps](#). It is very important to always check [the terms of use for this resource](#).

For example: 'You may only use embedded Getty Images Content for **editorial purposes (meaning relating to events that are newsworthy or of public interest)**. Embedded Getty Images Content may not be used: (a) **for any commercial purpose (for example, in advertising, promotions or merchandising) or to suggest endorsement or sponsorship**; (b) in violation of any stated restriction; (c) in **a defamatory**, pornographic or otherwise unlawful manner; or (d) outside of the context of the Embedded Viewer.'

All images (photographs, designs, artwork, sculptures etc) have rights implications in Europe (including UK) where made and published/exhibited after 1st July 1912. In the USA the position is more complicated because of copyright renewal provisions.

Case law in England and Wales is trying to catch up with the Internet and online social media communications. But copyright law still applies to photographic images distributed by Twitter, Instagram, or other social media platforms such as Facebook.

If you find user generated image content on Twitter, for example, you can direct message the account holder to find out if they originated the image and would be prepared to allow you to use the image with a credit. It is important to establish that the person giving permission has the right to do so and ideally owns the photograph.

Social media images and photographs taken for domestic purposes are protected by a privacy provision in section 85 of the 1988 Copyright, Patents and Designs Act, so it is important to seek permission and check the origin and provenance of such imagery. Family images on a Facebook page connected to somebody involved in a news event could have a copyright belonging to the person who commissioned them as well as the person who was paid to take them. An example would be a wedding or official school photographer.

Although it is becoming a common practice for mainstream news publishers to 'screengrab' images from television coverage of news events to use in their online publications, a strict interpretation of copyright law is that this could be infringement without the permission of the source provider. Mohammed Al Fayed successfully sued the *Sun* for publishing two stills from the security video-tape of his property Villa Windsor in Paris. The newspaper argued they were running a public interest news story disputing how much time his late son Dodi and the late Diana, Princess of Wales had been there. The court ruled the information from the images could have been published without infringing photographic copyright.

See: [Hyde Park Residence Ltd v Yelland & Ors \[2000\] EWCA Civ 37 \(10 February 2000\)](#).

The situation appears to be different though when using short clips of digital video or sound from publishers covering a news event. This is derived from a test case in 1991 involving the BBC and the satellite news provider BSB. The case established that within a 24-hour period rival media organizations can use extracts of video for news reporting taken from exclusive rights coverage of public interest sport and news events. In this case it was the World Cup. Again, the extracts had to acknowledge the source/origin, not be substantial in use, be used after the rights holder had first published, and such occasional limited news usage did not undermine or compete with the original publisher's commercial interests in buying the rights exclusively. The BSB use had been deemed reasonable in terms of using clips ranging between 14 to 37 seconds and only up to four times in any 24-hour period.

The 2016 case taken by the England and Wales Cricket Board and Sky against the Fanatix sports app indicated that an excessive use of short though qualitative clips became a tipping point of 'purely commercial rather than genuinely informative' usage.

See: [England And Wales Cricket Board Ltd & Anor v Tixdaq Ltd & Anor \[2016\] EWHC 575 \(Ch\) \(18 March 2016\)](#)

In 2014 the fair dealing defence was reformed to include quotation of works (whether for criticism or review or otherwise) and copying works for the purposes of caricature, parody or pastiche. This has opened up a debate about whether this expands the fair dealing defence for online photographs and images. It could be argued that in order to quote a statement or event presented on a website, using a screengrab of the relevant webpage for current reporting purposes might qualify under this extension of fair dealing.

However, it is unlikely to change the exclusion of photographic images in current event fair dealing. The government's Intellectual Property Office has said: 'Whilst the exception applies to all types of copyright work, it would only be in exceptional circumstances that copying a photograph would be allowed under this exception. It would not be considered fair dealing if the proposed use of a copyright work would conflict with the copyright owner's normal exploitation of their work. For example, the ability to sell or license copies of photographs for inclusion in newspapers would be a normal exploitation'.

See:

https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/375951/Education_and_Teaching.pdf

Quite detailed research needs to be undertaken to ascertain rights holders in photographic images and legal disclaimers will need to be published to avoid future actions from the owners of what appeared to be 'orphan' works. [material previously published with no assigned and traceable ownership/originality.]

Original images of other images, or two, or three-dimensional works of art are subject to rights implications where they are taken in private exhibition spaces or from in copyright publications. However, public architecture and sculptures are deemed to be in the public domain; however recently built and created.

You need to be aware that the use of digital still and video images taken in people's homes, on private and corporate property are not copyright free. You will need to obtain permission. Sometimes you might be in an environment that you think is public, but is, in fact, privately owned. This could even be a park, shopping mall, railway station, airport, or transport hub.

Incidental Use

There is an incidental use defence in UK copyright when images, designs, words and indeed music, video and broadcasting might be included in a separate publication whether photographic or filmic or online video sequence. The key expression from section 31 of the 1988 copyright legislation in this defence turns on the idea that the defence fails 'if it is deliberately included'. An example of incidental use would be the filming of a documentary about shoplifting and in a sequence showing somebody being arrested the store's background music is playing, or if the sequence was in an electrical goods shop with large plasma screen televisions, there might be a film or broadcast television service showing on the screens. Obviously if you digitally edited the ironic selection of a scene from a film showing shop-lifting onto the screens, then you would need to obtain the rights for the use of that sequence. It would be different if this was incidental and a rather miraculous showing at the time of the arrest. The mere serendipity of such a coincidence could be argued to be an incidental use.

Moral Rights

Most employed journalists producing online publications are not entitled to the CDP 1988 Act's establishment of the right to be identified as the author or director of a published work and the right to object to derogatory treatment of the work. These are known as 'Moral Rights', but journalists are still entitled to the protection against false attribution of their work. This means that it would be unlawful for somebody else to claim credit for your work or for a publisher to put your name to a publication that you had no involvement in.

Small Claims Actions

It is important to appreciate that copyright infringement actions are becoming more frequent and easier to launch. The Small Claims track of the Intellectual Property Enterprise Court (IPEC), a division of the High Court in London, is now operating for actions involving damages of less than £10,000. It means that individual photographers can litigate on their own behalf in a less formal legal process. More than 60 actions are being heard each year.

See: <https://www.gov.uk/guidance/take-a-case-to-the-intellectual-property-enterprise-court>

Music Issues

Music publishers, composers, musicians, and record companies have two very powerful music licensing organisations, PRS, and PPL, actively enforcing copyright compliance in all dimensions of media. If you are involved in an online/web publisher that regularly uses in copyright music for entertainment, there will be an obligation to pay for an annual license and probably make detailed returns on the music that has been used. PPL will be anxious that as a music publisher you have control over your own streaming. This could require hosting your music use on your own server. There may be difficulties obtaining a music use license if your music usage is encoded from a host platform such as Soundcloud, Youtube or Vimeo. This is because access to the music is provided to all users of the host platforms rather than your own online publication.

It is possible to use music journalistically with the current event reporting and criticism and review, as well as quotation fair dealing defences. However, the music used would have to be relevant, illustrative and short- certainly not the substantial part in length of any track. An European Union Directive extended copyright duration for music recordings from 50 to 70 years in October 2013. This means that recorded music released for public consumption prior to 31st December 1962 is likely to be out of copyright, though music compositional and arrangement copyright continues for 70 years after the death of the author. Any musical recording published after 1st January 1963 will remain in copyright until at least the end of 2043.

Database Issues

It is very important to appreciate that data journalism and Internet data scraping software programmes generate two risks of copyright infringement in UK media law. Database copyright exists where the database itself is a literary work of an author's own intellectual creation, and a Database Right resides in a collection of independent works, data or other materials which are arranged in a systematic or methodical way and individually accessible by electronic or other means.

The Database Right does not require any intellectual or creative effort. It exists if there has been a substantial investment in obtaining, verifying or presenting the contents of the database, and investment for these purposes means any investment whether in financial, human or technical resources. The information does not have to be confidential. The Database copyright duration lasts 70 years from the death of the author, and the Database *sui generis* Right lasts 15 years from the end of the calendar year when the production of the database was finished. Obviously if the commercial database is continually updated, developed and added to, the copyright duration will extend from when that it is done and not the first public release of the database.

This means that the extraction or re-utilisation of all or a substantial part of the contents of online sites that qualify under the definition of databases is likely to be UK copyright infringement. Copying the contents to another digital electronic storage device amounts to extraction. Making the contents available to the public by any means amounts to re-utilisation. This would, of course, include the engagement of computer graphics data journalism software to organise the data extracted in an illustrative form.

There is a fair dealing defence for Database copyright in terms of current event reporting, for criticism or review, or quotation for journalistic purposes. This could operate where a journalist had extracted database information from different sources and is setting out an analysis or comparison for public interest purposes. The fair dealing defence for Database Right infringement is explained as extraction by a lawful user, extraction for the purpose of illustration or teaching or for a non-commercial purpose, and where the source is indicated. This would appear to provide a defence for data journalistic illustration provided that the source is indicated. However, it will be wise to check the terms and conditions applying to visitors of online database resources. When the terms and conditions exclude visiting the website for the purposes of data scraping, there is an argument that the journalist researcher is not 'a lawful user' of the site. The ultimate and most effective defence is, of course, the consent and the agreement of online database owners.

Such database arrangement protection, does not apply in the USA where compilation copyright does not apply to all the data extracted from a copyright database. And in the case of databases not protected by copyright law it could be lawful to 'scrape' all of a database unless the website's terms and conditions make it a breach of contract in relation to registered site members or visitors. The European database right is only available to companies based in EU countries.

As indicated earlier Brexit means some adjustment in the applicability of *sui generis* database copyright. Brexit means that new commercial databases made available after 1st January 2021 do not have the EU *sui generis* database copyright protection, though the UK government has made clear it will be introducing legislation to ensure that they do. See: [Sui generis database rights from 1 January 2021. How protection in the EU for databases produced in the UK will change from 1 January 2021.](#)

Orphan works- a special licensing system managed by the UK Intellectual Property Office

One of the longstanding challenges to media publishers and journalists in copyright had been the issue of orphan works- these can be any kind of copyright material, primary and secondary, which has no apparent authorship.

This has been met by reform of the 1988 Copyright, Designs and Patents Act in 2014- '[The Copyright and Rights in Performances \(Certain Permitted Uses of Orphan Works\) Regulations 2014](#)'

These measures effectively implemented European Union law on orphan works with [the explanatory note](#) requiring the provision of 'permitted uses of orphan works by relevant bodies.'

The Regulations necessitated 'a diligent search, for the purpose of establishing whether a relevant work is an orphan work, and include a list of the minimum sources to be searched in different cases.'

The IPO set up the UK's Orphan works licensing scheme and there is an eight page guidance briefing for right holders.

See:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/367846/orphan-holders.pdf

The IPO have also produced a YouTube video on the operation of the scheme.

The IPO explains:-

1. An orphan work is a copyright work where the right holder is unknown or cannot be located. The orphan works licensing scheme allows the Intellectual Property Office (IPO) to grant an applicant a non-exclusive licence to use an orphan work.

2. The scheme was launched on 29 October 2014 when the Copyright and Rights in Performances (Licensing of Orphan Works) Regulations 2014 came into force. An applicant must conduct a diligent search for the right holders in the work and submit details of that search to us as part of their application.

3. The purpose of the diligent search is to find right holders where they can be found and to demonstrate that all reasonable efforts have been taken where they cannot be found. Orphan works online diligent search guidance. See:

<https://www.gov.uk/government/publications/orphan-works-diligent-search-guidance-for-applicants/orphan-works-diligent-search-guidance>

The IPO has provided diligent search guides with samples for some copyright categories:-

[Orphan works sample diligent search: photograph](#)

[Orphan works sample diligent search: unpublished literary work](#)

[Orphan works sample diligent search: printed music](#)

[Orphan works sample diligent search: film footage \(production level\)](#)

After licensing the IPO maintains an online register of orphan works- [The orphan works register](#)

The register is currently set out in six categories:-

[Moving images](#)

[Music notation](#)

[Script and choreography](#)

[Sound recordings](#)

[Still visual art](#)

[Written works](#)

The application for licensing operates online via the following link:

[Applying online to license an orphan work](#)



Neutral Citation Number: [2022] EWHC 2695 (Ch)

Claim Number: IL-2020-000063

**IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST (ChD)**

Rolls Building
7 Rolls Buildings
Fetter Lane
London, EC4A 1NL

25th October 2022

Before :

MR JUSTICE EDWIN JOHNSON

Between :

ANNA PASTERNAK

Claimant

and

LARA PRESCOTT

Defendant

New Copyright case law High Court Copyright ruling 28th October 2022- [Pasternak v Prescott \[2022\] EWHC 2695 \(Ch\)](#)

The 492 paragraph ruling by Mr Justice Edwin Johnson. See: <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Ch/2022/2695.html>

Key sections:-

The Judge's summary of the case- paragraphs 2 to 6.

2.The Claimant, Anna Pasternak, is the author of the book Lara: The Untold Love Story That Inspired Doctor Zhivago ("Lara"). It was published in the United Kingdom on 25th August 2016. Lara is a non-fictional, historical work. It tells the story of the love affair of Boris Pasternak, poet and author of the world famous novel Doctor Zhivago, and the woman variously described as his lover, mistress and muse, Olga Ivinskaya. The Claimant is the great niece of Boris Pasternak. As the author of Lara, the Claimant is the owner of the copyright subsisting therein.

3.The Claimant also owns the copyright subsisting in the English translation of certain parts of a work entitled Légendes de la rue Potapov. The translation, from French to English, was the work of Marlene Hervey, who was commissioned to make the translation by the Claimant. Légendes de la Rue Potapov is the title of the French translation of a book written in Russian by Irina Kosovoi (nee Emelianova), daughter of Olga Ivinskaya. The actual Russian title, transliterated from the Cyrillic script, is Legendy Potapovskogo pereulka. No English edition of this book exists. It is convenient to refer to the English translation, in which the Claimant owns (by assignment) the subsisting copyright, as "the Legendes Translation", while referring to the book itself as "Légendes".

4. The Defendant, Lara Prescott, is the author of the book *The Secrets We Kept* ("TSWK"). It was published in the United States on 3rd September 2019 and in the United Kingdom on 5th September 2019. TSWK is a work of historical fiction. It is a fictionalised account of a CIA operation in the late 1950s, during the Cold War, to infiltrate copies of Doctor Zhivago into the Soviet Union as a propaganda weapon. The story is told in alternating parts, described as West and East, which effectively divide the story into two narrative threads. In the West chapters, the story is primarily told by and from the perspectives of a group of female typists and spies working for the CIA. In the East chapters, the story is primarily told by and from the perspective of Olga Ivinskaya.

5. The Claimant's case is that 7 of the 11 chapters in the East section of TSWK infringe the copyright subsisting in 7 of the 12 chapters of Lara. The essential complaint is that the Defendant has copied, from the relevant chapters in Lara, a substantial part of the selection, structure and arrangement of facts and incidents which the Claimant is said to have created when she wrote Lara. The Claimant's case is also that the Defendant has infringed the copyright in the *Legendes Translation*, in this case by the simple (language) copying, from Lara, of an extract from the *Legendes Translation* which is quoted in Lara.

6. The Defendant denies that she has, in TSWK, infringed the copyright in either Lara or the *Legendes Translation*.

Judge's decisions. Paragraphs 406 to 412 on the 'selection issue' - 'copying from the relevant chapters in Lara, a substantial part of the selection, structure and arrangement of facts and incidents which the Claimant is said to have created when she wrote Lara.'

'406. The way in which the Selection Claim has been formulated and pursued has required me to go through the individual allegations of copying, both in relation to the selection of Events and in relation to the Supporting Allegations, on a chapter by chapter basis. In the course of this lengthy exercise, I have stated my conclusions on the same chapter by chapter basis. The overall result of this exercise is that the Selection Claim fails, in relation to each of the chapters of Lara which is said to have been the subject of copying of selection.

407. It is however important to stress that I reach the same result by adopting the shorter route of considering, as a whole, all of the material which is said to have been the subject of copying of selection. If one stands back, and takes the relevant chapters of Lara as a whole, I do not think that this changes the evidential position; namely that it is clear that the Defendant did not copy from Lara the selection of events in the relevant chapters of TSWK or any part of that selection.

408. The essential reason for this is that Lara and TSWK are fundamentally different works. Lara is a non-fictional historical work. The Claimant stressed in her evidence that while it was her object to tell the story in an accessible and readable manner, reading more like fiction, the book is not a work of fiction and describes actual events. TSWK is a work of historical fiction. It is based on real events, but those real events have been woven into the story devised by

the Defendant, and have themselves been adapted to suit the story. TSWK has been described as a spy thriller. I am not sure that this is quite how I would describe the book, but this description does bring out the essential difference with Lara; namely that TSWK is a work of fiction, loosely based on real events. This fundamental difference between the two works is apparent on a first reading of the two works.

409. Beyond this, and as will have been apparent from the detailed analyses set out in the previous sections of this judgment, the two works are written in very different styles, with different content and different arrangement.

410. A comparison between the two works, taken as a whole, is not of course the relevant comparison in the present case, where the Selection Claim is confined to certain chapters of Lara and certain chapters of TSWK. The differences in style, content and arrangement which I have identified are however equally apparent if one concentrates on the chapters of each work which are the subject of the Selection Claim.

411. The relevant chapters of each work are of course concerned with the same basic historical events in the lives of Boris and Olga. Both authors were using the same principal source materials; namely ACOT and TZA. The Defendant, on her own evidence, did use Lara as a secondary source. In these circumstances it is not surprising that the sequence of events, in each work, follows the same basic chronology, although I stress the reference to basic chronology; given the differences in events and their ordering as between the two works. Equally, it is not surprising that one finds some of the same details in each work. None of these areas of similarity or overlap seem to me to come anywhere near establishing that the Defendant copied the selection of events in the relevant chapters of Lara, or any part of that selection. This is so whether one considers the Selection Claim on a chapter by chapter basis, or as a whole. The evidence demonstrates that the Defendant took no more from Lara than odd details which, quite correctly, are not said to have been protected by copyright.

412. The Selection Claim – overall conclusions:

For the reasons which I have set out, the Selection Claim fails. The Defendant has not infringed the Claimant's copyright in Lara in all or any of the ways alleged in the Selection Claim. Accordingly, the Selection Claim falls to be dismissed.

The Translation Claim. Paragraph 489

'489. In any event the conclusion which follows from my discussion of the Translation Claim is that the Defendant has infringed the copyright in the translation of the Accusation Act which appears in the Legendes Translation. I have decided that copyright does subsist in the translation of the Accusation Act in the Legendes Translation. It is not in dispute that the Claimant took a valid assignment of that copyright. It is not in dispute that the Defendant did indirectly copy the translation of the Accusation Act, by her use of the quotation which she took from Lara. I have decided that the Defendant cannot rely upon the defence in Section 30(1ZA). Accordingly, the Translation Claim succeeds.'

High Court Copyright ruling 6th April 2022- [Sheeran & Ors v Chokri & Ors \[2022\] EWHC 827 \(Ch\)](#)



Neutral Citation Number: [2022] EWHC 827 (Ch)

Case No: IL-2018-000095

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
INTELLECTUAL PROPERTY LIST

7 Rolls Building
London EC4A 3DF

Date: 6 April 2022

Before:

MR JUSTICE ZACAROLI

Between:

(1) MR EDWARD CHRISTOPHER SHEERAN MBE	<u>Claimants</u>
(2) MR STEVEN MCCUTCHEON	
(3) MR JOHN MCDAID	
(4) SONY/ATV MUSIC PUBLISHING (UK) LIMITED	
(5) ROKSTONE MUSIC LIMITED	
(6) POLAR PATROL MUSIC LIMITED	
- and -	
(1) MR SAMI CHOKRI	<u>Defendants</u>
(2) MR ROSS O'DONOGHUE	
(3) ARTISTS AND COMPANY LIMITED	

221 long paragraph ruling by Mr Justice Zacarole. See: <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Ch/2022/827.html>

The Judge's summary of the case- paragraphs 1 to 6:

1. The first three claimants, Ed Sheeran, Steven McCutcheon and John McDaid are the writers of the song "Shape of You" ("Shape"). Shape, performed by Mr Sheeran, was released as a single on 6 January 2017 and included on Mr Sheeran's album "÷" ("Divide"), released on 3 March 2017. It became the best-selling digital song worldwide in 2017. In December 2021 it became the first song to pass 3 billion streams on the streaming service Spotify. It has had more than 5.6 billion views on YouTube.

2. The first two defendants, Sami Chokri (who performs under the name Sami Switch) and Ross O'Donoghue, are the writers of the song "Oh Why". The song was performed by Mr Chokri, released in mid-March 2015 and included on Mr Chokri's EP "Solace", released on 1 June 2015.

3. The fourth to sixth claimants are music publishing companies that own a share of the rights in the musical and literary works subsisting in Shape. The third defendant ("A&C") is a music artists' development, management and social media company and is the assignee of Mr Chokri's copyright in Oh Why.

4. The defendants' claim relates only to an eight-bar post-chorus section of Shape, in which the phrase "Oh I" is sung, three times, to the tune of the first four notes of the rising minor pentatonic scale commencing on C#. The defendants refer to this as a "hook", commonly understood to mean that part of a song that stands out as catchy, memorable and keeps recurring. The claimants point out that there are other parts of Shape which are just as catchy, memorable and recur much more, for example the four-bar marimba pattern which starts the song and repeats throughout most of it, or the sung phrase "I'm in love with the shape of you" which defines the song. I will refer to the post-chorus passage in issue, neutrally, as the "OI Phrase".

5. The defendants contend that the OI Phrase is copied from the eight-bar chorus of Oh Why, in which the phrase "Oh why" is repeated to the tune of the first four notes of the rising minor pentatonic scale, commencing on F#. This catchy and memorable phrase is clearly central to the song Oh Why, and I will refer to it as the "OW Hook".

6. These proceedings were commenced by the first four claimants (and three other entities that were later replaced by the fifth and sixth claimants) on 16 May 2018, seeking declarations that they had not infringed copyright in Oh Why. The claim was issued following the defendants having notified the Performing Rights Society Limited ("PRS") of their contention that they should be credited as songwriters of Shape, causing the PRS to suspend all payments to the claimants in respect of the public performance/broadcast of Shape. By a counterclaim, the defendants assert their claim that copyright in Oh Why has been infringed by the claimants.'

Key conclusions by the Judge at paragraph 205:

'(1) While there are similarities between the OW Hook and the OI Phrase, there are also significant differences;

(2) As to the elements that are similar, my analysis of the musical elements of Shape more broadly, of the writing process and the evolution of the OI Phrase is that these provide compelling evidence that the OI Phrase originated from sources other than Oh Why;

(3) The totality of the evidence relating to access by Mr Sheeran to Oh Why (whether by it being shared with him by others or by him finding it himself) provides no more than a speculative foundation for Mr Sheeran having heard Oh Why;

(4) Taking into account the above matters, I conclude that Mr Sheeran had not heard Oh Why and in any event that he did not deliberately copy the OI Phrase from the OW Hook;

(5) While I do not need to resort to determining where the burden of proof lies, for completeness:

(a) the evidence of similarities and access is insufficient to shift the evidential burden so far as deliberate copying is concerned to the claimants;

(b) the defendants have failed to satisfy the burden of establishing that Mr Sheeran copied the OI Phrase from the OW Hook; and

(c) even if the evidential burden had shifted to the claimants, they have established that Mr Sheeran did not deliberately copy the OI Phrase from the OW Hook.

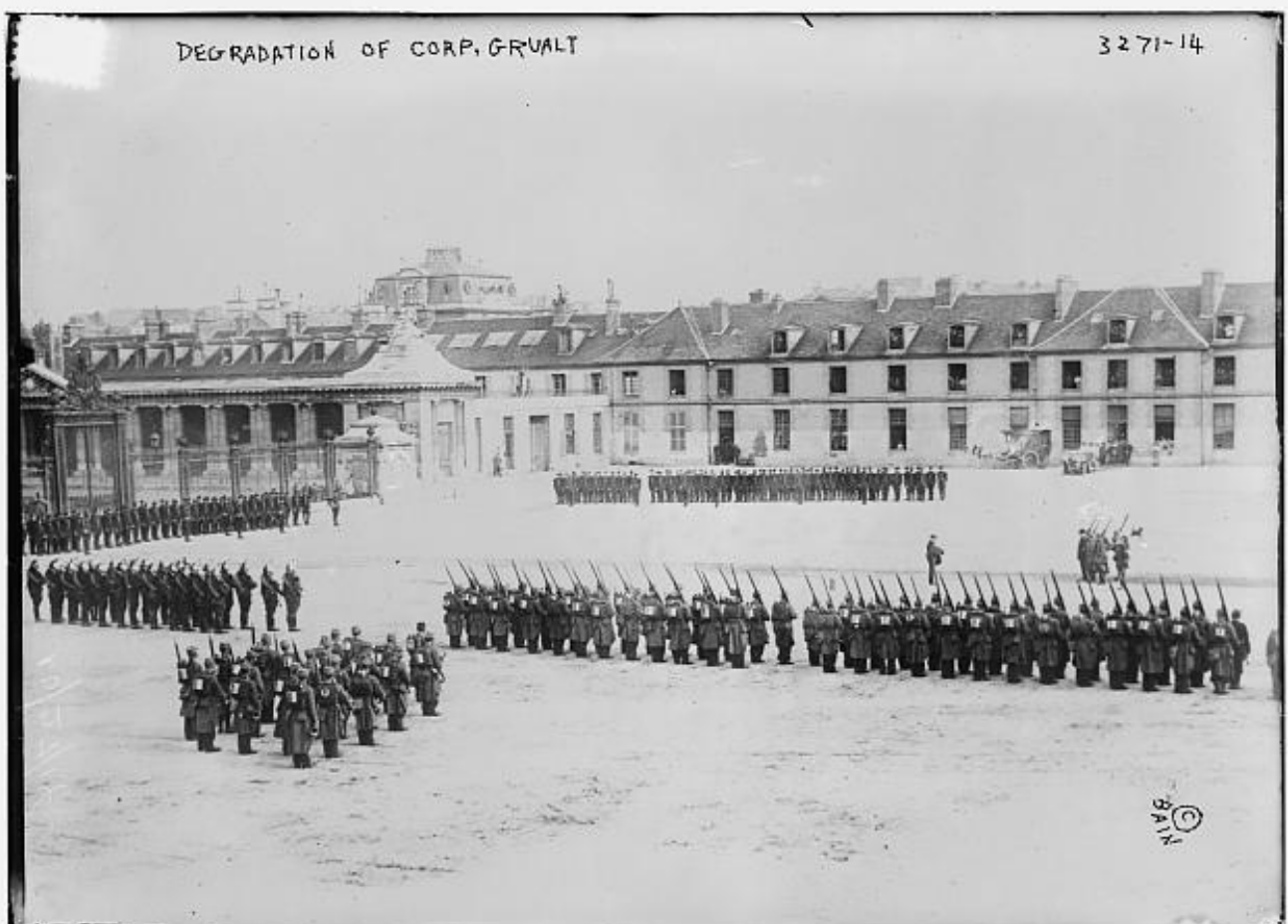
(6) Finally, again taking into account all the matters I have considered above, I am satisfied that Mr Sheeran did not subconsciously copy Oh Why in creating Shape.'

UK Media Law Pocketbook 2nd Edition (2022) Chapter 6 Copyright and Intellectual Property pages 95 to 147. Companion website resource at;

<https://ukmedialawpocketbook.com/2021/12/15/featured-content-2/>

McNae's Essential Law for Journalists 26th Edition (2022) covers the subject of copyright at Chapter 29 between pages 442-460.

McNae's Essential Law for Journalists 25th Edition (2020) covers the subject of copyright at Chapter 29 between pages 381-397.



Degradation of Corp. Grualt [Bain News Service](#), 1914. Photograph shows the great courtyard of the Ecole Militaire in Paris, France, when Gruault, a French reservist was degraded (stripped of his military insignia and paraded before troops) for attempting to sell a plan of the Eiffel Tower wireless station to Germany. (Source: Flickr Commons project, 2011 and Sydney Morning Herald, Sept. 28, 1914)

Media law of reporting Courts-Martial hearings

The courts martial system in the British Services is run by the office of the Judge Advocate General and Military Court Service in the Service Justice System (SJS). The current JAG is His Honour Judge Alan Large (See: <https://www.judiciary.uk/about-the-judiciary/who-are-the-judiciary/judges/judge-advocate-general/>);

Most trials take place in the Military Court Centres in the UK which are in Bulford (Wiltshire) and Catterick (Yorkshire) These sit full-time on a continuous basis 43 weeks of the year in modern, fully equipped facilities.

The Court Martial may also sit from time to time in Northern Ireland (Aldergrove), Germany (Sennelager) and Cyprus (Episkopi). MCS arranges, funds and supports trials at these centres and sometimes at other venues in the UK and overseas.

This system of courts tries criminal offences as well as breaches of specific armed forces discipline and duties. Summary Appeal Courts hear appeals from summary decisions and punishment handed out by commanding officers.

At courts martial in trial and sentence hearings a professional judge known as the Judge Advocate presides over the proceedings. He/she is joined by a court martial board that consists of a minimum of 3 and maximum of 7 service people at commissioned officer and warrant officer level who have served for not less than three years.

The senior officer is called the President of the Board. The Judge rules and directs on law and the members of the board decide the facts and also the sentence. This means the risk of media prejudice extends between findings of guilt and the sentence hearing.

The board members operate like jurors in the civilian courts, though unlike jurors they have a role in determining the sentence with the Advocate General who does not have a vote in relation to the determination of the verdict which is known as a 'finding' in military courts.

Courts martial board members must not have been the commanding officer of any defendant/appellant, nor have served in the same unit at any time from the date of the alleged offence.

Cases are prosecuted by the Service Prosecuting Authority. During trial the Judge Advocate is addressed as 'Sir' or 'Madam', the Judge Advocate General as 'Your Honour' and when a High Court Judge presides, as Mr Justice McKinnon did at Bulford in the Baha Mouza case, the proper address is 'My Lord.'

The usual composition of a military court board is five and this can deliver majority verdicts of three to two. The Appeal Court ruled in 2009 that courts martial can no longer reveal

whether verdicts are unanimous. The Court Martial Appeal Court ruled in 2010 that majority verdicts do not infringe the right to a fair trial or produce an unsafe conviction

(See: <https://www.judiciary.uk/about-the-judiciary/our-justice-system/jurisdictions/military-jurisdiction/>);

The principle of open justice as expressed in *Scott v Scott* in 1913 applies to the Court Martial just as it does in any other criminal court, and the presumption is that all criminal court proceedings are open and accessible to the public. There is a statutory requirement that the Court Martial sit in open court unless there is a compelling reason for the judge to direct otherwise: for instance, cases involving matters which could lead to the disclosure of security classified information may be held in camera.

In Courts Martial just as in other criminal courts, automatic reporting restrictions apply under certain circumstances which may render discretionary restrictions unnecessary, such as: restrictions on publishing information identifying of victims or alleged victims in sexual offence cases; rulings made at preliminary hearings. The judge may provide guidance to the media as to the applicability of automatic reporting restrictions in a specific case. The media remain responsible for ensuring they comply with the law.

Discretionary reporting restrictions can be imposed by a judge under the Contempt of Court Act 1981. Section 4(1) of the Act provides that publication of a fair, accurate and contemporaneous report of proceedings held in public is lawful, and s 4(2) provides: In any such proceedings the court may, where it appears to be necessary for avoiding a substantial risk of prejudice to the administration of justice in those proceedings, or in any other proceedings pending or imminent, order that the publication of any report of the proceedings, or any part of the proceedings, be postponed for such period as the court thinks necessary for that purpose.

The Armed Forces Court Martial Rules give military courts the power to give leave for any name or other matter given in evidence in proceedings to be withheld from the public. The Coroners and Justice Act 2009 s 86 provides for witness anonymity orders and s 94 makes it clear this provision applies to Service courts). A witness anonymity order requires specified measures to be taken in relation to a witness to ensure that the identity of the witness is not disclosed in or in connection with the proceedings.

The kinds of measures to be taken include measures for securing that the witness's name and other identifying details may be withheld or removed from materials disclosed to any party; that the witness may use a pseudonym; that the witness is not asked questions that might lead to his or her identification; that the witness is screened; and that the witness's voice is subjected to modulation.

The Contempt of Court Act 1981 s 11 provides: In any case where a court (having power to do so) allows a name or other matter to be withheld from the public in proceedings before the court, the court may give such directions prohibiting the publication of that name or matter in connection with the proceedings as appear to the court to be necessary for the

purpose for which it was so withheld. S 11 directions may be made in relation to the defendant or a witness, or any other “matter” relevant to proceedings (for instance, evidence which is sensitive for security reasons).

Prosecution or defence counsel may apply for orders imposing reporting restrictions so as to withhold from the public the identity of defendants or witnesses only if such an order is necessary for avoiding a risk of impediment to or frustration of the administration of justice. This may be in the instant proceedings or in future proceedings.

For the protection of a particular witness, directions may be given for example permitting the witness to give evidence from behind a screen or under a pseudonym (“X”) rather than their real name. It is not sufficient that the reporting of the name, etc. would cause the defendant or witness embarrassment, or even financial loss; those applying for such a restriction must show by way of evidence that failure to exercise the discretion to withhold the name would risk frustrating or impeding the administration of justice, for example because there are reasonable grounds for fearing that the operational or personal safety of these individuals is threatened.

Judges consider each such application on its merits, giving due weight to the public interest in the principle of open justice and to the qualified right to freedom of expression (the right both to impart and receive information) under Article 10 of the European Convention on Human Rights (ECHR).

Personal safety considerations may, where there is cogent evidence in support, justify non-disclosure of identity on the grounds that disclosure would contravene the rights of the individual under ECHR Articles 2 right to life & 8 right to privacy. The Armed Forces (Court Martial) Rules 2009 r 26 contain general provisions enabling the judge to conduct the proceedings: “...in such a way as appears to him to be in the interests of justice.”

(See: <https://www.legislation.gov.uk/ukxi/2009/2041/article/26/made>)

A Court Martial Appeal Court case involving the *Times* and *Guardian* and a trial of members of the Special Forces in 2008 established a two-fold test for deciding whether to withhold the name of the defendant: either that ‘the administration of justice would be seriously affected were it not to grant anonymity’ (from *Scott v Scott*) or that ‘there is a real and immediate risk to life’ (a more modern limb arising from ECHR Article 2 as recognized in the 2007 House of Lords case about police officer witnesses to an inquiry in Northern Ireland known as *Re Officer*).

See: <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Crim/2008/2559.html>

The ruling in the case of Marine A, Sgt Alexander Wayne Blackman in December 2013, convicted of executing a wounded Afghan insurgent re-affirmed this principle. This case also stipulated that anonymity issues had to be resolved before the beginning of courts-martial

and any release of footage or image of the victims of murders or serious crimes should consider the impact on their or their families' rights to respect for privacy and family life.

(See: <https://www.bailii.org/ew/cases/EWCA/Crim/2013/2367.html> and <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Crim/2017/326.html>);

Where practicable the media must be notified in advance about any applications for reporting restrictions and have the opportunity to make submissions in relation to the application. Failing that, in an exceptional case, an order should be expressed to be interim and be followed up by a further hearing open to the public and notified to the media at which the judge reconsiders the reporting restrictions already made, after giving the media an opportunity to be heard or represented.

Media representatives prefer to and are entitled to expect to be given an avenue for making representations at the time when the restrictions are originally imposed. The media may appeal against reporting restrictions imposed in the Court Martial to the Court Martial Appeal Court.

The Judicial Communications Office circulates the existence of media restriction orders to a wide circle of media contacts, and deals with phone calls or queries from the media about actual or possible reporting restrictions. The Court Officer hands out hard copies of the order imposing reporting restrictions locally to any media representatives present at court on the day. Simple queries received locally may be dealt with locally, if the answer is sufficiently obvious, but otherwise are referred to JCO.

Whenever there is significant media interest in a forthcoming trial, with the likelihood of many press and broadcast media personnel attending, MoD Media Ops make arrangements for management, accreditation, etc of the journalists and if required for a pre-trial briefing.

MoD Media Ops may arrange a photo-opportunity for the defendants, if they agree. Nothing prevents the media from taking any other photographs or videos outside of the court precincts in the same way as for a Crown Court. MCS Court Officer arranges for journalists and their vehicles to be accommodated suitably inside and outside the court centre, and may arrange a photo-opportunity for the judge, if he agrees.

Media representatives address requests for access to images, documents, or video material to the prosecutor in the first instance, and the prosecutor takes the initial decision to permit or deny access. It has been agreed that the prosecutor will have regard to the Crown Prosecution Service / Association of Chief Police Officers (CPS/ACPO) document "Publicity and the Criminal Justice System – Protocol for working together" (October 2005), insofar as it is relevant.

The overriding objective is to provide an open and accountable prosecution process, by ensuring the media have access to all relevant material wherever possible, and at the earliest appropriate opportunity.

Although the ECHR Article 10 guarantees the right to impart and receive information, this must be balanced against the other rights guaranteed, notably by Article 2 (Right to Life) and Article 8 (Right to Respect for Private and Family Life). Additional considerations for a military prosecutor would be whether material should not be disclosed for operational reasons or for reasons relating to the personal safety of military personnel.

In 2013 the then Judge Advocate General Jeffrey Blackett agreed a composite of stills could be released for use by the media during the 2013 trial of Royal Marines for murder in Afghanistan. He ruled against the release of moving video and any still image of the actual death of the wounded Taliban fighter.

He did agree to a release of the sound from the video. His decision that all five soldiers originally charged, including Marine Sergeant A found guilty, should be identified was challenged by the servicemen at the Court Martial Appeal Court.

In a significant precedent the three-judge appeal, including the Lord Chief Justice, decided Sergeant Alexander Wayne Blackman should be named and at least two of those who had been acquitted. The risk to the right of life had to be 'real and immediate' and the standard of decision 'reasonableness.'

The court also decided releasing footage or images of victims of murders and assaults might be a serious encroachment on their and their families' rights to respect for privacy and family life. (See: <https://www.bailii.org/ew/cases/EWCA/Crim/2013/2367.html>);

In 2017, following a substantial campaign supported by the thriller writer Frederick Forsythe, the *Daily Mail* and politicians saying Sergeant Blackman was the victim of a miscarriage of justice when he was convicted of murder and jailed for life with a minimum of eight years, a further appeal resulted in the substitution of a conviction for manslaughter and a jail sentence enabling near immediate release. (See: <https://www.bailii.org/cgibin/format.cgi?doc=/ew/cases/EWCA/Crim/2017/326.html>);

It can be assumed that The Remote Observation and Recording (Courts and Tribunals) Regulations 2022 enable access by accredited journalists to remote transmission of Court Martial proceedings. Video hearings and remote participation was operated by the military court system during the pandemic of 2020 to 2022.

The regulations do not specifically mention courts martial, but at the same time the statutory instrument 2022 No. 705 relates to criminal procedure in proceedings of any type and in any court to which section 85A of the Courts Act 2003 applies, which are in public. This refers to Section 19 of the Contempt of Court Act 1981 which states a "court" includes any tribunal or body exercising the judicial power of the State, and "legal proceedings" shall be construed accordingly.'

Links

[Judge Advocate General Who is the Judge Advocate General?](#)

[Explanation of the history and current structure of the UK's military court system](#)

[The Annual Report of the Office of the Judge Advocate General 2020-21](#)

[The Court Martial and the Summary Appeal Court guidance – Volume 1](#)

[The Court Martial and the Summary Appeal Court guidance – Volume 2](#)

[Guidance on sentencing in the Court Martial – Version 5](#)

[Practice in the Court Martial: Collected memoranda – Version 6 See pages 36 to 41 for guidance on reporting restrictions and media dealing in court martial cases.](#)

[Memorandum 3: Better Case Management in the Court Martial – BCM\(CM\) \(PDF\) – Note: This memorandum replaces 3 and 13 and the booklet will be updated in due course](#)

[Summary of Court Martial Appeal Court cases reference guide](#)

[Marines A & Ors v Guardian News and Media & Other Media \[2013\] EWCA Crim 2367 \(17 December 2013\)](#)

[Blackman, R. v \[2017\] EWCA Crim 326 \(28 March 2017\)](#)

[Times Newspapers Ltd & Ors v Soldier B \[2008\] EWCA Crim 2559 \(24 October 2008\)](#)

[Protocol for sentencing cases in the Service Justice System by Zoom](#)

[Protocol for e-bundles in the Service Justice System \(SJS\)](#)

[Protocol for digital case files in the Service Justice System \(SJS\)](#)

[JAG Practice Note 1 of 22 – Court Dress etc for Video Hearings](#)

[JAG Practice Note 2 of 22 – Access to Recordings of Court Proceedings](#)

[The Remote Observation and Recording \(Courts and Tribunals\) Regulations 2022](#)

[Section 85A of the Courts Act 2003- Remote observation and recording of proceedings by direction of a court or tribunal](#)

[Section 19 of the Contempt of Court Act 1981- definition of a court and legal proceedings.](#)

UK Media Law Pocketbook 2nd Edition (2022) online Chapter 16 Reporting Courts Martial
at: <https://ukmedialawpocketbook.com/2021/12/06/reporting-courts-martial/>



A composite of the stills that Judge Advocate General Jeffrey Blackett agreed could be released for use by the media during the 2013 trial of Royal Marines for murder in Afghanistan. He ruled against the release of moving video and any still image of the actual death of the wounded Taliban fighter.

He did agree to a release of the sound from the video. His decision that all five soldiers originally charged, including Marine Sergeant A found guilty, should be identified was challenged by the servicemen at the Court Martial Appeal Court. In a significant precedent the three-judge appeal, including the Lord Chief Justice, decided Sergeant Alexander Wayne Blackman should be named and at least two of those who had been acquitted. The risk to the right of life had to be 'real and immediate' and the standard of decision 'reasonableness.'

The court also decided releasing footage or images of victims of murders and assaults might be a serious encroachment on their and their families' rights to respect for privacy and family life. In 2017, following a substantial campaign supported by the thriller writer Frederick Forsythe, the Daily Mail and politicians saying Sergeant Blackman was the victim of a miscarriage of justice when he was convicted of murder and jailed for life with a minimum of eight years, a further appeal resulted in the substitution of a conviction for manslaughter and a jail sentence enabling near immediate release.

See the ruling at [Blackman, R. v \[2017\] EWCA Crim 190 \(15 March 2017\)](#)



Westminster Coroner's Court 2011

[https://commons.wikimedia.org/wiki/File:Coroners_Court_\(5822054350\).jpg](https://commons.wikimedia.org/wiki/File:Coroners_Court_(5822054350).jpg)
 Tony Hisgett from Birmingham, UK, CC BY 2.0, via Wikimedia Commons

Media Law of reporting Inquests in England and Wales and fatal accident inquiries in Scotland

Under the Coroners and Justice Act 2009 a coroner must conduct an investigation into violent or unnatural deaths, deaths where the cause is unknown and deaths which occur in custody or otherwise in state detention. In certain cases, this investigation will include the coroner holding an inquest.

(See: <https://www.legislation.gov.uk/ukpga/2009/25/contents>)

The inquest must be held in public unless the Coroner decides it would not be in the interests of national security to do so, and in the case of 'a pre-inquest review hearing' the coroner considers it would not be in the interests of justice or national security to do so.

(See: Section 11 of Coroners (Inquests) Rules 2013 on Inquest hearings to be held in public - <https://www.legislation.gov.uk/uksi/2013/1616/article/11/made>).

Inquests convened by Coroners are inquisitorial court proceedings and fair, accurate and contemporaneous reporting provides absolute privilege in terms of libel- reverting to qualified privilege when reporting is not to the nearest deadline of publication. (See the full list of 'Chief Coroner's Guidance, Advice and Law Sheets' at:

<https://www.judiciary.uk/courts-and-tribunals/coroners-courts/coroners-legislation-guidance-and-advice/coroners-guidance/> At the time of writing the Chief Coroner for England and Wales is His Honour Judge Thomas Teague KC- <https://www.judiciary.uk/courts-and-tribunals/coroners-courts/office-chief-coroner/> For

absolute privilege in libel see Section 14 of the Defamation Act 1996-
<https://www.legislation.gov.uk/ukpga/1996/31/section/14>).

Inquests are covered by the Contempt of Court Act 1981 so it is possible to commit media contempt- not so much in relation to influencing the professional coroner, but to those hearings where a jury is convened to decide on a conclusion of sudden death occurring in prison or in police custody, or in the execution of a police officer's duty, or if it affects public health or safety (See Contempt of Court Act 1981-
<https://www.legislation.gov.uk/ukpga/1981/49>).

Inquests will be held into the deaths of service people abroad in the coroners' jurisdictions where the body is brought back to Britain.

Between 7 and 11 jurors can sit at Inquests and the largest minority allowed in a majority conclusion is 2. (See Section 9 of the Coroners and Justice Act 2009 'Determinations and findings by jury'-
<https://www.legislation.gov.uk/ukpga/2009/25/section/9>)

Inquest proceedings become active in terms of contempt of court risk as soon as the first 'opening' hearing takes place. This means publications that create a substantial risk of serious prejudice or impedance to the administration of justice by discouraging witnesses to give truthful evidence could attract prosecution by the Attorney General.

IPSO's Editors' Code of Practice and broadcasting regulation stipulate rules of conduct in cases involving grief and shock. For instance, publication in such circumstances must be handled sensitively and, when reporting suicide, care should be taken to avoid excessive detail about the method. See the IPSO guide to editors and journalists which was updated end of January 2023 titled 'Guidance on reporting deaths and inquests'-
<https://www.ipso.co.uk/media/2296/deaths-and-inquests-guidance.pdf>).

The IPSO guide references one inquest reporting complaint from 2019 over a Daily Star article about a man who had died from being 'choked to death on a Yorkshire pudding' which was headlined 'Killed by a Yorkshire pud.' His daughter said the article was inaccurate because Yorkshire puddings were not mentioned during the inquest. The Star provided reporter's notes showing the man had died eating several items of food- one of which was a Yorkshire pudding. Even though the complainant argued the detail in the report made the story sensational and mocked her father about the way he died, the IPSO committee did not consider the headline or article insensitive and inaccurate. (See
<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=09224-19>).

In 2008 the Ministry of Justice published a discussion paper titled 'Sensitive Reporting in Coroners' Courts' which set out how bereaved people can be upset by media coverage. It has informed understanding of how journalistic coverage of inquests impacts on the feelings and mental health of bereaved families.

All inquests must be held in public in accordance with the principle of open justice, and so members of the public and journalists have the right to, and indeed may, attend (although

parts of a very small number of inquests may be held in private for national security reasons. See <https://www.legislation.gov.uk/ukxi/2013/1616/article/11/made>).

Suicide notes and personal letters will not usually be read out at the inquest unless the coroner decides it is important to do so. If they are read out, their contents may be reported.

An inquest is a limited, fact-finding inquiry to establish who has died, and how, when and where the death occurred. An inquest does not establish any matter of liability or blame. Although it receives evidence from witnesses, an inquest does not have prosecution and defence teams, like a criminal trial; the coroner and all those with "proper interests" simply seek the answers to the above questions.

Coroners have powers to issue reporting restrictions that postpone and prohibit the reporting of their proceedings under the 1981 Contempt of Court Act, 1933 Children and Young Persons Act- relating to young people aged 17 and under, and the statutory protection of sexual offence complainants applies at inquests as in any other proceeding or situation.

Coroners have an inherent jurisdiction in common law to order that witnesses give evidence anonymously where there is a real and immediate risk to their safety and this is also backed by Article 2, right to life under the 1998 Human Rights Act.

Coroners now record conclusions as to death rather than the term 'verdict.' These include: I.Accident or misadventure; II.Alcohol/drug related; III.Industrial disease; IV.Lawful/unlawful killing; V.Natural causes; VI.Open; VII.Road traffic collision; VIII.Stillbirth; IX.Suicide.

As an alternative, a brief narrative conclusion may be made. The standard of proof required for the short form conclusions of "unlawful killing" and "suicide" is the criminal standard of proof- 'so the coroner or jury are sure, beyond all reasonable doubt.' For all other short-form conclusions and a narrative statement the standard of proof is the civil standard of proof- 'on the balance of probabilities.'

Coroners have the power to make reports to prevent future deaths (known as PFDs) where an inquest has elicited evidence of circumstances which create a continuing risk to life to other persons. There are published on the UK judiciary website. (See Chief Coroner's Guidance No.5 Reports to Prevent Future Deaths- <https://www.judiciary.uk/guidance-and-resources/revised-chief-coroners-guidance-no-5-reports-to-prevent-future-deaths/> and UK judiciary portal for Reports to Prevent Future Deaths- https://www.judiciary.uk/?s=&pfd_report_type=&post_type=pfd&order=relevance This currently hosts many hundreds of reports since 2013 raising serious public interest concerns of future death risk circumstances and many involving public authorities.)

It is becoming standard practice for police firearms officers involved in the fatal shooting of members of the public, and members of the Special Forces to have anonymity during inquests. Sir Michael Wright, the coroner in the 2008 inquest into the death of Brazilian electrician Charles de Menezes, who was shot by police when mistaken for a terrorist,

warned the media that any attempt to take photographs of police officer witnesses granted anonymity would be contempt of court. (See Press Gazette 'Cameraman arrested for filming outside de Menezes inquest'-

<https://pressgazette.co.uk/publishers/broadcast/cameraman-arrested-for-filming-outside-de-menezes-inquest/> and Evening Standard 'All 44 police officers who applied for anonymity at the inquest into the death of Jean Charles de Menezes will have their identity kept secret using a screen and code-names'- <https://www.standard.co.uk/news/uk/de-menezes-police-granted-anonymity-6928252.html>).

The Chief Coroner publishes a detailed guidance online titled: '[The Coroner and the Media- Guidance no 25](#)'. The latest version updated in 2016 is available on the judiciary website (See: https://www.judiciary.uk/wp-content/uploads/2016/09/GUIDANCE-No_25-CORONERS-AND-THE-MEDIA.pdf)

This document places a considerable emphasis on the principle of Open Justice and states stating 'Coroners will be guided in the first instance by the important principle of open justice. This is best explained in the well-known Court of Appeal case of Guardian News and Media Ltd (2012) which applies to all courts including coroners' courts. It is the principle behind public courts, open hearings, recording hearings, public notification of inquests in advance, and provision to the media where appropriate of access to documents'. (See: <https://www.judiciary.uk/wp-content/uploads/JCO/Documents/Judgments/guardian-city-of-westminster-mags-03042012.pdf> & <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2012/420.html>).

When Southwark Coroner's Court in London inadvertently failed to notify the media of the opening of an inquest into the perpetrators of the terrorist attack on London Bridge and Borough Market in 2017, accredited journalists were permitted to take notes from a recording of the hearing. (See: Section 26 of Coroners (Inquests) Rules 'Recording inquest hearings'- <https://www.legislation.gov.uk/uksi/2013/1616/article/26/made> and 'Chief Coroner's Guidance No. 4 Recordings'- <https://www.judiciary.uk/guidance-and-resources/chief-coroners-guidance-no-4-recordings/>).

The Coroners (Inquests) Rules 2013 (<https://www.legislation.gov.uk/uksi/2013/1616/contents/made>) provide detailed guidance on procedure. There are three types of hearing: a pre-inquest review hearing; an inquest opening; and the full hearing that may also be described as the final hearing. Inquests can be adjourned.

Rule 9 of the 2013 Coroners (Inquests) Rules stipulates that the date, time, and location of an inquest hearing must be publicly available. (See 'Notification of inquest hearing arrangements'- <https://www.legislation.gov.uk/uksi/2013/1616/article/9>

The Chief Coroner has issued a guidance briefing stating that a coroner must in advance of a 'final' inquest hearing, and where possible seven days before it, publish (preferably online) certain details including the date, time and place of the inquest, name and age of

the deceased, and date and place of their death. (See <https://www.judiciary.uk/guidance-and-resources/chief-coroners-guidance-no-25-coroners-and-the-media/>).

Where possible such advance notice should be given for pre-inquest review and 'opening' hearings, and that it is 'good practice' to use email to update the media about forthcoming cases.

In June 2022 the Chief Coroner issued new guidance (Number 42) on remote hearings for Coroners and their inquests. This recognized that Section 85A of the Courts Act 2003 and the Remote Observation and Recording (Courts and Tribunals) Regulations 2022 meant Coroners can allow remote online audio-visual observation by the public, including the media and remote attendance by participants such as interested person, witnesses and legal representatives. (See 'Remote Hearings'- <https://www.judiciary.uk/guidance-and-resources/chief-coroners-guidance-no-42-remote-hearings/>).

Section 41 of the Judicial Review and Courts Act 2022 allows virtual hearings in coroners' courts ("Virtual hearings") in terms of use of audio or video links at inquests. (See: <https://www.legislation.gov.uk/ukpga/2022/35/section/41>).

The Chief Coroner has always held to the view that Coroners and their juries should be present in the physical inquest courtroom and it is expected that any remote attendance by them in the future would only be permitted in exceptional circumstances.

Inquests are rarely combined with public inquiries, or may be replaced by a statutory public inquiry. These situations arrive with controversial deaths raising issues of great social and political significance and where national security dimensions make it difficult for an inquest to fulfil its function. Examples have included the inquiry and inquest into the death of Dr David Kelly by Lord Hutton in 2003 which reported in January 2004, but this was not a statutory inquiry under the Inquiries Act which was passed in 2005. (Hutton Inquiry report <https://irp.fas.org/world/uk/huttonreport.pdf>).

In 2009 a government minister explained that an inquiry under the 2005 Inquiries Act would be held instead of an inquest when there was 'the existence of highly sensitive matters- including, for example, intercept material- which are directly relevant to the purposes of the inquest, and which may not be disclosed either to a coroner or a coroner's jury, and where there is no alternative way of ensuring the matters are protected from public disclosure.'

Examples include the inquiry in 2014 into the circumstances surrounding the death of Alexander Litvinenko, the former Russian spy, who was poisoned with radioactive tea and which reported in 2016, and the inquiry into the death Azelle Rodney shot dead by a Metropolitan Police specialist firearms officer in 2005 which reported in July 2013 ('The Litvinenko Inquiry- Report into the death of Alexander Litvinenko' https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493860/The-Litvinenko-Inquiry-H-C-695-web.pdf and 'The Report of The Azelle Rodney Inquiry'-

<https://assets.publishing.service.gov.uk/media/5a7b8d46e5274a7202e17e6c/0552.pdf>

Inquests into the deaths of people involved in any event subject to a statutory public inquiry will be adjourned until the reporting of the public inquiry. (See House of Commons research paper 'Inquests and public inquiries', 2017-

<https://commonslibrary.parliament.uk/research-briefings/cbp-8012/>) A coroner's investigation of a death may be resumed after a public inquiry has concluded, but only if the coroner thinks there is sufficient reason for doing so. If the investigation is resumed, an inquest might be held as part of that investigation.

Section 40 of Judicial Review and Courts Act 2022 gives Coroners the 'power to conduct non-contentious inquests in writing.' This legislative move was opposed by professional journalism bodies because it was seen as an extension of 'office justice' begun with criminal 'Single Justice Procedures.' The press and public are not present, information exchange and the detail of submissions and evidence is not readily available for reporting and public scrutiny. The section does not appear to provide any legislative right for journalists to oppose a Coroner's decision to hold an inquest in writing only or access to evidence and documentation considered. Direct written application to the Coroner would be advisable. The only method of legally challenging these decisions would appear to be by way of judicial review to the High Court, though such a remedy has major cost-bearing implications.

(See <https://www.legislation.gov.uk/ukpga/2022/35/section/40>).

The Coroner for Mid Kent and Medway Catherine Wood issued an 'unprecedented' reporting ban in March 2023 on identifying the name of a surgeon who is a key witness in an inquest into deaths of patients who contracted herpes during operations. Media lawyers and journalism bodies find it difficult to recall a similar instance of such a media prohibition order being made at an inquest hearing. The surgeon concerned may have infected the two new mothers with herpes. The coroner said the decision to ban identification is based on the surgeon's 'apprehension' about being named when he takes the stand as a witness. She said it is 'likely impede his evidence in court' and affect his health. See Irish Times & PA Media "Unprecedented": Coroner prohibits naming of surgeon in herpes deaths inquest.'

See:

<https://www.irishnews.com/news/uknews/2023/03/07/news/ unprecedented coroner prohibits naming of surgeon in herpes deaths inquest-3114464/>

There is a real risk this decision could open the floodgates to more restrictions protecting witnesses from identification in inquests. See:

<https://www.hilldickinson.com/insights/articles/anonymity-inquests-coroner-prohibits-naming-witness-herpes-death-inquests>

The decision was opposed by the bereaved families of those who died and media organisations. See:

<https://www.dailymail.co.uk/news/article-11808419/Agony-extended-family-mother-died-herpes-caught-surgeon-did-caesarean.htm>

The Mid Kent and Medway Coroner is investigating the cases of Kimberly Sampson, 29, and Samantha Mulcahy, 32, who both

died in 2018 after the same obstetrician conducted their caesareans. They were treated six weeks apart in hospitals run by East Kent Hospitals University NHS Trust (EKHUT).

In an age when detectorists and exploring for historical artefacts using metal detectors are so popular, it should be mentioned that Coroners have a longstanding and traditional role in determining the ownership of valuable objects found buried in land in England and Wales. It is known as Treasure Trove. (See 'Treasure- A Practical Guide for Coroners'- <https://www.judiciary.uk/wp-content/uploads/2016/07/treasure-a-practical-guide-for-coroners.pdf> and Chapter 4 of the Coroners and Justice Act 2009- <https://www.legislation.gov.uk/ukpga/2009/25/part/1/chapter/4>);.

People who find what would be recognised as treasure need to report it first to a local Finds Liaison Officer in England and in Wales the local Coroner and Portable Antiquities Scheme Cymru Coordinator. If the item may be treasure and a museum wishes to acquire it, the Coroner should open and list an Inquest. The purpose of the inquest is to establish whether the find is treasure, who found it, and when and where it was found.

In February 2023 the government by statutory instrument changed the definition of 'treasure' in the 1996 Treasure Act from items found over 300 years old and made of gold or silver, or found with artefacts made of precious metals to include exceptional finds more than 200 years old, regardless of the type of metal of which they are made (See The Treasure Act 1996 Code of Practice (2nd Revision)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/77532/TreasureAct1996CodeofPractice2ndRevision.pdf & The Treasure Act 1996 <https://www.legislation.gov.uk/ukpga/1996/24/contents> & 'Government changes the legal definition of treasure so that more new discoveries can go on public display' <https://www.gov.uk/government/news/thousands-more-treasures-to-be-saved-for-the-nation-as-rules-about-discoveries-are-changed>).

Coroners are advised to be aware of the possible risk of damage to the landowner's property and other items of archaeological significance that may occur as a result of revealing the exact location of the find in open Court. Consequently, the find locations are usually identified by the name of a Parish.

Sudden deaths giving rise to public interest concerns in Scotland are investigated by 'Fatal Accident Inquiries'- there is no system of Coroner's courts and inquests in the Scottish jurisdiction. The fatal accident inquiry process is legislatively determined by the 'Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016.'

(See: <https://www.legislation.gov.uk/asp/2016/2/contents>).

The Scottish system does have similarities with the operation of Coroner's inquests in England, Wales and Northern Ireland. The inquiries are presided over by Sheriffs (judges in the Scottish judicial system) and 'They are not adversarial hearings and are not designed to be like civil litigation. Nor have they any connection to criminal proceedings.' They divide

between mandatory and discretionary inquiries. The former have to be held if a person died in Scotland as a result of an accident in Scotland, in the course of the person's employment or occupation, if a person has died in Scotland and was in legal custody, or was a child required to be kept or detained in secure accommodation, and under section 104 of the Scotland Act 1998, namely deaths of service personnel in the course of military service in Scotland.

Unlike in the Coroner's inquest system, Scottish FAIs do not sit with juries. However, a Sheriff does have the statutory discretion under Section 24 to appoint an assessor to provide assistance based on the assessor's specialist knowledge or expertise.

(See: <https://www.legislation.gov.uk/asp/2016/2/section/24>)

The Lord Advocate in Scotland (known as Her Majesty's Advocate and Scotland's principal legal adviser and chief public prosecutor) can exercise discretion to prevent a mandatory Fatal Accident Inquiry taking place only if satisfied that the circumstances of the death have been sufficiently established in the course of certain other legal proceedings.

Section 21 of the Act stipulates that Fatal Accident Inquiries should normally be held in public. However, subsection (2) allows the sheriff to order that an inquiry, or part of it, is to be held in private. The sheriff can make this order if the procurator fiscal or one of the participants applies for it, or may do so on his or her own initiative. The circumstances in which an FAI may be held in private have been left to the discretion of the sheriff, as the reasons may range widely from issues of national security to the need to protect children or other vulnerable persons.

(See: <https://www.legislation.gov.uk/asp/2016/2/section/21>).

Section 22 allows the sheriff to prohibit publication of material that could identify a child involved in a fatal accident inquiry. (See: <https://www.legislation.gov.uk/asp/2016/2/section/22>).

One aspect of the Scottish system which is to be admired from an Open Justice point of view and facilitating journalistic coverage is that **all determinations** made in terms of the inquiries into Fatal Accident and Sudden Deaths Act 2016 from 15 June 2017, are published online by the Scottish Judiciary. (See: <https://www.scotcourts.gov.uk/search-judgments/fatal-accident-inquiries>).

Links

House of Commons Research paper 22nd January 2009 'Coroners and Justice Bill: coroners and death certification.'

<https://researchbriefings.files.parliament.uk/documents/RP09-07/RP09-07.pdf>

Samaritans' media guidelines for reporting suicide and online resources reinforce industry codes of practice, supporting the highest standards of coverage of suicide.

<https://www.samaritans.org/about-samaritans/media-guidelines/>

A Guide to Coroner Services for Bereaved People, Ministry of Justice 2020

[Click to access guide-to-coroner-services-bereaved-people-jan-2020.pdf](#)

A 52 page guide setting out in great detail all of the procedure and likely issues to be faced by a bereaved relative involved or attending a Coroner's inquest.

Inquest- 'The only charity providing expertise on state related deaths and their investigation to bereaved people, lawyers, advice and support agencies, the media and parliamentarians.'

<https://www.inquest.org.uk/>

The Coroners' Society of England and Wales which seeks:

1. the promotion of the usefulness of the office of coroner to the public;
2. the ascertainment in questions of difficulty of the duties which devolve on coroners;
3. the advancement of such amendments to the law as seem desirable;
4. the establishment and maintenance of contact with HM Government and the Chief Coroner; and
5. the protection of the rights and interest of coroners

<https://www.coronersociety.org.uk/>

The history of the role of Coroner stretches as far back as 1194

<https://www.coronersociety.org.uk/the-coroners-society/history/>

Under the Coroners and Justice Act 2009

<https://www.legislation.gov.uk/ukpga/2009/25/contents>

Coroners (Inquests) Rules 2013

<https://www.legislation.gov.uk/uksi/2013/1616/contents/made>

'Chief Coroner's Guidance, Advice and Law Sheets'

<https://www.judiciary.uk/courts-and-tribunals/coroners-courts/coroners-legislation-guidance-and-advice/coroners-guidance/>

Chief Coroner for England and Wales is His Honour Judge Thomas Teague KC

<https://www.judiciary.uk/courts-and-tribunals/coroners-courts/office-chief-coroner/>

Absolute privilege in libel see Section 14 of the Defamation Act 1996

<https://www.legislation.gov.uk/ukpga/1996/31/section/14>

Contempt of Court Act 1981

<https://www.legislation.gov.uk/ukpga/1981/49>

IPSO guide to editors and journalists 'Guidance on reporting deaths and inquests

https://www.ipso.co.uk/media/1490/deaths-journo_v3.pdf

Chief Coroner's Guidance No.5 Reports to Prevent Future Deaths

<https://www.judiciary.uk/guidance-and-resources/revised-chief-coroners-guidance-no-5-reports-to-prevent-future-deaths/>

UK judiciary portal for Reports to Prevent Future Deaths

https://www.judiciary.uk/?s=&pfd_report_type=&post_type=pfd&order=relevance

The Coroner and the Media- Guidance no 25

https://www.judiciary.uk/wp-content/uploads/2016/09/GUIDANCE-No_25-CORONERS-AND-THE-MEDIA.pdf

The Coroner and Remote Hearings Guidance no 42

<https://www.judiciary.uk/guidance-and-resources/chief-coroners-guidance-no-42-remote-hearings/>

Hutton Inquiry report into the death of Dr David Kelly, January 2004

<https://irp.fas.org/world/uk/huttonreport.pdf>

House of Commons research paper 'Inquests and public inquiries', 2017

<https://commonslibrary.parliament.uk/research-briefings/cbp-8012>

Public Inquiry taking over function of an inquest: The Litvinenko Inquiry- Report into the death of Alexander Litvinenko

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/493860/The-Litvinenko-Inquiry-H-C-695-web.pdf

Public Inquiry taking over function of an inquest: The Report of The Azelle Rodney Inquiry

<https://assets.publishing.service.gov.uk/media/5a7b8d46e5274a7202e17e6c/0552.pdf>

Treasure- A Practical Guide for Coroners

<https://www.judiciary.uk/wp-content/uploads/2016/07/treasure-a-practical-guide-for-coroners.pdf>

Chapter 4 of the Coroners and Justice Act 2009

<https://www.legislation.gov.uk/ukpga/2009/25/part/1/chapter/4>

Plymouth Live- Plymouth treasure trove inquests as it happens. Join us as we look at lost artifacts found around the region:

<https://www.plymouthherald.co.uk/news/plymouth-news/live-plymouth-treasure-trove-inquests-7954962>

Medical Defence Union webinar for medical doctors 'Understanding Coroners' investigations.'

IPSO ruling on complaint over newspaper's reporting of an inquest hearing. 09224-19

Laws v Daily Star Decision: No breach – after investigation.

<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=09224-19>

Section 40 of the Judicial Review and Courts Act 2022- Power to conduct non-contentious inquests in writing

<https://www.legislation.gov.uk/ukpga/2022/35/section/40>

Section 41 of the Judicial Review and Courts Act 2022- Use of audio or video links at inquests

<https://www.legislation.gov.uk/ukpga/2022/35/section/41>

Prohibition anonymity order in March 2023 for surgeon at Kent Inquest investigating deaths of two mothers after caesarian operations. Irish Times & PA Media

"Unprecedented": Coroner prohibits naming of surgeon in herpes deaths inquest'

https://www.irishnews.com/news/uknews/2023/03/07/news/unprecedented_coroner_prohibits_naming_of_surgeon_in_herpes_deaths_inquest-3114464/

There is a real risk this decision could open the floodgates to more restrictions protecting witnesses from identification in inquests.

<https://www.hilldickinson.com/insights/articles/anonymity-inquests-coroner-prohibits-naming-witness-herpes-death-inquests>

The decision was opposed by the bereaved families of those who died and media organisations.

<https://www.dailymail.co.uk/news/article-11808419/Agony-extended-family-mother-died-herpes-caught-surgeon-did-caesarean.htm>

The Treasure Act 1996 Code of Practice (2nd Revision)

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/77532/TreasureAct1996CodeofPractice2ndRevision.pdf

The Treasure Act 1996

<https://www.legislation.gov.uk/ukpga/1996/24/contents>

'Government changes the legal definition of treasure so that more new discoveries can go on public display' 18 February 2023

<https://www.gov.uk/government/news/thousands-more-treasures-to-be-saved-for-the-nation-as-rules-about-discoveries-are-changed>

Inquiries into Fatal Accidents and Sudden Deaths etc. (Scotland) Act 2016

<https://www.legislation.gov.uk/asp/2016/2/contents> and explanatory notes-

<https://www.legislation.gov.uk/asp/2016/2/notes/contents>

Section 21 Fatal Accident Inquiries to be conducted in public

<https://www.legislation.gov.uk/asp/2016/2/section/21>

Fatal Accident Inquiries- Section 22- Publishing restrictions in relation to children

<https://www.legislation.gov.uk/asp/2016/2/section/22>

Section 24- Power to appoint an assessor.

<https://www.legislation.gov.uk/asp/2016/2/section/24>

All determinations made in terms of the inquiries into Fatal Accident and Sudden Deaths Act 2016 from 15 June 2017, are published (under the previous legislation only selected determinations were published).

<https://www.scotcourts.gov.uk/search-judgments/fatal-accident-inquiries>

UK Media Law Pocketbook 2nd edition (2022) online Chapter Fourteen- Covering Inquests (and Fatal Accident Inquiries in Scotland)

<https://ukmedialawpocketbook.com/2021/12/08/covering-inquests/>

McNae's Essential Law for Journalists 26th Edition (2022) covers the media law of reporting 'Coroner's courts and inquests' at Chapter 17 between pages 283-295

McNae's Essential Law for Journalists 25th Edition (2020) 'Coroner's courts and inquests' at Chapter 17 between pages 243-254.



City Hall, Newham, Siemens Crystal Building, London. Image by Matt Buck, [CC BY-SA 2.0](https://creativecommons.org/licenses/by-sa/2.0/)

Media Law of Reporting Local Government and access to meetings (including professional disciplinary/misconduct hearings)

Local and regional government bodies in the UK are responsible for spending billions of pounds of central government funds and council tax revenue and journalists have statutory, case law and freedom of expression rights in law to attend meetings and committees discussing and making their decisions.

They are responsible for vital and critical public services in terms of social services, education, housing, planning, transport and environment.

For example, in England alone there are 333 local authorities made up of 5 different types: county councils; district councils; unitary authorities; metropolitan districts; London boroughs and there are thousands of Town and Parish councils.

Statutory legislation in the UK means any person who attends principal council proceedings can use any communication method, including the internet, to publish, post or otherwise share the results of their reporting activities. Publication and dissemination may take place at the time of the meeting or afterwards. This includes tweeting, live blogging, filming, photographing or making an audio recording. And the law allows for 'any other means for enabling persons not present to see or hear proceedings at the meeting as it takes place or later.'

See <https://www.legislation.gov.uk/ukpga/1972/70/section/100A>.

The Act also says 'A person attending a meeting of a principal council in England for the purpose of reporting on the meeting must, so far as practicable, be afforded reasonable facilities for doing so.'

The devolved nations of Wales, Northern Ireland and Scotland have their respective structures of local authorities. Legislation passed in Wales in 2021 obliges principal councils, fire and rescue authorities and the national park authority to broadcast their public meetings online (<https://www.legislation.gov.uk/asc/2021/1/section/46>).

In Wales there are 22 unitary (principal council) authorities and more than 730 community and town councils. In Scotland there are 32 unitary authorities in Scotland, and around 1200 community councils. In Northern Ireland there are 11 elected district councils. There has therefore never been an equivalent of the directly- elected English parish council in Northern Ireland.

The combined budgets of all 32 London boroughs, The City of London, the Greater London Authority and Mayor of London's office exceed that of some small sovereign states and this vast range of governmental activity and representative democracy clearly needs reporting and journalistic coverage.

The Greater London Authority and Mayor of London's Office are constituted by the Greater London Authority Act 1999 (<https://www.legislation.gov.uk/ukpga/1999/29/contents>) and 2007 (<https://www.legislation.gov.uk/ukpga/2007/24/contents>) Sections 45 to 48 provide for 'public accountability' (<https://www.legislation.gov.uk/ukpga/1999/29/part/II/crossheading/public-accountability>) and the law relating to 'openness' of the authority's meetings and procedures under Section 58 avers to Part VA of the Local Government Act 1972 as if it were a 'principal council' (<https://www.legislation.gov.uk/ukpga/1999/29/section/58>).

The law on access for the media and members of the public is set out in acts of parliament, statutory instruments and regulations and broadly means exclusion of attendance or non-disclosure of information can only be justified on the grounds of privacy, confidentiality and commercial confidentiality. (See: Part VA of the Local Government Act 1972- <https://www.legislation.gov.uk/ukpga/1972/70/part/VA>, for post 2011 cabinet style councils in England see: The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012- <https://www.legislation.gov.uk/uksi/2012/2089/contents/made>, for cabinet style councils in Wales see: Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001- <https://www.legislation.gov.uk/wsi/2001/2290/contents>, for Parish Councils and other forms of local government see Public Bodies (Admission to Meetings) Act 1960- (<https://www.legislation.gov.uk/ukpga/Eliz2/8-9/67/contents>).

Journalists have legal rights to access financial and accounting records and are entitled to apply public interest scrutiny to investments a local authority body might make. (See section 26 of the Local Audit and Accountability Act 2014- <https://www.legislation.gov.uk/ukpga/2014/2/section/26>, and Local Audit (Public Access to Documents) Act 2017- <https://www.legislation.gov.uk/ukpga/2017/25/contents/enacted>).

The UK government's Department for Communities and Local Government has published a guide on 'Open and Accountable local government' which can be referenced in the event of any disputes. (See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/343182/140812_Openness_Guide.pdf) The Department also published a Local government transparency code in 2015 (See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf).

The Local Government Association publishes guides and advice to members on best practice in media and public relations. (See Code of Recommended Practice on Local Authority Publicity in 2011- https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/5670/1878324.pdf).

Case law challenges of closed meetings and denials of information by way of judicial review are rare though there have been notable test case histories where litigation and/or Freedom of Information Act requests and tribunal appeals have overcome legally untenable exclusion and denial of information decisions.

The collapse in the local and regional journalism industry has led to a reduction in professional reporting of public authorities though the Local Democracy Scheme funded by the BBC has maintained a specialist corps of journalists covering local government in many parts the UK. The Local Government Association has been encouraging its members to connect with hyper-local and community journalism. (See the LGA's 'Modern media relations – a content-driven approach to communications' at <https://www.local.gov.uk/our-support/guidance-and-resources/comms-hub-communications-support/futurecomms-building-local-15>) Journalists who report on London's local politics have launched their own organisation inspired by the Westminster lobby. It includes accredited reporters covering the Mayor of London and Greater London Authority which in 2022 managed an annual budget of around £19 billion. (See: <https://www.holdthefrontpage.co.uk/2022/news/local-journalists-launch-new-group-inspired-by-westminster-lobby/> & <https://www.holdthefrontpage.co.uk/2022/news/lobby-inspired-local-journalists-hold-first-huddle-with-politicians-they-cover/>).

Journalists are entitled to argue that local authorities should not use what is known as 'election purdah' periods to close important meetings from media and public access. The 'election purdah' concept should only apply to avoiding public body public relations services being used to campaign for councillors or Mayors standing in elections and thereby giving them an unfair advantage. But some principal councils have been criticised for excluding public and journalistic access to actual decision making meetings during election campaigns. Rather than use the word 'purdah', they have begun replacing it with the terms 'pre-election period' and 'heightened sensitivity' and it does look like they may be determined to make previously public meetings private if they believe this is the only way to comply with their understanding of pre-election restrictions governed by Section 2 of the Local Government Act 1986.

(See: Local Government Association 'Short guide to publicity during the pre-election period' - <https://www.local.gov.uk/publications/short-guide-publicity-during-pre-election-period>).

Journalist and news publishers sometimes have to assert their public interest and freedom of expression rights to attend police officer misconduct hearings and identify those officers involved.

There is a varied framework of journalistic access and open justice rights to hearings and decisions by professional disciplinary bodies with some being more transparent and open than others. This includes complaints and disciplining of solicitors, barristers, teachers, medics and judges.

Many aspects of the governance of the National Health Service, fire, rescue, and police bodies are run by trusts, police commissioners and oversight bodies that, again, provide a varied framework of journalistic and public access to management and decision-making meetings. Some of these are covered by the Public Bodies (Admission to Meetings) Act 1960 (England, Wales and Scotland). (See: <https://www.legislation.gov.uk/ukpga/Eliz2/8-9/67/contents> and 'Bodies to which this Act applies' <https://www.legislation.gov.uk/ukpga/Eliz2/8-9/67/schedule>).

Journalists, and members of the public have rights to visit council offices if they wish to inspect agendas, minutes and relevant documents relating to decisions during what is described as 'reasonable hours.' Under the Local Government Act 1972 there are rights of access to council agendas and connected reports, inspection and publication of minutes and other documents after meetings, background papers, and these are set out under Sections 100B to 100G of Part VA 'Access to Meetings and Documents of Certain Authorities, Committees and Sub-Committees'. (See: <https://www.legislation.gov.uk/ukpga/1972/70/part/VA>) For cabinet council bodies See Section 7 of the 2012 regulations for 'Access to agenda and connected reports for public meetings' at <https://www.legislation.gov.uk/uksi/2012/2089/regulation/7/made> and Section 9 'Publicity in connection with key decisions' at <https://www.legislation.gov.uk/uksi/2012/2089/regulation/9/made> and Section 21 'Inspection and supply of documents' - (See <https://www.legislation.gov.uk/uksi/2012/2089/regulation/21/made>).

There are access rights to financial documents not usually published during one specific time period each year. For example, the Local Government Transparency Code 2015 sets out categories of expenditure that must be published quarterly and this includes spending exceeding £500, Government Procurement Card transactions, and Procurement information. (See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf) The Code recommends that local authorities go further than the minimum publication requirements and publish information on a monthly instead of quarterly basis, or ideally, as soon as it becomes available and therefore known to the authority (commonly known as 'real-time' publication).

Local authorities are obliged to provide notice periods which include five clear days for public meetings and 28 clear days for private meetings.

Although journalists and members of the public are entitled to electronically record public council proceedings by filming, photographing, or audio recording, councils also have powers to prevent disruption of meetings and this would include any attempt to provide an oral commentary while the meeting is in progress.

Most local authorities in the UK are run by cabinet style executive committee meetings rather than full meetings of all elected councillors in the style of Westminster's House of Commons or Lords.

This was brought about by the Local Government Act 2000 which changed the style, structure and nature of governance. (See: <https://www.legislation.gov.uk/ukpga/2000/22/contents>). Under sections 97 and 98 Parliament synchronised rights of access to meetings and information to the situation with local government legislated for in the Local Government Act 1972. (See: <https://www.legislation.gov.uk/ukpga/2000/22/part/V/crossheading/access-to-information>).

The 1996 Defamation Act provides the qualified privilege protection in libel (subject to explanation or contradiction) for accurate and fair reports of local authority meetings and documents and this should apply to public bodies such as police forces. If there is any doubt double-check with the Act's Schedule 1, Parts 1 and 2. The critical phrase in Part 2 is 'an authority anywhere in the world performing 'governmental functions' and this includes 'police functions.' (See: <https://www.legislation.gov.uk/ukpga/1996/31/schedule/1>)

It is worth bearing in mind that public authorities and police forces employ highly skilled cadres of well remunerated and securely employed press officers, usually 'poachers turned gamekeepers' in terms of having been experienced journalists and they also have the financial muscle to engage the best legal advice and representation available in media law disputes.

Central government in recent years has sought to discourage and prevent local authorities financing their own local newspaper publications- critically described as 'Pravdas' by independent publishers and journalism bodies such as the Chartered Institute of Journalists and News Media Association. This is because of their potential for being propaganda arms of local government and competing in the advertising and circulation market of local and regional newspaper media. In 2011 the UK government published a 'Code of Recommended Practice on Local Authority Publicity' which said 'Local authorities should not publish or incur expenditure in commissioning in hard copy or on any website, newsletters, newssheets or similar communications which seek to emulate commercial newspapers in style or content.'

The Code said publication of newsletters, newssheets or similar communications, should not be issued 'more frequently than quarterly.' (See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/5670/1878324.pdf). However, controversy about the practice remains. The Welsh government issued a 'Code of recommended practice for local authority publicity' in March 2022 and made no reference to any issues concerning councils that published their own newspapers. (See:

<https://www.gov.wales/sites/default/files/publications/2022-03/code-recommended-practice-for-local-authority-publicity.pdf>).

Another subject of controversy is when political parties such as the Liberal Democrats publish and distribute newspapers with titles and layout designs which look like established independent papers. Local newspaper editors and groups criticize this as 'passing off' to deceive voters, though during the 1960s and 70s National Young Liberals used community politics and newspapers as methods of social and political activism.

Journalists and members of the public have statutory rights of access to planning applications and registers, registers of interests of councillors, disclosure of pecuniary interests, and personal expenses. These can be the source of impactful public interest sources. See: Sections 69 and 188 of The Town and Country Planning Act 1990 for rights of access to planning information

(<https://www.legislation.gov.uk/ukpga/1990/8/section/69> & <https://www.legislation.gov.uk/ukpga/1990/8/section/188>). See Sections 27 to 29 of the Localism Act 2011 on rights of access to the register of local authority members' interests (<https://www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7/enacted>). See The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464) on disclosure of councillors' pecuniary interests (<https://www.legislation.gov.uk/uksi/2012/1464/made>) and Regulation 15 and 16 of the Local Authorities (Members' Allowances) (England) Regulations 2003 (SI 2003/1021) for access and publicity in respect of the register of council members's expenses (<https://www.legislation.gov.uk/uksi/2003/1021/regulation/15/made> & <https://www.legislation.gov.uk/uksi/2003/1021/regulation/16/made>).

Journalists in the UK have uneven rights and access to the disciplinary bodies of professions. Some permit and encourage attendance by the media of hearings; other do not, but do publish adjudications. Professional misconduct by police officers is very much a public interest in recent years; particularly when the Metropolitan Police Commissioner Sir Mark Rowley has publicly complained of his force's difficulties in dismissing rogue officers who should no longer be serving or even have been recruited. Police forces in the UK have a varied approach to journalistic access to disciplinary proceedings.

The Metropolitan Police employs 31,000 officers and operates a policy of holding misconduct hearings in public where at all possible. This is facilitated on an application basis with a capacity at each session of eight places for members of the public and four places for members of the press. (See: <https://www.met.police.uk/advice/advice-and-information/mis/misconduct-hearings/about-misconduct-hearings/>)

The chairs of the Met Police misconduct hearings can determine the proceedings before them and occasionally, a misconduct hearing is not held in public or only a part is heard in public because of reasons of national security; potential interference with

the prevention or detection of crime and the welfare of parties involved. The Chair also exercises the power to preserve the anonymity of vulnerable witnesses. Recording and photography is not permitted though accredited members of the press will be allowed to use text-based communications to report the proceedings. The Met Police gives notice of the hearings at <https://www.met.police.uk/foi-ai/af/accessing-information/published-items/?q=&dt=Misconduct+hearing&fdte=> , publishes hearing outcomes at <https://www.met.police.uk/foi-ai/af/accessing-information/published-items/?q=&dt=Misconduct+outcome> and enables application to attend hearings via online application at <https://www.met.police.uk/advice/advice-and-information/mis/sf/apply-to-attend-a-hearing/>.

The following coverage by Hold The Front Page demonstrates some of the frustrations professional journalists have challenging secrecy and restrictions at police misconduct hearings across the UK: ‘Journalists thwarted after bid to name sex case sergeant’ (see: <https://www.holdthefrontpage.co.uk/2023/news/sex-case-sergeant-given-anonymity-as-journalists-lose-secrecy-fight/>); ‘Daily editor demands greater transparency from ‘toxic’ police force’ (see: <https://www.holdthefrontpage.co.uk/2022/news/daily-editor-demands-greater-transparency-from-toxic-police-force/>); ‘Reporter barred from covering police hearing after secret meeting’ (see: <https://www.holdthefrontpage.co.uk/2021/news/reporter-barred-from-covering-police-hearing-after-secret-meeting/>) ‘Daily slams ‘murky’ police practices as sacked cop given anonymity’ (see: <https://www.holdthefrontpage.co.uk/2022/news/daily-slams-murky-police-practices-as-sacked-dodgy-copper-given-anonymity/>). In May 2023 journalists continued to be concerned about the inconsistency in open justice at police misconduct hearings. In Derby journalists were refused the right to identify details about a police officer, including gender, who was disciplined for making discriminatory and offensive remarks to a colleague. See: <https://www.holdthefrontpage.co.uk/2023/news/journalists-barred-from-revealing-gender-of-disgraced-police-officer/> In March 2023 Brighton & Hove News editor Jo Wadsworth complained that Sussex police refused to give locations of police misconduct incidents. See: <https://www.holdthefrontpage.co.uk/2023/news/editor-slams-police-over-refusal-to-give-location-of-incidents/>

The Hold The Front Page law column reported a legal victory at the High Court to identify a police officer subject to misconduct proceedings in March 2022- ‘Newsquest’s court battle to name police officer dismissed for gross misconduct’ (see: <https://www.holdthefrontpage.co.uk/2022/news/law-column-newsquests-court-battle-to-name-police-officer-dismissed-for-gross-misconduct/>) It was noted Mrs Justice Ellenbogen observed that the dismissed police officer, Terry Cooke, ‘does not have a reasonable expectation of privacy “in relation to acts of serious misconduct committed in the context of his professional activities”, and that his identity was an integral part of the story’.

The government regulates teacher misconduct hearings in England and Wales, and like with police misconduct hearings, attendance and coverage by the public and media is possible on application. (See: <https://www.gov.uk/government/collections/teacher-misconduct>). Online notice of hearings is provided (See: <https://www.gov.uk/guidance/teacher-misconduct-attend-a-professional-conduct-panel-hearing-or-meeting>) and hearing outcomes are published (https://www.gov.uk/search/all?parent=&keywords=panel+outcome+misconduct&level_one_taxon=&manual=&organisations%5B%5D=teaching-regulation-agency&organisations%5B%5D=national-college-for-teaching-and-leadership&public_timestamp%5Bfrom%5D=&public_timestamp%5Bto%5D=&order=updated-newest) As of 12th February 2023, there were 1,258 decisions published online. Teacher serious misconduct hearings can be held either virtually (online) or in person and remote hearings are also accessible by application on the part of the public and media. (See: <https://www.gov.uk/government/publications/teacher-misconduct-information-for-observers/teacher-misconduct-hearings-information-for-observers>) The use of mobile telephones during the hearing is prohibited. The physical in person hearings are usually held at the Teaching Regulation Agency's headquarters in Coventry.

The judiciary in England and Wales is regulated for discipline and misconduct by the Judicial Conduct Investigations Office. (See: <https://www.complaints.judicialconduct.gov.uk/>) Hearings are not open to media reporting and attendance by the public, but outcomes are published online. (See: <https://www.complaints.judicialconduct.gov.uk/disciplinarystatements/>) Since its formation in 2013, the JCIO has dealt with over 10,000 complaints. Over the same period, chamber presidents and advisory committees have dealt with thousands of complaints about tribunals office-holders and magistrates. At around 50 cases a year, misconduct by judicial office-holders is rare.

A consultation into judicial discipline conducted between 2021 and 2022 concluded: 'while it would be wrong to describe the system as closed, we recognise that more could be done to aid public understanding of disciplinary decisions.' (See: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033392/judicial-discipline-consultation.pdf) It might be argued that the system operates as closely to secret justice as it is possible to achieve. The outcome statements seem somewhat minimalist in the extreme- just a name and one line reference to the alleged misconduct, no detail of the charge, evidence, defence and even the location and time of the court hearing. On the other hand there may be signs of more information being disclosed as exemplified in JCIO statements after investigations into complaints against [Lord Justice Clive Lewis](#) and [Mr Justice Derek Sweeting](#), an Appeal Court and High Court judge respectively in 2023.

The General Medical Council regulates the medical doctors' profession with hearings and decisions operated by way of Medical practitioners tribunals and Interim order tribunals. The system is explained with extensive online resources. (See: <https://www.gmc-uk.org/sitecore/content/mpts-website/home/hearings-and-decisions>).

They generally take place in public with all in-person hearings heard in Manchester and there is the option to attend virtual hearings which can be observed remotely via MS Teams. Attendance by the public is by application 48 hours in advance and prior agreement to terms of access. Members of the press need to contact the GMC's press office pressoffice@mpts-uk.org. Notice of hearings and decisions are issued online. (See; <https://www.mpts-uk.org/hearings-and-decisions/medical-practitioners-tribunals>).

The Nursing and Midwifery Council regulates professional discipline and misconduct matters with hearings and sanctions publicised online with notices and decisions. (See: <https://www.nmc.org.uk/concerns-nurses-midwives/hearings/hearings-sanctions/>) The NMC says its 'hearings are usually held in public. However, a panel can hear all or part of a hearing in private when it is satisfied that it is reasonable and proportionate to do so, and it is justified in the interests of any party (including any third party) or is in the public interest.' Attendance by media and public is facilitated by prior application and when remote the connection is audio only. (See <https://www.nmc.org.uk/concerns-nurses-midwives/hearings/attending-a-hearing/>).

Lawyers in England and Wales are regulated by their respective professional bodies- The Bar Council for barristers operates The Bar Tribunals and Adjudication Service ('BTAS'). (See: <https://www.tbta.org.uk/>) The BTAS publicises advanced notice of hearings and decisions online. (See: <https://www.tbta.org.uk/hearings/how-the-hearings-process-works/>) Disciplinary Tribunal hearings are held in public unless there has been a specific order that a particular hearing be held in private. Members of the public, press and the profession are welcome to attend hearings, although it should be noted that seating is usually limited to 6 observers per hearing. (<https://www.tbta.org.uk/hearings/how-the-hearings-process-works/guidance-on-attending-a-hearing/>).

Professional misconduct by solicitors are adjudicated by 'Prosecution before the Solicitors Disciplinary Tribunal.' (See: <https://www.sra.org.uk/solicitors/enforcement/solicitors-disciplinary-tribunal/>) The Tribunal gives advanced notice of its hearings and its judgements online and permits limited attendance by members of the public and journalists. (See: <https://www.solicitorstribunal.org.uk/>) In July 2022 the Ministry of Justice increased the Solicitors Regulation Authority's fining powers from £2,000 to £25,000 for solicitors and traditional law firms. Live tweeting is not permitted during the tribunal hearings. Hearings are usually in public both in person and remotely. But, on application of either party, the tribunal can consent to a private hearing in exceptional cases.

Professional misconduct by dentists in the UK is regulated by the General Dental Council which seeks to publicise its hearing and outcomes online. (See: <https://olr.gdc-uk.org/hearings>) This website also provides a database record of past hearings and outcomes and pdf file setting out the detail of the cases. As of March 2023 the GDC said: 'will continue to hold hearings remotely, especially interim order

and review hearings, where there are clear benefits in expediting proceedings. We are also holding hearings at our London offices, and will continue to do this when it is clear that the evidence would be best heard in person, to ensure fairness to all parties involved.' Requests to attend hearings remotely can be made at <https://contactus.gdc-uk.org/Hearing/Attend/AttendRemoteHearing> Its disclosure and publication policy 2018 is set out at <https://www.gdc-uk.org/docs/default-source/information-we-hold-about-you/disclosure-and-publication-policy.pdf> The policy states at paragraph 106: 'All media queries must be directed to the GDC press office (pressoffice@gdc-uk.org). All disclosures to the media will follow this policy.'

Professional misconduct by opticians in the UK is regulated by the General Optical Council. (See: <https://optical.org/en/raising-concerns/raising-concerns-about-an-optician/>) The GOC explains 'The majority of our hearings are held in public and in certain instances, part or all of a case may be heard in private. All hearings will be carried out by our independent Hearings Panel.' Hearings usually take place at the offices of the General Optical Council, 10 Old Bailey, London, EC4M 7NG very close to the Central Criminal Court. (See: <https://optical.org/en/raising-concerns/hearings/how-to-attend-a-hearing/>) The GOC explains how the hearing panels are constituted at <https://optical.org/en/raising-concerns/hearings/hearings-panel/>, publicises forthcoming hearings at <https://optical.org/en/raising-concerns/hearings/future-hearings/> and decisions/outcomes of past hearings at <https://optical.org/en/raising-concerns/hearings/past-hearings/> It should be noted how many of the hearings are held in private and the extent of redactions in outcome/decisions statements and summaries which arguably restrict the effectiveness of reporting. It is also whether these redacted details could have been reported had a reporter been present.

Links

Admission to meetings of principal councils. Section 100A Local Government Act 1972 <https://www.legislation.gov.uk/ukpga/1972/70/section/100A>
Section 46 Local Government and Elections (Wales) Act 2021 Electronic broadcasts of meetings of certain local authorities
<https://www.legislation.gov.uk/asc/2021/1/section/46>
Greater London Authority Act 1999
<https://www.legislation.gov.uk/ukpga/1999/29/contents>
Public accountability Greater London Authority Act 1999. Section 45 The Mayor's periodic report to the Assembly, Section 46 Annual report by the Mayor, Section 47 The annual State of London debate, and Section 48 People's Question Time
<https://www.legislation.gov.uk/ukpga/1999/29/part/II/crossheading/public-accountability>
Greater London Authority Act 2007
<https://www.legislation.gov.uk/ukpga/2007/24/contents>
Section 58 'Openness' Greater London Authority Act 1999.- 'Part VA of the M1Local Government Act 1972 (access to meetings and documents of certain authorities, committees and sub-committees) shall have effect as if— (a)the Assembly were a principal council, and (b)any committee or sub-committee of the Assembly were a

committee or sub-committee of a principal council, within the meaning of that Part, but with following modifications...'

<https://www.legislation.gov.uk/ukpga/1999/29/section/58>

Local Government Act 1972- 'Access to Meetings and Documents of Certain Authorities, Committees and Sub-Committees.'

<https://www.legislation.gov.uk/ukpga/1972/70/part/VA>

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

<https://www.legislation.gov.uk/uksi/2012/2089/contents/made>

Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001

<https://www.legislation.gov.uk/wsi/2001/2290/contents>

Public Bodies (Admission to Meetings) Act 1960

<https://www.legislation.gov.uk/ukpga/Eliz2/8-9/67/contents>

Section 26 Local Audit and Accountability Act 2014- Inspection of documents etc

<https://www.legislation.gov.uk/ukpga/2014/2/section/26>

Local Audit (Public Access to Documents) Act 2017

<https://www.legislation.gov.uk/ukpga/2017/25/contents/enacted>

Open and accountable local government- A guide for the press and public on attending and reporting meetings of local government

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/343182/140812_Openness_Guide.pdf

Department for Communities and Local Government: Local Government Transparency Code

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf

Department for Communities and Local Government: CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/5670/1878324.pdf

Local Government Association: Modern media relations – a content-driven approach to communications

<https://www.local.gov.uk/our-support/guidance-and-resources/comms-hub-communications-support/futurecomms-building-local-15>

Local journalists launch new group inspired by Westminster lobby by David Sharman
Published 22 Jul 2022

<https://www.holdthefrontpage.co.uk/2022/news/local-journalists-launch-new-group-inspired-by-westminster-lobby/>

Local journalists hold first lobby-inspired 'huddle' with politicians by David Sharman
Published 19 Oct 2022

<https://www.holdthefrontpage.co.uk/2022/news/lobby-inspired-local-journalists-hold-first-huddle-with-politicians-they-cover/>

Local Government Association- This guide provides advice and guidance on the publicity restrictions that should be observed by local authorities during the pre-election period.

<https://www.local.gov.uk/publications/short-guide-publicity-during-pre-election-period>

Public Bodies (Admission to Meetings) Act 1960

<https://www.legislation.gov.uk/ukpga/Eliz2/8-9/67/contents>

'Bodies to which this Act applies'

<https://www.legislation.gov.uk/ukpga/Eliz2/8-9/67/schedule>

Local Government Act 1972, Part VA Access to Meetings and Documents of Certain Authorities, Committees and Sub-Committees

<https://www.legislation.gov.uk/ukpga/1972/70/part/VA>

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012- Access to agenda and connected reports for public meetings

<https://www.legislation.gov.uk/uksi/2012/2089/regulation/7/made>

Section 9 'Publicity in connection with key decisions'

<https://www.legislation.gov.uk/uksi/2012/2089/regulation/9/made>

Section 21 'Inspection and supply of documents'-

<https://www.legislation.gov.uk/uksi/2012/2089/regulation/21/made>

Department for Communities and Local Government: Local Government Transparency Code 2015

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/408386/150227_PUBLICATION_Final_LGTC_2015.pdf

Local Government Act 2000

<https://www.legislation.gov.uk/ukpga/2000/22/contents>

Under sections 97 and 98 Parliament synchronised rights of access to meetings and information to the situation with local government legislated for in the Local Government Act 1972.

<https://www.legislation.gov.uk/ukpga/2000/22/part/V/crossheading/access-to-information>

The 1996 Defamation Act Schedule 1, Parts 1 and 2.

<https://www.legislation.gov.uk/ukpga/1996/31/schedule/1>

Department for Communities and Local Government- CODE OF RECOMMENDED PRACTICE ON LOCAL AUTHORITY PUBLICITY

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/5670/1878324.pdf

Welsh Government: GUIDANCE Code of Recommended Practice for Local Authority Publicity

<https://www.gov.wales/sites/default/files/publications/2022-03/code-recommended-practice-for-local-authority-publicity.pdf>

Town and Country Planning Act 1990- Section 65 Publicity for applications and Section 69 Register of applications etc

<https://www.legislation.gov.uk/ukpga/1990/8/part/III/crossheading/publicity-for-applications> & <https://www.legislation.gov.uk/ukpga/1990/8/section/69>

Town and Country Planning Act 1990 Section 188- Register of enforcement and stop notices and other enforcement action

<https://www.legislation.gov.uk/ukpga/1990/8/section/188>

Sections 27 to 29 of the Localism Act 2011 on rights of access to the register of local authority members' interests

<https://www.legislation.gov.uk/ukpga/2011/20/part/1/chapter/7/enacted>

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464) on disclosure of councillors' pecuniary interests

<https://www.legislation.gov.uk/ukSI/2012/1464/made>

Regulation 15 and 16 of the Local Authorities (Members' Allowances) (England) Regulations 2003 (SI 2003/1021) for access and publicity in respect of the register of council members' expenses

<https://www.legislation.gov.uk/ukSI/2003/1021/regulation/15/made> &

<https://www.legislation.gov.uk/ukSI/2003/1021/regulation/16/made>).

Metropolitan Police Misconduct Hearings

<https://www.met.police.uk/advice/advice-and-information/mis/misconduct-hearings/about-misconduct-hearings/>

Notice of hearings at <https://www.met.police.uk/foi-ai/af/accessing-information/published-items/?q=&dt=Misconduct+hearing&fde=>

Hearing outcomes at <https://www.met.police.uk/foi-ai/af/accessing-information/published-items/?q=&dt=Misconduct+outcome>

Application portal to attend hearings via online application at

<https://www.met.police.uk/advice/advice-and-information/mis/sf/apply-to-attend-a-hearing/>

'Journalists thwarted after bid to name sex case sergeant'

<https://www.holdthefrontpage.co.uk/2023/news/sex-case-sergeant-given-anonymity-as-journalists-lose-secrecy-fight/>

'Daily editor demands greater transparency from 'toxic' police force'

<https://www.holdthefrontpage.co.uk/2022/news/daily-editor-demands-greater-transparency-from-toxic-police-force/>

'Reporter barred from covering police hearing after secret meeting'

<https://www.holdthefrontpage.co.uk/2021/news/reporter-barred-from-covering-police-hearing-after-secret-meeting/>

'Daily slams 'murky' police practices as sacked cop given anonymity'

<https://www.holdthefrontpage.co.uk/2022/news/daily-slams-murky-police-practices-as-sacked-dodgy-copper-given-anonymity/>

'Journalists barred from revealing gender of disgraced police officer'

<https://www.holdthefrontpage.co.uk/2023/news/journalists-barred-from-revealing-gender-of-disgraced-police-officer/>

'Editor slams cops over refusal to give locations of police misconduct incidents'

<https://www.holdthefrontpage.co.uk/2023/news/editor-slams-police-over-refusal-to-give-location-of-incidents/>;

Hold The Front Page law column March 2022- 'Newsquest's court battle to name police officer dismissed for gross misconduct'

<https://www.holdthefrontpage.co.uk/2022/news/law-column-newsquests-court-battle-to-name-police-officer-dismissed-for-gross-misconduct/>

Teacher Serious Misconduct Hearings in England and Wales.

<https://www.gov.uk/government/collections/teacher-misconduct>

Online notice of hearings is provided

<https://www.gov.uk/guidance/teacher-misconduct-attend-a-professional-conduct-panel-hearing-or-meeting>

Hearing outcomes are published online

https://www.gov.uk/search/all?parent=&keywords=panel+outcome+misconduct&level_one_taxon=&manual=&organisations%5B%5D=teaching-regulation-agency&organisations%5B%5D=national-college-for-teaching-and-leadership&public_timestamp%5Bfrom%5D=&public_timestamp%5Bto%5D=&order=updated-newest

Access for journalists and public to in person and remote hearings

<https://www.gov.uk/government/publications/teacher-misconduct-information-for-observers/teacher-misconduct-hearings-information-for-observers>

Judicial Discipline Consultation on proposals about the judicial disciplinary system in England and Wales. A consultation by the Lord Chancellor and Lord Chief Justice of England and Wales.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1033392/judicial-discipline-consultation.pdf

Judicial Conduct Investigations Office

<https://www.complaints.judicialconduct.gov.uk/>

Disciplinary statements from the JCIO published online

<https://www.complaints.judicialconduct.gov.uk/disciplinarystatements/>

The General Medical Council regulates a system of Medical practitioners tribunals and Interim order tribunals usually sitting in public in Manchester.

<https://www.gmc-uk.org/sitecore/content/mpts-website/home/hearings-and-decision>

Notice of hearings and decisions are issued online.

<https://www.mpts-uk.org/hearings-and-decisions/medical-practitioners-tribunals>

The Nursing and Midwifery Council online notices and decisions

<https://www.nmc.org.uk/concerns-nurses-midwives/hearings/hearings-sanctions/>

Attendance by media and public

[https://www.nmc.org.uk/concerns-nurses-midwives/hearings/attending-a-hearing/"\);](https://www.nmc.org.uk/concerns-nurses-midwives/hearings/attending-a-hearing/)

The Bar Council for barristers operates The Bar Tribunals and Adjudication Service ('BTAS') Advanced notice of hearings and decisions online.

<https://www.tbta.org.uk/hearings/how-the-hearings-process-works/>

Access to public hearings

[https://www.tbta.org.uk/hearings/how-the-hearings-process-works/guidance-on-attending-a-hearing/"\);](https://www.tbta.org.uk/hearings/how-the-hearings-process-works/guidance-on-attending-a-hearing/)

Professional misconduct by solicitors are adjudicated by 'Prosecution before the Solicitors Disciplinary Tribunal.'

<https://www.sra.org.uk/solicitors/enforcement/solicitors-disciplinary-tribunal/>

Advanced notice of public hearings and judgements online

<https://www.solicitorstribunal.org.uk/>

Professional misconduct by dentists in the UK is regulated by the General Dental Council with a database of past and forthcoming hearings and decisions.

<https://olr.gdc-uk.org/hearings>

Requests to attend hearings remotely can be made online

<https://contactus.gdc-uk.org/Hearing/Attend/AttendRemoteHearing>

General Dental Council disclosure and publication policy 2018

<https://www.gdc-uk.org/docs/default-source/information-we-hold-about-you/disclosure-and-publication-policy.pdf>

Professional misconduct by opticians in the UK is regulated by the General Optical Council

<https://optical.org/en/raising-concerns/raising-concerns-about-an-optician/>

How to apply to and access GOC disciplinary hearings

<https://optical.org/en/raising-concerns/hearings/how-to-attend-a-hearing/>

How GOC hearing panels are constituted

<https://optical.org/en/raising-concerns/hearings/hearings-panel/>

Forthcoming GOC disciplinary hearings

<https://optical.org/en/raising-concerns/hearings/future-hearings/>

Decisions and outcomes of past GOC hearings

<https://optical.org/en/raising-concerns/hearings/past-hearings/>



NBC's outside broadcast unit preparing for a live Q/A to the studio with their London correspondent Keir Simmons reporting on the presentation by Sir Brian Leveson of his report following judicial public inquiry into the culture, practices and ethics of the British press after the News International *News of the World* phone hacking scandal.

Media law of covering public inquiries

Public inquiries provide a unique forum for journalistic coverage offering protections and access to information often denied by the judicial and political systems of government. These are known as public inquiries into matters of ‘national concern.’ (See House of Commons research briefing ‘Statutory public inquiries: the Inquiries Act 2005’-

<https://researchbriefings.files.parliament.uk/documents/SN06410/SN06410.pdf>).

The Parliamentary research paper explained: ‘Public inquiries play a prominent part in public life in the United Kingdom. When major accidents or disasters occur, or when something goes seriously wrong within government or a public body, calls are often made for “a public inquiry” to be held. Inquiries into matters of public concern can be used to establish facts, to learn lessons so that mistakes are not repeated, to restore public confidence and to determine accountability.’ The report also said: ‘they provide legal powers to compel witnesses to give evidence, provide legal safeguards, and can set limits upon the Government’s discretionary control of an inquiry.’

Some recent examples of full public inquiries commissioned under the 2005 Inquiries Act include ‘the Independent public inquiry to investigate the deaths of the victims of the 2017 Manchester arena terror attack’ chaired by Sir John Saunders (<https://manchesterarenainquiry.org.uk/>) and ‘The Grenfell Tower Inquiry ... created to examine the circumstances leading up to and surrounding the fire at Grenfell Tower on the night of 14 June 2017.’ (<https://www.grenfelltowerinquiry.org.uk/>) 72 people lost their lives in the fire. Chaired by Sir Martin Moore-Bick, this inquiry has disclosed over 320,000 documents to core participants, received over 1,600 witness statements, and held more than 300 public hearings.

The Manchester Arena Inquiry has demonstrated how this process can receive and challenge important evidence from the intelligence agencies such as the Security Service MI5 and issue critical reports on behalf of the victims of the terror attack. (See: “MI5 missed ‘significant opportunity’ to prevent Manchester Arena bombing. Report into atrocity concludes failure to act on intelligence means ‘realistic possibility’ to stop plot was missed” at: <https://www.theguardian.com/uk-news/2023/mar/02/realistic-possibility-manchester-arena-attack-could-have-been-prevented> and the Report itself at: <https://files.manchesterarenainquiry.org.uk/reports/2023/MAI-Final-PDF-Volume-3.pdf>).

Another poignant public inquiry taking place and expected to report its findings in 2023 is The Infected Blood Inquiry- ‘This is an independent public statutory Inquiry established to examine the circumstances in which men, women and children treated by national Health Services in the United Kingdom were given infected blood and infected blood products, in particular since 1970.’ Some idea of the scale of its public interest significance is that it has heard evidence that 3,000 people have died as a

result of receiving infected blood via British health service provision. (See <https://www.infectedbloodinquiry.org.uk/>).

The judge led Undercover Policing Inquiry was constituted by the Home Secretary in 2015 under the 2005 Inquiries Act to ‘get to the truth about undercover policing across England and Wales since 1968 and provide recommendations for the future.’ (<https://www.ucpi.org.uk/about-the-inquiry/>)

The terms of reference (<https://www.ucpi.org.uk/wp-content/uploads/2016/06/Terms-of-Reference.pdf>) for the Undercover Police Inquiry with Sir John Mitting as chair included the power to ‘examine and review all documents as the inquiry chairman shall judge appropriate’, and ‘receive such oral and written evidence as the inquiry chairman shall judge appropriate’.

As a result an inquiry costing at least £54 million as of January 2023 has published over 3,200 documents and files, held 26 days of public evidence hearings and investigated 54 years of undercover policing. The inquiry has succeeded in putting into the public domain several Metropolitan Police Special Branch and MI5 Security Service files (with redactions) concerning staff and students at Goldsmiths, University of London which several FOI First Tier and Upper Tribunal hearings and a judicial review application at the High Court failed to achieved.

The inquiry has succeeded in obtaining more than one million pages of documents from the Metropolitan Police, resolving and finding solutions to challenging issues such as the ‘approach to deceased children’s identities’, ‘officer anonymity rulings’, securing an amendment to the Rehabilitation of Offenders’ Act, and anonymity for Special Demonstration Squad officers so they could provide evidence. The Inquiry has released the cover names of 70 undercover officers from the Met Police Special Demonstration Squad (SDS). This is to enable members of the public to determine whether they were affected by undercover policing and come forward with evidence.

These inquiries provide inquisitorial adjudication in public, often live-streamed online with audio-visual and documentary archiving of transcripts and source papers combined with adversarial cross-examination of witnesses.

Statutory public inquiries are the remedy and recourse for the victims of grand-scale injustice which trump and delay inquest and police investigation and can also retrospectively reinvestigate police, inquest and judicial failures, miscarriages of justice, and even failures of public inquiries from the past.

Various acts of parliament provide local authorities the power to convene routine inquiries preliminary to decision making impinging on the rights of individuals or public authorities, and these can be in public or with the discretionary option to convene in private sessions.

Examples include the appointment of an inspector by a government minister to investigate planning developments. Health trusts and local authorities have statutory powers to constitute ad hoc inquiries into issues that may be of local or national concern with the discretion of deciding whether these are investigated by public proceedings or conducted privately.

Many inquiries are commissioned on a non-statutory basis and this means they do not have any legal powers to compel witnesses to give evidence. However, the flexibility allows the inquiry to gain fuller cooperation from individuals and organisations that would not be possible with full public examination.

The inquiry into the abduction, rape and murder of Sarah Everard by former Met Police officer, Wayne Couzens, who committed his crimes when he was a serving officer and using his warrant card, was established in 2021 on a non-statutory basis after his conviction and sentencing to a full life-term of imprisonment; (<https://www.angiolini.independent-inquiry.uk/>) The Home Secretary indicated that it could be changed into a statutory inquiry if the inquiry head, Lady Elish Angiolini KC thought this would be necessary.

Independent inquiries investigated by senior lawyers and judges by private, corporate and public bodies also produce reports addressing huge public interest issues and engage the shield of qualified privilege in libel, but are not immune to potential risks of media law infraction.

Examples of these kinds of inquiries include Rebecca Tuck KC's Independent investigation into allegations of antisemitism within the National Union of Students (NUS) which reported in January 2023 ([https://assets.nationbuilder.com/nus/pages/108/attachments/original/1673471780/Independent Investigation into Antisemitism Report NUS 12 January 2023.pdf?1673471780](https://assets.nationbuilder.com/nus/pages/108/attachments/original/1673471780/Independent%20Investigation%20into%20Antisemitism%20Report%20NUS%2012%20January%202023.pdf?1673471780)) and independent inquiries commissioned by the BBC such as Lord Dyson's investigation into the circumstances around the 1995 Panorama interview with Diana, Princess of Wales and the conduct of journalist Martin Bashir. (<https://downloads.bbc.co.uk/aboutthebbc/reports/reports/dyson-report-20-may-21.pdf>) Both were conducted without public hearings.

Public inquiries constituted under legislation, the Inquiries Act 2005 for England and Wales and Northern Ireland, and the Inquiry Rules (Scotland) 2007 carry absolute and qualified privilege for defamation in respect of public hearings. This is absolute when reported contemporaneously and qualified (without the subject to explanation or contradiction obligation) when reporting past evidence or proceedings. Journalists should always be aware that their reports of anything provided in private session to public inquiries would not carry any privilege as is the case with information journalists obtain about court hearings held in private.

Media law in these circumstances protects the inquiry protagonists and participants and the professional media reporting it. The Inquiries Act 2005 legislation under Sections

19 and 20 gives both the commissioning Minister and the inquiry's chair power to restrict access (by way of private or public hearings) and to restrict the disclosure and publication of an item of evidence or documents, or of the identity of a witness.

The restriction can be specified as temporary, but otherwise continues indefinitely, unless varied or revoked. The grounds on which such a restriction can be imposed are the same as those which can restrict attendance.

The Saville public inquiry reported in 2010 (<https://www.gov.uk/government/publications/report-of-the-bloody-sunday-inquiry>) into the deaths of 13 young men in Londonderry, Northern Ireland in 1973, commonly known as 'Bloody Sunday' and established the right of witnesses for anonymity should there be compelling evidence of a threat to life and wellbeing under Articles 2 and 3 of the European Convention of Human Rights. The Saville Inquiry was constituted by the 2005 Inquiries Act precursor legislation, the Tribunals of Inquiry (Evidence) Act 1921.

17 former soldiers succeeded in persuading the Divisional Court and Appeal Court Civil Division in 1999 to overrule the Saville Inquiry which had decided they should be named. See: (<https://www.bailii.org/ew/cases/EWCA/Civ/1999/3012.html>) The Divisional High Court had ruled that the Inquiry had reached a 'flawed' conclusion when it gave precedence to the need for an open inquiry and had failed to give proper weight to the human rights of the men, mainly from the Parachute Regiment, who feared revenge attacks by Irish republican terrorists.

While public inquiries often afford journalism greater access to information than would normally be allowed by judicial proceedings, government body disclosure and FOI requests, the Inquiries Act 2005 inherited from its predecessor legislation certifying powers to ask the High Court to order up the delivery of information that it seeks for its information and this includes summary penalties for refusing to provide evidence.

Section 35 legislates for a summary offence for failing to obey an order made by the a public inquiry to provide evidence and there is a maximum sentence of imprisonment of 51 weeks. Brendan Mulholland of the *Daily Mail* and Reg Foster of the *Daily Sketch*, refused to reveal their sources to the Radcliffe public inquiry set up in 1963 to investigate the John Vassall spy scandal (<https://media.nationalarchives.gov.uk/index.php/scandalous-case-john-vassall/>) of the previous year. They were jailed for contempt of court by Lord Radcliffe who sentenced Mulholland for six months and Foster for three months.

Lord Saville, Chair of the Bloody Sunday public inquiry, threatened the journalists Alex Thomson and Lena Ferguson of *Channel 4*, and Toby Harnden of the *Daily Telegraph* – with contempt of court certification over their refusal to name the sources of stories about the killings. The Appeal Court in Northern Ireland ruled in 2003 that the

contempt proceedings brought against Harnden were criminal in nature (<https://www.bailii.org/cgi-bin/format.cgi?doc=/nie/cases/NICA/2003/6.html>).

By June 2004 Lord Saville decided to drop the contempt proceedings because he was satisfied that the journalist would never have revealed the identity of “Soldier X” he had interviewed for a newspaper article and the soldier’s identity had been established through other means. (<https://www.irisht Examiner.com/news/arid-30151686.html>) No action was taken against the *Channel 4* journalists.

Reports of public inquiries held under the Inquiries Act 2005 have, under section 37, the same privilege ‘as would be the case if those proceedings were proceedings before a court.’

This means that, as regards proceedings held in public, absolute privilege applies under section 14 of the Defamation Act 1996 to contemporaneous reports and qualified privilege applies under Part 1 of Schedule 1 to the 1996 Act to non-contemporaneous reports if the respective requirements of these defences are met, including that the reports fairly and accurately reflect the proceedings.

When the inquiry’s findings are published, under the Defamation Act 1996: a fair and accurate media report of such findings, when they have been officially published by a government or legislature anywhere in the world, is protected by qualified privilege under Part 1 of the Act’s Schedule 1 (paragraph 7); and a fair and accurate media report of findings officially published by a local authority anywhere in the world is protected by qualified privilege under Part 2 of the Schedule (paragraph 9).

There are other sections that determine media and members of the public attendance e.g. section 18 says that any recording and broadcast of an inquiry’s proceedings must be sanctioned by the chair.

Neither the Inquiry nor the media would be considered liable for libellous statements made by witnesses. Witnesses themselves are protected by the Defamation Act privilege.

There is only one case history where a High Court judge decided malice being proved in relation to a local government inquiry invalidated qualified privilege. This is because some of the gravest false allegations of child abuse imaginable were included in the publication of the inquiry report.

This was the case of *Lillie & Anor v Newcastle City Council*. Full ruling of *Lillie & Anor v Newcastle City Council & Ors* [2002] EWHC 1600(2) (QB) (30 July 2002) (available online at <https://www.bailii.org/ew/cases/EWHC/QB/2002/1600.html>) The two care workers subjected to the allegations had to go into hiding for their own protection and subsequently collected £200,000 each in libel damages from the local authority in subsequent litigation. Mr Justice Eady said the arrangements for the inquiry had been a shambles, ‘natural justice seemed to have fallen by the wayside’

and 'has cost a vast amount of money for the citizens of Newcastle and I have no doubt years of unnecessary heartache for many of those directly involved. Unhappily, the Council has only itself to blame.'

As explained in Chapter 14 on reporting inquests where matters of national security and sensitivity prevent the securing and provision of public evidence in relation to the investigation of controversial and sudden deaths, there is an option to hold a public inquiry under the Inquiries Act 2005.

The Azelle Rodney Inquiry

(<https://webarchive.nationalarchives.gov.uk/ukgwa/20150406091509/http://azellerodneyinquiry.independent.gov.uk/>) replaced the earlier inquest which could not proceed because there was certain intelligence material which the coroner was not permitted to be privy to. The Litvinenko Inquiry, which reported in January 2016, (<https://webarchive.nationalarchives.gov.uk/ukgwa/20160613090324/https://www.litvinenko.org/report>) was necessary because only closed evidence and closed hearings could access evidence from the UK's intelligence agencies. There was no mechanism by which closed hearings could be held in the course of an inquest and the effect of upholding the claim to public interest immunity was that the material in question would be excluded from consideration in the inquest.

Media Law had a substantial impact arising out of the 2005 Inquiries Act commissioned public inquiry by Sir Brian Leveson into the culture, practices and ethics of the press which reported at the end of 2012. (See executive summary and recommendations-

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/229039/0779.pdf).

It can be argued that the shift of virtually default privacy anonymity for crime suspects prior to charging, the elevation of the Information Commissioner as an additional statutory regulator of digital journalism practice in data processing, the diminution in protection of sources case law for journalists and, in particular, their sources, with criminal prosecution jeopardy using the common law of misconduct in public office, the complexity and legal jeopardies arising out of Press Charter endorsed regulation underpinned by legislation are the developing consequences from this inquiry.

Links

Inquiries Act 2005 <https://www.legislation.gov.uk/ukpga/2005/12/contents>

Inquiries Act 2005- Explanatory Notes

<https://www.legislation.gov.uk/ukpga/2005/12/notes/contents>

House of Commons research briefing 2022- 'Statutory public inquiries: the Inquiries Act 2005'

<https://researchbriefings.files.parliament.uk/documents/SN06410/SN06410.pdf>

Independent public inquiry to investigate the deaths of the victims of the 2017 Manchester arena terror attack' chaired by Sir John Saunders

<https://manchesterarenainquiry.org.uk/>

'The Grenfell Tower Inquiry ... created to examine the circumstances leading up to and surrounding the fire at Grenfell Tower on the night of 14 June 2017.'

<https://www.grenfelltowerinquiry.org.uk/>

The Infected Blood Inquiry- 'The Inquiry will examine why men, women and children in the UK were given infected blood and/or infected blood products; the impact on their families; how the authorities (including government) responded; the nature of any support provided following infection; questions of consent; and whether there was a cover-up.' <https://www.infectedbloodinquiry.org.uk/>

The Infected Blood inquiry has also archived video recordings of evidence and submissions and this has included questioning of past Prime Ministers and Secretaries of State for Health.

<https://www.youtube.com/@InfectedBloodInquiry/videos>

Undercover Policing Inquiry 'get to the truth about undercover policing across England and Wales since 1968 and provide recommendations for the future.'

<https://www.ucpi.org.uk/about-the-inquiry/>

The terms of reference <https://www.ucpi.org.uk/wp-content/uploads/2016/06/Terms-of-Reference.pdf>

The non-statutory inquiry into the abduction, rape and murder of Sarah Everard by former Met Police officer, Wayne Couzens, who committed his crimes when he was a serving officer and using his warrant card. <https://www.angiolini.independent-inquiry.uk/>

Rebecca Tuck KC's Independent investigation into allegations of antisemitism within the National Union of Students (NUS) which reported in January 2023

[https://assets.nationbuilder.com/nus/pages/108/attachments/original/1673471780/Independent Investigation into Antisemitism Report NUS 12 January 2023.pdf?1673471780](https://assets.nationbuilder.com/nus/pages/108/attachments/original/1673471780/Independent%20Investigation%20into%20Antisemitism%20Report%20NUS%2012%20January%202023.pdf?1673471780)

Lord Dyson's investigation into the circumstances around the 1995 Panorama interview with Diana, Princess of Wales and the conduct of journalist Martin Bashir.

<https://downloads.bbc.co.uk/aboutthebbc/reports/reports/dyson-report-20-may-21.pdf>

17 former soldiers succeeded in persuading the Divisional Court and Appeal Court Civil Division in 1999 to overrule the Saville Inquiry which had decided they should be named. <https://www.bailii.org/ew/cases/EWCA/Civ/1999/3012.html>

Radcliffe public inquiry set up in 1963 to investigate the John Vassall spy scandal

<https://media.nationalarchives.gov.uk/index.php/scandalous-case-john-vassall/>

Leveson Inquiry – Report into the culture, practices and ethics of the press- published in four volumes 29th November 2012:

[An inquiry into the culture, practices and ethics of the press: Volume 1](#)

[An inquiry into the culture, practices and ethics of the press: Volume 2](#)

[An inquiry into the culture, practices and ethics of the press: Volume 3](#)

[An inquiry into the culture, practices and ethics of the press: Volume 4](#)

House of Commons Research briefing. Press regulation after Leveson Friday by John Woodhouse 27 July, 2018 [cbp-7576Download](#)

The Saville public inquiry reported in 2010 into the deaths of 13 young men in Londonderry, Northern Ireland in 1973.

<https://www.gov.uk/government/publications/report-of-the-bloody-sunday-inquiry>

The Appeal Court in Northern Ireland ruled in 2003 that the contempt proceedings brought against a journalist refusing to reveal his sources to the Saville Inquiry into the 1973 'Bloody Sunday' fatalities from gunfire by British soldiers were criminal in nature.

<https://www.bailii.org/cgi-bin/format.cgi?doc=/nie/cases/NICA/2003/6.html>

Full ruling of *Lillie & Anor v Newcastle City Council & Ors* [2002] EWHC 1600(2) (QB) (30 July 2002) The two care workers subjected allegations in a local authority inquiry report had to go into hiding for their own protection and subsequently collected £200,000 each in libel damages in subsequent litigation. Mr Justice Eady ruled that the local authority lost its qualified privilege defence to libel because of a determination of malice. <https://www.bailii.org/ew/cases/EWHC/QB/2002/1600.html>

The Azelle Rodney Inquiry 'to ascertain by inquiring how, where and in what circumstances Azelle Rodney came by his death on 30 April 2005 [as a result of the discharge of a firearm by a Metropolitan Police officer] and then to make any such recommendations as may seem appropriate.

<https://webarchive.nationalarchives.gov.uk/ukgwa/20150406091509/http://azellerodneyinquiry.independent.gov.uk/>

The Litvinenko Inquiry into the death of Alexander Litvinenko who died from acute radiation syndrome on 23 November 2006, three weeks after drinking tea containing polonium-210 in the hotel bar in central London's Mayfair.

<https://webarchive.nationalarchives.gov.uk/ukgwa/20160613090324/https://www.litvinenkoenquiry.org/report>

BBC news report: 'Litvinenko inquiry: Key findings' <https://www.bbc.co.uk/news/uk-35371344>



Camorra Trial, Viterbo, southern Italy. [George Bain agency Library of Congress.](#)



The courtroom in the United States Courthouse in Sioux City, Iowa.
By [Carol M. Highsmith](#), Public domain, via Wikimedia Commons

Media law of reporting the family courts

The Family Courts are the most difficult to cover from the point of view of Open Justice, yet they process some of the most devastating legal interventions in the lives of hundreds of thousands of people every year which are life-changing and of immense public interest.

There are over 200,000 cases a year being heard and these include local authority interventions to protect children, parental disputes over the upbringing of children and forced marriage protection. Public access is not allowed, accredited journalists may attend (usually after exhaustive and initially awkward negotiation) but when they are there, they find that reporting restrictions mean that it is usually impossible to provide a meaningful journalistic narrative.

The Open Justice deficit has been recognised by Family Division judges largely because the secrecy has been undermining public confidence in a system of law where many litigants have to represent themselves because of the limitations of legal aid support. They have been trying to overcome the fact that when a court sits in private dealing with matters to do with children, it is a contempt of court to publish any information about those proceedings. Journalists permitted to attend have to negotiate quite complex hurdles with the judges on what they could report if they have identified something of acute public interest.

Only around 200 Family Court rulings are made public each year which is substantially less than a hoped for 10 per cent target. When they are, they are usually heavily redacted. Two pieces of legislation- Section 12 of the Administration of Justice Act 1960 and Section 97 of the Children Act 1989 combined with the strict privacy requirements engaged by the 2002 Adoption and Children Act operate as a legal vice substantially restricting the opportunity to report cases which involve children.

(Section 12 Administration of Justice Act-<https://www.legislation.gov.uk/ukpga/Eliz2/8-9/65/section/12> and Section 97 Children Act 1989-<https://www.legislation.gov.uk/ukpga/1989/41/section/97/2013-04-01> and Section 123 of the Adoption and Children Act 2002-<https://www.legislation.gov.uk/ukpga/2002/38/section/123>).

A pilot project in three family court centres (Cardiff, Carlisle and Leeds) is taking place from 30th January 2023 where journalists and bloggers who attend will be able to write about the cases, subject to a very strict transparency order that will ensure children are not identified.

Journalists taking part include Sanchia Berg of the BBC and Louise Tickle, a respected freelance journalist who specialises in reporting family law court cases. (See: 'Family Court reporting pilot courts'- <https://transparencyproject.org.uk/family-court-reporting-pilot-courts/>)

They have to comply with a guidance briefing and a Template Transparency Order agreed by the President of the Family Division Rt Hon. Sir Andrew McFarlane. (See: <https://www.judiciary.uk/wp-content/uploads/2023/01/The-Reporting-Pilot-Guidance-26-1-23.pdf> and 'Message from the President of the Family Division: Reporting Pilot in the Family Court'- <https://www.judiciary.uk/message-from-the-president-of-the-family-division-reporting-pilot-in-the-family-court/>).

On 25th January 2023, six days before the pilot project of reporting in the Family Division was to start, Mr Justice Poole issued a pioneering ruling on a transparency order at the Family High Court in Leeds in a complex though high public interest case that merits reporting in the media. The judge explained there were: 'three public family law applications brought separately by three different Local Authorities concerning three previously unconnected families living in different parts of Yorkshire heard together' and families referred to as 'Family R, Family S, and Family T.' He explained the forthcoming hearing concerns allegations that the mother in each family has fabricated or induced illness in one child of each family.' (See: <https://www.bailii.org/ew/cases/EWFC/H CJ/2023/9.html>).

Mr Justice Poole said: 'I have decided to publish this judgment because it may be helpful to other judges and parties in the pilot courts' and he said he had sought to achieve an appropriate balance of Article 8 and Article 10 Convention rights in accordance with the principles set out in *Re S and Griffiths v Tickle*'.

Re S from 2004 has been analysed in detail in a previous section. It is binding authority on the balance between Family Law interests in Article 8 and Open Justice interests in covering criminal proceedings under Article 10.

(See: <https://www.bailii.org/uk/cases/UKHL/2004/47.html>).

Lord Steyn decided that the open justice interests of reporting the identity of a mother accused of the murder of her child in a criminal trial outweighed the family law privacy interests of her other living child. The Court of Appeal ruling in Griffiths v Tickle 2021, as explained in Chapter 5, permitted the reporting of the most serious allegations against a former minister and member of parliament in a family law dispute and with the identification of the parties. (See <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2021/1882.html>).

The pilot Family Law transparency reporting scheme has been accompanied by the development of an extensive online 'Family Justice' resource for journalists compiled by Family Law journalist expert Louise Tickle and the Bureau of Investigative Journalism. (See: <https://www.thebureauinvestigates.com/projects/family-justice>).

It is worth bearing in mind that the moves towards more open reporting of family law cases does not provide any immunity to journalists and their publishers who may in good faith inadvertently include detail in their reports which breaches current statutory legal protection; particularly the jigsaw identification of children and families.

Mr Justice Poole explained in his 25th January ruling in Re BR and others (Transparency order) at paragraph 43: 'The reporting pilot places a heavy responsibility on pilot reporters. It would be over- burdensome on judges, and objectionable in principle, for the court to give detailed directions to pilot reporters about the content of their reports. Pilot reporters must use their own professional judgment to ensure that their reporting complies with the law.'

Family High Court rulings released into the public domain contain a standard caveat: 'This judgment was delivered in private. The judge has given leave for this version of the judgment to be published on condition that (irrespective of what is contained in the judgment) in any published version of the judgment the anonymity of the children and members of their family must be strictly preserved. All persons, including representatives of the media, must ensure that this condition is strictly complied with. Failure to do so will be a contempt of court.' This leaves the legal jeopardy with reporters and their publications and fair and accurate reporting of such rulings in a context of triangulating information could still be problematical.

Considerable merit and credit needs to be given to the professionalism and dedication of family law journalists who have been trying over many years to improve greater openness in a division of law in a country that places more children into local authority care than any other in Europe. As mentioned in Chapter 5, freelance journalist Melanie Newman is one of those public spirited reporters who fought for significant access to

court documents in a case in 2020 which related to the removal into care of a 2-year-old child from her mother by social workers for Southampton City Council.

(See *Newman v Southampton City Council & Ors* [2020] EWHC 2103 (Fam) (05 August 2020) at <https://www.bailii.org/ew/cases/EWHC/Fam/2020/2103.html> and <https://www.bailii.org/ew/cases/EWHC/Fam/2020/2148.html>).

Persistent campaigning for more openness led to the President of the Family Division Sir Andrew McFarlane releasing the report 'Confidence and Confidentiality: Transparency in the Family Courts' in late 2021. He conceded: 'The present system in the Family Courts whereby a journalist may attend any hearing but may not always report what they observe, is not sustainable.' One year later the House of Commons Justice Committee's report on 'Open justice: court reporting in the digital age' concluded and recommended law reform so that 'media representatives and bloggers should be able to report, subject to the relevant restrictions, on the cases they observe in the Family Court.'

(See: <https://www.judiciary.uk/wp-content/uploads/2021/10/Confidence-and-Confidentiality-Transparency-in-the-Family-Courts-final.pdf>)

Non-children family court hearings are sometimes heard in open court and these could include paying maintenance, declarations about parentage, legitimacy or marital status disputes, matrimonial and civil partnership proceedings, and financial orders arising out of disputes over assets.

Reporting restrictions apply from Section 1(1)(b) of the Judicial Proceedings (Regulation of Reports) Act 1926, limiting reporting to four categories of information: 1 the names, addresses, and occupations of parties and witnesses; 2 the grounds of the application and a concise statement of the charges, defences, and counter-charges in support of which evidence has been given; 3 submissions on any point of law arising in the proceedings and the decision of the court on the submissions; and 4 the summing up of the judge, the judgment, and any observations made by the judge in giving it (See Section 1(1)(b) of the Judicial Proceedings (Regulation of Reports) Act 1926- <https://www.legislation.gov.uk/ukpga/Geo5/16-17/61/section/1>).

This legislation is duplicated by Section 2 of the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968 in any court which hears such a case or an appeal. (See: Section 2 of the Domestic and Appellate Proceedings (Restriction of Publicity) Act 1968- <https://www.legislation.gov.uk/ukpga/1968/63/section/2>).

In practice these restrictions mean that journalists covering any family hearings held in open court can only reply on what the magistrate or judge says about the evidence along with any accompanying judicial observations made when giving the court's decision. Identification of the parties is likely to be subject to anonymity requests on Article 8 Human Rights Act privacy grounds. Any involvement of children would inevitably guarantee anonymising obligations and the potential prohibition on reporting

the case. 'A concise statement of the charges, defences, and counter-charges in support of which evidence has been given' is probably best left to any summary provided in the judge's ruling.

The anonymity of medical clinicians in end of life proceedings, particularly involving infant children has been clarified by a key precedent in the Court of Appeal 31st March 2023. See: *Abbasi & Anor v Newcastle Upon Tyne Hospitals NHS Foundation Trust* [2023] EWCA Civ 331 (31 March 2023) See: <https://www.bailii.org/ew/cases/EWCA/Civ/2023/331.html>

The background was explained by the Lord Chief Justice Lord Burnett: 'These appeals concern the principles to be applied when a court considers an application to vary or discharge a Reporting Restriction Order ("RRO") made long before in end-of-life proceedings in the High Court. Such orders often protect the identities of all those involved in the care of a patient in respect of whom an application to withdraw treatment is made. That is usually to protect the privacy of the patient, of the patient's immediate family and of those concerned in the treatment of the patient as well as to safeguard the integrity of the proceedings.'

Lord Burnett went on to explain: 'Such proceedings are apt to generate a great deal of passionate debate which spills over into harassment of those involved in the proceedings, picketing of hospitals and interference with the working of the hospitals. There are too many who involve themselves in these kinds of debate who lack all sense of proportion and display intolerance of anyone who disagrees with them. Some are not willing to admit that there may be two legitimate points of view. Nonetheless, the circumstances in which it is lawful or ethical to withdraw treatment is the subject of legitimate debate.' In a unanimous ruling supported by Lady Justice King and Lady Justice Carr, Lord Burnett concluded the indefinite reporting restrictions were not correct in law because Article 10 freedom of expression rights outweigh Article 8 privacy rights.

Lord Burnett explained: 'The orders made in these cases provide for the indefinite continuation of injunctions against the world prohibiting publication of the names of a small number of clinicians in the *Abbasi* case and a wide range of health service staff in the *Haastrup* case. The intense focus on the specific rights being claimed delivers the clear conclusion that the article 10 rights of the parents in wishing to "tell their story" outweigh such article 8 rights of clinicians and staff as may still be in play, long after the RROs were made in the respective end-of-life proceedings. The wider systemic concerns which affect the operation of the NHS laid before the court by representative bodies cannot justify the creation of a practice, not anchored to the specific circumstances of the case, of granting indefinite anonymity to those involved in end-of-life proceedings. Such a step is one that is controversial and intensely political and suitable for Parliament rather than the courts.' An excellent analysis of this ruling has been written by the much respected media lawyer Sam Brookman in the *Hold The Front Page* 'Law Column: Reporting restrictions overturned in two end of life cases.' She explains that the overturning of the two reporting restriction orders 'are important legally

because the judgment is another example of the courts coming down in favour of freedom of expression.' (See: <https://www.holdthefrontpage.co.uk/2023/news/law-column-reporting-restrictions-overturned-in-two-end-of-life-cases/>)

From 2016 proceedings in the Court of Protection, established by the Mental Capacity Act 2005, began to sit in public beginning with a pilot scheme allowing access to journalists and bloggers who were subject to 'transparency orders' setting out what could and could not be reported. This court makes decisions for people who lack the mental capacity to make them for themselves. When it stopped sitting in private, this meant that the restrictions under section 12 of the Administration of Justice Act 1960 no longer applied.

The Court has formalized rules on reporting open proceedings supported by a Practice Direction. Restrictions continue to be imposed to protect the identities of those involved in the proceedings through transparency orders though sometimes identifying details are permitted in media reports.

(See Court of Protection Rules 2017 4.2 Court's general power to authorise publication of information about proceedings- <https://www.legislation.gov.uk/ukSI/2017/1035/article/4.2/made> and 4.3 Court's power to order that a hearing be held in public- <https://www.legislation.gov.uk/ukSI/2017/1035/article/4.3/made> and Practice Direction 4C Transparency Order-<https://www.judiciary.uk/wp-content/uploads/2017/12/pd-4c-transparency.pdf>).

A pervasive issue in the Court of Protection is where decisions are made to close hearings and seal evidence and case documentation; otherwise known as 'Closed Material'. This matter became controversial in the case of Re A (Covert Medication, Closed Proceedings), [2022] where the Court of Protection authorised the covert administration of hormone treatment to a young woman without the knowledge of her family. (See: <https://www.bailii.org/ew/cases/EWCOP/2022/44.html>) In February 2023 the Vice President of the Court Protection, Mr Justice Hayden decided to issue guidance on 'Close Hearings' and 'Closed Material.' This followed the convening of a sub-committee of judges and lawyers which received 'helpful submissions from Professor Celia Kitzinger, Open Justice (Court of Protection).

The guidance seeks to set out proper procedure and as much transparency as possible in 'situations which are rare, but which do occur from time to time, [when] it is necessary for the court to consider whether a hearing should be closed and/or for material be closed.' Mr Justice Hayden advised: 'Nothing in this guidance is intended to increase the number of closed hearings or applications for material to be closed. Rather, its purpose is to provide clarity as to the principles to be applied and considerations to be taken into account in the very limited circumstances under which such steps may be appropriate.'

(See: <https://www.judiciary.uk/guidance-and-resources/guidance-for-the-court-of-protection-closed-hearings-and-closed-material/>);

Mr Justice Hayden said at paragraph 20: 'The requirements of open justice still weigh heavily and require the publication of a reasoned judgment at the earliest possible opportunity to explain both the rationale for the holding of the closed hearing and (insofar as possible) the substantive decision reached at the hearing.'

Should names be published in sensitive and high value divorce cases? Longstanding Family Division judge Mr Justice Mostyn has made it clear in some rulings that they should. But he appears to be in a minority as revealed in a 2023 report 'transparency in financial remedies' by circuit judge Stuart Farquhar.

See: <https://www.judiciary.uk/guidance-and-resources/final-report-of-the-financial-remedies-court-frc-sub-group-of-the-transparency-implementation-group/> and <https://www.judiciary.uk/wp-content/uploads/2023/05/FRC-TIG-Final-Report-April-2023.pdf>

At 12.113 the report observed: ' Overall the tenor of evidence received was, as one respondent put it: "What is the true public benefit of transparency, as compared to the harm caused to a child who is unlucky enough to have experienced her parents' divorce and then has the added pain of seeing the unpleasant details of her parents' dispute spread across the press and social media, readily available at the touch of a screen to everyone who knows her?" And another said: "to open up the marriage warts and all weaponizes the content and can have a devastating impact on the family generally, the children in particular."'

The report was discussed by *The Times* newspaper's legal affairs correspondent Jonathan Ames 'Family judge rebels on anonymity' (May 25 2023) at <https://www.thetimes.co.uk/article/family-judge-rebels-over-anonymity-jmfs9m798>

This is behind a paywall, but your university library should have a subscription for username and password access. This is also true of an extensive feature by Louise Eccles for the *Sunday Times* News Review (28 May 2023) 'Inside The Family Court- Covid jabs, tears and custody battles. As judges seek to show their rulings are fair, some family courts have been opened to the press for the first time. Louise Eccles reports on the sad but vital work.'

See: <https://www.thetimes.co.uk/article/tears-custody-battles-and-covid-jabs-a-week-inside-britains-family-courts-9jjqv5bs8>

Media Lawyer Sam Brookman analysed a Family Court ruling in Derbyshire County Council v Marsden [2023] EWHC 1892 (Fam) (21 July 2023) See: <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Fam/2023/1892.html> in which the High Court judge clarified that 'Publishers can name lay justices and advisors in care proceedings.' The case concerned Child A – a sibling of Finley Boden, who was

killed by his parents after he was returned to their care two months prior to his death. The BBC, Telegraph and PA Media made an application for the release of the Family Court judgment which allowed Finley to be returned to the care of his parents together with some supporting documents including the skeleton arguments and case summaries from the hearing in question. Mrs. Justice Lieven allowed the disclosure of redacted versions of the documents.

The Judge also said statutory restrictions relating to care proceedings are to protect the children involved and possibly their families, and not the professionals involved. Lay Magistrates are still judges who 'make very important decisions that impact on children and families in the most significant way. As such, there is no case for their names not to be in the public domain when decisions are made, in the same way as would the names of judges who had made such decisions.' The judge made the same point about legal advisors in such court cases.

In her article at <https://www.holdthefrontpage.co.uk/2023/news/law-column-publishers-can-name-lay-justices-and-advisors-in-care-proceedings/> Sam Brookman said: 'With the push towards increased openness in the family courts, this is a welcome step forward and a principle which is certainly worth remembering.'

On 5th October 2023 freelance family law journalist Louise Tickle secured a significant victory in appealing restrictions preventing her from reporting a family law case in Manchester. As Mrs Justice Lieven explained the issue was whether 'the Judge erred in law in his application of the balance between Ms Tickle's rights to report under Article 10 European Convention of Human Rights ("ECHR") and the child and family's right to privacy under Article 8 ECHR.'

The case is *Tickle v Father & Ors* [2023] EWHC 2446 (Fam) (05 October 2023 with the ruling available online at: <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Fam/2023/2446.html>

The case was reported by Press Gazette 9th October 2023 'Freelance journalist wins solo High Court fight to shine light on family courts..' See: <https://pressgazette.co.uk/media-law/freelance-journalist-wins-solo-high-court-fight-to-shine-light-on-family-courts/>

The case was described by the judge as a 'highly contentious private family law proceedings concerning a child under the age of 5' where there are 'there are allegations of domestic abuse and "parental alienation" in the factual mix.' Louise Tickle agreed to maintain anonymity for the child involved and adult parties, but wanted to report 'the significant issues of public interest' which were:

'i. Continuing practical difficulties arising due to the lack of legal aid provision; ii. The disruption caused to private law applications concerning children; iii. Problems for the court system, and other families within the court system, of delays/adjournments where time has to be found for cases; iv. Issues regarding transparency and media

attendance, including the culture of the Family Justice System's interaction with/response to the media, especially in the context of the ongoing Transparency Pilot.'

At paragraphs 49 and 50 of her ruling she reiterated: '...there is a public interest in the reporting of cases in the Family Courts. This is made clear in the report of the President of the Family Division (Sir Andrew McFarlane) in his report Confidence and Confidentiality: Transparency in the Family Courts (21 October 2021). At paragraph 22 the President said: "The level of legitimate media and public concern about the workings of the Family Court is now such that it is necessary for the court to regard openness as the new norm. I have, therefore, reached the clear conclusion that there needs to be a major shift in culture and process to increase the transparency of the system in a number of respects. In short, the reasons for this conclusion are as follows: ..."

The Report goes on to refer to the genuine and legitimate public interest in the Family Justice System for the purposes of gaining public confidence in the system, and greater knowledge and understanding of issues such as domestic abuse, see [30]. In my view it is relevant that because most Family Court cases are held in private and with no reporting, there is less knowledge or understanding of the challenges facing the Family Justice System than those facing the Criminal Justice System. There is a very real public interest in there being greater understanding of the work done by the Family Courts.'

Mrs Justice Lieven said: 'I conclude that the Judge erred in law. The decision to adjourn the reporting application was a case management decision and as such the Court should ordinarily be very slow to intervene ... However, a decision on reporting is rather different from most case management decisions because it interferes with an Article 10 right and in practice may prevent that journalist from reporting at all.'

At paragraph 54 she said: 'In my view, the Judge here did not apply the Article 8/10 balance in a legally appropriate manner. On the Article 8 side of the balance he did not address his mind to the fact that given the restrictions that Ms Tickle proposed, there was no possibility of the child or parents being identified. She did not seek to report any of the evidence and any of the factual matrix beyond the greatest of generalities. As such, it put the case well outside the norm of what is sought to be reported. The Judge in his consideration simply did not engage with the scope of the limitations Ms Tickle was proposing. As such, "confidentiality" or "anonymity" did not arise in any meaningful way on the facts of the case.'

In conclusion, Mrs Justice Lieven ruled: 'I take the view that this is a case where the Article 8/10 balance, and taking into account any impacts on Article 6 rights, points clearly in favour of allowing report. In very brief summary, there is effectively no risk of the child being identified. There is a strong public interest in allowing Ms Tickle to report the generic concerns about the Family Justice System which arise. There is no interference in any parties' Article 6 rights. I will therefore allow the appeal and allow the application.'

The case has been analysed by media lawyer Eloise Spensley for the Hold The Front Page Jaffa Law Column 11th October 2023 'No party holds a veto on reporting in the Family Court' at: <https://www.holdthefrontpage.co.uk/2023/news/law-column-no-party-holds-a-veto-on-reporting-in-the-family-court/>.

She said: 'Lieven J. took the view that the judge in the original case at Manchester had failed to carry out the balancing exercise between the rights of privacy and freedom of expression appropriately. She further stated that it is rarely, though not never, relevant for a Judge to consider why a reporter is seeking to report on a matter. It is not for the Court to consider the quality or fairness of any coverage. In a statement certain to be welcomed by editors across the nation, the Judge held that "the court is not an arbiter of the editorial content of reporting".

Ms Spensley added: 'Lieven J. went on to say that there was a clear and strong public interest in reporting the case and that whilst the father may well identify his own case in a generic report, that did not constitute grounds on which to refuse reporting.' She underlines how the ruling 'demonstrates a sign of commitment from the Judiciary to the issue of improved transparency in the family courts and further highlights the importance of the principle of open justice, particularly in relation to the significant public interest in reporting cases heard within the family court.'

In the Press Gazette article reporting her successful appeal Louise Tickle explained: 'I could tell quickly that this judge and this court were not friendly to journalists.[The judge] tried to find out how I found out about the case. He asked the parties, a separated couple, if they had been in touch with me. Anybody is allowed to tell a journalist they have a case, but they can't tell them the details. I told him I was not prepared to answer those questions and there was a rather fractious hearing. I used the chat function on the Teams call to say I was going to make an application to report on the case but the judge said "no."

Louise Tickle's first novel titled 'Between the Lies' and described as a thriller which draws on her experience of covering family disputes was [published 19th October 2023](#).

Links

Section 12 Administration of Justice Act 1960 Publication of information relating to proceedings in private <https://www.legislation.gov.uk/ukpga/Eliz2/8-9/65>

Section 97 Children Act 1989 Privacy for children involved in certain proceedings: <https://www.legislation.gov.uk/ukpga/1989/41/section/97>

Section 123 of the Adoption and Children Act 2002 <https://www.legislation.gov.uk/ukpga/2002/38/section/123>

Section 1 Judicial Proceedings (Restriction on Reports) Act 1926 Restriction on publication of reports of judicial proceedings <https://www.legislation.gov.uk/ukpga/Geo5/16-17/61/section/1>

Examples of family court rulings released to the media

Norfolk County Council v Webster & Ors [2006] EWHC 2733 (Fam) (01 November 2006)

<https://www.bailii.org/ew/cases/EWHC/Fam/2006/2733.html>

Re E (Medical treatment: Anorexia) (Rev 1) [2012] EWHC 1639 (COP) (15 June 2012)

<https://www.bailii.org/ew/cases/EWHC/COP/2012/1639.html>

President of the Family Division: Guidance as to reporting in the Family Courts

<https://www.judiciary.uk/wp-content/uploads/2019/10/Presidents-Guidance-reporting-restrictions-Final-Oct-2019-1.pdf>

HM Courts and Tribunals Service Jurisdictional guidance to support media access Family courts

<https://www.gov.uk/government/publications/guidance-to-staff-on-supporting-media-access-to-courts-and-tribunals/jurisdictional-guidance-to-support-media-access-to-courts-and-tribunals-family-courts-guide-accessible-version>

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1074298/HMCTS707_media_guidance_-_Family_Court_Guide_MAY_2022_V1.pdf

Newman v Southampton City Council & Ors [2020] EWHC 2103 (Fam) (05 August 2020)

<https://www.bailii.org/ew/cases/EWHC/Fam/2020/2103.html>

Newman v Southampton City Council & Ors (COSTS and PTA) [2020] EWHC 2148 (Fam) (05 August 2020)

<https://www.bailii.org/ew/cases/EWHC/Fam/2020/2148.html>

Confidence and Confidentiality: Transparency in the Family Courts, October 2021

<https://www.judiciary.uk/wp-content/uploads/2021/10/Confidence-and-Confidentiality-Transparency-in-the-Family-Courts-final.pdf>

Re S (a child), Re [2004] UKHL 47 (28 October 2004)

<https://www.bailii.org/uk/cases/UKHL/2004/47.html>

Griffiths v Tickle & Ors [2021] EWCA Civ 1882 (10 December 2021)

<https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWCA/Civ/2021/1882.html>

Hold The Front Page Jaffa Law Column: New drive to transparency in reporting the Family Court

<https://www.holdthefrontpage.co.uk/2022/news/law-column-new-drive-to-transparency-in-reporting-the-family-court/>

House of Commons Justice Committee: 'Open justice: court reporting in the digital age'

<https://committees.parliament.uk/publications/33518/documents/182166/default/>

Louise Tickle and the Bureau of Investigative Journalism- 'Family Justice What you need to know about the pilot for reporting on the family court system

<https://www.thebureauinvestigates.com/projects/family-justice>

A (Covert Medication: Closed Proceedings) [2022] EWCOP 44 (07 October 2022)

<https://www.bailii.org/ew/cases/EWCOP/2022/44.html>

February 9, 2023 Guidance for the Court of Protection: 'Closed hearings' and 'closed material'

<https://www.judiciary.uk/guidance-and-resources/guidance-for-the-court-of-protection-closed-hearings-and-closed-material/>

Key Court of Appeal ruling on anonymity rights of medical clinicians in end of life proceedings. Freedom of expression Article 10 rights of families involved outweigh Article 8 Privacy rights of the medical carers. Case reference: Abbasi & Anor v Newcastle Upon Tyne Hospitals NHS Foundation Trust [2023] EWCA Civ 331 (31 March 2023)

<https://www.bailii.org/ew/cases/EWCA/Civ/2023/331.html>

Analysis of this ruling by the media lawyer Sam Brookman at Hold The Front Page 'Law Column: Reporting restrictions overturned in two end of life cases.'

<https://www.holdthefrontpage.co.uk/2023/news/law-column-reporting-restrictions-overturned-in-two-end-of-life-cases/>

Transparency in the Financial Remedies Court- The Final Report of the Financial Remedies Sub-Group of The Transparency Implementation Group April 2023

<https://www.judiciary.uk/wp-content/uploads/2023/05/FRC-TIG-Final-Report-April-2023.pdf>

'Family judge rebels on anonymity' Times May 25 2023

<https://www.thetimes.co.uk/article/family-judge-rebels-over-anonymity-jmfs9m798>

Sunday Times News Review (28 May 2023) 'Inside The Family Court- Covid jabs, tears and custody battles'

<https://www.thetimes.co.uk/article/tears-custody-battles-and-covid-jabs-a-week-inside-britains-family-courts-9jjqv5bs8>

Hold The Front Page Law Column 8th August 2023 'Law Column: Publishers can name lay justices and advisors in care proceedings.'

<https://www.holdthefrontpage.co.uk/2023/news/law-column-publishers-can-name-lay-justices-and-advisors-in-care-proceedings/>

Derbyshire County Council v Marsden [2023] EWHC 1892 (Fam) (21 July 2023)

<https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Fam/2023/1892.html>

Tickle v Father & Ors [2023] EWHC 2446 (Fam) (05 October 2023)

<https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Fam/2023/2446.html>

Hold The Front Page Jaffa Law Column 11th October 2023 'No party holds a veto on reporting in the Family Court'

<https://www.holdthefrontpage.co.uk/2023/news/law-column-no-party-holds-a-veto-on-reporting-in-the-family-court/>

Press Gazette 9th October 2023 'Freelance journalist wins solo High Court fight to shine light on family courts.'

https://pressgazette.co.uk/media_law/freelance-journalist-wins-solo-high-court-fight-to-shine-light-on-family-courts/



The front page of a newspaper published and censored in the British Isles when under occupation by Nazi Germany. This edition of the Guernsey evening *Star* had to publish stories that amounted to German propaganda. Hence the angled headlines on the terrible defeat of the Wehrmacht in the Battle of Stalingrad: 'Stalingrad heroes inspire whole German people "As they die so we shall live and so we shall conquer."' Most of the Channel Islanders on Guernsey would have been thinking the exact opposite.

Media law of British Island jurisdictions- Isle of Man and Channel Islands

The Isle of Man and Channel Islands are not part of the United Kingdom and have never been part of the European Union. They are self-governing UK Crown Dependencies, with their own legal systems and constitutions- the UK has responsibility for their defence and representation abroad. They have their own systems of primary and secondary media law which are similar to the UK, but with some distinctive differences.

The Isle of Man is an island in the Irish Sea situated between the north of England and east coast of Ireland in its own 2021 census recorded a population of 84,069 people. 26,677 live in the island's capital, Douglas. The Channel Islands consist of an archipelago in the English Channel situated off the French coast of Normandy. Geographically they are closer to France than Britain. Sometimes a distinction is made between the Channel Islands being considered part of the British Islands because of their close geographical proximity to France, and the Isle of Man being part of the British Isles.

The Channel Islands include two Crown Dependencies- the Bailiwick of Jersey, which is the largest of the islands; and the Bailiwick of Guernsey, consisting of Guernsey, Alderney, Sark, Herm and some smaller islands. The total population on the archipelago is about 171,916. The two Bailiwicks are separate self-governing entities with their own legal jurisdictions. And to complicate matters the Bailiwick of Guernsey is divided into three jurisdictions – Guernsey, Alderney and Sark – each with its own legislature.

If you are a media publisher intending to despatch journalists to cover legal stories in these territories I would advise hiring the freelance consultation and guidance of experienced local journalists trained and familiar with local law and culture. If issues of media law liability arise it is also essential to instruct members of the legal profession qualified to practice in the law of these jurisdictions.

Tradition and legacy of freedom of the press on the Isle of Man

These islands have distinguished and noble traditions of journalistic independence. For example, *The Isle of Man Daily Times* showed impressive defiance in the face of a threat of libel action on 1st August 1907 in this editorial: 'We published in our issue of Saturday last some matter contributed by a correspondent of ours who writes under the head of "Chats." This matter contained paragraphs severely stigmatizing a firm known as the "Norris-Meyer Press" for publishing a filthy postcard. We have since received a letter from Mr. R.D. Farrant acting under instructions from the firm in question, threatening us with an action for libel in respect of the comments of our correspondent, published by us above stated, unless we insert what is described as a "properly-worded apology" and retraction in our next issue in a "prominent place." In view of the nature of the postcard referred to by our correspondent, we consider the sending of this letter to us a piece of intolerable insolence and effrontery. So far from apologising or retracting, we now reiterate and lay emphasis on very word used by our correspondent; and we shall be prepared to meet any action for libel in connection with the subject.'

This is an early historical example of resistance to what is now recognised as 'lawfare' against journalists or SLAPPs- standing for strategic lawsuits against public participation whereby lawyers act for usually rich and powerful people and organisations to suppress and intimidate journalism published in the public interest which is critical of and questioning their behaviour.

The Isle of Man celebrates the Liverpool born journalist and *Isle of Man Times* founding editor [James Brown \(1815-81\)](#) who challenged the unrepresentative nature of the House of Keys and improved the democratic accountability of the island's constitution. James was the mixed race grandson of an African-American slave. His name is on the 'Manx Patriots' Roll of Honour' which can be seen in the foyer of Legislative Buildings and [in the Royal Chapel at St John's](#). He was sentenced to six months' imprisonment in 1864 over articles which accused the Isle of Man's House of Keys unelected legislators of being donkeys. He refused to apologise when summoned to the House of Keys and was accused of contempt and abuse of

privileges. The decision to convict him was done in secret session. The editor of the *Mona's Herald*, John C. Fargher, also summoned to appear, did apologise and was pardoned when he agreed to published a retraction. Brown's jailing started a freedom of the press campaign throughout Great Britain and Ireland. He continued to publish defiant articles, calling for freedom of the press and democracy while in prison. (See: <https://www.iomtoday.co.im/news/james-brown-a-pioneer-for-many-reasons-236282>)

He was released after six weeks by the Court of Queen's bench in London which had, and still has, jurisdiction over *habeas corpus* in the Crown Dependencies. The court ruled his detention was unlawful. This remains the only recourse to the English High Court (now King's Bench division) in Crown Dependencies, including the Channel Islands, for arbitrary and irrational arrest and detention without due process. He successfully sued the House of Keys for depriving him of his liberty and was awarded £519 in damages. In 1866, the House of Keys became an elected body and in 1881 extended the franchise to unmarried women and widows over the age of 21 who own property, thus making the Isle of Man the first place to give some women the vote in a national election.

The newspaper media and journalism on the Isle of Man during these years can be regarded as key contributing factors to achieving more representative government there. This progressive tradition continued in 2006 when the voting age was lowered to 16, though the minimum age for candidates remains 18. The Manx Patriots' Roll of Honour also commemorates two more campaigning journalists who furthered the cause of democracy on the island- [Robert Fargher \(1803-1863\)](#) and [Samuel Norris \(1875-1948\)](#). Both had also been jailed (Norris at the height of the Great War in 1916) as a result of publications and political clashes with the Isle of Man's government and legislature.

The first edition of McNae's *Essential Law for Journalists* published in 1954 reported in the chapter on 'Contempt of Court' how the case of the '*Isle of Man Times*' in 1938 described a police raid as "very amusing" and proceeded: "Liverpool constables, staying as guests in boarding houses, ordered drinks in unlicensed premises; and then, in true American fashion, with hooting of horns, and screeching of brakes, motor-cars drew up. Policemen jumped out and the show was complete." The paper was ordered to pay the costs of the High Court action which held this was a technical contempt.'

Tradition and legacy of freedom of the press in the Channel Islands

There has been a tradition of a free press in the Channel Islands since the age of the Enlightenment towards the end of the 18th century and the time of the Napoleonic Wars. The *Guernsey Star* was founded in 1813. The island is at present served by one daily newspaper, *The Guernsey Press*, published six days a week with an online news site (<https://guernseypress.com/news/>). The *Guernsey Evening Press* was first published in 1897. In 1951 it merged with the morning *Guernsey Star*, and has become known as *The Guernsey Press*.

The first newspaper published in Jersey was the French speaking *Le Magasin de Jersey* in 1784 and the first English language papers in Jersey were *The British Press* in 1822 followed by the *Jersey Times* in 1823 when they amalgamated. Jersey is currently served by one daily newspaper, the *Jersey Evening Post*, printed six days a week, and has been in circulation since 1890. It has an online news site. (See: <https://jerseyeveningpost.com/category/topstories/>). The printed newspaper media in the Channel Islands are IPSO regulated. Television news services are provided by the BBC (<https://www.bbc.co.uk/programmes/b00cpbsj>) and ITV (<https://www.itv.com/news/channel>) with newsrooms and programmes produced in the Islands. The BBC operates local radio stations in Jersey and Guernsey (https://www.bbc.co.uk/sounds/play/live:bbc_radio_jersey & https://www.bbc.co.uk/sounds/play/live:bbc_radio_guernsey) and there are also commercial radio stations. All of the broadcasting is subject to Ofcom regulation. Media conduct and content has to comply with Ofcom's Broadcasting Code. There is a standalone *Bailiwick Express* online news service which describes itself as 'a new virtual newspaper for Jersey [and Guernsey] combining the opportunities in website presentation and interactivity with e-mail reach to its readers.' This is regulated by the Royal Charter approved IMPRESS and adheres to the Standards Code adopted by IMPRESS: <http://www.impress.press/standards/>. (See: <https://www.bailiwickexpress.com/jsy/group/making-complaint>) The *Bailiwick Express* operates an online news service with Jersey (<https://www.bailiwickexpress.com/jsy/news/>) and Guernsey editions (<https://gsy.bailiwickexpress.com/>) Bailiwick publishing broadcasts an online radio service which follows Ofcom regulation and also publishes the magazine *Connect* also regulated by IMPRESS.

The Channel Islands were the only part of the British Isles occupied by Nazi Germany during the Second World War and journalists died in their courageous efforts to bring BBC and Allied news to their fellow islanders through underground news sheet and other forms of clandestine communications. Great tribute and respect is owed to the editor of the daily *Guernsey Star*, Frank Falla, who during the occupation was part of a resistance group which published an underground paper titled the Guernsey Underground News Sheet, known as GUNS. (See: 'Guernsey Underground News Service blue plaque unveiled' at: <https://guernseypress.com/news/2017/04/24/guernsey-underground-news-service-blue-plaque-unveiled/>) He was betrayed and deported to Germany and was fortunate to survive the ordeal. While editing the *Star* he devised a method of strategic placement of stories in the newspaper's lay-out so that islanders would be able to recognise those directed by the Germans for publication as propaganda and those actually written by Guernsey journalists. I believe his memoir *The Silent War* should be on the reading list/syllabus of any journalism history and training course. Extensive research by Cambridge University academic Dr Gilly Carr and colleagues resulted in the location, donation and curating of Frank Falla's personal papers which are now online at <https://www.frankfallaarchive.org/> and <https://www.frankfallaarchive.org/people/frank-falla/> The research has widened to

cover all forms of resistance and defiance against Nazi occupation of the Channel Islands; https://youtu.be/EHEHvUAI_B8

A Cambridge University archaeologist, along with two other researchers in Guernsey, has uncovered a previously unseen archive featuring the testimonies of people who were deported to German prison camps during World War II. The project they are working on aims to document the history of protest and resistance in the Channel Islands. She described the collection as: "the single most important resistance archive ever to emerge from the Channel Islands."

Media on Isle of Man and Secondary Media Law regulation

Isle of Man media law is a combination of statute passed by its own legislature/parliament, the Tynwald, and Manx customary law, an equivalent of common law developed by case law set in the island's courts. The island has its own Human Rights Act, Strasbourg jurisprudence can be taken into account, UK precedents are not binding, but influential, and the final appeal from the Isle of Man's legal system is to the Judicial Committee of the Privy Council in London sitting in the UK's Supreme Court building in London's Parliament Square, constituted by UK Supreme Court Justices (See <https://www.jcpc.uk/>).

The island's three printed weekly newspapers, *Isle of Man Courier*, *Isle of Man Examiner* and *Manx Independent* are in the Isle of Man Newspapers group owned by Tindle newspapers along with online news site *Isle of Man Today* (see: <https://www.iomtoday.co.im/>). These are all contracted to regulation by the Independent Press Standards Organisation, IPSO, and follow the Editors' Code. Broadcast regulation of the island's one public broadcasting service (Manx Radio at <https://www.manxradio.com/>) and two commercial radio stations is by the island's own Broadcasting Act (see http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1993/1993-0012/BroadcastingAct1993_2.pdf) and subsequent Communications Act 2021 (See: https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2021/2021-0003/CommunicationsAct2021_1.pdf) The Communications and Utilities Regulatory Authority CURA (See: <https://www.gov.im/about-the-government/statutory-boards/communications-and-utilities-regulatory-authority/>) is responsible for implementing the legislation including under section 46, the observance of a Standards Code set out under Schedule 3. This also ensures that licensed broadcasters establish and maintain procedures for the handling and resolution of complaints about the observance of those standards.

Television news coverage is provided by UK or 'across' BBC and ITV services. People in the Isle of Man do not use the term 'mainland' as they regard themselves as the mainland. The UK television coverage is subject to Ofcom UK Broadcasting Code content and conduct regulation. Neither provide a specific news programme for the Isle of Man. No Isle of Man local television service has yet been licensed though should the economies of scale make it viable and achieve licensing approval by

[CURA](#), independent television broadcasting indigenous to the island remains a possibility.

Consequently secondary media law is determined in print and associated online journalism under voluntary IPSO regulation by the Editors' Code of Practice at <https://www.ipso.co.uk/editors-code-of-practice/> guided by latest edition of Editors' Codebook (144 pages) at: <https://www.editorscode.org.uk/downloads/codebook/codebook-2022.pdf> One page Code of Practice pdf file is available at: <https://www.ipso.co.uk/media/2032/ecop-2021-ipso-version-pdf.pdf>

Schedule 3 of the Isle of Man Communications Act 2021 sets out broadcasting standards and objectives to be observed on pages 127 to 131 of the legislation. (See: https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2021/2021-0003/CommunicationsAct2021_1.pdf)

These standards cover the protection of under 18s, preventing content which encourages or incites the commissioning of crime, ensuring the reporting of news with due accuracy, showing a proper degree of responsibility with respect to religious programmes, providing adequate protection from including harmful or offensive material in programming, preventing unjust or unfair treatment in any programmes included in a broadcasting service, ensuring there is no unwarranted infringement of privacy in, or in connection with the obtaining of material included in any programme, and other rules on political advertising, sponsorship, and the prevention of subliminal communications. Schedule 3 also sets out 'special requirements on impartiality' which includes the preservation of due impartiality and the prevention of undue prominence of views and opinions in programming. Schedule 3 is very much a mirroring of the UK Ofcom Broadcasting Code.

It seems The Isle of Man's CURA and its predecessor body has been rarely asked to adjudicate and rule on complaints. The last case to generate significant coverage and attention was the suspension of Manx Radio presenter Stu Peters in 2020 over a phone-in exchange during which he challenged the concept of "white privilege." (See: <https://www.bbc.co.uk/news/world-europe-isle-of-man-52936980>) The matter was referred to the then Isle of Man's Communications Commission. Peters was supported by The Free Speech Union which intervened on his behalf. (See: <https://freespeechunion.org/letter-to-the-isle-of-man-communications-commission-about-stuart-peters/>) The Commission decided the broadcast did not breach the standards code, and the presenter was cleared of any wrongdoing and reinstated. (See: <https://www.manxradio.com/news/isle-of-man-news/stu-peters-did-not-breach-programme-code-says-broadcasting-watchdog/> and <https://www.bbc.co.uk/news/world-europe-isle-of-man-53171352>) In 2021 Stu Peters left Manx Radio to become a candidate in the General Election (See: <https://twitter.com/StuManx/> was elected to the House of Keys, and appointed

Chairman of the Board of the Isle of Man's Post Office (See: <https://www.iompost.com/media-centre/isle-of-man-post-office/Stu-Peters-Chairman/>).

Libel/defamation law on the Isle of Man

Libel in the Isle of Man has been determined by the Libel and Slander Act 1892, Defamation Act 1954, and the most recent legislative provisions of the Law Reform Act 1997, and case law- some of which goes as far back as the celebrated case in 1872 of Laughton v the Bishop of Sodor and Man at the Judicial Committee of the Privy Council which determined issues over absolute privilege and the construction of malice in political communications. (See:

http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1892/1892-0007/LibelandSlanderAct1892_1.pdf and http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1954/1954-0005/DefamationAct1954_1.pdf and http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1997/1997-0001/LawReformAct1997_2.pdf and https://www.bailii.org/cgi-bin/format.cgi?doc=/uk/cases/UKPC/1872/1872_88.html)

In 2013 Lord Neuberger summarised the Laughton v Bishop of Sodor and Man libel case over three succinct paragraphs 41 to 43 in his delivery of 'The Annual Caroline Weatherill Memorial Lecture' on the subject of The Judicial Committee of the Privy Council in the 21st Century Isle of Man:-

(41)One case heard in the JCPC in 1872 must have caused quite a stir among the Isle's inhabitants.⁴¹ A Bill had been introduced into the House of Keys, which, if passed, would have vested additional ecclesiastical patronage in the Bishop of Sodor and Man. At a public meeting, which the law report describes as having been 'of a somewhat excited character', against the Bill, Alfred Laughton, a Manx barrister, spoke so effectively that he was retained as counsel to oppose the Bill. In addressing the House of Keys, he did not hold back, describing the Bishop 'under the cloak of anxiety for the publicwelfare and cure of souls, in reality [seeking] only increased patronage for himself, [and] attempt[ing] "to take by violence the property of his neighbour"'. Mr Laughton ended by saying that the Bishop 'came here in 1854, and has ..., by act after act, till the whole Island has echoed and re-echoed with cries of 'shame!' brought a foulstain and scandal upon the Church'.

(42)The House of Keys duly threw out the Bill. On Whit Thursday 1868, the Bishop read a charge to his Clergy and sent a copy of the charge to the editor of the Manx Sun newspaper. In it, he described Mr Laughton 'as employing arguments and language not ordinarily used by any man of high professional repute when pleading before a common jury or a Parish vestry; ... of being a wicked man; of making calumnious assertions; and of being guilty of the sin of bearing false witness against his neighbour'.

(43) Depending on your viewpoint, Mr Laughton couldn't be expected to stand by idly, or he was not prepared to get as good as he had given. He brought an action for libel against the Bishop. The Deemster directed the jury that, as the alleged libel was uttered on a privileged occasion, the claim could only succeed if there was express malice on the part of the Bishop. The jury must have concluded that there was such malice, and awarded Mr Laughton £400 damages. The Staff of Government Division set aside the verdict, on the ground that there was no evidence of express malice. The JCPC agreed, holding that, while some expressions used by the Bishop 'undoubtedly [went] beyond what was necessary for self-defence', they did not amount to evidence of malice for a jury.'

Isle of Man defamation law does not have the clarity of the recent reforming and largely consolidating Defamation Act 2013 of England and Wales and navigating and understanding it in the context of any potential litigation should certainly require specialist legal advice from a lawyer qualified and practising in the Manx jurisdiction. The criminal libel processes still applying from the 1892 Libel and Slander Act require the approval of a High Court of Justice under section 10, which in the Isle of Man would be a judicial office-holder called a Deemster. Section 12 sets out defences of the publication being for the public benefit, being true (justification), being fair and accurate, and published without malice.

Libel/defamation is also a civil wrong/tort in the Isle of Man legal jurisdiction and it would seem that the defences cited in the 1892 legislation should be available in civil litigation. The 1997 Law Reform Act legislates in detail for the absolute privilege defence when reporting court proceedings, and the Isle of Man's Tynwald, the Council or the Keys, and qualified privilege when reporting other government bodies and public meetings. The enactment of the Isle of Man's own 2001 Human Rights Act in 2006 means that under Section 2 Strasbourg jurisprudence on freedom of expression law must be taken into account and the island's courts need to have particular regard for freedom of expression under Section 11 when prior restraint orders are sought. (See: http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2001/2001-0001/HumanRightsAct2001_1.pdf)

There are few public domain reports of Isle of Man libel cases. One such by the Guardian in 2002 'Poet faces jail in libel battle with millionaire' at <https://www.theguardian.com/uk/2004/nov/12/davidleigh> contained unflattering descriptions of the Island's legal system as 'neanderthal', 'idiosyncratic' and 'Kafkaesque,' with no protection of journalists' sources law and a Human Rights Act which at that time was not in force. The case of Albert Gubay v the late Roly Drower resulted in Mr Drower being fined for contempt of court when he refused to disclose the identity for the source of allegations he had posted online. (See: 'Chasing a Manx tale. The Isle of Man is proud of its consensus form of government, but it can be a costly place to express dissent, writes Carol Coulter' at: <https://www.irishtimes.com/news/chasing-a-manx-tale-1.1170605>).

Need to legislate for protection of journalist sources law revealed in notorious libel case

A proposed 2018 Isle of Man Contempt of Court Bill under clause 14 'provides that it is neither an offence nor a contempt of court to refuse to disclose a source of information contained in a publication unless the disclosure is required in the interests of justice, or in the interests of the national security of the Island or the United Kingdom, or to prevent crime or disorder.' This reflects the provision in Section 10 of the UK 1981 Contempt of Court Act. The bill is to be considered for legislation in the next few years and following the commencement in 2006 of the island's Human Rights Act 2001, it is certainly possible for journalists and their lawyers to draw upon Strasbourg protection of sources jurisprudence in the interim and additionally if and when the Contempt Bill is enacted. (See Contempt of Court Bill 2018 at https://consult.gov.im/attorney-generals-chambers/contempt-of-court-bill-2018/supporting_documents/ContemptofCourtBill2018_V01.pdf and explanatory notes at: https://consult.gov.im/attorney-generals-chambers/contempt-of-court-bill-2018/supporting_documents/Explanatory%20notes.pdf).

Isle of Man libel law reached the consideration of the Judicial Committee of the Privy Council in the case of *Nugent & Anor v Willers (Isle of Man)* [2019] UKPC 1 (16 January 2019) at <https://www.bailii.org/uk/cases/UKPC/2019/1.html> on the matter of interpreting the primary limitation period for bringing defamation actions which usually runs from one year after the date of publication as imposed by section 4A of the Isle of Man Limitation Act 1984 and the discretion to exclude that time limit which is conferred on the court by section 30A of the Act. This was not a journalism publication case and turned on whether the claimant acted promptly and reasonably after discovering the cause of action in a letter. The letter originated in 2009 and its existence was discovered by the claimant in 2013.

Isle of Man defamation law is therefore a matrix of Manx Acts of Parliament and case law. It is missing the serious harm rule, one publication rule, statutory defences for truth, public interest, honest opinion, academic journal/conference qualified privilege, and innocent dissemination/web operator's defence present in the 2013 Defamation Act of England and Wales. However, libel cases and other secondary media law infractions are rare. In 2021 and 2020 there were no complaints made or upheld against Tindle's Isle of Man newspaper series: *Isle of Man Examiner*, *Isle of Man Courier*, and *Manx Independent* and its associated news website. (See: https://www.ipso.co.uk/media/2270/tindle-annual-statement-2021_compressed.pdf & <https://www.ipso.co.uk/media/2040/tindle-newspapers-annual-statement-2020.pdf>) The only IPSO complaint recorded against a Isle of Man newspaper was in 2020 *Dobson v Isle of Man Examiner* with a resolved decision through IPSO mediation. See: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00397-20> This was reported by Hold The Front Page 15th April 2020 'Magistrate's delivery blamed for weekly's inaccurate court story' at:

https://www.holdthefrontpage.co.uk/2020/news/magistrates-delivery-blamed-for-weeklys-inaccurate-court-story/?utm_source=dlvr.it&utm_medium=facebook.

Section 8 of the Isle of Man Law Reform Act 1997 provides a defence on responsibility for defamation if a person can show: (a) he was not the author, editor or publisher of the statement complained of, (b) he took reasonable care in relation to its publication, and (c) he did not know, and had no reason to believe, that what he did caused or contributed to the publication of a defamatory statement.

Under 8(3) 'A person shall not be considered the author, editor or publisher of a statement if he is only involved' under (d) 'as the broadcaster of a live programme containing the statement in circumstances in which he has no effective control over the maker of the statement' and (e) 'as the operator of or provider of access to a communications system by means of which the statement is transmitted, or made available, by a person over whom he has no effective control.'

In theory this should provide a defence for broadcasters faced with a live guest who without any warning or reasonable expectation makes defamatory allegations and for journalism website publishers or social media platforms with comment streams which are not pre-moderated. Where potential libel is brought to the attention of a news website/social media publisher, it could be argued they should be able to avail themselves of the defence by removing the material within a reasonable amount of time. Under 8(5) the legislation provides 'a reasonable care' evaluation and 'regard shall be had to — (a) the extent of his responsibility for the content of the statement or the decision to publish it, (b) the nature or circumstances of the publication, and (c) the previous conduct or character of the author, editor or publisher.'

See:

http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1997/1997-0001/LawReformAct1997_2.pdf.

Under Section 9 of the Law Reform Act 1997, the Isle of Man has an offer of amends provision in libel law which is a means of settling early and limiting damages and costs. Under section 14 there is a provision for summary disposal where 'The court may dismiss the plaintiff's claim if it appears to the court that it has no realistic prospect of success and there is no reason why it should be tried.' Summary relief is defined as: (a) a declaration that the statement was false and defamatory of the plaintiff; (b) an order that the defendant publish or cause to be published a suitable correction and apology; (c) damages not exceeding £10,000 or such other amount as may be prescribed by order of the Council of Ministers; (d) an order restraining the defendant from publishing or further publishing the matter complained of.' Under section 13, the legislation states 'In defamation proceedings the court shall not be asked to rule whether a statement is arguably capable, as opposed to capable, of bearing a particular meaning or meanings attributed to it.'

Section 19 of the Law Reform Act enacts an absolute privilege defence in libel for 'A fair and accurate report of proceedings in public before a court to which this section applies, if published contemporaneously with proceedings.' In 19(3) the absolute privilege applies to any court in the British Islands, EU Court of Justice, ECtHR in Strasbourg and any international criminal tribunal established by the Security Council of the United Nations. It also applies to fair and accurate reports of proceedings where reporting had been postponed by court order. Section 20 states that the qualified privilege defence can be defeated by malice and where the defendant '(a) was requested by [the Plaintiff] to publish in a suitable manner a reasonable letter or statement by way of explanation or contradiction, and (b) refused or neglected to do so.'

The 1954 Defamation Act made defamatory statements in broadcasting a permanent form of libel. Under Section 2 in slander (the spoken form of defamation) 'it shall not be necessary to allege or prove special damage' when defaming somebody in the plaintiff's 'office, profession, calling, trade or business.' Under Section 5 in respect of 'words containing two or more distinct charges against the plaintiff, a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation having regard to the truth of the remaining charges.' Under Section 6 in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.'

Open justice and legal system on Isle of Man

Court proceedings in the Isle of Man follow the Open Justice convention and principle. Manx law has a distinct system of binding precedent based on cases brought before the Island's courts. Precedents in the English legal system, when relevant and applicable, are persuasive. The supreme court for the Isle of Man is the Judicial Committee of the Privy Council. The Isle Man's highest appellate court is the Staff of Government Division. The lowest courts in the Isle of Man are the summary courts, Coroner of Inquests, Licensing Court, Land Court, etc. These courts are presided over by magistrates. There are two stipendiary magistrates, the High Bailiff and the Deputy High Bailiff, along with lay justices of the peace.

The superior court of the Isle of Man is the High Court of Justice of the Isle of Man, consisting of a Civil Division and an appeal division, called the Staff of Government Division. The judges of the High Court are the deemsters, appointed by the King (acting on the advice of the Secretary of State for Justice in the United Kingdom), and the judicial officers, appointed by the Lieutenant Governor. The High Bailiff and the Deputy High Bailiff are ex officio judicial officers, and additional judicial officers (full-time or part-time) may be appointed. Civil matters are usually heard at first instance by a single

deemster sitting in the High Court. Criminal proceedings are heard at first instance before either the High Bailiff or the Deputy High Bailiff or a bench of lay magistrates, in less serious cases. More serious criminal cases are heard before a deemster sitting in the Court of General Gaol Delivery. In a defended case the Deemster sits with a jury of seven (twelve in cases of treason or murder). Civil and criminal appeals are dealt with by the Staff of Government Division.

Appeals are usually heard by a deemster (the one not involved with the case previously in the High Court or Court of General Gaol Delivery) and the Judge of Appeal. An explanation of the Isle of Man Courts of Justice is set out at <https://www.courts.im/> and this includes listings of forthcoming cases and hearings. A database of Isle of Man judgements online is maintained at <https://www.judgments.im/content/home.mth>

The Isle of Man's criminal justice system is explained in a detailed report published in 2018. (See: <https://www.gov.im/media/1364203/iom-code-of-practice-for-victims-and-witnesses-2312019.pdf> with 'a service which focuses on the needs of victims' <https://www.gov.im/news/2021/may/23/service-focuses-on-needs-of-victims/>). Page 49 of the criminal justice system guide explains 'Journalists are able to attend hearings at the Courts however, reporting restrictions may apply. The media does not report the names of offenders, victims or witnesses if they are under the age of 18 years. Only in very exceptional circumstances, after an application has been made by the media to the presiding Deemster, may permission be given to publish names.' The guide also explains the identity of adult witnesses are protected 'Only in very limited circumstances. Generally, if you are giving evidence you will be required to give your name to the court. There are very few restrictions placed upon the media in terms of what can and what cannot be reported. Information that might lead to the identification of a child witness or a defendant aged less than 18 years is prohibited.'

Isle of Man Sexual Offences legislation enshrines anonymity for defendants unless and until found guilty as well as complainants

The Sexual Offences and Obscene Publication Act Isle of Man 2021 makes it a criminal offence to publish anything which could lead to the identification of a sexual offence defendant until convicted. (See: https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2021/2021-0010/SexualOffencesandObscenePublicationsAct2021_1.pdf) This makes the Isle of Man legal jurisdictional approach to sex offence defendants unique in the British Islands. The relevant part of the act is set out in Sections 139 to 146. The legislation includes a 'backstop' provision that allows a judge to lift the naming ban in the public interest if it is judged to be a 'substantial and unreasonable' restriction on the reporting of the court proceedings. The anonymity clause only applies to the Manx media, and the same case could be covered without restriction in the UK press. However, the risk of 'jigsaw identification', where readers can piece together the information of a case from two different media sources, means Isle of Man media may decide to avoid covering a case because the missing details reported elsewhere

makes them liable. It should go without saying that this legislation provides lifelong anonymity for anyone who complains of being the victim of a sexual offence from the time they make the accusation.

The legislation mirrors UK law at Section 139(1) 'no matter relating to that person shall during that person's lifetime be included in any publication if it is likely to lead members of the public to identify that person as the person against whom the offence is alleged to have been committed.' Under 139(4) the matters 'include in particular — (a) the person's name; (b) the person's address; (c) the identity of any school or other educational establishment attended by the person; (d) the identity of any place of work; and (e) any still or moving picture of the person.' This provision could make it a potential offence to include a pixelated still or film purportedly concealing identity because there may be remaining features which are identifiable to somebody who may know the victim/complainant. Section 146 defines 'picture' as to include 'a likeness however produced.' The Act also provides the power to additionally grant anonymity to witnesses in sexual offence trials. Section 142 sets out offences to which the anonymity restrictions can be applied and states the reasons and circumstances under Section 143 and 144 where they could be varied and lifted by order of the court.

The legislation was considered controversial and the debate generated is covered in the articles 'Anonymity law will lead to cases going unreported' 12th November 2020 at <https://www.iomtoday.co.im/news/courts/anonymity-law-will-lead-to-cases-going-unreported-238097> and 'Defendants accused of rape to have identity protected' 11th December 2019 at <https://www.iomtoday.co.im/news/politics/defendants-accused-of-rape-to-have-identity-protected-231894> UK British media need to be conscious of the potential legal position of a news website which part covered Isle of Man news. When the legislation was scrutinised by the Tynwald a spokesman for the Department of Home Affairs said: 'If the website had an Isle of Man presence and an article naming a defendant on it was published, the bill talks about the editor having committed an offence, and the penalties are specified.' This new law was not due implementation until the last quarter of 2023.

Protection of children in Isle of Man legal system

The Isle of Man's Children and Young Persons' Act 2001 at Section 8 sets out the protections for children involved in legal proceedings. At Section 69 the statutory principle is established that 'Every court in dealing with a child or young person who is brought before it, either as an offender or otherwise, shall have regard to the welfare of the child or young person.' Section 75 provides for clearing court while child or young person is giving evidence though 'bona fide representatives of a newspaper or news agency' are not excluded and can remain to carry on their reporting duties. Section 80 makes it a criminal offence to publish a photograph or any information leading to the identification of children involved in legal proceedings: 'no written report of any proceedings in any court shall be published in the Island, and no report of any such proceedings shall be included in a relevant programme for reception in the Island, which —(a) reveals the name, address or school, or (b) includes any

particulars calculated to lead to the identification, of any child or young person concerned in those proceedings, either as being the person against or in respect of whom the proceedings are taken or as being a witness therein.' (See: http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2001/2001-0020/ChildrenandYoungPersonsAct2001_1.pdf) The age of criminal responsibility on the Isle of Man is 10. The legislation also says 'the words "conviction" and "sentence" shall not be used in relation to children and young persons dealt with summarily.' Children are aged 17 and under and Isle of Man law recognises them as adults when they reach the age of 18.

Plan to legislate for media contempt law in Isle of Man

In the next few years it is expected that the Isle of Man Parliament will be evaluating, updating and passing its Contempt of Court Bill into legislation. It seeks to synchronise media contempt law with the provisions of the UK's 1981 Contempt of Court Act with formal powers to issue court orders to postpone the reporting of proceedings to avoid prejudice to future court cases, prohibit publications of the identity of witnesses withheld from the hearing, a strict liability rule of substantial risk of serious prejudice applying to the media after arrests have been made in criminal enquiries, and the prohibition of filming, sound recording and photography in court. There are no problematic case histories in media conduct on the Isle of Man to make this legislation urgent.

In 2018 somebody who was not a journalist and attending a criminal trial on the island took photographs in court and there was confusion about the legal powers available to deal with the disruption. It was reported that the case had to be abandoned because the photographs during the closing stages of the trial included the jurors and the prosecuting advocate. The jury had to be discharged. See 'Fair trials: A loophole is found in Manx court laws', 23rd August 2018 at:

<https://www.iomtoday.co.im/news/courts/fair-trials-a-loophole-is-found-in-manx-court-laws-223181> The proposed legislation provides for an appeal process to challenge the imposition of reporting restrictions, a defence for discussion of public interest matters that are merely incidental to court proceedings taking place, the protection of jury deliberations, and as previously mentioned a statutory protection of journalists' sources. See: https://consult.gov.im/attorney-generals-chambers/contempt-of-court-bill-2018/supporting_documents/ContemptofCourtBill2018_V01.pdf & <https://consult.gov.im/attorney-generals-chambers/contempt-of-court-bill-2018/>

GDPR, Freedom of Information and Copyright law in Isle of Man

The Isle of Man also has GDPR and Data Protection legislation which is similar to the UK position though different in taking a direct approach. Key parts of the GDPR include a widened definition of personal data, new obligations for processors as well as boosted rights for individuals. The Isle of Man implemented the GDPR into its law so that it can continue to do business with EU countries via an Order made under a new Data Protection Act 2018 (See <https://legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2018/2018->

[0010/DataProtectionAct2018_1.pdf](#)) This enables the Isle of Man to bring in EU laws relating to data protection. (See <https://www.gov.im/about-the-government/data-protection-gdpr-on-the-isle-of-man/> and https://www.gov.im/media/1361222/gdpr_weboutlinedblue.pdf The laws contained in this framework will substantially influence the concept of privacy law in the Isle of Man's jurisdiction combined with case law vectoring Article 8 of the European Convention on Human Rights- respect for private and family life, home and correspondence and enshrined in the Manx Human Rights Act.

The Isle of Man has its own Freedom of Information Act and regime of request to public bodies and appeal against refusal. (See http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2015/2015-0008/FreedomofInformationAct2015_1.pdf and <https://www.gov.im/about-the-government/freedom-of-information/make-a-freedom-of-information-request/>) The system and approach is very similar to that in England and Wales, Northern Ireland, Scotland and the Channel Islands. And Isle of Man journalists have encountered similar frustrations about the effectiveness of FOI to serve public interest imperatives. See 'There's a public interest in releasing 'bullying' report but we're not going to do it' 7th December 2019 at: <https://www.iomtoday.co.im/news/education/theres-a-public-interest-in-releasing-bullying-report-but-were-not-going-to-do-it-231796>.

Copyright and intellectual property law on the Isle of Man is determined by the primary legislation statute law the Copyright Act of 1991, followed by the Copyright Amendment Act of 1999, establishing database rights and remedies and another Copyright Amendment Act of 2014, which largely amended penalties and remedies for infringement. (See: http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1991/1991-0008/CopyrightAct1991_5.pdf, and http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/1999/1999-0012/CopyrightAmendmentAct1999_1.pdf and http://www.legislation.gov.im/cms/images/LEGISLATION/PRINCIPAL/2014/2014-0007/CopyrightetcAmendmentAct2014_1.pdf) The Isle of Man legal jurisdiction hears copyright claims, disputes and litigation in its own Copyright Tribunal (See: <https://www.courts.im/court-procedures/tribunals-service/tribunals/>.) There are other Tynwald Acts covering IP such as the Design Right Act 1991, Performers' Protection Act 1996, Patents Act 1977, Registered Designs Act 1949, Trade Marks Act 1994, Community Trade Mark Order 1998 (SD 671/98) and Community Trade Mark Regulations 1998 (SD 672/98).

The duration of copyright in a literary, dramatic, musical or artistic work lasts from 70 years after the death of the author, and the copyright residing in sound recordings and films covers the communication of a work to the public by electronic transmission. Isle of Man copyright law is substantially synchronised with that of the UK and European Union. The island's Department of Economic Development seeks to modernise IP as explained at <https://www.gov.im/categories/business-and-industries/intellectual->

[property/modernisation/](#) though it does not propose to seek the adoption of legislation for an artist's resale right (droit de suite) or public lending right.

Channel Islands legal systems

The main systems cover the Bailiwicks of Jersey and Guernsey and they are both very similar, with a final route of appeal on matters of law to the Judicial Committee of the Privy Council in London. Channel Islands' law has a considerable amount of French influence. For example, the first tier criminal Magistrates Court can resemble in process the inquisitorial function of the French examining magistrate who will investigate a criminal allegation, make a finding of guilty or not guilty and then decide the sentence alone. The French traditions determine some of the unique terminology describing the court roles. In Jersey the Centenier is an honorary police officer who presents the case. The equivalent of the Magistrates Clerk is called the Greffier, or Deputy Greffier.

The more serious criminal cases in Jersey are heard in Royal Court trials where the professional judge determining matters of law is called the Bailiff or Deputy Bailiff and usually two Jurats who decide the facts in criminal cases and also rule on the sentence. Where the prison sentence for the crime being tried is more than 4 years, the Royal Court will be constituted by the Bailiff and five jurats. In the Jersey system occasionally a jury of 12 members of the public might be summoned in cases heard before the Assizes Court and they will determine the issue of guilt in respect of the accused.

Jurats are not professional judges but do become specialists in their field of judicial participation which also includes the civil system where they can assess damages as well. In the Bailiwicks of Jersey and Guernsey Jurats also preside over land conveyances and liquor licensing.

Jurats are not randomly selected members of the public from the electoral role. At any one time the Jersey and Guernsey legal systems are served by twelve Jurats who are indirectly elected in Jersey by an electoral college constituted of States Members and members of the legal profession. They serve until retirement at the age of 72, or earlier once they have served in the role for six years. They have two further important constitutional roles: as presiding officers in public elections, known in the Islands as autorisés to oversee polling and declare the results and constituting the Bailiwick's Prison Board of Visitors where they are responsible for the proper care and treatment of prisoners and hear their complaints and representations.

In Guernsey jurats are elected by a process known as the States of Election comprising of the Island's judiciary, law officers and Anglican clergy. In the more serious criminal cases the Bailiff (professional judge) sits with seven jurats known as the Full Court, with cases heard by Bailiff and two jurats known as the Ordinary Court. When robed in court, jurats in Jersey will be in red and in Guernsey they will be in purple. The separate legal jurisdiction of Alderney is run by six jurats (appointed by the Crown) and the senior judge known as the Judge of Alderney.

Alderney jurats operate as judges of both fact and law assisted by a learned clerk in civil and criminal cases. BBC report 'How to become a Jurat in Jersey' See http://news.bbc.co.uk/local/jersey/hi/people_and_places/the_states/newsid_8399000/8399699.stm Bailiwick Express podcast 'The Interview: Diversity on the Royal Court bench with Jurat Collette Crill.' See: <https://bailiwickexpress.transistor.fm/episodes/the-interview-diversity-on-the-royal-court-bench-with-jurat-collette-crill>

Some useful online guides to the legal system in the Bailiwick of Jersey: Jersey Legal Information Board See: <https://www.jerseylaw.je/Pages/default.aspx>; Online resource provided by the government of Jersey on crime and justice. See: <https://www.gov.je/CrimeJustice/Pages/default.aspx> and Jersey court structure <http://www.justcite.com/kb/editorial-policies/terms/jersey-court-structure/> Some useful online guides to the legal system in the Bailiwick of Guernsey. Guernsey Legal System Resources. See: <https://www.guernseylegalresources.gg>. The Royal Court of Guernsey. See: <https://guernseyroyalcourt.gg/> Law Officers of the Crown in the Bailiwick of Guernsey. See <https://guernseyroyalcourt.gg/>

Media Law in the Channel Islands' legal jurisdictions

Broadly speaking the media law applying in these jurisdictions is similar to that of the UK and as has already been stated journalists working press, online, radio and television services are subject to the same professional standards and values regulated by Ofcom (broadcasting services) IPSO (*Jersey Evening Post* and *Guernsey Press*) and IMPRESS (online Bailiwick Press and printed magazine). However, specific nuances and differences as well as local customs and practices could require the expertise of specialist lawyers qualified in these legal jurisdictions and I would recommend external news organisations to commission the expertise, services, and advice of professional journalists working in the Channel Islands when this is felt necessary.

Media law litigation and/or prosecution is very rare in the Islands' jurisdictions. Reporting restrictions protecting the publication of anything which could identify youths aged 17 and under and sexual offence complainants apply. Youth Courts sit without the public, but accredited reporters can be present. Jersey Youth Court procedure determined by Criminal Justice (Young Offenders) (Jersey) Law 1994 states: 'Journalists may attend provided that nothing reported shall enable a Defendant directly or indirectly to be identified.' See: <https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/ID%20YouthCourtBooklet%202007-11-10%20BJL.pdf>.

Defamation issues are pursued through civil legal action and a full Jersey libel trial determined by jurats was described and reported on by Informm in 2012 'Case Law, Jersey: Pitman v Jersey Evening Post, cartoon not defamatory' See: <https://informm.org/2012/05/23/case-law-jersey-pitman-v-jersey-evening-post-cartoon-not-defamatory/> In 2013 the Guardian reported on a case leading to criminal

consequences for a libel defendant refusing to comply with the outcome of defamatory legal action. “Former Channel Islands politician sentenced to three months in prison for refusing to take down ‘highly defamatory’ articles” See: <https://www.theguardian.com/uk-news/2013/nov/04/jersey-stuart-syvret-jailed-blog-allegations>.

The courts in Jersey and Guernsey have inherent powers to control their proceedings and protect what they regard as the administration of justice and this does on occasion lead to tension and disagreement with Open Justice considerations argued by journalists and their publications. In 2002 the *Jersey Evening Post* contested a reporting ban which the *Guardian* reported was ‘the culmination of a year-long battle to report a civil case surrounding millions of pounds deposited in three Jersey registered trust funds.’ See: <https://www.theguardian.com/media/2002/oct/14/pressandpublishing.law>

There is evidence in recent years that the frequency of Open Justice derogations is increasing. On 10th January 2023, Magistrate Bridget Shaw imposed restrictions (at a hearing that the media was barred from attending) preventing details of the case from being reported, under an Article 89 Order of the Criminal Procedure (Jersey) Law 2018 to “protect the administration of justice.”

See: https://www.bailiwickexpress.com/jsy/news/flame-thrower-threat-students-was-cry-help-court-hears/#.ZF_I3XbMIkh The *Jersey Evening Post* published an essay criticising a lack of transparency and open justice in the island on 21st January 2023, highlighting that journalists were increasingly finding restrictions placed on what they can report.

On 22nd Nov 2019 *Bailiwick Express* applied for the removal of reporting restrictions <https://www.bailiwickexpress.com/jsy/news/express-applies-removal-reporting-restrictions/?t=i#.ZB479xXP1ow> and on 2nd December 2019 it reported that its restrictions application was rejected See: <https://www.bailiwickexpress.com/jsy/news/express-reporting-restrictions-application-rejected/#.ZB48ixXP0kg> The legal system in Jersey does publish court lists and court case outcomes (for only up to seven days after the event.) See: <https://www.gov.je/Government/NonexecLegal/JudicialGrefe/Pages/CourtLists.aspx#anchor-2>

There is an argument for legislation in both Bailiwicks to underscore Open Justice values in the context of practice and law in the United Kingdom as well as reference to Strasbourg jurisprudence in respect of the European Convention on Human Rights and Article 10 Freedom of Expression. For example they could follow the Isle of Man in legislating for an equivalent Contempt of Court Act guaranteeing protection of journalists’ sources, the right to report court hearings and a system of appeal and challenge of reporting restrictions. Jersey’s Human Rights Law came into force on 10 December 2006 following the passage of Human Rights Jersey law in 2000. See:

<https://www.jerseylaw.je/laws/current/Pages/15.350.aspx> and section 12 Freedom of Expression:

12 Freedom of expression

This Article applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

If the person against whom the application for relief is made (the “respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied –

that the applicant has taken all practicable steps to notify the respondent; or

that there are compelling reasons why the respondent should not be notified.

No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

The court shall have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to –

the extent to which –

the material has, or is about to, become available to the public; or

it is, or would be, in the public interest for the material to be published; and

any relevant privacy code.

In this Article –

“court” includes a tribunal; and

“relief” includes any remedy or order (other than in criminal proceedings).

See also Jersey Human Rights Working Group Main provisions of Human Rights Jersey Law A brief explanatory document at:

<https://www.gov.je/SiteCollectionDocuments/Government%20and%20administration/I>

[D%20Human%20rights%20guidance%20note%20091217%20ME.pdf](#) The Bailiwick of Guernsey also passed Human Rights Law in 2000 which has now been put into force. See:

<https://www.guernseylegalresources.gg/CHttpHandler.ashx?documentid=80709>

Freedom of Expression in the consolidated text is covered by Section 11:

(1) This section applies if a court is considering whether to grant any relief which, if granted, might affect the exercise of the Convention right to freedom of expression.

(2) If the person against whom the application for relief is made (“the respondent”) is neither present nor represented, no such relief is to be granted unless the court is satisfied –

that the applicant has taken all practicable steps to notify the respondent, or

(b) that there are compelling reasons why the respondent should not be notified.

(3) No such relief is to be granted so as to restrain publication before trial unless the court is satisfied that the applicant is likely to establish that publication should not be allowed.

(4) The court must have particular regard to the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to –

(a) the extent to which –

(i) the material has, or is about to, become available to the public, or

(ii) it is, or would be, in the public interest for the material to be published, (b) any relevant privacy code.

(5) In this section –

“court” includes a tribunal, and

“relief” includes any remedy or order (other than in criminal proceedings).

The legal profession and judiciary in these small Islands’ legal jurisdictions have been discussing the setting of legal boundaries in media communications about the process of law particularly in the new age of online social media. Robin Gist, an Advocate with the Law Officers of the Crown, Guernsey, in an article in 2016 analysed ‘the effect of social media on confidence in the judiciary of a small jurisdiction, where the limited number of judges means their judgments are subject to the most public of scrutiny.

The article considers whether more can, or should, be done to ensure that confidence in the judiciary is retained at its very highest.’ See: ‘Protecting the administration of justice in a small jurisdiction’ in the Jersey and Guernsey Law Review at: https://www.jerseylaw.je/publications/jglr/PDF%20Documents/JLR1602_Gist.pdf

The article sets out useful factual information about the laws protecting the disruption of legal proceedings by contempt of court and references the Children (Guernsey and Alderney) Law 2008 (as amended), s 115(5) which determines that any person who publishes any matter in contravention of that section (which effectively prohibits the publishing of any report which might identify a child concerned in proceedings, be that child the subject of proceedings or a witness), is guilty of an offence and liable to imprisonment and a fine. Media Contempt under the customary law is referenced to the case of BBC v Law Officers, a judgment handed down by the Guernsey Court of Appeal on 18 November 1988. Mr Gist effectively analyses this precedent in his article:

The Court of Appeal set out (at 6) that—

“Although Contempt of Court has long been a part of the law of the Island of Guernsey, there has been no authoritative definition . . . of the constituent parts of the offence.”

The Court of Appeal endorsed the Deputy Bailiff’s decision to—

“look for guidance primarily to the Law of England . . . [having] regard not so much to the common law . . . as to the provisions of section 2 of the Contempt of Court Act 1981”,

apparently implying that it was appropriate to use the 1981 Act for guidance, notwithstanding that it had (at 9) “effected substantial changes in the [previously common] Law of Contempt in the United Kingdom”. The reasons cited for this were that—

(a) the Contempt of Court Act 1981 had ensured the UK’s compliance with the European Convention on Human Rights (specifically art 10);

(b) that Convention extends to Guernsey; and (at 8)—

“there would be less room for differences between one jurisdiction and another in the case of interference with the authority of the judiciary than in the case for example of the ‘protection of morals’ which may vary with differences in time and place.”

The Court of Appeal held (at 11) that—

“the test to be applied . . . can properly be derived by way of analogy from the terms of section 2 [of the Contempt of Court Act 1981] . . . the section, in its application applies a double test . . . First there has to be some risk that the proceedings will be affected at all. Second there has to be a prospect that, if affected the effect will be serious.”

Mr Gist recognised that there is still an option for customary law in Guernsey to recognise contempt of court in publications which can be proved to be deliberate and intended to interfere with the administration of justice: ‘Thus, publications which are intended to impede or prejudice the administration of justice remain punishable as

contempt of court at common law in England & Wales, and, one might argue, pursuant to the customary law in Guernsey. It is clear that a publication which is not punishable as a contempt under the strict liability rule may nevertheless be punishable as a contempt at common (and so arguably customary) law.'

Mr Gist also observed 'It is interesting to note that there seems to be no statutory basis for any contempt of court in Jersey. Certainly, as in Guernsey, there is no equivalent to the Contempt of Court Act 1981. Moreover, it would appear that the courts in Jersey have not applied, by analogy or otherwise, the provisions of the 1981 Act. On the other hand, the Jersey courts have been far more ready to find that a contempt of court exists.' He referenced the 2013 Syvret case where refusal to comply with an order of the court after defamatory proceedings led to a jail sentence of three months for contempt of court.

Freedom of Information, privacy law and Data Protection GDPR in Channel Islands jurisdictions

Privacy law operates through the development of customary case law and like with other jurisdictions in the UK and British Isles is underpinned by Article 8 of the European Convention on Human Rights. Privacy protection is also statutorily framed by the Islands' GDPR. The Data Protection (Jersey) Law 2018 sets out the rights of individuals in respect of their personal data as well as the obligations and conditions organisations must follow to process it. GDPR reshapes the way in which sectors manage data, as well as redefines the roles for key leaders in businesses. The Freedom of Information (Jersey) Law 2011 was legislated for in order to meet the aim of making the Government of Jersey accountable and transparent in the way they operate and make decisions.

These spheres of legal duties, rights, and obligations are regulated by the Jersey Office of the Information Commissioner. See: 'Jersey's Data Protection, GDPR and Freedom of Information Laws' at <https://jerseyoic.org/dp-foi-laws/> and Jersey Office of the Information Commissioner at: <https://jerseyoic.org/> In Guernsey The Office of the Data Protection Authority is the independent regulatory authority for the purposes of The Data Protection (Bailiwick of Guernsey) Law, 2017 and associated legislation. See: <https://www.odpa.gg/>

There is a debate that Freedom of Information law in the Bailiwick of Guernsey is weaker than in the island jurisdictions of Jersey and Isle of Man because it is determined by the operation of only a Freedom of Information Code. See: <https://www.gov.gg/CHttpHandler.ashx?id=149645&p=0> You can assess the operation of the code with case histories at: <https://www.gov.gg/information> See ITV News 2021 'Guernsey politicians vote against introducing Freedom of Information law' at: <https://www.itv.com/news/channel/2021-06-17/guernsey-politicians-vote-against-introducing-freedom-of-information-law> See also *Guernsey Press* 'Time not right for freedom of information law – Scrutiny' at:

<https://guernseypress.com/news/2021/05/14/time-not-right-for-freedom-of-information-law—scrutiny/>

Copyright Law Channel Islands’ jurisdictions

Copyright law in Jersey is similar to that of the UK and protection engages as soon as a work is created and is recorded in some way, for example, on paper or as a digital file. It is not possible to make a formal registration for creative work in Jersey that is not patents, trademarks and designs and there is no register to lodge with. (or the UK). Citizens Advice provides an excellent summary of IP law in the Bailiwick of Jersey at <https://www.citizensadvice.je/copyright-patents-in-jersey/> The main legislative reference point is Intellectual Property (Unregistered Rights) (Jersey) Law 2011 with an official version of consolidated legislation compiled and issued under the authority of the Legislation (Jersey) Law 2021 and is set out at:

<https://www.jerseylaw.je/laws/current/Pages/05.350.aspx> There is also an excellent summary of ‘Intellectual Property (Unregistered Rights) (Jersey) Law 2011’ by the legal firm of Bedell and Christin at:

<https://www.bedellcristin.com/knowledge/briefings/intellectual-property-unregistered-rights-jersey-law-2011/>.

Copyright law in the States of Guernsey, again, is similar to that of the UK. For example, Under the Copyright (Bailiwick of Guernsey) Ordinance, 2005, Copyright in literary, dramatic, musical or artistic works expires at the end of the period of 70 years from the end of the calendar year in which the author dies. Copyright (Bailiwick of Guernsey) Ordinance, 2005 is set out at

<https://www.guernseylegalresources.gg/ordinances/guernsey-bailiwick/i/intellectual-property/copyright-bailiwick-of-guernsey-ordinance-2005/> with a printable version at

<https://www.guernseylegalresources.gg/CHttpHandler.ashx?documentid=52628> The

States of Guernsey has an Intellectual Property Office which advises on the jurisdiction’s IP law. See: <https://ipo.guernseyregistry.com/article/3865/Intellectual-Property-Office-Home-Page> Guernsey does have a distinctive IP facility under The

Image Rights (Bailiwick of Guernsey) Ordinance 2012, which enables the registration of a personality and “images” associated with the personality. The Guernsey Image Rights Legislation has been explained by the legal firm Ogier at:

<https://www.ogier.com/news-and-insights/insights/guernsey-image-rights-legislation/> and discussed in a 2012 Guardian article ‘Image rights register for celebrities

proposed in Guernsey’ at: <https://www.theguardian.com/uk/2012/jun/26/image-rights-register-celebrities-guernsey>. This innovative reform in IP law was also discussed in

an article by David Evans, Director of Collas Crill IP, Guernsey ‘Can You Protect Your image Like Your Brand?’ published in the World Intellectual Property Organisation’s magazine in May 2015 at:

https://www.wipo.int/wipo_magazine/en/2015/02/article_0008.html



An early Edwardian Fleet Street which was developing rapidly as the centre of the UK's journalism industry. It was a time when journalism law was shorter and simpler. Image: George Bain news agency, Library of Congress USA.

Questions to ask yourself in relation to your reporting

Is your story in the public interest? (not just sensational title tattle or gossip)	Libel/privacy/secondary media law regulation.
Is your information from a privileged source e.g. court hearing, public inquiry, public meeting, press conference, government body press release (e.g. police) academic journal/conference, local authority/assembly/parliamentary proceeding? These contexts operate as legally privileged shields against libel, but they require conditions- the most important being fairness, accuracy and the absence of malice.	Contempt for court hearings, libel everything else.
At first base you have to ask yourself is your reporting fair and accurate? And are you sure you are not operating under any hidden agendas that could be perceived as malicious?	Libel/contempt
Are children/youths-(17 and under) involved? Check if they are subject to anonymity orders because of criminal/civil/family proceedings. Obtain guardian & parent permission if under 16 or I/V interaction is in a school.	Contempt, privacy and secondary media law regulation. Separate standalone criminal office.

Is a complaint of a sexual offence being made? If so anything that could lead to identification of the complainant has to be removed. You can't rely on police and authorities to do this. Any identifying feature that would be recognized by the complainant's relative or close friend would be enough to convict you. Sex offence complaints often wish to keep their suffering and experience from their family and friends. The UK legal systems are extending the range of anonymity rights. This includes police firearms officers, intelligence agency personnel, members of the special forces, jurors, the alleged victims of people trafficking offences, alleged victims of forced marriages, alleged victims of female genital mutilation (FGM) blackmail victims where the menaces are the threat to expose something embarrassing, and teachers accused of offences against children at their schools prior to any decision to formally charge them.	Contempt/privacy/secondary regulation. Separate standalone criminal offence.
Can you double-check/cross reference your notes? (is your shorthand good enough/do you have a recording?) Do they tally with PA/news agencies, and other reporters?	Everything. There is no public interest defence for inaccuracy.
What is the prior history/contact with the subject(s) of the story? Is it clear there is nothing that could be construed/constructed as any form of prior negative disposition, or malice? Make sure there are no conflicts of interest e.g. you have not been paid or been given any favours/freebies/junkets. Has your conduct been courteous/polite throughout? Make sure you have no negative comments or doodles in your notes/computer systems against anyone referred to for the story.	Libel/privacy.
Make sure you have made no material promises or offered favours and/or inducements to obtain information, or used the threat of exposure/publication to obtain a response/cooperation/supply of information.	Potential criminal offences of bribery and blackmail.
Have you maintained neutral non-sensationalist language throughout to publication, including in investigatory/research emails/notes in case of litigation that might scoop up files/documentation by legal discovery?	Libel/privacy.
Have you given a reasonable opportunity for anyone being criticized or accused of anything to respond to the allegations and give their side of the story? Has the gist been included in the report? Did you accurately represent the allegations/criticism that they face?	Libel/secondary media law regulation.
Is it possible to find out if there is or has been any investigation into the issue you are reporting on carried out by any authority (whether employer/government body/professional disciplinary/regulation/state authority or police)? If there is, can this support the story? Sometimes state authorities allow unlawful conspiracies to run while suspects are under surveillance to collect evidence of more serious crimes, or there may be undercover agents inside the operation with participating informants. Also bear in mind that the FBI and other federal investigative authorities in the USA are known to allow illegal operations to run across international borders, particularly on the Internet, in order to collect evidence. Their agents and participating informants could be at the heart of and in control of the activity.	Libel/privacy/secondary media law regulation
If you are investigating something deemed unlawful, anti-social/controversial, have you excluded the possibility that the subject has been given special permission to be doing what's going on e.g. for	Libel/privacy.

charitable/humanitarian/compassionate reasons or as a result of prior exceptional agreement?	
Have you checked and double-checked that documentary/witness information for the story has not been fabricated/forged by informant sources with malicious/conspiratorial/political/situationist/mischievous hoaxing motives?	Libel/privacy/secondary media law regulation.
Have you checked and double-checked that your source(s) do not have any legally disabling axes to grind/past feuds with people and organizations they are criticising? Were they previous employees/contractors? Are they commercial/reputational rivals?	Libel/privacy/secondary media law regulation.
Have you made sure that what you state as facts are not in fact your opinions? Have you made sure that allegations/criticisms are attributed to sources and are not expressions of your editorial point of view e.g. 'editorializing.' Pay close attention to your use of adjectives and adverbs. If using sound or televisual media take care to avoid sarcasm and double meanings through voice inflection, facial expression, and body language.	Libel/secondary media law regulation.
Have you checked that your story and its multimedia content are not breaches of privacy e.g. ask if your subjects have a reasonable/legitimate expectation of privacy? Have they given permission for its publication, or is the information already in the public domain? Does it relate to personal sexuality/relationships/family life, home, correspondence (all personal communications), private space including salary/financial affairs/education/activities that take place on private property? If you are alerted to any affirmative answers to these questions, you next need to ask if public interest in an equal balancing act with freedom of expression would defeat the right to respect for privacy. Have you recognised that suspects of crime in England and Wales, even those arrested, have compelling reasonable expectation of privacy rights requiring anonymity consolidated by the UK Supreme Court case law of ZXC v Bloomberg February 2022?	Privacy.
Is there a risk of breaking any existing criminal law or professional ethical rule in the process of your researching and publishing this story? If there is you need to check your conscience, support and approval of your employer, and professional association/union. You need to establish if there is a public interest defence for the crime. If not, does the DPP/CPS operate any public interest policy on deciding whether or not to decide to charge and prosecute?	All primary and secondary media law.
Are you using surreptitious/clandestine devices and subterfuge? Have you established that you cannot obtain the information/story by any other non-deceptive technique? Since any use of surreptitious recording devices and subterfuge involves breaching privacy, have you established there is credible prior information of an issue that justifies such intrusion in the public interest? This excludes imaginative 'fishing expeditions' based on intuition and mere suspicion.	Privacy and secondary media law.
Does your story need witnesses and sources who would be willing and effective to give evidence in defence of privacy and defamation actions? If so are sworn affidavits in place? If documents have been supplied by public authorities are you sure they will not challenge their use in defence of libel or privacy actions?	Libel/privacy.

Have you recorded interviews and actuality without the knowledge and agreement of your subjects? In backing your notes and research in the UK you can record telephone/mobile calls without the other party knowing and this is legal as long as your recording device does not electronically intercept a telephone system that you do not own. Recording without the other party's permission can be a criminal offence in foreign jurisdictions. You cannot use these recordings for broadcasting on Ofcom licenced stations without the permission of the other party unless there is an Ofcom recognized public interest.	Criminal law and secondary media law regulation.
Are your images/photographs compliant with UK copyright? You do not have a current event fair dealing defence for using in copyright images. So are they your pictures, or if they have been taken by somebody else, do you have permission for use in your publication? Better to have this in writing by email. If there is a creative commons usage possibility, check the conditions to make sure your publication meets these. Make sure you have attributed/acknowledged the copyright holder.	Copyright/Intellectual Property
If you do not have permission, have you made sure your pictures were not taken on private property since this is likely to be a breach of privacy and copyright? Buildings and sculptures in public can be photographed for publication, but art/photographs/exhibitions in private corporate space have IP rights and require permission.	Copyright/Intellectual Property and Privacy
Have you sought permission from the guardian/school, and/or parent(s) when taking images/digital video and sound recording of children (16 and under) prior to broadcast/internet multimedia use? Use of media equipment to record a child on school premises requires the permission of the school as well as the parent/guardian.	Secondary media law regulation/privacy
Have you promised confidentiality to any of your sources? If you have, does your employer/publisher know and will they agree to support the confidentiality? How secure have you made your protection? You and your source become more vulnerable, the greater the number of people who know. Meeting confidential sources in public places (such as cafes, pubs, and restaurants) is less secure than in private spaces. Using digital communications is also insecure, though encryption and proxy servers help. The world's leading intelligence services have broken all forms of digital/Internet encryption. You cannot count on digital/Internet communications being free of surveillance or detection. Essentially the more sensitive the story, the greater risk of being under surveillance or exposed. You need to be careful about how much secrecy and confidentiality you can promise to a source.	Secondary media law regulation/Primary media law statute and case law.
Is it clear and have you evidence that your source is lying to you or manipulating/deceiving you? Bear in mind that your professional pledge of confidentiality can be released in these circumstances. If the information provided turns out to be fabricated and untruthful, professional ethics allow you to be released from your confidentiality. Equally if you need your source to be on the record, you can seek to use persuasion. If your source comes to you with information supplied to you illegally and the result of criminal behaviour, ECHR and English common law offers an argument for the protection of your source, but the issue will be balanced with other issues such as national security etc. You need to	Secondary media law regulation/Primary media law statute and case law.

seek legal/editorial advice before getting yourself deeply involved and obligated in these situations.	
Is there a risk that the police, or another state investigative authority will want your media recordings of a public event? If requested you should politely ask the authority to seek a court order under the Police and Criminal Evidence Act 1984. It is advisable to label your equipment 'Media material protected by special procedure duty under PACE 1984.' If your notebooks and digital equipment contains confidential information held by you for the purposes of journalism, you can inform any state authority trying to seize and examine it that it is 'excluded' material under PACE 1984 and their access to it requires the permission of a court. Labelling, though tedious, gives your equipment a clearly stated status under the law. Be aware that if your sources are police officers, members of the armed forces or connected with state intelligence bodies and the story is politically sensitive it is likely you will be vulnerable to covert examination of your phone records and Internet activities. These concerns are based on the revelations of former CIA contractor Edward Snowden and the details of the Metropolitan Police report in Operation Alice which revealed detectives had used the Regulation of Investigatory Powers Act 2000 to obtain phone records of the newsdesk and political editor of the Sun thereby enabling them to identify the police officer sources for the allegations made against former Government chief whip Andrew Mitchell's about altercation with officers outside 10 Downing Street. You should adopt counter-surveillance measures such as email/database encryption, use of onion servers that can conceal your ISP number, avoid all digital communications and carrying of devices even when seemingly switched off, and working in 'analogue world' e.g. commit key information to your memory or writing on paper which you can much more reliably and easily destroy if necessary.	Secondary media law regulation/Primary media law statute and case law.
When interviewing your source(s) has it been made clear what is meant by 'on the record', 'non-attributable', 'off the record', Chatham House Rules'? There are conventions in journalism that although clear to reporters/editors are not so clear to their subjects. If it needs clarification make sure your interviewees know whether i. their comments are for publication and attribution; ii. Are for publication but not attributable and using a conventional description e.g. 'Whitehall source'(s) 'friends of'; iii not for publication unless confirmed and corroborated by another named source; iv not for publication under any circumstances- the information is background guidance; v 'Chatham House rules' which means 'comments can be reported, however neither the identity of the speaker nor their affiliation, i.e. who they work for, must be revealed.' Rule was devised in 1927 and revised in 1992 and 2002. See: https://www.chathamhouse.org/about-us/chatham-house-rule	Secondary media law regulation.

Analysis of Ethics and Law- case history from the past.



Page 143 *On Liberty, Today [Della Libert , Oggi]* by Anthony Smith, Alberto Abruzzese, Erik Barnauw, Jo Groebel, Rome, Italy: Special Edition for Prix Italia, Ravenna.

[Caption: '23 January 1987 – The Pennsylvania State Treasurer, Budd Dwyer, accused of corruption, shot himself before the television cameras at a press conference. Only a few television stations broadcast this sequence. Its exceptionally dramatic nature and the decision to screen it gave rise to heated debate about the ethics raised throughout the world.

See: <http://www.nytimes.com/1987/01/23/us/official-calls-in-press-and-kills-himself.html>

These are archive images from the USA where a politician has called a media conference and takes his own life by shooting himself in the mouth. The aftermath of the suicide, which is obviously very distressing and unpleasant has not been included in this guide, but you do not need much imagination to envisage the horror of the event. It is understood that the politician killed himself during live television and radio coverage, and press photographers also captured what happened. In Britain no primary laws would be broken by recording and broadcasting the event, but profound ethical and secondary media law issues arise.

1. If the person concerned had given prior warning he was going to kill himself, media organizations would have to ethically challenge their reason for going to the press conference and thereby contributing to the event;

2. Running live coverage of media events in licensed broadcasting raises the importance of operating a delay device so that unforeseen events of this kind can be intercepted before actual transmission;
3. Broadcasting the moment of death in western media is generally seen as a moral taboo;
4. Any part of this sequence in broadcasting would have to be evaluated in terms of 'harm and offence.' Any evidence of 'under eighteens' being a significant proportion of the audience would question its inclusion in a newscast. A warning about the content would be expected at any time.
5. Under the Editors' Code of Practice for the Independent Press Standards Organisation (IPSO) and, indeed other regulatory codes, publication in print or online would engage a range of issues. Certainly, publishing after the event requires consideration of the impact on the politician's family. Had next of kin been informed? To what extent is the use of the imagery in the public interest? What is informative, gratuitous and voyeuristic about inclusion of the images? The context may well be differing for the print online media if the event had been live broadcast on television and radio and was continuing to be recycled. Then the debate on taste, decency, media harm and offence is active.
6. Recycling the footage in any form could compound the distress, and reproducing it in later years for anniversary items or illustration in feature and documentary publications would continue to have an impact on the politician's surviving family. This is why great care must be taken when replicating police released images of crimes and trials in later journalism. The families of two 11-year-old murder victims Holly Chapman and Jessica Wells have pleaded with the British media to stop using what became an iconic image of the two girls in Manchester United shirts that was actually taken on the day of their murder in 2002.
7. Any reporting of suicide in the media has been judged to have profound emotional consequences for those involved and members of any media audience. The British media have begun to recognize the advice and guidance of The Samaritans and their informative briefings on the social implications of use of language and purpose of representation in relation to suicide.
8. What are the copyright/intellectual property issues arising? The BBC v BSB case of 1990 may provide a defence for using screen-grabs or an edited portion of the tv sequence within 24 hours of the event taken from the broadcaster which had decided to publish. This may come under fair dealing in relation to a news and current event. For an elected politician to act in this way and use a live firearm for violent and shocking self-destruction would certainly come under the common law and 1998 Human Rights Act jurisprudence of 'public interest.'

9. The wider media would have a fair dealing defence under criticism or review if using a less than substantial proportion in the context of the media ethics debate. Acknowledgement of the source of the images would be needed to qualify for fair dealing.
10. In the UK the Independent Press Standards Organisation [has published a detailed briefing on reporting suicide](#) which is often updated as a result of consultation with relevant NGOs and charities such as The Samaritans. The Editors' Code does not seek to prevent reporting of suicide and recognises that there is always a public interest in raising awareness of suicide as a significant public health issue. However, IPSO advises that care should be taken to limit the risk of vulnerable people being influenced by coverage of suicide and choosing to end their own lives. Journalists should be prepared to justify the inclusion of any detail of the method of suicide in any report. Particular care should be taken when reporting on novel methods of suicide. It does take some degree of fortitude and professional bearing to argue that the fact of someone's death is not private and deaths affect communities as well as individuals and are a legitimate subject for reporting. There will be circumstances where people in a state of grief or shock will not fully appreciate this and consequently they must be approached with sensitivity. Reporting should be handled sensitively and appropriate consideration should be given to the wishes and needs of the bereaved.
11. IPSO advises that journalists keep in mind the following set of questions when compiling the content of suicide reports:
- a. What details are you going to include in your report about the death?
 - b. Do any details relate to the method of suicide?
 - c. Is the method of suicide you are reporting on novel?
 - d. If so, what is your justification for including those details?
 - e. Have you considered how the material will be presented online to ensure that you do not publish excessive detail of the method? IPSO suggests journalists should address the following further key questions and issues:
 1. How will you approach the family at inquest?
 2. Have you considered the effect of your behaviour on the family of the deceased?
 3. How have you checked the accuracy of your reporting of the inquest?
 4. If you are including photos of the deceased, how have you chosen the photos you are publishing?
 5. What language are you using in your report to describe the suicide?
 6. What prominence will you give your report about suicide? What is the reasoning for that?
 7. How will you report the suicide of a young person?
 8. Have you included contact details for appropriate organisations in your article?

[Samaritans](#) publishes their [own guidelines on reporting suicides for the media](#) and provide an advice service for journalists.

They also have a [factsheet on talking to bereaved families](#).

[PAPYRUS Prevention of Young Suicide](#) focuses on the prevention of youth suicides and provide some [resources for journalists](#).

[Mind](#) runs a [media advisory service](#) focusing on the reporting of mental health, including suicide.



When the police are arriving at an incident, professional journalists do not want to be the people subject to inquiry and arrest. Image by Tim Crook

Legal rights for journalists when arrested while covering news events in the UK.

The widespread criticism of arrests by Hertfordshire police of journalists and photographers covering Just Stop Oil protests, including an LBC/Global reporter is an opportunity to explore the law and ethics over reporters' rights when covering stories of this kind.

What are the rights of journalists if wrongfully stopped from doing their job by the police, and even worse arrested for doing so? In 2023 Parliament legislated to improve the protection of journalists in these circumstances.

The following does not constitute qualified legal advice, but journalists should always have direct contact with their employer's lawyers or professional legal advice in the event of arrest while carrying out their work.

It is also recommended that professional journalists covering public news events are members of professional journalist organisations such as the National Union of Journalists (NUJ), Chartered Institute of Journalists (CioJ) or British Association of Journalists (BAJ).

The UK National Police Chiefs' Council accredited Press Card states categorically 'The National Police Chiefs' Council recognise the holder of this card as a bona fide newsgatherer.'

Furthermore the College of Policing guidance on media relations (updated for 2022) states under the heading 'Reporting from a scene':-

'Reporting or filming from the scene of an incident is part of the media's role and they should not be prevented from doing so from a public place. Police have no power or moral responsibility to stop the filming or photographing of incidents or police personnel. It is for the media to determine what is published or broadcast, not the police. Once an image has been recorded, the police have no power to seize equipment, or delete or confiscate images or footage, without a court order.' College of Policing guidance is available online at:

<https://www.college.police.uk/app/engagement-and-communication/media-relations>

The largest police force in the UK is the Metropolitan Police in London who have an online public declaration of media rights for journalists and members of the public and what they expect their officers to understand and comply with at: <https://www.met.police.uk/advice/advice-and-information/ph/photography-advice/>

'Freedom to photograph and film

Members of the public and the media do not need a permit to film or photograph in public places and police have no power to stop them filming or photographing incidents or police personnel.

Creating vantage points

When areas are cordoned off following an incident, creating a vantage point, if possible, where members of the media at the scene can see police activity, can help them do their job without interfering with a police operation. However, media may still report from areas accessible to the general public.

Identifying the media

Genuine members of the media carry identification, for instance the UK Press Card, which they will present on request.

The press and the public

If someone distressed or bereaved asks the police to stop the media recording them, the request can be passed on to the media, but not enforced.

Access to incident scenes

The Senior Investigating Officer is in charge of granting members of the media access to incident scenes. In the early stages of investigation, evidence gathering and forensic retrieval take priority over media access, but, where appropriate, access should be allowed as soon as is practicable.'

Review by Hertfordshire Police and Apologies to Journalists

Hertfordshire Police instituted an independent review of the arrests of journalists covering the Just Stop Oil protests which was carried out by the Cambridgeshire Constabulary. It concluded that the journalists should not have been arrested. The Chief Constable of Hertfordshire Police directly apologised to the arrested journalists.

M25 arrests review See:

<https://www.herts.police.uk/news/hertfordshire/news/2022/november/m25-arrests-review/>

Chief Constable Charlie Hall said: "Whilst the review has correctly concluded that the arrests of the journalists were not justified, and that changes in training and command need to be made, it found no evidence to indicate that officers acted maliciously or were deliberately disproportionate. They made mistakes and I now reiterate my apologies.'

As a result of the review Hertfordshire Police accepted five recommendations:

- 1.Hertfordshire Constabulary should consider selecting commanders with commensurate skills and experience when balanced against the nature of the operation.
- 2.Hertfordshire Constabulary should consider ensuring that mentors collate with commanders for the duration of the operation.
- 3.Hertfordshire Constabulary should consider ensuring that all commanders have access to Public Order Safety (POPS) advisors.
- 4.Hertfordshire Constabulary should consider affording commanders with the ability and capacity to maintain accurate decision logs.
- 5.Hertfordshire Constabulary should consider ensuring that all officers engaged with public order activity complete the NUJ package and identified learning is shared.

Legislative change to the new Public Order Act in 2023 to protect journalists from arrest when covering public protests

An amendment in the House of Lords to the [Public Order Act 2023](#) passed on 7th February 2023 introduced statutory safeguards protecting journalists from arrest when observing or reporting on the type of protests carried out by climate change activists.

The aim has been to separate in law the professional work of journalists of merely being there to report from any suspicion or belief on the part of the police that by doing so they are conspiring or participating in ‘direct political action’ that is so disruptive as to amount to actual public order offences.

Exercise of police powers in relation to journalists etc

17 Exercise of police powers in relation to journalists etc

- (1) A constable may not exercise a police power for the sole purpose of preventing a person from observing or reporting on a protest.
- (2) A constable may not exercise a police power for the sole purpose of preventing a person from observing or reporting on the exercise of a police power in relation to—
 - (a) a protest-related offence,
 - (b) a protest-related breach of an injunction, or
 - (c) activities related to a protest.
- (3) This section does not affect the exercise by a constable of a police power for any purpose for which it may be exercised apart from this section.
- (4) In this section—
 - “injunction” means an injunction granted by the High Court, the county court or a youth court;
 - “police power” means a power which is conferred on a constable by or by virtue of an enactment or by a rule of law;
 - “protest-related breach”, in relation to an injunction, means a breach which is directly related to a protest;
 - “protest-related offence” means an offence which is directly related to a protest.

Section 17 under subsection (1) states the police may not use their powers ‘for the sole purpose of preventing a person from observing or reporting on a protest.’ Subsection (2) prevents the police from using their powers for the sole purpose of preventing a person from observing or reporting on the exercise of a police power in relation to:

- (a) a protest-related offence,
- (b) a protest-related breach of an injunction, or
- (c) activities related to a protest.

These safeguards were proposed by the former director of Liberty and Labour peer Baroness Chakrabarti who explained that the amendment was designed to protect journalists, legal observers, academics and bystanders who might observe or report on protests or the police’s use of powers related to protests.

The amendment was approved by a majority of 283 to 192 and became law in July 2023.

Section 17 of the Public Order Act 2023

<https://www.legislation.gov.uk/ukpga/2023/15/section/17>

Press Gazette: 'Protection for journalists added into anti-protest Public Order Bill. Campaigners had warned the Public Order Bill could make arrests of journalists "commonplace."'

See: <https://pressgazette.co.uk/news/protection-for-journalists-added-into-public-order-bill/>

Notwithstanding the new legislation, here are some key journalists' rights criteria when covering public news events.

1. Journalists have Article 10 freedom of expression and media rights under the European Convention of Human Rights and UK Human Rights Act (HRA) 1998 combined with English common law freedom of expression rights to cover news events without hindrance or interference from government authorities.

2. The National Press Card recognised by the National Police Chiefs' Council should be a guarantee to any UK police officer that the holder is a legitimate professional journalist.

3. In the absence of this kind of card, any other identifying document or card from an employing organisation or association, even a commissioning letter/email from an editor, should be sufficient evidence of professional *bona fide* status.

4. Professional journalists never participate in protests and demonstrations and properly distinguish themselves from those people they are reporting on. This should be obvious to police officers. Everything should be done to avoid any ambiguity on this point. This is why the value of professional impartiality extends to a journalists' personal social media and online presence.

5. Professional journalists have a right to cover news events using multimedia technology from public places and this is lawful behaviour. Privacy law issues should be a matter for the civil courts and not criminal police investigation.

6. Police officers should not ask journalists how and why they know protests or demonstrations are taking place. This is a *prima facie* interference with the Article 10 right to the protection of journalists' sources.

7. Police officers need to have reasonable cause to suspect any journalist has committed an offence before proceeding to arrest, detention, and other processes such as taking DNA and photographs. If they do not, they face potential action for false arrest and unlawful imprisonment.

8. Police officers are obliged under the 1984 Police and Criminal Evidence Act to perform reasonable steps when making any request of an individual in respect of an arrest or interruption of a working journalist. It is always useful for journalists or their colleagues to make notes, record/film the conduct and behaviour of the officer(s) though it is understandable why this might be difficult in some circumstances.

9. What should be done if police officers mistakenly arrest a journalist while lawfully covering a news event? It is advisable to politely ask the officers what their 'reasonable suspicion' amounts to. It is not advisable for journalists to resist the police officers physically in any situation. It might help to always make it clear that there is no intention to obstruct, or give actual interference with the police officers carrying out their duties. It might also help to try and stress the advantage of clarifying any misunderstanding; avoiding the waste, expense, cost, and paperwork of complaints and future litigation.

10. There is no harm in professional journalists reminding the police that they have been lawfully covering a public interest news event, they have properly identified themselves as such and the arrest is not reasonable or necessary in law. The circumstances and personalities of the arresting officers might be such that silence and not over-stating the issue could be the best strategy. There may be an advantage in suggesting that arresting police officers sought the advice of their senior officers and commanders in respect of their actions.

11. The police may have a power under the Criminal Justice and Police Act 2001 (Section 19) to seize under lawful search digital reporting equipment with photographs, video and sound, but journalists are entitled to the protection under 1984 PACE that this material is protected as 'special procedure material.' The police must get a court order to search this material and only a Crown Court judge can issue a warrant.

The police can seize equipment in order to ascertain whether or not the content is 'special procedure material,' but if the journalism equipment, smart phone, digital recording devices and SD cards, are labelled "Special Procedure Material collected for the purposes of journalism under PACE 1984" then the police can be in no doubt about their legal obligations.

12. There is further protection for 'confidential journalistic' material under the 1984 PACE legislation that effectively blocks police access, even with application for court orders, unless there is an investigation for a very serious indictable offence. When journalists collect information and media material subject to a journalistic confidentiality agreement it is advisable to label this as 'Confidential Journalistic Records under 1984 PACE.'

However, journalists might have difficulty getting the courts to recognise the 'confidential' designation if they have been recording a public event because

actions in public can be hardly evaluated as 'confidential'- only the special procedure material protection applies. It can certainly be argued that a smartphone is likely to include confidential journalistic records and journalists would have a right to withhold the password accessing the device.

13. It would seem journalists and photographers had been arrested by Hertfordshire Police for alleged 'conspiracy to commit a public nuisance.' The professional journalistic coverage of a public interest news event is not a criminal nuisance. This includes photographing, digitally videoing and sound recording such an event. It can be argued that for such an arrest to be 'reasonable', the police would need to have evidence that journalists agreed to protest and disrupt with the activists. No professional journalists carrying out their impartial reporting duties would ever agree to such a course of action. It can be strongly argued that journalists receiving information from protest groups that 'something is going to happen at such a time and in such a place' does not amount to 'conspiracy to commit a public nuisance.' Such communications should have the shield of journalist source protection law under Article 10 Human Rights Law. Journalists have the right not to disclose anything about such communications.

14. Unfortunately the Investigatory Powers Act 2016 does give the police (and other state bodies) powers to access mobile, computer and digital communications information between journalist sources and journalists if they are investigating serious crime which is defined as any criminal offence with a minimum jail sentence of one year's imprisonment.

The oversight by the Investigatory Powers Commissioner's Office (IPCO) and The Office for Communications Data Authorisations (OCDA) is done in secret by judicial commissioners and civil service with very limited accountability. If journalist communications have been intercepted and the connections made by the police, journalists have no right to know about this or even represent their position in any review by a judicial commissioner. Consequently, journalists should think carefully about the digital trails of their communications with sources.

15. Do journalists have any positive legal obligation to report prior knowledge of potential criminal behaviour to the police? At the moment there is only a positive duty under:

16.

Section 38B(1) and (2) of the Terrorism Act 2000 which makes it an offence if someone does not inform the police if he/she believes that someone they know is in preparation of acts of terrorism. The maximum sentence in respect of Section 38B is for a term not exceeding five years' imprisonment, although it is a defence to prove that he/she had reasonable excuse for not making the disclosure.

Obviously the disruptive actions of Just Stop Oil protesters and environmental activists are not acts of terrorism. In any communications between journalists and their sources in protest groups, it is advisable to avoid receiving any information

about the detail and nature of protests and events being planned. It is enough to receive information about time and place in order to avoid any potential ethical dilemmas generated by the nature of the full detail of prior knowledge offered.

16. Some self-evident observations:- professional journalists covering Just Stop Oil disruption can obviously do so in a lawful way from public places. It would not be lawful for them to join the activists on an M25 gantry. Similarly if a criminal fugitive who has escaped custody contacts a journalist and wants to provide an interview, this should only be done remotely. The journalist should not agree to meet the fugitive for an interview unless the fugitive agrees to surrender back into custody at the same time. There are obviously risk assessment and personal safety issues for the employing organisation to resolve with their journalist(s) beforehand.

17. Journalists need to be provided with effective identifying documentation, media cards and lanyards to demonstrate their *bona fide* status as journalists when covering public interest news events. If they have not been issued with a UK Press Card Authority card, they should be in possession of an accreditation letter from their editor and employing/commissioning news publisher with contact numbers and details for verification.

18. Some useful background case histories-

The wrongful arrest of two investigative journalists and the search of their homes by the police in Northern Ireland on behalf of the Durham Constabulary led to legal condemnation by the Northern Ireland High Court and the award of hundreds of thousands of pounds in damages.

See Belfast Telegraph story in 2020: 'Police to pay out millions after settling case over journalist arrests' at: <https://www.belfasttelegraph.co.uk/news/northern-ireland/police-to-pay-out-millions-after-settling-case-over-journalist-arrests-39799447.html>

And 'Journalist gets police apology for arrest over Kent barracks photos. Force admits detention of Andy Aitchison after he covered protest at Napier barracks was unlawful.'

See Guardian story in October 2021:
<https://www.theguardian.com/media/2021/oct/22/journalist-gets-police-apology-for-arrest-over-kent-barracks-photos>

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Replacement of Official Secrets Acts with new National Security Act 2023 and new criminal offences for obtaining and disclosing official information beneficial to a foreign power



Many of the Official Secrets Acts have been replaced with a new National Security Act which had been proceeding through the UK's Westminster Parliament during 2022 and 2023. It received Royal Assent 11th July 2023.

See: <https://www.gov.uk/government/publications/national-security-bill-factsheets/espionage-etc-national-security-bill-factsheet> and <https://bills.parliament.uk/bills/3154>

Professional journalism and journalism industry bodies had been very concerned about the lack of safeguards and defences for public interest journalists' sources and any criminal liability applying to journalists receiving official information and reporting it in the public interest.

40 media organisations throughout the world signed a letter in January 2023 protesting that the Bill contained broad and vague definitions 'that we believe will, even if unintentionally, impact on legitimate whistle-blowers and public interest journalism.'

See: <https://newsmediauk.org/blog/2023/01/11/global-media-warns-of-serious-concerns-with-national-security-bill/>

The UK's News Media Association (NMA) continued to press its concerns during the House of Lords Report Stage of the Bill's passage through Parliament.

On February 23rd 2023 it remained cautious in its reception of government proposals to table amendments to the National Security Bill which sought to address concerns around press freedom.

See: <https://newsmediauk.org/blog/2023/02/23/nma-comments-on-amendments-to-national-security-bill/>

By way of background, journalism history in the 20th century recognises that broad and vaguely defined criminal offences legislated to tackle espionage without any public interest defences passed in 1911, 1920, 1939 and 1989 led to clumsy and oppressive prosecution of journalists and their sources over stories which were merely embarrassing politically to executive government and did not present any material risk to the interests of national security.

See the House of Commons Briefing Paper The Official Secrets Acts and Official Secrecy <https://researchbriefings.files.parliament.uk/documents/CBP-7422/CBP-7422.pdf>

See: 'Amendments laid to strengthen National Security Bill The government has put forward its proposed amendments to the National Security Bill ahead of the Lord's report stage.'

See: <https://www.gov.uk/government/news/amendments-laid-to-strengthen-national-security-bill>

The background to the reform discussion process is that the Law Commission did recommend that new legislation provided a public interest defence for civilians, including journalists covering circumstances where the court finds that the disclosure, and manner of disclosure, was in the public interest.

This recommendation was not present in the Bill tabled by the government and it can be argued is not reflected in proposed amendments.

The Home Office had been advancing a 'Journalistic freedoms: National Security Bill factsheet- Aims of the bill and the Law Commission's recommendations' which it updated when it became an Act of Parliament in July 2023.

See: <https://www.gov.uk/government/publications/national-security-bill-factsheets/journalistic-freedoms-national-security-bill-factsheet>

The Home Office argued: 'The offences in the National Security Act target harmful activity by states, not leaks, whistleblowing activity or public interest journalism. This is a sentiment echoed by the Law Commission in oral evidence to the Public Bill Committee who were clear that in their view the requirements of the offences take them outside of the realm of leaks and into the realm of espionage.'



National Security Act 2023

CHAPTER 32

The Home Office explained: 'The bill does not target leaks or whistleblowing activity and it **does not replace the Official Secrets Act 1989 (OSA 1989)** – a distinct piece of legislation which deals with unauthorised disclosures by those within government of specific categories of national security information, as well as onward disclosure and failing to safeguard the information. It is not focused at hostile activity from foreign states.' The new act was essentially reforming the old Official Secrets Acts 1911, 1920, 1939.

The Home Office said the Law Commission did not recommend a public interest defence for journalists in respect of the offences created in the new act because 'During their oral evidence to the committee for this bill in the other place [meaning House of Lords], the LC were clear that, in their view, the requirements of the offences take them outside of the realm of leaks and into the realm of espionage.'

The government said they did not reform the OSA 1989 because: 'Given its complexity, we were concerned that reform of OSA 1989 would distract from the government's package of measures in this bill to counter state threats and delay us from providing law enforcement and the intelligence agencies with the tools that they need now to directly tackle these threats.'

The briefing asserted the act provides safeguards for confidential journalistic material when police use the search and seizure powers in the legislation. The government further argues it changed the phrasing of the threshold of knowledge on the part of potential offenders to ensure that legitimate journalistic activity is out of scope.

Journalists 'would not be caught if they acted unwittingly or where they did not have information from which it could be concluded that they should have known' they were handling protected information 'prejudicial to the safety or interests of the United Kingdom.'

The Sun newspaper's investigative journalist Harry Cole wrote: 'Home Office official joked I should be jailed for one of my scoops – under new law criminalising journalists, I could be.' 24th February 2023

See: <https://www.thesun.co.uk/news/21508975/new-law-jailing-journalists-harry-cole/>

The National Security Act as it is on receiving Royal Assent 11th July 2023:

See: <https://www.legislation.gov.uk/ukpga/2023/32/contents>

Explanatory notes on the Act prepared by the Home Office"

See: <https://www.legislation.gov.uk/ukpga/2023/32/notes/division/1/index.htm>

Section 38 of the Act becomes the relevant statutory power to enable courts to exclude media and public from court proceedings in the interests of national security.

The government issued the following media release 11th July 2023 'National Security Bill becomes law. On 11 July, the National Security Bill became law after being passed by both Houses of Parliament and securing Royal Assent.'

See: <https://www.gov.uk/government/news/national-security-bill-becomes-law--2>

Security Minister Tom Tugendhat said: 'The National Security Act overhauls our outdated espionage laws and will provide our law enforcement and intelligence agencies with new and updated tools to deter, detect and disrupt modern-day state threats. For the first time there is an offence of foreign interference, meaning it will now be illegal to engage in conduct that interferes with fundamental rights, such as voting and freedom of speech, that are essential to the UK's democracy.'

And the Director General of MI5, Ken McCallum said: 'The National Security Act is a game changing update to our powers. We now have a modern set of laws to tackle today's threats.'

The Home Office also issued a 'National Security Act Factsheet.'

See: <https://homeofficemedia.blog.gov.uk/2023/07/11/national-security-act-factsheet/>

And the Law Commission seemed to be pleased with how the Government and Parliament had responded to its recommendations when scrutinising and amending the legislation. See: 'Recommendations on espionage offences implemented in National Security Act 2023.'

See: <https://www.lawcom.gov.uk/law-commission-recommendations-on-espionage-offences-implemented-in-national-security-act-2023/>

It said it had made recommendations to ensure 'the law governing espionage is fit to counter threats to the UK's national security from foreign powers, **and that only sufficiently culpable conduct is criminalised.** These recommendations

followed extensive consultation with stakeholders, such as the News Media Association and the UK Intelligence Community, as well as assessment of classified evidence.'

However, history has shown that legislation passed by Parliament to deal with espionage and national security threats does have a tendency to catch journalists and their sources where disclosure of information classified as secret is politically embarrassing to the government of the day and carries the weight of public interest.

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A former SAS soldier loses judicial review bid over a challenge to ban him from publishing a book about his counter-terrorism actions in Nairobi Kenya which earned him a bravery award.

The hearing was heard in private on the grounds of national security. The decision for it to be held with the media and public excluded was taken by Mr Justice Peter Lane 8th June 2023.

See: CC, R (On the Application Of) v Secretary of State for Defence [2023] EWHC 1804 (Admin) (08 June 2023) at:

<https://www.bailii.org/ew/cases/EWHC/Admin/2023/1804.html>

He said at paragraph 13 that if the hearing was in open court: '...I agree that matters would come into the public domain which would, in effect, make the proceedings a dead letter. I am also of the view that national security interests concerning UKSF [UK Special Forces] will play a prominent part in the hearing and that those matters should not be disclosed in open court. I also accept what Mr Sanders KC says, that the policy of neither confirm nor deny on the part of the defendant would be put at risk if the proceedings were held entirely in open.'

Following the full judicial review hearing held in private on 13th and 14th June Mrs Justice Steyn released a public ruling that the application for judicial review by Christian Craighead of the decision by the Secretary of State for Defence had been unsuccessful.

See: Craighead, R (On the Application Of) v The Secretary of State for Defence [2023] EWHC 2413 (Admin) (03 October 2023) at: <https://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2023/2413.html>

The judge summarised the case in her introductory paragraphs 1 to 4:

'1 The claimant is a former member of the United Kingdom Special Forces ('UKSF', also referred to as 'the Group'). In accordance with the anonymity order made on 21 November 2022, I shall refer to him in this judgment by his

pseudonym, "**Christian Craighead**". While serving in Kenya, in January 2019, Mr Craighead engaged in a counter-terrorist operation at the DusitD2 hotel complex in Nairobi ('the Dusit Incident'). He was subsequently awarded the Conspicuous Gallantry Cross, an award which may be given to "*all ranks of the services in recognition of an act (or acts) of conspicuous gallantry during operations against the enemy*". As the Ministry of Defence ('MOD') readily acknowledges, Mr Craighead served the UK with honour, and he is a valued and respected member of the wider UKSF community.



Neutral Citation Number: [2023] EWHC 2413 (Admin)

Case No: CO/3889/2022

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 03/10/2023

Before :

THE HON. MRS JUSTICE STEYN DBE

Between :

THE KING

on the application of

CHRISTIAN CRAIGHEAD

Claimant

- and -

THE SECRETARY OF STATE FOR DEFENCE

Defendant

2 By this claim for judicial review, Mr Craighead challenges the Secretary of State's refusal on 25 July 2022 to give him "*express prior authority in writing*" ('EPAW') to publish a memoir he has written which contains an account of his involvement in the Dusit Incident ('the memoir'). The central issue is whether that refusal unlawfully interfered with Mr Craighead's right to freedom of expression. The focus of the claim, and consequently of this judgment, has been on article 10 of the European Convention on Human Rights ('the ECHR'). The jurisprudence in respect of that Convention right is substantially at one with the long-established common law right to freedom of expression: see *R v Shayler* [2002] UKHL 11, [2003] 1 AC 247, [21] (Lord Bingham); *R (Lord Carlile) v Secretary of State for the Home Department* [2014] UKSC 60, [2015] AC 945, [13] (Lord Sumption JSC).

3 The parties have taken a cooperative approach to this litigation, with the Secretary of State acknowledging that Mr Craighead has approached this matter appropriately first by seeking EPAW and then, as he is entitled to do, by challenging the refusal through these proceedings. Although the courts have considered, in a number of authorities relied on by the parties and discussed below, issues arising in circumstances where former members of UKSF or of the intelligence services have disclosed information without authorisation, this case

appears to be the first in which a public law challenge to a refusal of authorisation has proceeded to a substantive hearing. (*R (A) v Director of Establishments of the Security Service* [\[2009\] UKSC 12](#) [\[2010\] 2 AC 1](#) concerned an analogous claim which was later transferred to the Investigatory Powers Tribunal – which has jurisdiction in connection with the security and intelligence services – but the proceedings were settled.)

4 Insofar as it is possible to do so, without damaging the interests of national security or defeating the object of the proceedings, I address the claim in this OPEN judgment. I am handing down, at the same time, a Confidential Schedule to this judgment containing additional reasoning which cannot be disclosed publicly. Both parties and their representatives have seen the full judgment, including the Confidential Schedule.'

This is a classic Article 10 freedom of expression versus interests of national security balancing act judicial exercise, and as the Judge mentioned the first of its kind where the special forces author has sought permission and clearance for publication.

At paragraph 21 Mrs Justice Steyn explained why secrecy attaches to the identity of serving and past serving special forces operatives and their knowledge of operations: 'In order to fulfil their functions, UKSF must be able to operate covertly, often in extremely dangerous environments. As Eady J observed in *Ministry of Defence v Griffin* [\[2008\] EWHC 1542 \(QB\)](#) at [4]: "*It is clear that much of the work is sensitive and requires that they operate secretly.*" Successive UK governments have adopted a policy of not commenting on UKSF matters, otherwise known as an NCND (neither confirm nor deny) policy.'

Mr Craighead also signed a confidentiality agreement before joining.

At paragraph 149 the judge explained the MOD as defendant produced 'three witnesses [who] have all given evidence as to the effect of authorisation to publish the memoir on cooperation with other states. I have addressed their evidence on this issue in the Confidential Schedule. Given their roles, expertise and considerable experience of engaging with the authorities and armed forces of friendly foreign states, and the rationality of their evidence on these issues, I consider that the assessments made by the defendant's witnesses as to how other states would be likely to react to publication of the memoir have high evidential value and should be respected: see *Lord Carlile*, [70] (Lord Neuberger PSC). The claimant does not have such expertise or experience and his views as to how foreign states would be likely to react should be accorded little weight.'

In the end Mrs Justice Steyn said she had to judge if the MOD's refusal to allow Christian Craighead to publish this matters turned on proportionality and justification in law:

And at paragraphs 150 to 155 she set out the conclusion of her ruling:

150 In my judgment, the Secretary of State has succeeded in demonstrating that the interference with the claimant's article 10 rights entailed in refusing to authorise publication of his memoir was proportionate and justified. There was a clear rational connection between the decision and the important objectives underlying it. In article 10(2) terms, those objectives were protecting national security and protecting information received in confidence, but the significance of the latter objective in this case is that the purpose is, in essence, to protect lives and to protect national security. It is well established that the court should be slow to differ from the executive's assessment of the importance of the objective pursued in a national security context. The DSF clearly attaches "*vital*" importance to those objectives. The third criterion, the "*least restrictive means*" test, requires that "*the limitation of the protected right must be one that 'it was reasonable for the legislature to impose'*"; it does not call for a strict application which would permit of only one executive response to an objective that involved limiting a protected right: see *Bank Mellat*, [20] (Lord Sumption JSC), [75] (Lord Reed JSC). In my view, this criterion was clearly met.

151 In considering whether a fair balance has been struck, I have borne in mind the importance to Mr Craighead of being able to tell his story. I have weighed in the balance his understandable wish to provide "*an insider's account of how a young man with a difficult upbringing served his country and saved lives during the Incident*" (CCWS4 §25). Although he acknowledges that his interest is, in part, financial (CCWS4 §27), he wants to be able to tell his story about the Dusit Incident which, as he says, he thinks "*reflects well on the UKSF and well on me*" (CCWS4 §§23-24). He considers it unfair that so many other people (including Mr Ryan, a former member of UKSF who served prior to the introduction of the contract) are able to comment on the footage and the publicly available information about the Dusit Incident, and yet he is prevented from saying anything about it (CCWS4 §24). I have also borne in mind that the claimant is willing to make amendments and that article 10 protects speech that offends. The weight to be given to the claimant's wish to tell his story is, however, reduced by dint of the fact that he voluntarily entered into the contract (see paragraphs 109-112 above).

152 I also agree with Mr Johnston that the article 10 rights of third parties should not be ignored. The interests of the potential publisher, and the interests of members of the public in reading the memoir, should be weighed in the balance, in my view, even though they have not themselves brought claims.

153 In *Lord Carlile*, the decision impeded political communication with Members of Parliament and so was "*at the top of the hierarchy of free speech*" ([61] (Lord Neuberger PSC)). The speech in this case is not near the top of the hierarchy. Although I have no doubt that many members of the public would be interested to read the memoir, there is not a high public interest in the content of the memoir being imparted to the public. Nor do the interests of the publisher carry much weight in circumstances where they were aware prior to contracting with the claimant that the ability to publish was dependent on obtaining EPAW.

154 Although I give some weight to Mr Craighead's wish to tell his story, I also bear in mind that he has not been prevented from publishing any information about his upbringing or life before he joined the armed forces, or about his service prior to joining UKSF, and he has been able to disclose that he was selected for and served in 22 SAS. During the hearing, the Secretary of State also clarified that the claimant is permitted to state, albeit only in bare terms, that he was involved in responding to the Dusit Incident. He has only been prevented from giving an account of an operation, the Dusit Incident, in which he engaged as a member of UKSF. The decision accords with the clear and consistent policy and practice of UKSF, and the contract he signed.

155 On the other side of the balance are the interests of the community reflected in the defendant's evidence. Those community interests entail the protection of lives, the protection of national security, the maintenance of the morale and efficiency of UKSF and protecting relations with defence partners. On the evidence before me, the interests of the community substantially outweigh the claimant's interest in publishing a memoir about the Dusit Incident (even when buttressed by the interest of the public in receiving the information he wishes to disclose, and by the interest of his publisher). I conclude that the decision did not breach the claimant's article 10 rights.'

Journalism coverage of this case:

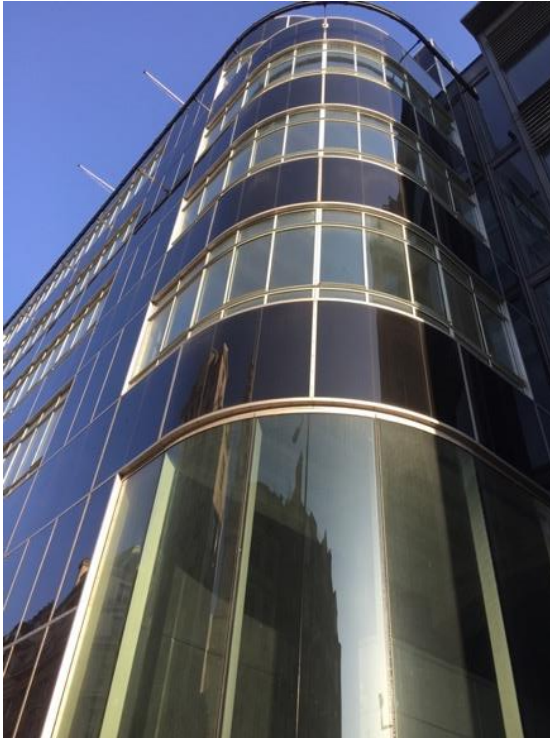
Mail Online 5th October 2023 "Former SAS soldier gagged from releasing his book on how he defeated Kenya's Islamic terrorists because judge thinks it will expose forces' tradecraft."

See: <https://www.dailymail.co.uk/news/article-12596767/former-sas-soldier-book-release-defeated-kenya-islamic-terrorist-judge-expose-forces-tradecraft.html>

Mail Online 5th May 2023 'SAS hero who earned global acclaim for saving hostages from jihadi terrorists in hotel siege fights Ministry of Defence gagging order that bans him talking about it.' See: <https://www.dailymail.co.uk/news/article-12051351/SAS-hero-fights-Ministry-Defence-gagging-order-bans-talking-it.html>

Telegraph 4th October 2023 'Ex-SAS soldier loses court battle to lift ban on Kenyan terror attack book. Christian Craighead was awarded the conspicuous gallantry cross for fighting al-Shabaab terrorists at the Dusit D2 hotel in Nairobi in 2019.' See: <https://www.telegraph.co.uk/world-news/2023/10/04/ex-sas-loses-court-battle-lift-ban-book-kenya-terror-attack/>

BBC News report on 2019 Nairobi hotel siege. 'Kenya terror attack: What happened during the Nairobi hotel siege?' 12 February 2019. (click on link to see BBC filmed report) <https://www.bbc.co.uk/news/av/world-africa-47202313>



Architectural symbols of media, law and regulation. Top left, the Art Deco glass fronted Express building in Fleet Street once run by Lord Beaverbrook and criticised for being one of the newspaper Barons who held power without responsibility. Bottom left, the BBC's old Broadcasting House in Portland Place- for many years its own regulator, but now subject to much more external regulation by Ofcom and top and bottom right images of the police and the courts who may well intervene if secondary media law regulation is not respected as being effective in 'policing' media malpractice. All images by Tim Crook.

Secondary Media Law- regulation by statutory and industry bodies.

This dimension moves from acting under moral principle in terms of duties and responsibilities (having the honourable motive and intention) to a position of compliance and acting on inclination to observe the rules of regulation which when transgressed can be enforced by sanctions. Having the worthy motive and intention is sometimes seen as morally superior to only making decisions to avoid punitive and unpleasant consequences to you personally. But this virtue is vulnerable to the paradox that 'the path to hell is paved with good intentions.' This is an acknowledgement that always telling the truth can do more damage than good. Many writers and experienced journalists have reflected on the good judgment including using discretion on what not to report in terms of ethics.

Secondary media law sometimes overlaps with primary media law where the sanctions include criminal prosecution and punishment and civil law actions with damages/compensation and court orders (known as injunctions).

The ethics codes are critical to determining hard-fought over primary legal cases. This is because section 12(4)(b) of the 1998 Human Rights Act obliged the courts to reference them when adjudicating a dispute between Article 10 Freedom of Expression and Article 8 Privacy.

The court **must have particular regard to the importance of the Convention right to freedom of expression** and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material (or to conduct connected with such material), to—

- (a) the extent to which—
 - (i) the material has, or is about to, become available to the public; or
 - (ii) it is, or would be, in the public interest for the material to be published;
- (b) any relevant privacy code.**

The most regulated journalists in terms of secondary media law in the UK are broadcast journalists who are news and story gathering and publishing for licensed broadcasters in radio and television. This regulation directly stems from legislative and executive government control. The statutory regulator Ofcom is constituted by Act of Parliament and a body of legislation and statutory instruments and is also answerable in many ways to the Department of Culture, Media and Sport and Secretary of State for this department who has a seat in the Cabinet. From April 3rd 2017 it assumed full regulation of the BBC both for all content publication and ancillary issues such as competition and performance.

Secondary Media Law Codes and Guidelines

IPSO Editors' Code of Practice in one page pdf document format

<https://www.ipso.co.uk/media/2032/ecop-2021-ipso-version-pdf.pdf>

The Editors' Codebook 144 pages pdf booklet 2022 edition

<https://www.editorscode.org.uk/downloads/codebook/codebook-2022.pdf>

IMPRESS Standards Guidance and Code 72 page 2023 edition

<https://www.impress.press/wp-content/uploads/2023/02/Impress-Standards-Code.pdf>

Ofcom Broadcasting Code Applicable from 1st January 2021

<https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code> Guidance briefings at <https://www.ofcom.org.uk/tv-radio-and-on-demand/information-for-industry/guidance/programme-guidance>

BBC Editorial Guidelines 2019 edition 220 page pdf

<http://downloads.bbc.co.uk/guidelines/editorialguidelines/pdfs/bbc-editorial-guidelines-whole-document.pdf> Online

<https://www.bbc.com/editorialguidelines/guidelines>

Office of Information Commissioner (ICO) Data Protection and Journalism Code of Practice 2023 41 page pdf

<https://ico.org.uk/media/for-organisations/documents/4025760/data-protection-and-journalism-code-202307.pdf> and the accompanying reference notes or guidance 47 page pdf <https://ico.org.uk/media/for-organisations/documents/4025761/data-protection-and-journalism-code-reference-notes-202307.pdf>

Ofcom Regulation

Ofcom has the power to punish licensed broadcasters though cannot award compensatory damages to complainants. Breaches of licensing and the broadcasting code can result in substantial fines, and the suspension and deletion of the licence of some broadcasters.

Regulation has the potential to discipline broadcasters and journalists for professional mistakes that do not breach primary media law such as libel, privacy, copyright and media contempt. It sets up a liability with consequences for inaccuracy, or political bias.

Broadcast journalists should be vigilant in monitoring Ofcom 'Broadcast and On Demand Bulletin reports on the outcome of investigations into potential breaches of Ofcom's codes and rules for TV, radio and video-on-demand programmes, as well as the licence conditions with which broadcasters regulated by Ofcom are required to comply.'

The bulletin reports are released in pdf files at: <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins>. The bulletin for 11th September 2017 reported on an investigation into Channel 4 News:

'On 22 March 2017, Channel 4 News reported on the terror attack in London which had taken place earlier that day. The report included coverage live from Westminster of the aftermath of the events, as well as analysis from the studio and discussions in various formats between journalists and contributors to the programme. The first half of the programme focused on a man, Abu Izzadeen, who Channel 4 News incorrectly identified as the person responsible for the terror attack and who had been shot dead by police. In fact, Abu Izzadeen was in prison. Six complainants subsequently objected to this.'

Ofcom decided that 'Channel 4 News' rush to get this story to air resulted in it broadcasting a significant error on a major news story.' It also noted that it was the fourth case in three years in which Ofcom had found Channel 4 News in breach of the requirement to report news with due accuracy, under Rule 5.1 of the Code. In deciding the sanction on this occasion Ofcom said: 'We took into account that the Licensee had taken a number of steps to ensure that its audience was aware of the error and to correct it. However, given the serious breach in this case, Ofcom directs the Licensee to broadcast a summary of Ofcom's Decision in a form and manner to be decided by Ofcom.'

In 1998, Ofcom's predecessor regulatory authority, the Independent Television Commission imposed a fine of £2 million on the former ITV broadcaster in the Midlands, Central Television, for including fabricated scenes in a documentary about heroin-smuggling from Columbia to Britain. The programme, called *The Connection*, had won awards for its investigative journalism and Ofcom justified the level of the fine by pointing out the damage the deception had caused to the trust of viewers in the integrity of broadcast journalism. The ethical problems of the programme had been exposed by an investigation carried out by the Guardian newspaper.

The largest fines imposed by Ofcom amount to a total of £5.675m in 2008 for what was described as the 'abuse' of premium-rate phone lines in popular light entertainment programmes.

The shows included Ant and Dec's *Saturday Night Takeaway*, Ant and Dec's *Gameshow Marathon* and *Soapstar Superstar*. Viewers had been misled by competitions they had been invited to participate in. Ofcom's sanctions committee said: 'millions of paying entrants were misled into believing they could fairly interact with some of ITV's most popular programmes.' In one instance the broadcaster did not point out that transmissions were not live so people ringing in were still charged for taking part. ITV was ordered to transmit six on-air apologies for their transgressions of broadcast regulation. Ofcom also investigated the BBC for unfair conduct of viewer and listener competitions that included *Children In Need* and *Comic Relief*. The highest fine imposed was £400,000.

See: <https://www.theguardian.com/media/2008/may/08/itv> and <https://www.theguardian.com/media/2008/jul/30/bbc.ofcom>

In 2012 Ofcom withdrew its licence from Press TV, a news channel funded by the Iranian government. The service broadcast in English from the UK and had not addressed concerns that its editorial content was determined from Tehran, and had not paid a fine of £100,000 for broadcasting an interview with Maziar Bahari, an imprisoned Newsweek journalist, that had been conducted under duress.

See: <https://www.theguardian.com/media/2012/jan/20/iran-press-tv-loses-uk-licence>

Ofcom does not have any legal powers to curtail or end the licences of public service broadcasters such as the BBC, Channel 4 and S4C (in Scotland). Primarily its investigation and sanctions against broadcast journalists are concerned with the concepts of 'harm and offence,' the protection of children, the representation of crime, and the maintenance of the principles of fairness and 'due impartiality and due accuracy.' Like the press regulators it applies a public interest formula to complaints about broadcast journalist conduct in relation to deception and misrepresentation, secret filming and recording, and issues of privacy.

You should regularly check and evaluate Ofcom rulings in Broadcast and On Demand Bulletins.

See: <https://www.ofcom.org.uk/about-ofcom/latest/bulletins/broadcast-bulletins>

The online Channel 4 Compliance resource provides very effective analysis of Ofcom Broadcasting Code and broadcasting media law issues. See:

<https://www.channel4.com/4compliance>

4Compliance is described as 'Channel 4's legal & compliance hub for producers and editorial staff. Find practical guidance on the main areas of law, regulation and best practice that apply to the making and publishing of content at Channel 4.'

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The Ofcom Broadcasting Code

Section one: Protecting the under-eighteens

This section outlines the rules around scheduling and content information in programmes with regard to protecting children under the age of eighteen.

Example: Material that might seriously impair the physical, mental or moral development of people under eighteen must not be broadcast. TV watershed is before 2100 and after 0530. Radio broadcasters must have particular regard to times when children are particularly likely to be listening.

Section two: Harm and offence

This section outlines standards for broadcast content so as to provide adequate protection for members of the public from harmful and/or offensive material and this includes strong language.

Example: Factual programmes or items or portrayals of factual matters must not materially mislead the audience. Material which may cause offence must be justified by the context.

Case history: [Ofcom ruling on complaint of harm and offence. ITV Good Morning Britain, 8 March 2021 at 0600. Outcome: Not in breach.](#) One of the most sensational broadcasting harm and offence disputes in recent years concerned the record 58,000 complaints to Ofcom about Piers Morgan's criticism of the Duchess

of Sussex on ITV's *Good Morning Britain* programme in March 2021. Mr Morgan said he did not believe what Meghan Markle said in her Oprah Winfrey interview. The duchess herself filed complaints with the regulator and ITV. Piers Morgan resigned from the presenting role after refusing to make an apology. Ofcom decided the broadcasting code on harm and offence had not been breached and restricting his views would be a 'chilling restriction' on freedom of expression, although it criticized his 'apparent disregard' for the subject of suicide. The regulator explained: 'Mr Morgan's comments were potentially harmful and offensive to viewers, and we recognise the strong public reaction to them. But we also took full account of freedom of expression. Under our rules, broadcasters can include controversial opinions as part of legitimate debate in the public interest, and the strong challenge to Mr Morgan from other contributors provided important context for viewers.'

[Case history: Issue 420 8th February 2021 complaint against Capital Xtra Reloaded.](#) Capital Xtra Reloaded is a radio station which predominantly broadcasts dance, hip hop and RnB music. The licence for Capital Xtra Reloaded is held by Global Radio Limited. Ofcom received a complaint about racially offensive language in the music track *I Got 5 On It* by Luniz. Ofcom welcomed the Licensee's apology and the steps it has taken to prevent a recurrence. However, for the reasons given above, Ofcom's Decision is that the broadcast of offensive language in this programme was in breach of Rule 2.3.

Section three: Crime, disorder, hatred and abuse

This section of the Code covers material that is likely to incite crime or disorder, reflecting Ofcom's duty to prohibit the broadcast of this type of programming.

Example: Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services or BBC ODPS (on demand programme services) and this includes hate speech.

The meaning of "hate speech" as defined in section three is explained as 'all forms of expression which spread, incite, promote or justify hatred based on intolerance on the grounds of disability, ethnicity, social origin, sex, gender, gender reassignment, nationality, race, religion or belief, or sexual orientation, colour, genetic features, language, political or any other opinion, membership of a national minority, property, birth or age.'

[Case history: Issue 421, 22nd February 2021. Financial penalties imposed on Khalsa Television Ltd of £20,000 and £30,000; direction not to repeat the content; and a direction to broadcast a statement of findings.](#) A music video and a discussion programme expressed views that were likely to encourage or incite the commission of crime or lead to disorder. The potentially highly offensive material was not justified by the context.

[Case history: Issue 418 11th January Notice of Sanction- Worldview Media Network Limited. Financial penalty of £20,000; direction to broadcast a statement of Ofcom's findings in this case](#) on Republic Bharat, a satellite television channel

broadcasting rolling news and current affairs to the Hindi speaking community in the UK, predominantly in the Hindi language. During a current affairs discussion programme, the presenter and some of his guests made several statements which amounted to hate speech against, and derogatory and abusive treatment of, Pakistani people. The content was also potentially offensive and was not sufficiently justified by the context.

Section four: Religion

This section relates to the responsibility of broadcasters with respect to the content of religious programmes.

Example: The religious views and beliefs of those belonging to a particular religion or religious denomination must not be subject to abusive treatment.

Section five: Due impartiality and due accuracy

To ensure that news, in whatever form, is reported with due accuracy and presented with due impartiality. To ensure that the special impartiality requirements of the Act are complied with.

Examples:

“Due” is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. “Due” means adequate or appropriate to the subject and nature of the programme. So “due impartiality” does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented.

Significant mistakes in news should normally be acknowledged and corrected on air quickly.

No politician may be used as a newsreader, interviewer or reporter in any news programmes unless, exceptionally, it is editorially justified. In that case, the political allegiance of that person must be made clear to the audience.

Due impartiality on matters of political or industrial controversy and matters relating to current public policy may be achieved within a programme, or over a series of programmes taken as a whole.

[Case history, Issue 481, 18th September 2023. Saturday Morning with Esther and Phil. Decision- Decision: Breaches of Rules 5.11 and 5.12](#)

This particular programme featured a pre-recorded interview between the two presenters and the Chancellor of the Exchequer, Jeremy Hunt MP. The interview focused on the Government’s approach to economic and fiscal policies ahead of the Spring Budget, which was announced four days later. Ofcom received 45 complaints from viewers who raised concerns that the programme had failed to preserve due impartiality. Ofcom decided that as the programme featured two sitting MP presenters from one political party interviewing the Chancellor of the same political party about a matter of major political controversy and current public policy, we consider, in these circumstances, that GB News should have taken

additional steps to ensure that due impartiality was preserved. [This was the third breach of Ofcom broadcasting rules recorded against GB News since it launched in June 2021. Ofcom had six further investigations open into the channel's compliance with our due impartiality rules.](#)

[Case history, Issue 422, 8th March. Notice of Sanction –Star China Media Limited. Outcome: Financial penalty of £125,000](#) The licence for the provision of the CGTN service was held by Star China Media Limited (“SCML” or “the Licensee”) until 4 February 2021 when the Licence was revoked. In the UK, the channel was broadcast on satellite. The sanction related to the broadcast of five programmes concerned with the protests which were ongoing in Hong Kong during this period. These protests were initially in response to the Hong Kong Government’s Extradition Law Amendment Bill that would have allowed criminal suspects in Hong Kong to be sent to mainland China for trial. In the decisions published on 26 May 2020 in [Issue 403 of the Broadcast and On Demand Bulletin](#), Ofcom found that each of the five programmes had failed to maintain due impartiality and had breached Rules 5.1, 5.11 and 5.12 of the Code.

Section six: Elections and referendums

This section covers the special impartiality requirements and other legislation that must be applied at the time of elections and referendums.

Examples: In determining the appropriate level of coverage to be given to parties and independent candidates broadcasters must take into account evidence of past electoral support and/or current support. Broadcasters must also consider giving appropriate coverage to parties and independent candidates with significant views and perspectives.

Discussion and analysis of election and referendum issues must finish when the poll opens.

Broadcasters may not publish the results of any opinion poll on polling day itself until the election or referendum poll closes.

If a candidate takes part in an item about his/her particular constituency, or electoral area, then broadcasters must offer the opportunity to take part in such items to all candidates within the constituency or electoral area representing parties with previous significant electoral support or where there is evidence of significant current support. This also applies to independent candidates. However, if a candidate refuses or is unable to participate, the item may nevertheless go ahead.

Any constituency or electoral area report or discussion after the close of nominations must include a list of all candidates standing, giving first names, surnames and the name of the party they represent or, if they are standing independently, the fact that they are an independent candidate. This must be conveyed in sound and/or vision.

If, in subsequent repeats on that day, the constituency report does not give the full list of candidates, the audience should be directed to an appropriate website or

other information source listing all candidates and giving the information set out above.

Section seven: Fairness

This section is to ensure that broadcasters avoid unjust or unfair treatment of individuals or organisations in programmes.

Examples: Where a person is invited to make a contribution to a programme (except when the subject matter is trivial or their participation minor) they should normally, at an appropriate stage:

- be told the nature and purpose of the programme, what the programme is about and be given a clear explanation of why they were asked to contribute and when (if known) and where it is likely to be first broadcast;
- be told what kind of contribution they are expected to make, for example live, pre-recorded, interview, discussion, edited, unedited, etc.;
- be informed about the areas of questioning and, wherever possible, the nature of other likely contributions;
- be made aware of any significant changes to the programme as it develops which might reasonably affect their original consent to participate, and which might cause material unfairness;
- be told the nature of their contractual rights and obligations and those of the programme maker and broadcaster in relation to their contribution; and
- be given clear information, if offered an opportunity to preview the programme, about whether they will be able to effect any changes to it.

If a contributor is under sixteen, consent should normally be obtained from a parent or guardian, or other person of eighteen or over in loco parentis. In particular, persons under sixteen should not be asked for views on matters likely to be beyond their capacity to answer properly without such consent.

If a programme alleges wrongdoing or incompetence or makes other significant allegations, those concerned should normally be given an appropriate and timely opportunity to respond.

[Case History Issue 421 22nd February 2021. Complaint by Mrs Rachael Tooher-Rudd about *How To Stop Nuisance Calls* on Channel 5 television.](#) The programme examined the rise of “nuisance” calls, with a particular focus on calls made during the national Covid-19 lockdown period. The programme referred to the complainant, Mrs Rachael Tooher-Rudd as having “ran” an automated calls company along with her husband, and which was fined £400,000 by the Information Commissioner’s Office (“the ICO”). She complained that this was wrong and that she had nothing to do with running the company. Ofcom found that the broadcaster did not take reasonable care to satisfy itself that material facts had not been presented, disregarded, or omitted in a way that was unfair to Mrs Tooher-Rudd.

Section eight: Privacy

This section is to ensure that broadcasters avoid any unwarranted infringement of privacy in programmes and in connection with obtaining material included in programmes.

Examples:

Where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

Legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place.

Broadcasters can record telephone calls between the broadcaster and the other party if they have, from the outset of the call, identified themselves, explained the purpose of the call and that the call is being recorded for possible broadcast (if that is the case).

Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is prima facie evidence of a story in the public interest; and
- there are reasonable grounds to suspect that further material evidence could be obtained; and
- it is necessary to the credibility and authenticity of the programme.

[Case history: Issue 412 12th October 2020 Complaint by Mrs Nichola Corner on behalf of the Ms Lyra McKee \(deceased\) about Newsnight: The 'Real' Derry Girls and the Dissidents.](#) Ofcom has upheld this complaint about unwarranted infringement of privacy in the programme as broadcast. The programme featured a report about terrorism in Northern Ireland, with a particular focus on Derry, or Londonderry. The report described the circumstances which led to the murder of Ms Lyra McKee, who was a journalist covering a story when she was hit by a bullet after a gunman opened fire on the police. The programme included a brief piece of footage that appeared to show Ms McKee lying in the street in her dying moments after being shot. The footage, filmed on a mobile phone, included around three seconds which focused on Ms McKee as she lay on the ground with people crowding around her. Whilst the footage was brief, of low quality and Ms McKee was largely obscured, it included a glimpse of her footwear. Mrs Corner, Ms

McKee's sister, complained that Ms McKee's privacy was unwarrantably infringed in the programme as broadcast by the inclusion of this footage.

Section nine: Commercial references on TV

This section relates to broadcasters' editorial independence and control over programming with a distinction between editorial content and advertising.

Examples:

Product placement is not permitted in the following:

- a) religious programmes;
- b) consumer advice programmes; or
- c) current affairs programmes.

News and current affairs programmes must not be sponsored.

No undue prominence may be given in programming to a product, service or trade mark. Undue prominence may result from:

the presence of, or reference to, a product, service or trade mark in programming where there is no editorial justification; or
the manner in which a product, service or trade mark appears or is referred to in programming.

Section ten: Commercial communications on radio

This section relates to radio broadcast only and is to ensure the transparency of commercial communications as a means to secure consumer protection.

Examples:

Spot advertisements must be clearly separated from programming.

No commercial reference, or material that implies a commercial arrangement, is permitted in or around news bulletins or news desk presentations.

No commercial reference, or material that implies a commercial arrangement, is permitted on radio services primarily aimed at children or in children's programming included in any service.

Broadcasters may broadcast appeals for donations to make programming or fund their service. Listeners must be told the purpose of the appeal and how much it raises. All donations must be separately accounted for and used for the purpose for which they were donated.

Ofcom's Regulation of the BBC

From April 3rd 2017, Ofcom became the new external regulator of the BBC. Its job is to 'hold the BBC to account.' Regulation covers three main areas: Content standards – including assessing the impartiality and accuracy of BBC news and current affairs programmes; Competition issues – including the final determination on new BBC services or significant changes to existing services, and ensuring the BBC's commercial services are not unfairly cross-subsidised by the licence fee; and Reviewing the BBC's performance against its mission and public purposes.

The Government has decided that a new BBC unitary board will govern and run the BBC, and ultimately be responsible for editorial and management decisions. Previously Ofcom rules about the protection of children, harm and offence, crime, disorder, hatred and abuse, religion, and fairness and privacy, all applied to the BBC already. After April 3rd 2017 Ofcom now enforces the remaining rules on accuracy and impartiality, elections and referendums, and commercial references in programmes.

The BBC has substantially updated and developed its editorial guidelines and these are currently published online in two large categories of accessible information. First there are the [BBC Editorial Guidelines](#) substantially more expanded than the situation 10 or 20 years ago. Secondly, there are around 80 [Editorial Guidance briefings](#) alphabetically arranged. These include, for example, [Impartiality and Racism](#), and [Racist language \(including racial slurs and racist/ethnic abuse\)](#).

How complaints against BBC programmes have been handled since April 3rd 2017?

Ofcom is the final arbiter for complaints. Under the new system, Ofcom operates a Broadcaster-first complaints policy – that is complainants must address their complaints to the BBC first and Ofcom will only be involved if the complaint goes to an appeal stage. However, complaints about Fairness and Privacy (Sections 7 and 8 of Ofcom's Broadcasting Code) can go direct to Ofcom. Complaints about the BBC World Service will still be the sole responsibility of the BBC, with no appeal to Ofcom. Ofcom can offer advice about other online material, judged against the BBC's Editorial Guidelines. Appeals to Ofcom will be judged against the Ofcom Broadcasting Code only. Editorial complaints to the BBC will continue to be assessed against the BBC's Editorial Guidelines.

The BBC's complaints framework and procedures (June 2020) are set out at: [https://www.bbc.co.uk/contact/sites/default/files/2023-03/BBC Complaints Framework.pdf](https://www.bbc.co.uk/contact/sites/default/files/2023-03/BBC_Complaints_Framework.pdf)

An editorial complaint may proceed through the following stages:

Stage 1a – initial response.

Stage 1b – if the complaint progresses further, a response from or on behalf of a BBC manager or a member of the editorial team

Stage 2 – if the complaint progresses further, a response from the Executive Complaints Unit (ECU).

The BBC publishes its adjudications following complaints at <https://www.bbc.co.uk/contact/complaints> and appeals to the BBC's Executive Complaints Unit at: <https://www.bbc.co.uk/contact/recent-ecu>

Example of a first level complaint:

BBC News website, Family court article, 4 September 2023 14 September 2023 **Summary of complaint** We have received complaints that our article [Family courts: Children forced into contact with fathers accused of abuse](#) is unbalanced

and doesn't consider fathers who also suffer abuse. Decision provided at: <https://www.bbc.co.uk/contact/complaint/parentalalienation>

Example of a decision by the Executive Complaints Unit (ECU):

The Daily Global, BBC News Channel, 4 July 2023 at:

<https://www.bbc.co.uk/contact/ecu/the-daily-global-bbc-news-channel-4-july-2023>



Screengrab selected for criticism and review of BBC self-regulation of its editorial values and evaluating of complaints.

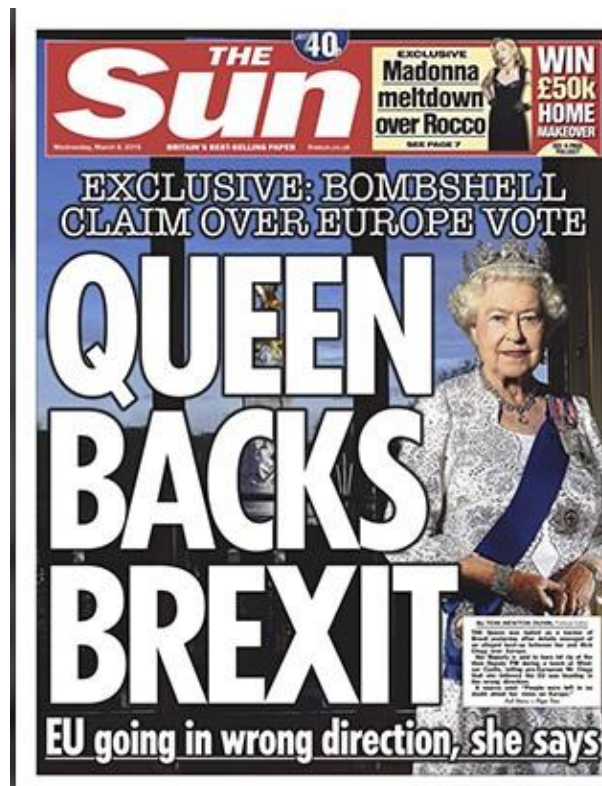
In this section I have set out the detail of the UK Independent Press Standards Organisation (IPSO) [Editors' code of practice](#) adopted and developed from that of its predecessor body the Press Complaints Commission (PCC), and grafted ethical rules set out by the UK's Chartered Institute of Journalists and National Union of Journalists. A rival press and online regulator to IPSO, [IMPRESS](#) has been approved by the Press Recognition Panel set up by post the Leveson Inquiry Royal Charter.

As you can see there is wide consensus and coincidence of regulation between professional and regulatory bodies covering all forms of media publication, but there are also differences between print/online and licensed broadcasting by analogue or digital signal.

Breaching these rules carries sanctions. IPSO (<https://www.ipso.co.uk/what-we-do/>) took over from the PCC, Press Complaints Commission (<http://www.pcc.org.uk/>) 8th September 2014.

Its status and efficacy is an ongoing matter of controversy in the light of the Leveson Inquiry and continuing criticisms by media victim groups such as Hacked Off and the Media Standards Trust. Although it is said that 90 per cent of newspaper, magazine and online media have contracted to be regulated by IPSO, the Financial Times, Independent, London Evening Standard and Guardian newspapers have still not done so. Those media companies contracting to IPSO are part of a regulatory regime that can impose fines of up to £1 million and make directions to publish apologies and corrections. Up until the time of writing there have been no substantial fines, but newspapers have been directed to publish corrections in more prominent positions; sometimes accompanied by an Editor's protests.

This was the case with the Sun and its story in 2016 that the Queen was opposed to the UK's membership of the European Union.



Buckingham Palace v The Sun- IPSO found this headline and story 'significantly misleading' and ordered the paper to publish its critical adjudication on page 2. See: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01584-16>

News publishers who do not participate in any Royal Charter backed and recognized form of regulation [could be subject to punitive \(described as 'exemplary'\) damages if sued for media law civil wrongs such as libel and privacy under the 2013 Crime and Courts Act.](#) The provisions at [sections 34-39 of the Crime and Courts Act 2013 relating to exemplary and aggravated damages in claims against the press come into force in November 2015.](#) Successive Conservative governments have decided that the related costs provisions at section 40 should not be enacted, though it remains the policy of the Labour and LibDem parties that they should. At the time of writing the Media Bill is in legislative process through Parliament and proposes to repeal Section 40 of the Crime and Courts Act 2013.

Journalists responsible for mistakes and transgression will continue to face disciplinary action by their employers ultimately leading to dismissal. The sanctions facing broadcasters can be imposed on their employers. Under the force of statute, Ofcom can fine, admonish, suspend or delete the broadcasting licenses. Disciplinary action is frequently taken against employees of independent television and radio and the BBC for breaching the Ofcom Broadcasting Code and/or the BBC's Editorial Guidelines.

McNae's Essential Law for Journalists 26th Edition (2022) covers 'Press Regulation' under Chapter 2 pages, 10-25, and 'Broadcast Regulation' under Chapter 3, pages 26-44, with an additional chapter 'Journalism avoiding unjustified intrusion' at Chapter 4, pages 45-64.

McNae's Essential Law for Journalists 25th Edition (2020) covers 'Press Regulation' under Chapter 2 pages, 11-24, and 'Broadcast Regulation' under Chapter 3, pages 25-40.

IPSO researches, publishes and updates [briefings and guides on journalism regulatory and ethical issues.](#) They all merit close reading and consideration and often respond to current debates and concerns about reporting trends or complaints about media standards.

[Reporting suicide guidance](#)

Pdf file at <https://www.ipso.co.uk/media/2284/reporting-suicide-journalist-guidance.pdf>

[Sex and gender identity guidance](#)

Pdf file at <https://www.ipso.co.uk/media/2423/guidance-sex-gender-identity.pdf>

[Deaths and inquests guidance](#)

Pdf file at <https://www.ipso.co.uk/media/2296/deaths-and-inquests-guidance.pdf>

[Prominence guidance](#)

Pdf file at <https://www.ipso.co.uk/media/2288/due-prominence-journalist-guidance.pdf>

Major incidents guidance

Pdf file at <https://www.ipso.co.uk/media/1713/major-incidents-ed-and-journ.pdf>

Sexual offences guidance

Pdf file at <https://www.ipso.co.uk/media/2420/sexual-offences-guidance.pdf>

Social media guidance

Pdf file at <https://www.ipso.co.uk/media/2274/ipso-social-media-guidance.pdf>

Religion guidance

Pdf file at <https://www.ipso.co.uk/media/1972/islam-guidance.pdf>

Court reporting guidance

Pdf file at <https://www.ipso.co.uk/media/2284/ipso-court-reporting-guidance.pdf>

In January 2016 IPSO updated the Editors' Code of Practice in various parts and placed emphasis on news publishers honouring its spirit as well as maintaining an effective complaints system. It has continued to update and develop the code year by year. [The Editors' Codebook is also regularly updated and accessible online.](#)

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IPSO ruling 2023 finding that a column written by Jeremy Clarkson for the *Sun* newspaper was a breach of clause 12 (discrimination) of the Editors' Code

Jeremy Clarkson apologised for the content of his *Sun* column denigrating the Duchess of Suffolk, Meghan Markle, and the newspaper withdrew the article from publication and also apologised.

Yet the UK's press self-regulatory body IPSO decided to investigate third party complaints from The Fawcett Society and The WILDE Foundation.

IPSO sanctioned the publication of the adjudication.

The ruling, somewhat curiously, does not even mention Jeremy Clarkson by name.

See: **18626-22 The Fawcett Society and The WILDE Foundation v The Sun Decision: Breach - sanction: publication of adjudication** at: <https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=18626-22>

[< Back to ruling listing](#)

18626-22 The Fawcett Society and The WILDE Foundation v The Sun

Decision: Breach - sanction: publication of adjudication

Relevant code provisions
3 Harassment (2021)
12 Discrimination (2021)
1 Accuracy (2021)

Publication
The Sun (News UK)

Conclusion
Breach - sanction: publication of adjudication



Decision of the Complaints Committee – 18626-22 The Fawcett Society and The WILDE Foundation v The Sun

In conclusion it states:

‘... to argue that a woman is in a position of influence due to “vivid bedroom promises”, to compare the hatred of an individual to other women only, and to reference a fictional scene of public humiliation given to a sexually manipulative woman, read as a whole, amounted to a breach of Clause 12 (i). IPSO therefore found that the column included a number of references which, taken together, amounted to a pejorative and prejudicial reference to the Duchess of Sussex’s sex in breach of the Editors’ Code.’

The decision has drawn criticism as a worrying extension of press regulation to curtail and discipline the expression of opinion however offensive.

The article was headlined “One day, Harold the glove puppet will tell the truth about A Woman Talking Bollocks” and was published 17th December 2022.

The article also appeared online in substantially the same format, under the headline “One day, Harold the glove puppet will tell the truth about A Woman Talking B*****ks”. This version of the article was published 16th December 2022.

IPSO explained: ‘IPSO’s Regulations allow it to consider complaints from representative groups – i.e., a body or an organisation representing a group of people who have been affected by an alleged breach of the Code – where the alleged breach of the Code is significant and there is a substantial public interest in IPSO considering the complaint.’

The article said the following about the Duchess of Sussex:

“I hate her. Not like I hate Nicola Sturgeon or Rose West. I hate her on a cellular level.”

“At night, I’m unable to sleep as I lie there, grinding my teeth and dreaming of the day when she is made to parade naked through the streets of every town in Britain while the crowds chant, “Shame!” and throw lumps of excrement at her.”

It also included comments about the Duchess and her relationship with her husband:

“Along came Meghan, who obviously used some vivid bedroom promises to turn him into a warrior of woke. And now it seems she has her arm so far up his bottom, she can use her fingers to alter his facial expressions.”

The article then said that “younger people, especially girls, think she’s pretty cool. They think she was a prisoner of Buckingham Palace, forced to talk about nothing but embroidery and kittens.”

IPSO acknowledged the extent of *mea culpas* issued by Clarkson, who they refer throughout as ‘one of the newspaper’s regular columnists’, and who had tweeted:

“Oh dear. I’ve rather put my foot in it. In a column I wrote about Meghan, I made a clumsy reference to a scene in Game of Thrones and this has gone down badly with a great many people. I’m horrified to have caused this much hurt and I shall be more careful in the future.”

IPSO recognised that the *Sun* removed the online version of the article on 19th December 2022 replacing it with Clarkson’s tweet and accompanied with the declaration: “In light of [columnist’s] tweet he has asked us to take last week’s column down”

The Sun published a further statement on 23rd December 2022, which was repeated in a January edition:

“In The Sun on December 17, [the columnist] wrote a comment article about the Duchess of Sussex. It provoked a strong response and led to a large number of complaints to IPSO, the independent press regulator.

In a tweet last week, [the columnist] said he had made a ‘clumsy reference to a scene in Game of Thrones’, which had ‘gone down badly with a great many people’ and he was ‘horrified to have caused so much hurt’. He also said he will be more careful in future.

Columnists’ opinions are their own, but as a publisher, we realise that with free expression comes responsibility.

We at The Sun regret the publication of this article and we are sincerely sorry.

The article has been removed from our website and archives. The Sun has a proud history of campaigning, from Help for Heroes to Jabs Army and Who Cares Wins, and over 50 years of working in partnership with charities, our campaigns have helped change Britain for the better.

Working with our readers, The Sun has helped to bring about new legislation on domestic abuse, provided beds in refuges, closed harmful loopholes in the law and empowered survivors of abuse to come forward and seek help.

We will continue to campaign for good causes on behalf of our readers in 2023.”

Across paragraphs 10 to 16 of the IPSO ruling The Fawcett Society was described as ‘a gender equality charity’ and had ‘made a complaint to IPSO about the article. It complained in its capacity as “an organisation that represents women and campaigns for women’s rights”. It further noted that it had “over 3000 members and over 17,000 supporters, on behalf of whom” the complaint was made.’ The WILDE Foundation was described as ‘a charity supporting women and girls who are survivors of domestic abuse and had ‘made a separate complaint about the article. It said that it had been asked to complain on behalf of its service users, as they felt that the article “allowed, perpetrated, and promoted [violence] toward a woman.”’

The *Sun*’s position was that it ‘did not accept that the article breached the Editors’ Code. The newspaper said that, while it had ultimately reached the decision to remove the article and apologise, the concerns raised by the complainants were a matter of “taste and judgment” – rather than a case where the Editors’ Code had been breached. It considered that the matter had already been dealt with effectively “as a matter of taste, not one of regulation”, noting its position that “matters of subjective taste are not for the Code.”’

The newspaper’s arguments are set out across paragraphs 18 to 22 of the ruling and the complainants between paragraphs 23 to 28.

The IPSO committee explained: ‘The Code acknowledges that the right to freedom of expression includes the right to shock and challenge, but it also provides protections for individuals from discrimination. The Committee set aside the question of whether the article was offensive; the question was only whether it breached the Code.’

The Committee found that ‘this was a pejorative and prejudicial reference to the Duchess of Sussex’s’ sex and upheld the complaint of a breach of Clause 12 (i) of the Editors’ Code.’

The Committee ‘did not uphold the complaint under Clause 12 that the article contained pejorative or prejudicial references to the race of the Duchess.’

The Committee also rejected the complaints under clause 3 Harassment and clause 1 accuracy.

IPSO decided to issue the sanction of publication of its adjudication because ‘the apology had not been published in a prominent position – appearing on page 6 – and did not address the references to the Duchess’ sex in the article which the Committee had found together represented a breach of Clause 12, which the publication had not accepted.’

In respect of the online publication IPSO observed: ‘the website itself did not include any form of acknowledgment or apology on the part of the newspaper for the column – this appeared only on the publisher’s corporate website, and so would not have been visible or easily accessible to the newspaper website’s usual readers.’

At the concluding paragraph 52 of the ruling IPSO declared:

‘The terms of the adjudication for publication are as follows:

The Fawcett Society and The WILDE Foundation complained to the Independent Press Standards Organisation that The Sun breached Clause 12 (Discrimination) in an article headlined “One day, Harold the glove puppet will tell the truth about A Woman Talking Bollocks”, published on 17 December 2022.

The complaint was upheld, and IPSO required The Sun to publish this adjudication to remedy the breach of the Code.

The article under complaint was written by one of the newspaper’s regular columnists, setting out his views on the Duke and Duchess of Sussex. The article said that the columnist: “hate[d] her on a cellular level”; listed her, Nicola Sturgeon, and Rose West as people that he hated; “dream[t] of the day when” the Duchess would be subject to public punishment; and referred to her using “vivid bedroom promises” on her husband.

The complainants said that Clause 12 had been breached because “[t]he acts described by the author in his column and the language used is inherently misogynistic and sexualised, pointing to gender-based discrimination”, and that the article included what they believed to be “[r]eferences to methods historically used to punish and publicly shame women”. They also said that making references to the hatred of other women linked the hatred of one woman with hatred towards other women.

The newspaper said that the article had fallen short of its high editorial standards, and that it had removed the column, after a request from the columnist to do so, and apologised. However, it did not accept that the article breached the Editors’

Code. It said that the concerns raised by the complainants were a matter of “taste and judgment” – rather than a case where the Editors’ Code had been breached.

The newspaper also said that the complainants had interpreted the Clause 12 too broadly, and that IPSO should not uphold a complaint by applying subjective value judgments held by particular people.

IPSO noted that The Editors’ Code doesn’t prevent criticism of public figures, even when it might seem mean-spirited or cruel. However, an article can be offensive or mean-spirited and also breach the Code. The Code protects the right to shock and challenge, but not to discriminate against individuals. IPSO therefore set aside the question of whether the article was offensive. The question was only whether it breached the Editors’ Code.

IPSO found that the article included a number of references to the Duchess’ sex. Specifically: the writer’s claim that the Duchess exercised power via her sexual hold over her husband which, in the view of the Committee, was a reference to stereotypes about women using their sexuality to gain power, and also implied that it was the Duchess’ sexuality – rather than any other attribute or accomplishment – which was the source of her power; a comparison with two other individuals – Nicola Sturgeon and Rose West – and the only clear common characteristic between the three being their sex and the writer’s “hate”; it highlighted her position as a specifically female negative role model by referring to the Duchess’s influence on “younger people, especially girls”; and the end-point of these references being a “dream” of humiliation and degradation.

IPSO considered that any of these references, individually, might not represent a breach of the Code. However, to argue that a woman is in a position of influence due to “vivid bedroom promises”, to compare the hatred of an individual to other women only, and to reference a fictional scene of public humiliation given to a sexually manipulative woman, read as a whole, amounted to a breach of Clause 12 (i).

IPSO therefore found that the column included a number of references which, taken together, amounted to a pejorative and prejudicial reference to the Duchess of Sussex’s sex in breach of the Editors’ Code.’

The significance of the ruling has been met with a range of journalistic coverage and comment.

Press Gazette 30th June 2023: ‘IPSO says Jeremy Clarkson’s Meghan Markle Sun column was sexist and breached Editors’ Code’ at: <https://pressgazette.co.uk/the-wire/newspaper-corrections-media-mistakes-errors-legal/jeremy-clarkson-sun-column-meghan-markle-ipso-ruling/>

Press Gazette 3rd July 2023: 'IPSO faces backlash from publishers over Jeremy Clarkson ruling. The NUJ and Women in Journalism, however, said they welcomed the decision' at: <https://pressgazette.co.uk/media-law/fraser-nelson-spectator-ipso-sun-markle-jeremy-clarkson/>

Spectator Editor Fraser Nelson argued 3rd July 2023: 'The Clarkson ruling puts Ipso in violation of its own charter' at <https://www.spectator.co.uk/article/the-clarkson-ruling-puts-ipso-in-violation-of-its-own-charter/>

Mick Hume argued at Spiked Online 4th July 2023: 'The Jeremy Clarkson ruling is an outrageous attack on press freedom. IPSO's ruling against his Sun column will empower the easily offended to meddle in our media' at <https://www.spiked-online.com/2023/07/04/the-jeremy-clarkson-ruling-is-an-outrageous-attack-on-press-freedom/>

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Ethical representation of the identity of transgender defendants and other participants in court reporting

Professional journalists and student journalists, particularly in universities, will be very much aware of the acute debates taking place about proper vocabulary and references to gender identities.

The issue is taken so seriously in professional and institutional life individuals found to have disrespected fair and respectful wishes on gender identification have faced disciplinary proceedings and dismissal.

There is understandable anxiety on the part of trainee journalists about the expectations of how defendants and other participants represent themselves in court, how they are referred to in the legal proceedings and how this must be properly and fairly reported.

In 2023 IPSO (The Independent Press Standards Organisation) published fresh draft guidance on reporting of sex and gender identity, which contains advice for newsrooms on covering court cases involving transgender and gender-diverse defendants.

IPSO is seeking consultation before finalising the guidance.

Journalists are being urged to take account of trans defendants' gender at the time they offended.

IPSO Draft guidance on reporting of sex and gender identity

See: <https://www.ipso.co.uk/media/2302/ipso-draft-guidance-on-reporting-of-sex-and-gender-identity.pdf>

The key points arising from the guidance on court reporting recommend:

1. Taking into account and respecting the way a defendant says they wish to be identified in the court proceedings, including the name used and pronoun used by court officials and/or any witnesses;
2. Taking account of the defendant's gender identity at the time of the alleged crime;
3. Considering any guidance provided by the court about a defendant's gender identity;
4. Evaluating the public interest in reporting the gender identity and any transition in the context of protecting public health or safety particularly in respect of the need to ensure accuracy when reporting a major news event;
5. Considering the significance of the charges the defendant faces and whether gender identity is relevant to the case brought by the prosecution and the defence and/or mitigation provided during the trial.

The stalwarts of legally safe court reporting: accuracy, fairness and attribution are effective lines of protection from what would be secondary media law complaints to regulatory bodies.

However, it might be argued there are still areas of discretion which should be determined by the exercise of an individual's conscience and the freedom of expression prerogative.

Primary media law litigation could arise if gender transitioning and identity information about an individual has not been put into the public domain by the individual concerned, and if the journalist and publisher cannot show by documentary trail they have carried out a balancing act analysis of whether in reporting gender identity the degree of intrusion is proportionate to the public interest being served.

The navigation of this area is clearly controversial.

Dr Amy Binns and Sophie Arnold sought to research the subject and produced guidance on covering court cases involving transgender defendants.

But this was removed by the University of Central Lancashire after its publication online following complaints made to the university.

See the following articles and case law for further guidance and background:

Law Column: IPSO and reporting on sex and gender identity by Sam Brookman
Published 21 Feb 2023 <https://www.holdthefrontpage.co.uk/2023/news/law-column-ipso-and-reporting-on-sex-and-gender-identity/>

Journalists urged to take account of trans defendants' gender at time they offended <https://www.holdthefrontpage.co.uk/2023/news/pronouns-and-transgender-defendants-feature-in-press-watchdogs-new-guidance/>

IPSO commissions research into standards of UK media reporting on transgender issues <https://pressgazette.co.uk/news/ipso-commissions-research-into-standards-of-uk-media-reporting-on-transgender-issues/>

New guidance launched to aid reporting on transgender defendants <https://www.holdthefrontpage.co.uk/2022/news/new-guidance-launched-in-bid-to-aid-reporting-on-transgender-defendants/>

Guidance on covering transgender defendants removed after complaints <https://www.holdthefrontpage.co.uk/2022/news/guidance-on-covering-transgender-defendants-removed-after-complaints/>

Editor and reporter leave weekly after transgender column controversy by David Sharman Published 13 Nov 2017 Last updated 17 Nov 2017 <https://www.holdthefrontpage.co.uk/2017/news/editor-and-reporter-leave-weekly-after-transgender-column-controversy/>

Press Gazette: 'Kentish Gazette transgender article was wrong – but journalists should not be sacked for exercising freedom of speech' <https://pressgazette.co.uk/publishers/regional-newspapers/kentish-gazette-transgender-article-was-wrong-but-journalists-should-not-be-sacked-for-exercising-freedom-of-speech/>

Journalist who launched LGBTQ+ network leaves regional press for national role <https://www.holdthefrontpage.co.uk/2023/news/journalist-who-launched-lgbtq-network-leaves-regional-press-for-national-role/>

Press Gazette Transgender ex-Times journalist loses discrimination claim against paper <https://pressgazette.co.uk/news/transgender-ex-times-journalist-loses-discrimination-claim-against-paper/>

Media wins right to name transgender man battling to be named 'father' on own child's birth certificate <https://pressgazette.co.uk/news/media-wins-right-to-name-transgender-man-battling-to-be-named-father-on-own-childs-birth-certificate/>

TT, R (on the application of) v The Registrar General for England and Wales [2019] EWHC 2384 (Fam) (25 September 2019) <https://www.bailii.org/ew/cases/EWHC/Fam/2019/2384.html>

Courts and Tribunals Judiciary April 2023 interim revision of the Equal Treatment Bench Book <https://www.judiciary.uk/wp-content/uploads/2023/06/Equal-Treatment-Bench-Book-April-2023-revision.pdf>

The Crown Prosecution Service Trans Equality Statement
<https://www.cps.gov.uk/publication/trans-equality-statement>
and <https://www.cps.gov.uk/sites/default/files/documents/publications/Trans-equality-statement.pdf>

Relevant IPSO rulings

00804-20 Smith v The Herald Decision: No breach – after investigation
<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00804-20>

Daily newspaper cleared over SNP trans row story
<https://www.holdthefrontpage.co.uk/2020/news/daily-newspaper-cleared-over-snp-trans-row-story/>

09159-19 Fair Play for Women v kentlive.news Decision: Breach – sanction: action as offered by publication
<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=09159-19>

Watchdog raps news site over ‘transphobic abuse’ claim
<https://www.holdthefrontpage.co.uk/2020/news/ipso-raps-news-site-for-reporting-alleged-transphobic-abuse-as-fact/>

00572-15 Trans Media Watch v The Sun Decision: Breach – sanction: publication of adjudication
<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=00572-15>

01972-22 The Radcliffe School v miltonkeynes.co.uk Decision: Breach – sanction: publication of adjudication
<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01972-22>

Resolution Statement – 06439-21 Pascoe v spectator.co.uk Decision: Resolved – IPSO mediation
<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=06439-21>

09309-21 A woman v Daily Mail Decision: No breach – after investigation
<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=09309-21>

01695-21 Parrott v Norwich Evening News Decision: Breach – sanction: action as offered by publication
<https://www.ipso.co.uk/rulings-and-resolution-statements/ruling/?id=01695-21>

IMPRESS Standards Code 2023 and its innovatory approach to journalism standards in the Internet and social media context

See: <https://www.impress.press/wp-content/uploads/2023/02/Impress-Standards-Code.pdf>

IMPRESS is a UK regulator for journalism publishers which has been recognised by the Press Recognition Panel established by Royal Charter following the Leveson Inquiry into press standards which reported in 2012.

Many of the publishers regulated by IMPRESS are online outlets only or hybrid in terms of online and print. The Standards code, therefore, addresses ethical and standards issues strongly in the context of news websites and social media. IMPRESS says under the headings of scope and remit: 'The scope of journalism is broad and includes publishing content on the publisher's website and official social media accounts.'

At page 6 the Code document highlights the legal and ethical risks of 'sourcing and publishing content from online or social media sources and UGC [user generated content].'

In its guidance for Clause 1- Accuracy, at page 17 IMPRESS advises:-

'(a) be aware of the use of artificial intelligence (AI) and other technology to create and circulate false content (for example, deepfakes), and exercise human editorial oversight to reduce the risk of publishing such content;
(b) be aware of the use of AI by news distributors to generate, curate, rank and circulate news;
(c) exercise editorial oversight to ensure the accuracy of any content produced by an AI system;'

And at '(e) clearly label and provide hyperlinks where possible to corroborate sources that verify the content (see Clause 10: Transparency).'

IMPRESS appears to be the first UK journalism regulator to engage and advise directly in its Code on standards in respect of artificial intelligence.

At page 22 in the guidance on posting accuracy corrections online the advice is very specific to web-based technology and platform architecture:

'For online corrections, a publisher should consider where the story first appeared, the amount of time it was available online, and how many people had viewed the article. A story may sit as the lead on a website for many hours before moving to a less prominent position. The correction may be pinned or displayed on the news publisher's homepage for a reasonable period to allow readers to see it. Similarly, if the error was widely shared in a post or tweet, it may be appropriate to promote the correction to reach the same audience or pin it to the social media account for a reasonable period.'

At page 24 the code guidance said proper attribution and plagiarism avoidance 'extends to content taken or submitted from social media.'

At page 35 the IMPRESS code addresses Clause 4 'encouraging hatred or abuse of a person or group based on their characteristics' and advises: 'This may include subjecting them to abuse on social media, excluding them from online communities...' It can be presumed that IMPRESS is conscious here of the harmful 'pile-on' phenomenon where, for example, a Twitter account holder with a very high number of followers, concatenates an overwhelming wave of abuse against an individual or group.

At page 40 the IMPRESS guidance on Clause 5 Harassment:

'...journalists should use their professional emails and social media accounts, which clearly identify:

- (a) themselves as a journalist; and
- (b) how they can be contacted; and
- (c) if applicable, the publisher they work for.'

IMPRESS also advises on the same page that 'Journalists should normally keep records of all communications relating to their work for a minimum of 12 months; this includes timestamps, logs, written, email and messaging communications.' Professor Tim Crook, author of UK Media Law Pocketbook 2nd Edition states in the printed text that retaining records should be stretch as far back as at least 6 years, perhaps even as long as a career lasts. See Addition to Chapter Two Guide to Court Reporting- 'Keeping reporting files and the importance of accurate and professional shorthand as a journalist/reporting skill when covering the courts,' and the analysis of the Tony Palmer High Court case ruled on at the end of 2022.

At pages 50-1 in the guidance for Clause 7 Privacy IMPRESS quite rightly reminds journalists that:

'if a person posts images of themselves on social media with privacy settings in place, they would likely have a reasonable expectation that this would not be posted elsewhere. Therefore, this clause could be breached if a publisher takes and publishes images of a person from a private social media account without the individual's consent. However, it is important for publishers to understand that although a reasonable expectation of privacy may be weaker where no privacy settings are in place, the absence of privacy settings will not necessarily remove any expectation of privacy from the individual concerned. Posting an image on an account without privacy settings does not mean that the individual is consenting to the publication of the images by journalists or publishers, which may reach a wider or entirely different audience than those usually viewing the content on the individual's account.'

The IMPRESS code on protecting reasonable expectation of privacy not unexpectedly at page 54 defines unacceptable deceptive behaviour as 'phone, computer or social media account hacking' and 'Additionally, publishers must refrain from using deceptive methods to obtain information. This includes using fake social media accounts to access individuals or groups online.'

The code of standards does offer the exception of 'using secret devices and deceptive methods where it is in the public interest to do so,' though of course when such methods are deployed and challenged there are criminal offences that could be committed where no public interest defence is available in law.

Still on privacy at page 55 IMPRESS emphasises: 'As explained in the guidance to Clause 7.1, journalists should not knowingly publish material that has been acquired by breaching a person's social media privacy settings. This means that where a journalist obtains material from social media, and it is clearly sourced, they should take reasonable steps to gain consent before using it.'

At page 56, the IMPRESS guidance goes into some detail about acceptable gathering of journalistic information from social media accounts, for example on Facebook:

'It will not always be evident whether a person has intended to restrict access to information on social media, as privacy settings will vary depending on the platform and the individual's literacy on social media. In some cases, however, it will be evident that a person used restricted privacy settings to limit the audience from viewing their material or contacting them. For example, Facebook allows users to select who can view their posts and 'look them up' using their email address or phone number. A person may select 'friends' from the list of options provided, which also includes 'only me', 'friends of friends' and 'everyone'. In that case, it may be a breach of this clause for a journalist to extract and use material posted without their consent.'

IMPRESS is repeatedly emphatic on the standard of privacy consideration it expects of journalists in respect of sourcing from social media:

Page 57: '...journalists should respect the privacy settings of the deceased's social media accounts.'

Page 58: 'Contacting people to gain first-hand details can also be problematic for journalists, particularly when the story relates to a traumatic event or death. When gathering information from social media sources, journalists should follow the guidance provided..'

For the guidance on Clause 9 in respect of Suicide and Self Harm, IMPRESS advises at page 66:

‘Publishers should signpost sources of support such as helplines when reporting on suicide. This could be in the article by-line, footer or a pinned comment on social media.’

And- [publishers] ‘should be cautious when re-publishing content from social media, such as comments on Facebook tribute walls, as such messages can inadvertently glamorise suicide, particularly for vulnerable young people.’

The updated IMPRESS Standards Code and Guidance released in February 2023 is a welcome and progressive contribution to guiding professional journalists on ethics when working online and with social media. Even if you are a journalist regulated by IPSO, the IMPRESS resource is informative and enlightening.

It should also be appreciated that the courts are obliged by the Human Rights Act under Section 12 to take into account journalism codes of ethics when ruling on the balancing of freedom of expression and privacy rights.

The IMPRESS code is very much part of the journalism standards topography that could be consulted and cited in legal argument; even where an individual journalist or publisher is not specifically subject to IMPRESS regulation.

IPSO Code Preamble. (<https://www.ipso.co.uk/editors-code-of-practice/>)

The latest version of the Editors’ Code of Practice came into effect on 1 January 2021. Find a full PDF of the 2021 Code [here](#).

The latest up-to-date Editors’ Codebook provides interpretation and context on the code and is downloadable from:

<https://www.editorcode.org.uk/downloads/codebook/codebook-2023.pdf>

The Code – including this preamble and the public interest exceptions below – sets the framework for the highest professional standards that members of the press subscribing to the Independent Press Standards Organisation have undertaken to maintain. It is the cornerstone of the system of voluntary self-regulation to which they have made a binding contractual commitment. It balances both the rights of the individual and the public’s right to know.

To achieve that balance, it is essential that an agreed Code be honoured not only to the letter, but in the full spirit. It should be interpreted neither so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it infringes the fundamental right to freedom of expression – such as to inform, to be partisan, to challenge, shock, be satirical and to entertain – or prevents publication in the public interest.

It is the responsibility of editors and publishers to apply the Code to editorial material in both printed and online versions of their publications. They should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists.

Editors must maintain in-house procedures to resolve complaints swiftly and, where required to do so, co-operate with IPSO. A publication subject to an adverse adjudication must publish it in full and with due prominence, as required by IPSO.

[IPSO adjudication 13th March 2015. Hawk v metro.co.uk Decision: Breach - sanction: action as offered by publication. Relevant code provisions 1 \(Accuracy\) 2015 Publication metro.co.uk \(Associated Newspapers Limited\)](#)

IMPRESS Code 'About'

As already discussed in early 2023 IMPRESS published an updated and impressive new standards code document contextualising, discussing as well as defining and publishing its standards.

See: <https://www.impress.press/wp-content/uploads/2023/02/Impress-Standards-Code.pdf>

'The Code sets out the minimum standards that Impress expects from regulated publishers and journalists when gathering and publishing news content. It is designed to be:

- (a) a practical tool to help journalists do their job;
- (b) a best practice resource for journalists working in the public interest and committed to producing socially responsible journalism;
- (c) a guide for the public that details the standards and behaviour expected of journalists working in the public interest;
- (d) the standard by which Impress regulates publishers and journalists who subscribe to its scheme.

This document also outlines Impress's guidance on all the clauses in the Code, separated into chapters dealing with each relevant section.

The guidance is intended to provide general advice to all publishers and journalists working with edited news content and to help them understand and implement the Code. Some sections also include notes which provide additional practical tips and examples.

The guidance is also intended to advise news consumers on the Code requirements that Impress expects publishers and journalists to uphold.'

1. Accuracy, Opportunity to reply, Due Impartiality.

IPSO

1. Accuracy

- i) The Press must take care not to publish inaccurate, misleading or distorted information or images, including headlines not supported by the text.
- ii) A significant inaccuracy, misleading statement or distortion must be corrected, promptly and with due prominence, and — where appropriate — an apology published. In cases involving IPSO, due prominence should be as required by the regulator.
- iii) A fair opportunity to reply to significant inaccuracies should be given, when reasonably called for.
- iv) The Press, while free to editorialise and campaign, must distinguish clearly between comment, conjecture and fact.

v) A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.

[Case history Slade v The Argus \(Brighton\) Decision: No breach - after investigation Relevant code provisions 1 \(Accuracy\) 2015 2 \(Opportunity to reply\) 2015 Publication The Argus \(Brighton\) \(Newsquest Media Group\)](#)

[Case History 02283-18 Premier Inn v Mail Online Decision: Breach - sanction: publication of correction](#)

IMPRESS

Accuracy

- 1.1. Publishers must take reasonable steps to ensure accuracy.
- 1.2. Publishers must distinguish clearly between statements of fact and opinion.
- 1.3. Whilst free to be partisan, publishers must not misrepresent or distort the facts.
- 1.4. Publishers must correct any significant inaccuracy with prominence equal to the original article at the earliest opportunity

Attribution & Plagiarism

- 2.1. Publishers must take all reasonable steps to identify and credit the originator of any third-party content.
- 2.2. Publishers must correct any failure to credit the originator of any third-party content with equal prominence at the earliest opportunity.

Case history. 608/2023 Laura Hitchcock and Dorset Eye. Date of adjudication: August 24, 2023 Relevant clauses: Attribution & Plagiarism 2.1 and 2.2 of the Impress Standards Code. [Outcome: Complaint upheld. Breach of Clauses 2.1 and 2.2. Publisher to publish a notice statement and link to full adjudication.](#)

Case history. 467/2021 – Michelle Edwards and Waltham Forest Echo. Date of adjudication: April 22, 2022. Relevant clauses: Accuracy 1.1 of the IMPRESS Standards Code. [Outcome: Complaint upheld. Breach of Clause 1.1. Publisher to publish a clarifying statement alongside the original article.](#)

Case history. 388/2021 Graham Hindson and The SKWAWKBOX. Date of adjudication: May 14, 2021. Relevant clauses: Accuracy 1.4 of the IMPRESS Standards Code. [Outcome: Complaint upheld. Breach of Clause 1. Publisher to publish correction alongside the original article.](#)

NUJ – A journalist

2. Strives to ensure that information disseminated is honestly conveyed, accurate and fair.
3. Does her/his utmost to correct harmful inaccuracies.
4. Differentiates between fact and opinion.

CloJ

- 1) You have a duty to maintain the highest professional standards of accuracy and clearly distinguish between fact, conjecture or opinion in all your work.

4) If a factual inaccuracy is discovered in your work, you will seek to have it corrected at the first available opportunity, in the same format of publication, and with due prominence so that similar readership will be aware of the correction.

11) You should be able to compensate sources of any kind in proportion to the public interest value of their information and the risks they are undertaking.

Ofcom

2a All news in any part of the service should be presented with due accuracy and impartiality.

2b Due impartiality should be preserved on the part of persons providing the service as respects matters of political or industrial controversy or relating to current public policy.

Meaning of "due impartiality":

"Due" is an important qualification to the concept of impartiality. Impartiality itself means not favouring one side over another. "Due" means adequate or appropriate to the subject and nature of the programme. So "due impartiality" does not mean an equal division of time has to be given to every view, or that every argument and every facet of every argument has to be represented. The approach to due impartiality may vary according to the nature of the subject, the type of programme and channel, the likely expectation of the audience as to content, and the extent to which the content and approach is signalled to the audience. Context, as defined in Section Two: Harm and Offence of the Code, is important.

Due impartiality and due accuracy in news

5.1 News, in whatever form, must be reported with due accuracy and presented with due impartiality.

5.2 Significant mistakes in news should normally be acknowledged and corrected on air quickly. Corrections should be appropriately scheduled.

5.3 No politician may be used as a newsreader, interviewer or reporter in any news programmes unless, exceptionally, it is editorially justified. In that case, the political allegiance of that person must be made clear to the audience.

Special impartiality requirements: news and other programmes

Matters of political or industrial controversy and matters relating to current public policy

Meaning of "matters of political or industrial controversy and matters relating to current public policy":

Matters of political or industrial controversy are political or industrial issues on which politicians, industry and/or the media are in debate. Matters relating to current public policy need not be the subject of debate but relate to a policy under discussion or already decided by a local, regional or national government or by bodies mandated by those public bodies to make policy on their behalf, for example non-governmental organisations, relevant European institutions, etc.

The exclusion of views or opinions

(Rule 5.4 applies to television and radio services except restricted services.)

5.4 Programmes in the services (listed above) must exclude all expressions of the views and opinions of the person providing the service on matters of political and industrial controversy and matters relating to current public policy (unless that person is speaking in a legislative forum or in a court of law). Views and opinions relating to the provision of programme services are also excluded from this requirement.

The preservation of due impartiality

(Rules 5.5 to 5.12 apply to television programme services, teletext services, national radio and national digital sound programme services.)

5.5 Due impartiality on matters of political or industrial controversy and matters relating to current public policy must be preserved on the part of any person providing a service (listed above). This may be achieved within a programme or over a series of programmes taken as a whole.

Meaning of "series of programmes taken as a whole":

This means more than one programme in the same service, editorially linked, dealing with the same or related issues within an appropriate period and aimed at a like audience. A series can include, for example, a strand, or two programmes (such as a drama and a debate about the drama) or a 'cluster' or 'season' of programmes on the same subject.

5.6 The broadcast of editorially linked programmes dealing with the same subject matter (as part of a series in which the broadcaster aims to achieve due impartiality) should normally be made clear to the audience on air.

5.7 Views and facts must not be misrepresented. Views must also be presented with due weight over appropriate timeframes.

5.8 Any personal interest of a reporter or presenter, which would call into question the due impartiality of the programme, must be made clear to the audience.

5.9 Presenters and reporters (with the exception of news presenters and reporters in news programmes), presenters of "personal view" or "authored" programmes or items, and chairs of discussion programmes may express their own views on matters of political or industrial controversy or matters relating to current public policy. However, alternative viewpoints must be adequately represented either in the programme, or in a series of programmes taken as a whole. Additionally, presenters must not use the advantage of regular appearances to promote their views in a way that compromises the requirement for due impartiality. Presenter phone-ins must encourage and must not exclude alternative views.

5.10 A personal view or authored programme or item must be clearly signalled to the audience at the outset. This is a minimum requirement and may not be sufficient in all circumstances. (Personality phone-in hosts on radio are exempted from this provision unless their personal view status is unclear.)

Meaning of "personal view" and "authored":

"Personal view" programmes are programmes presenting a particular view or perspective. Personal view programmes can range from the outright expression of highly partial views, for example by a person who is a member of a lobby group and is campaigning on the subject, to the considered "authored" opinion of a journalist, commentator or academic, with professional expertise or a specialism in an area which enables her or him to express opinions which are not necessarily mainstream.

Matters of major political or industrial controversy and major matters relating to current public policy

5.11 In addition to the rules above, due impartiality must be preserved on matters of major political and industrial controversy and major matters relating to current public policy by the person providing a service (listed above) in each programme or in clearly linked and timely programmes.

Meaning of "matters of major political or industrial controversy and major matters relating to current public policy":

These will vary according to events but are generally matters of political or industrial controversy or matters of current public policy which are of national, and often international, importance, or are of similar significance within a smaller broadcast area.

5.12 In dealing with matters of major political and industrial controversy and major matters relating to current public policy an appropriately wide range of significant views must be included and given due weight in each programme or in clearly linked and timely programmes. Views and facts must not be misrepresented.

The prevention of undue prominence of views and opinions on matters of political or industrial controversy and matters relating to current public policy

(Rule 5.13 applies to local radio services (including community radio services), local digital sound programme services (including community digital sound programme services) and radio licensable content services.)

5.13 Broadcasters should not give undue prominence to the views and opinions of particular persons or bodies on matters of political or industrial controversy and matters relating to current public policy in all the programmes included in any service (listed above) taken as a whole.

Meaning of "undue prominence of views and opinions":

Undue prominence is a significant imbalance of views aired within coverage of matters of political or industrial controversy or matters relating to current public policy.

Meaning of "programmes included in any service taken as a whole":

Programmes included in any service taken as a whole means all programming on a service dealing with the same or related issues within an appropriate period.

BBC

[The BBC's editorial guidelines on accuracy are set out in Section 3.](#)

The BBC is committed to achieving due accuracy in all its output. This commitment is fundamental to our reputation and the trust of audiences. The term 'due' means that the accuracy must be adequate and appropriate to the output, taking account of the subject and nature of the content, the likely audience expectation and any signposting that may influence that expectation.

Accuracy

- [3.1 Introduction](#)
- [3.2 Mandatory Referrals](#)
- 3.3 Guidelines
 - [Gathering Material](#)
 - [Accuracy in Live Content](#)
 - [Reporting Statistics and Risk](#)
 - [User-Generated Content](#)
 - [Material from the Internet and Social Media](#)
 - [Material from Third Parties](#)
 - [Note-Taking for Journalism and Factual Programmes](#)
 - [Avoiding Misleading Audiences](#)
 - [Programmes Affected by Changing Circumstances](#)
 - [Correcting Mistakes](#)

The BBC is responsible for maintaining its own standards in relation to due impartiality and its guidelines are set out in [Section 4 of the Editorial Guidelines](#).

Due impartiality usually involves more than a simple matter of 'balance' between opposing viewpoints. We must be inclusive, considering the broad perspective and ensuring that the existence of a range of views is appropriately reflected. It does not require absolute neutrality on every issue or detachment from fundamental democratic principles, such as the right to vote, freedom of expression and the rule of law. We are committed to reflecting a wide range of subject matter and perspectives across our output as a whole and over an appropriate timeframe so that no significant strand of thought is under-represented or omitted.

Impartiality

- [4.1 Introduction](#)
- [4.2 Mandatory Referrals](#)
- 4.3 Guidelines
 - [Diversity of Opinion](#)
 - [Due Weight](#)
 - [Impartiality in BBC Content](#)
 - [Contributors' Affiliations](#)
 - [Where BBC Content or the BBC is the Story](#)
 - [Contentious Views and Possible Offence](#)
 - [Consensus, Campaigns and Scrutiny](#)
 - [Elections and Referendums](#)
 - [Impartiality in Series and Over Time](#)
 - [Impartiality and Audiences](#)
 - [Drama, Entertainment and Culture](#)
 - [Personal View Content](#)

The BBC also has a policy on '**Right to Reply**' in its [Section 6 on Fairness to Contributors and Consent](#)

6.3.38 When our output makes allegations of wrongdoing, iniquity or incompetence or lays out a strong and damaging critique of an identifiable individual or institution the presumption is that those criticised should be offered a right of reply, that is, given a fair opportunity to respond to the allegations.

Fairness to Contributors and Consent

- [6.1 Introduction](#)
- [6.2 Mandatory Referrals](#)
- 6.3 Guidelines
 - [Contributors and Informed Consent](#)
 - [Finding Contributors](#)
 - [Safety and Welfare of Contributors](#)
 - [Intimidation and Humiliation](#)
 - [Game Shows, Quizzes, Talent Shows and Programmes Offering Life-Changing Opportunities](#)
 - [Fair Editing](#)
 - [Anonymity](#)

- [Contributors, Access Agreements, Indemnity Forms and Editorial Independence](#)
- [Right of Reply](#)
- [Refusals to Take Part](#)
- [Deception](#)
- [Portrayal of Real People in Drama](#)

Sources

IPSO

14. Confidential sources

Journalists have a moral obligation to protect confidential sources of information.

[Case history Wadhams v The Times Decision: No breach - after investigation Relevant code provisions 1 \(Accuracy\) 2015 2 \(Opportunity to reply\) 2015 14 \(Confidential sources\) 2015 Publication The Times \(News UK\)](#)

[Case history 05823-20 A woman v the Halifax Courier Decision: Breach - sanction: publication of adjudication](#)

[Case history 10508-20 A man v Central Fife Times & Advertiser Decision: Breach - sanction: publication of adjudication](#)

[Case history A man v The Lancashire Telegraph, Press Complaints Council adjudication from 2007](#)

IMPRESS

Sources

8.1 Publishers must protect the anonymity of sources where confidentiality has been agreed and not waived by the source, except where the source has been manifestly dishonest.

8.2 Publishers must take reasonable steps to ensure that journalists do not fabricate sources.

8.3 Publishers should not pay public officials for information, except where an exceptional public interest justifies this

NUJ

Protects the identity of sources who supply information in confidence and material gathered in the course of her/his work.

CloJ

7.You will maintain the confidences you agreed with any contributors.

9.You will check sources and understand that previously published material may not always have been created using the exacting standards of a professional journalist and will independently seek to verify that the information is accurate.

12. You should be able to compensate sources of any kind in proportion to the public interest value of their information and the risks they are undertaking.

OFCOM

7.7 Guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity, should normally be honoured.

BBC

Sources

3.3.17 We should normally identify on-air and online sources of information and significant contributors and provide their credentials, so that our audiences can judge their status.

(See [Guidance: Investigations](#))

3.3.18 When quoting an anonymous source, especially a source making serious allegations, we must take all appropriate steps to protect their identity. However, we should give the audience what information we can about them and in a way that does not materially mislead about the source's status.

(See [Section 6 Fairness to Contributors and Consent: 6.3.26-6.3.31](#))

Whenever a promise of anonymity is made, both the journalist and the source must understand how this commitment extends to all those in the BBC who are aware of the identity of the source.

Where it is sought, the relevant editor, including the Director-General, as editor-in-chief, has the right to be told a source's identity and is equally obliged to keep this information confidential. In cases involving serious allegations we should resist any attempt by an anonymous source to prevent their identity being revealed to a senior BBC editor or, for independent production companies, the relevant commissioning editor. If this happens, it should be made clear that the information obtained confidentially may not be broadcast.

Anonymity

6.3.26 Sometimes information in the public interest is available only through sources or contributors on an 'off-the-record' or anonymous basis.

When practicable, referral should be made to a senior editorial figure or, for independent production companies, to the commissioning editor, who may consult Editorial Policy, before an agreement is made to protect a source's anonymity. Consideration should be given to whether anonymity should be granted and how it will be achieved.

Anonymity should be offered only when there is an editorial justification for doing so. When we grant a contributor or source anonymity as a condition of their participation, we must agree the extent of anonymity we will provide. In order to achieve that, we will need to understand who the contributor wishes to be anonymous from and why. It may be sufficient to ensure that the contributor or source is not readily recognisable to the general public, or they may wish to be rendered unidentifiable even to close friends and family. We should keep a record of conversations with sources and contributors about anonymity.

(See [Section 3 Accuracy: 3.3.15](#) and [3.3.18](#))

6.3.27 We must ensure when we promise anonymity that we are in a position to honour it, taking account of the implications of any possible court order demanding the disclosure of our unbroadcast material. When anonymity is essential, no document, computer file, or other record should identify a contributor or source. This includes notebooks, administrative paperwork, electronic devices, as well as video and audio material.

6.3.28 Effective obscuring of identity may require more than just anonymity of face. Other distinctive features, including hair, clothing, gait and voice may need to be taken into account. Where anonymity is essential, we should normally blur pictures, rather than pixelate them, and revoice contributions, rather than technically distort them, as both pixelation and technical distortion can be reversed. Audiences should be informed that the contribution has been revoiced.

6.3.29 To avoid any risk of 'jigsaw identification' (that is, revealing several pieces of information in words or images that can be pieced together to identify the individual), our promises of anonymity may also need to include, for example, considering the way a contributor or source is described, blurring house numbers, editing out certain pieces of information (whether spoken by the contributor or others) and taking care not to reveal the precise location of a

contributor's home. Note that, in some circumstances, avoiding the 'jigsaw effect' may require taking account of information already in the public domain.

6.3.30 We may need to disguise the identity of international contributors to meet our obligations of anonymity or if their safety may be compromised. Third-party websites sometimes reproduce our content globally without our knowledge or consent so no guarantee can be given that a contribution will not be seen in particular countries.

(See [Guidance: Anonymity](#))

Crisis in the Protection of Journalist Sources

The confidentiality of journalists' investigations, research and communications is closely bound up with the professional duty to protect sources. The whistle-blower, Edward Snowden, revealed the extent of surreptitious interception of online data by state intelligence agencies. In the UK, the online magazine *Press Gazette* highlighted police force use of the Regulation of Investigatory Powers Act 2000 to obtain journalists' phone data without any court hearing and scrutiny by an independent judge. While steps are being taken to lobby Parliamentarians to improve journalist source protection, you would be advised to follow techniques and advice that provide some level of information security for journalists.

[A ruling of the Investigatory Powers Tribunal in the case of Scottish investigative journalist and former police officer, Gerard Gallacher](#), suggest the legal system is beginning to provide a remedy for breaches of the right to protect journalist sources. In 2016, he was awarded £10,000 damages against Police Scotland when detectives unlawfully collected communications data when trying to identify his source(s) for a series of stories on an unsolved murder inquiry.

In 2017 the IPT awarded damages of £3,000 each to two police officers whose phone records had been unlawfully accessed by Cleveland Police investigating leaks to the regional newspaper the Northern Echo. But in the case of [Dias and Others against Cleveland Police](#) the journalists whose records had been unlawfully intercepted received nothing in compensation. See: <http://www.pressgazette.co.uk/cleveland-police-illegal-phone-records-grab-police-officers-given-3000-but-journalists-get-nothing/>.

The large-scale criminal prosecution of journalists and their official civil servant sources in Operation Elveden demonstrated the risk of the authorities using criminal remedies to punish the phenomenon of leaking, and leaving the courts to decide whether such actions were in the 'public interest.' All journalists prosecuted who denied any criminal wrongdoing were eventually acquitted or cleared, but most of their official sources were convicted and many jailed. The implications of not protecting journalists' sources have been explored in two online articles published by The Conversation.

See: [Protect journalists' sources or give up on British democracy](#)

And: [The lack of justice for journalists' sources is a catastrophe for democracy](#)

Former Belmarsh prison officer Robert Norman challenged his conviction and jail sentence. He was unsuccessful at the Court of Appeal in the ruling [Norman, R v \[2016\] EWCA Crim 1564 \(20 October 2016\)](#). He was unsuccessful when pursuing his appeal to the ECHR in Strasbourg

on the basis that he was entitled to Article 10 Human Rights freedom of expression protection as a valid source providing information to a journalist that was in the public interest.

He also argued that his rights under Article 7 (no crime without law) of the convention were breached in that the use of the common law offence of misconduct in public office to criminalize public official sources giving information to journalists in the public interest did not exist when he began his source/journalist relationship with Daily Mirror reporter Stephen Moyes. His payments totalling £10,000 were disclosed to the police by the newspaper publishers of the Daily Mirror and now defunct News of the World. In November 2017, and his legal team at Garden Court Chambers held a seminar to raise the implications of his case and discuss his appeal to Europe.

See: NORMAN v. THE UNITED KINGDOM - 41387/17 (Judgment : Remainder inadmissible : Fourth Section) [2021] ECHR 601 (06 July 2021) (CE:ECHR:2021:0706JUD004138717, ECLI:CE:ECHR:2021:0706JUD004138717, [2021] ECHR 601; From European Court of Human Rights; 144 KB) See: <https://www.bailii.org/eu/cases/ECHR/2021/601.html>

The court's bullet point summary:

'Art 10 • Freedom to impart information • Justified prosecution and conviction of prison officer for providing information about prison to journalist in exchange for money • Strong public interest in prosecution for maintenance of integrity and efficacy of and public confidence in the prison service • No public interest in majority of disclosed information and no claim to be acting as a whistle-blower • Disclosure of applicant's name by newspaper owner not attributable to respondent State, in the absence of any compulsion by police. Art 7 • *Nullum crimen sine lege* • Prosecution and conviction for offence of misconduct in public office sufficiently foreseeable.'

In short, the European judges decided the public interest in prosecuting him was greater than any public interest in his provision of information as a source to journalists. He denied him the status of whistle-blower because there was no public interest in the majority of information he had provided. They also believed the likelihood of being criminally prosecuted as opposed to disciplined in employment law by losing his job was 'sufficiently foreseeable.'

Important UK existing media law relating to journalists' sources

Under clause 14 of the Editors' Code followed by IPSO, all journalists and their news publishers are deemed to have a moral obligation to protect their confidential sources: 'Journalists have a moral obligation to protect confidential sources of information.' This is also a professional obligation in the codes of the NUJ and CloJ. The obligation is also in the IMPRESS code.

IPSO rulings have repeatedly berated publications that fail to protect sources.

See: [A woman v Evening Chronicle \(Newcastle upon Tyne\)](#) and more recent cases of [05823-20 A woman v the Halifax Courier IPSO ruling](#) [10508-20 A man v Central Fife Times & Advertiser IPSP ruling](#)

But at the same time in the UK there is no legal obligation on the part of journalists and their publishers to protect their sources. This may develop as an area of confidentiality or privacy law in the future. In the USA journalists or publishers who 'burn' their confidential sources can be sued. This was established in 1991 in the US Supreme Court case of *Cohen v. Cowles Media*. Jerome A. Barron in an academic article for the *William & Mary Bill of Rights Journal* explained its [significance for First Amendment law and journalism in the USA](#).

At present there appears to be no law of negligence on UK journalists sources that could result in any legal comeback for journalists or publishers who betray them through negligence or even worse, malicious mischief.

Section 7.7 of Ofcom's Broadcasting Code states that: 'Guarantees given to contributors, for example relating to the content of a programme, confidentiality or anonymity, should normally be honoured.' Ofcom has statutory powers to fine broadcast licencees if they decide that the consequences of breaching 7.7 have been so serious.

IMPRESS, in its standards code, states: 'Publishers must protect the anonymity of sources where confidentiality has been agreed and not waived by the source, except where the source has been manifestly dishonest.'

Another problem in the UK is that the relationship between journalists, their publishers and their sources is affected by the fact there is no public interest defence should anyone [breach the 2010 Bribery Act](#).

The offence is wide-ranging:-

'A person ("P") is guilty of an offence if either of the following cases applies.

(2) Case 1 is where—

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P intends the advantage—

(i) to induce a person to perform improperly a relevant function or activity, or

(ii) to reward a person for the improper performance of such a function or activity.

(3) Case 2 is where—

(a) P offers, promises or gives a financial or other advantage to another person, and

(b) P knows or believes that the acceptance of the advantage would itself constitute the improper performance of a relevant function or activity.'

The offence works both ways and potentially could catch both a source and a reporter. The same issue applies to the common law of conspiracy to commit misconduct in public office where a source is a public official or civil servant.

A recent ruling of Lord Chief Justice Morgan in Northern Ireland in July 2020 in the case [Fine Point Films and Trevor Birney's Application, Barry McCaffrey's Application and PSNI and Durham Constabulary for search warrants' Application](#) demonstrates that journalists pursuing public interest investigations have Article 10 freedom of expression protection of source confidentiality. Under [Section 11\(1\)c of the Police and Criminal Evidence Act 1984](#) any

computers, smartphone devices and office records should attract the protection of 'excluded journalistic material.'

Furthermore, if a journalist sources issue ever get to court there would be the protection of [Section 10 of the 1981 Contempt of Court Act](#) which was the first UK legislation to statutorily protect journalist source confidentiality:-

'10 Sources of information.

No court may require a person to disclose, nor is any person guilty of contempt of court for refusing to disclose, the source of information contained in a publication for which he is responsible, unless it be established to the satisfaction of the court that disclosure is necessary in the interests of justice or national security or for the prevention of disorder or crime.'

Misconduct in public office can only be proved against a journalist if it can be shown that the publication of the information obtained actually damaged the public interest.

The position of journalists' rights when covering public interest stories has been highlighted somewhat acutely with the arrest and detention of professional freelance photographer Andy Aitchison who covering protests outside a detention centre for migrants in Folkestone, Kent in February 2021. The Kent police arrested him at his home for alleged criminal damage. They seized the SD card from his camera and his smartphone. Index on Censorship and other journalist NGOs, including Mr Aitchison's own trade union, NUJ, [say his treatment is an attack on press freedom](#). Index raised a ['Harassment and intimidation of journalists' alert with the Council of Europe in relation to his case](#). The Council of Europe constitutes the European Court of Human Rights at Strasbourg. The Kent police subsequently dropped the enquiry and returned his equipment and he received an apology and damages.

Case History. Robert Norman v United Kingdom ECtHR 2018. The European Court of Human Rights 4th Section

Although Robert Norman lost his case at Strasbourg, here are the arguments provided by the author in an affidavit he supplied to the court in Mr Norman's support.

It is a struggle to find any other example in case law with a set of circumstances as seriously damaging to Article 10 protection of source rights. Operation Elveden, through the prosecution of a previously non-existent and unknown ancient common law offence, criminalized every aspect of the applicant's decision to inform a professional journalist at the highest circulation national news publishers in the country of serious public interest issues concerning the prison system. The applicant was one of scores of public officials disproportionately humiliated, shamed and criminalized by the state and legal system for exercising the legitimate aim and pressing social need to contact journalists confidentially for the purposes of public interest journalism. The personal consequences for him could not be more impactful and devastating as a warning to any other public or private individual seeking to communicate anything they wish to a journalist. In the industry's recognized online platform for professional and specialist news, *UK Press Gazette*, and the *Guardian* newspaper the individual personal cost to his professional and family life was laid bare. It was reported that he had to 'sell his house in order to pay the £51,000 costs of his defence. His wife's mental health, already fragile, deteriorated. She attempted to take her own life and was committed to psychiatric care on three occasions.'

See: 'Trinity Mirror's chiefs should resign for failing to protect a source' Guardian 24th November 2016. At: <https://www.theguardian.com/media/greenslade/2016/nov/24/trinity-mirrors-chiefs-should-resign-for-failing-to-protect-a-source>

He served six months in prison and five under home detention. It was also reported he was living on the £64 a week, which he was receiving from the state as his wife's full-time carer.

The applicant and the journalist to whom he communicated have consistently emphasized that the motivation was to bring matters to do with prison security, welfare and management to the wider attention of the public. Stephen Moyes, in the statement he released when he was told he was not going to face a criminal trial for conspiracy to commit misconduct in public office, said of the applicant: 'Without him a number of important security and safety exposés would have been hushed up – by the same negligent prison management who were responsible for them. His concerns – of sweeping staff cuts when they were at full capacity, threatening the lives of warders, inmates, and the general public – were backed up by reports and statistics from the independent prison inspector and charities such as the Howard League for Penal Reform.'

See: 'Case against cleared Sun reporter Stephen Moyes said he 'demonised' Suffolk Strangler by writing stories about him'

<https://www.pressgazette.co.uk/evidence-against-cleared-sun-reporter-stephen-moyes-said-he-demonised-suffolk-strangler-writing/>

The applicant has been denied all of the Article 10 freedom of expression rights he was entitled to as a protected journalistic source as reaffirmed in the ruling of [The ECtHR Grand Chamber at paragraphs 50 to 51 of Sanoma Uitgevers B.V. v. the Netherlands \(no. 38224/03\)](#):

'50. Freedom of expression constitutes one of the essential foundations of a democratic society and the safeguards to be afforded to the press are of particular importance. Whilst the press must not overstep the bounds set, not only does the press have the task of imparting such information and ideas: the public also has a right to receive them. Were it otherwise, the press would be unable to play its vital role of "public watchdog" (Observer and Guardian v. the United Kingdom, 26 November 1991, § 59, Series A no. 216) The right of journalists to protect their sources is part of the freedom to "receive and impart information and ideas without interference by public authorities" protected by Article 10 of the Convention and serves as one of its important safeguards. It is a cornerstone of freedom of the press, without which sources may be deterred from assisting the press in informing the public on matters of public interest. As a result, the vital public-watchdog role of the press may be undermined and the ability of the press to provide accurate and reliable information to the public may be adversely affected. 51. The Court has always subjected the safeguards for respect of freedom of expression in cases under Article 10 of the Convention to special scrutiny. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society, an interference cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest.'

ECtHR jurisprudence has indicated that the importance of the source and journalist confidentiality and protection from disclosure is such that it is not necessary that the information being provided has to be proved to be of public interest. This was acknowledged in the summary of submissions in the case of [GOODWIN v. THE UNITED KINGDOM - 65723/01 \[2008\] ECHR 61 \(22 January 2008\)](#) at paragraph 37: 'the degree of public interest in the information could not be a test of whether there was a pressing social need to order the source's disclosure. A source may provide information of little value one day and of great value the next; what mattered was that the relationship between the journalist and the source was generating the kind of information which had legitimate news potential.'

Further ECtHR case law in [TELEGRAAF MEDIA NEDERLAND LANDELIJKE MEDIA BV AND OTHERS v. THE NETHERLANDS - 39315/06 - HEJUD \[2012\] ECHR 1965 \(22 November 2012\)](#) has

emphasized that the motivation of the source is not critical to determining the pressing social need for journalist and source protection. At paragraph 128 the court observed in its ruling:

'While it may be true that the public perception of the principle of non-disclosure of sources would suffer no real damage where it was overridden in circumstances where a source was clearly acting in bad faith with a harmful purpose (for example, by intentionally fabricating false information), courts should be slow to assume, in the absence of compelling evidence, that these factors are present in any particular case. In any event, given the multiple interests in play, the Court emphasizes that the conduct of the source can never be decisive in determining whether a disclosure order ought to be made but will merely operate as one, albeit important, factor to be taken into consideration in carrying out the balancing exercise required under Article 10 § 2 (Financial Times Ltd. and Others, cited above, § 63).'

The importance of the conduct of the source was fully considered in [FINANCIAL TIMES LTD AND OTHERS v. THE UNITED KINGDOM - 821/03 \[2009\] ECHR 2065](#) at paragraph 63:

'In the case of disclosure orders, the Court notes that they have a detrimental impact not only on the source in question, whose identity may be revealed, but also on the newspaper against which the order is directed, whose reputation may be negatively affected in the eyes of future potential sources by the disclosure, and on the members of the public, who have an interest in receiving information imparted through anonymous sources and who are also potential sources themselves (see, mutatis mutandis, Voskuil v. the Netherlands, no. 64752/01, § 71, 22 November 2007). While it may be true that the public perception of the principle of non-disclosure of sources would suffer no real damage where it was overridden in circumstances where a source was clearly acting in bad faith with a harmful purpose and disclosed intentionally falsified information, courts should be slow to assume, in the absence of compelling evidence, that these factors are present in any particular case. In any event, given the multiple interests in play, the Court emphasises that the conduct of the source can never be decisive in determining whether a disclosure order ought to be made but will merely operate as one, albeit important, factor to be taken into consideration in carrying out the balancing exercise required under Article 10 § 2.'

As a long form investigative academic researcher and journalist concentrating on the criminal justice system and the conduct of state investigation agencies and public bodies, I have detected two significant diminishing reductions in source confidence and communication. From the year 2000 longstanding sources became much more apprehensive about the security of electronic communications, the use of traceable landline and mobiles for discussion and there was a sense that their identification was much more vulnerable. Many years later that apprehension was fully justified when it became apparent that the Regulation of Investigatory Powers Act 2000 afforded police and state investigatory bodies access to mobile phone records and other communications data without independent judicial oversight. The Act enabled approval for such data acquisition from a senior officer in the same force or body.

The Leveson Inquiry in 2011 signalled a critical and hostile social and political view of journalist and public official contact; particularly with regard to any accompanying hospitality and the payment of fees for stories. The central charge was that unofficial police and journalist contact had become too close to the extent it was potentially compromising and corrupting. This was accompanied by lurid and sensational media reports of public officials and journalists being arrested in Operation Elveden for misconduct in public office offences. It was reported that overly large teams of detectives raided the homes of suspects, conducted intrusive searches when family and children were present, a sense that the crimes being investigated were being treated as seriously as terrorism or murder, followed by very long periods of police bail, sometimes as much as two years, before decisions were taken to charge and proceed to trial. Reports of public official sources receiving custodial sentences began emerging towards the end of 2012. It was noticeable that several personal sources connected with the prison

and criminal justice system became unavailable. This kind of 'chilling effect' impact was reported throughout the profession of journalism.

In 2013 the BBC's Home Affairs Correspondent, Guy Smith, concluded in a quantitative and qualitative academic dissertation and survey that 'Both police communicators and crime journalists are in sharp disagreement with how they perceive each other's methods. The results suggest both have low professional opinions of each other in terms of manipulating information.' He added the Operation Elveden had 'destabilised the relationship and caused significant damage.'

See: ['Police relationship with crime reporters under strain, research finds Survey finds lack of understanding between forces' media officers and journalists since prosecutions and Leveson inquiry'](#)

(Smith, G (2013) Is the relationship broken? A study of how police communicators and crime journalists perceive each other post-2011. Unpublished CIPR Diploma Project. The online link to this dissertation is no longer active.)

In 2016 Millar and Scott reported in their influential legal textbook on newsgathering law that although Lord Justice Leveson had urged in his report 'that "remedial action" has the potential of going too far in the direction of disengagement or, speaking more colloquially, battering down the hatches," retrenchment and a chilling effect in communication developed. They observe that the College of Policing's 2013 guidance on police and journalist relations 'pays little heed to Lord Justice Leveson's warning. All officers or civilians who meet a journalist, are interviewed, or provide information on a matter for which they are responsible should record "a note of the meeting or disclosure...In a diary or pocket book." Chief Officers should "record all contact with the media where policing matters are discussed." Millar and Scott further observed that 'a simple rule' on contact 'would discourage contact by junior officers in deference to senior officers heading investigations and to force press officers.

The guidance was derided by one experienced crime reporter as "a top-down, paranoid, defensive over-reaction by officers [who] are not accountable to anybody". She also highlighted the fact that it had caused the suspension of one Metropolitan Police Officer for "sending texts to a journalist", and another for having "a journalist's number on their mobile phone". The upshot has been a significant loss of trust between journalists and the police.' Millar and Scott chronicled a significant chilling effect descending on media relations between journalists and civil servants with changes in the Civil Service Management Code which from 2015 would preclude: '...any activities or...public statement which might involve the disclosure of official information or draw upon experience gained in their official capacity without the prior approval of their department or agency. They must clear in advance material for publication, broadcasts or other public discussion which draws on official information or experience. All contacts with media should be authorized in advance by the relevant Minister unless a specific delegation or dispensation has been agreed which may be for blocks of posts or areas of activities.' [...] The revision was criticized ... as "a blanket ban on media contact for civil servants [that is] ... an unnecessary, unworkable, and unjustified restriction on the work of the civil service ...we can see no justification for this sudden, drastic change, other than intimidating civil servants into silence."

(All quotations from pages 117-119 and sections 6.55 to 6.60 Millar & Scott 2016)

The *Guardian's* veteran and retired crime correspondent and author, Duncan Campbell, explained how the Leveson Inquiry had constructed a problematization of journalist and police contact. The Inquiry's QC Robert Jay had listed five potential features that suggested the relationships were 'over-cosy': inappropriate hospitality; off-the-record briefings; leaks; press attribution of "police sources"; and the press turning up at incidents because they had been tipped off by the police.' (Campbell 2016:231) The denunciation of the expression 'police sources' was infused with an implication of bad faith: 'a term which is redolent of impropriety, or at the very least carries with it the possibility of inappropriate behaviour, either because the police officer has indulged in gossip or leaks, or because the term is in

truth a cipher or fig-leaf for an invented story because the source does not in fact exist'. (ibid) The former Met Police Commissioner Lord Condon introduced a sense of disgust when talking about how 'hospitality can be the start of a grooming process' as though he were discussing the strategies of child abusers.

In 2011 the Home Secretary and Metropolitan Police Commissioner asked Dame Elizabeth Filkin to investigate 'The Ethical Issues Arising From Relations Between the Police and the Media.' She reported in 2012 and recommended that police officers should watch out for 'late-night carousing, long sessions, yet another bottle of wine at lunch – these are all long-standing media tactics to get you to spill the beans. Avoid.' Other Dame Filkin homilies included 'Mixing the media with alcohol is not banned but should be an uncommon event,' drinking with officers 'may be seen as inappropriate hospitality' and the police should watch out for reporters 'flirting'.

Dame Filkin's report is available at:

<http://webarchive.nationalarchives.gov.uk/20140122180353/http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Report-by-Elizabeth-Filkin.pdf>

Duncan Campbell summarizes the cumulative chilling effect of Operation Elveden arrests and prosecutions, the Leveson and Filkin reports in the words of Sean O'Neill, the Crime Editor of the *Times*, in that it had "created a culture of fear reinforced by a set of rules and regulations that have left sensible officers worried about the impact on their careers of having conversations with journalists." (Campbell 2016:234). Mr. O'Neill warned that Operation Elveden was overwhelmingly damaging to the public interest because it would lead to 'a press that is all too willing to bash the police at every opportunity because it has now seen bully-boy policing up close' (ibid).

Mr. Campbell contrasts the post Operation Elveden chilling effect with the more open and effective policy of former Met Police Commissioner, Sir Robert Mark, who has been credited with checking and rooting out police corruption during the 1960s and early 70s and who issued a memorandum in May 1973 which sought to build cooperation and goodwill with the public by fostering symbiotic and positive police and media relations: 'He urged that the police should supply the media with information "within officers' knowledge at as low a level as possible" - that is to say that a detective constable on a minor case should be able to talk directly to a reporter. And he also acknowledged that, "The new approach to dealings with the news media will of course involve risks, disappointments and anxieties; but officers who speak in good faith may be assured of my support even if they make errors of judgement when deciding what information to disclose."' (ibid 147) Mr. Campbell ended his chapter on what he titled as the 'Leveson Leviathan' with the response of a senior serving detective in March 2015 whom he had asked to interview about media/police relations: "Much as I would like to, I cannot speak to journalists without a senior press officer present and they only give permission to comment factually on jobs. The world is a very different place. Sorry." (ibid 235)

The chilling effect generated by the applicant's experience as a suspect and convicted defendant in Operation Elveden should also be contextualized with the fact that notwithstanding his betrayal by the very news publisher which had invited him to accept remuneration in return for his public interest stories on the prison system, the Police would have been able to identify him as a journalistic source without any intervening judicial scrutiny by using their powers under the Regulation of Investigatory Powers Act 2000. In September 2014 the *UK Press Gazette* spotted that the Metropolitan Police had somewhat triumphantly revealed their use under the legislation to obtain, without any court hearing, the phone records of *Sun* newspaper journalists in contact with unauthorized police sources in a dispute between a leading politician and officers on security duty at the gates of 10 Downing Street.

Press Gazette's subsequent investigation through Freedom of Information Act requests revealed large-scale use of such powers to identify largely police and public official sources suspected of leaking stories to the media over many years.

In February 2015, the then Interception of Communications Commissioner's Office reported that in an investigation going back the previous three years they had established that detectives had been able to obtain the communications data of 82 journalists using these RIPA 2000 powers. A separate non-attributable source disclosed to me: 'Think of any significant police and civil servant leak since the Act was passed and assume that the name of the journalist's source and much more was found out by the police being able to access data without having to go to a judge for a court hearing.' In the three year period 'there were 242 suspected sources investigated by police under ... 34 investigations, with 233 having their communications data taken.

The IOCCO concluded that police forces generally 'did not give the question of necessity, proportionality and collateral intrusion sufficient consideration.' It said that while generally Article 8 (privacy) of the European Convention of Human Rights was considered, Article 10 (freedom of speech) was not. The IOCCO's report also stated 80 per cent, 484 out of 608 RIPA applications in this three year period related to Operation Elveden, the Metropolitan Police's investigation into alleged inappropriate payments to public officials. The Office recommended that Parliament legislated so that 'judicial authorisation is obtained in cases where communications data is sought to determine the source of journalistic information.'

See: [Some 82 journalists have had their communications data obtained by police under the Regulation of Investigatory Powers Act in three years, the Interception of Communications Commissioner's Office has found.](#)

IOCCO report available at: <http://www.statewatch.org/news/2015/feb/uk-IOCCO-Communications-Data-Journalist-Inquiry-Report.pdf>

In conclusion, it can be strongly argued that this applicant's case under Article 10- Freedom of Expression and Article 7- No punishment Without Law, is in the context of a national regime of law, state body practice and judicial decision-making that disrespects and violates the democratic and constitutional necessity of confidential journalistic source protection under Article 10. Neither existing law, nor judicial intervention and scrutiny offered the necessary protection to the applicant, and the other source and journalist suspects targeted in Operation Elveden. The Police were operating in a culture where Article 10 rights for sources and journalists were irrelevant, ignored, and given no effective and proper consideration. The scale of improper acquisition of communications data by the police using their powers under RIPA 2000, and which enabled the identification of confidential sources without a Police and Criminal Evidence Act 1984 style production order hearing that respected the status of 'Excluded Material', is evidence of public authority antipathy to the purpose and importance of Article 10.

There is no evidence that the United Kingdom state has shown sufficient interest in safeguarding Article 10 rights for journalists and sources through the legislative provision of public interest defences for the purposes of journalism. It is absent from the 2010 Bribery Act. It did not exist when common law misconduct in public office was conjured to operate as an old Section 2 Official Secrets Act, Trojan Horse, Catch-all that criminalized any public official seeking to leak public interest information to journalists and their news publishers. The Leveson and Filkin reports have demonized and problematized public official and journalistic exchange and encounter. The collective trauma of Operation Elveden arrests, prosecution, and convictions has not served the essential vital public interest that underpins the purpose of protecting journalists' sources; namely the public interest in free communication of news and opinions.

The overall message presented by Operation Elveden, and the applicant's involvement in it, is that journalist sources on a massive scale were not protected by the UK legal system, they were disproportionately criminalized, and they will not be protected in the future. The fact that the UK state

has failed to protect journalist sources in this unprecedented police inquiry means UK journalists are not going to be able to obtain information enabling them to uncover matters in society that constitute the heart of political, social and cultural debate and hold powerful government bodies and private corporations to account.

Society's paramount interest in the free communication of news and opinions has not been protected. The UK state had no overriding requirement in the public interest to use the confidential information identifying the applicant for the purposes of a criminal prosecution. He had stopped providing information to Mr. Moyes a year before the newspaper's disclosure. The sourcing of his information for story publication had been in the public interest for journalistic purposes. No crime for providing such information to a journalist when working as a public official was properly prescribed by law at the time. The engagement of criminal investigation for what had been regarded in law as an employment disciplinary matter was wholly disproportionate to any harm in relation to the rights of others. None of what happened to the applicant was necessary in a democratic society.

Recognizing journalist and source liability on the part of publishers and the pressing social need for Article 10 rights to accrue to journalist sources.

How the applicant as a source has been betrayed and his confidentiality breached to enable the police to prosecute him for an invalid crime that did not exist when he began giving information to Mr Moyes and the *Daily Mirror* is, arguably, not the pre-eminent issue. His betrayal was without his consent and that of his journalist contact. The disclosure action was by the publisher employing his journalist contact and without the knowledge of either the applicant or his journalist contact. The publisher had also been employing the applicant as its source since it was the party that had been paying him and not the individual journalist, Mr Moyes.

The narrative in terms of nexus and cause and effect is much more complicated than previous case law decided on Article 10 protection of sources by the ECtHR. The applicant's case is unique. Both he and the journalist he provided his information to have always sought to sustain the confidentiality of the protected source role that is considered so important by ECtHR jurisprudence. But that has not been the case in respect of the publisher which took the decisive action to surrender the identification of the source and electronic communications he had with the journalist to the police. It is also the case the Metropolitan Police, Crown Prosecution Service, and judiciary, at Crown Court, Appeal Court and Supreme Court level have not intervened to properly ensure the applicant's Article 10 rights.

At no stage has there been any independent judicial hearing into whether the applicant's and Mr. Moyes' Article 10 rights on protection of journalist source confidentiality preclude any use of the data provided by Mirror Group Newspapers. The Crown Court and Appeal Court engaged a balancing act using the very information that Article 10 freedom of expression journalistic source protection was supposed to shield, or to use the terminology of the Police and Criminal Evidence Act 1984 to fully exclude.

Norman V United Kingdom could be an opportunity for the European Court of Human Rights to fully recognize the applicant's standalone right as an anonymous source. It is a key foundation for the legal mechanism to protect the right of the public to a free press. His right and standing in relation to Article 10 Freedom of Expression's protection of journalist source principle should be fully recognized as equivalent to that of the journalist to whom he has entrusted his public service imperative whistle-blowing. The protection from disclosure and the jeopardy of identification has to exist independently of any action being taken against the journalist or not. The circumstances of the applicant's case give rise to the pressing social need for such protection to accrue directly to the source and should vector legally

on a vertical dimension between citizen and public authority or body, and horizontally in respect of citizen to citizen.

ECtHR case law on protection of sources is expanding and widening the frame of source vulnerability when it has previously resided in disproportionate and improper orders and directions to journalists for disclosure. In [BECKER v. NORWAY - 21272/12 \(Judgment : Violation of Article 10 - Freedom of expression-{general} \(Article 10-1 - Freedom of expression Freedom to impart information...\)\) \[2017\] ECHR 834 \(05 October 2017\)](#) the ECtHR was invited to explore Article 10 protection of source rights when the source had apparently volunteered his identity and participation in a criminal trial process. Yet, the court quite rightly evaluated the protection of source rights asserted almost theoretically by a journalist witness being ordered to give evidence about the identity of her source and any dealings with him. I would argue that the Court in Becker recognized changing circumstances and contexts necessitating the continuing assertion of protection of source principle. In Becker it was stated: ‘... the Court has held that protection afforded to journalists when it comes to their right to keep their sources confidential is “two-fold, relating not only to the journalist, but also and in particular to the source who volunteers to assist the press in informing the public about matters of public interest”’ (Paragraph 76).

I would argue that paragraph 74 is of particular significance in enabling consideration of the applicant’s special needs and recognition for *sui generis* stand-alone source protection when his Article 10 rights are not being considered by the journalist who wrote up his story or the news publisher that brought it to the attention of the public:

‘74. The Court confirms that it has not previously had an occasion to consider the specific question arising in the present case. At the same time the Court recalls that in cases where a source was clearly acting in bad faith with a harmful purpose, it held that the conduct of the source can never be decisive in determining whether a disclosure order ought to be made but will merely operate as one, albeit important, factor to be taken into account in the balancing exercise under Article 10 § 2 of the Convention (see, paragraphs 67-68 above quoting *Financial Times Ltd and Others*, cited above, §§ 63 and 66, and also *Telegraaf Media Nederland Landelijke Media B.V. and Others v. The Netherlands*, no. 39315/06, § 128, 22 November 2012). Consequently, a journalist’s protection under Article 10 cannot automatically be removed by virtue of a source’s own conduct. In the Court’s view, these considerations are also relevant in a situation when a source comes forward, as in the present case. The Court recalls, moreover, that it has previously held that source protection under Article 10 applied also when a source’s identity was known to the investigating authorities before a search.’

At paragraph 70 the ECtHR in Becker amplified the different set of circumstances and position for source protection when its identity had already been known to the police:

‘Issues concerning source disclosure have not only arisen with respect to disclosure orders, but also in cases dealing with investigative searches, including *Görmüş and Others v. Turkey*, no. 49085/07, 19 January 2016 and *Nagla v. Latvia*, no. 73469/10, 16 July 2013. In the latter, the Court noted that there was a fundamental difference between that case and other cases, where disclosure orders had been served on journalists, requiring them to reveal the identity of their sources. However, the distinguishing feature lay not, as the Government in that case had suggested, in the fact that the source’s identity had been known to the investigating authorities prior to the search. According to the Court, that fact “[did] not remove the applicant’s protection under Article 10 of the Convention” (*Nagla*, cited above, § 95).’

The Court in Becker also drew on a wider range of international declarations that in my opinion can enable the present court to accommodate the recognition that the applicant’s protection source rights have been severely derogated disproportionately and without a legitimate aim. On 8th September 2015 the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression submitted a report to the UN General Assembly (A/70/361), which stated:

‘...both reporter and source enjoy rights that may be limited only according to article 19 (3). Revealing or coercing the revelation of the identity of a source creates disincentives for disclosure, dries up further sources to report a story accurately and damages an important tool of accountability. In the light of the importance attached to source confidentiality, any restrictions must be genuinely exceptional and subject to the highest standards, implemented by judicial authorities only. Such situations should be limited to investigations of the most serious crimes or the protection of the life of other individuals.’ (Paragraph 40) I would argue that these observations support the applicant’s case in that the revelation or coercion of his identity brought about by Mirror Group Newspapers as the publisher clearly created a devastating disincentive for other sources to come forward to assist with news publication. The restrictions envisaged by the Special Rapporteur of investigating serious crime or protecting life did not apply to the applicant’s arrest and prosecution.

Throughout *Becker v Norway*, there are, in my opinion important jurisprudential openings to recognize the special protection that adheres to the applicant as someone who volunteered to assist the press in informing the public about significant matters of interest: ‘...the Court has held that protection afforded to journalists when it comes to their right to keep their sources confidential is “two-fold, relating not only to the journalist, but also and in particular to the source who volunteers to assist the press in informing the public about matters of public interest” (see *Nordisk Film & TV A/S v. Denmark* (dec.), no. 40485/02, ECHR 2005-XIII and, for example, *Stichting Osade Blade* (dec.), no. 8406/06, § 64, 27 May 2014). (Paragraph 76) I also think it is significant that the Court in *Becker* extrapolated the following section of the explanatory report on the right of journalists not to disclose their sources of information, adopted by the Committee of Ministers of the Council of Europe on 8 March 2000:

“d. Information identifying a source

18. In order to protect the identity of a source adequately, it is necessary to protect all kinds of information which are likely to lead to the identification of a source. The potential to identify a source therefore determines the type of protected information and the range of such protection. As far as its disclosure may lead to an identification of a source, the following information shall be protected by this Recommendation:

- i. the name of a source and his or her address, telephone and telefax number, employer’s name and other personal data as well as the voice of the source and pictures showing a source;
- ii. ‘the factual circumstances of acquiring this information’, for example the time and place of a meeting with a source, the means of correspondence used or the particularities agreed between a source and a journalist;...” (Paragraph 41) Again this is another example of a standalone recognition of how European Human Rights law can specifically protect the source as a separate juridical entity from the journalist.

The unprecedented decisions by News International and MGN/Trinity Mirror to engage in such large-scale disclosure breaching the journalist source confidentiality of so many journalists and their informants has changed the terms and legal geography in this area of law. That which had never been done before and on this scale has impacted so fundamentally upon Article 10 freedom of expression rights that I strongly urge the Court to recognize any extension necessary to bring the applicant into the remit of the longstanding protection of journalist source human rights jurisprudence. The Chartered Institute of Journalists recognized the urgency of the need to buttress and strengthen the specific protections and needs of the journalistic source with a resolution at its Annual General Meeting in 2013: ‘Motion on protection of sources.

‘The Institute deplores and condemns the disastrous surrendering of confidential material on journalists sources by News Corporation’s Management and Standards Committee (MSC) to the Metropolitan Police.

It is apparent that much of this information was confidential journalistic material and should have been subject to the protection of the Police and Criminal Evidence Act 1984. This information should not

have been released unless by court order after a hearing before a judge at which the sources and individual journalists concerned should have had the right to independent representation.

The Institute calls on Parliament to introduce legislation so that confidential sources who have been negligently and without court order identified by the media institutions receiving, using or paying for their information can sue for compensation for the breach of their Article 10 Freedom of Expression protection of source rights as recognized by English common law and the European Court of Human Rights in a longstanding line of powerful rulings.'

UK law on the right of sources to have a legal remedy against media publishers that betray their duty of confidentiality should be given the same recognition as set out in the [US Supreme Court in Cohen v Cowles Media Co 501 US 663 \(1991\)](#).

The UK's new independent press regulator in the UK, IMPRESS, which has been recognized by the Press Recognition Panel as being fully compliant with the terms of the Leveson Inquiry, has recognized the obligation of 'publishers' as well as journalists to protect the anonymity of sources in its standards code.

'Publishers must protect the anonymity of sources where confidentiality has been agreed and not waived by the source, except where the source has been manifestly dishonest.'

(IMPRESS first standards Code) Amended code 2023:

'Sources

8.1 Publishers must protect the anonymity of sources where confidentiality has been agreed and not waived by the source, except where the source has been manifestly dishonest.

8.2 Publishers must take reasonable steps to ensure that journalists do not fabricate sources.

8.3 Publishers should not pay public officials for information, except where an exceptional public interest justifies this.'

(Page 61 to 63 at <https://www.impress.press/wp-content/uploads/2023/02/Impress-Standards-Code.pdf>)

See: <https://www.impressorg.com/standards/impress-standards-code/our-standards-code/>

'Journalists have a moral obligation to protect confidential sources of information.' (UK editors' code of practice)

See: http://www.editorscode.org.uk/the_code.php

'You will maintain the confidences you agreed with any contributors'

'You should be able to compensate sources of any kind in proportion to the public interest value of their information and the risks they are undertaking.' (Chartered Institute of Journalists code of conduct)

See: <https://cioj.org/the-cioj-code-of-conduct-for-our-members/>

'A journalist protects the identity of sources who supply information in confidence.'"(National Union of Journalists' code of conduct)

See: <https://www.nuj.org.uk/about/nuj-code/>

'Protecting sources is a key principle of journalism for which some journalists have gone to jail.' (BBC editorial guidelines)

See: <http://www.bbc.co.uk/guidelines/editorialguidelines/assets/guidelinedocs/Producersguidelines.pdf>
[This link is no longer live.]

As shown above all of the ethical codes of regulators and professional journalism associations in the UK fully recognize that the protection of sources is a moral, professional and legal duty and central to the essential human right of freedom of expression. In conclusion, I would suggest the language, spirit and scope of these legal and ethical obligations invest the applicant's argument that his protection of source rights have been violated. There was no pressing social need and it was not necessary in a democratic society for the surrender of his confidentiality by MGN/Trinity Mirror to be used by the police and legal system to disproportionately prosecute him for a criminal offence that had no legitimacy, clarity and proper application at the time he offered to provide public interest stories to a *Daily Mirror* journalist.

The very fact that disclosure was made by the newspaper publisher and not ordered by a court, or given up by the journalist whose source he was, is, in my opinion, an urgent invitation to the ECtHR to strengthen stand-alone rights for the journalist source. As Judge Tsotsoria so eloquently stated in *Becker v Norway* in 2017: ‘...we are living in the modern digital era where the legal framework of the protection of journalistic sources is under significant strain. This expands the risk of erosion, restriction and compromise in the work of journalists, with an impact on freedom of expression, the media and investigative journalism in particular. The Court has been a frontrunner and an advocate of judicial protection of journalists and their sources and in so doing it has also served as an inspiration for many other jurisdiction.’ (Concurring opinion). The applicant’s case is a dramatic manifestation and example of the significant strain referred to and professional journalists in the United Kingdom are hoping that the function they have in furthering the country’s democratic tradition can be supported by holding that his rights under Article 7 and 10 have been violated.

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This is an extract from the affidavit provided by Professor Tim Crook in Norman v United Kingdom Application no, 41387/17, August 2018 combined with articles published in The Journal of the Chartered Institute of Journalists in 2020 and 2021.

McNae’s Essential Law for Journalists 25th Edition covers some of these issues at Chapter 34 ‘Protecting journalist’s sources and neutrality’ pages 432-447.

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Highly significant European Court of Human Rights Grand Chamber ruling extending and strengthening Article 10 Protection of Journalists’ sources to the sources themselves when they act in the role of ‘good faith’ whistleblowers with public interest disclosure.

While Mr Norman’s case from the United Kingdom seeking to apply the Article 10 protection of journalists’ sources to the source itself was unsuccessful, a case from Luxembourg reaching the Grand Chamber did make the connection.

Judgement in Strasbourg 14th February 2023 in the case of *Halet v Luxembourg* (Application no. 21884/18)

This is also known as the 'Luxleaks case' and was summarized and referenced on pages 161 to 162 of the printed 2022 Second Edition of UK Media Law Pocketbook.

Very briefly the case concerned Raphaël Halet, a French national, who worked for PricewaterhouseCoopers accountants in Luxembourg.

The judges have ruled there was a violation of his whistle-blower's freedom of expression, Article 10 rights as a result of his criminal conviction for disclosing confidential documents protected by professional secrecy, comprising 14 tax returns of multinational companies and two covering letters, obtained from his workplace.

He says he did this to a journalist in the public interest for no financial reward. Up until now Article 10 protection of journalist source rights in Strasbourg cases have been robustly asserted in respect of the journalists, but this had not been clearly extended to the sources themselves when they suffered consequences from their exposure or identification. In Monsieur Halet's case, he had been criminally prosecuted and fined 1,000 Euros and additionally ordered to pay 1 Euro in compensation.

The Grand Chamber ruling is summarized with the following bullet-points:

Art 10 • Freedom of expression • Criminal-law fine of EUR 1,000 for disclosing to the media confidential documents from a private-sector employer concerning the tax practices of multinational companies (Luxleaks) • Consolidation of the European Court's previous case-law on the protection of whistle-blowers and fine-tuning of the criteria established in the Guja judgment • No abstract and general definition of the concept of whistle-blower • Claim for protection under this status to be granted depending on the circumstances and context of each case • Overall assessment by the Court of the Guja criteria, taken separately, but without hierarchy or specific order • Channel selected to make the disclosure was acceptable in the absence of illegal conduct by the employer • Authenticity of the disclosed documents • The applicant's good faith • Necessary balancing of competing interests at stake by the Grand Chamber, as the domestic courts' balancing exercise did not satisfy the requirements identified in the present judgment • Overly restrictive interpretation of the public interest of the disclosed information, which had made an essential contribution to a pre-existing debate of national and European importance • Only the detriment caused to the employer taken into account by the domestic courts • Public interest in the disclosure outweighed all of the detrimental effects, including the theft of data, the breach of professional secrecy and the harm to the private interests of the employer's customers • Disproportionate nature of the criminal conviction.

See the full ruling of the court <https://hudoc.echr.coe.int/eng?i=001-223259>

PDF document also available on this link

[case-of-halet-v.-luxembourgfullruling14thfebruary2023Download](#)

The legal summary of the case is available on this link:

<https://hudoc.echr.coe.int/eng?i=002-14005>

The press release about the ruling is available on the link below:

[grand-chamber-judgment-halet-v.-luxembourg-criminal-conviction-of-a-whistle-blowerDownload](#)

This is not an all-encompassing template offering a strong pre-determined legal shield for journalists' sources disclosing confidential information to journalists during their employment, but it will be influential and the seed for developing important precedents in this area.

It may strengthen the position of civil servant 'whistle-blowers' communicating to journalists public interest information without any financial reward or favour who under current English and Welsh criminal law face prosecution for misconduct in public office.

The judges explained there is no abstract and general definition of the concept of whistle-blower and the claim for protection under this status is to be granted depending on the circumstances and context of each case.

The ruling derived from principles developed in the 2008 [Grand Chamber ruling of Guja v. Moldova](#) which 'had identified for the first time the review criteria for assessing whether and to what extent an individual divulging confidential information obtained in his or her workplace could rely on the protection of Article 10 of the Convention, and specified the circumstances in which the sanctions imposed were such as to interfere with the right to freedom of expression.'

The Grand Chamber judges in Halet decided that the context for whistleblowers had changed since 2008 'whether in terms of the place now occupied by whistle-blowers in democratic societies and the leading role they were liable to play by bringing to light information that was in the public interest, or in terms of the development of the European and international legal framework for their protection.'

Halet is therefore important in confirming and consolidating the principles established in case-law for the protection of whistle-blowers by refining the six criteria for their implementation:-

- (1) The channels used to make the disclosure; (2) The authenticity of the disclosed information; (3) Good faith; (4) The public interest in the disclosed information; (5) The detriment caused, and (6) The severity of the sanction.

The Grand Chamber in Halet 'verified compliance with the various Guja criteria taken separately, without establishing a hierarchy between them or indicating the order in which they were to be examined, which, while it had varied from one case to another, had never an impact on the outcome of the case. However, in view of their interdependence, it was after undertaking a global analysis of all these criteria that it ruled on the proportionality of an interference.'

The majority of 12 to 5 ruled that the interference with the Monsieur Halet's right to freedom of expression by criminal prosecution, conviction and fine, in particular his freedom to impart information, had not been 'necessary in a democratic society.'

The ruling has been welcomed by Protect the UK's whistle-blowing charity 'European Court backs LuxLeaks Whistleblower in his decision to expose tax avoidance in the public interest.' See: <https://protect-advice.org.uk/protect-luxleaks-whistleblower/>

The International Consortium of Investigative Journalists was involved in reporting the Luxleaks case and reported the Grand Chamber ruling: 'European court reverses course to rule in favour of LuxLeaks whistleblower. The European Court of Human Rights ruled that the public interest in leaking the data showing how multinationals spirited profits to the tiny nation outweighed the detrimental effect.'

See: <https://www.icij.org/investigations/luxembourg-leaks/european-court-reverses-course-to-rule-in-favor-of-luxleaks-whistleblower/>

Stelios Andreadakis, Reader in Corporate and Financial Law at Brunel University London, and Dimitrios Kafteranis Assistant Professor at the Centre for Financial and Corporate Integrity, Coventry University observed in their article for the Oxford Business Law Blog: 'Apart from the undeniable impact of the judgment in relation to the right to freedom of expression, reference should be made to the notable protection offered to a whistleblower, who wanted to do the right thing, in good faith and without any intention to profit from it or to harm his employer. If the original criminal conviction had a 'chilling effect' on potential whistleblowers, who were considering speaking out about wrongdoings in their workplace, the Grand Chamber's decision was a step towards the right direction: the direction of transparency, accountability and fairness.'

See: 'Halet v Luxembourg: The Final Act of the Luxleaks Saga' at:

<https://blogs.law.ox.ac.uk/blog-post/2023/02/halet-v-luxembourg-final-act-luxleaks-saga>

Case History Discussion. The Snoopers' Charter.

In September 2018 the European Court of Human Rights ruled the UK Government's mass surveillance programmes were unlawful and violated the freedom of the press. ECtHR Judges found, by five votes to two, that the UK's mass interception regime revealed by NSA whistleblower Edward Snowden in 2013 violated the Article 8 right to privacy under the European Convention on Human Rights.

This was because its bulk surveillance was 'effectively indiscriminate, without basic safeguards and oversight', and it did not have sufficient legal basis under the Regulation of Investigatory Powers Act 2000. The court also ruled there had been a breach of Article 10, the right to freedom of expression, due to the 'potential chilling effect that any perceived interference with the confidentiality of journalists' communications and, in particular, their sources might have on the freedom of the press.'

There were insufficient safeguards in respect of confidential journalistic material. The case was brought by a number of parties, including the Bureau of Investigative Journalism, campaign groups Big Brother Watch and English PEN, and human rights groups including Amnesty International.

Rachel Oldroyd, TBIJ managing editor was reported in Press Gazette saying: 'The Bureau believes the freedom of the press is a vital cornerstone of democracy and that journalists must be able to protect their sources. We are particularly concerned about the chilling effect that the

threat of state surveillance has on whistleblowers who want to expose wrongdoing, and this ruling will force our government to put safeguards in place.'

See: <https://www.pressgazette.co.uk/extremely-good-day-for-journalism-as-echr-rules-uk-government-surveillance-regime-violated-freedom-of-the-press/>

See: The ECtHR ruling: [BIG BROTHER WATCH AND OTHERS v. THE UNITED KINGDOM - 58170/13 \(Judgment : Remainder inadmissible : First Section\) \[2018\] ECHR 722 \(13 September 2018\)](#)

The ruling reported the 'deep concern' of the UK Media Lawyers' Association that domestic law was moving away from the strong presumption that journalistic sources would be afforded special legal protection, since surveillance regimes allowed the authorities to intercept journalists' communications without the need for prior judicial authorisation. Since the protection of journalists' sources was one of the core components of Article 10, more robust protection was required.

The majority ruling stated at paragraphs 487 to 489: 'The Court reiterates that freedom of expression constitutes one of the essential foundations of a democratic society and that the safeguards to be afforded to the press are of particular importance. The protection of journalistic sources is one of the cornerstones of freedom of the press. Without such protection, sources may be deterred from assisting the press in informing the public about matters of public interest. As a result the vital public-watchdog role of the press may be undermined, and the ability of the press to provide accurate and reliable information may be adversely affected. The Court has always subjected the safeguards for respect of freedom of expression in cases under Article 10 of the Convention to special scrutiny. Having regard to the importance of the protection of journalistic sources for press freedom in a democratic society, an interference cannot be compatible with Article 10 of the Convention unless it is justified by an overriding requirement in the public interest.'

The Court has recognised that there is "a fundamental difference" between the authorities ordering a journalist to reveal the identity of his or her sources, and the authorities carrying out searches at a journalist's home and workplace with a view to uncovering his or her sources. The Court considered that the latter, even if unproductive, constituted a more drastic measure than an order to divulge the source's identity, since investigators who raid a journalist's workplace have access to all the documentation held by the journalist. However, the Court has also drawn a distinction between searches carried out on journalists' homes and workplaces "with a view to uncovering their sources", and searches carried out for other reasons, such as the obtaining of evidence of an offence committed by a person other than in his or her capacity as a journalist.'

The court decided: '...in view of the potential chilling effect that any perceived interference with the confidentiality of their communications and, in particular, their sources might have on the freedom of the press and, in the absence of any "above the waterline" arrangements limiting the intelligence services' ability to search and examine such material other than where "it is justified by an overriding requirement in the public interest", the Court finds that there has also been a violation of Article 10 of the Convention.'

In relation to the complaint of the violation of Article 8- the privacy of journalists and their sources, the court decided that regime of surveillance under the Investigatory Powers Act 2000 'was not in accordance with the law as it permitted access to retained data for the purpose of combating crime (rather than "serious crime") and, save for where access was sought for the purpose of determining a journalist's source, it was not subject to prior review by a court or independent administrative body.'

The UK government's attempts to amend and develop the Investigatory Powers Act, otherwise known as 'The Snoopers' Charter' had hit more legal buffers in April 2018 in the ruling of the English High Court.

The court ruled that parts of the Investigatory Powers Act 2016, dubbed the "Snoopers Charter", must be amended as it runs contrary to European Union law.

Judges found that the Data Retention and Investigatory Powers Act 2015 (DRIPA), which the 2016 Act replaced and expanded upon broke the law by allowing access to individuals' phone and internet records without the suspicion on criminal activity.

Parts of the 2016 Investigatory Powers Act are also unlawful.

The court concluded: 'For the reasons we have given this claim for judicial review succeeds in part, because Part 4 of the Investigatory Powers Act 2016 is incompatible with fundamental rights in EU law in that in the area of criminal justice:

- (1) access to retained data is not limited to the purpose of combating "serious crime"; and
- (2) access to retained data is not subject to prior review by a court or an independent administrative body.

We have concluded that the legislation must be amended within a reasonable time and that a reasonable time would be 1 November 2018, which is just over 6 months from the date of this judgment. We have also concluded that the appropriate remedy is a declaration to reflect our judgment.

See: <http://www.bailii.org/cgi-bin/format.cgi?doc=/ew/cases/EWHC/Admin/2018/975.html>

See the Liberty briefing at: <https://www.libertyhumanrights.org.uk/campaigning/people-vs-snoopers-charter>

At the heart of the [2016 Investigatory Powers Act](#) is the government's belief that we do not own our communications data.

The information about who we contact, on which day and at what time, where and in what way belongs to private internet service providers and telecommunications companies.

That is why the legal access is a relationship between government and data processors; not the users.

There is nothing in the Act to explicitly declare that the content of a communication is our personal property, but perhaps that is implied.

The trick played on journalists and everyone else is that the police, intelligence agencies and any of the 50 state investigatory bodies given access powers in the 2016 legislation have the data map to that content should it be preserved on computer hard discs or any form of digital storage server.

It is the roadmap to finding the more detailed evidence if required.

US government whistle-blower [Edward Snowden and Liberty say the Investigatory Powers Act is the most invasive surveillance regime of any democracy in the world.](#)

The fear for all of us is that it introduces staggering state spying powers that give the government access to up to one year of everybody's web histories, email, text and phone records.

The government says it makes us more safe and free from all the dangers of terrorism and other awful crimes.

The Dystopian Big Brother vista of doom conjured by privacy campaigners is an unnecessary and inaccurate exaggeration.

Ministers say IPA was intended to introduce transparency to state surveillance following Snowden's revelations of unlawful mass monitoring of the public's communications.

But Liberty's legal experts say it simply legalises the practices he exposed – and introduces hugely intrusive new powers which undermine our privacy, free press, free speech, protest rights, protections for journalists' sources and whistle-blowers and legal and patient confidentiality.

When it was passed in Parliament at the end of 2016 there was an atmosphere of shambolic opposition and a political climate reeling from the implications of the EU referendum.

The government was criticized for not providing any credible evidence that the extreme indiscriminate powers included in the legislation complied with European Union and European Human Rights law and were fully necessary to prevent or detect crime.

[A public petition has called for its repeal](#) with more than 200,000 signatures, but has not been debated by Parliament.

In January 2018, the English Court of Appeal ruled that near-identical powers in the Government's previous surveillance law – the Data Retention and Investigatory Powers Act – were unlawful because they let public bodies access the nation's internet activity and phone records with no suspicion of serious crime and no independent sign-off.



Twin towers of the European Court of Justice, in Kirchberg, Luxembourg. Image: Tercer. Creative Commons licence.

This ruling had applied an [earlier judgment in the same case from the European Court of Justice \(ECJ\)](#).

The Government has conceded that Part 4 of the new Act needs reform, in the light of these cases, but further intervention by the courts is not needed.

IPA not only gives state agency access to communications data on demand.

The law also allows the State to hack computers, phones and tablets on an industrial scale, and collect the content of our digital communications and records about those communications created by our computers, phones and other devices.

The scandal over Facebook's leak of data [belonging to 87 million social media users](#) has heightened public sensitivity about the significance of personal data.

It is being likened to 'the new oil' or to coin another metaphor 'the oxygen of the information age,' meaning that while it is vital to life it is also very dangerous in its pure form especially when mixed with a burning substance.

The flame of an investigation will burn ever so more brightly with IPA access to a detailed picture of a person's movements, contacts, habits and views.

The Act purports to provide safeguards for the protection of confidential journalistic information and journalist source data.

But these provisions are not equal to those offered by the [Police and Criminal Evidence Act 1984](#) where independent judicial hearings have to take place with representation for the journalist and news publisher as parties to the applications.

The IPA system does not recognize that the journalist has a right to be party to the review.

The Act appoints [a Judicial Commissioner to adjudicate applications](#) and journalists have no rights to be informed about the applications or access to their information.

[The Investigatory Powers Commissioner's Office](#) has now been up and first under Sir Adrian Fulford with a plan to use around 15 current and recently retired High Court, Court of Appeal and Supreme Court Judges as Judicial Commissioners. He was succeeded in early 2020 by

Sir Brian Leveson and there has been an expansion of the IPCO's resources and the establishment of the OCDA (Office for Communications Data Authorisations). Everything will be conducted in secret with no public scrutiny at all and absolutely no due process of legal representation.

'Protections' for sensitive categories such 'confidential journalistic material' and 'sources of journalistic information,' are invalidated where the 'information is created or acquired for the purpose of furthering a criminal purpose.'

And it seems that the threshold of 'serious crime' now involves only investigation of an offence which carries a maximum term of imprisonment of only one year or more.

This means any public official trying to leak anything to a journalist will be furthering a criminal purpose because the maximum sentence is life imprisonment for misconduct in public office and will be 14 years for leaking info under a proposed Espionage Bill.

At a judicial review hearing brought by Liberty, the government's QC James Eadie contended that the vast majority of communications data retained will never be accessed by the state because most people are not affected by police or other relevant investigations.

This is certainly not the case with professional journalists.

Under the old Regulation of Investigatory Powers Act 2000 scores, [perhaps hundreds of journalists had their data secretly accessed](#) with a sign-off from a senior police officer in the same force.

The lack of scrutiny in such oversight chimes ironically with a profession castigated during the Leveson Inquiry for 'marking its own homework.'

When RIPA 2000 was debated in Parliament politicians assured the media industry its powers would never be used against journalists in leak inquiries.

The government lawyer said that accessing a person's entire communications data history would require the most serious justification and 'in reality the law does not permit vast, intrusive collection by the state of communications data.'

See: <http://cioj.org/thejournal/contesting-the-worlds-most-invasive-surveillance-regime/>

It is certainly arguable that the current position of oversight infrastructure of the Investigatory Powers Commissioners' Office (IPCO) and Office for Communications Data Authorisations (OCDA) is not adequate for protecting the public interest freedom of information rights of professional journalists and their sources.

[IPCO's 2019 report](#) states that communications data requests affecting journalists are 'subject to an independent decision by the Office for Communications Data Authorisations (OCDA) and are not subject to Judicial Commissioner review.'

Annual Report of the Investigatory Powers Commissioner 2019

Cover of IPCO report for 2019.

The report also confirms that confidential journalist material is not protected from access 'if the journalist was using professional communications for the furtherance of serious crime.' The problem here is that serious crime is defined as any criminal offence with a maximum jail sentence of more than one year and this means there is no protection in relation to any leak enquiry of any form of government body information.

Misconduct in public office is a common law offence which in theory carries a maximum sentence of life imprisonment and has been deployed as a substitute for the notorious and repealed Section 2 of the 1911 Official Secrets Act that made it a crime to communicate any official information to a journalist.

In the digital and online sphere it is reasonable to fear that protection of journalists' sources is practically non-existent and it is extremely difficult for journalists to carry out news gathering confidentially and communicate with their sources freely and securely without the fear and suspicion of snooping, later reprisals and consequences for people providing information to them in the public interest.

The Chartered Institute of Journalists has identified further problems with the lack of Open Justice and clarity in oversight:

1. Failure to provide the identity of the law enforcement and public authorities applying for communications data relating to journalists and their sources and the journalists and publications affected;
2. No clarity on difference between 'requests' and 'authorisations' so that some kind of quantitative measurement can be made of the nature of oversight;
3. While the system engages some independent judicial oversight, it does not facilitate Open Justice equivalence. It does not match the extent of disclosure when applications

are made for production orders and access to confidential journalistic material under the Police and Criminal Evidence Act 1984;

4. In practice the oversight process is secret justice that guarantees mystery and suspicion. The Institute believes there is a need for much more information about the justification for warrants and communications data interceptions. It should be possible at the very least to provide summary accounts.
5. There is a significant natural and open justice problem in that journalists and sources affected are excluded from any knowledge and awareness of the interception while it is being carried out and remain barred from any knowledge after the event.

The Investigatory Powers Act highlights the philosophical, sociological and indeed policy confusion about the ownership and integrity of digital online information.

Mobile and Internet communications by journalists are not deemed to be owned by them. The legislation determines that power and control resides in the private corporations providing the services and the UK state thereby exercises its power of interception and surveillance with the digital host and 'proprietor' of the communication and not the journalist authors.

The Investigatory Powers Commissioners' Office (IPCO) reported that in 2019 up to 50 UK government agencies made 116 targeted communications data requests in relation to journalists 'whilst 15 were made to identify or confirm a journalistic source.' It has further indicated that '17 applications were made for warrants under the Investigatory Powers Act 2016 (IPA) where the purpose was to obtain material which the intercepting agency believed would relate to confidential journalistic material.' The report said: 'In all cases, the Judicial Commissioners (JCs) were satisfied that the case for obtaining confidential material was well made and the proposed activity was necessary and proportionate.'

The 2019 report also says: 'Only one application was made for the acquisition of communications data which was expected to include confidential journalistic material.'

Sensitive professions

In 2019, 50 law enforcement and public authorities applied for CD in relation to individuals of sensitive professions⁸⁸ (see also chapter 3).

Profession	
Lawyer	309
Journalist	116
Journalistic Source	15
Member of Parliament	138
Minister of Religion	135
Medical Doctor	300
Total	1,013

Graphic in 2019 IPCO Report setting out communications data authorisations for 'Sensitive professions' with the 'Journalist' category highlighted.

Investigatory Powers Commissioner's Reports for 2020 and 2021 reveal information on intercepting journalists' communications with sources.

It also discloses the first example of a Judicial Commissioner refusing an application to access data relating to journalists and their sources.

It seems the scale/number of state interception of journalists' communications is substantially down on previous years.

74 authorisations in 2021 compared to 281 in 2020.

Figure 19.6: Communications data authorisations involving members of a sensitive profession, 2018 to 2021

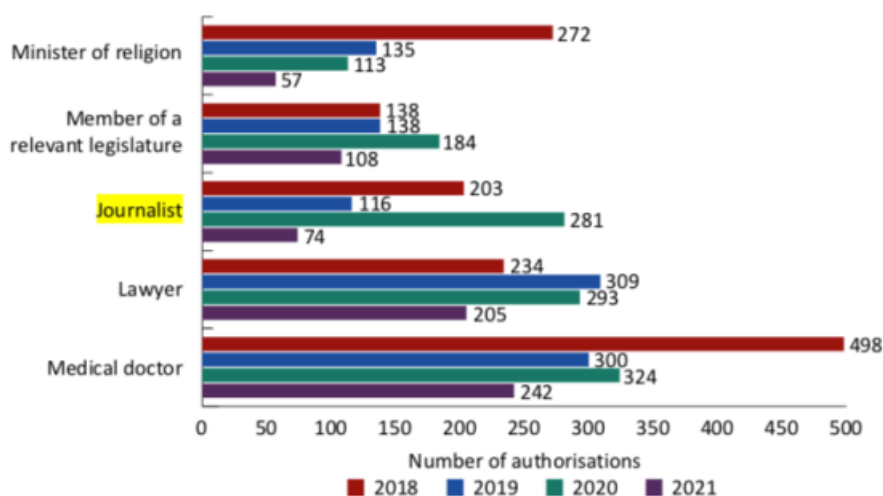


Table from page 118 of Investigatory Powers Commissioner's Annual Report 2021.

The report, for the first time, provides some more detail on the circumstances of interception and identification of the nature of contact between journalist source and journalists.

However, the report does not identify the journalists concerned, the people they were talking to, or their publications.

Two clear examples of interception of data relates to police officers or police staff and journalists.

One case reveals the police were investigating information being leaked by a police officer to a freelance journalist for financial gain.

Another case reveals investigation of police staff for leaking information to journalists resulting in a victim being contacted. The misconduct in public office issue did not disclose this being done for financial gain.

The report reveals an instance where a Judicial Commissioner refused an application for interception of communications data between a source and journalist. The rejection of the application was due to the fact of 'there being no evidence the allegations had been leaked, nor had they appeared in the public domain several weeks following the suspected leak.' The information being sought was the 'name of an officer who was facing a misconduct hearing.' It is not clear whether the source was a police officer, police staff or somebody else.

The report says the News Media Association and Media Lawyers' Association met with the IPCO Chief Commissioner Sir Brian Leveson to talk about improving the reporting of this information.

Annual Report of the Investigatory Powers Commissioner 2021 and the activities of the Investigatory Powers Commissioner's Office (IPCO) and Office for Communications Data Authorisations (OCDA). See: <https://ipco-wpmedia-prod-s3.s3.eu-west-2.amazonaws.com/Annual-Report-2021.pdf>

Annual Report of IPCO and OCDA for 2020. See: https://ipco-wpmedia-prod-s3.s3.eu-west-2.amazonaws.com/IPCO-Annual-Report-2020_Web-Accessible-version.pdf

The Appeal Court rules High Court can review bulk collection of journalists' data by UK law enforcement in 2016 Investigatory Powers Act. But at the same time the review will not include use of other secret powers of surveillance in respect of journalists' confidential information and sources. 30th August 2023.

In a ruling released on 4th August, three appeal court judges said the High Court should decide whether the act provides "adequate safeguards for the protection of a journalist's sources or confidential journalistic material in relation to communications obtained by means of a bulk equipment interference warrant".

See Summary in National Council for Civil Liberties -v- Secretary of State for the Home Department at: <https://www.judiciary.uk/wp-content/uploads/2023/08/R-Liberty-v-Secretaries-of-State-Summary-040823.pdf>

Full detailed ruling (116 pages) at <https://www.judiciary.uk/wp-content/uploads/2023/08/R-Liberty-v-Secretaries-of-State-Judgment-040823.pdf>

Paragraph 4 and 5 of the summary of the ruling explain the defeat for Liberty and National Union of Journalists on reviewing the provisions for accessing data communications about journalist's confidential data and dealings with their sources:

'4. The appellant contended that the 2016 Act did not provide adequate safeguards against the risk of abuse or for the protection of journalistic material and sources. In particular, the appellant contended that the 2016 Act did not, in a number of respects, meet the requirements outlined by the Grand Chamber of the European Court of Human Rights in its

judgment in Big Brother Watch v United Kingdom which concerned the compatibility of provisions of a predecessor statute with Articles 8 and 10 of the Convention.

5. The Court of Appeal considered in detail the legal regimes governing each type of warrant. The Court concluded that, save in one respect, the provisions contained in the 2016 Act do provide adequate safeguards against the risk of abuse and protect confidential journalistic material and journalistic sources. The Court held that there are adequate safeguards providing for the sharing of information with authorities overseas but, in respect of one category of material (that is data obtained from bulk personal datasets) those safeguards are not in accordance with law, and so not compatible with Article 8 of the Convention, because the safeguards governing such transfers are not contained in any legislation, code or publicly available policy or other document. The Court of Appeal also remitted one issue to the Divisional Court for it to determine, namely whether the provisions contained in Part 6 Chapter 3 of the Act governing the grant of bulk equipment interference warrants authorising the interference with equipment for the purposes of obtaining communications and other data and information are sufficient to provide adequate safeguards for the protection of a journalist's sources or confidential journalistic material. The Court also held that the provisions of the Act were compatible with retained EU law.'

Press Gazette reports 8th August 2023 'High Court to review bulk collection of journalists' data by UK law enforcement. The High Court will re-examine journalistic safeguards in one part of the Investigatory Powers Act.' See: https://pressgazette.co.uk/media_law/snoopers-charter-journalistic-safeguards-court-of-appeal/

Privacy

IPSO * indicates subject to public interest exceptions.

2. *Privacy

- i) everyone is entitled to respect for their private and family life, physical and mental health, and correspondence, including digital communications.
- ii) Editors will be expected to justify intrusions into any individual's private life without consent. In considering an individual's reasonable expectation of privacy, account will be taken of the complainant's own public disclosures of information and the extent to which the material complained about is already in the public domain or will become so.
- iii) It is unacceptable to photograph individuals, without their consent, in public or private places where there is a reasonable expectation of privacy.

[Case history. 02299-17 A man v Daily Star Sunday Decision: Breach - sanction: publication of adjudication](#)

[Case history. 17059-17 Hunter v thesun.co.uk Decision: No breach - after investigation](#)

[Case history. Princess Beatrice of York v Mail Online Decision: Breach - sanction: publication of adjudication Relevant code provisions 2 Privacy \(2016\) Publication Mail Online \(Associated Newspapers Limited\)](#)

IMPRESS

Privacy

7.2 Except where justified by the public interest, publishers must:

- (a) not use covert means to gain or record information;

(b) give due consideration to online privacy settings when determining the privacy status of the information;

(c) take all reasonable steps not to exacerbate grief or distress through intrusive news gathering or reporting.

7.3 Publishers must give reasonable consideration to the request of a person who:

(a) has been identified in news content and subsequently asks to be anonymised;

(b) has previously been identified in news content when they were under 18 and now wishes to be anonymised. Normally, only the subjects themselves can make such requests, and the responsibility is on them to demonstrate why they should no longer be identified

(see Clause 3.4: Children)

[Case history. 206/2019 Mr Tom Watson and The SKWAWKBOX. Date of adjudication: May 3, 2019. Relevant clauses: Harassment 5.1 and Privacy 7.1 of the IMPRESS Standards Code. Outcome: Complaint dismissed. No breach.](#)

Ofcom

To ensure that broadcasters avoid any unwarranted infringement of privacy in programmes and in connection with obtaining material included in programmes.

Rule

8.1 Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

Meaning of "warranted":

In this section "warranted" has a particular meaning. It means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

BBC

Privacy is covered in [Section 7 of the BBC's Editorial Guidelines](#).

The BBC respects privacy and does not infringe it without good reason, wherever in the world we operate. The Human Rights Act 1998 gives protection to the privacy of individuals, and private information about them, but balances that with a broadcaster's right to freedom of expression. In regulation, the Ofcom Broadcasting Code [\[1\]](#) states 'Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.'[\[2\]](#)

Meeting these ethical, regulatory and legal obligations in our output requires consideration of the balance between privacy and our right to broadcast information in the public interest. We must be able to demonstrate why an infringement of privacy is justified, and, when using the public interest to justify an infringement, consideration should be given to proportionality; the greater the intrusion, the greater the public interest required to justify it.

Privacy

- [7.1 Introduction](#)
- [7.2 Mandatory Referrals](#)
- [7.3 Guidelines](#)

- [Privacy and Consent](#)
- [Secret Recording](#)
- [Electronic Note-Taking](#)
- [Inconspicuous Recording Devices](#)
- [Live Streaming](#)
- [Private Investigators](#)
- [Doorstepping](#)
- [Tag-Along Raids](#)
- [Reporting Death, Suffering and Distress](#)
- [Personal Information](#)
- [Missing People](#)

Harassment and Intrusion into grief or shock

IPSO

3. *Harassment * indicates subject to public interest exceptions.

- i) Journalists must not engage in intimidation, harassment or persistent pursuit.
- ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.
- iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

[Case history Hale and Sharp v Daily Record Decision: No breach - after investigation Relevant code provisions 3 Harassment \(2018\) Publication Daily Record \(Reach PLC\)](#)

[Case history 08062-18 Gordon v Sunday Life Decision: No breach - after investigation](#)

4. Intrusion into grief or shock

In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. These provisions should not restrict the right to report legal proceedings.

[Case history 07252-15 - Farrow v Lancashire Evening Post Decision: Breach - sanction: publication of adjudication](#)

[Case history 08070-18 Family of Tony Carroll v Mail Online Decision: No breach - after investigation](#)

[Case history Family of Paul Tam v Express.co.uk Decision: No breach - after investigation](#)

[Relevant code provisions 4 Intrusion into grief or shock \(2016\) Publication express.co.uk \(Reach PLC\)](#)

[Case history A woman v Derby Telegraph Decision: Breach - sanction: publication of adjudication Relevant code provisions 3 \(Privacy\) 2015 5 \(Intrusion into grief or shock\) 2015 6 \(Children\) 2015 Publication Derby Telegraph \(Reach PLC\)](#)

5. *Reporting Suicide

When reporting suicide, to prevent simulative acts care should be taken to avoid excessive detail of the method used, while taking into account the media's right to report legal proceedings.

[Case history Dayman v Northampton Chronicle & Echo Decision: Breach - sanction: publication of adjudication Relevant code provisions 2 Privacy \(2018\) 5 Reporting suicide \(2018\) 4 Intrusion into grief or shock \(2018\) Publication Northampton Chronicle & Echo](#)

[Case history 14070-16 Smyth v Oxford Mail Decision: No breach - after investigation](#)

IMPRESS

Harassment

5.1 Publishers must ensure that journalists do not engage in intimidation or harassment.

5.2 Except where justified by the public interest, publishers must ensure that journalists:

- (a) do not engage in deception;
- (b) identify themselves as journalists and provide the name of their publication when making contact;
- (c) comply immediately with any reasonable request to desist from contacting, following, communicating with or photographing a person

[Case history. 148/2018 A person \(the Complainant\) and Byline. Date of adjudication: August 28, 2018. Relevant clauses: Harassment 5.1; Justice 6.3; and Privacy 7.2 of the IMPRESS Standards Code. Outcome: Complaint dismissed. No breach.](#)

Self-Harm & Suicide

9.1 When reporting on self-harm and suicide, publishers must not provide excessive details of the method used, the specific location or speculate on the motives.

9.2 Publishers must signpost sources of support when reporting on self-harm and suicide.

NUJ

6. Does nothing to intrude into anybody's private life, grief or distress unless justified by overriding consideration of the public interest.

BBC

7.3.41 We must always balance the public interest in full and accurate reporting with the need to be compassionate and to avoid unjustified infringement of privacy when we report accidents, disasters, disturbances, violence against individuals or war.

We must consider the editorial justification for portraying graphic or intrusive material of human suffering and distress. When crews arriving at the scene of a disaster or emergency are under pressures that make it difficult to judge whether recording is an unjustified infringement of privacy, they will often record as much material as possible. However, in such a situation, care must be taken to assess any privacy implications prior to broadcast. The demands of live output and speed in the use of pictures, including those from social media, should not override consideration of the privacy of those suffering or in distress.

(See [Section 5 Harm and Offence: 5.3.1-5.3.5](#) and [5.3.27-5.3.31](#) and [Section 11 War, Terror and Emergencies: 11.3.7](#))

(See [Guidance: Filming in Medical Emergencies](#))

(See [Section 5 Harm and Offence: 5.3.27-5.3.31](#) and [5.3.11](#) and [Section 7 Privacy: 7.3.46](#))

Ofcom

8.11 Doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly,

and it is warranted to doorstep. However, normally broadcasters may, without prior warning interview, film or record people in the news when in public places.

8.16 Broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent.

8.17 People in a state of distress should not be put under pressure to take part in a programme or provide interviews, unless it is warranted.

8.18 Broadcasters should take care not to reveal the identity of a person who has died or of victims of accidents or violent crimes, unless and until it is clear that the next of kin have been informed of the event or unless it is warranted.

8.19 Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes.

In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past.

Professional Values

CloJ

Publication refers to all work that is undertaken by editorial staff, during the course of their professional duties, regardless of the means of dissemination or their status as contract, freelance, contributors or staff. Specifically, this excludes private correspondence but includes contributions made in online activities.

2. You will comply with the Editors' Code of Practice. You will co-operate fully with any enquiry held by the Press Complaints Commission except where sources are compromised, and, subject to any legal advice you may receive.

5) You will not request or accept payment for the publication of editorial matter under whatever guise, including costs relating to colour separation of pictures or other devices, which compromise your editorial independence.

6) You will not accept money, or any other inducement whatsoever, to manipulate editorial comment unless it is clearly identified.

8) You will respect the work of other media professionals and will not seek to undermine exclusive stories submitted by freelance contributors.

10) You will defend the principles of a free press and freedom of speech and will do nothing to damage these principles.

NUJ

A journalist:

1. At all times upholds and defends the principle of media freedom, the right of freedom of expression and the right of the public to be informed.

8. Resists threats or any other inducements to influence, distort or suppress information and takes no unfair personal advantage of information gained in the course of her/his duties before the information is public knowledge.

10. Does not by way of statement, voice or appearance endorse by advertisement any commercial product or service save for the promotion of her/his own work or of the medium by which she/he is employed.

12. Avoids plagiarism.

The NUJ believes a journalist has the right to refuse an assignment or be identified as the author of editorial that would break the letter or spirit of the NUJ code of code.

BBC

The BBC sets out a wide range of professional values that it obliges its employees to comply with in its Editorial Guidelines. They include:

[Section 14: Independence from External Interests](#)

The BBC's reputation and the strength of its brand in the UK and around the world are based upon its fundamental values of editorial integrity, independence and impartiality. These values are central both to the BBC's Public Services and our Commercial Services. Audiences everywhere must be able to trust the BBC. In order to achieve that, our impartiality, editorial integrity and independence must not be compromised by outside interests and arrangements [\[1\]](#). We must maintain independent editorial control over our content.

Independence from External Interests

- [14.1 Introduction](#)
- [14.2 Mandatory Referrals](#)
- 14.3 Guidelines
 - [Product Prominence](#)
 - [Prop Placement](#)
 - [Free and Reduced Cost Facilities, Products and Services](#)
 - [Online Links to Third-Party Platforms](#)
 - [Logos and Credits Online](#)
 - [Public Service References to BBC Commercial Services and Products and Other Material Related to Editorial Content](#)
 - [BBC Support Services](#)
 - [Product Placement](#)

[Section 15: Conflicts of Interest](#)

A potential conflict of interest arises when there is the possibility that an individual's external activities or interests may affect, or be reasonably perceived as affecting, the BBC's impartiality and its integrity, or risk damaging the BBC's reputation generally or the value of the BBC brand. Conflicts of interest may occur in any area of our work.

It is a requirement that all BBC staff must formally declare any personal interest which may affect their work with the BBC. This requirement extends to freelance presenters, reporters, producers and researchers and other workers.

Conflicts of Interest

- [15.1 Introduction](#)
- [15.2 Mandatory Referrals](#)
- 15.3 Guidelines
 - [Declaration of Personal Interests](#)
 - [Risks of Conflicts of Interest](#)
 - [News and Current Affairs](#)

- [External Activities](#)
- [Public Expressions of Opinion](#)
- [Political Activities](#)
- [Charities and Campaign Work](#)
- [Public Speaking and Other Public Appearances](#)
- [Academic Roles](#)
- [Media Training](#)
- [Personal Benefits](#)
- [On-Air Talent and Promotional Activity Including Commercial Advertising and Endorsements](#)
- [References to BBC Content in Advertisements](#)
- [Regular Contributors to Output](#)
- [Actors and Artists Replicating Their BBC Roles in Other Output](#)
- [Talent or Agent-Owned Independent Production Companies](#)

Section 16: External Relationships and Financing

Our commitment to partnerships, specifically, is set out in the BBC Charter which says that we must: seek to enter into partnerships with other organisations, particularly in the creative economy, where to do so would be in the public interest. These partnerships must be: with a wide range of organisations including commercial and non-commercial organisations and organisations of all sizes, throughout the nations and regions of the United Kingdom covering television, radio and online services.

External Relationships and Financing

- [16.1 Introduction](#)
- [16.2 Mandatory Referrals](#)
- [16.3 Part A: Guidelines for all services](#)
- [16.3 Part B: Guidelines for public services](#)
- [16.3 Part C: Additional guidelines for BBC World Service Group](#)
- [16.3 Part D: Advertising and Sponsorship for BBC Commercial Services](#)
- [16.3 Part E: Content made by BBC Commercial Services for Third Parties](#)

Section 17: Competitions, Votes and Interactivity

Interactivity is a major and growing dimension of the media scene and has a bearing on many BBC activities, both Public Service and Commercial. We aim to offer opportunities for interactivity to everyone by using different platforms in different ways. Activity in this domain by Public Services and most Commercial Services is regulated by the Ofcom Broadcasting Code (notably sections 2, 5, 7, 8, 9 and 10) and Public Services must conform to the Statement of Policy on Use of Alternative Finance in BBC Content [\[1\]](#).

The BBC seeks to apply the following principles:

All audience interactivity must be conducted in a manner that is honest and fair.

Audiences must not be materially misled about any competition or vote.

All BBC competitions, votes and awards on our Public Services must comply with the BBC's Code of Conduct for Competitions and Voting.

Competitions, Votes and Interactivity

- [17.1 Introduction](#)
- [17.2 Mandatory Referrals](#)

- 17.3 Guidelines
 - [Competitions and Votes](#)
 - [Awards](#)
 - [Content that is Pre-Recorded, Repeated, or Available on Catch-Up Services](#)
 - [Prizes](#)
 - [The Interactivity Technical Advice and Contracts Unit \(ITACU\)](#)
 - [Telephony Services](#)
 - [Game Shows and Quizzes](#)
 - [Talent Searches and Programmes Offering Life-Changing Opportunities](#)
 - [Phone-in Programmes](#)
 - [Comment and Moderation](#)
 - [User-Generated Content](#)
 - [Mobile Content, Including Apps](#)
 - [Games](#)
 - [Interactive TV Services](#)

IMPRESS

Transparency

10.1 Publishers must clearly identify content that appears to be editorial but has been paid for, financially or through a reciprocal arrangement, by a third party.

10.2 Publishers must ensure that significant conflicts of interest are disclosed.

10.3 Publishers must ensure that information about financial products is objectively presented and that an interests or conflicts of interest are effectively disclosed.

10.4 Publishers must correct any failure to disclose significant conflicts of interest with due prominence at the earliest opportunity.

10.5 Publishers must ensure human editorial oversight and clear labelling of AI-generated content

Reporting children and ‘children in sex cases.’

IPSO

6. *Children

i) All pupils should be free to complete their time at school without unnecessary intrusion.

ii) They must not be approached or photographed at school without permission of the school authorities.

iii) Children under 16 must not be interviewed or photographed on issues involving their own or another child’s welfare unless a custodial parent or similarly responsible adult consents.

iv) Children under 16 must not be paid for material involving their welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.

v) Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life.

7. *Children in sex cases

The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.

In any press report of a case involving a sexual offence against a child -

i) The child must not be identified.

ii) The adult may be identified.

iii) The word "incest" must not be used where a child victim might be identified.

iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

[Case history Rooney v Daily Mail Decision: No breach - after investigation Relevant code provisions 6 Children \(2016\) Publication Daily Mail \(Associated Newspapers Limited\)](#)

[Case history A man v Wilts & Gloucestershire Standard Decision: Breach - sanction: publication of adjudication Relevant code provisions 1 \(Accuracy\) 2015 3 \(Privacy\) 2015 7 \(Children in sex cases\) 2015 11 \(Victims of sexual assault\) 2015 Publication Wilts](#)

[Case history 02322-19 A Man v Yorkshire Evening Post Decision: Breach - sanction: publication of adjudication](#)

[Case history 19498-17 Perrin v The News \(Portsmouth\) Decision: No breach - after investigation](#)

IMPRESS

Children

3.1 Publishers must only engage with a child or report on an identifiable child under 18 when this will not cause them harm. Reporting must have the child's consent and, where necessary, the consent of an appropriate adult. The only exception is when there is an extremely high level of public interest. While children are entitled to hold and express their views, journalists are responsible for considering the child's age and capacity to give their informed consent. This clause does not apply to the publication of images of general scenes unless this would put a child at risk of harm.

3.2 Publishers must not identify a child under 18 without their consent or the consent of an appropriate adult. Identification of a child can only be made where it is relevant to the story. It must not cause harm to the child or place the child at risk of harm. This clause is not breached if there is an overwhelming public interest in identifying the child.

3.3 Publishers must reasonably consider a child's request to remain anonymous.

3.4 If a person was under 18 when identified in a piece of news content and later requests to be anonymised in that content, publishers must consider the request (see Clause 7.3: Privacy).

NUJ

1. A journalist shall normally seek the consent of an appropriate adult when interviewing or photographing a child for a story about her/his welfare.

Ofcom

1.1 Material that might seriously impair the physical, mental or moral development of people under eighteen must not be broadcast.

1.2 In the provision of services, broadcasters must take all reasonable steps to protect people under eighteen. For television services, this is in addition to their obligations

resulting from the Audiovisual Media Services Directive (in particular, Article 27, see Appendix 2).

1.3 Children must also be protected by appropriate scheduling from material that is unsuitable for them.

Meaning of "children":

Children are people under the age of fifteen years.

Meaning of "appropriate scheduling":

Appropriate scheduling should be judged according to:

- the nature of the content;
- the likely number and age range of children in the audience, taking into account school time, weekends and holidays;
- the start time and finish time of the programme;
- the nature of the channel or station and the particular programme; and
- the likely expectations of the audience for a particular channel or station at a particular time and on a particular day.

1.4 Television broadcasters must observe the watershed.

Meaning of "the watershed":

The watershed only applies to television. The watershed is at 2100. Material unsuitable for children should not, in general, be shown before 2100 or after 0530.

On premium subscription film services which are not protected as set out in Rule 1.24, the watershed is at 2000. There is no watershed on premium subscription film services or pay per view services which are protected as set out in Rules 1.24 and 1.25 respectively.

1.5 Radio broadcasters must have particular regard to times when children are particularly likely to be listening.

Meaning of "when children are particularly likely to be listening":

This phrase particularly refers to the school run and breakfast time, but might include other times.

1.6 The transition to more adult material must not be unduly abrupt at the watershed (in the case of television) or after the time when children are particularly likely to be listening (in the case of radio). For television, the strongest material should appear later in the schedule.

1.7 For television programmes broadcast before the watershed, or for radio programmes broadcast when children are particularly likely to be listening, clear information about content that may distress some children should be given, if appropriate, to the audience (taking into account the context).

(For the meaning of "context" see Section Two: Harm and Offence.)

The coverage of sexual and other offences in the UK involving under-eighteens

1.8 Where statutory or other legal restrictions apply preventing personal identification, broadcasters should also be particularly careful not to provide clues which may lead to the identification of those who are not yet adult (the defining age may differ in different parts of the UK) and who are, or might be, involved as a victim, witness, defendant or other perpetrator in the case of sexual offences featured in criminal, civil or family court proceedings:

- by reporting limited information which may be pieced together with
- other information available elsewhere, for example in newspaper reports (the 'jigsaw effect');

inadvertently, for example by describing an offence as "incest"; or in any other indirect way.

(Note: Broadcasters should be aware that there may be statutory reporting restrictions that apply even if a court has not specifically made an order to that effect.)

1.9 When covering 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. Particular justification is also required for the broadcast of such material relating to the identity of any person who is not yet adult who is involved in the defence as a defendant or potential defendant.

Drugs, smoking, solvents and alcohol

1.10 The use of illegal drugs, the abuse of drugs, smoking, solvent abuse and the misuse of alcohol:

- must not be featured in programmes made primarily for children unless there is strong editorial justification;

- must generally be avoided and in any case must not be condoned, encouraged or glamorised in other programmes broadcast before the watershed (in the case of television), or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification;

- must not be condoned, encouraged or glamorised in other programmes likely to be widely seen or heard by under-eighteens unless there is editorial justification.

Violence and dangerous behaviour

1.11 Violence, its after-effects and descriptions of violence, whether verbal or physical, must be appropriately limited in programmes broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio) and must also be justified by the context.

1.12 Violence, whether verbal or physical, that is easily imitable by children in a manner that is harmful or dangerous:

- must not be featured in programmes made primarily for children unless there is strong editorial justification;

- must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification.

1.13 Dangerous behaviour, or the portrayal of dangerous behaviour, that is likely to be easily imitable by children in a manner that is harmful:

- must not be featured in programmes made primarily for children unless there is strong editorial justification;

- must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless there is editorial justification.

(Regarding Rules 1.11 to 1.13 see Rules 2.4 and 2.5 in Section Two: Harm and Offence.)

Offensive language

1.14 The most offensive language must not be broadcast before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio).

1.15 Offensive language must not be used in programmes made for younger children except in the most exceptional circumstances.

1.16 Offensive language must not be broadcast before the watershed (in the case of television), or when children are particularly likely to be listening (in the case of radio), unless it is justified by the context. In any event, frequent use of such language must be avoided before the watershed. (Regarding Rules 1.14 to 1.16 see Rule 2.3 in Section Two: Harm and Offence.)

Sexual material

1.17 Material equivalent to the British Board of Film Classification ("BBFC") R18-rating must not be broadcast at any time.

1.18 'Adult sex material' - material that contains images and/or language of a strong sexual nature which is broadcast for the primary purpose of sexual arousal or stimulation - must not be broadcast at any time other than between 2200 and 0530 on premium subscription services and pay per view/night services which operate with mandatory restricted access. In addition, measures must be in place to ensure that the subscriber is an adult.

Meaning of "mandatory restricted access":

Mandatory restricted access means there is a PIN protected system (or other equivalent protection) which cannot be removed by the user, that restricts access solely to those authorised to view.

1.19 Broadcasters must ensure that material broadcast after the watershed which contains images and/or language of a strong or explicit sexual nature, but is not 'adult sex material' as defined in Rule 1.18 above, is justified by the context.

(See Rules 1.6 and 1.18 and Rule 2.3 in Section Two: Harm and Offence which includes meaning of "context".)

1.20 Representations of sexual intercourse must not occur before the watershed (in the case of television) or when children are particularly likely to be listening (in the case of radio), unless there is a serious educational purpose. Any discussion on, or portrayal of, sexual behaviour must be editorially justified if included before the watershed, or when children are particularly likely to be listening, and must be appropriately limited.

Nudity

1.21 Nudity before the watershed must be justified by the context.

The involvement of people under eighteen in programmes

1.28 Due care must be taken over the physical and emotional welfare and the dignity of people under eighteen who take part or are otherwise involved in programmes. This is irrespective of any consent given by the participant or by a parent, guardian or other person over the age of eighteen in loco parentis.

1.29 People under eighteen must not be caused unnecessary distress or anxiety by their involvement in programmes or by the broadcast of those programmes.

1.30 Prizes aimed at children must be appropriate to the age range of both the target audience and the participants. (See Rule 2.16 in Section Two: Harm and Offence.)

BBC

The BBC mirrors and follows Ofcom regulation with [Section 9: Children and Young People as Contributors](#)

Children and young people have a right to speak out and to participate, as enshrined in the United Nations Convention on the Rights of the Child, but we must safeguard the welfare of those who contribute to our content, wherever in the world we operate and

irrespective of any consent that might have been given by a parent or other adult acting in loco parentis. We are also subject to the law regarding children and the [BBC's Child Protection Policy](#).

We must ensure that under-18s are not caused unnecessary distress or anxiety by their involvement in our output. Their involvement must be editorially justified, consents should be obtained as appropriate to the circumstances of the person and the nature of the contribution and content, and support should be given to them where necessary.

Children and Young People

- [9.1 Introduction](#)
- [9.2 Mandatory Referrals](#)
- 9.3 Guidelines
 - [Safeguarding the Welfare of Children and Young People](#)
 - [Informed Consent for Children and Young People](#)
 - [The Impact of a Contribution](#)
 - [Licensing of Child Performers](#)

Hospitals

IPSO

8. *Hospitals

- i) Journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.
- ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.

[Case history from Press Complaints Commission Frank O'Sullivan, the Chief Executive of Taunton & Somerset NHS Trust Clauses Noted: 3, 8 Publication: Daily Mirror in 2011](#)
[Case history 05943-17 Mansford v Daily Mail Decision: No breach - after investigation](#)

Ofcom

Under the Privacy Section of the Broadcasting Code, Ofcom lays down regulation over the coverage of **Suffering and distress**:

8.16 Broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent.

8.17 People in a state of distress should not be put under pressure to take part in a programme or provide interviews, unless it is warranted.

8.18 Broadcasters should take care not to reveal the identity of a person who has died or of victims of accidents or violent crimes, unless and until it is clear that the next of kin have been informed of the event or unless it is warranted.

8.19 Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes.

In particular, so far as is reasonably practicable, surviving victims and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past.

8.8 When filming or recording in institutions, organisations or other agencies, permission should be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required.

However, in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for broadcast from those in sensitive situations (unless not obtaining consent is warranted). If the individual will not be identifiable in the programme then separate consent for broadcast will not be required.

BBC

The BBC has a full guidance resource on [Guidance: Filming in medical emergencies](#).

The right of patients to privacy and confidentiality is usually paramount. To enable us to film in highly sensitive medical environments, or on location with the emergency services, we distinguish between consent to film (often verbal) and consent to broadcast (always in a form that is provable, often in writing). We would not normally broadcast any footage without clear, informed consent from patients and key medical or emergency staff featured.

Key to filming in these circumstances is the principle that we consult with the medical or emergency personnel whose work we are following before making the initial decision to film a patient.

It may be appropriate to seek consent to broadcast only after the patient's treatment is complete and the decision has been taken to include their story in our output. It will be necessary to maintain close contact with the patient and their family in order to determine how and when to discuss consent to broadcast.

- [Introduction](#)
- [Filming when patients are conscious](#)
- [Filming when patients are unconscious](#)
- [Death of a patient](#)
- [Contact with the family](#)
- [Viewings with the patient and their family](#)
- [Filming people in hospital waiting rooms](#)
- [Negotiating access with hospitals and emergency services](#)

Reporting of Crime

IPSO

9. *Reporting of Crime

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 under the age of 18 who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.

iii) Editors should generally avoid naming children under the age of 18 after arrest for a criminal offence but before they appear in a youth court unless they can show that the individual's name is already in the public domain, or that the individual (or, if they are under 16, a custodial parent or similarly responsible adult) has given their consent. This does not restrict the right to name juveniles who appear in a crown court, or whose anonymity is lifted.

[Case history Bobin v The Times Decision: Breach - sanction: publication of adjudication Relevant code provisions 3 \(Privacy\) 2015 9 \(Reporting of crime\) 2015 Publication The Times \(News UK\)](#)

[Case history 01745-17 A man v The Jewish Chronicle Decision: Breach - sanction: publication of adjudication](#)

15. Witness payments in criminal trials

i) No payment or offer of payment to a witness – or any person who may reasonably be expected to be called as a witness – should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981. This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.

*ii) Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.

*iii) Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.

[Case history PCC investigation into an offer of payment by Full House magazine Clauses Noted: 15 Publication: Full House. Press Complaints Commission from 2008.](#)

16. *Payment to criminals

i) Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates – who may include family, friends and colleagues.

ii) Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.

[Case history Ms Treena McIntyre Clauses Noted: 5, 16 Publication: That's Life. Press Complaints Commission from 2013.](#)

IMPRESS

Justice

6.1 Publishers must not knowingly or negligently obstruct any criminal investigations or prejudice any criminal proceedings.

6.2 Publishers must not directly or indirectly identify people under 18 who are, or have been, involved in criminal, immigration and asylum, or family proceedings, except as permitted by law.

6.3 Publishers should not directly or indirectly identify any people under criminal investigation before being charged, unless in cases where the police have released someone's name or other identifying information. This is subject to a public interest exception.

6.4 Publishers must preserve the anonymity of victims of sexual offences, except as permitted by law or with the person's express consent.

6.5 Publishers must not make or offer payments to witnesses or defendants in criminal proceedings, except as permitted by law

Case history. 570/2023 – A Complainant and The Stray Ferret. Date of adjudication: May 2, 2023. Relevant clauses: Children 3.2 and Justice 6.2 of the Impress Standards Code (2020 version) [Outcome: Complaint upheld. Breach of Clauses 3.2 and 6.2. Publisher to remove a video and publish a short clarifying statement.](#)

Ofcom

3.1 Material likely to encourage or incite the commission of crime or to lead to disorder must not be included in television or radio services.

3.2 Descriptions or demonstrations of criminal techniques which contain essential details which could enable the commission of crime must not be broadcast unless editorially justified.

3.3 No payment, promise of payment, or payment in kind, may be made to convicted or confessed criminals whether directly or indirectly for a programme contribution by the criminal (or any other person) relating to his/her crime/s. The only exception is where it is in the public interest.

3.4 While criminal proceedings are active, no payment or promise of payment may be made, directly or indirectly, to any witness or any person who may reasonably be expected to be called as a witness. Nor should any payment be suggested or made dependent on the outcome of the trial. Only actual expenditure or loss of earnings necessarily incurred during the making of a programme contribution may be reimbursed.

3.5 Where criminal proceedings are likely and foreseeable, payments should not be made to people who might reasonably be expected to be witnesses unless there is a clear public interest, such as investigating crime or serious wrongdoing, and the payment is necessary to elicit the information. Where such a payment is made it will be appropriate to disclose the payment to both defence and prosecution if the person becomes a witness in any subsequent trial.

3.6 Broadcasters must use their best endeavours so as not to broadcast material that could endanger lives or prejudice the success of attempts to deal with a hijack or kidnapping.

BBC

The BBC follows Ofcom regulation with [Section 8 of its Editorial Guidelines- Reporting Crime and Anti-social Behaviour - Guidelines](#)

The BBC reports crime and anti-social behaviour as a matter of public interest. Our coverage is aimed at giving audiences the facts in their context and reflects our right to freedom of expression and the audience's right to receive information and ideas [\[1\]](#).

The BBC will also reflect the work of the agencies which fight crime, examine the nature of criminality, and report on its causes and consequences.

Some of this output is likely to require production methods that carry risks and we must weigh them up, and ensure we act proportionately, so that we observe appropriate standards of behaviour, consider the consequences of our actions and avoid obstructing the work of the authorities.

Reporting Crime and Anti-social Behaviour

- [8.1 Introduction](#)
- [8.2 Mandatory Referrals](#)
- 8.3 Guidelines
 - [Reporting crime](#)
 - [Impact on Victims](#)
 - [Reconstructions](#)
 - [Reporting Police and Regulatory Investigations](#)
 - [Court Reporting and Covering Trials](#)
 - [Dealing with Criminals and Perpetrators of Anti-Social Behaviour](#)
 - [Payments](#)
 - [Interviews with Prisoners](#)
 - [Paedophiles and Other Sex Offenders](#)
 - [Disguising Identities](#)
 - [Children and Young People](#)
 - [Dealing with Witnesses and Victims of Crime](#)
 - [Investigations into Crime and Anti-Social Behaviour](#)
 - [Untransmitted and Unused Material from Discontinued Investigations](#)

Clandestine devices and subterfuge

IPSO

10. *Clandestine devices and subterfuge

i) The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs; or by accessing digitally-held information without consent.

ii) Engaging in misrepresentation or subterfuge, including by agents or intermediaries, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.

[Case history Pell & Bales v The Sun Decision: No breach - after investigation Relevant code provisions 1 \(Accuracy\) 2015 10 \(Clandestine devices and subterfuge\) 2015 Publication The Sun \(News UK\)](#)

CloJ

3) You will behave in a transparent way.

NUJ

5. Obtains material by honest, straightforward and open means, with the exception of investigations that are both overwhelmingly in the public interest and which involve evidence that cannot be obtained by straightforward means.

Ofcom

8.12 Broadcasters can record telephone calls between the broadcaster and the other party if they have, from the outset of the call, identified themselves, explained the purpose of the call and that the call is being recorded for possible broadcast (if that is the case) unless it is warranted not to do one or more of these practices. If at a later stage it becomes clear that a call that has been recorded will be broadcast (but this was not explained to the other party at the time of the call) then the broadcaster must obtain consent before broadcast from the other party, unless it is warranted not to do so.

(See "practices to be followed" 7.14 and 8.13 to 8.15.)

8.13 Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

there is prima facie evidence of a story in the public interest; and

there are reasonable grounds to suspect that further material evidence could be obtained; and

it is necessary to the credibility and authenticity of the programme.

(See "practices to be followed" 7.14, 8.12, 8.14 and 8.15.)

Meaning of "surreptitious filming or recording":

Surreptitious filming or recording includes the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing a recording when the other party thinks that it has come to an end.

8.14 Material gained by surreptitious filming and recording should only be broadcast when it is warranted. (See also "practices to be followed" 7.14 and 8.12 to 8.13 and 8.15.)

8.15 Surreptitious filming or recording, doorstepping or recorded wind-up' calls to obtain material for entertainment purposes may be warranted if it is intrinsic to the entertainment and does not amount to a significant infringement of privacy such as to cause significant annoyance, distress or embarrassment. The resulting material should not be broadcast without the consent of those involved.

However, if the individual and/or organisation is not identifiable in the programme then consent for broadcast will not be required. (See "practices to be followed" 7.14 and 8.11 to 8.14.)

BBC

The BBC Editorial Guidelines on secret/clandestine recordings comply with Ofcom regulation and there is special guidance on [Secret Recording](#) and carrying out [Investigations](#).

- Privacy
See [Editorial Guidelines Section 7 Privacy: Legitimate Expectations of Privacy 7.1](#) and [Secret Recording 7.3.10 – 7.3.21](#)
- Fairness to Contributors and Consent
See [Editorial Guidelines Section 6 Fairness to Contributors and Consent](#)
- Accuracy
See [Editorial Guidelines Section 3 Accuracy: Note-taking for Journalism and Factual Programmes 3.3.15](#)

The BBC sets out the following key points:

- Both stages of the secret recording process – the recording and the broadcast – may need to be assessed separately to ensure that any infringement of privacy, at either stage, is editorially justified by the public interest it serves.
- The two stage process – considering any infringement of privacy in gathering secret recording separately from any infringement in broadcasting it – is reflected in the approval process that should be carried out before secret recording is to be undertaken or included in our output.
- If agreements have been made about anonymity of our sources, care should be taken to ensure the secret recording proposal form does not include details that should not be made public.
- The subject to be secretly recorded should normally be the target of any investigation, against whom there is prima facie evidence of wrongdoing or intended wrongdoing. Any attempt to secretly record people who are not involved in committing the behaviour under investigation, especially vulnerable people or innocent victims of the behaviour, will need a strong public interest justification – the ends should justify the means.
- ‘Prima Facie’ evidence is the information that makes it evident, without yet providing conclusive proof, that the behaviour we are intending to capture secretly is either taking place already or is intended to take place. Without clear existing prima facie evidence the BBC will not normally carry out secret recording. The more serious the infringement of privacy in any secret recording, the stronger the prima facie evidence may need to be.
- It is not normally appropriate to use secret recording in an investigation simply for illustrative purposes.
- Safety issues should be considered for staff, contributors or other members of the public that may be involved in gathering the material.
- Accurate and reliable records and notes documenting what has been secretly recorded, how it was filmed and any relevant surrounding events can be an important tool for validating the authenticity of secretly recorded material. These notes should normally be made as contemporaneously as operationally possible.

Victims of Sexual Assault

IPSO

11. Victims of sexual assault

The press must not identify or publish material likely to lead to the identification of a victim of sexual assault unless there is adequate justification and they are legally free to do so.

Journalists are entitled to make enquiries but must take care and exercise discretion to avoid the unjustified disclosure of the identity of a victim of sexual assault.

[Case history. 12775-17 A Man v The Gazette \(Paisley\) Decision: Breach - sanction: publication of adjudication.](#)

IMPRESS

Under 6.4 Justice

Publishers must preserve the anonymity of victims of sexual offences, except as permitted by law or with the person's express consent

Ofcom

The Ofcom Broadcasting Code makes it explicitly clear that broadcasters must not under any circumstances publish anything that could lead to the identification of sexual offence complainants under Sections One Protecting under Eighteens and this is considered to apply to the identification without consent of any adults who are also sexual offence complainants.

BBC

This is covered under [Section 18 of the Guidelines The Law Principal Considerations](#) in relation to Legal Rights to Anonymity:

18.4.2 Victims and alleged victims of sexual offences, human trafficking offences and female genital mutilation have a legal right to anonymity. The rules regarding anonymity in these cases are complex and the right of anonymity cannot always be waived. Teachers also have a legal right of anonymity in some circumstances when an allegation of an offence is made concerning a pupil.

(See [Section 6 Fairness to Contributors and Consent: 6.3.26-6.3.31](#) and [Section 8 Reporting Crime and Anti-Social Behaviour: 8.3.33-8.3.37](#))

Discrimination

IPSO

12. Discrimination

i) The press must avoid prejudicial or pejorative reference to an individual's, race, colour, religion, sex, gender identity, sexual orientation or to any physical or mental illness or disability.

ii) Details of an individual's race, colour, religion, gender identity, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.

[Case history Trans Media Watch v The Sun Decision: Breach - sanction: publication of adjudication Relevant code provisions 12 \(Discrimination\) 2015 3 \(Privacy\) 2015 Publication The Sun \(News UK\)](#)

[Case history 18626-22 The Fawcett Society and The WILDE Foundation v The Sun Decision: Breach - sanction: publication of adjudication](#)

IMPRESS

Discrimination

4.1 Publishers must not make prejudicial or derogatory reference to anybody based on the following characteristics:
 (a) Age (b) Disability (c) Health (d) Gender identity or reassignment (e) Marital or civil partnership status (f) Pregnancy (g) Race (h) Religion (i) Sex or sexual orientation (j) Any other characteristic that puts a person at risk of discrimination.
 4.2. Publishers must not refer to a person's disability, health, gender reassignment or identity, pregnancy, race, religion or sexual orientation unless this characteristic is relevant to the story.
 4.3. Publishers must not encourage hatred or abuse against any group based on their characteristics, as detailed in Clause 4.1.

Case history. 574/2023 Bob Seely and IW Observer. Date of adjudication: August 23, 2023. Relevant clauses: Discrimination 4.1 of the Impress Standards Code. Outcome: Complaint dismissed. No breach of Code.

NUJ

9. Produces no material likely to lead to hatred or discrimination on the grounds of a person's age, gender, race, colour, creed, legal status, disability, marital status, or sexual orientation.

Ofcom

Under Section 4 of the Broadcasting Code (<https://www.ofcom.org.uk/tv-radio-and-on-demand/broadcast-codes/broadcast-code/section-four-religion>) UK licensed broadcasters are obliged to:

To ensure that broadcasters exercise the proper degree of responsibility with respect to the content of programmes which are religious programmes.

To ensure that religious programmes do not involve any improper exploitation of any susceptibilities of the audience for such a programme.

To ensure that religious programmes do not involve any abusive treatment of the religious views and beliefs of those belonging to a particular religion or religious denomination.

Ofcom also stipulates under Section Two of its code dealing with Harm and Offence that broadcasters must avoid 'discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation).'

BBC

The BBC covers issues of discrimination and prejudice under [Section 5 of its Editorial Guidelines dealing with Harm and Offence](#). It provides detailed guidance briefings on [Racism and Impartiality](#), [Racist Language](#), [Reporting and portrayal of tribal peoples](#), and [Visually impaired and hearing impaired audiences](#).

Financial Journalism

IPSO

13. Financial journalism

i) Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.

- ii) They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.
- iii) They must not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.

[Case history Complainant Name: City Slickers ruling Clauses Noted: 13 Publication: Daily Mirror Press Complaints Commission investigation into publications between 1998 and 2000.](#)

BBC

The BBC has provided special [editorial guidance covering the regulatory issues for their financial journalists.](#) The main principles are:

- Journalists and presenters of the BBC's financial output should register all their shareholdings, financial and business interests or dealings in securities. All BBC employees must conform to the BBC's Employment Policy "BBC Declaration of Personal Interests"
- Journalists must not use for their own profit any privileged information or financial information they receive in advance of its general publication, nor should they pass such information to others.
- It is essential that financial journalists do not promote, or give the impression of promoting, any business or financial service in the BBC's output.
- Financial journalists are subject to some specific legal restrictions. They must not promote financial services or products without proper authorisation from the relevant regulatory authority. And they must not use non-public information they acquire to trade in securities, or pass that information on to others who may trade in securities. This is "insider trading", which is a criminal offence.
- We may need to make our audiences aware that guests on financial news output have a financial or commercial interest in the topics under discussion.
- The EU's Market Abuse Directive requires to us to make our audiences aware of some additional information if it directly recommends buying or selling some securities.

Guidance in full

- [Introduction](#)
- [Declaring interests](#)
- [Guarding against exploitation of information](#)
- [Guarding against on-air promotion](#)
- [Legal Restrictions on Financial Journalists](#)
- [Guests on Financial News Programmes](#)
- [The Market Abuse Directive](#)
- [Maintaining Awareness of these issues](#)
- [Other sources of information](#)

The Public Interest

IPSO

There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.

The public interest includes, but is not confined to:

Detecting or exposing crime, or the threat of crime, or serious impropriety.

Protecting public health or safety.

Protecting the public from being misled by an action or statement of an individual or organisation.

Disclosing a person or organisation's failure or likely failure to comply with any obligation to which they are subject.

Disclosing a miscarriage of justice.

Raising or contributing to a matter of public debate, including serious cases of impropriety, unethical conduct or incompetence concerning the public.

Disclosing concealment, or likely concealment, of any of the above.

There is a public interest in freedom of expression itself.

The regulator will consider the extent to which material is already in the public domain or will or will become so.

Editors invoking the public interest will need to demonstrate that they reasonably believed publication - or journalistic activity taken with a view to publication – would both serve, and be proportionate to, the public interest and explain how they reached that decision at the time.

An exceptional public interest would need to be demonstrated to over-ride the normally paramount interests of children under 16.

IMPRESS

Public Interest

i In certain circumstances, there may be a public interest justification for a particular newsgathering method or content publication that might otherwise breach the Code. The clauses where public interest exceptions may apply are clearly signposted.

ii A public interest means the public has a legitimate stake in, and/or a right to know about a story because of its importance to society. Such interests include, but are not limited to:

(a) the revelation or discussion of matters such as serious incompetence or unethical behaviour that affects the public;

(b) putting the record straight where an individual or organisation has misled the public on a matter of public importance;

(c) revealing that a person or organisation may be failing to comply with any legal obligation they have;

(d) the proper administration of government and the judiciary;

(e) open, fair and effective justice;

(f) public health and safety;

(g) national security;

(h) the prevention and detection of crime; and

(i) the discussion or analysis of artistic or cultural works.

iii When a publisher considers publishing a story or acting in a way that they believe may breach the Code, they are responsible for showing that they are doing so in the public interest. At the time the decision to breach the Code is made, the publisher should record this and establish why they believe that:

- (a) the action is in the public interest;
- (b) they could not have achieved the same result using measures that are compliant with the Code;
- (c) the action is likely to achieve the desired outcome; and
- (d) any likely harm caused by the action does not outweigh the public interest in the action.

BBC

The BBC has adjusted its avowed and published definition of ‘the public interest’ in [a long section and preamble to its Editorial Guidelines](#). The position is now stated as:

We have a right to freedom of expression, included in the Charter and protected under the European Convention on Human Rights and the Human Rights Act 1998. This freedom is at the heart of the BBC’s independence. Our audiences have a right to receive creative material, information and ideas without interference. But our audiences also expect us to balance our right to freedom of expression with our responsibilities to our audiences and to our contributors, subject to restrictions in law.

We operate in the public interest – reporting stories of significance to our audiences and holding power to account. In our journalism in particular, we seek to establish the truth and use the highest reporting standards to provide coverage that is fair and accurate. Our specialist expertise provides professional judgement and clear analysis. We are impartial, seeking to reflect the views and experiences of our audiences – so that our output as a whole includes a breadth and diversity of opinion and no significant strand of thought is under-represented or omitted. We are independent of outside interests and arrangements that could compromise our editorial integrity. Our editorial standards do not require absolute neutrality on every issue or detachment from fundamental democratic principles.

Free speech enables the exchange of information and ideas without state interference. It helps to inform public debate – encouraging us to be curious, engaged and critical. It allows, for example, dramatists, satirists and comedians to comment on the world around us. However, freedom of expression is not an absolute right – it carries duties and responsibilities and is also subject to legal restrictions and limits.

In exercising freedom of expression, we must offer appropriate protection to vulnerable groups and avoid causing unjustifiable offence. We must also respect people’s privacy – only putting private information into the public domain where the public interest outweighs an individual’s legitimate expectation of privacy.

We have a particular responsibility towards children and young people and must preserve their right to speak out and be heard. Where they contribute to or feature in our output, we must take due care to ensure that their dignity and their physical and emotional welfare are protected.

At 1.3 it further states: ‘The BBC’s Mission [\[4\]](#) specifies that we must ‘act in the **public interest**’. It is in the public interest to fulfil our mission to produce output to inform, educate and entertain. There is no single definition of public interest, but it includes freedom of expression; providing information that assists people to better comprehend or make decisions on matters of public importance; preventing people being misled by the

statements or actions of individuals or organisations. The public interest is also served in exposing or detecting crime or significantly anti-social behaviour and by exposing corruption, injustice, significant incompetence or negligence.'

Harm and Offence

Ofcom

2.1 Generally accepted standards must be applied to the contents of television and radio services so as to provide adequate protection for members of the public from the inclusion in such services of harmful and/or offensive material.

2.2 Factual programmes or items or portrayals of factual matters must not materially mislead the audience. (Note to Rule 2.2: News is regulated under Section Five of the Code.)

2.3 In applying generally accepted standards broadcasters must ensure that material which may cause offence is justified by the context (see meaning of "context" below). Such material may include, but is not limited to, offensive language, violence, sex, sexual violence, humiliation, distress, violation of human dignity, discriminatory treatment or language (for example on the grounds of age, disability, gender, race, religion, beliefs and sexual orientation). Appropriate information should also be broadcast where it would assist in avoiding or minimising offence.

Meaning of "context":

Context includes (but is not limited to):

- the editorial content of the programme, programmes or series;
- the service on which the material is broadcast;
- the time of broadcast;
- what other programmes are scheduled before and after the programme or programmes concerned;
- the degree of harm or offence likely to be caused by the inclusion of any particular sort of material in programmes generally or programmes of a particular description;
- the likely size and composition of the potential audience and likely expectation of the audience;
- the extent to which the nature of the content can be brought to the attention of the potential audience for example by giving information; and
- the effect of the material on viewers or listeners who may come across it unawares.

Violence, dangerous behaviour, and suicide

2.4 Programmes must not include material (whether in individual programmes or in programmes taken together) which, taking into account the context, condones or glamorises violent, dangerous or seriously antisocial behaviour and is likely to encourage others to copy such behaviour. (See Rules 1.11 to 1.13 in Section One: Protecting the Under-Eighteens.)

2.5 Methods of suicide and self-harm must not be included in programmes except where they are editorially justified and are also justified by the context. (See Rule 1.13 in Section One: Protecting the Under-Eighteens.)

Exorcism, the occult and the paranormal

2.6 Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these that purport to be real (as opposed to entertainment) must be treated with

due objectivity. (See Rule 1.27 in Section One: Protecting the Under-Eighteens, concerning scheduling restrictions.)

2.7 If a demonstration of exorcism, the occult, the paranormal, divination, or practices related to any of these is for entertainment purposes, this must be made clear to viewers and listeners.

2.8 Demonstrations of exorcism, the occult, the paranormal, divination, or practices related to any of these (whether such demonstrations purport to be real or are for entertainment purposes) must not contain life-changing advice directed at individuals. (Religious programmes are exempt from this rule but must, in any event, comply with the provisions in Section Four: Religion. Films, dramas and fiction generally are not bound by this rule.)

Meaning of "life-changing":

Life-changing advice includes direct advice for individuals upon which they could reasonably act or rely about health, finance, employment or relationships.

Hypnotic and other techniques, simulated news and photosensitive epilepsy

2.9 When broadcasting material featuring demonstrations of hypnotic techniques, broadcasters must exercise a proper degree of responsibility in order to prevent hypnosis and/or adverse reactions in viewers and listeners. The hypnotist must not broadcast his/her full verbal routine or be shown performing straight to camera.

2.10 Simulated news (for example in drama or in documentaries) must be broadcast in such a way that there is no reasonable possibility of the audience being misled into believing that they are listening to, or watching, actual news.

2.11 Broadcasters must not use techniques which exploit the possibility of conveying a message to viewers or listeners, or of otherwise influencing their minds without their being aware, or fully aware, of what has occurred.

2.12 Television broadcasters must take precautions to maintain a low level of risk to viewers who have photosensitive epilepsy. Where it is not reasonably practicable to follow the Ofcom guidance (see the Ofcom website), and where broadcasters can demonstrate that the broadcasting of flashing lights and/or patterns is editorially justified, viewers should be given an adequate verbal and also, if appropriate, text warning at the start of the programme or programme item.

Broadcast competitions and voting

2.13 Broadcast competitions and voting must be conducted fairly.

2.14 Broadcasters must ensure that viewers and listeners are not materially misled about any broadcast competition or voting.

2.15 Broadcasters must draw up rules for a broadcast competition or vote. These rules must be clear and appropriately made known. In particular, significant conditions that may affect a viewer's or listener's decision to participate must be stated at the time an invitation to participate is broadcast.

2.16 Broadcast competition prizes must be described accurately.

(See also Rule 1.30 in Section One: Protecting the Under-Eighteens, which concerns the provision of appropriate prizes for children.)

Note:

For broadcast competitions and voting that involve the use of premium rate telephony services (PRS), television broadcasters should also refer to Rules 9.26 to 9.30. Radio broadcasters should refer to Rules 10.9 to 10.10.

Meaning of "broadcast competition":

A competition or free prize draw featured in a programme in which viewers or listeners are invited to enter by any means for the opportunity to win a prize.

Meaning of "voting":

Features in a programme in which viewers or listeners are invited to register a vote by any means to decide or influence, at any stage, the outcome of a contest.

BBC

The BBC Editorial Guidelines closely mirror Ofcom regulation under Section 5 with the same title '[Harm and Offence.](#)'

The BBC aims to reflect the world as it is, including all aspects of the human experience and the realities of the natural world. In doing so, we balance our right to broadcast innovative and challenging content, appropriate to each of our services, with our responsibility to protect the vulnerable, especially young people, and to avoid unjustifiable offence.

Harm and Offence

- [5.1 Introduction](#)
- [5.2 Mandatory Referrals](#)
- 5.3 Guidelines
 - [Audience Expectations](#)
 - [Content Information](#)
 - [Labelling On-Demand and Digital Content](#)
 - [Scheduling for Television and Radio](#)
 - [Live Output](#)
 - [Language](#)
 - [Violence](#)
 - [Intimidation and Humiliation](#)
 - [Nudity](#)
 - [Sex](#)
 - [Abusive or Derogatory Treatment](#)
 - [Portrayal](#)
 - [Alcohol, Smoking, Vaping, Solvent Abuse and Illegal Drugs](#)
 - [Suicide, Attempted Suicide, Self-Harm and Eating Disorders](#)
 - [Imitative Behaviour](#)
 - [Tragic Events](#)
 - [Religion](#)
 - [Hypnotism, Exorcism, the Occult and the Paranormal](#)
 - [Flashing Images, Strobing and Images of Very Brief Duration](#)
 - [Acquired Programmes](#)

The final instructive section for the handbook is a section offering you short revision briefings on **Primary Media Law**. Here are eleven briefings, backed up online with video-casts.

UK Contempt and Reporting Crime	Video/podcast
1. Demonizing crime suspects after they've been arrested by impeding a police inquiry, a defence case, or publishing seriously prejudicial material when there's a substantial risk of influencing a jury is media contempt & a criminal offence. Do not identify suspects unless charged. Likely to be a breach of privacy. There may be an exception if officially named by the police., but take legal advice before publishing. 2. You can twitter and email from court unless directed not to and accurate and fair reporting's ok. 3. Taking pictures or recording sound inside a courtroom, or recording a remote hearing is usually a crime. 4. Alleged sex offence victims have anonymity for life from the time they complain. This is also the case with the victims of female genital mutilation, known as FGM, forced marriages and people trafficking. 5. Young people aged 17 and under, along with vulnerable witnesses, blackmail victims with embarrassing menaces, and undercover state investigators usually have legal anonymity. 6. Never report anything in the absence of the jury. 7. Do not interview jurors about their deliberations (another criminal offence), harass judges for interviews, and don't pay criminals and their families for stories. 8. Open justice is protected by freedom of expression Article 10 of the Human Rights Act, presumption of innocence is protected by Article 6- the right to fair trial. UK Media Law Pocketbook 2nd Edition (2022) Chapter 1 Media Contempt and Reporting Crime pages 3 to 68. Resources for the chapter online https://ukmedialawpocketbook.com/2022/05/04/blog-post-title-2/ McNae's Essential Law for Journalists 26th Edition (2022) Chapter 5 'Crime- media coverage prior to any court case' pages 66-77, and Chapter 19 'Contempt of court' pages 305-352. McNae's Essential Law for Journalists 25th Edition (2020) Chapter 5 'Crime- media coverage prior to any court case' pages 61-70, and Chapter 19 'Contempt of court' pages 261-283.	Podcast https://soundcloud.com/comparativemedialaw/podcast10mp3 Videocast https://www.youtube.com/watch?v=jwUhxxahYQw
Guide to Court Reporting Key facts and Checklist 1. When you report court cases it's a good idea to be respectfully dressed as well as respectfully behaved. 2. Bear in mind that alleged victims of sexual offences will be named in court but you'll not be allowed to publish anything that's identifiable. 3. Be careful to remove any detail that leads to jigsaw identification, where people could put two and two together. 4. Where young people aged 17 and under are involved as accused or witnesses, adult courts have to make the orders, but in youth courts were the public's not admitted, there's default anonymity. 5. Orders on children also specifically cover the schools they go to.	Podcast https://soundcloud.com/comparativemedialaw/podcast20mp3 Videocast https://www.youtube.com/watch?v=

6. Always check with the court if there are any other reporting restrictions- they might not be obvious. 7. Attribute everything, avoid comment, stick to the language you've heard in court, & satisfy fairness by representing both sides in your report. 8. You'll realize how important it was to take that shorthand writing course. Keep a couple of notes, one taking down newsworthy quotes and the other writing the story while you're there. 9. In April 2015 court reporting restrictions relating to people aged 17 and under were intensified in England and Wales. In criminal cases orders under section 45A of the Youth Justice and Criminal Evidence Act 1999 mean any youth who is not a defendant can receive anonymity for life- beyond the time they reached the age of 18. Breaching youth anonymity orders can lead to an unlimited amount. 10. When covering remote hearings do not under any circumstances record sound or video on your computer, smartphone or any other device. This is a contempt of court. UK Media Law Pocketbook 2nd Edition Chapter 2 'Guide to Court Reporting- Key Facts and Checklist, pages 69 to 94. Resources for the chapter online at: https://ukmedialawpocketbook.com/2022/05/04/featured-content-6/ McNae's Essential Law for Journalists 26th Edition (2022) has a range of chapters on covering the courts and court reporting. Chapters 7 and 8 'Magistrates Courts- summary' and 'The Most serious criminal cases' pages 84-108, Chapter 9 'Crown courts and appeal courts', pages 109-122, Chapter 10 'Children and Young Persons in court proceedings', pages 123-141, Chapter 11 'Anonymity for victims and alleged victims of sexual offences, human trafficking, female genital mutilation, and forced marriage offences', pages 142-161, Chapter 12, 'Court reporting and other restrictions pages 162-183, Chapter 13 'Civil courts and reporting restrictions', pages 184-193, Chapter 14 'Family courts', pages 194-203, Chapter 15 'Open Justice and access to court information, pages 204-244, Chapter 16 'Challenging the courts' pages 245-282, Chapter 17 'Coroner's Courts' pages 283-295, and Chapter 18 'Tribunals and public inquiries' pages 296-304. McNae's Essential Law for Journalists 25th Edition (2020) has a range of chapters on covering the courts and court reporting. Chapters 7 and 8 'Magistrates Courts- summary' and 'The Most serious criminal cases' pages 77-98, Chapter 9 'Crown courts and appeal courts', pages 99-110, Chapter 10 'Juveniles in court proceedings', pages 111-127, Chapter 11 'Victims of sexual offences, human trafficking, female genital mutilation, and forced marriage offences', pages 128-146, Chapter 12, 'Court reporting and other restrictions pages 146-163, Chapter 13 'Civil courts and reporting restrictions', pages 164-172, Chapter 14 'Family courts and restrictions', pages 173-181, Chapter 15 'Open Justice and access to court information, pages 182-211, Chapter 16 'Challenging the courts' pages 212-242, Chapter 17 'Coroner's courts and inquests' pages 243-254, and Chapter 18 'Tribunals and public inquiries' pages 255-260.	e6XxC4t5FI8
Libel, Privacy, Accuracy and Balance 1. Libel is untruthful publication to a third party, that seriously harms reputation, can identify by innuendo, & cross-media jigsaw connections. The burden of proof is on defendant, & damage is presumed. 2. The UK Supreme Court in the Lachaux case of 2019 means claimants have to prove serious harm by reference to the actual facts about a publication's impact; not just the meaning of the words.	Podcast https://soundcloud.com/comparativemedialaw/podcast30mp3 Videocast

3. Harm to the reputation of a body that trades for profit is not “serious harm” unless it has caused or is likely to cause that body serious financial loss.
4. Defences include honest opinion, truth, a reasonable belief that the publication, either fact or opinion, was a matter of public interest with an allowance for editorial judgment, privilege in fair and accurate reports of courts, parliament, public meetings, press conferences, and peer-reviewed scientific or academic conferences & journals.
5. Prior restraint in libel not usually available if the media defendants intend to defend their case.
6. Media privacy & confidentiality stem from Article 8 of Human Rights Act, protects private information, either truthful or not truthful such as health, relationships, sexuality, home, correspondence and family life- where there’s a reasonable expectation of privacy. Intrusion and publication has to be justified by public interest. Breach of privacy can be by media conduct as well as by media publication.
7. Prior restraint usually available because privacy is like a cube of ice, It’s gone once melted. Now English courts have to hold a hearing and hear legal argument against prior restraint before issuing injunctions. Even where parties remain anonymous, the legal system has to keep and make available a record of the decision. The media must have notice of prior restraint applications.
8. Inaccurate publication that neither harms reputation nor breaches privacy can still lead to fines, prominent corrections and apologies by Ofcom regulation of broadcasters and independent press regulation of print media. No public interest defence is available.
9. Broadcasters have a legal duty to be impartial and avoid giving undue prominence to views and opinions.
10. The Press can be partial, but Editors’ Code expects a distinguishing between comment, conjecture & fact.
11. The right to be forgotten asserted in EU’s Court of Justice ruling in 2014 applies to the delisting of information by data processing search engines such as Google; not the archive of journalistic publications. However, there’s case law developing in the European Court of Human Rights in Strasbourg that proposes delisting to tags in online articles and even removing the identity of people in online stories.
12. UK Data Protection legislation and regulated by the Information Commissioner’s Office imposes public interest duties on media processing of private information and its publication.

<https://youtu.be/eAXLG B2vOIE?si=POZuUcV2KgUCmZLE>

UK Media Law Pocketbook 2nd Edition (2022) Chapter 3- Libel, Privacy, Accuracy and Balance, pages 95 to 147.

Resources for the chapter online at:

<https://ukmedialawpocketbook.com/2021/12/18/featured-content-5/>

McNae’s Essential Law for Journalists 26th Edition (2022) covers defamation, libel, slander, malicious falsehood and obscenity across Chapters 20 to 25 pages 333-400. Chapter 26 covers ‘Breach of confidence and privacy’ at pages 402-413, and Chapter 27 ‘Data protection’ at pages 433-441.

McNae’s Essential Law for Journalists 25th Edition (2020) covers defamation, libel, slander, malicious falsehood and obscenity across Chapters 20 to 25 pages 287-348. Chapter 26 covers ‘Breach of confidence and privacy’ at pages 351-374, and Chapter 27 ‘Data protection’ at pages 375-380.

News Gathering, Story Finding, and Public Interest 1. Public interest used to be what interested the readers who bought newspapers, watched television, listened to the radio, or went online. Now it's defined by Ofcom, a government quango for broadcasters, the BBC itself, independent press regulation, politicians in legislation, government law officers such as the Director of Public Prosecutions (DPP), and judges in case law. And the law is what they say, not what the audience says it wants and is interested in; 2. This means journalists committing crimes and civil wrongs have public interest defences in a few situations but are denied it in most; 3. Phone and computer hacking – no public interest, bribing police officers, civil servants or anybody else, breaching national security, stalking celebrities and public figures, fraud by subterfuge – no public interest; 4. Blagging by tricking people to get private information, harassing by door-stepping – there are limited public interest defences; 5. Journalists' sources are protected by statute and European human rights law subject to the interests of investigating crime, national security and the administration of justice; 6. If the police want unused media footage of public events they need a court order, if they want confidential info in notebooks and computers there's an excluded material protection for the purposes of journalism; 7. Regulation of Investigatory Powers Act 2016 means scores of state investigation agencies can access up to one year of mobile and computer communications data. Approval and warrants, along with statutory oversight, are done in secret. There are protections for journalists and their sources though these can be over-ridden when investigating serious crime, which is defined as an offence carrying more than one year's imprisonment. UK Media Law Pocketbook 2nd Edition, Chapter 4 'News Gathering, Story Finding and Public Interest' pages 148 to 168 Resources for the chapter online at: https://ukmedialawpocketbook.com/2021/12/17/featured-content-4/ McNae's Essential Law for Journalists 26th Edition (2022) contains several chapters covering these issues. Chapter 33 'Protecting journalist's sources and neutrality' pages 432-447, Chapter 34 'The risks of being charged with bribery, misconduct, hacking , intercepting or "bugging."' pages 498-510, Chapter 39 'Boundaries to expression, hate and obscenity' and Chapter 40 'Terrorism and the effect of counter-terrorism law are referenced at pages 521 and 522 and are online only. McNae's Essential Law for Journalists 25th Edition (2020) contains several chapters covering these issues. Chapter 34 'Protecting journalist's sources and neutrality' pages 432-447, Chapter 35 'Bribery, misconduct, hacking and interception' pages 433-448. Chapter 38 'The incitement of hate' and Chapter 40 'Terrorism and the effect of counter-terrorism law which are both online only.	Podcast https://soundcloud.com/comparativemedialaw/podcast40mp3 Videocast https://www.youtube.com/watch?v=Z1_vqILIPFs
Protecting Children 1. Minimum age of criminal responsibility in England Wales and Northern Ireland is 10, in earliest age children can be prosecuted in Scotland is 12. 2. The criminal justice system protects young people aged 17 and under with anonymity restrictions for them and their schools- This has become the same in	Podcast https://soundcloud.com/comparativemedialaw/p

Scotland. There's no youth court system there- They're managed in a social work oriented system of children's panels. - Ofcom, BBC, independent press regulation, and the courts give the protection of children, their highest priority. There's a 9 p.m. watershed for television. Ofcom makes it clear material that might seriously impair the physical, mental or moral development of people under eighteen must not be broadcast. Watershed for radio can be any time when 'children are particularly likely to be listening.' - Children are never usually identifiable in any reports of family court proceedings. - The UK media, press & broadcasting are legally obliged to protect children so they're free to complete their school education without unnecessary intrusion, children under 16 must not be interviewed or photographed without consent of guardians/parents and must not be approached or photographed at school without the school's permission. UK Media Law Pocketbook 2nd Edition (2022) Chapter 5 'Protecting Children' pages 169 to 183. Resources for the chapter online at: https://ukmedialawpocketbook.com/2021/12/16/featured-content-3/	odcast50mp3 Videocast https://www.youtube.com/watch?v=3hHZI5dyj0Q
Copyright and Intellectual Property - Primary authorial works of a literary, dramatic, musical and artistic kind have copyright protection lasting 70 years after the death of the author/creator. - Secondary entrepreneurial works such as sound productions, broadcasts, and films have a copyright protection usually lasting 70 years after first public release. - Most journalists rely on the defence of fair dealing when using other people's copyright material without payment. But it's a limited and inflexible defence. - Things you should know- Fair dealing can be for criticism and review, but you must not use the substantial part of the original work and you must acknowledge and attribute. What is less than the substantial part is not clearly defined. - Fair dealing can also be for reporting current events and the application of the word 'current' is limited by case law. So TV clips of a news event covered by a rival broadcaster should only be usable with sufficient acknowledgement within 24 hours. There's no, <u>repeat no</u> fair dealing for reporting current events in relation to photographs and images. - But case law indicates there may be rare exceptions when an image carries great public interest value (such as showing a crime), has already been published, does not undermine the commercial rights of the photographer or publisher and its origin is fully acknowledged. - Can you 'fair deal' photographs for criticism & review? In theory yes, but in practice rather difficult. How can you 'quote' and extract what is the less substantial part of an image? - From October 1st 2014 UK copyright law extended the fair dealing defence to quotation of works (whether for criticism or review or otherwise); works for the purposes of caricature, parody or pastiche; and the making of personal copies of works (other than computer programs) for private use. However, the making personal copies provision has been ruled unlawful by the High Court. The government when enabling private copying as an exception to copyright laws did not ensure that rights holders received fair compensation. And the government's Intellectual Property Office says the quotation defence will not permit use by news media of current event photographs without the permission and/or remuneration to copyright owners.	Podcast https://soundcloud.com/comparative-medialaw/podcast60mp3 Videocast https://youtu.be/DihMDOpKR8g?si=WY6qIE6r8gF8yPaf

9. Simple advice probably best to adopt a cautious approach; when using other people's stuff in media publication pay them, or get their permission. UK Media Law Pocketbook 2nd Edition (2022) Chapter 6 'Copyright and Intellectual Property' pages 184 to 194. Resources for the chapter online at: https://ukmedialawpocketbook.com/2021/12/15/featured-content-2/ McNae's Essential Law for Journalists 26th Edition (2022) covers the media law of Copyright at chapter 29 pages 442-460. McNae's Essential Law for Journalists 25th Edition (2020) covers the media law of Copyright at chapter 29 pages 381-397.	
Laws and Rules for Elections and Politics 1. During the coverage of elections libel, privacy, accuracy and fairness obligations remain the same. 2. What's additional? Well there's a separate criminal offence for making or publishing a false statement of fact about the personal character or conduct of an election candidate with a purpose to affect the voting. 3. While there's a continuation of qualified privilege subject to contradiction or explanation for election meetings open to the public, the defence does not, repeat does not apply to candidates' election addresses. 4. There's a legal ban on publishing exit polls while people are voting on polling day. This does not mean you are prevented publishing the result of opinion polls surveyed before the polling stations open for voting. 5. UK broadcasters have a legal duty to be impartial and balanced in their coverage during election periods. Print and online publishers can be as biased as they want. 6. This means that broadcast presenters cannot, repeat cannot express their personal support for any candidate or party. And candidates and their parties should have an opportunity to participate in all reports and programmes covering the election. 7. Ofcom, the BBC and the Electoral commission usually publish helpful guides for the media when elections happen. 8. Lastly when covering election counts reporters need to respect and follow the directions of election/returning officers. UK Media Law Pocketbook 2nd Edition (2022) Chapter 7 'Laws and Rules for Elections and Politics', pages 195 to 203. Resources for the chapter online at: https://ukmedialawpocketbook.com/2021/12/14/featured-content/ McNae's Essential Law for Journalists 26th Edition (2022) covers the media law of Reporting Elections in Chapter 31, pages 467-472. McNae's Essential Law for Journalists 25th Edition (2020) covers the media law of Reporting Elections in Chapter 32, pages 420-425.	Podcast https://soundcloud.com/comparativemedialaw/podcast70mp3 Videocast https://www.youtube.com/watch?v=hCubyPfPFcM
The Secret World 1. Journalists can breach the Official Secrets Act if they disclose information, without permission, knowing or having reasonable cause to believe it is protected...and they know the information, in the protected categories, is what is described as 'damaging'.	Podcast https://soundcloud.com/comparativemedialaw/p

2. Categories include security and intelligence, defence, international relations, crime, information on government phone-tapping, interception of letters or other communications, information entrusted in confidence to other states or international organizations.
3. The UK state persecutes and terrorizes potential whistle-blowers and journalist sources- in other words crown employees/officers working in intelligence.
4. If they want to put anything into the public domain, they have to go before a secretive Investigatory Powers Tribunal, which has been criticized for giving decisions without reasons, though it does have a web-site publishing some of its rulings and has held some of its proceedings in public.
5. Journalists who annoy or embarrass the UK state can still have the indignity of being arrested and their homes, offices, papers, files and computers searched. So, a rather unpleasant message is delivered without any further legal action following. Though some recent cases where the arrest and searching was unlawful, one in Northern Ireland and the other in Kent, England, resulted in damages and compensation to the journalists.
6. Sensitive stuff that might relate to terrorism, torture and rendition is kept from the public by the use of 'special advocates' in SIAC hearings and other areas of litigation.
7. In total secrecy, suspected terrorists received lawyers who can't communicate with them but can see, hear & challenge the 'secret' information used against them. In 2013 the UK government expanded this process into the rest of the legal system in what they call 'closed material procedure.'
8. The identity of secret witnesses, unknown to the defence, is a standard practice in many criminal trials. Some witnesses appear as pseudonyms; others as letters or numbers.
9. Terrorism legislation provides no public interest defence for journalists and media workers who do anything that knowingly assists the preparation of acts of terrorism. There is a positive obligation in criminal law for journalists who have any knowledge about terrorism to report the information to the police.
10. In 2014 the *Guardian* challenged an Old Bailey judge's decision to hold an entire terrorism trial in secret with the identity of the 2 defendants anonymized.
11. The Appeal court ruled that the accused should be named, and elements of the trial had to be heard in open court including swearing in of the jury, reading the charges to the jury, part of the judge's opening remarks to the jury, part of the prosecution opening, the verdicts, and sentencing in the event of guilty verdicts.
12. Accredited journalists were also permitted to attend much of the *in camera* proceedings provided they agreed to be bound by confidentiality and left their notes with the court at the end of the day. This means that should the reason for the secrecy ever be lifted the media will be able to report what happened behind closed doors. But this has not happened and challenge by newspaper groups was unsuccessful.

UK Media Law Pocketbook 2nd Edition (2022) Chapter 8 'The Secret World, pages 204 to 215.

Resources for the chapter online at:

<https://ukmedialawpocketbook.com/2021/12/13/chapter-eight-the-secret-world/>

McNae's Essential Law for Journalists 26th Edition (2022) at Chapter 32, pages 473-479.

McNae's Essential Law for Journalists 25th Edition (2020) at [Chapter 33 has an online section on Official Secrets pages 426-431](#) in addition to the printed text.

[odcast80mp3](#)

Videocast
<https://www.youtube.com/watch?v=3t8sJ3cFGyY>

Scottish and Northern Ireland differences and issues 1. Scotland and Northern Ireland have separate legal systems, with the Scottish jurisdiction having substantially different traditions, influences, rituals, and terminology; 2. Juries in Scotland are 15 with majorities possible at 8–7, and there is a third ‘not proven’ verdict in addition to guilty and not guilty; 3. In Scotland, publication of images/photographs of accused people is usually regarded as potential contempt of court because of the legal doctrine of ‘dock identification’; 4. There are no youth/juvenile courts in Scotland and young people, aged 17 and younger investigated for criminal offences are dealt with by a children’s panel system. They have similar anonymity rights to youths involved in adult court proceedings in England; 5. Libel law in Scotland has been synchronized to become much more similar to English libel law with many of the same statutory defences provided in the 2013 Defamation Act; 6. Libel law in Northern Ireland has been reformed with the introduction of statutory public interest, truth, and honest opinion defences, and ending jury trials unless with the permission of the court. 7. All sexual offence complainants in courts in Scotland and Northern Ireland receive similar forms of protection in terms of anonymity for life and are not identified; 8. Scottish criminal courts close the public gallery but permit the presence of reporters when alleged victims of sexual offences give their evidence; 9. In Northern Ireland, some courts are willing to permit anonymity for criminal defendants if there is strong evidence that identification will undermine their right to life because of the risk of vigilante attacks or reprisals. UK Media Law Pocketbook 2nd Edition (2022) Chapter 9 ‘Scottish and Northern Irish Differences and Issues’ pages 216 to 224. Resources for the chapter online at: https://ukmedialawpocketbook.com/2021/12/12/chapter-nine-scottish-and-northern-irish-differences-and-issues/ McNae’s Essential Law for Journalists 26th Edition (2022) has two chapters on the media law of Northern Ireland and Scotland, but they are both online although referenced at page 518 for Chapter 36 on Northern Ireland and page 523 for Chapter 41 on Scotland. The latest Scottish Courts and Tribunals Service online media guide on restrictions & access is available at: https://www.scotcourts.gov.uk/docs/default-source/aboutscs/contact-us/media-guide-external-update-02-02-2022.pdf?sfvrsn=f943355f_2 McNae’s Essential Law for Journalists 25th Edition (2020) has two chapters on the media law of Northern Ireland and Scotland. Chapter 37 on Northern Ireland pages 465-470 is available in the printed book and Chapter 39 on Media Law in Scotland is available online.	Podcast https://soundcloud.com/comparativemedialaw/podcast90mp3 Videocast https://youtube.be/hJF6qwd6vPs?si=C3CpjE0P1nOH6gyi
UK Media Law of Freedom of Information 1. UK Supreme Court Justice Lord Sumption described the 2000 Freedom of Information Act (FOIA) which came into force five years later as a ‘landmark enactment of great constitutional significance’;	Podcast https://soundcloud.com/comparativemedialaw/100podcast

2. It created a statutory scheme enabling journalists to ask for information from public and government bodies which can source important public interest stories;
3. Another UK Supreme Court Justice Lord Mance said 'Information is the key to sound decision making, to accountability and development; it underpins democracy and assists in combatting poverty, oppression, corruption, prejudice and inefficiency';
4. All public bodies are obliged to respond to written Freedom of Information (FOI) requests within 20 working days, for example four weeks and are supposed to have an 'FOI officer' and/or a 'publication scheme';
5. Freedom of Information law is regulated by the Information Commissioner's Office (ICO) which is described as 'as independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals';
6. Public bodies can, however, refuse information requests because of absolute and qualified exemptions and the FOI system is often criticized by media publishers and non-governmental organizations (NGOs) for being over-bureaucratic and giving public bodies legal powers to easily block and deny access to significant public interest information;
7. The Scottish legal system operates its own freedom of information scheme based on the 2002 Scottish Freedom of Information Act with a separate Scottish Information Commissioner;
8. If a public body refuses to respond to a FOI request, journalists can ask for an internal review and can then appeal to the Information Commissioner within three months from the last communication of the public authority;
9. The next stage in the appeal process is to the First Tier Tribunal (Information Rights). Any appeal must be brought within 28 days of the date of the ICO's decision. If the case needs to be fought further, an application for permission to appeal can be made to the Upper Tribunal and beyond that on points of law for judicial review to the Administrative Division of the High Court;
10. The European Court of Human Rights at Strasbourg recognized a standing right to state information for journalists, academics, and NGOs seeking public interest information when carrying out a social watchdog role. Up until the time of writing, these important principles set out in the case of Magyar Helsinki v Hungary in 2016 have been blocked by case law from implementation in the UK FOI system;
11. Allied to the FOIA system is the legal right to Environmental Information under the Environmental Information Regulations of 2004 and this can enable journalists to research information about genetically modified crops, polluting discharges into rivers, radiation, noise, and environmental issues related to land, air, water, and other natural resources.

Videocast
<https://youtu.be/5aHFanzhUJA?si=74m752YsW5r3ley5>

UK Media Law Pocketbook 2nd Edition Chapter 10 'Freedom of Information', pages 225 to 251.

Resources for the chapter online at:

<https://ukmedialawpocketbook.com/2021/12/11/freedom-of-information/>

McNae's Essential Law for Journalists 26th Edition (2022) has an online chapter on 'The Freedom of Information Act 2000' [Chapter 37 which is referenced at page 519.](#)

McNae's Essential Law for Journalists 25th Edition (2020) covered 'The Freedom of Information Act 2000 at chapter 30 pages 401 to 409.

Social Media Law 1. Tweets, re-tweets, TikTok short-form user videos, online blogs, Facebook postings, Instagram images or digital video, YouTube, and Vimeo; messaging, 'status' notices, and emails 'copied' and 'distributed' to more than a second party, that is beyond the traditional single mail correspondent can be libellous, breach of privacy, breach of copyright, and become unlawful publications in many dimensions of UK law; 2. Throughout all UK legal jurisdictions libel is a civil law issue in which the burden of proof is on the defendant, not the claimant. The construction of meaning in your communication has nothing to do with your intention and can be assessed by the most negative perception and by the most sensitive disposition imaginable and so the risk of being considered potentially libellous can be very high; 3. Litigation is pursued by a privatized profit-led legal profession that operates with very high costs and in most libel and breach of privacy cases the legal costs substantially outrun any damages awarded by way of remedy; 4. All 'social media' communications are liable to other media law infringements and these include criminal offences. The most serious risk is contempt of court and breaching reporting restrictions. There are cases in which people have been jailed; 5. Social media users do not even have to name people to get into trouble or even explicitly state or repeat an allegation. The former House of Commons Speaker's wife, Sally Bercow, was successfully sued for libel over one tweet when she asked why a former Tory politician was 'trending' and added 'innocent face.' This was deemed to be libel by jigsaw identification/implication because allegations of child abuse had been broadcast by the BBC and, on the internet, somebody the BBC did not name was being identified in blogs and social media; 6. Anonymity and alter ego identities will not protect people from the legal consequences of unlawful communications as the UK courts have powers to order social media platforms to provide the data leading to their identification; 7. As communications on social media platforms are hosted by private companies and corporations, social media users are subject to terms and conditions contract law and can have their freedom of expression curtailed or deleted without any legal rights to restitution and return; 8. Communications on electronic networks such as Twitter, Instagram, TikTok and YouTube are liable under section 127 of the 2003 Communications Act to criminal prosecution for any messages that are 'grossly offensive or of an indecent, obscene or menacing character.' Penalties on summary conviction at the Magistrates Court can be as much as six months' imprisonment and/or a fine of £5,000; 9. In 2013 the DPP finalized guidelines on when it is not in the public interest to prosecute you. These were revised in 2018. Prosecutions are likely if social media communication contains 'a credible threat of violence, a targeted campaign of harassment against an individual or which breaches court orders.' The 'grossly offensive' category is expected to be reserved for racial/gendered orientation or hate crime abuse. UK Media Law Pocketbook 2nd Edition (2022) Chapter 11 'Social Media Law', pages 252 to 266. Resources for the chapter online at: https://ukmedialawpocketbook.com/2021/12/11/chapter-eighteen-social-media-law/	Podcast https://soundcloud.com/comparativemedialaw/110podcast Videocast https://youtube.be/r-K2yzAnDjI?si=BD-rPTpIFCcROOrL

United States Society of Professional Journalists Code of Practice 2014

See: <https://www.spj.org/ethicscode.asp>

Preamble

Members of the Society of Professional Journalists believe that public enlightenment is the forerunner of justice and the foundation of democracy. Ethical journalism strives to ensure the free exchange of information that is accurate, fair and thorough. An ethical journalist acts with integrity.

The Society declares these four principles as the foundation of ethical journalism and encourages their use in its practice by all people in all media.

Seek Truth and Report It

Ethical journalism should be accurate and fair. Journalists should be honest and courageous in gathering, reporting and interpreting information.

Journalists should:

- Take responsibility for the accuracy of their work. Verify information before releasing it. Use original sources whenever possible.
- Remember that neither speed nor format excuses inaccuracy.
- Provide context. Take special care not to misrepresent or oversimplify in promoting, previewing or summarizing a story.
- Gather, update and correct information throughout the life of a news story.
- Be cautious when making promises, but keep the promises they make.
- Identify sources clearly. The public is entitled to as much information as possible to judge the reliability and motivations of sources.
- Consider sources' motives before promising anonymity. Reserve anonymity for sources who may face danger, retribution or other harm, and have information that cannot be obtained elsewhere. Explain why anonymity was granted.
- Diligently seek subjects of news coverage to allow them to respond to criticism or allegations of wrongdoing.
- Avoid undercover or other surreptitious methods of gathering information unless traditional, open methods will not yield information vital to the public.
- Be vigilant and courageous about holding those with power accountable. Give voice to the voiceless.
- Support the open and civil exchange of views, even views they find repugnant.
- Recognize a special obligation to serve as watchdogs over public affairs and government. Seek to ensure that the public's business is conducted in the open, and that public records are open to all.
- Provide access to source material when it is relevant and appropriate.
- Boldly tell the story of the diversity and magnitude of the human experience. Seek sources whose voices we seldom hear.
- Avoid stereotyping. Journalists should examine the ways their values and experiences may shape their reporting.
- Label advocacy and commentary.
- Never deliberately distort facts or context, including visual information. Clearly label illustrations and re-enactments.
- Never plagiarize. Always attribute.

Minimize Harm

Ethical journalism treats sources, subjects, colleagues and members of the public as human beings deserving of respect.

Journalists should:

- Balance the public's need for information against potential harm or discomfort. Pursuit of the news is not a license for arrogance or undue intrusiveness.
- Show compassion for those who may be affected by news coverage. Use heightened sensitivity when dealing with juveniles, victims of sex crimes, and sources or subjects who are inexperienced or unable to give consent. Consider cultural differences in approach and treatment.
- Recognize that legal access to information differs from an ethical justification to publish or broadcast.
- Realize that private people have a greater right to control information about themselves than public figures and others who seek power, influence or attention. Weigh the consequences of publishing or broadcasting personal information.
- Avoid pandering to lurid curiosity, even if others do.
- Balance a suspect's right to a fair trial with the public's right to know. Consider the implications of identifying criminal suspects before they face legal charges.
- Consider the long-term implications of the extended reach and permanence of publication. Provide updated and more complete information as appropriate.

Act Independently

The highest and primary obligation of ethical journalism is to serve the public.

Journalists should:

- Avoid conflicts of interest, real or perceived. Disclose unavoidable conflicts.
- Refuse gifts, favors, fees, free travel and special treatment, and avoid political and other outside activities that may compromise integrity or impartiality, or may damage credibility.
- Be wary of sources offering information for favors or money; do not pay for access to news. Identify content provided by outside sources, whether paid or not.
- Deny favored treatment to advertisers, donors or any other special interests, and resist internal and external pressure to influence coverage.
- Distinguish news from advertising and shun hybrids that blur the lines between the two. Prominently label sponsored content.

Be Accountable and Transparent

Ethical journalism means taking responsibility for one's work and explaining one's decisions to the public.

Journalists should:

- Explain ethical choices and processes to audiences. Encourage a civil dialogue with the public about journalistic practices, coverage and news content.
- Respond quickly to questions about accuracy, clarity and fairness.
- Acknowledge mistakes and correct them promptly and prominently. Explain corrections and clarifications carefully and clearly.
- Expose unethical conduct in journalism, including within their organizations.
- Abide by the same high standards they expect of others.

The SPJ Code of Ethics is a statement of abiding principles supported by additional explanations and position papers that address changing journalistic practices. It is not a set of rules, rather a guide that encourages all who engage in journalism to take responsibility for the information they provide, regardless of medium. The code should be read as a whole; individual principles should not be taken out of context. It is not, nor can it be under the First Amendment, legally enforceable.

Sigma Delta Chi's first Code of Ethics was borrowed from the American Society of Newspaper Editors in 1926. In 1973, Sigma Delta Chi wrote its own code, which was revised in 1984, 1987, 1996 and 2014.

The US Radio, Television, Digital News Association Code of Ethics 2015

See: <https://www.rtdna.org/ethics>

Guiding Principles:

Journalism's obligation is to the public. Journalism places the public's interests ahead of commercial, political and personal interests. Journalism empowers viewers, listeners and readers to make more informed decisions for themselves; it does not tell people what to believe or how to feel.

Ethical decision-making should occur at every step of the journalistic process, including story selection, news-gathering, production, presentation and delivery. Practitioners of ethical journalism seek diverse and even opposing opinions in order to reach better conclusions that can be clearly explained and effectively defended or, when appropriate, revisited and revised. Ethical decision-making – like writing, photography, design or anchoring – requires skills that improve with study, diligence and practice.

The RTDNA Code of Ethics does not dictate what journalists should do in every ethical predicament; rather it offers resources to help journalists make better ethical decisions – on and off the job – for themselves and for the communities they serve.

Journalism is distinguished from other forms of content by these guiding principles:

—• Truth and accuracy above all

- o The facts should get in the way of a good story. Journalism requires more than merely reporting remarks, claims or comments. Journalism verifies, provides relevant context, tells the rest of the story and acknowledges the absence of important additional information.

- o For every story of significance, there are always more than two sides. While they may not all fit into every account, responsible reporting is clear about what it omits, as well as what it includes.

- o Scarce resources, deadline pressure and relentless competition do not excuse cutting corners factually or oversimplifying complex issues.

- o “Trending,” “going viral” or “exploding on social media” may increase urgency, but these phenomena only heighten the need for strict standards of accuracy.

- o Facts change over time. Responsible reporting includes updating stories and amending archival versions to make them more accurate and to avoid misinforming those who, through search, stumble upon outdated material.

- o Deception in newsgathering, including surreptitious recording, conflicts with journalism's commitment to truth. Similarly, anonymity of sources deprives the audience of important, relevant information. Staging, dramatization and other alterations – even when labeled as such – can confuse or fool viewers, listeners and readers. These tactics are justified only when stories of great significance cannot be adequately told without distortion, and when any creative liberties taken are clearly explained.

- o Journalism challenges assumptions, rejects stereotypes and illuminates – even where it cannot eliminate – ignorance.

- o Ethical journalism resists false dichotomies – either/or, always/never, black/white thinking – and considers a range of alternatives between the extremes.

—• Independence and transparency

- o Editorial independence may be a more ambitious goal today than ever before. Media companies, even if not-for-profit, have commercial, competitive and other interests – both internal and external -- from which the journalists they employ cannot be entirely shielded. Still, independence from influences that conflict with public interest remains an essential ideal of journalism. Transparency provides the public with the means to assess credibility and to determine who deserves trust.
- o Acknowledging sponsor-provided content, commercial concerns or political relationships is essential, but transparency alone is not adequate. It does not entitle journalists to lower their standards of fairness or truth.
- o Disclosure, while critical, does not justify the exclusion of perspectives and information that are important to the audience's understanding of issues.
- o Journalism's proud tradition of holding the powerful accountable provides no exception for powerful journalists or the powerful organizations that employ them. To profit from reporting on the activities of others while operating in secrecy is hypocrisy.
- o Effectively explaining editorial decisions and processes does not mean making excuses. Transparency requires reflection, reconsideration and honest openness to the possibility that an action, however well intended, was wrong.
- o Ethical journalism requires owning errors, correcting them promptly and giving corrections as much prominence as the error itself had.
- o Commercial endorsements are incompatible with journalism because they compromise credibility. In journalism, content is gathered, selected and produced in the best interests of viewers, listeners and readers – not in the interests of somebody who paid to have a product or position promoted and associated with a familiar face, voice or name.
- o Similarly, political activity and active advocacy can undercut the real or perceived independence of those who practice journalism. Journalists do not give up the rights of citizenship, but their public exercise of those rights can call into question their impartiality.
- o The acceptance of gifts or special treatment of any kind not available to the general public creates conflicts of interest and erodes independence. This does not include the access to events or areas traditionally granted to working journalists in order to facilitate their coverage. It does include “professional courtesy” admission, discounts and “freebies” provided to journalists by those who might someday be the subject of coverage. Such goods and services are often offered as enticements to report favorably on the giver or rewards for doing so; even where that is not the intent, it is the reasonable perception of a justifiably suspicious public.
- o Commercial and political activities, as well as the acceptance of gifts or special treatment, cause harm even when the journalists involved are “off duty” or “on their own time.”
- o Attribution is essential. It adds important information that helps the audience evaluate content and it acknowledges those who contribute to coverage. Using someone else's work without attribution or permission is plagiarism.

—• Accountability for consequences

- o Journalism accepts responsibility, articulates its reasons and opens its processes to public scrutiny.
- o Journalism provides enormous benefits to self-governing societies. In the process, it can create inconvenience, discomfort and even distress. Minimizing harm, particularly to vulnerable individuals, should be a consideration in every editorial and ethical decision.

o Responsible reporting means considering the consequences of both the newsgathering – even if the information is never made public – and of the material’s potential dissemination. Certain stakeholders deserve special consideration; these include children, victims, vulnerable adults and others inexperienced with American media.

o Preserving privacy and protecting the right to a fair trial are not the primary mission of journalism; still, these critical concerns deserve consideration and to be balanced against the importance or urgency of reporting.

o The right to broadcast, publish or otherwise share information does not mean it is always right to do so. However, journalism’s obligation is to pursue truth and report, not withhold it. Shying away from difficult cases is not necessarily more ethical than taking on the challenge of reporting them. Leaving tough or sensitive stories to non-journalists can be a disservice to the public.

A growing collection of coverage guidelines for use on a range of ethical issues is available on the RTDNA website – <http://www.rtdna.org>.

Revised Code of Ethics adopted June 11, 2015

- See more at: http://www.rtdna.org/content/rtdna_code_of_ethics#sthash.iNfkjRoR.dpuf

Guidance on using the UK Freedom of Information Act 2000

Some Useful Advice Resources

Campaign for Freedom of Information (CFFI) (key resource)

<http://www.cfoi.org.uk/>

<http://www.freedominfo.org/> ‘is a one-stop portal for critical resources about freedom of information laws and movements around the world’. It is managed and primarily authored by the academic David Banisar, who edits and publishes Freedom of Information Around the World 2006: A Global Survey of Access to Government Information Laws.

What Do They Know (Supports, advises on and tracks FOI requests to UK ‘public bodies’)

<http://www.whatdotheyknow.com/>

The ‘What Do They Know’ website is a voluntary resource set up to help people use the FOI Act and to keep the site’s visitors informed about the progress of requests and the information obtained. It has an extensive help guide at www.whatdotheyknow.com/help/about. This explains: ‘You choose the public authority that you would like information from, then write a brief note describing what you want to know. We then send your request to the public authority. Any response they make is automatically published on the website for you and anyone else to find and read.’

The Information Commissioner says requests must ‘be made in writing (this can be electronically e.g. email); state the name of the applicant and an address for correspondence; and describe the information requested.’

<https://ico.org.uk/your-data-matters/official-information/>

Guardian articles on UK FOI.

<http://www.guardian.co.uk/politics/freedomofinformation>

Guardian (specific ‘how to’ FOI guide

<http://www.guardian.co.uk/politics/2004/dec/30/freedomofinformation.uk2>

Brooke, Heather (2006) *Your Right to Know*, 2nd revised edition, London: Pluto Press. The book is a comprehensive kit and guide on using FOI laws for the purposes of private citizen, NGO and journalistic research. The author has been a professor at City University and provides courses and consultancies to organizations such as the UK National Union of Journalists.

A more recent practical guide on Freedom of Information for UK journalists has been written by Matt Burgess and published by Routledge in 2015.

He is the founder of the FOI Directory website:

<http://www.foidirectory.co.uk>

Two leading legal textbooks on FOI are:

Blackstone's Guide To The Freedom of Information Act 2000, Fifth Edition edited by John Wadham, Kelly Harris and Eric Metcalfe, (2013) Oxford: Oxford University Press

MacDonald On The Law of Freedom of Information, Third Edition edited by John MacDonald QC and Ross Crail, (2016), Oxford: Oxford University Press.

Replies to requests

Public bodies are supposed to have an 'FOI officer' and/or a 'publication scheme'. They are supposed to reply to you within 20 working days e.g. 4 weeks.

For an example of a publication scheme see the Goldsmiths College website:

<http://www.gold.ac.uk/foi/>

Complaints If you are unhappy about the response you can ask for an internal review and this should be dealt with within 20 working days e.g. 4 weeks.

If the Internal Review does not provide the answer you want, you can complain to the Information Commissioner. You must make your complaint within 28 days of your last response from the public authority whether or not you have received a decision on their Internal Review.

The complaint form is available at:

<https://ico.org.uk/media/report-a-concern/forms/1477/access-official-information-form.pdf>

The Information Commissioner provides detailed briefings and guidance notes on FOI law and a growing body of jurisprudence is developing from decisions of the Information Tribunal.

The Scottish Information Commissioner provides a similar resource of information and guidance at:

<http://www.itspublicknowledge.info>

Appeals

The next stage in the appeal process is the First Tier Information Tribunal. Any appeal must be brought within 28 days of the date of the ICO's decision.

For information on how to appeal see this website that includes a link to downloading the appropriate appeal form. Appeals have to be constructed on matters of law. You must explain why you think the ICO decision is wrong in law (e.g. the ICO did not give adequate reasons for its decision) and state the outcome you are seeking.

<https://www.gov.uk/guidance/information-rights-appeal-against-the-commissioners-decision>

Refusal of requests

There are twenty-three exceptions to enable public bodies to refuse your request for information. The key ones are: public interest in confidentiality is greater than public interest in disclosure; commercial interests; absolute exceptions (e.g. intelligence agencies and national security); information is accessible by other means; prejudice to effective conduct of public affairs; legal professional privilege; information is intended for future publication; cost is too much.

Cost

Ministers have claimed that most requests for information will be free.

If the cost of answering your request is less than £450 (or £600 for central government) it will be free.

Officials may ask you to pay for the cost of photocopying and postage. If a request costs more than these limits, a public body can refuse outright to answer your request.

Here are some tips on making journalistic FOI requests:

- Think of the story before you think of the question.
- Immerse yourself in the statistics and language of the organization.
- Will the data you want be releasable?
- Avoid overcomplicating the question.
- The best questions are short and simple.
- Ask for comparative data, to put your figures in context.
- Ask for an index/chapter head so you can easily find what you're looking for.

UK Freedom of Information Law should undergo some progressive developments in the light of the Grand Chamber ruling of the European Court of Human Rights in *Magyar Helsinki v Hungary* 2016.

The court recognized that there was a qualified standing right under Article 10 Freedom of Expression to access state information for public interest applications by individuals and organisations that perform a social watchdog role in society. The case is also significant in that the United Kingdom government intervened to try and oppose the recognition of a right of access and was unsuccessful. See:

[MAGYAR HELSINKI BIZOTTSAG v. HUNGARY - 18030/11 \(Judgment \(Merits and Just Satisfaction\): Court \(Grand Chamber\)\) \[2016\] ECHR 975 \(08 November 2016\)](#)

The ruling said that the standing right to the information could be established if:

- The person seeking it was acting in the role of a “social watchdog” – which would typically apply to the media and non-governmental organisations, but could also cover academics, authors, bloggers and social media users;
- It was sought for the purpose of communicating information to the public on a matter of public interest;
- It was readily available to the public authority.

However, the Strasbourg court subsequently rejected a case brought by The Times and investigative journalist Dominic Kennedy over the Charity Commission's refusal to disclose documents relating to its investigation into a fund to provide medical help to Iraqi children.

The First Section of the Strasbourg court held that the application was inadmissible because they had not exhausted the potential remedy in the English courts. The UK courts may need to resolve the issue of whether challenges to absolute exemptions and the exercise of Article 10 rights can only be done by English common law requests followed by applications for judicial review at the High Court, which would be a much more expensive process than using the FOIA system.

TIMES NEWSPAPERS LIMITED and Dominic KENNEDY against the United Kingdom, The European Court of Human Rights (First Section), sitting on 13 November 2018 as a Committee See: <https://laweuro.com/?p=4528>

Freedom of Information case histories

Unsuccessful Judicial Review challenge of failure of FTT and UT Information Rights to apply ECtHR Grand Chamber ruling Magyar v Helsinki 2016

The ruling of Mr Justice Ritchie on 11th November 2022 is the end of the road for a longstanding attempt through multiple appeals to the First Tier Tribunal and Upper Tribunal (Information Rights) by Professor Tim Crook to persuade the UK domestic legal system to read down Article 10 Freedom of Expression rights against the statutory absolute exemptions in the Freedom of Information Act 2000.

This was in the context of the ECtHR Grand Chamber in Magyar v Helsinki ruling in 2016 that public watchdog journalists, academic researchers, and NGOs had a qualified standing right under Article 10 to state information.

Mr Justice Ritchie decided 'There is no arguable error of law asserted, only an impassioned plea for the law in S.23 of the Freedom Of Information Act to be changed. Parliament changes the law, not the Courts.'

He rejected Professor Crook's application for leave for judicial review and certified it as 'totally without legal merit.' This provision meant it would have been highly unlikely that further appeal attempts to the Appeal Court Civil Division and UK Supreme Court would have had any chance of success.

Professor Crook had mounted five First Tier Tribunal appeals and three Upper Tribunal applications for permission to appeal in striving to achieve recognition of his public interest/watchdog right to information withheld from him by a state information monopoly. In every case the tribunals insisted they were determined by Act of Parliament (creatures of FOIA) and the King's Bench Division Administrative Court was not prepared to accommodate any judicial review seeking declaration of incompatibility with Article 10 rights.

Judge's decision at: [foijudicialreviewclaimtotallywithoutlegalmerit11thnov2022.org](https://www.foi-judicial-review-claim-totally-without-legal-merit-11th-nov-2022.org)

For lawyers, journalists, academics and law students interested in finding out more about the background to this case, please see Professor Crook's statement of facts, legal grounds and remedies sought which were submitted in the application for judicial review.

See: [section56statementoffactsangroundsandsection8remediessought](#)

The full core bundle is not in the public domain because it contained some private information and documents covered by privacy/confidentiality issues. Relevant Upper Tribunal rulings and links to FTT rulings are provided below.

Please also find the three rulings by Upper Tribunal (Information Rights) Judges refusing permission to appeal against First Tier Tribunal rulings on appeals pursued by Professor Crook.

Judge Edward Jacobs Upper Tribunal ruling 20th April 2022 Crook v Met Police & ICO UA-2021-000143-GIA See: [uppertribunalruling20thapril2022crookvmetpoliceicoua-2021-000143-gia](#)

Judge Rupert Jones Upper Tribunal Ruling Crook v ICO 13th September 2021 GIA 446 & 447/2021 See: [crookvicojudgejonesruling13thseptember2021gla4464472021](#)

Judge Stewart Wright Upper Tribunal Ruling 22nd July 2021 GIA/2103/2019 & GIA/753/2020 See: [crookvhomeofficejudgestewartwightruling22ndjuly2021gla210320197giai7532020](#)

Prof Tim Crook v IC & Metropolitan Police (Dismissed) | Judgment | 3 Aug 2021 — 1 IN THE FIRST-TIER TRIBUNAL EA/2019/0014. (INFORMATION RIGHTS) In the matter of an appeal under section 57 of the Freedom of Information Act [2021] UKFTT 2019 0014 (GRC)

<https://www.casemine.com/judgement/uk/610924b92c94e0239c457ee6>

[Ruling by Judge Peter Lane and FTT \(Information Rights\) Crook v ICO & FCO EA/2015/0224 decision date 19 April 2016](#)

Freedom of Information Act 2000	Tim Crook v IC Additional Party Foreign and Commonwealth Office EA/2015/0224	28/06/2016 Dismissed
Decisions from 1 April 2019	Prof Tim Crook v IC Additional Party EA/2019/0282	27/02/2020 Dismissed
Decisions from 1 April 2019	Prof Tim Crook v IC Additional Party Home Office EA/2019/0073	24/07/2019 Dismissed
Decisions from 1 April 2019	Prof Tim Crook v IC Additional Party The Commissioner of Police for The Metropolis EA/2019/0014	03/08/2021 Dismissed

Ruling by Judge Moira MacMillan First Tier Tribunal Prof Tim Crook v ICO 18 January 2021 QJ/2020/0013 & 0014 See: [judgemoiramacmillanfirsttiertribunal18jan2021qj202000130014](https://www.justice.gov.uk/courts/appellate/first-tier-tribunal/judgments/judgemoiramacmillanfirsttiertribunal18jan2021qj202000130014)

Commentary:-

Professor Crook's multiple actions through the FOIA system were made in good faith in order to simply ask an independent judicial body to adjudicate on a request to access historical files relating to public watchdog and public interest academic history and journalism projects.

There would have been no risk to national security as this could have been done in closed session in respect of closed files. Partial release of information with redactions is now standard and an effective method of guaranteeing as much disclosure as possible in respect of people deceased long ago and events long in the past.

The information sought is held by security bodies listed as exempt in FOIA and the Special Branch of the Metropolitan Police which is not, though it does enjoy the absolute exemption shield because historically Special Branch and its successor organisation, Counter Terrorism Command, works closely with the Security Service MI5.

The FOIA system and High Court have denied him the right to have that independent judicial adjudication, despite the fact the ECtHR Grand Chamber in Magyar 2016 clearly stated he had that right and its denial amounts to a breach of Article 10 Freedom of Expression and Information rights.

His requests were in the context of the Met Police and Security Bodies, such as MI5 exercising their own information monopoly over the release of historical files to the National Archives, which currently amounts to nearly 6,000 such files at the time of writing.

As will be seen in the arguments and grounds presented to the Tribunals and High Court, some information relevant to the Goldsmiths History project has been released to the Public Inquiry into Undercover Policing and a FOI request to the Met Police by an author on a book about policing left-wing intellectuals, but absolutely nothing has been offered and made available by way of remedy in respect of his requests.

The case would have been a reasonable opportunity of providing clarification over whether seeking state information in the context of Article 10 and English Common Law freedom of information rights in the face of FOIA absolute exemptions should be adjudicated by the FOI Tribunal system or judicial review at the High Court, and if judicial review is the only course whether it should operate similarly to FOI Tribunal appeals with each side bearing its own costs.

Professor Crook began the Met Police Special Branch appeal over access to historical files concerning Goldsmiths' College, University of London staff and students in early 2018, well before the Upper Tribunal ruling in Moss in July 2020. He and the ICO asked for the case to be joined to Moss so that the position of Article 10 standing rights raised by Magyar for journalists, historical researchers and public watchdog NGOs could be properly represented

before Judge Stewart Wright. But this request was rejected by the Presidents of the Upper Tribunal and First Tier Tribunal (Information Rights).

Having said all this, an FOI applicant seeking to crack open the absolute exemptions in FOIA should have an arguable case via Section 78 of the legislation at judicial review in the High Court and can rely on the English Common Law powers of freedom of expression so strongly identified by the majority of UK Supreme Court in *Kennedy v Charity Commissioners* in 2014, and indeed European Convention of Human Rights freedom of expression powers in Article 10 so precisely identified in *Magyar Helsinki v Hungary* at the ECtHR Grand Chamber in 2016 as residing in journalists, academic researchers and NGOs pursuing public watchdog/public interest research and investigation projects. The area needs an applicant with a very good and worthy cause, enough financial resources, and a qualitative team of media law counsel ready to do battle against government, public authorities and perhaps even the Information Commissioner. It also goes without saying that FOI law in the UK needs urgent legislative reform. If the UK domestic courts are not prepared to observe the rule of law in the ECtHR *Magyar* ruling,

Parliament should ensure the UK fulfils its treaty obligations as a member of the Council of Europe with adherence to the European Convention on Human Rights.

A number of professional historians are voicing their anger at the failures of FOI and abuse by government bodies and, indeed, the Royal Family of their monopoly control over historical archives and information.

Dr. Andrew Lownie has had published articles describing his frustrations and experiences and on 21st June 2023 wrote for the Daily Mail/Mail Online 'The government must release secret files on the Royal Family. Hiding the truth means we are no better than a Banana Republic..' See: <https://www.dailymail.co.uk/news/article-12213771/Open-secret-royal-files-no-better-banana-republic.html>

On May 17th 2023 he wrote for the Mail Online: 'From Wallis Simpson's affair with a car salesman to the FBI's Mountbatten probe, our Royal Family and the government are colluding to destroy Royal records and falsify the past. Why do we let them?' See: <https://www.dailymail.co.uk/news/article-12090125/ANDREW-LOWNIE-allow-Windsors-government-censor-royal-history.html>

What appears to be happening is that in the UK and USA previously released and accessible files under FOI laws in both countries are suddenly being withheld or disappearing in the manner of George Orwell's main character Winston Smith in his dystopian novel *Nineteen Eighty Four* destroying files and articles previously published in *The Times* by dumping them down the blast furnace memory hole.

It could be argued that this continuing and outrageous abuse of the information and historical archives monopoly by UK state bodies is a disgrace to democracy.

It has become an absurd manifestation of what was previously regarded as unthinkable and unconscionable in fiction. How extraordinary that it has now become standard in real life practice.

-O-

Successful First Tier Tribunal FOI appeal by investigative journalist Gareth Davies and the Bureau of Investigative Journalism seeking financial documents and information from Thurrock Council 17th October 2022.

On 17th October 2022 The First Tier Tribunal partly ruled in favour of Gareth Davies in respect of the public interest balancing act in the qualified exemptions of FOIA under sections 36 or 43.

[Gareth Davies v Information Commissioner](#)

Additional Party Thurrock Council

14/10/2022

EA/2020/0241

[davies-gareth-ea.2020.0241-and-ea.2020.0242-part-allowedDownload](#)

Determination of the disclosure request turned on whether, “in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.”

The majority view of the Tribunal set out in the ruling of Judge Anthony Snelson included the observation on the council’s wish to withhold some of the information sought:

‘We cannot avoid the sense that it stems in material part from a wish to avoid the embarrassment which public scrutiny of its remarkable financial activities would be likely to involve. The exemptions from the right to freedom of information must not be invoked as a means of sparing public bodies and their employees discomfort of this sort.’

Hold The Front Page reported 21st October 2022: [‘Journalist hopes three-year secrecy fight win will be landmark for local press.’](#)

Mr Davies said: ‘The information we requested in 2019 will provide vital insight into disastrous investments which threaten to cost taxpayers hundreds of millions of pounds and to cripple a council that provides vital services to local people. It should never have taken three years to reach this point.’

To understand the journalistic context of this FOI appeal see Bureau of Investigative Journalism’s [‘Thurrock council reveals £500m black hole caused by ruinous business deals.’](#) And: [‘Thurrock council ordered to disclose details of ‘dodgy deals’ worth £1bn.’](#)

-O-

Some 2022 First Tier Tribunal Hearings seeking to challenge the BBC's use of exemptions in the Freedom of Information Act 2000

The [2012 UK Supreme Court Act ruling in Sugar v BBC set the ambit of the BBC's exemption to FOI requests for information.](#)

The Court had to decide whether the Balen Report about the BBC's coverage of Israeli and Palestinian conflict was held for purposes *other than those of journalism*.

The claimant, London solicitor Stephen Sugar, had died by the time the Court ruled. In a Herculean battle with the BBC he had represented the majority feeling in the UK's Jewish population that the BBC was and still is biased in its reporting.

The FOI litigation had previously reached the previous apex of the legal system in 2009 when the Judicial Committee of the House of Lords ruled that for the purposes of FOIA, the BBC was a public authority.

The current politics, as reported by *The Jewish Chronicle*, is the BBC has conceded [it does have impartiality issues in reporting the Israeli and Palestinian conflict](#) and, indeed, issues of antisemitic coverage by the BBC [are to be the subject of the Parliamentary inquiry](#). The BBC was even [ranked third in the Simon Wiesenthal Center's "Global Antisemitism Top Ten List"](#) for 2021.

As recently as January 5th 2023, Jan Shure has been arguing in the Jewish Chronicle ['Why the BBC must finally publish Balen report' and 'It's unacceptable that the Beeb still refuses to release its own document on anti-Israel bias.'](#)

It seems something of a moot historical position for the BBC to continue keeping the Balen report under wraps, but the Corporation had spent hundreds of thousands of pounds in legal costs maintaining the cordon sanitaire FOIA provides under the derogation in Part IV of Schedule 1 FOIA, which provides that information held by the BBC is not disclosable pursuant to the FOIA if it is held for the 'purposes of journalism, art or literature.'

The BBC's tenacious defence in the Sugar case has also had the knock-on effect of blocking any reading down of the ECtHR Grand Chamber ruling in Magyar Helsinki v Hungary 2016 which provides for a qualified standing right to state information under Article 10 Freedom of Expression for journalists, academic researchers and NGOs with laudable public interest and social watchdog imperatives.

If anyone wants to use Human Rights to challenge absolute and qualified exemptions their only recourse is Judicial Review via Section 78 of FOIA (which states 'Nothing in this Act is to be taken to limit the powers of a public authority to disclose information held by it.'). This remedy is rather inhibiting for many journalists and academic researchers of limited means because of the very long pockets of public authorities who have a tradition of fighting tooth and nail to prevent disclosure of information they want to conceal.

Once FOI cases get into the High Court arena and above defeat means paying the other side's costs.

The Information Commissioner is supposed to be an impartial regulator of freedom of information rights but has done nothing politically or legally to bring home the potential benefits of the Magyar ruling to the existing FOI regime.

At the end of 2022, the First Tier Tribunal turned down two attempts to obtain information from the BBC because of the purposes of journalism, art or literature exemption.

In [David Keighley v ICO & BBC](#), the requester sought information about the adjudication of editorial guidelines on impartiality, copies of complaints, and the recruitment to a post that was then occupied by Professor Richard Sambrook.

In particular, Mr Keighley was investigating 'complaints about impartiality with regard to handling of the recent controversy involving Dominic Cummings and his trips by vehicle to Durham and Barnard Castle under lockdown, including but not limited to any comments by Emily Maitlis.'



NCN: [2022] UKFTT 00480 (GRC)

Appeal Number: EA/2021/0290

First-Tier Tribunal
(General Regulatory Chamber)
Information Rights

Between:

David Keighley

Appellant:

and

The Information Commissioner

First Respondent:

and

British Broadcasting Corporation

Second Respondent:

Date and type of Hearing: 6 May, 23 & 24 November and 14 December 2022.

Essentially the FTT ruling upheld the application of the absolute exemption block that the information is held for the purposes of '*journalism, art or literature*' and does not fall inside the FOIA.

The Tribunal's ruling by Judge Brian Kennedy QC stated:

‘...this Tribunal is satisfied on the evidence before us that the closed material provided by the BBC is directly linked to the BBC’s journalistic output and is held by the BBC for the purposes of journalism.’

And:-

‘...this Tribunal is satisfied on the evidence before us that the closed material provided by the BBC in respect of complaints made to the BBC and its handling of such complaints is sufficiently linked to journalistic output and is held by the BBC for the purposes of journalism.’

In [Bonnington v ICO](#), the FTT sustained the BBC’s exemption in an FOI application by one of the BBC’s highly distinguished former media lawyers- Alistair Bonnington.



First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Appeal Reference: EA/2022/0175
Neutral Citation number: [2022] UKFTT 00460 (GRC)

Decided following a ‘remote’ hearing by CVP held on 15 November 2022

Before

JUDGE ANTHONY SNELSON
MS SUZANNE COSGRAVE
MS KATE GRIMLEY EVANS

Between

MR ALISTAIR BONNINGTON

Appellant

and

THE INFORMATION COMMISSIONER

Respondent

Mr Bonnington had sought the following information:

1) How many contacts by email or other electronic message sending system, phone call, letter or other method of communication were made by the following to BBC Scotland News on the subject of BBC Scotland’s News output:

a) the SNP

b) ministers of the Scottish Government or civil servants of the Scottish Government

c) Special Advisors (SPADs) on behalf of the Scottish Government.

The information sought must include contacts by agents or any other intermediaries acting on behalf of the said groups mentioned in (a), (b) and (c)?

2) Further, what percentage of these contacts (1) urged a change in the BBC Scotland’s existing news output or (2) urged that certain information being supplied to the BBC in the contact should become a news story which BBC Scotland included in its output?

The Tribunal upheld the BBC's position that 'If held, the information you requested is held for the purposes of 'art, journalism or literature'. The [Freedom of Information] Act provides that the BBC is not obliged to disclose this type of information.'

It could be argued that these two cases signify that there are many requests for information made about how the BBC goes about its journalism and self-regulation that in ordinary terms are arguably in the public interest but are shielded by an exemption which gives them a monopoly of information control and non-disclosure.

On the other hand it can also be argued that news and journalism publishers which are not public authorities under FOIA enjoy a similar statutory exemption in respect of Data Protection and because they are private bodies are outside the reach of freedom of information legislation.

Why should they have these privileges and the BBC not- which would be the BBC's position without the Part IV of Schedule 1 FOIA exemption?

Mr Bonnington's submissions, no doubt because of his experience and stature as BBC Scotland's former media lawyer, are worthy of quotation. He put up a very good fight:

- (1) FOIA enacts a presumption in favour of freedom of information. It is for the Commissioner to show that the derogation applies, not the other way around.
- (2) The Commissioner wrongly conflated the two parts of the request.
- (3) The first part was simply a request for a number.
- (4) The Commissioner erred in ignoring the nature and quality of the information sought.
- (5) The information sought had not been "gathered" by the BBC (for journalistic or any other purposes). It had just been forced on it from outside sources.
- (6) The information sought could not have been seen as "newsworthy" at the time of the request and the BBC cannot have held it with a view to reporting it publicly.
- (7) The derogation should not be held to apply given that the BBC routinely publishes complaints about its services, including allegations of breaches of its duty of political impartiality.
- (8) The derogation is inapplicable because the BBC did not hold it with the immediate object of using it for journalistic purposes (Sugar, para 67 (Lord Phillips)); alternatively there was not the necessary proximity between the subject matter of the request and the BBC's journalistic activities and end product (Sugar, para 83 (Lord Walker)).

The 12 December promulgated ruling by Judge Anthony Snelson concluded: 'We have stepped back to review the arguments in the round. Having regard to the purpose of the derogation as explained in Sugar (see para 28 above), we are entirely satisfied that the Commissioner arrived at the correct outcome and we can see no possible ground for reaching a different view.'

Before we step away from the BBC and FOI for the time being, it is worth mentioning that some controversy remains about the [BBC's handling of FOI requests from investigative journalist Andy Webb over the BBC Panorama Diana interview and reporter Martin Bashir scandal.](#)

You may recall Lord Dyson's [highly critical report about the matter commissioned by the BBC itself.](#)

Mr Webb has complained that [there is a disconnection between the BBC's refusal in respect of FOI requests in made in 2007 and then their disclosure two days before the transmission of a documentary he made for Channel 4](#) in 2020. See:

'In July 2020 Andy Webb of Blink Films (the producers of the Channel 4 programme) renewed his 2007 FOIA request.

- The BBC initially relied on the journalistic exemption under Part 4, Schedule 1 FOIA 2000. This exemption had not been claimed in 2007, and it certainly is questionable whether it applied.

- Attached is the letter that the BBC sent to Andy Webb on 19 October 2020, which supplied 67 FOIA documents, while explaining the grounds of their earlier failure to supply the documents in response to his 2007 FOIA request.

The BBC response came two days before the broadcast and, as he has pointed out in the Sunday Times of 8 November 2020, too late for the documents to be included in the film.

- The BBC's explanation for the incorrect answers given in 2007 was that they were based on supposition rather than established fact. They should, they said, have taken steps to ascertain whether the relevant information had been supplied. That, one might think, was after all the purpose of the FOIA.

- The enquiry should examine all the documentation relating to the FOIA requests and ensure that all the documentation relating to the programme is produced.'

In September 2023, Andy Webb proceeded with a First Tier Tribunal (Information Rights) appeal against the BBC's resistance to release email files relating to the Martin Bashir inquiry. The appeal has been vigorously defended by the BBC.

See Mail Online 5th September 2023: "[Documentary maker accuses BBC of 'cover-ups and lies' over Martin Bashir's interview with Princess Diana. The broadcaster is accused of failing to release material relating to the scandal.](#)"

And Mail Online 9th September 2023: '[BBC spends £100,000 of licence-payer's money in bid to keep emails related to Martin Bashir's infamous interview with Princess Diana secret as documentary-maker fights to make thousands of documents public.](#)'

See previous reports:-

[I uncovered the BBC's Diana deceit – it was far worse than The Crown would have us believe. Peter Morgan's drama doesn't begin to explore the crux of the Martin Bashir scandal – the BBC's decision to cover up rather than own up](#)

[BBC to release potentially explosive Martin Bashir emails after losing 18-month FOI battle](#)

[Ofcom- COMPLAINT IN RESPECT OF THE BBC, PANORAMA AND MARTIN BASHIR](#)

Adjudicating Section 14 FOIA- vexatious or merely irritating and inconvenient requests? Jared O'Mara v ICO and South Yorkshire Police

Many professional journalists and news publishers are familiar with public bodies resorting to the Section 14 FOIA qualified exemption to deny requests for information on the grounds that they are vexatious.

And it could be argued that over the years the Information Commissioner has tended to side with the public bodies where there are appeals.

But a ruling of the First Tier Tribunal Information Rights promulgated 19th April 2023 could place a safeguard and useful precedent against this tendency when the request, in whatever context, is clearly reasonable.

See: [O'Mara v Information Commissioner \[2023\] UKFTT 381 \(GRC\) \(19 April 2023\)](#)

Direct link <https://www.bailii.org/cgibin/format.cgi?doc=/uk/cases/UKFTT/GRC/2023/381.html>



NCN: [2023] UKFTT 00381 (GRC)

First-tier Tribunal
(General Regulatory Chamber)
Information Rights

Case Reference: EA/2022/0091

Heard by CVP
Heard on: 6 December 2022
Decision given on: 19 April 2023

Before

JUDGE NEVILLE
MS R EDWARDS
MS J MURPHY

Between

MR JARED O'MARA

and

(1) THE INFORMATION COMMISSIONER
(2) SOUTH YORKSHIRE POLICE

Appellant

Respondents

Representation:

For the Appellant:	Mr O'Mara in person
For the First Respondent:	Written representations only
For the Second Respondent:	Mr Ketteringham, solicitor

Introduction and Decision Notice at the heart of the case paragraphs 1 to 3:

'Introduction

1. On 31 March 2021, Mr O'Mara made the following request for information to South Yorkshire Police ("SYP"):

I would like to place a Freedom of Information Request for all information you hold on the Police and Crime Act 2017 in relation to charging referrals made by the police after a

suspect's relevant bail period has expired and where the suspect then accordingly defaults to Release Under Investigation by way of police decision.

Please do not process any of my personal data in relation to this request.

Please also do not designate my request as being Vexatious as this information holds huge value to the general public".

2. Having had no reply, on 4 May 2021 Mr O'Mara complained to the Commissioner. After some delay concerned with the correct provision of documents, on 8 June 2021 the Commissioner contacted SYP requiring that a response be given to Mr O'Mara within 10 working days. SYP then took until 2 July 2021 to issue its response, which was that it refused to comply with the request because it considered it to be vexatious. There then followed a significant exchange of correspondence between the three parties until, on 24 March 2022, the Commissioner issued a Decision Notice ([2022] UKICO ic-104057) concluding that SYP had indeed been entitled to refuse the request on that basis.

The Decision Notice

3. The Commissioner agreed with SYP that the request was vexatious. SYP's initial response to the Commissioner following Mr O'Mara's complaint was sent by its Data Protection Officer, Ms Amanda Winder. The factors relied upon in her letter can be summarised as follows:
 - a. This was Mr O'Mara's "51st request received into [SYP's FOI] department, his 27th FOI request";
 - b. Overlapping requests for the same or similar information would often be received before SYP had a chance to respond to earlier requests – a table was provided setting them out;
 - c. He had previously complained to the Commissioner about other vexatious requests, which SYP had reopened "out of goodwill";
 - d. He had made unfounded accusations about SYP and others, for example accusing Ms Winder as Data Protection Officer of "acting in a criminal, fraudulent and corrupt manner" which was unfounded and upsetting;
 - e. SYP believed that Mr O'Mara acted out of a deliberate intention to cause disruption and annoyance to that organisation;
 - f. The present request was similar to four other specified requests.'

Conclusion on Vexatiousness at paragraphs 56 to 58:

Conclusion on vexatiousness

56. We take a broad and holistic view, taking into account all the circumstances set out above without repeating them, to find that SYP were not entitled to treat the request as vexatious, and therefore as exempt from the duty at s.1 of FOIA. Without doubt, Mr O'Mara's requests in early to mid-2020 looked likely to become disproportionately burdensome to SYP. There would have been justifiable concerns about his motive and the value of the information he sought.
57. Yet in subsequent requests, Mr O'Mara changed his ways. While public authorities, the Commissioner and the Tribunal more commonly encounter a relentlessly deteriorating pattern of requests, here the opposite had occurred. It is unfortunate that this was not recognised by SYP; the present request followed a positive trend, having all the characteristics one might wish: easily complied with; politely and respectfully

worded; on a new topic with an identifiable public interest; and coming some six months after any previous request. Parliament did not intend s.14 to operate as a permanent bar against making requests. If there was ever a point at which SYP was entitled to treat Mr O'Mara's requests as vexatious, then it had long passed by 31 March 2021. There was no basis to consider that the burden of complying with the request was disproportionate to the motive and its value, given the high threshold of vexatiousness. We disagree with SYP's characterisation of the situation, summarised at paragraphs 3 to 8 above.

58. We therefore allow the appeal on the basis that, on the facts as we have found them to have been, the Commissioner was wrong in law to find that the request was dealt with in accordance with the provisions of FOIA. The appropriate decision is for the request to be re-considered without applying s.14(1).'

Eloise Spensley of the Jaffa Law Column for Hold The Front Page provided cogent and instructive analysis of this case 2nd May 2023 under the headline: 'Why journalists should chase public bodies which miss FOI deadlines.'

See: <https://www.holdthefrontpage.co.uk/2023/news/law-column-why-journalists-should-chase-public-bodies-which-miss-foi-deadlines/>

Eloise Spensley observed: 'The Tribunal found that the request in question possessed all the characteristics that one might wish of a reasonable submission and therefore found the characterisation of the request as vexatious to be unreasonable.'

The media lawyer added: 'The Tribunal reserved harsh criticism for the Police, stating that they had not found any evidence of a "wider pattern" of behaviour that suggested Mr O'Mara had behaved unreasonably, noting that chasing a response following the passage of a deadline could hardly be classed as harassing.'

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BBC successfully appeals against Freedom of Information request sought by another journalism publisher July 17th 2023

The BBC won a First Tier Tribunal appeal against the UK's journalism trade online magazine *Press Gazette* which sought to find out the cost of commissioning a value-for-money report. The study, conducted by MTM, found UK households "underestimated" the value of the licence fee.

On 3rd May 2022 Press Gazette sent an FOI request asking the BBC to reveal the total cost of producing this report. The BBC declined to release the information, citing section 43(2) of the FOI Act that protects "commercial interests" and upheld this decision after Press Gazette asked for an internal review.

In an appeal to The Information Commissioner's Office, Press Gazette won their argument and ICO ordered the BBC to release the figure. The commissioner said the BBC had failed to demonstrate how the release of the information would damage its commercial interests.

But the BBC appealed to the First Tier Tribunal (Information Rights) arguing its commercial interests would be harmed because it could affect future negotiations with other market research agencies and disclosure would also 'be likely to harm the commercial interests of MTM.'

The Tribunal ruled Press Gazette's public interest did not outweigh the BBC's commercial interests.

This is yet another example of the BBC as a corporate journalism publisher with imperatives to promote freedom of expression in the public interest successfully defending itself against individuals and journalism publishers seeking information in the public interest and wishing to uphold freedom of expression.

It could be argued there were two double ironies operating here: Press Gazette investigating the value for money of a value for money report, and a journalism publisher for the UK's journalism industry asking the UK's biggest employer and publisher of journalism to release information in the public interest.

See: [FTT Appeal Number: EA/2022/0376 BBC v ICO & William Turvill.](#)

Press Gazette 17th July 2023: 'BBC wins legal fight to stop Press Gazette revealing cost of value-for-money report. The study, conducted by MTM, found UK households "underestimated" the value of the licence fee.' See:

https://pressgazette.co.uk/media_law/bbc-freedom-of-information-victory/

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UK Media Law Pocketbook 2nd Edition Chapter 10 'Freedom of Information', pages 225 to 251.

Resources for the chapter online at:

<https://ukmedialawpocketbook.com/2021/12/11/freedom-of-information/>

McNae's Essential Law for Journalists 26th Edition (2022) has an online chapter on 'The Freedom of Information Act 2000' [Chapter 37 which is referenced at page 519.](#)

McNae's Essential Law for Journalists 25th Edition has a full chapter 30 on Freedom of Information pages 401- 409. It is also useful consulting Chapter 31 on 'Other information rights and access to meetings' pages 410-419.

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Media Law and Artificial Intelligence: the implications of ChatGPT, Bard and other systems of replicating human communications production robotically 2023

Artificial intelligence has been used in journalism and many other forms of professional work for many years. The spelling and grammar checking software in word processing programmes is a form of AI. So are data processing online platforms such as Google and Bing.

Data Journalism software which ‘scrapes’ data online to create visual representations of data and information is also AI as are the programmes which vocalise text- some of which provide sound presentation that can sometimes and rather eerily appear as though this has been performed by a professional broadcast journalist or actor. AI programmes can absorb prior recordings of an individual’s voice and be used by a fraudster to imitate convincingly the voice of this individual in sound only communications.

Siri provided by Apple and Alexa provided by Amazon are examples of the rapidly developing forms of AI which are becoming close to providing representation of human robots which used to be the stuff of Science Fiction.

ChatGPT stands for ‘Chat Generative Pre-trained Transformer’ and is a large language model-based chatbot developed by OpenAI and Microsoft which was first launched 30th November 2022.

Bard is a conversational AI tool by Google powered by its ‘Language Model for Dialogue Applications’ (or LaMDA for short). See the article by Google’s CEO Sundar Pichai: ‘An important next step on our AI journey.’

See: <https://blog.google/technology/ai/bard-google-ai-search-updates/>

ChatGPT’s engagement with journalism and digital intelligence and programmes like it raise a range of legal and ethical issues. As already reported on this companion website page, IMPRESS is the first UK journalism regulator to recognise professional ethical obligations in the use of AI.

In April 2023, the first reported dismissal of a journalism editor for using ChatGPT to construct a fake interview with seven-times F1 world champion Michael Schumacher emerged from Germany. *Die Aktuelle* had published a mock interview. Mr Schumacher’s family said they were considering taking legal action against the magazine which is owned by Funke media group.

The managing director of the group Bianca Pohlman apologised and said: ‘This tasteless and misleading article should never have appeared. It in no way meets the standards of journalism that we and our readers expect from a publisher like Funke. As a result of the publication of this article, immediate personnel consequences will be drawn. Die Aktuelle editor-in-chief Anne Hoffmann, who has held journalistic responsibility for the paper since 2009, will be relieved of her duties as of today.’

See: Observer and Reuters ‘Magazine editor sacked over AI-generated Schumacher interview’ at: <https://www.theguardian.com/sport/2023/apr/22/michael-schumacher-formula-one-interview-die-aktuelle-editor-sacked> and Mail Online: ‘The editor of German magazine Die Aktuelle has reportedly been fired,’ at: <https://www.dailymail.co.uk/sport/formulaone/article-12002195/Editor-Die-Aktuelle-fired-producing-fake-interview-Michael-Schumacher.html>

AI and copyright/intellectual property law is already being addressed, largely because sophisticated forms of AI such as ChatGPT depends on sourcing information. If the information

has IP rights issues then image rendering and/or textual production using source materials beyond fair dealing/fair use discretion could lead to litigation.

For example, Getty Images is suing the creators of AI art tool Stable Diffusion for scraping its content. (See: <https://www.theverge.com/2023/1/17/23558516/ai-art-copyright-stable-diffusion-getty-images-lawsuit>) *Sui generis* and copyright database laws protect the intellectual property of subscription protected and open source database providers. This is still active and fully applying in the UK. Copyright database and *Sui generis* database laws are summarized by the government at <https://www.gov.uk/guidance/sui-generis-database-rights#sui-generis-database-rights-in-the-uk>

In addition, contractual law where users have to agree terms and conditions provides further protection.

In July 2023 it was reported that the UK's Associated Newspapers was taking legal against Google over the use of its intellectual property in Bard. See: 'Google Bard copyright: Daily Mail to challenge browser's use of 1000s of its articles to train AI chatbot. The Daily Mail prepares to take on Google in an artificial intelligence copyright fight in the latest move against AI giants' at: <https://www.nationalworld.com/lifestyle/tech/google-bard-copyright-daily-mail-challenge-browsers-1000s-articles-train-ai-chatbot-4220038>

Robotic systems of human style production, like animals, do not have legal personality in law. The legal responsibility and liability in litigation, as well as criminal law *actus reus* and *mens rea* lies with individuals, government bodies or private corporate bodies who/which use the AI for communications and publication.

Consequently, where AI generates inaccuracy, libel, contempt of court, breach of privacy, and breach of professional ethics codes, the legal trail in prosecution and litigation will be to the person or persons who deployed and used it.

There could be an interesting test case in the courts where an individual created a publication and an outside and intervening form of AI changed the content without permission to create a risk of media law infraction. This set of circumstances would need evidential forensic analysis and explanation. The issues of consent, permission and human agency in the operation and impact of the AI programmes/systems would have to be legally explored.

Test cases are emerging. Allegations are being pursued that ChatGPT is fashioning defamatory online conduct and actually faking articles which were never written. A libel action is being prepared in Australia. Arab News and Reuters reported: 'Australian mayor readies world's first defamation lawsuit over ChatGPT content.'

See: <https://www.arabnews.com/node/2281861/media> Chris Moran has written for the Guardian that: 'ChatGPT is making up fake Guardian articles. Here's how we're responding.' See: <https://www.theguardian.com/commentisfree/2023/apr/06/ai-chatgpt-guardian-technology-risks-fake-article>. At the same time the Mail Online has been reporting 'ChatGPT falsely accuses a law professor of a sex attack against students during a trip to Alaska that

never happened – in shocking case that raises concerns about AI defaming people.’ See: <https://www.dailymail.co.uk/sciencetech/article-11948855/ChatGPT-falsely-accuses-law-professor-SEX-ATTACK-against-students.html>

It seems not a day goes by without there being news of litigation in copyright and intellectual property rights over AI’s use of content obtained from online publication. On September 21st 2023, the Guardian and Associated Press reported that George RR Martin and John Grisham were among a group of 17 authors suing OpenAI over breach of copyright in the US federal court system. They allege ‘systematic theft on a mass scale’- the latest in a wave of legal action by writers concerned that artificial intelligence programs are using their copyrighted works without permission. See: <https://www.theguardian.com/books/2023/sep/20/authors-lawsuit-openai-george-rr-martin-john-grisham>

The Guardian reported September 20th 2023 that Stephen Fry was shocked by AI cloning of his voice in documentary. He said ‘It could have me read porn.’ He was warning about the dangers of artificial intelligence after discovering a version of his voice based on Harry Potter audiobooks. See: <https://www.theguardian.com/technology/2023/sep/20/it-could-have-me-read-porn-stephen-fry-shocked-by-ai-cloning-of-his-voice-in-documentary>

His speech at an Artificial Intelligence conference coincided with the announcement by Amazon that it had decided to restrict authors from self-publishing more than three books on their Kindle platform per day after AI concerns. The three-book limit announcement comes a week after Amazon introduced the requirement for authors to inform the company when their content is AI-generated and added a new section to their guidelines featuring definitions of ‘AI-generated’ and ‘AI-assisted’ content.

See: <https://www.theguardian.com/books/2023/sep/20/amazon-restricts-authors-from-self-publishing-more-than-three-books-a-day-after-ai-concerns>

The company announced the new limitations after an influx of suspected AI-generated material was listed for sale but said that ‘very few’ publishers will be affected

One of the gravest injustices caused by over-reliance on AI in recent times is undoubtedly the Post Office ‘Horizon’ computer scandal. Between 2000 and 2014, the Post Office prosecuted 736 sub-postmasters and sub-postmistresses – an average of one a week – based on information from a recently installed computer system called Horizon.

A court would later rule that the system contained ‘bugs, errors and defects, and that there was a ‘material risk that shortfalls in branch accounts were caused by the system. The consequences were appalling and tragic. Hundreds of people had been wrongly prosecuted and convicted for fraud/theft crimes they had not committed, but were the fault of the artificial intelligence generated by the Horizon programme.

The use of digital algorithms that set a template decision making process for much more complex circumstances than the task imagined and designed for can result in discrimination and injustice. Pierluigi Bizzinie explains such a case which ‘blew up Italy’s school system.’ It

was supposed to save time by allocating teachers on short-term contracts to schools automatically. Failures in the code and in the design severely disrupted teachers' lives. See: <https://algorithmwatch.org/en/algorithm-school-system-italy/> Mainstream news publishers have frequently complained that Google and other 'search engines' and digital platforms can disadvantage their present and referral rate. The simple issue here is that digital information technology and artificial intelligence is constructed by codification that is different to the language appearing before you in terms of reading written text.

By way of example, if you are using a Macbook, ctrl right click and then click on 'inspect' and the representation of hidden html code will be apparent. Without computer code education and training, how are you to know what it means and how it works along with all the icons and layouts used?

It is the hidden language behind or 'inside the screen' as it were. Consequently, the very concept of 'media literacy' has changed into something which is much more complicated and technical in the 21st century. The maxim 'knowledge is power' has an enhanced significance in this context.

Should AI generate accurate and reliable journalistic communications which do not breach primary and secondary media law, the question of whether AI as authorship should be transparent to the audience is a matter of ethics and is now being debated.

The issue of plagiarism in all forms of education is certainly being debated and investigated. Should universities and schools abandon digital online assessment and submission and revert wholly to the old-fashioned method of unseen invigilated examination restricted to pen and paper and quarantined from all mechanical/machine aids? Universities use artificial intelligence to check for plagiarism. An example is the Turnitin programme.

Plagiarism in journalistic professional work is already an issue for commissioning editors and their receipt and payment for freelance work. Can they be sure features and articles they are buying are original and authentic to the contributors? Does it actually matter if AI such as ChatGPT is a significant part of, or most of the source of the work?

The quality of voice activation programmes is such that a single journalist working in a radio station could use one to provide an alternative reporter's voice for a report of a court case in a news bulletin. But how should the report be cued and what would be the impact on listener's trust if it was not possible to tell the difference between an AI report and actual radio journalist's voiced report? More ethical issues arise if high quality digital production techniques are deployed to pretend that a report has been originated on location.

AI image enhancement software can transform an image into something which is not seen by the naked eye. This is certainly true of images shown in online news sites and television news of the Aurora Borealis or Northern Lights. A news story might say why go to Reykjavik when you can see it in Ramsbottom or Biggleswade? But isn't there an obligation to explain that the photograph has been filtered and enhanced.

The potential for AI digital photography to create and masquerade analogue authenticity has been recently tested by photographer and German artist Boris Eldagsen who admitted that a prize-winning image to the Sony world photography awards was AI-generated. He refused the prestigious award after admitting to being a “cheeky monkey” in order to provoke debate. See: <https://www.theguardian.com/technology/2023/apr/17/photographer-admits-prize-winning-image-was-ai-generated> and “AI isn’t a threat’ – Boris Eldagsen, whose fake photo duped the Sony judges, hits back’ at: <https://www.theguardian.com/artanddesign/2023/apr/18/ai-threat-boris-eldagsen-fake-photo-duped-sony-judges-hits-back>

We are now very much aware of social media programmes which can improve physical appearances, remove wrinkles and look younger. The notorious online deception practice of catfishing is often perpetrated through voice distortion and transformation and visual masking. The immoral and unlawful utilisation of such digital intelligence devices raise questions about integrity, trust, honesty and notions of originality and authenticity.

The use of such technology does engage criminal and civil legal liability and while the prospect of such developments may cause apprehension about the extent to which honest people could be tricked and deceived, digital technology does leave a fingerprint evidentially and should in theory make investigation, prosecution and conviction easier.

General ChatGPT systems reliant on global data mining cannot be trusted to overcome and apply the varying IP laws across national legal jurisdictional boundaries where copyright duration varies widely, and information can be legally private and covered by reporting restrictions in the UK and European countries but not so in the USA. However, AI can be specifically tailored in journalistic production by the selection of specific sources and pre-moderation and checking for accuracy.

And, of course, there is nothing to prevent the development of an AI Comparative Media Law Bot that substantially replaces the function and employment of media lawyers. Angus McBride, News UK’s General Counsel, has argued in *The Times* ‘News conjured by rogue algorithms must be avoided.’ This is because the AI chatbot depends on scraping content from online sources to generate and inform its intelligence.

Mr McBride thinks the new regulator, the Digital Markets Unit, should urgently grapple with the issue of AI-written news. (See: <https://www.thetimes.co.uk/article/news-conjured-by-rogue-algorithms-must-be-avoided-hp7fhlptn>)

Donna Lu’s informative article in the Guardian sets out ‘Misinformation, mistakes and the Pope in a puffer: what rapidly evolving AI can – and can’t – do.’ See: <https://www.theguardian.com/technology/2023/apr/01/misinformation-mistakes-and-the-pope-in-a-puffer-what-rapidly-evolving-ai-can-and-cant-do>

In August 2023 the BBC news and current affairs programme Panorama devoted an edition to the issue of AI and its impact on human society. See: ‘Beyond Human: Artificial Intelligence and Us.’

“Machines are getting smarter. Much smarter. Now they are becoming so powerful, they could pose an existential threat to the human race. That’s the warning from some of the greatest minds behind the development of artificial intelligence.

For Panorama, reporter Lara Lewington speaks to some of the so-called ‘godfathers’ of AI about their hopes and fears, and she meets researchers developing technology that allows computers to read our emotions and even our minds.”

See: <https://www.bbc.co.uk/iplayer/episode/m001ph7q/panorama-beyond-human-artificial-intelligence-and-us>

The London School of Economics hosts JournalismAI. See: <https://www.lse.ac.uk/media-and-communications/polis/JournalismAI>

‘JournalismAI is a global initiative that empowers news organisations to use artificial intelligence responsibly. We support innovation and capacity-building in news organisations to make the potential of AI more accessible and to counter inequalities in the global news media around AI. JournalismAI is a project of Polis – the LSE’s journalism think-tank – and is supported by the Google News Initiative.’

In September 2023 The LSE research group published its second JournalismAI global survey which consulted more than 120 editors, journalists, technologies and mediamakers from 105 small and large newsrooms across 46 countries. They share their learnings on the use of AI and genAI and the report addresses the quality and sustainability of journalism in this context.

To download the report use the adjoining link: [Generating Change 2023.](#)



Professor Charlie Beckett said: ‘...our survey shows it is also already changing journalism. It brings exciting opportunities for efficiency and even creativity. As one respondent told us, “Freeing up time for journalists to continue doing their job is the greatest impact achieved.” But it also brings specific and general hazards. The good news from our respondents, at least, is that they are aware of the opportunities and risks and are beginning to address them.’

The survey revealed news publishers expect AI to influence four main areas:

- 1 Fact-checking and disinformation analysis;
- 2 Content personalisation and automation;
- 3 Text summarisation and generation;
- 4 Using chatbots to conduct preliminary interviews and gauge public sentiment on issues.

And 'More than 60% of respondents are concerned about the ethical implications of AI integration for editorial quality and other aspects of journalism. Journalists are trying to figure out how to integrate AI technologies in their work upholding journalistic values like accuracy, fairness, and transparency.'

LSE's previous and first report published in 2019: 'The JournalismAI Report- New powers, new responsibilities. A global survey of journalism and artificial intelligence.' See: <https://blogs.lse.ac.uk/polis/2019/11/18/new-powers-new-responsibilities/>

Press Gazette covered the 2023 report with the extensive feature 'Survey reveals global newsroom adoption of AI at early stage but set to increase. Three-quarters of respondent newsrooms see the new opportunities from ChatGPT and Bard.' See: <https://pressgazette.co.uk/news/ai-approach-newsrooms-chatgpt-lse-report/>

Hold The Front Page reported: 'Most of news industry concerned about ethics of AI, report reveals.' See: <https://www.holdthefrontpage.co.uk/2023/news/most-of-new-industry-concerned-about-ethics-of-ai-report-reveals/>

The UK government published a white paper: '[AI regulation: a pro-innovation approach](#)' Updated 3 August 2023- This white paper details our plans for implementing a pro-innovation approach to AI regulation.'

The Office of Information Commissioner providing the following response 11th April 2023. See: <https://ico.org.uk/media/about-the-ico/consultation-responses/4024792/ico-response-ai-white-paper-20230304.pdf>

La rédaction de Heidi.news prend position sur l'usage des intelligences artificielles. See: <https://www.heidi.news/cyber/la-redaction-de-heidi-news-prend-position-sur-l-usage-des-intelligences-artificielles>

Persbureau ANP stelt 'leidraad met vangrails' op voor inzet van kunstmatige intelligentie. See: <https://www.villamedia.nl/artikel/persbureau-anp-stelt-leidraad-met-vangrails-op-voor-inzet-van-kunstmatige-intelligentie>

DPA: 'Offen, verantwortungsvoll und transparent – Die Guidelines der dpa für Künstliche Intelligenz.' See: <https://innovation.dpa.com/2023/04/03/kuenstliche-intelligenz-fuenf-guidelines-der-dpa/>

The Google translate artificial intelligence facility online has been used to translate five recommended DPA guidelines into English:

- '1. The dpa uses AI for various purposes and is open to the increased use of AI. AI will help to do our work better and faster – always in the interest of our customers and our products.
2. The dpa only uses AI under human supervision. The final decision about the use of AI-based products is made by a human. We respect human autonomy and the primacy of human choices.
3. dpa only uses legitimate AI that complies with applicable law and statutory provisions and that meets our ethical principles, such as human autonomy, fairness and democratic values.
4. dpa uses AI that is technically robust and secure to minimize the risk of errors and misuse. Where content is generated exclusively by AI, we make this transparent and explainable. A person is always responsible for all content generated with AI.
5. The dpa encourages all employees to be open and curious about the possibilities of AI, to test tools and to make suggestions for use in our workflows. Transparency, openness and documentation are crucial.'

Prior to the freely available use of such AI provided by Google this kind of translation work would have been commissioned from a professional linguist most likely educated to degree and postgraduate level in German and modern languages. The technology here clearly replaces human agency, reduces employment opportunity and effectively standardises a method and style of interpretative translation.

Bayerischer Rundfunk: 'Ethics of Artificial Intelligence'- See: <https://www.br.de/extra/ai-automation-lab-english/ai-ethics100.html>

UK Parliamentary Commons Select Committee for culture, media and sport publishes report on 'Connected tech: AI and creative technology' 30th August 2023.

See: <https://committees.parliament.uk/publications/41145/documents/201678/default/>

Main findings and recommendations

Artificial intelligence

- The Committee is pleased that the Government has been listening to stakeholders on text and data mining intellectual property for commercial benefit and is encouraged that Ministers are looking again at this. Instead of pursuing plans for a broad text and data mining exemption to copyright, the Government should proactively support small AI developers in particular, who may find difficulties in acquiring licences, by reviewing how licensing schemes can be introduced for technical material and how mutually-beneficial arrangements can be struck with rights management organisations and creative industries trade bodies.
- The Government must work to regain the trust of the creative industries following its abortive attempt to introduce a broad text and data mining exemption. The Government should consider how creatives can ensure transparency and, if necessary, recourse and redress if they suspect that AI developers are wrongfully using their works in AI development.

- The Government's initial handing of the text and data mining exemption to copyright for AI development, though eventually correct, shows a clear lack of understanding of the needs of the UK's creative industries. All branches of Government need to better understand the impact of AI, and technology more broadly, on the creative industries and be able to defend their interests consistently.

Creative technology

- The Government should ensure support for the creative industries encourages artists to push the boundaries of creativity and technology and is not limited to following the narrow interests of the tech sector. Cultural institutions should be encouraged and supported by the Government to invest in, present and preserve the results of creative technology.
- The tech sector and creative industries are experiencing long-standing skills and personnel shortages that have capped the potential for growth. The Government's forthcoming Cultural Education Plan should explicitly discuss how educators can combine digital skills provision with creative and cultural education to nurture the next generation of digital artists, visual effects professionals and innovators in creative technology to address long-running skills shortages in the sector.
- The rapid growth of generative artificial intelligence and the impact this is already having on the ability of artists to protect their moral rights means that urgent action is necessary. The Government should improve protections for creatives to prevent misuse of their likeness and performances by emerging technologies such as generative AI. At minimum, this should involve bringing forward ratification of the Beijing Treaty on Audiovisual Performances by the time it responds to this report.

The Committee was anxious to urge that the Government must follow through on its pledge and abandon plans to allow AI developers the free use of existing music, literature and works of art for the purposes of training artificial intelligence to come up with new creations.

See: <https://committees.parliament.uk/committee/378/culture-media-and-sport-committee/news/197222/abandon-artificial-intelligence-copyright-exemption-to-protect-uk-creative-industries-mps-say/>

The Guardian reported that '**MPs criticise UK government's handling of copyright policy related to AI**. A report said a proposed exemption that would allow artificial intelligence developers free use of copyrighted books and music for training demonstrated 'a clear lack of understanding.' See: <https://www.theguardian.com/books/2023/aug/30/mps-criticise-uk-governments-handling-of-copyright-policy-related-to-ai>

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Here are some recent articles exploring and debating Artificial Intelligence media law and ethics issues:

Guardian 1st September 2023: 'The Guardian blocks ChatGPT owner OpenAI from trawling its content. Publisher is latest news organisation to block the artificial intelligence company from harvesting content to create its tools.'

See: <https://www.theguardian.com/technology/2023/sep/01/the-guardian-blocks-chatgpt-owner-openai-from-trawling-its-content>

Guardian 15th September 2023: 'Court of appeal judge praises 'jolly useful' ChatGPT after asking it for legal summary. Lord Justice Birss used AI chatbot to write part of judgment in first known use by British judge.'

See: <https://www.theguardian.com/technology/2023/sep/15/court-of-appeal-judge-praises-jolly-useful-chatgpt-after-asking-it-for-legal-summary>

Guardian and AFP report: 'AI generated news presenter debuts in Kuwait media. Kuwait News introduced Fedha, promising that it could read online news in the future.' See: <https://www.theguardian.com/world/2023/apr/11/ai-generated-news-presenter-debuts-in-kuwait-media>

Guardian reports: "I didn't give permission': Do AI's backers care about data law breaches? Regulators around world are cracking down on content being hoovered up by ChatGPT, Stable Diffusion and others."

See: <https://www.theguardian.com/technology/2023/apr/10/i-didnt-give-permission-do-ais-backers-care-about-data-law-breaches>

Guardian reports: "I'm terrified': what does AI Tom Brady mean for the future of media? The hosts of the Dudesy podcast were shocked when their robot companion created an hour-long standup special."

See: <https://www.theguardian.com/technology/2023/apr/10/tom-brady-standup-ai-dudesy>

New York Times reports (behind paywall) 'Can We No Longer Believe Anything We See? Human eyes — and even technology — often struggle to identify images created by artificial intelligence.'

See: <https://www.nytimes.com/2023/04/08/business/media/ai-generated-images.html>

Marco Giannangeli writes for Sunday Express: 'The terrifyingly real risk of AI with China now leading the robot march.' See: <https://www.express.co.uk/news/science/1756313/artificial-intelligence-china-threat-robot-data>

Press Gazette- 'Journalists: ChatGPT is coming for your jobs (but not in the way you might think' 9th March 2023, See: <https://pressgazette.co.uk/media-law/journalists-chatgpt-jobs-ai-copyright/>

Press Gazette- 'ChatGPT, AI and journalism: Legal and ethical pitfalls' 2nd March 2023, See: <https://pressgazette.co.uk/comment-analysis/ai-journalism-legal-ethical-considerations/>

Reuters Institute, Oxford University. 'UK media coverage of artificial intelligence dominated by industry, and industry sources.'

See: <https://reutersinstitute.politics.ox.ac.uk/news/uk-media-coverage-artificial-intelligence-dominated-industry-and-industry-sources>

& <https://reutersinstitute.politics.ox.ac.uk/our-research/industry-led-debate-how-uk-media-cover-artificial-intelligence>

& https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2018-12/Brennen_UK_Media_Coverage_of_AI_FINAL.pdf

For a perspective on what Artificial Intelligence represents in the long-term, Bill Gates believes there is significance in appreciating that ‘The Age of AI has begun.’ He argues: ‘Artificial intelligence is as revolutionary as mobile phones and the Internet.’ And he concludes: ‘Finally, we should keep in mind that we’re only at the beginning of what AI can accomplish. Whatever limitations it has today will be gone before we know it.’

See: <https://www.gatesnotes.com/The-Age-of-AI-Has-Begun>

John Naughton writes for Observer 25th March 2023: ‘You wait ages for an AI chatbot to come along, then a whole bunch turn up. Why?’

See: <https://www.theguardian.com/commentisfree/2023/mar/25/you-wait-ages-for-an-ai-chatbot-to-come-along-then-a-whole-bunch-turn-up-chatgpt>

John Naughton writes for Observer 26th August 2023: ‘Can AI-generated art be copyrighted? A US judge says not, but it’s just a matter of time.’

See: <https://www.theguardian.com/commentisfree/2023/aug/26/ai-generated-art-copyright-law-recent-entrance-paradise-creativity-machine>

Guardian: “Elon Musk joins call for pause in creation of giant AI ‘digital minds.’ More than 1,000 artificial intelligence experts urge delay until world can be confident ‘effects will be positive and risks manageable.’”

See: <https://www.theguardian.com/technology/2023/mar/29/elon-musk-joins-call-for-pause-in-creation-of-giant-ai-digital-minds>

The Open Letter of AI ‘Pause Giant AI Experiments: An Open Letter We call on all AI labs to immediately pause for at least 6 months the training of AI systems more powerful than GPT-4.’ See: <https://futureoflife.org/open-letter/pause-giant-ai-experiments/>

Alex Hern writes for Guardian: ‘My week with ChatGPT: can it make me a healthier, happier, more productive person?’ See: <https://www.theguardian.com/technology/2023/apr/06/my-week-with-chatgpt-can-it-make-me-a-healthier-happier-more-productive-person>

Press Gazette reports: ‘The ethics of using generative AI to create journalism: What we know so far. The use of generative AI tools can impact trust, accuracy, accountability and bias in newsrooms.’

See: <https://pressgazette.co.uk/publishers/digital-journalism/ai-news-journalism-ethics/>

BBC News 2nd May 2023 “AI ‘godfather’ Geoffrey Hinton warns of dangers as he quits Google.” See: <https://www.bbc.co.uk/news/world-us-canada-65452940>

BBC News 16th March 2023 ‘AI: “How ‘freaked out’ should we be?” See: <https://www.bbc.co.uk/news/world-us-canada-64967627>

BBC Online feature By Richard Gray 19th November 2018. 'The A-Z of how artificial intelligence is changing the world.' See: <https://www.bbc.com/future/article/20181115-a-guide-to-how-artificial-intelligence-is-changing-the-world>

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Useful Media Law and Media Regulation websites and additional resources

- ☐ [Channel 4 '4Compliance' online resources and training URL](#)
- ☐ [Guardian.co.uk: Media Law URL](#)
- ☐ [UK Media Law Pocketbook companion website URL](#)
- ☐ [Ofcom - The UK Communications regulator \(About page\) URL](#)
- ☐ [IPSO \(Independent Press Standards Authority\) - independent regulator for the newspaper and magazine industry in the UK URL](#)
- ☐ [5RB Media and Entertainment Law URL](#)
- ☐ [The BBC's Editorial Values and Standards](#)
- ☐ [McNae's Essential Law for Journalists: Online Resource Centre for 26th Edition](#)
- ☐ [Hold The Front Page Media Law URL](#)
- ☐ [McNae's Essential Law for Journalists: Online Resource Centre for 25th Edition](#)

Media Law and Racial Justice

The Black Lives Matter social and political phenomenon of 2020 intensified the pressure for a more diversified and inclusive syllabus in university teaching of all subjects. This is sometimes referred to as 'decolonizing or liberating the curriculum.'

The BJTC has produced a highly significant downloadable pdf e-book resource: [Everybody In](#) which extensively provides a journalistic guide to inclusivity and seeks to increase understanding of the personal experiences of difference – from race, gender and class to sexuality, age and regionalism.

Issues of racial justice, media law, regulation and ethics require urgent consideration; particularly in the context of journalism, media, communications and cultural studies where disparities in

power, representation and equality are significant sociological and political integers in human history.

With this in mind, I have outlined some case histories that merit discussion and analysis.

Lady Mountbatten and the Sunday People 1932

In 1932 a libel case involving Lady Edwina Mountbatten and the Sunday People newspaper reveals the inherent problems of racism and discrimination in British media law.

Historical analysis enables us to appreciate in now what has covered up and concealed by the libel litigation process and the exigencies of social and racial hierarchy.

The case history took place in a British Imperialist society, though somewhat ironically Lady Mountbatten would be present in India when her husband Lord Louis Mountbatten was the last Viceroy of India responsible for executively managing the transition to independence in 1947.

Race issues in Edwina Mountbatten libel case from 1932

- **'Malignant, poisonous and lying tongues that wagged'**
- Edwina Mountbatten wife of Lord Louis Mountbatten uncle to Prince Philip, mentor to Prince Charles was notorious for her serial relationships including with Jawaharlal Nehru first Prime-Minister of independent India while her husband was last Vice-Roy there.
- When her husband was posted to Malta for two years in the Royal Navy in 1931, she chose to leave 'London Society' and join him with her two children.
- A short gossip paragraph in the Sunday People written by 'The Watcher' was headlined 'Famous Hostess Exiled, Society Shaken by Terrible Scandal.' It did not name her but identified her by implication and said she had been caught in 'compromising circumstances ... with a coloured man' that was the talk of the West End. Innuendo was that she was told to clear out of England for two years so that the affair could blow over by the Royal Family.
- She sued, Sunday People immediately conceded and offered her substantial damages that she refused to receive. She gave evidence at the settlement hearing that everyone, including her friends, knew who the black man referred to was, but "In fact, I have never in the whole course of my life ever met the man referred to...The whole thing is a preposterous story'



Establishment cover-up: Casualties- truth, racism, human dignity

- 'The Watcher' was never identified.
- The Judge- Lord Chief Justice Hewart was not very pleased with a bizarre settlement of apology without damages.



"I am able to reveal to-day the sequel to a scandal which has shaken society to the very depths. It concerns one of the leading hostesses in the country—a woman highly connected and immensely rich.
 "Her associations with a coloured man became so marked that they were the talk of the West End. Then one day the couple were caught in compromising circumstances.
 "The sequel is that the society woman has been given hints to clear out of England for a couple of years to let the affair blow over, and the hint comes from a quarter which cannot be ignored."

Mr. Birkett: The second paragraph in this publication deals with a coloured man. Is there one single word of truth in the allegations there made?—Not one single word. In fact I have never in the whole course of my life ever met the man referred to.
 Your friends have named to you the coloured man supposed to be referred to in the paragraph?—They have. Do you tell my lord you have never met him?—I have never met him.

K.C.'s Statement
 And you have never had anything to do with him in any shape or form?—The whole thing is a preposterous story.

The Libel was true, but the alleged lover referred to was a decoy for the real one



- What those in the establishment and the media knew, but the public did not was that the People alleged Edwina Mountbatten was having an affair with the American singer and film star Paul Robeson (left).
- The real truth was that Edwina Mountbatten was having a longstanding affair with the Granada born singer and entertainer Leslie Hutchinson – known as 'Hutch' (right).
- After The Sunday People case, Buckingham Palace refused to have Hutchinson on any Royal Command Performance bill, and Lord Beaverbrook gave orders that Hutch's name was never to be mentioned again by any of his papers."
- The outrage, disgust and scandal centred on the fear of exposure of somebody so prominent having an inter-racial relationship.
- The main casualty was the famous cabaret black artist. The circumstances of this kind of story would perhaps now be covered up by contemporary privacy law.
- The Mountbattens clearly exploited the misidentification to their advantage. See: <http://www.dailymail.co.uk/femail/article-1085883/The-royal-gigolo-Edwina-Mountbatten-sued-claims-affair-black-singer-Paul-Robeson-But-truth-outrageous-.html>



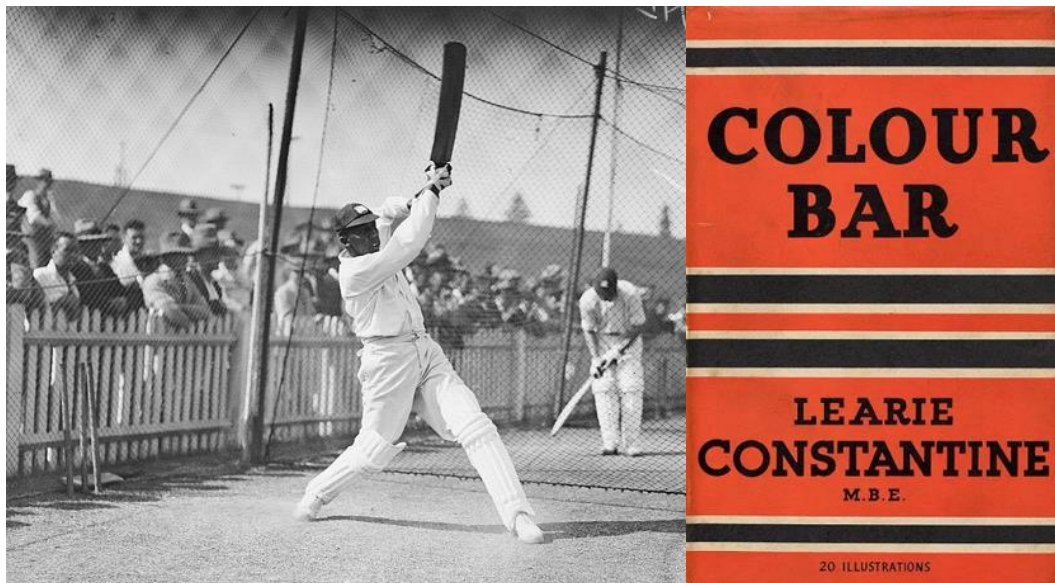
Learie Constantine- challenging 'The Colour Bar' 1944

Learie Constantine (1901-71) was a West Indian cricketer, lawyer and politician, was knighted, served as Trinidad's High Commissioner to the United Kingdom and became the UK's first black peer.

In the 1930s Constantine provided critical support for the writer C.L.R. James when he first came to Britain. Constantine joined the League of Coloured Peoples- the most prominent organisation campaigning for racial equality in Britain at the time. He helped James find a post on the *Manchester Guardian* thereby launching his successful career as a journalist, writer and broadcaster. In turn C.L.R James helped Constantine write his first book *Cricket and I*, published in 1933.

The Constantine v Imperial London Hotels court case of 1944 is seen as a ground-breaking precedent in British race relations and asserting the rights of black people to not be discriminated against. The case arose from an incident in London the previous year when he was playing a charity cricket match at Lord's and had booked rooms for himself and family at the Imperial Hotel for several nights. He had been told that race would not be an issue, but when arriving the hotel position had changed. The presence of a large number of American guests meant that they could stay for only one night and would have to transfer to another nearby hotel owned by Imperial. A colleague from the Ministry of Labour who intervened heard a racial slur with the use of the notorious 'n' word. At the time there was no law against racial discrimination, but Constantine sued alleging breach of contract based on his claim that the attitude of the hotel changed between his booking and arrival, owing to the presence of white American servicemen.

The judge found in Constantine's favour and awarded him damages. Mr Justice Birkett said in his ruling that Constantine 'did suffer, much unjustifiable humiliation and distress.' The legal principle was asserted in common law that he did not have to prove special damage in order to win his case, though the precedent did not allow the judge any powers to award exemplary or punitive damages. The case was widely reported and identified as the first litigation to challenge racially discriminatory practices of this kind. It was a key foundation stone for the first Race Relations Act of 1965.



Left: West Indies cricketer Learie Constantine practicing batting in the training nets, New South Wales, ca. 1930. Image: National Library of Australia. Public Domain. On the right to cover of Learie Constantine's 1954 book *Colour Bar* from a scan of a copy owned by Tim Crook.

After his retirement from professional cricket, Learie Constantine qualified as a barrister and pursued legal, political and journalistic careers. In 1954 he wrote the influential book *Colour Bar*. He said it was written 'at the request of the press' who had urged him to provide a black man's

perspective of 'the black and white problem. When it comes, let's have some real fast bowling, some respectable wickets thrown down suddenly from the gully, and hit some 6's, will you? Just let it be the real stuff.'

The book was promoted as a stark exposition of problems in 'Britain, U.S.A., South Africa, Russia and elsewhere. It examines mixed marriages, physical and mental differences, 'Ghettos' in Britain, lynchings, Communism in China and the British Empire, The Queen's Empire tour, Mau Mau [...] the Ku Klux Klan's interference in American politics today.' Constantine's book was a pioneering analysis of the race problem in terms of religion, education, sport, politics, industry, business, the professions, the arts and its grave social aspects.

Civil Rights Movement and Sullivan v New York Times 1964

This US Supreme Court case established a significant public interest defence against libel and the developing problem in English speaking common law jurisdictions of 'Strategic Lawsuits Against Public Participation'; otherwise known as SLAPPs. At the centre of it was the Civil Rights movement of the mid-20th century. The New York Times had published a full-page advertisement for making donations to defend Martin Luther King, Jr. on perjury charges. It included several minor factual inaccuracies about actions taken by the Montgomery, Alabama police. The city Public Safety commissioner, L.B. Sullivan, argued that the criticism damaged his reputation even though he was not specifically named in the publication. He sought punitive damages in a libel action under Alabama law which also included a group of African-American ministers mentioned in the advert. After a trial in Alabama a jury awarded the police commissioner \$500,000 in damages.



Dr. Martin Luther King Jr front row third from left with Vice President Lyndon B. Johnson, Attorney General Robert F. Kennedy, Benjamin Mays, and other civil rights leaders, June 22, 1963. [U.S. National Archives and Records Administration](https://www.archives.gov/research/civil-rights) Public Domain.

The Supreme Court established and founded a paradigmatic First Amendment protection for media publications defending mistakes in relation to public figure and public interest coverage. The mistakes damaging a plaintiff's reputation in this case related to an advertisement but as a precedent the Court raised the threshold of proof needed to win a libel case concerning public figures in any publication to being actuated by malice or showing a reckless disregard for the truth. The ruling also shifted the burden of proof from the defendant having to prove that a statement was true to the plaintiff proving that the statement was false. While the UK libel jurisdictions continue to adhere to the traditional rule, the New York Times case was an influence and inspiration for the development of the statutory public interest defence legislated for in the 2013 Defamation Act. Australia has followed the U.S. in making the shift on burden of proof from defendant to claimant.

Esther Thomas v News Group Newspapers 2001

When Esther Thomas first brought her case of racial harassment against the Sun Newspaper her successful outcome in resisting a move by the newspaper to have it struck out went unreported. She was supported by the London Racial Discrimination Unit. The case [attracted wider coverage](#) when the legal issue on whether the Protection of Harassment Act 1997 could be applied to the content of news publications went to the Court of Appeal.

Ms Thomas was identified and criticised by a series of Sun newspaper articles for being a black civilian clerk in a City of London police station who had reported officers for their treatment of a Somali refugee woman who had sought advice from them. Ms Thomas received hate mail and the impact of being targeted had made her ill and forced her to change her job.

The original Sun story, headlined 'Beyond a joke - fury as police sarges are busted after refugee jest,' described Ms Thomas as a 'black clerk' who had reported a private remark to her bosses. This was followed up by publication of readers' letters expressing shock and disgust at what had happened to the officers and branding her action as 'diabolical.'

The Sun published a further article reporting that officers who tried to organise a whip-round to pay a fine of £700 had been warned they could face disciplinary action, and the newspaper invited its readers to contribute to a fund.

Ms Thomas's courage and determination to pursue this issue established a ground-breaking development in media law in terms of the responsibility of media publications and their liability for potential race harassment and intimidation.

The Head of the Court of Appeal Civil Division, Master of the Rolls Lord Phillips ruled in [Thomas v News Group Newspapers Ltd & Anor \[2001\] EWCA Civ 1233 \(18 July 2001\)](#): 'When the three publications are considered together [...] I am satisfied that the respondent has pleaded an arguable case that the appellants harassed her by publishing racist criticism of her which was foreseeably likely to stimulate a racist reaction on the part of their readers and cause her distress.'

Esther Thomas's [solicitor, Lawrence Davies, said](#): 'This is the most significant decision in the fields of race relations, human rights and the media for years,' yet it could be argued that it does not receive the focus and attention in media law books that it merits. It is also the case that this hard-fought principle and development in the law by a modest and courageous black woman should be accorded greater significance in the media law curriculum.

Naomi Campbell v Trinity Mirror 2004

The ruling of the House of Lords in Naomi Campbell's privacy case against the Daily Mirror in 2004 has become one of the most important media law precedents in post Second World War British history. See: [Campbell v MGN Ltd \[2004\] UKHL 22 \(6 May 2004\)](#). It was the ground-breaking ruling that consolidated and enabled the full development of the right to media privacy under Article Eight of the European Convention of Human Rights in UK civil law. This was a herculean legal struggle and victory by one of the most successful Black British women in public life. The case turned on the intrusion of the national newspaper in publishing a photograph that challenged the confidentiality and private information of Naomi Campbell's health treatment for addiction illness. Ms Campbell's lawyers did raise a racial issue during the litigation though [this was vehemently denied by the media defendant](#). She has Jamaican and Chinese heritage and objected to the attack on her character being accompanied by [the use of the expression 'chocolate soldier.'](#)



Naomi Campbell at festival de Cannes May 2018. Image by Georges Biard. [CC BY-SA 4.0](#)

In the House of Lords ruling Lord Nicholls explained how the Daily Mirror published an article about her treatment for addition illness with Narcotics Anonymous accompanied with “a dominating picture over the caption 'Hugs: Naomi, dressed in jeans and baseball hat, arrives for a lunchtime group meeting this week'. The picture showed her in the street on the doorstep of a building as the central figure in a small group. She was being embraced by two people whose faces had been

pixelated. Standing on the pavement was a board advertising a named café. The article did not name the venue of the meeting, but anyone who knew the district well would be able to identify the place shown in the photograph.'

Lord Nicholls said after she commenced legal proceedings against Mirror Group Newspapers, the tone of the newspaper's coverage became critical:

"On 5 February 2001 the newspaper published an article headed, in large letters, 'Pathetic'. Below was a photograph of Miss Campbell over the caption 'Help: Naomi leaves Narcotics Anonymous meeting last week after receiving therapy in her battle against illegal drugs'. This photograph was similar to the street scene picture published on 1 February. The text of the article was headed 'After years of self-publicity and illegal drug abuse, Naomi Campbell whinges about privacy.' The article mentioned that 'the Mirror revealed last week how she is attending daily meetings of Narcotics Anonymous'. Elsewhere in the same edition an editorial article, with the heading 'No hiding Naomi', concluded with the words: 'If Naomi Campbell wants to live like a nun, let her join a nunnery. If she wants the excitement of a show business life, she must accept what comes with it.'

Two days later, on 7 February, the 'Mirror' returned to the attack with an offensive and disparaging article. Under the heading 'Fame on you, Ms Campbell', an article referred to her plans 'to launch a campaign for better rights for celebrities or "artists" as she calls them'. The article included the sentence: 'As a campaigner, Naomi's about as effective as a chocolate soldier.'"

Naomi Campbell won her case by the slimmest of margins with the Law Lords 3-2 in favour. The Court of Appeal had ruled against her. Lady Baroness Hale of Richmond explained:

'Examined more closely, however, this case is far from trivial. What is the nature of the private life, respect for which is in issue here? The information revealed by the article was information relating to Miss Campbell's health, both physical and mental. Drug abuse can be seriously damaging to physical health; indeed it is sometimes life-threatening. It can also lead to a wide variety of recognised mental disorders (see The ICD-10 Classification of Mental and Behavioural Disorders, WHO 1992, F10 - F 19). Drug addiction needs treatment if it is to be overcome. Treatment is at several levels. There is the quick 'detox' to rid the body of the harmful substances. This will remove the immediate physical danger but does nothing to tackle the underlying dependence. Then there is therapy aimed at tackling that underlying dependence, which may be combined with a transfer of the dependence from illegal drugs to legally prescribed substitutes. Then there is therapy aimed at maintaining and reinforcing the resolve to keep up the abstinence achieved and prevent relapse. This is vital. Anyone who has had anything to do with drug addiction knows how easy it is to relapse once returned to the temptations of the life in which it began and how necessary it is to try, try and try again to achieve success.'

Baroness Hale concluded: 'The risk of harm is what matters at this stage, rather than the proof that actual harm has occurred. People trying to recover from drug addiction need considerable dedication and commitment, along with constant reinforcement from those around them. That is why organisations like Narcotics Anonymous were set up and why they can do so much good. Blundering in when matters are acknowledged to be at a 'fragile' stage may do great harm.'

Her judgement set a key threshold for reasonable expectation of privacy in the balancing exercise on an equal basis with the right to freedom of expression.

Racist attitudes and prejudices have been embedded in the history and culture of journalism since the very beginnings of the media, but it is important to be cautious about simplifying complex and ambiguous narratives. The *News Of The World* was shut down in the wake of the phone-hacking scandal in 2011, but in 1959 it was the only national newspaper offering a reward to assist the campaign by Claudia Jones to find the [racist murderers of Kelso Cochrane](#). It was the *Daily Mail* in February 1997 which published a front page accusation against five suspects for murdering Stephen Lawrence with the headline 'Murderers: The Mail accuses these men of killing. If we are wrong, let them sue us,' and this was followed by the Macpherson public inquiry and new police investigation [and prosecution resulting in two of them being convicted](#).

In the late 19th and early 20th century anti-Semitism was a significant problem in crime-reporting. Consider this report in the Leicester Chronicle and Leicestershire Mercury for January 6th 1877 headlined: 'Execution of a Jewish Murderer.' The religion and racial identity of the convicted and condemned prisoner had no relevance to any aspect of the crime and the description of Isaac Marks for being 'a miserable-looking little object' is dehumanizing, pitiless and offensive.

EXECUTION OF A JEWISH MURDERER.

The execution of the prisoner Isaac Marks, for the murder of a young man named Frederick Barnard, by shooting him with a revolver took place on Tuesday morning at nine o'clock within Horsemonger-lane Gaol. Both before and since his conviction the prisoner has been constantly visited by the Rev. Mr. Singer and the Rev. Mr. Spyers, ministers of his own belief. Marks said that he did not know what he was doing at the time, and that he only became conscious of the wickedness of the act some hours afterwards. He was deeply sorry for his crime, and requested both the reverend gentlemen to express to the widow and family of the deceased his sincere sorrow and repentance, and implored them to pardon him for having deprived them of a husband and a father. The execution was carried out in a very simple form. The Under-Sheriff and some of his officers went to the prisoner's cell, accompanied by Mr. Keene, the Governor, a few minutes before nine o'clock, and the prisoner was pinioned. He was attended to the scaffold by both the Jewish ministers, who prayed in Hebrew. The prisoner was a miserable-looking little object, and his countenance was ghastly pale. The two ministers did not go on the scaffold with the prisoner, but stood at some distance outside it, and they continued praying, not only till the drop fell, but for some time afterwards. The executioner (Marwood) allowed the prisoner a long drop, between six and seven feet, but, owing to his light weight, it would seem that none of the vertebrae of the neck were broken, and the culprit appeared to struggle for two or three minutes violently before life was extinct. After hanging an hour the body was cut down, and an inquest was held upon it by Mr. Carter, the coroner, and the usual formal verdict was returned.

Fast forward 105 years to the Daily Mail for 22nd May 1982 and here is an example of offensive demonizing and stereotyping of young black men as rapists. The racial identification of suspected rapists as black and victims as white has no justification or relevance to the news story; even in the context of the need to assist the police investigations to arrest the alleged attackers. This style of reporting and publication was widespread across many national newspapers at the time and was challenged by complaints to the Press Council.



Page 14, Daily Mail 22nd May 1982. Scan included for the purposes of fair dealing criticism and review.

For a more complex understanding of the role of [journalism in the construction of race, crime and youth the 1978 seminal text *Policing The Crisis* written by the late Professor Stuart Hall, Chas Critcher, Tony Jefferson and John Clarke](#) analysed the moral panic narrative in media publications about 'mugging' as a growing crime and social problem during the late 1970s.

While it is not the purpose of this book to fully cover criminological and cultural studies subjects relating to race, representation and inequality in the legal system, it should be regarded as a professional obligation to reflect and understand social context. Sir William MacPherson's '[The Stephen Lawrence Inquiry report of 1999](#)' was a defining moment in British social history when it recognised institutional racism at the Metropolitan Police, a police force that had failed in its first investigation of the racist murder of 18 year old Black youth Stephen Lawrence. The Institute of Racial Relations has funded and published significant research on the subject of the death of black suspects in police custody '[Dying For Justice](#)' and [How Black working-class youth are criminalised and excluded in the English School System](#).

These along with David Lammy QC's [independent review into the treatment of, and outcomes for, Black, Asian and Minority Ethnic individuals in the Criminal Justice System](#) provide valuable research tools and background briefings on key issues of racial justice in British Society.

The Lammy Review was published in September 2017 and explained:

'Across England and Wales, people from minority ethnic backgrounds are breaking through barriers. More students from Black, Asian and Minority Ethnic (BAME) backgrounds are achieving in school and going to university. There is a growing BAME middle class. Powerful, high-profile institutions, like the House of Commons, are slowly becoming more diverse. Yet our justice system bucks the trend. Those who are charged, tried and punished are still disproportionately likely to come from minority communities.'



Despite making up just 14% of the population as recorded in the 2011 census and 18% as recorded in the 2021 census, ethnic community men and women make up 25% of prisoners, while over 40% of young people in custody are from ethnic community backgrounds.

If our prison population reflected the make-up of England and Wales, we would have over 9,000 fewer people in Prison – the equivalent of 12 average-sized prisons. There is greater disproportionality in the number of Black people in prisons here than in the United States.'

A more recent research report published in 2022 by Manchester University and the much respected Keir Monteith KC of Garden Court Chambers concluded the legal system of England and Wales is institutionally racist.

See: 'New report uncovers 'institutional racism' in the justice system' at <https://www.manchester.ac.uk/discover/news/new-report-uncovers-institutional-racism-in-the-justice-system/>

The research study focused on the examination of judicial racial bias and drew on a survey of 373 legal professionals with 95% of respondents reporting that racial bias plays some role in the processes or outcomes of the justice system. 29% said it played a 'fundamental role'.

A majority of respondents had witnessed one or more judges acting in a racially biased way towards a defendant and in their decision-making. Racial discrimination by judges is most

frequently directed towards Asian and Black people according to the survey, with people from Black communities - lawyers, witnesses, defendants, etc. - by far the most common targets of judicial discrimination.

Young Black male defendants were the subgroup most frequently mentioned as targets of judicial bias. The survey did find that some judges are already acting in 'antiracist' ways by being conscious of and knowledgeable about racism. The research study said they were seeking to mitigate it.

However, only a minority of respondents had ever seen a judge act in this way. The 'Race at the Bar: A Snapshot Report' in 2021 revealed that 'barristers from all ethnic minority backgrounds, and especially Black and Asian women, face systemic obstacles to building and progressing a sustainable and rewarding career at the Bar.'

The 40 page report 'Racial Bias and the Bench' is available at:

<https://documents.manchester.ac.uk/display.aspx?DocID=64125>

The 60 page report 'Race at the Bar: A Snapshot Report' is available at:

<https://www.barcouncil.org.uk/uploads/assets/d821c952-ec38-41b2-a41ebee362b28e5/Race-at-the-Bar-Report-2021.pdf>



The reality of these statistics and critical questioning as to why they bear these implications need to be an essential part of journalistic understanding and knowledge. This should inform a more intelligent and professional approach to covering crime and the operation of the criminal justice system.

There are many high quality open access sources on British Black History that can inform and provide depth of understanding to racial justice issues. These include [*West Indian Intellectuals in Britain \(Studies in Imperialism\)*](#)- edited by Bill Schwarz first published in 2003. This a comprehensive discussion of the major Caribbean thinkers who came to live in 20th-century Britain and chapters discuss the influence of journalists and authors such as C.L.R. James; Una Marson; George Lamming; Jean Rhys; Claude McKay and V.S. Naipaul. The Chartered Institute of Journalists has published [an online profile of the valuable legacy of the journalist Rudolph Dunbar](#).

Another highly significant text exploring the subject of black consciousness in British Cultural History available is Professor Paul Gilroy's [*The Black Atlantic: Modernity and Double Consciousness*](#) first published in 1993.

[*Reprezentology - The Journal of Media and Diversity*](#) which began publishing in the winter of 2020 is another open access resource which stated as its aim to 'build connections between the academy, journalists and broadcasters. Rather than seek piecemeal reform to address the underrepresentation of marginalised voices, we wish to go further and help create a media that reflects the richness of every part of society.'

The issue of ethnic community representation is crucial in respect of the proportion of participation in the senior levels of the judiciary and the journalism industry. The make-up of the UK Supreme Court, English Court of Appeal and High Court and editors and senior editorial roles in news publishers has not reflected and does not reflect the proportion of ethnic groups in the United Kingdom population.



One of the important duties of professional journalists is to ensure that language and vocabulary are deployed with sensitivity and respect. Language and meaning also changes through time and context. It is, therefore, important to keep up to date with professional style-guides such as those published online by [the Guardian](#) and [the BBC](#). For example, the Guardian advises that Black people from the Caribbean expect to be described as ‘African-Caribbean not Afro-Caribbean.’

The US National Association of Black Journalists publishes a [regularly updated online style guide](#) which is a very important benchmark on advice and trends in journalistic use of language in respect of covering Black communities. For example, under ‘T’ the NABJ discourages use of the phrase ‘Third World: Commonly used to describe underdeveloped countries of Africa, Asia and Latin America. These nations and the people there are often cast as being uncivilized or primitive. Avoid using term because of its negative connotations. Better to say developing countries. Use in quotes only if necessary.’

In 2021 Research published by Birmingham City University’s Sir Lenny Henry Centre for Media Diversity today (7 December), examined use of the acronym BAME (when spoken to rhyme with name) across media platforms, with the term coming under increasing scrutiny from the public and politicians.

The report was commissioned by the BBC and concluded broadcast media outlets should drop the use of the term ‘BAME,’ with the phrase found to be a damaging catch-all, which fails to acknowledge the varied lived experiences of people from non-white backgrounds.

‘BAME: A report on the use of the term and responses to it Terminology Review for the BBC and Creative Industries, compiled by Sarita Malik, Marcus Ryde, Stevie Marsden, Robert Lawson And Matt Gee.

See: <https://bcuassets.blob.core.windows.net/docs/csu2021325-lhc-report-bbchighres231121-132836254614117870.pdf>

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Antisemitism in the contemporary media- new issues in 21st Century Britain

The problem of contemporary antisemitism in media spheres and public life has been identified as worryingly resurgent and discussed both in the UK and other countries. Admissions or *mea culpas* by mainstream journalism publishers and media regulatory bodies speak for themselves.

In 2020 the UK’s Equality and Human Rights Commission investigated complaints about the Labour Party which included:

- 1.whether the Party has handled antisemitism complaints in a lawful, efficient and effective way
- 2.whether the Rule Book and the Party’s complaint handling processes have enabled or could enable it to deal with antisemitism complaints efficiently and effectively, including whether appropriate sanctions have been or could be applied

In its report it concluded the Labour Party had committed unlawful acts. See: ‘Investigation into antisemitism in the Labour Party’ at:

<https://www.equalityhumanrights.com/sites/default/files/investigation-into-antisemitism-in-the-labour-party.pdf>

[Rebecca Tuck KC's Independent investigation into allegations of antisemitism within the National Union of Students \(NUS\) reported in January 2023.](#)

On 30th April 2023 the *Guardian* said 'A cartoon (published in the newspaper on 29 April 2023, and online the day before) about the resignation of the BBC chairman, Richard Sharp, did not meet our editorial standards, and we decided to remove it from our website. The Guardian apologises to Mr Sharp, to the Jewish community and to anyone offended.'

One week later the Guardian and Observer's global readers' editor Elisabeth Ribbans wrote a long apology and explanation: 'An image that should never have been published, and lessons that must be learned.'

See: <https://www.theguardian.com/commentisfree/2023/may/03/image-published-bbc-richard-sharp-guardian-cartoon-martin-rowson>

Later on 26th July 2023, the cartoonist himself, Martin Rowson, wrote an article headlined: 'Bite the air in Britain and you can taste the prejudices that haunt us. I'm sorry I became part of that. After drawing a cartoon including antisemitic tropes, I am trying to respond in the best way I can: to apologise, to learn and to be vigilant.'

See: <https://www.theguardian.com/commentisfree/2023/jul/26/britain-prejudices-cartoon-antisemitic-tropes>

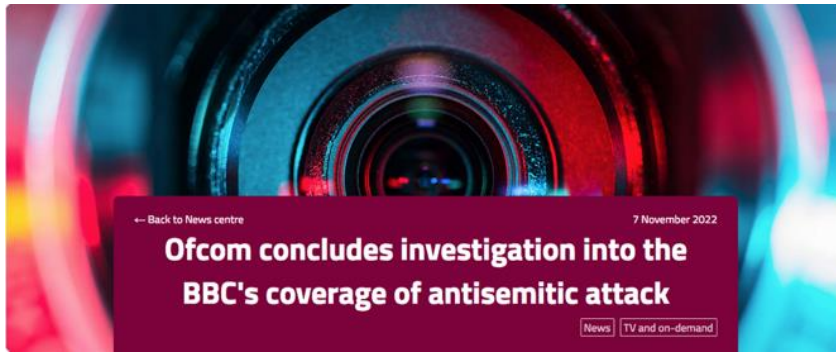
In June 2022 Ofcom found after an investigation into complaints against LBC News that 'During news coverage of the protests held in London relating to the Israel-Palestine conflict, the reporter inaccurately described the Israeli Embassy as the "Jewish Embassy" nine times across three news items, potentially causing offence. In breach of Rules 5.1 and 2.3 of the Broadcasting Code.'

See: Ofcom Broadcast and On Demand Bulletin Issue 452, 13 June 2022 at: https://www.ofcom.org.uk/data/assets/pdf_file/0029/238673/News-Programming,-LBC-News,-15-May-2021,-Various-times.pdf

Press Gazette 13th June 2022 'Ofcom has rapped LBC News over a series of broadcasts in which a reporter referred to the Israeli Embassy in London as the "Jewish Embassy."

See: <https://pressgazette.co.uk/the-wire/ofcom-lbc-news/>

In November 2022 Ofcom reported on their investigation into a number of complaints about an online BBC news article and news report broadcast on BBC One London covering an antisemitic attack on Jewish students in London. These were published and broadcast on 2 December 2021.



Ofcom decided its investigation uncovered significant editorial failings in the BBC's reporting of an antisemitic attack on Jewish students travelling on board a bus in London.

Ofcom explained:

'The BBC's reports claimed that an audio recording made during the incident included anti-Muslim slurs – which it later changed to the singular "slur" – which came from inside the bus. Shortly afterwards, it received evidence which disputed this interpretation of the audio. The BBC failed to promptly acknowledge that the audio was disputed and did not update its online news article to reflect this for almost eight weeks. During this time the BBC was aware that the article's content was causing significant distress and anxiety to the victims of the attack and the wider Jewish community. This, in our opinion, was a significant failure to observe its editorial guidelines to report news with due accuracy and due impartiality.'

Ofcom concluded that the: 'failure to respond promptly and transparently created an impression of defensiveness by the BBC among the Jewish community. It demonstrates that the BBC has further to go in learning how to respond when its reporting is in contention.'

See: 43 page Ofcom Broadcast and On Demand bulletin Issue 461, 7 November 2022 at: https://www.ofcom.org.uk/data/assets/pdf_file/0023/247163/BBC-News-Online-and-BBC-London-News-2-December-2021.pdf

BBC News reported: 'Ofcom: BBC made significant editorial failings over antisemitism bus attack report' 7 November 2022 at: <https://www.bbc.co.uk/news/entertainment-arts-63541437>

The BBC and other mainstream journalism publishers in the UK and abroad are subjected to a considerable amount of analysis and criticism over its coverage of the Israel and Palestinian Arab conflict. Bulletins questioning the alleged lack of balance can be found at CAMERA (Committee for Accuracy in Middle East Reporting and Analysis) at <https://www.camera.org/> and Honest Reporting (Exposing anti-Israel media bias) at: <https://honestreporting.com/>

In 2006, the BBC Governors' independent panel report on the impartiality of BBC coverage of the Israeli-Palestinian conflict recommended that the BBC should make public an abbreviated version of its journalists' guide to facts and terminology.

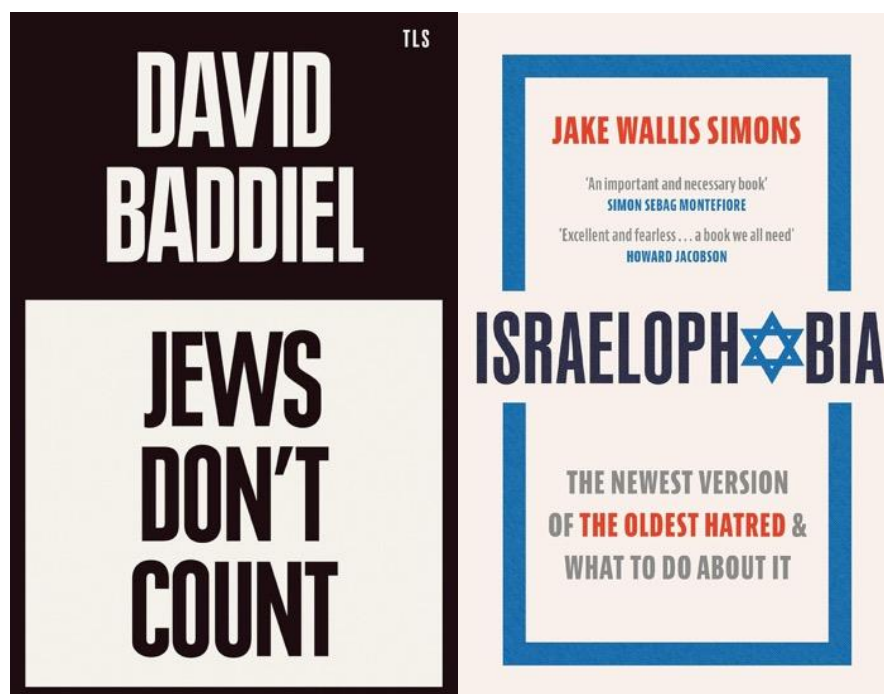
This is available online at: <https://www.bbc.co.uk/newsstyleguide/israel-and-the-palestinians>

During the Israel Hamas war which broke out after the massacres of more than a thousand Israeli citizens on October 7th 2023, the BBC came under intense criticism and pressure to stop

referring to Hamas killers as ‘militants’ since Hamas was a legally proscribed terrorist organisation under UK law. The criticism was both [domestic](#) and [international](#). The BBC [maintained its defence](#) of its policy.

Two books have been recently written and respected for exploring contemporary antisemitism primarily for a non-Jewish readership.

David Baddiel’s *Jews Don’t Count* (2021) argued that those who think of themselves as on the right side of history have often ignored the history of anti-Semitism. He outlines why and how, in a time of intensely heightened awareness of minorities, Jews do not count as a real minority.



Israelophobia as extemporised in the eponymous book by *Jewish Chronicle* editor Jake Wallis Simons (2023) argues that in the Middle Ages, Jews were hated for their religion, in the twentieth century, they were hated because of their race, but there now appears to be a twenty first century phenomenon of Jews being wrongly and unfairly hated for the existence of their nation- state of Israel.

Most public bodies and universities in the UK have adopted the International Holocaust Remembrance Association’s (IHRA) non-legally binding working definition of antisemitism.

See: <https://www.holocaustremembrance.com/resources/working-definitions-charters/working-definition-antisemitism>

There are alternative guidance definitions of antisemitism such ‘The Jerusalem Declaration on Antisemitism’ known as the JDA.

See: <https://jerusalemdeclaration.org/>

And the Nexus Document at: <https://israelandantisemitism.com/the-nexus-document/> with pdf file download at: <https://israelandantisemitism.com/wp-content/uploads/2023/05/The-Nexus-Document-5-27-23.pdf>

As will be evident from any reading around the context of these definitions their relative adoption has become a highly politicised issue. This was explored in an article by Michael Starr in the Jerusalem Post 22nd April 2021 'War of the words: The conflict between definitions of antisemitism. "We need to first define and identify that which we are trying to defeat, in order to defeat it."

See: <https://www.jpost.com/diaspora/antisemitism/war-of-the-words-the-conflict-between-definitions-of-antisemitism-665935>

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A number of Buddhist Monks from Preah Sihanouk Raja Buddhist University attended the second of the preliminary hearings on Khmer Rouge leaders Nuon Chea's and Ieng Thirith's into their fitness to stand trial. 30 Aug 2011. [Extraordinary Chambers in the Courts of Cambodia, CC BY-SA 2.0](#), via Wikimedia Commons. In 2014 Chea would be convicted of [crimes against humanity and jailed for life](#). Thirith was declared unfit to stand trial.

Comparative Media Law- Why is US media law so different?

The USA shares the common law legal tradition of the UK as well as being English speaking. However, there are major differences in media law which are the result of different social, political and cultural history as well as the fact the US has a written constitution and First Amendment guaranteeing, without qualification, freedom of speech and freedom of the press.

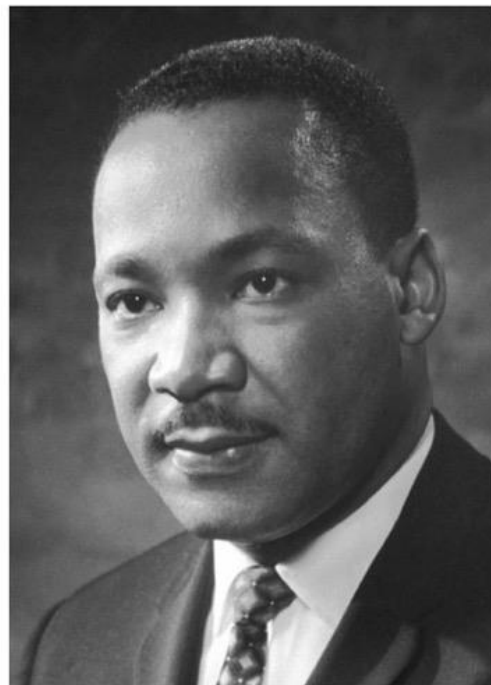
There is a predominating federal legal system as well as different legal jurisdictions across the fifty different states that make up the country.

The importance of the First Amendment of the Constitution which guarantees freedom of the press and expression was raised by two key US Supreme Court rulings arising out of the Civil Rights movement for racial equality and opposition to US involvement in the Vietnam War. During this period the courts developed a heightened protection of speech for the press.

[New York Times v Sullivan in 1964](#) has been identified as an influential case in developing a more liberal libel law in England in the 2013 Defamation Act. As explained above the US Supreme Court ruling established a much higher threshold of proof before courts in state jurisdictions could impose damages for libel cases involving public figures even when the statements in dispute turned out to be false. This is the Oyez online law report summary of the background to the case:

Sullivan v New York Times 1964

- During the Civil Rights movement of the 1960s, the New York Times published an ad for contributing donations to defend Martin Luther King, Jr., on perjury charges. The ad contained several minor factual inaccuracies. The city Public Safety Commissioner, L.B. Sullivan, felt that the criticism of his subordinates reflected on him, even though he was not mentioned in the ad. Sullivan sent a written request to the Times to publicly retract the information, as required for a public figure to seek punitive damages in a libel action under Alabama law.
- When the Times refused and claimed that they were puzzled by the request, Sullivan filed a libel action against the Times and a group of African American ministers mentioned in the ad. A jury in state court awarded him \$500,000 in damages. The state supreme court affirmed and the Times appealed.



The question to be decided by the US Supreme Court Justices: Did Alabama's libel law unconstitutionally infringe on the First Amendment's freedom of speech and freedom of press protections?

The [Oyez case law summary explained](#):

'To sustain a claim of defamation or libel, the First Amendment requires that the plaintiff show that the defendant knew that a statement was false or was reckless in deciding to publish the information without investigating whether it was accurate.'

The court delivered a unanimous opinion by Justice Brennan which was in favour of the New York Times. Justice Brennan held when a statement concerns a public figure it is not enough to show that it is false for the press to be liable for libel.

Instead, the target of the statement must show that it was made with knowledge of or reckless disregard for its falsity. Oyez says: 'Brennan used the term "actual malice" to summarize this standard, although he did not intend the usual meaning of a malicious purpose. In libel law, "malice" had meant knowledge or gross recklessness rather than intent, since courts found it difficult to imagine that someone would knowingly disseminate false information without a bad intent.'

A simple comparison of English and US libel law

UK Libel

1. Burden of proof on defendant
2. Damages presumed
3. Freedom of expression balanced equally with other rights
4. Public interest defence in terms of reasonable belief & editorial judgment- determined by judges
5. Chilling effect of cost burden on media defendants and more sensational tabloid newspaper media
6. Press regulation with statutory underpinning

US Libel

1. Burden of proof on the claimant/plaintiff
2. Damages have to be proved
3. Freedom of expression and media constitutional priority through First Amendment
4. Public interest defence for making mistake has high threshold of plaintiff having to prove actuated by malice, or reckless disregard for the truth- determined by juries
5. Ethical self-regulation by fact checking, voluntary mutuality
6. Congressional/executive regulation of the press unconstitutional

[Richmond Newspapers v Virginia in 1980](#) established, again at Supreme Court level, that there was a First Amendment affirmative right of the press and public to achieve access to information that concerned the exercise of government power.

The Oyez summary explains the significance of this case, sixteen years after *New York Times v Sullivan*.

Richmond Newspapers further reshaped the framework of freedom for journalistic publication and news gathering: "In a 7-to-1 decision, the Court held that the right to attend criminal trials was 'implicit in the guarantees of the First Amendment.'

The Court held that the First Amendment encompassed not only the right to speak but also the freedom to listen and to receive information and ideas.

The Court also noted that the First Amendment guaranteed the right of assembly in public places such as courthouses.

The Court emphasized that 'certain unarticulated rights' were implicit in enumerated guarantees and were often 'indispensable to the enjoyment of rights explicitly defined.'"

The Richmond Newspapers judgment places a significant brake on any US court trying to issue censorial reporting restrictions beyond the courtroom walls and excluding the media and public from proceedings in order to control and limit the reporting of trials.

US privacy law is restricted to states' jurisdiction covering intrusive reporting methods; extreme emotional distress and abusing personality rights. Prior restraint or court bans prior to publication are unheard of in US privacy law.

The First Amendment ensures that the public interest threshold is very hard to beat by claimants/plaintiffs since freedom of expression and the media is given pragmatic priority- not absolute authority. It has the Sullivan v New York Times standard in relation to public figures and public interest news stories.



The Colorado Supreme Court courtroom, located on the fourth floor of the Ralph L. Carr Colorado Judicial Center, located at 2 East 14th Avenue in Denver, Colorado. [Jeffrey Beall](#), [CC BY 3.0](#), via Wikimedia Commons

UK/European style media privacy law is unconstitutional in USA



It could be argued that the most famous US Supreme Court privacy precedent relating to a public figure is the case of [Falwell v Hustler magazine from 1988](#).

The magazine mocked Christian religious leader Jerry Falwell and insulted the memory of his mother. He initially sued to recover damages for libel, invasion of privacy, and intentional infliction of emotional distress. He won a jury verdict on the emotional distress claim and was awarded a total of \$150,000 in damages for injury to his feelings.

The equivalent concept in European privacy law would be an attack on his honour and family dignity.

Hustler famously won at the Supreme Court on First Amendment grounds that the allegation was so unbelievable that even 'bad taste' satire had to be protected.

Falwell scored an own goal by succumbing to cul-de-sac cross examination by conceding that the literal meaning in the satire was so outrageous no one could believe it. The judges also said that in cases of this kind actual malice had to be proved.

Oyez observed: 'The Court added that the interest of protecting free speech, under the First Amendment, surpassed the state's interest in protecting public figures from patently offensive speech, so long as such speech could not reasonably be construed to state actual facts about its subject.'

US Supreme Court case of Hustler Magazine and Jerry Falwell

Jerry Falwell talks about his first time.*



FALWELL: My first time was in an outhouse outside Lynchburg, Virginia.

INTERVIEWER: Wasn't it a little cramped?

FALWELL: Not after I kicked the goat out.

INTERVIEWER: I see. You must tell me all about it.

FALWELL: I never really expected to make it with Mom, but then after she showed all the other guys in town such a good time, I figured, "What the hell!"

Campari, like all liquor, was made to mix you up. It's a light, 40-proof, refreshing spirit, just mild enough to make you drink too much before you know you're schnookered. For your first time, mix it with orange juice. Or maybe some white wine. Then you won't remember anything the next morning. Campari. The mixable that smarts.

INTERVIEWER: But your mom? Isn't that a bit odd?

FALWELL: I don't think so. Looks don't mean that much to me in a woman.

INTERVIEWER: Go on.

FALWELL: Well, we were drunk off our God-fearing asses on Campari, ginger ale and soda—that's called a Fire and Brimstone—at the time. And Mom looked better than a Baptist whore with a

\$100 donation.

INTERVIEWER: Campari in the crapper with Mom... how interesting. Well, how was it?

FALWELL: The Campari was great, but Mom passed out before I could come.

INTERVIEWER: Did you ever try it again?

FALWELL: Sure...

lots of times. But not in the outhouse. Between Mom and the shit, the flies were too much to bear.

INTERVIEWER: We meant the Campari.

FALWELL: Oh, yeah. I always get sloshed before I go out to the pulpit. You don't think I could lay down all that bullshit sober, do you?

© 1983—Imported to Campari U.S.A., New York, NY. All rights reserved. Admitted to liquor.



CAMPARI You'll never forget your first time.

*NO HARDY—NOT TO BE TAKEN SERIOUSLY

The key differences between US and UK media law most probably lie in the key reference points for protecting freedom of expression. The UK's Article 10 Freedom of expression legislated for in the Human Rights Act of 1998 is qualified. The US First Amendment, part of a written constitution is not.

Section 10 Human Rights Act- Article on Right to Freedom of Expression. (European Convention on Human Rights and Fundamental Freedoms 1950)

'(1) Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

(2) The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.'

The US First Amendment 1791

'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.'

Johnny Depp v Amber Heard- a libel case run in both the UK and USA legal jurisdictions with different outcomes

In November 2020, the *Sun* newspaper and its executive editor Dan Wootton successfully relied on the Section 2 defence of Truth when defending a 16-day trial in which the actor Johnny Depp sued over articles published 27th and 28th April 2018 headlined 'How can JK Rowling be "genuinely happy" casting wife beater Johnny Depp in the new Fantastic Beasts film?' and other headlines.

It was described as the biggest English libel trial of the 21st century.

Unlike in the USA the English High Court judge Mr Justice Nicol adjudicated the trial of evidence and found on the facts.

He decided on the standard of proof of balance of probabilities that during their relationship, Mr Depp committed 12 out of the 14 incidents of serious violent physical assault against Amber Heard which had been relied on by the defendants and that on three such occasions she feared for her life.

See: Depp II v News Group Newspapers Ltd & Anor [2020] EWHC 2911 (QB) (02 November 2020) at:

<https://www.bailii.org/ew/cases/EWHC/QB/2020/2911.html>

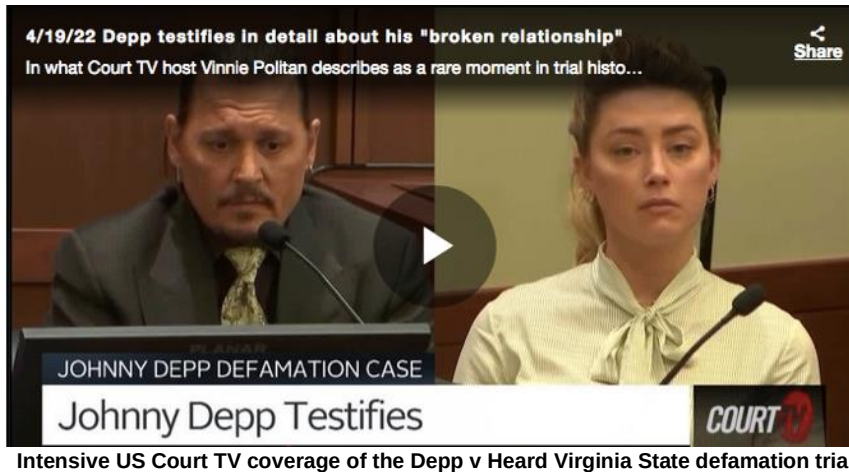
However, when similar issues were tried in a US court in June 2022, Depp largely won the libel case in that jurisdiction. In the US civil trial the litigation was pursued between the two individuals rather than the publications.

Depp sued Heard over a piece she authored in the Washington Post published 18th December 2018 and the jury ruled that three statements (including the headline, which she did not write) were defamatory, untrue and published with malice:

1: "I spoke up against sexual violence — and faced our culture's wrath. That has to change."
[headline]

2: "Then two years ago, I became a public figure representing domestic abuse, and I felt the full force of our culture's wrath for women who speak out."

3: "I had the rare vantage point of seeing, in real time, how institutions protect men accused of abuse."



Intensive US Court TV coverage of the Depp v Heard Virginia State defamation trial

Depp was awarded \$15m in damages by the jury, capped at \$10.35m by the Fairfax County Court in the state of Virginia where the trial was held. Heard won \$2m in damages from Depp after a defamatory statement made by her former lawyer Adam Waldman was published by Mail Online on 8 April 2020. He accused her of fabricating evidence of abuse by Depp.

The contrasting results of the Depp v Heard litigation in the two common law jurisdictions was explored by *Press Gazette* 6th June 2022 in the article 'Johnny Depp vs Amber Heard: Why did Pirates star lose libel case in UK but win in US?'

See: <https://pressgazette.co.uk/johnny-depp-amber-heard-trial-uk-us-libel-law/>

Press Gazette editor Dominic Ponsford concluded 'a key difference is the fact that his [Depp's] defeat over substantially similar claims in the UK was decided by a judge – whereas the US trial was decided by a jury.'

He further observed: 'The US jury would also have been exposed to widespread commentary throughout the case on social media, which was overwhelmingly supportive of Depp. It may also be significant that in the US Depp sued Heard (the individual) rather than the Washington Post (the publication) – especially when media titles like the Post and Mail Online, which was involved in the counter claim, have much more experience of fighting defamation actions than Heard.'

Another and, indeed, significant difference between the procedure and media coverage of the defamation cases is that in the United States, the entire hearing was televised, whereas in London, Mr Justice Nicol presided over a case where journalists and members of the public could only be present in the court room. Reporters had to rely on their note-taking, some by shorthand, to provide an accurate and fair record of the proceedings.

Jury awards in US defamation cases reach levels that would not be permitted in the UK legal jurisdictions. A spectacular example is undoubtedly that of the award against conspiracy polemicist Alex Jones. In October 2022 a jury in Connecticut ordered him to pay Sandy Hook shooting massacre victims' families nearly \$1 billion with a further award of punitive damages amounting to \$473 million.

The damages and verdicts were in favour of the families of eight victims killed in the 2012 shooting and an F.B.I. agent who responded to the scene. Jones had been found liable for defamation after he spent years falsely describing the shooting.

See *New York Times* coverage of the case at: <https://www.nytimes.com/live/2022/10/12/us/alex-jones-verdict-sandy-hook>

Guardian and Reuters: 'Infowars host Alex Jones ordered to pay \$473m more to Sandy Hook families. Conspiracy theorist must pay punitive damages on top of nearly \$1bn jury verdict for falsely claiming 2012 shooting was hoax.'

See: <https://www.theguardian.com/us-news/2022/nov/10/alex-jones-conspiracy-theorist-sandy-hook-victims-hoax>

Before we leave this brief exploration of the US media law system it might be instructive to reflect on a multimillion award of defamation damages against a US College whose staff and students had been judged to have wrongly waged a campaign of racism accusation against a local bakery.

Oberlin College in Oberlin City, Lorain County, Ohio had to pay \$36 million to the bakery owners who said they had been falsely accused of racism. In November 2016, three Black students from the College were arrested after they were accused of trying to buy wine from the Gibsons Bakery story with a fake ID.

Oberlin College students, deans and professors protested outside the bakery making accusations of racism and handing out flyers stating the bakery 'is a RACIST establishment with a LONG ACCOUNT of RACIAL PROFILING and DISCRIMINATION.' One flyer said: 'Today we urge you to shop elsewhere in light of a particularly heinous event involving the owners of this establishment and local law enforcement.'

The bakery said that its employees had been threatened and their car tyres had been punctured because of the school's claims, and that owner David Gibson's home was damaged on more than one occasion.

The three students later pleaded guilty to three misdemeanor charges [one student later had the plea of guilty expunged] and the student trying to purchase alcohol with fake identification said that he did not believe the actions taken by employees were racially motivated. The Ohio Supreme Court ruled on 30th August 2022 not to take up the college's appeal of a lower court ruling that upheld the judgment.

See: CNN 9th September 2022 'Oberlin College to pay \$36.59M to bakery owners who claim they were falsely accused of racism.'

<https://edition.cnn.com/2022/09/09/us/oberlin-college-bakery-lawsuit-payment-reaj/index.html>

Mail Online "Truth still matters, and David has overcome Goliath": Family-run bakery hails \$36.5 million settlement that Oberlin FINALLY paid - after woke college defamed the small business with false racism claims.'

<https://www.dailymail.co.uk/news/article-11195113/Oberlin-College-pays-36-5m-owes-Ohio-bakery-defamed-racism-claims.html>

Oberlin Review 16th September 2022 'Oberlin College v. Gibsons Bros., Inc.'

<https://oberlinreview.org/27513/news/27513/>

Judge Donna J. Carr for the three member panel of the Ohio Court of Appeals in Gibson Bros., Inc. v. Oberlin College, 2022-Ohio-1079.

<https://law.justia.com/cases/ohio/ninth-district-court-of-appeals/2022/16ca011016.html>

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The Meaning of Open Justice- a discussion and historical reflection by Tim Crook.

In 2020 I was commissioned to research, investigate and report on the development and state of Open Justice in the UK legal jurisdiction.

This has been an initiative by the United Nations Development Programme (UNDP), via the 'Rule of Law Partnership in Uzbekistan' project (run by USAID, the Supreme Court of the Republic of Uzbekistan, and UNDP)

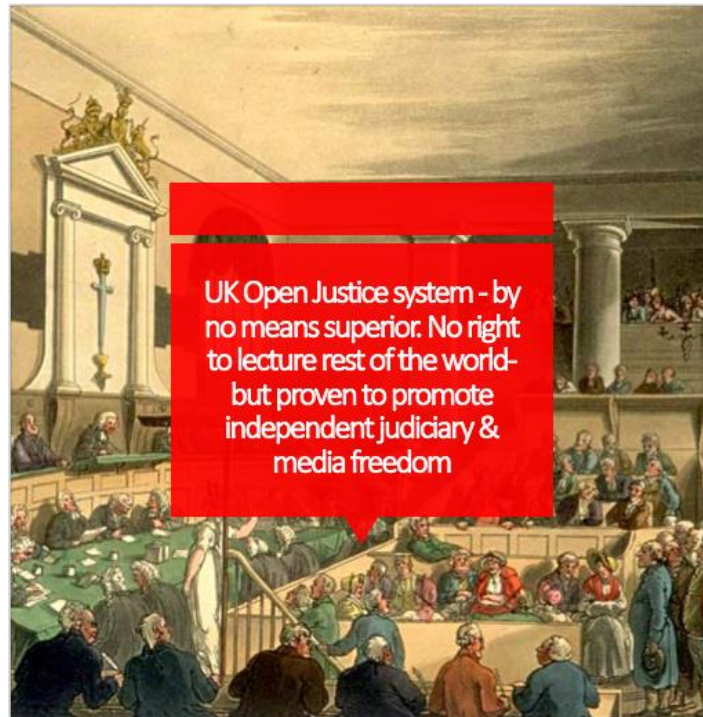


I presented to a special conference session in Uzbekistan on December 4th 2020 with judges, judicial officials and journalists who have been developing the country's engagement with Open Justice culture.

The conference sessions engaged comprehensive discussion and reflection about comparative practices and insights and ideas for future development.

This section includes the body of research and analysis provided for discussion.

This includes particular recognition and concern for the implications of the current global crisis of the COVID pandemic and the problem in many countries of the growing decline in print circulation and loss of news publication advertising to online digital oligopolies.



UK Open Justice system - by
no means superior. No right
to lecture rest of the world-
but proven to promote
independent judiciary &
media freedom

The UK Open Justice system – is by no means superior

Every citizen of the world should guard against ethnocentrism- believing everything in their country and society is superior to everywhere else and they have the right to export the model to ‘civilize’ and improve the rest of the world.

I have no right to pontificate to judges and journalists in other countries. I have no intention of doing so. And my presentation about the UK system is necessarily critical and contrite about its failings and problems.

Another thing I want to try to avoid is media law and ethics tourism. That’s superficially online researching another country and culture’s legal and media system to pick and choose things I think would work well and help reform the UK situation.

A few weeks in Amsterdam, New York City, Kuala Lumpur, Beijing or Moscow without fluent knowledge of the language is not going to equip me with proper understanding of socio-economic, cultural and historical roots, values and imperatives.



But the UK's largely Open Justice system has been proven to promote an independent judiciary and advance media freedom.

Both are considered as very strong constitutional factors that underpin democratic society, promote equality before the law, and the necessary stability of respect for the rule of law.

What has been learned very, very slowly over hundreds of years in the United Kingdom?

Democratic policing is successful policing by consent.

A Democratic legal system is one where the authority of the legal system and courts has public respect and support.

There are three legal jurisdictions in the UK: England & Wales; Scotland; and Northern Ireland. All vector to the UK Supreme Court at Westminster. All are very similar with appointed professional, not elected judges.

In the matter of serious criminal cases where the accused plead not guilty the verdict is determined by a jury of lay persons (non-judges).

There are 12 in England and Wales and Northern Ireland, and 15 in Scotland.

They are selected randomly from electoral registers.

This is considered to be the vulnerability to media prejudice and what UK legislation describes as the substantial risk of serious prejudice to the administration or impedance of justice.

And in the UK, it has been decided to apply criminal legal sanctions to media publications and their editors who generate so much prejudice, hate, suspicion and pre-judgement in relation to an impending criminal trial with jury determination.

This is all about vilifying an accused or defendant and in more vernacular language sometimes called 'monstering a suspect'.

Preventing fair trial by jury in the UK can lead to prosecution, an unlimited fine and a maximum prison sentence of two years.

The last time an editor went to prison for this kind of offence was in 1948- Sylvester Bolam, a Durham University graduate and editor of the mass circulation Daily Mirror newspaper.

He approved publication before criminal trial of a news article in which the serial killer, John George Haigh, after being arrested for multiple murders was said to have confessed to drinking the blood of his victims like some kind of 20th century vampire.

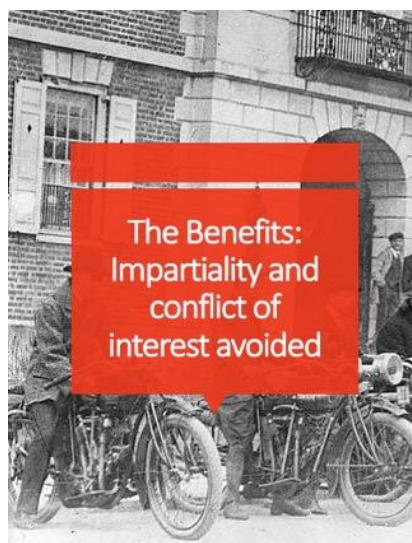
He was not named in the report, but any future jury could obviously make the connection.

This three-month imprisonment experience of a well-educated middle-class bourgeois newspaper editor was said to have broken his health and he died five years after his release.

He was only 48 years old when he passed away in 1953. In the modern age such punishment would most likely be considered disproportionate.

Jailing journalists or editors for publication offences is discouraged in many legal jurisdictions though there have been exceptions in the UK with two journalists being imprisoned in the early 1960s for refusing to reveal their sources to a judicial public enquiry.

More recently a handful of professional journalists were imprisoned for criminal offences connected to the phone hacking scandal.



The Benefits of Open Justice: Impartiality and avoiding judicial conflict of interest.

Justice depends on the impartiality of the judges and the court officials operating any legal system.

The avoidance of conflict of interest must be in the appearance as well as the material fact.

This cannot be achieved without justice being open and subject to the scrutiny of professional journalists reporting fairly and accurately, and without fear or favour.

We go back in time now to an everyday Magistrates Court case about a motorcycle collision and road traffic offences in a country town in Sussex, England in 1924.

R v Sussex Justices concerned a motorcyclist called McCarthy who was accused of dangerous driving.

It became an important test case in setting the value and principle of judicial impartiality.

The clerk to the justices (the judicial officer of the court) was a member of the firm of lawyers acting in a civil claim against Mr McCarthy arising out of the accident which had led to the criminal prosecution.

The clerk retired with the three lay justices trying the case when they were discussing whether to find him guilty or not.

They did return to convict the defendant. The justices said the clerk had said nothing to them and not directly influenced them.

But on appeal Lord Chief Justice Hewart explained: ‘...it is not merely of some importance but is of fundamental importance that justice should not only be done but should manifestly and undoubtedly be seen to be done.’

These words have become iconic whether quoted in or out of context.

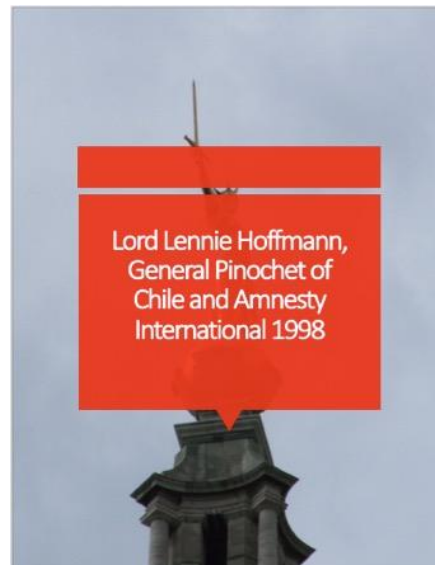
The Natural Justice principle here could only be upheld because of Open Justice.

Everyone in court including the journalists and public were able to know who the clerk was, who the justices were and the identity of the defendant or accused. The connections could be made.

Back in 1982 there was a test case declaring that there can be no situation where the identity of judges and justices should ever remain secret.

This happened at the huge shipping container port of Felixstowe on the east coast of England where the lay justices refused to give their names to reporters because they were frightened that people they had punished might carry out reprisals against them.

It was ruled that this risk was far too remote and where there was any evidence of threats or a risk of retaliation, the matter should be sorted out by investigation, prosecution and deterrence on the part of the police.



Lord Lennie Hoffmann, General Pinochet of Chile and Amnesty International 1998

Lord Lennie Hoffmann's failure to declare his links with Amnesty International before ruling on whether former Chilean dictator Augusto Pinochet was immune from prosecution [led to the unprecedented setting aside of a House of Lords legal judgment.](#)

The House of Lords judicial Committee was then the highest UK level court.

A Spanish judge wanted General Pinochet extradited from the UK to Spain to stand trial for crimes against humanity and these included torture and murder against political opponents when he was the military dictator of Chile.

The extradition application was made by Spain in Britain because Pinochet had been travelling there for medical treatment.

The global human rights NGO Amnesty International was an intervening party in this case and supported the Spanish Judge's bid to have Pinochet detained in Britain and extradited to Spain where his victims were seeking justice for what had been done to them many years before in Chile.

A full panel of five Law Lords (they are now called Supreme Court Justices) convened a correcting court and criticised the failure of Lord Hoffmann to declare his connections with Amnesty International.

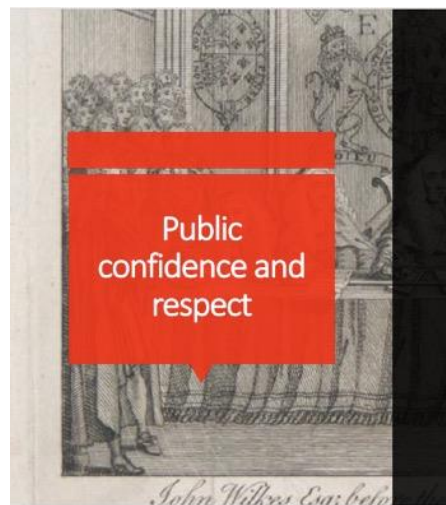
Lord Hoffmann appeared rather unrepentant. He later said to the Daily Telegraph newspaper: 'the fact is I'm not biased. I am a lawyer. I do things as a judge. The fact that my wife works as a secretary for Amnesty International is, as far as I am concerned, neither here nor there.'

He'd actually served as unpaid director of the Amnesty International Charity Ltd since 1990.

[This is a case where Open Justice helped guarantee transparency and accountability.](#)

There is a famous quotation from an early 17th writer called Thomas Fuller: 'Be Ye Never So High, the Law is above You.' In more modern English this means: 'Be you ever so high, you are never above the law.' And in the instance of the Pinochet extradition case this included one of the highest judges in the land.

This scrutiny and correction were achieved by Open Justice in the courts.



Public confidence and respect

Scrutiny of all court proceedings and access to those proceedings maintains faith in the administration of justice whether civil or criminal.

It's educational and an assurance that the state is protecting the individual citizen from crime and providing legal remedies when people suffer from negligence, the failure to fulfil contracts, and they need to claim damages, restitution and compensation for shoddy and harmful services.

Open Justice deters abuse of power and inappropriate behaviour by the judges and courts.

It stops judges bullying lawyers or defendants. It also prevents lawyers and defendants bullying judges and behaving disrespectfully.

It encourages judicial officers to do their very best and to uphold the rule of law.

Open justice is the observation of the process of justice, the legal holding to account of government and powerful people and corporations.

It's the source of public debate about the quality and performance of judges and lawyers, and the fairness of legal procedure.

Without Open Justice, journalism and the media cannot be the watchdogs of democracy.

Yes, like barking, snarling, and howling dogs and to extend the metaphor they can also, of course, be contented dogs wagging their tails with approval.

How does this work in practice? Here is a short narrative of a dramatic episode in British social and legal history.

The Birmingham pub bombings of 1974.



Memorial to those killed in the Birmingham pub bombings, unveiled outside New Street Station on 21 November 2018. [Image by Elliott Brown.](#)

[CC BY-SA 2.0](#)

Irish Republican terrorists murdered 21 young people by exploding bombs in two pubs in Britain's second biggest city. There were other terrorist atrocities at that time- notably bomb explosions at pubs used by British soldiers in Guildford and Woolwich towards the end of 1973, and the bombing of a bus containing soldiers.

But it was the Birmingham incident that caused a hurricane of outrage. The police were under pressure to make arrests. They detained the wrong suspects.

The six men with Irish backgrounds were beaten up and tortured into making false confessions. They were beaten up again when held in prison.

What had happened to them became obvious when they first appeared in court with their faces covered in bruises and injuries, and this could be observed by the attending media.

[Unreliable forensic evidence combined with the false confessions led to their wrongful conviction and imprisonment for 16 years.](#) The same injustice was visited on the four people convicted of the Guildford and Woolwich pub bombings.

The British judiciary was incapable of imagining that innocent people could have been frightened into making false confessions and subject to threats and violence.

In 1980, a senior judge called Lord Denning upheld an appeal by the West Midlands Police against a civil action brought by the Birmingham Six for injuries they received in custody.

He said that if these six men were allowed to win their case 'it would mean that the police were guilty of perjury; that they were guilty of violence and threats; that the confessions were involuntary and improperly admitted in evidence; and that the convictions were erroneous... That was such an appalling vista that every sensible person would say, 'It cannot be right that these actions should go any further.'"

Eleven years later the 'appalling vista' would turn out to be the truth.



Makes legal reform and improvement possible

- It enables society to judge the quality of justice administered in its name and whether the law needs modification.

Open Justice makes legal reform and improvement possible

It enables society to judge the quality of justice administered in its name and whether the law needs modification.

The persistence of media investigation and coverage of the campaign for the release of what became known as 'The Birmingham Six' eventually led to their freedom in 1991 when their convictions were quashed.

But that had been the third appeal.

At the end of the second appeal in 1988 the most senior judge in England and Wales, Lord Chief Justice Lord Geoffrey Lane, said: 'The longer this case has gone on, the more convinced this court has become that the verdict of the jury was correct.' As with Lord Denning in 1980, he and the other judges hearing the cases, could not have been more wrong.

The catastrophe of so many miscarriages of justice involving terrorist trials engaged introspection and questioning by judges, lawyers and journalists. The system reformed.

A Criminal Cases Review Commission was set up to make appealing miscarriages of justice fairer. The law was changed to improve disclosure of information by the prosecution to the defence in criminal cases.

The media questioned whether it had contributed to prejudice and hatred that might have influenced the juries trying the cases and could journalists have done more to give voice to the wrongly accused people and their families?

[What about the failure of the police to investigate and pursue the real killers of those 21 young people in Birmingham in 1974?](#)

An open inquest decades later investigated what had happened, what had gone wrong in the police investigation, and whether the media with their knowledge of the truth could have done more to help unmask the real killers.

This inquest led to a new police inquiry and at least one man has been arrested and questioned over the murders.

After all this time Detective Chief Superintendent Kenny Bell, head of Counter Terrorism Policing in the West Midlands said: 'We are committed to finding those responsible for the terrible murders of 21 innocent victims almost 46 years ago.'

'Let me assure families of the victims and the people of Birmingham that we're working relentlessly to find the bombers and bring them to justice.'

This is a long historical narrative.

It tells a deeply tragic story and highlights how openness, scrutiny and questioning is a sure way for a legal system and the media covering it to earn public confidence and respect.

I covered these cases and reported on the appeals and met and talked to the people who suffered so badly when things went so wrong in the criminal justice system.

It was more like a criminal injustice system.

These were among the most serious miscarriages of justice in British history and represented most probably the biggest failure in the criminal justice process.

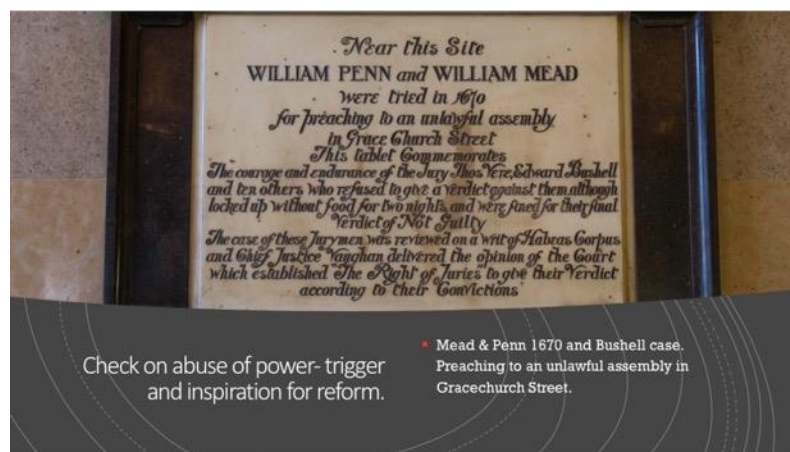


Image of plaque by [Paul Clarke](#) CC BY-SA 2.0

Check on abuse of power- The trigger and inspiration for reform

William Mead & William Penn 1670 and the case of Bushell the recalcitrant juror.

This is a foundation stone of the constitutional protection against state abuse of power when a jury has the constitutional right to return a verdict contrary to judge's direction and any unjust law that government and legislature decide to pass.

This constitutional bulwark only works when the media and public are there to witness it through contemporaneous reporting.

I have spent many hours contemplating this monument which is placed in the ground floor lobby of the Central Criminal Court, the Old Bailey in London. It is only yards away from the office where I worked as a resident court correspondent for more than ten years.

It commemorates: 'The courage and endurance of the Jury Thomas Vere, Edward Bushell and ten others who refused to give a verdict against them although locked up without food for two nights and were fined for their final verdict of Not Guilty. The case of these jurymen was reviewed on a writ of Habeas Corpus and Chief Justice Vaughan delivered the opinion of the Court which established The Right of Juries to give their verdict according to their convictions.'

Habeas Corpus is a Latin phrase and in law means 'deliver up the body' to the court- preferably alive.

These two young men were radical for their time being non-conformist Baptist preachers or early Quakers. They liked to do their preaching on street corners.

William Penn went on to found the US state of Pennsylvania which was named after him.

A pamphleteer (or early kind of reporter) took down a shorthand note of the proceedings.

There was a biased panel of judges who disliked Mead and Penn for their religion and politics. They were prejudiced against them and determined that they should be found guilty and jailed.

The two defendants were ordered to put on their hats in court and then fined for contempt of court in wearing them. The abuse and bullying were farcical.

The jury found the two defendants 'guilty of speaking in Gracechurch Street' but refused to add 'to an unlawful assembly.'

The infuriated judges (there were several on the panel including the Lord Mayor of London thus introducing an additional political element) were outraged and told the jury that they 'shall not be dismissed until we have a verdict that the court will accept.'

The jury modified the verdict to 'guilty of speaking to an assembly in Gracechurch Street' only- omitting the key adjective 'unlawful.'

The judges had them locked up overnight without food, water or heating.

They ordered Penn bound and gagged.

He protested, shouting to the jury, 'You are Englishmen, mind your Privilege, give not away your Right.'

The juror Edward Bushell replied, 'Nor shall we ever do.'

Another two days passed, and a very hungry, cold and thirsty jury continued to be stubborn and stayed true to their conscience.

They returned a not guilty verdict.

The judges responded by fining the jury for contempt of court for returning a verdict contrary to their own findings of fact and ordered them to languish in prison until the fine was paid.

Penn protested that this violated an early bill of rights called Magna Carta from the beginning of the 13th century and he was forcibly removed from the court.

Most of the jurors paid the fine.

But Edward Bushell and Thomas Vere refused.

They would be released by Lord Chief Justice Vaughan and an early form of appeal court which ruled that juries should not be punished for the verdicts they return- even when they appeared to defy a judge's directions.

The ruling and the interpretation of it that followed protected what is sometimes called a 'perverse verdict.'

This case and the monument are the foundation stones of the inviolability and integrity of the right of any jury not to be punished for the verdicts they return.

[The full transcript of the trial of Penn and Mead can be read online.](#)



Graphic produced by the Metropolitan Police to represent their view of the success of Operation Elveden first published in February 2016.

The public can know if crimes are investigated and tried

Open Justice allows the public to judge and evaluate how criminal cases are investigated and brought to trial through prosecution, conviction and sentencing.

It helps answer the crucial questions:

Who is committing crime?
Who are the victims?
Is it right what is being done?

The picture here is a public relations illustration of [Operation Elveden by the Metropolitan Police in London.](#)

They came under pressure to investigate crimes arising out of what became known as the Phone Hacking scandal and corruption by journalists- mainly working for high circulation and competitive tabloid/popular newspapers.

Criminal proceedings against a journalist and a private detective on a Sunday newspaper called the News of the World in 2006 and 2007 revealed corrupt payments to obtain the passwords of mobile telephone messages of so-called 'celebrity public figures' including the at least one of the children, Prince William, the son of Prince Charles and Diana Princess of Wales.

The Guardian newspaper's investigative journalist Nick Davies asked further questions and followed up sources who indicated that the police enquiry had uncovered industrial scale interception of mobile phone communications to

obtain confidential private messages that would be the source of hundreds perhaps thousands of stories.

The issue became a national and, indeed international scandal when the Guardian revealed that a murdered 14-year-old girl's mobile phone had been unlawfully intercepted by the private investigator and journalist phone-hacking racket at the News of the World.

Had this impeded the police investigation trying to find her and identify her killer- who turned out to be a notorious serial killer?

A public enquiry followed led by a judge and conducted by lawyers examining journalist ethics, relationships between police, journalists, newspapers and politicians.

It was named 'The Leveson Inquiry' after the senior judge running it- Sir Brian Leveson.

There were criminal trials over the phone-hacking. One former News of the World editor who had gone on to be the Director of the Prime Minister's media communications was jailed.

Prosecuting industrial scale phone hacking led to evidence of systematic corruption by popular journalists and newspapers of police officers, civil servants and government officials.

The evidence was largely provided by the newspapers themselves in the form of digital email records when they feared being prosecuted for corporate corruption.

Operation Elveden became the largest police investigation of professional journalists and the public official sources they had paid information for in western legal jurisdictions and indeed legal history.

And the Open Justice dimension was clear. The public were able to judge the nature of the victim-hood, the justification for and controversy surrounding it, and the proportionality of the process.

Was it justifiable spending nearly £15 million over five years to investigate digital email communications that had been given to the police by two publishers in defiance of the promise by journalists and editors to protect the police and public official sources providing the information?

The public trials of journalists accused of making the payments were unsuccessful. Juries largely found them not guilty accepting their defence that the payments had been for important public interest stories.

Only one journalist's conviction- where he had pleaded guilty actually stood. Over 30 of the journalists who had been charged or tried were acquitted. Where there had been guilty verdicts, these were overturned on appeal.

In the end 33 of the 34 convictions related to the public official sources found guilty or pleading guilty. The juries and public seemed less sympathetic to 'whistle-blowers' including nine police officers for taking money and what were seen as bribes in return for confidential information learned during their public official work as civil servants.

But the crime they were being prosecuted for 'misconduct in public office' had not been a legislated for criminal offence created by Parliament. Was there an issue here of no crime without law? Had the state made up a law to prosecute journalists and their whistle-blowers because of the political pressure created as a result of the phone-hacking scandal?

Had the sources been entitled to the protection of journalist sources enshrined under Article 10 Freedom of Expression Human Rights? Operation Elveden and its associated trials ended in 2016- but the public debate about Who is committing crime? Who are the victims? Is it right what has been done, continues.

One of the public officials is appealing to the European Court of Human Rights. He said he was betrayed by the newspapers who had paid him and promised to protect him as a confidential source for public interest information about security and safety in the prison system.

The former prison officer Robert Norman was jailed and ruined by the prosecution, trial and conviction.

He is saying this should not have happened. What he was doing was not a crime when he was doing it.

As a confidential journalist's source, he said he should have been protected by the publisher and indeed the legal system that should have recognised his rights under Article 10 freedom of expression to communicate important public interest information to a journalist.




Everyday reporting = notice of rule of law in progress

- The media can ensure that the public has a full understanding that the legal system is operating the assertion of the rule of law in progress and that this is continuing.
- Contemporaneous access and dissemination sustains the communication of the existence of the rule of law.

Everyday reporting = notice of rule of law in progress

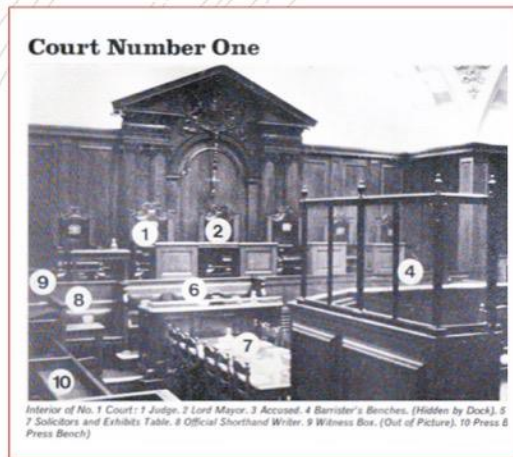
The media can ensure that the public has a full understanding that the legal system is operating the assertion of the rule of law in progress and that this is continuing.

Contemporaneous access and dissemination sustain the communication of the existence of the rule of law.

This is a surreptitious photograph taken of a judge sentencing a murderer to death in 1912 in the number one court of the Old Bailey. In 1925, it became a criminal offence to secretly take photographs in court. It represents the intense and sensational coverage of criminal justice resulting in capital punishment.

During the 20th century it would be the method of asserting deterrence against murder and at the same time the very reason capital punishment could be properly debated and questioned as the right thing to do.

When it became apparent that the weaknesses and inherent faults in the system could lead to the state killing innocent people, the hanging of convicted murderers would be abolished in the 1960s.



Witnesses under pressure to tell the truth

The whole truth and nothing but the truth cannot be sustained and monitored without open reporting and the journalists there as the eyes and ears of the public.

A lie told in public proceedings is more likely to be exposed than one told behind closed doors.

Illustration of the architecture of the Number One court of the Central Criminal Court taken from published guide for members of the public in 1960s & 70s. The numbering offers an opportunity to review the functions of trial participants in open court proceedings and the nature of public gaze and scrutiny.

Open Justice should mean that witnesses are under pressure to tell the truth

The whole truth and nothing but the truth cannot be sustained and monitored without open reporting and the journalists there as the eyes and ears of the public.

A lie told in public proceedings is more likely to be exposed than one told behind closed doors.

Yes, the design of these old court-rooms does have the element of the public spectacle about them.

Courtrooms designed and built at the end of the 19th century and early 20th century- what we call in Britain the Victorian and Edwardian ages because they were named after the Kings and Queens of the time, have the look of theatres or music halls with raised sections as some kind of performance stage for judge, defendant, jury, lawyers and witnesses and 'public galleries' for people to satisfy their desire, curiosity and wish to find out what is going on.

Is it voyeurism, the demand for entertainment, the pleasure of seeing a ritual performance based on others' tragedies and misfortune? Or is it the most

effective way of society and the state using due legal process to find out the truth?

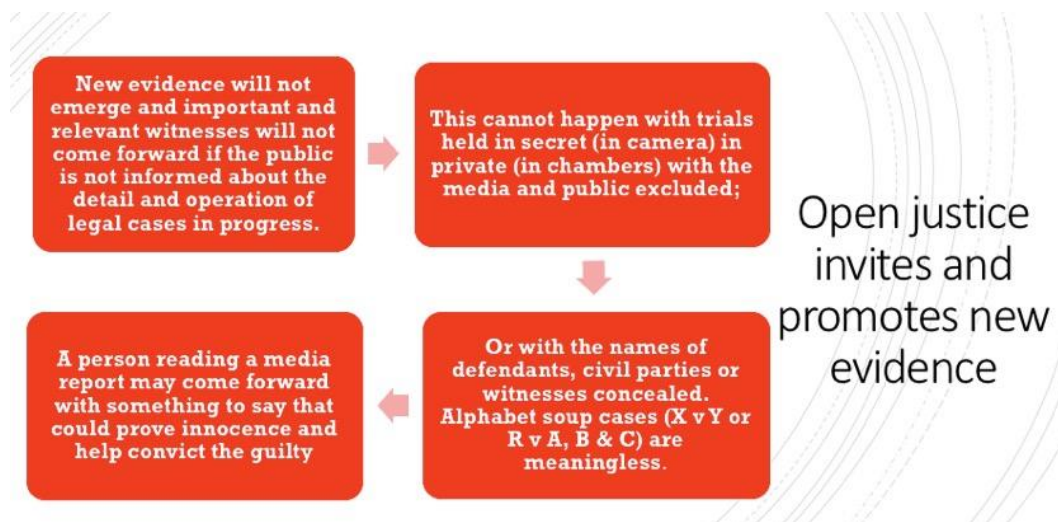
In a recent Metropolitan Police Operation called 'Midland' a man used the cloak and legal mask of anonymity as a sexual abuse victim to tell outrageous lies about public figures and politicians falsely accusing them of sexual abuse and murder of children.

This led to the wrongful police investigation of these public figures, their wrongful arrest, the searching of their homes and their public humiliation of being wrongly labelled as suspected murdering paedophiles in the media.

The man called 'Nick' would eventually be put on trial for perjury and perverting the course of justice.

Open Justice would eventually expose 'Nick' as Carl Beech. He was found to have been a paedophile himself and in July 2019, he was found guilty and sentenced to 18 years in prison.

Open Justice here led to the unravelling of his lies that ruined other people's lives.



Open justice invites and promotes new evidence

New evidence will not emerge, and important and relevant witnesses will not come forward if the public is not informed about the detail and operation of legal cases in progress.

This cannot happen with trials held in secret (in camera) in private (in chambers) with the media and public excluded.

Or with the names of defendants, civil parties or witnesses concealed.
'Alphabet soup' cases (X v Y or R v A, B & C) are meaningless.

A person reading a media report may come forward with something to say that could prove innocence and help convict the guilty.

This is why I campaigned against secret justice and unfair reporting bans in the 1980s.

I launched an appeal to the European Commission and Court of Human Rights at Strasbourg and the government settled by agreeing to introduce legislation so that journalists and news organisations had the right to appeal and challenge court reporting bans and decisions to hold trials in secret.

Along with another journalist we were successfully granted a hearing before the Lord Chief Justice and Appeal Court, criminal division in 1994. The only problem is that this appeal was held in secret and its decision could never be reported. We described this as Kafkaesque after Franz Kafka's famous novel *The Trial*.

It was absurd that an appeal against the decision to hold a trial in secret was heard in secret itself and that the court's ruling could not be reported because of this secrecy.

But at least we had done our best to challenge the secrecy. Many years later the same court would accept that no English trial could ever be held in total secrecy.

The identity of the defendants, the names of the lawyers, the judge, the nature of the charges, and the decisions of the court and especially a jury's verdict at the very least required identification and publication.



Deterrence in criminal justice = publicity

- A key purpose of criminal justice is the deterrence and prevention of crime.
- Anyone considering committing a crime will think twice and be discouraged if they know about the consequences.
- Punish the wrongdoer. Defend the children of the poor.

Deterrence in criminal justice = publicity

A key purpose of criminal justice is the deterrence and prevention of crime.

Anyone considering committing a crime will think twice and be discouraged if they know about the consequences.

The declaration 'Punish the wrongdoer. Defend the children of the poor' is carved into the granite stone facing at the front of the Central Criminal Court.

The aspiration here is a noble one that justice should be seen to protect those least able to protect themselves.



Open Justice dissolves rumour, prejudice, 'fake news.'

Public trial is an organized and disciplined social ritualizing a process of remedy, retribution and restitution.

This is to avoid vigilante and mob justice, but it cannot work without open, fair and accurate reporting.

Open Justice reporting diminishes and lessens the risk of uninformed, inaccurate rumour, and 'fake news.'



Open Justice promotes public debate about acute issues

The legal system adjudicates disputes, problems, and human behaviour on the front line of social fractures, problems, and crises.

It exposes and contains the best and the worst in human conduct.

It reveals the trends and manifestations of anti-social behaviour, crime, socio-economic injustice and inequality.

It is the forum for informing the public and precipitating debate, discussion and political response.

It is the intersection between independent judiciary, democratically elected legislature, executive government and independent free press and media.

It is a complicated constitutional equation. But the cases arising are fascinating.

In 1982 a man called Michael Fagan who was struggling with heroin addiction and personal and social problems admired the Queen so much that when he saw a window open from the street at Buckingham Palace he thought he could climb in and perhaps have a chat with her about his unhappiness and problems.

He 'visited' the Palace two times in this way.

Climbing the drain-pipe and slipping through under the open window on each occasion.

Nobody saw him. No alarm was activated.

On the first occasion he helped himself to some wine that had been a present to Prince Charles for the Royal Wedding with Princess Diana the previous year.

He was too shy to talk to the Queen.

During his second visit, he did knock on the Queen's door when she was in bed waiting for her morning tea. She ran out and he was arrested.



Buckingham Palace. Image: Tim Crook

The legal process and its engagement with media coverage were extraordinary and fascinating.

The scandal raised serious public interest questions about the security of the Queen, Buckingham Palace and the Royal Family during a time of Provisional IRA terrorism attacks throughout the UK.

The Queen's cousin Earl Mountbatten had been assassinated and blown up in his pleasure boat in Ireland in 1979 along with members of his near family.

More than one million pounds had been spent on a sophisticated new electronic security system at the Palace. It had clearly not worked.

What had Michael Fagan actually done that was wrong? The state decided to put him on trial in the number one court of the Old Bailey for burglary- stealing the bottle of wine he had found after climbing through the window and having a walk around the corridors and sitting on the throne.

In a public trial before a jury, it was argued that this was disproportionate and an over-reaction. The jury agreed and found him not guilty.

The prosecution wanted him subject to a hospital order without limit of time because of his mental illness, his plea of guilty to taking his partner's car without consent and a minor assault when he had an altercation with his stepson.

This would have meant that a politician, the Home Secretary, would have been the person to decide when he should be released.

The judge at the time decided Michael Fagan should not be made a scapegoat for the faults and failings of others that his misadventure and, it has to be said, rather entertaining to read shenanigans in Buckingham Palace had exposed.

The judge insisted on imposing a hospital order which meant only medical doctors would decide when Mr Fagan could leave and go home- which he did six months later.

Had Michael Fagan been denied a fair trial because of the prejudicial and sensational newspaper coverage after his arrest?

They called him Spiderman- somebody who could literally jump walls, was a master burglar because he could pick locks; somebody who had been a frequent visitor to the Palace; not only drinking Royal Wine but helping himself to Prince Philip's cigars as well.

He was called a dangerous, morose, unsociable and unpredictable misfit and a junkie.

The media coverage would be the first test case of a new media contempt law passed in 1981 setting a new bar on the beyond reasonable doubt proof that would be required.

The offending media content had to create a substantial risk of serious prejudice.

And the court would decide most of the Fagan coverage was prejudicial but not seriously prejudicial.

The risk became less substantial if the time of publication was distant from the jury trial and the scale and impact of publication remote and small.

The British system here struck a balance. Only publications close to the trial that interfered and distorted the issues to be tried would be judged to be guilty of media contempt.

Saying that Michael Fagan had confessed to burglary when he had not. Saying he had stabbed his stepson with a knife when he was only accused of a minor assault.

Successful model of live streaming and communication of UK Supreme Court hearings and rulings using online media. Click on the screen-grab to view any currently available live-stream.



Best practice in open justice reporting is always aspired to but not necessarily achieved

Professional news publishers need advance notice of court cases (lists, names, parties, the identity of judges, a summary of cases in terms of charges, crime, nature of litigation).

They need access and the facility to be present during the live proceedings- a press bench, an audio-visual facility, the ability to use computers connected to WiFi, the right to use their smartphone for text (e.g. Twitter) transmission.

They need remote access when cases are geographically distant, or journalism reporting resources are limited.

They need access to non-verbal evidence and documentation presented in court.

Audio-visual streaming can be a solution; particularly during the current COVID pandemic.

They need immediate access to documentary rulings and sentencing.

They need access and use of digital audio and visual recordings of rulings and sentencing and as much of the content of the proceedings as possible.

They need access and the use of contemporary documentary streaming and archive of transcripts.

Under the current COVID pandemic of 2020 going into 2021 much of this is being achieved.

Accredited journalists are remotely covering criminal trials by audio-visual link. It is a weird and complicated experience. One young court reporter, Charles Maloney, has written about it. There are obvious advantages. He says:

‘There are ongoing discussions between HMCTS (Her Majesty’s Courts and Tribunal Service) and media representatives to explore the possibility of keeping the door open for journalists to join court hearings digitally in a number of different forums.

I am a fully converted member of the digital access brigade as I think this historic technological advance in open justice is something to be grabbed with both hands. Publications and freelancers will be more likely to cover courts if they do not have to pay the travel costs for sending their reporters in person.

This will lead to more scrutiny, particularly of some regional courts which currently do not get any coverage at all. Me sitting in my living room to cover a major trial is a win for journalism in that sense.’

But his article quite rightly reflects on ‘covering “traumatising” trials from home by video-link’. Is it really a proper substitute for being physically present and verifying the actuality and ‘truthfulness’ of what is going on?

See: [Reporter urges support for colleagues covering ‘traumatising’ trials from home](#)

The judiciary in England are also particularly nervous about the reliability of journalists and publications to respect the strictures banning sound or video recording and the broadcasting of the material they are seeing online by tele-video link.

Contempt proceedings [have been launched against the BBC for allegedly broadcasting a sequence from a live high court hearing.](#) And the current senior Judge in England [told a conference of editors that perhaps there was a need ‘to take a step back.’](#)



Tensions and problems. Freedom of expression balanced equally with other rights.

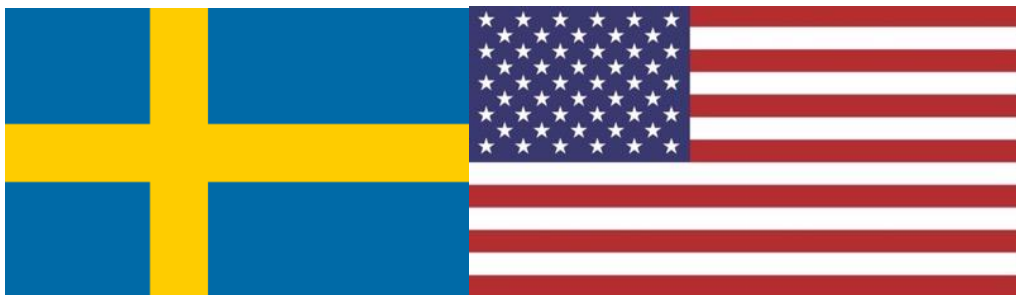
Open Justice is a default position in UK law, but it is a qualified doctrine.

Exceptions are open-ended though discouraged.

Exceptions are set by Parliament and developed by custom and practice in case law.

Under the European Convention of Human Rights and Fundamental Freedoms (now legislated for in 1998 Human Rights Act) Article 10 Freedom of Expression is equally balanced with Article 6 Right to Fair Trial and Article 8 Right to Privacy.

Article 10 is also explicitly qualified by the needs of national security, and other human rights such as Article 2 Right to Life, and Article 3 Right not to be subject to inhuman or degrading treatment.



- **Sweden**

- **United States of America**

How is this different compared to other countries e.g. USA and Sweden?

USA and Sweden have written constitutions. The UK does not.

There has never been a statutory declaration of media freedom in the UK.

The US First Amendment guaranteeing freedom of the press gives pragmatic priority to media freedom and Open Justice rights.

Sweden was the first country documented in history to have freedom of the press written into the constitution of 1766.

The first Swedish Freedom of the Press Act pioneered the principle of public access to information and made it legal to publish and read public documents.

The principle of public access is still a cornerstone of the Swedish Constitution. Judges and courts in Sweden cannot issue reporting bans and censor publications.

The First Amendment in USA prevents US judges and courts from doing so.



Illustration of the execution of the Cato Street conspirators in 1821 from a contemporaneous pamphlet.

Open Justice & Secret Justice tension in UK

Why is the situation in the UK different to the United States?

The power to reach out beyond courtroom walls to control the media began in Britain in the case of Clement from 1821.

In 1820 there had been a series of trials of what were known as the Cato Street conspirators.

This concerned a group of men accused of plotting to blow up the government of the time.

It was alleged government agent provocateurs created the conspiracy and entrapped the political radicals.

The Observer newspaper defied the ban to report the series of trials preceding the last one.

The editor Clement was prosecuted and fined £500 for contempt of court- a huge sum of money in those days.

The justification for controlling the media coverage was flawed because some of the same jurors served in subsequent trials.

The risk of media prejudice could not be properly argued as proper justification for the ban on reporting.

What was really going on here was a determination by the Judiciary and government of the time to limit publicity of a trial process because they feared rioting and protest.

The public execution of the convicted conspirators shown above in the grizzly illustration of public hanging and beheading was attended by considerable tension and protests by the attending spectators.



Are controls on media reporting justifiable? Sobering case history from 1910

- Legal doctrine of media contempt and control of competitive media sensationalizing and interfering with justice increased as a result of trial of US doctor Hawley Harvey Crippen in 1910.
- A largely privatized legal system (no legal aid then, and it is limited now combined with police, lawyer and media corruption to create conditions for miscarriage of justice.
- Crippen accused of murdering his wife Cora so he could live and eventually marry his lover & secretary Ethel Le Neve.

Are controls on media reporting justifiable? Sobering case history from 1910

The legal doctrine of media contempt and controlling competitive media sensationalizing and perceived interference with justice increased as a result of the trial of US doctor Hawley Harvey Crippen in 1910.

A largely privatized legal system (there was no legal aid then, and it is still very limited now) combined with police, lawyer and media corruption to create the conditions for a haunting miscarriage of justice.

Crippen was accused of murdering his wife Cora, so he could live with and eventually marry his lover & secretary Ethel Le Neve. They are seen here making their first court appearance at Bow Street Magistrates in London's Covent Garden area. It has since been sold off and just recently converted into a hotel.

Photograph taken of Dr. Hawley Harvey Crippen while in the dock of the Central Criminal Court in 1910.



Trial by media

Crippen and Ethel Le Neve had tried to flee the UK on an Atlantic crossing liner to Canada.

There had been overwhelming Trial by Media which pre-judged them.

The Metropolitan Police had originated a poster headlined: 'Wanted for Murder and Mutilation.'

They had a defence solicitor who was funded by cheque-book journalism and wrongly persuaded them to return to the UK when extradition would probably have failed.

Crippen in particular was provided with a poor defence team who failed to effectively challenge police evidence (including at least one paid prosecution witness), and an exaggerating forensic scientist who wrongly asserted that some human remains found buried in the cellar of Crippen's London home had a scar feature that very likely belonged to the alleged victim.

Crippen was found guilty and hanged. His corrupt lawyer sold a fake 'eve of execution confession' to a Sunday newspaper.

Letters to the Governor of Pentonville Prison where Dr. Crippen was held before his hanging had been written by a woman signing herself as the alleged murder victim Mrs Cora Crippen.

This was clear evidence that she was still alive and Dr. Crippen's story that they had agreed she would leave the country to go to America to avoid the social embarrassment of separation and divorce may have been true.

These letters were never disclosed to defence.

One was given to the then Home Secretary, Winston Churchill, and never seen again.

100 years later DNA testing proved the human remains were not Cora Crippen, but that of a man.



Photograph of Mrs. W.G. Brokaw on stand in courtroom in United States proceeding 13th December 1909.
Image from George Bain news agency [and Library of Congress](#).

Growing problems- generated and provoked by irresponsible media?

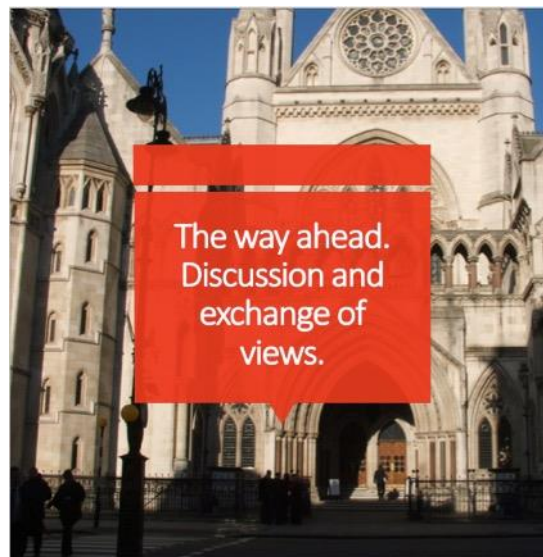
In the UK there is public and political consensus that vulnerable crime victims e.g. sexual offence complainants, youths (under 18), victims of human trafficking, FGM (female genital mutilation) should have anonymity for life.

This is now being extended to any criminal suspect arrested before charge, teachers accused of any criminal offence against their pupils/students prior to charging, and armed police officers who kill during the course of their duty.

Any involvement of national security, intelligence agencies, and terrorism or espionage normally engages draconian reporting restrictions, secret evidence and trial processes.

This is part of an ongoing repetitive pattern of over-sensational and what is seen as irresponsible media reporting leading to backlash, and an increase in restrictions.

The problem for UK Open Justice is that there a tendency for bad cases and experiences being used and cited to generate and justify new laws so that the exception to Open Justice then becomes the rule for Secret Justice.



The way ahead. Discussion and exchange of views.

There will always be a continuing tension between judiciary and media.

An independent judiciary needs an independent and enthusiastically reporting media as much as competitive media needs access to the drama and news urgency of court cases.

Culturally there will always be a professional difference of opinion. Police, lawyers and judges are more acutely aware of the dignity, suffering and feelings of people involved in their cases.

They do not necessarily fully appreciate and understand that the importance of what they do being reported depends on the media being able to frame dramatic narratives. Yes, sensationalism = entertainment.



Progress- slow, gradual but positive

In England and Wales, HM Courts & Tribunals Service and Ministry of Justice have been consulting with media organisations to promote 'Open Justice' to develop practical measures to improve reporting and journalist coverage of the legal system at all levels.

The Senior judge at the time, Lord Chief Justice Burnett, was sympathetic to the situation where reporters and news organisations do not have the resources to challenge reporting restrictions.

And he made this clear in a ruling in 2018 referenced as [Sarker, R v \[2018\] EWCA Crim 1341 \(13 June 2018\)](#) which gave guidelines to judges to be

vigilant before agreeing to applications for reporting restrictions when there were no reporters present in court.

In a section headed 'Open Justice' his ruling set out seven key concepts contained in the Open Justice principle:

When dealing with applications for reporting restrictions, the default position is the general principle that all proceedings in courts and tribunals are conducted in public. This is the principle of open justice. Media reports of legal proceedings are an extension of the concept of open justice.

The huge decline in newspaper circulation, loss of jobs, closure of titles and publications due to the dominance of Google and Facebook advertising and online digital commerce by Amazon, means professional journalism has fewer resources to resist and challenge courtroom secrecy and gagging orders limiting media coverage.

Local, regional and national media no longer have the same financial resources to instruct lawyers to properly and effectively challenge the restrictions being applied for in courtrooms where there are no reporters or media present.

As already indicated, after courtroom photography was banned in 1925, there's been some progress in broadcast coverage of the courts.

As indicated earlier there is now live [streaming of the UK Supreme Court](#), [the Appeal Court Civil Division](#), and there has been Parliamentary and judicial agreement to broadcast criminal sentencing sometime in the future.

In 2018 the Chartered Institute of Journalists produced an Open Justice Report with recommendations for the release of audio recordings of rulings and sentencing, and the setting up of judge media committees so that journalists and judges could meet regularly and discuss Open Justice issues.

The House of Lords Communications and Digital Select Committee released a report in November 2020 on the future of journalism and argued that to [avoid the literal 'breaking of public interest news' coverage more could be done to facilitate court reporting](#) including the release for reporting and publication of digital sound recordings.

We are sure that a commitment on both sides can lead to mutual understanding, the agreement to disagree on some issues, but with a continual discussion and conversation on how to achieve a successful balancing exercise between the coinciding imperatives of an independent judiciary and independent media.

There is every reason why Open Justice can co-exist with media responsibility.

There is no doubt that Open Justice and Freedom of Expression can continue to be key cornerstones serving the social and public interest needs of a democratic society in the 21st century.

McNae's Essential Law for Journalists 26th Edition (2022) covers many Open Justice issues in Chapter 15 'Open Justice and access to court information', pages 204-244.

McNae's Essential Law for Journalists 25th Edition (2020) covers many Open Justice issues in Chapter 15 'Open Justice and access to court information', pages 182-211.

Case History Sir Cliff Richard v BBC July 2018- A critical analysis published in The Journal, CloJ online

See: <http://cioj.org/thejournal/the-sir-cliff-richard-v-bbc-ruling-is-a-significant-precedent-and-damaging-to-media-freedom/>

For the full High Court ruling see: [Richard v The British Broadcasting Corporation \(BBC\) & Anor \[2018\] EWHC 1837 \(Ch\) \(18 July 2018\)](#)

The political fall-out from Mr Justice Mann's ruling in Sir Cliff Richard's successful privacy action against the BBC over their naming of him as a suspect in a sexual assault inquiry has had the flavour of the Brexit debate. Partiality, polemicism, win or lose, right or wrong, good and evil. It's either one way, or the other.

There are many who say the BBC **deserved to lose the case**, should never have defended it, and the judge's ruling **poses no threat whatsoever to press freedom**. In short: **'Shame on the BBC!'** The judge's reasoning and interpretation of the law is fully supported and so is his assertion that 'It is simply wrong to suggest there is now some blanket restriction on reporting investigations.' The BBC had been strongly urged not to appeal.

On the other hand there has been consensus among mainstream media publishers in press and broadcasting that the ruling does set a disturbing precedent, **is a significant blow to media freedom**, and **needs to be resisted**.

The ruling and its consequences require analysis attended by some measure of even-handedness and proportionality.

Why professional journalists disagree with the judge's ruling



BBC Headquarters in London. Image: Tim Crook.

Professional journalists at the BBC and elsewhere are aggrieved it has been ordered to pay £210,000 in damages and much more in legal costs for reporting accurately that Sir Cliff Richard had been investigated by the police for historical child sexual assault claims. They had repeatedly reported his side of the story and **only said they were allegations**. They reported that the police interviewed him, did not arrest him, and later fully exonerated him. They always reported his position that there was no truth whatsoever in the allegations.

They think it unfair that damages have to be paid **for a story that was true and when they consistently and repeatedly reported his denials**, expressions of innocence, and final exoneration. They do not understand why it was not in the public interest to name him when there was an **intensive and widespread political and public debate about well-known celebrities being subject to historical child sexual allegations** some of whom were later tried, convicted and jailed, and others later cleared but complaining their reputations had been unfairly destroyed. There have been significant judge led inquiries into the issue and multimillion pound police investigations. They honestly cannot understand or accept **why it was not in the public interest** to publish the truthful information that the police were investigating Sir Cliff Richard- one of Britain's pre-eminent and powerfully influential entertainers whose public interest status *par excellence* has always been heavily defined by his avowed Christianity.

In this context, even if it was accepted he had a reasonable expectation of privacy when suspected of crime, professional journalists believe **they had a public interest duty** to report that the police were investigating Sir Cliff Richard for sexually assaulting a child at a Billy Graham meeting in Sheffield in 1985.

The BBC were truly shocked by the ruling largely because they considered it as a retrospective penalty for doing something at the time that custom, practice and law had always permitted.

Privacy law and culture



Royal Courts of Justice in the Strand. Image: Tim Crook.

The professional news and journalistic culture of this country has not come to terms with how the law on media privacy has been developed by the courts and apparently supported by public and political opinion over the last 18 years. There is a severe dislocation in values and understanding between journalistic culture and the legal, public and political spheres.

Sir Cliff Richard v BBC was a contested media privacy case involving two of the most powerful parties you could ever find in British public life. It is an action that would not have been possible prior to the year 2000, the year the 1998 Human Rights Act came into force, and which introduced into English primary law **Article 8 of the European Convention on Human Rights**: 'Everyone has the right to respect for his private and family life, his home and his correspondence.' Parliament decided **under section 12(4) of the Act** that 'The court must have particular regard to the importance of the Convention right to freedom of expression' when litigation related to journalistic matters. In this situation the court must consider the extent to which it was 'in the public interest for the material to be published.'

Most professional journalists understood from this that Parliament required that the courts should give pragmatic priority and consideration to freedom of expression particularly when there was public interest in the material.

Source of Sir Cliff Richard's reasonable expectation of privacy



Parliament at Westminster. Image: Tim Crook

The view that Parliament instructed the courts to give pragmatic priority or 'particular regard' to freedom of expression in litigation over journalism said to be in the public interest was not shared by the UK courts when they began hearing media privacy litigation. 2004 was the year that supermodel Naomi Campbell had established in the **UK's then highest court, the judicial committee of the House of Lords**, that a respect for the right to media privacy did exist in law as a result of the Human Rights Act.

The approach of the majority of the Law Lords in her case was to adopt a balancing exercise between Article 8 privacy and Article 10 freedom of expression. It was recognised that there was a right to a reasonable expectation of privacy in a wide range of situations that could only be defeated by public interest in publication.

The right to media privacy also included protection from damage to reputation caused by the publication of truthful though private information. In the same year **Lord Steyn in Re S(FC) (A Child) (Appellant) [2004]** set a binding precedent that neither respect for privacy nor freedom of expression 'has as such precedence over the other.'

He set out the way judges in future would approach litigation of this kind: '...where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience I will call this the ultimate balancing test.' Lord Steyn and

his fellow judges would deny that this is judicial activism on their part and a rejection of Parliament's intentions. They would say the Human Rights Act gives them the power to take into account European Court of Human Rights case law that also advocates 'the ultimate balancing test.'

Long ago in the early 1960s there was case law making it clear that reporting that somebody had been helping the police with their enquiries when they were subsequently neither arrested nor charged was not libellous. The media had always recognised that they had a public duty to publish stories about individuals who were suspected of crime, had had their home and premises searched as a result of a police enquiry, and when they were being interviewed by the police whether or not they had been formally arrested. The public interest intensified where an individual was well-known, powerful, had public figure status, or was part of a public interest set of circumstances and narrative. The law protected publication if the facts were accurate.

But the developing law of privacy as evidenced by Mr Justice Mann's ruling fundamentally changed this situation. Most of the commentary on the Sir Cliff Richard case has failed to acknowledge that Parliament [in the 2011 Education Act](#) provided statutory life-long anonymity for teachers accused of criminal conduct against the students they teach unless and until such time they were formally charged by the police. Teachers became [the first group of professional people in British legal history](#) to be given automatic anonymity when they are accused of a criminal offence at work. There was a short period between 1976 and 1988 when men accused of rape offences had statutory anonymity unless and until they were convicted by the jury in a crown court trial.

Mr Justice Mann confirmed that the Sir Cliff Richard and BBC case was legally significant in advancing a reasonable expectation of privacy for criminal suspects. It was not something which been 'clearly judicially determined, though it has been the subject of judicial assumption and concession in other cases.' (Judge's ruling at paragraph 234). Four rulings at High Court and Appeal Court level in 2014, 2015, 2016, and 2017 had developed the case law: [PNM v Times Newspapers Ltd](#), [Hannon v News Group Newspapers Ltd](#), [ERY v Associated Newspapers Ltd](#), and [ZXC v Bloomberg LP](#). He also strongly drew on the pronouncements of [Sir Brian Leveson in his inquiry report into the Culture, Practices and Ethics of the Press in 2012](#). He cited the importance of Leveson's view '...that it should be made abundantly clear that save in exceptional and clearly identified circumstances (for example, where there may be an immediate risk to the public), the names or identifying details of those who are arrested or suspected of a crime should not be released to the press nor the public.'

The [Judicial Response to the Law Commission Consultation Paper on Contempt of Court](#) in 2013 fully endorsed Leveson's view. Mr Justice Mann called upon the [2013 College of Policing's Guidance on Relationships with the Media](#) which appears to repeat word for word Sir Brian Leveson's prescription: '... save in

clearly identified circumstances, or where legal restrictions apply, the names or identifying details of those who are arrested or suspected of crime should not be released by police forces to the press or public.’ He took on the observations of Sir Richard Henriques in his ‘[Independent review of the Metropolitan Police Service’s handling of non-recent sexual offence investigations alleged against persons of public prominence.](#)’

Sir Richard had been discussing the position of prominent and well known entertainers who ‘are all victims of false allegations and yet they remain treated as men against whom there was insufficient evidence to prosecute them. The presumption of innocence appears to have been set aside.’

Critical analysis of Mr Justice Mann’s ruling



Entrance to High Court in London. Image: Tim Crook.

It can be argued that Mr Justice Mann has cherry-picked from extra-judicial sources and, indeed dissenting views in case law that question the capacity of the public to accept legal exoneration and not guilty verdicts. This is an astonishing jurisprudential position to take. It questions the very impact of the rule of law and treats the media and its general public audience as a malicious, prejudiced, uncontrollable, rabid and witch-hunting mob incapable of respecting and acknowledging the very justice inherent in the due process of the law.

Mr Justice Mann’s [reasoning in paragraph 248 of his ruling](#) is contentious: ‘If the presumption of innocence were perfectly understood and given effect to, and if the general public was universally capable of adopting a completely open- and broad-minded view of the fact of an investigation so that there was no risk of taint either during the investigation or afterwards (assuming no charge) then the position might be different. But neither of those things is true. The fact of an

investigation, as a general rule, will of itself carry some stigma, no matter how often one says it should not.' It can also be argued the judge made a fundamental mistake in law in making the risk of some stigma as justification for reasonable expectation of privacy in these circumstances to take precedence. He was wrong to decide that the inevitability of some stigma residing in some people should trump the public interest of a media publication reporting the criminal justice process and identifying an individual suspected of a criminal offence.

Perhaps Mr Justice Mann would have benefited from being referred to **Lord Devlin's words in *Lewis v Telegraph* 1964**: 'Suspicion of guilt is something very different from proof of guilt [...] A man who wants to talk at large about smoke may have to pick his words very carefully if he wants to exclude the suggestion that there is also a fire; but it can be done.' No evidence has been produced showing that anything in the BBC's coverage implicitly or explicitly suggested there was fire behind the smoke. If that had been the case Sir Cliff Richard could have sued the BBC and any other media publication responsible for such coverage for libel.

Sir Cliff Richard said in interviews after his High Court victory that he believed the BBC 'took it upon themselves to be judge, jury, and executioner.' But Sir Cliff Richard was not being tried by the BBC. He was simply the subject of reporting about a police enquiry investigating an allegation against him that the police eventually decided did not merit arrest, charge and criminal proceedings.

Failure to give weight to UK Supreme Court Precedent



UK Supreme Court. Image: Tim Crook

It could be argued that Mr Justice Mann does not give sufficient weight to the powerful authority in the UK Supreme Court rulings of ***In re Guardian News and Media Ltd* in 2010** and ***PNM v Times Newspapers Ltd* in 2017**. In the Guardian 2010 case Lord Rodger, in a unanimous ruling, specifically referred to the publication of the names of defendants in advance of criminal trials and observed: 'In allowing this, the law proceeds on the basis that most members of the public understand that, even when charged with an offence, you are innocent

unless and until proved guilty in a court of law. That understanding can be expected to apply, a fortiori, if you are someone whom the prosecuting authorities are not even in a position to charge with an offence and bring to court.' The general principle on public interest in these circumstances established by the UK Supreme Court is the default position of most members of the public accepting innocence until proved guilty; not the risk that some may not.

In *PNM in 2017 Lord Sumption in the majority ruling 5-2* said: 'The sexual abuse of children, [...] is a subject of great public concern. The processes by which such cases are investigated and brought to trial are matters of legitimate public interest. The criticisms made of the police and social services inevitably reinforce the public interest in this particular case.'

Yes, this case can be distinguished from that of Sir Cliff Richard, but its similarity and relevance is that PNM was arrested but not charged and sought anonymity by injunction when mentioned peripherally in the criminal proceedings of other men. Lord Sumption said the public interest in the identity of individuals involved in the criminal justice process 'depends on (i) the right of the public to be informed about a significant public act of the state, and (ii) the law's recognition that, within the limits imposed by the law of defamation, the way in which the story is presented is a matter of editorial judgment, in which the desire to increase the interest of the story by giving it a human face is a legitimate consideration.' Both Supreme Court rulings acknowledged and respected the competitive and commercial nature of public interest journalism.

Lord Rodger explained in 2010: 'The judges are recognising that editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of its human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive.' The BBC would not be able to justify its income from the license fee if its news programmes did not successfully compete for audiences.

In journalism the pursuit of the scoop, with what Mr Justice Mann and no doubt most members of the public would regard as a sensationalist style of coverage, has been fully recognized as a valid part of the public interest role of media publication. That is why *Lord Nicholls in Reynolds v. Times Newspapers in 1999* said: 'it should always be remembered that journalists act without the benefit of the clear light of hindsight. Matters which are obvious in retrospect may have been far from clear in the heat of the moment. Above all, the court should have particular regard to the importance of freedom of expression. The press discharges vital functions as a bloodhound as well as a watchdog. The court should be slow to conclude that a publication was not in the public interest and,

therefore, the public had no right to know, especially when the information is in the field of political discussion. Any lingering doubts should be resolved in favour of publication.'

It can be argued that this is a significant authority that Mr Justice Mann should have taken into account when carrying out his intense focus on the evidence in Sir Cliff Richard's litigation.

Mr Justice Mann's rejection of the BBC's case

There is no doubt that public and political opinion are strongly sympathetic and supportive of Sir Cliff Richard's successful action against the BBC. His position on anonymity for criminal suspects is backed by [an opinion poll conducted by YouGov](#) where 86% of respondents support the anonymity of suspects under investigation and 62% favour anonymity for those on trial who have not yet been found guilty of an offence. The poll was conducted on 19th and 20th of July 2018 with a sample of 1669 adults in Great Britain.

[Paragraphs 20 to 28 of Mr Justice Mann's ruling](#) offer a withering deconstruction of the reliability of the BBC's witnesses. Of the BBC's reporter Daniel Johnson he said: 'he was capable of letting his enthusiasm get the better of him in pursuit of what he thought was a good story so that he could twist matters in a way that could be described as dishonest in order to pursue his story.' Of the BBC's deputy to the Director of News, Fran Unsworth (who was later promoted to Director) he observed: 'Her acts and thinking on the day, like the acts and views of others, were affected by the desire to protect the scoop.' She was 'tinged with wishful thinking and a bit of ex post facto convenient rationalization.' The judge decided on the balance of probabilities to accept the South Yorkshire Police case that they felt pressurized into agreeing to tell the BBC when they were going to search Sir Cliff's apartment in Berkshire.

They said they made that offer in order to prevent Mr Johnson publishing a story prior to the search, thereby potentially compromising it. Mr Justice Mann decided the BBC did not give sufficient consideration to Sir Cliff's reasonable expectation of privacy when they decided to name him as the suspect while at the same time using spectacular helicopter coverage of the search, which he condemned as a 'significant degree of breathless sensationalism.'



Traditional Metropolitan Police Lamp. Image: Tim Crook

He highlighted the content of emails between news editors and reporters that revealed the crassness and competitive hubris of journalists when working under pressure to deliver coverage that was entered for and received a nomination for the [Royal Television Society award in the category 'Scoop of the Year.'](#) In the light of a previous Law Lord recognizing the public interest in journalists discharging vital functions 'as a bloodhound as well as a watchdog', and acting 'without the benefit of the clear light of hindsight' is it possible the Judge has not evaluated the BBC's conduct with the proper perspective? He actually added £20,000 in aggravated (punitive) damages for the decision to enter the coverage for an award. Has the judge properly taken into account Lord Rodger's view that judges should accept that 'editors know best how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information?'

The rejection of the BBC's position on public interest

[Mr Justice Mann rejected the BBC's argument that it had a public interest duty](#) to identify Sir Cliff Richard as a suspect when covering the police search of his home in England.

What is also significant is that in the absence of the hullabaloo helicopter sensationalism a boring copy read by a presenter in the studio naming Sir Cliff Richard would still have been a serious breach of his privacy: 'A lower key report of the search and investigation (for example, done merely by a measured reading of the relevant facts by a presenter in the studio) would, on my findings be a serious infringement, and would not be outweighed by the BBC's rights of freedom of expression.' In cross-examination BBC deputy editor of News Fran Unsworth identified two BBC editorial guidelines on public interest that she

believed applied in this case: 'exposing or detecting crime' and 'protecting people's health and safety.'

But the judge said 'it was not clear to me whether she actually considered them at the time,' and added: '...while I am prepared to accept that a journalist's views on the justification of publication (or his/her absence of views) might assist the court in detecting the public interest in the balancing exercise, the ultimate question is one for the court, not for the journalist. So it does not help much if Ms Unsworth did not consider the guidelines, considered the wrong ones, or misinterpreted the right ones.' Is it significant that when listing the **BBC's editorial guidelines on public interest** in his judgement, he omitted 'There is also a public interest in freedom of expression itself.' Can it not be argued that Mr Justice Mann has not given fair consideration to the public interest defence position of journalists and editors who have to make decisions in the heat of competitive deadline pressures and without the benefit of hindsight?

Even the **2013 Defamation Act imposes a statutory duty** on courts under section 4[4] to 'make such allowance for editorial judgement as it considers appropriate' when determining whether it was reasonable for a media defendant to believe that publishing the statement complained of was in the public interest.

Is Mr Justice Mann's ruling a significant precedent?

Mr Justice Mann seemed to take exception to the mainstream media coverage of his ruling and said: 'It is simply wrong to suggest there is now some blanket restriction on reporting investigations.'

Close reading of his ruling proves that he does set a precedent on a wide range of issues. He says so himself **when declaring at paragraph 322**: 'I agree that the case is capable of having a significant impact on press reporting...'

At paragraph 248 he says: 'It seems to me that on the authorities, and as a matter of general principle, a suspect has a reasonable expectation of privacy in relation to a police investigation, and I so rule. As a general rule it is understandable and justifiable (and reasonable) that a suspect would not wish others to know of the investigation because of the stigma attached.'

His ruling creates a chilling effect for any news publication that wishes to name a suspect under police investigation. Editors now know that to do so will run the risk of an action for breach of privacy and this could be costly. The position is inhibiting. The legal cost liability is estimated to be in terms of millions of pounds. We may be revisiting the chilling effect of disproportionate costs to damages that led the European Court of Human Rights in 2011 to decide in the Naomi Campbell case that the level of legal fees was a breach of Article 10 freedom of Expression.

The award of an additional £20,000 in aggravated damages for pursuing professional awards recognition of a breach of privacy story is certainly unprecedented. It means that news publishers face being awarded damages against them for being competitive in the pursuit of scoops and awards for stories that could turn out to be breaches of privacy. Mr Justice Mann stated more clearly than any previous case that in breach of privacy damages can be collected for harm to reputation- a remedy usually encompassed by libel law. But in privacy, unlike libel, claimants are not required to prove that their reputations have suffered 'serious harm, or a likelihood of serious harm.'

This is creating a telescoping and inequitable overlap between libel and privacy; particularly when privacy can be a remedy for truthful and untruthful information. The case breaks new ground in making clear that there is a special damages liability for the consequences of a media breach of privacy when this triggers further problems for a claimant as a result of the behaviour of other people. Special damages are to be assessed for the costs involved in employing lawyers and public relations experts to deal with the fall-out from the BBC's coverage. This includes a Facebook site called 'Christians against Cliff,' which contained 'a large number of outrageous, highly offensive and defamatory allegations and remarks about Sir Cliff.' His lawyers had to also head off attempts by other newspapers and broadcasters to publish false allegations, there was an attempted blackmail, potential US immigration difficulties, and a lost book deal.

The future

There is one immediate lesson that all professional journalists, the BBC and media could learn from the case. Absolute care and caution needs to be taken in electronic communications between journalists in the newsroom.

The kind of communications that have been traditionally common-place between reporters and their editors should never be allowed to be funnelled into the public arena of judgment and condemnation of media legal litigation.

The gallows humour, satire and irony that relieves stress and tension should be kept analogue, ephemeral and unrecorded. The decision by the BBC not to appeal the case after Mr Justice Mann refused leave to appeal means that until another case emerges **the issues and problems identified** here will remain unresolved. There is the possibility of a future direction of travel in reasonable expectation of privacy and anonymity in the criminal process that could well extend to the identity of people arrested, charged, put on trial, acquitted, and released after the completion of their sentences.

This is because of the emphasis Mr Justice Mann has placed on the problem of stigma never being checked by the presumption of innocence and indeed its

legal declaration and confirmation through public exoneration and not guilty verdict.

It is unusual for all mainstream media publishers, including the Society of Editors, to join in a consensus about the judge's ruling damaging media freedom and all the more disappointing that these concerns cannot be addressed by the higher courts. While public and political opinion appears to support the ruling and Sir Cliff Richard's campaigning for suspect anonymity, the situation could change. Would the public be content if the leader of one of the main political parties, or key members of the Royal Family found themselves suspects in a serious criminal investigation and the media were prevented from making any identification?

During his lifetime the entertainer Sir Jimmy Savile was protected by the libel laws when over a 54 year period between 1955 and 2009, 500 people aged between 5 and 75 complained that he had sexually assaulted them. With the burden of proof in libel on the media defendant news publishers were unable to publish allegations made against him. It was feared that the credibility of his vulnerable and often disturbed victims would not have survived aggressive cross-examination in adversarial trials. He was interviewed and investigated by the Surrey and Jersey police forces in 2007 and 2008 over indecent assault allegations, but the cases never proceeded to charge.

It can certainly be argued that Mr Justice Mann's ruling will not assist any media investigation into another case like it. It should not be the role of any judge or court to change laws that are strictly matters for Parliament, and in particular, the democratically elected chamber of the House of Commons.

Something as serious as the right of any criminal suspect prior to formal arrest and charge to anonymity is a constitutional issue that should be decided by Parliament; not by some single judge in the Chancery Division of the High Court who has not addressed and followed binding previous precedent from the United Kingdom Supreme Court. Any party to legal proceedings should be subject to robust public criticism; particularly where the issue will not be tried by lay jury. However, the BBC had come under vituperative public and political pressure not to appeal the matters of legal principle arising.

It is disturbing that rather than use the legal system, it has felt the need to directly contact the government and Parliament for redress.

The financial consequences of pursuing an appeal were clearly disproportionate in terms of the rising and accruing costs compared to the actual amount of general damages awarded. The English legal system does not assist here in having so many levels and layers of appeal and potential redress. Any freedom of expression and privacy dispute has the potential of six legal forums: High

Court to Appeal Court to UK Supreme Court for injunctive relief, and the same three part staircase for any trial of the substantial issue.

This sorry case is a worrying precedent and there is no doubt that freedom of expression and the rights of the media have been left bruised and compromised. We are a long way from the judicial rhetoric of the courts recognising that in a democracy the media must be allowed to perform their **watchdog role as bloodhounds**. Time will tell if Sir Cliff Richard v BBC has replaced the bloodhound with a poodle.

When the Director-General of the BBC, Lord Tony Hall, appeared before the House of Commons Digital, Media and Sport House of Commons Select Committee a few months after the ruling he conceded 'I felt we overdid it to be blunt... if we were to appeal we'd be unlikely to win, cost licence fee money and prolong what Sir Cliff had been through, so I felt on those counts we should not appeal..

However he did highlight the wider ramifications of the case and pointed out: 'this is an issue for reporting which - rather than judges - parliament should decide. MPs should say what is right for us to report.'

See: [BBC 'overdid it' with coverage of raid on Sir Cliff's home, director-general admits](#)

How anonymity for crime suspects prior to charging has been consolidated by the High Court, Appeal Court, and then UK Supreme Court

Subsequent events have shown that Mr Justice Mann's approach in the Sir Cliff Richard case has been developed and strengthened so much so that it will be an exceptional situation for any UK media news publisher to publish the name of somebody being arrested; particularly if this is very newsworthy and the person is a public figure.

As indicated in the media contempt law section, The English and Welsh Appeal Court and High Court have fully established a reasonable expectation of privacy that being investigated for crime prior to being charged is private information, and this is, at the time of this edition, the norm.

This new approach fully protected a sitting Conservative MP in the Westminster Parliament from being identified in the media after being accused of raping a woman. The Met Police decided not to proceed with the case, the complainant has complained about the situation with a full front-page story in a national newspaper publication, but the identities of the people involved, and in particular, the MP himself, remains concealed and protected.

These are the key court precedents developing this protection.

[Sicri v Associated Newspapers Ltd \(Rev 1\) \[2020\] EWHC 3541 \(QB\) \(21 December 2020\)](#)

[ZXC v Bloomberg LP \[2020\] EWCA Civ 611 \(15 May 2020\)](#)

The claimant in the Sicri case was a suspect in the awful Ariana Grande concert terrorism attack at Manchester Arena. Suicide bomber, Salman Abedi, detonated an improvised explosive device in the foyer, murdered 22 and injured more than 800 people, many of them children and young people.

Mr Justice Warby decided the MailOnline was not entitled to identify Alaedeen Sicri:

‘The claimant had a right to expect that the defendant would not publish his identity as the 23-year-old man arrested on suspicion of involvement in the Manchester Arena bombing.

By 12:47 on 29 May 2017, the defendant had violated that right; it had no, or no sufficient public interest justification for identifying the claimant.

It continued to do so.

Later, another publisher (The Guardian) did the same or similar. But the claimant's right to have the defendant respect his privacy was not defeated or significantly weakened by the fact that others failed to do so. He is entitled to compensation. The appropriate sum is £83,000 in general and special damages.’

The Judge concluded that the rule is now very clear:

‘... those who have simply come under suspicion by an organ of the state have, in general, a reasonable and objectively founded expectation of privacy in relation to that fact and an expressed basis for that suspicion.’

Professional news media will not succeed with a defence of ‘public interest’ if they show no evidence that there was editorial engagement of the balancing exercise of considering the suspect’s privacy rights as well as the public interest in reporting the investigation of serious crime.

In ZXC v Bloomberg, the Court of Appeal set the binding precedent with Lord Justice Simon explaining: ‘Since the matter arises for decision in the present case, I would take the opportunity to make clear that those who have simply come under suspicion by an organ of the state have, in general, a reasonable and objectively founded expectation of privacy in relation to that fact and an expressed basis for that suspicion. The suspicion may ultimately be shown to be well-founded or ill-founded, but until that point the law should recognise the

human characteristic to assume the worst (that there is no smoke without fire); and to overlook the fundamental legal principle that those who are accused of an offence are deemed to be innocent until they are proven guilty.'

This is an important shift in jurisprudential thinking in the UK, and fully underpins the reasonable expectation of privacy protection for people in investigated and arrested but not or never charged. Lord Justice Simon even acknowledged that the court's conclusion is challenged by the weight of academic opinion: '...we were referred to an article by Professor Nicole Moreham, 'Privacy, Reputation and Alleged Wrongdoing: why police investigations should not be regarded as private', in (2019) *Journal of Media Law*, 11:2, 142-162. It will be apparent from the title that I disagree with her conclusions; but I would wish to acknowledge the illuminating contribution of the article to the debate on the issues that arise.'

The abstract for [Professor Moreham's *Journal of Media Law* article](#) argued: 'A handful of recent English authorities have held that, up to the point of charge, individuals will usually have a reasonable expectation of privacy in respect of police investigations into their conduct. This article argues this is problematic. It maintains, first, that neither the potential confidentiality of police investigations nor the need to protect a claimant's reputation provides a sound basis for concluding that such investigations should generally be private. Then it argues that the fact that a police investigation into one's conduct is taking place does not sit comfortably with the types of private information usually protected by English courts (e.g. information about one's health or sexual life). Finally, it says the reasonable expectation of privacy in respect of police investigations needs to be reconciled with the well-established common law principle that individuals should not be allowed to suppress evidence of their own wrongdoing.'

As has been fully reported elsewhere in this edition of the Handbook, the *ZXC v Bloomberg* precedent and reasonable expectation of privacy for crime suspects was unanimously upheld at UK Supreme Court level in February 2022.

See: *Bloomberg LP v ZXC* [2022] UKSC 5 (16 February 2022) at: <https://www.bailii.org/uk/cases/UKSC/2022/5.html>

Having reached the highest point in the UK legal system, it seems only Parliament can now intervene to restore the open justice rights on identifying individuals investigated and arrested for crimes in England and Wales.

This is unless there is reversal by the UK Supreme Court in respect of another case.

When considering the nature of European Court of Human Rights law and the practice for providing anonymity for crime suspects, defendants and convicted criminals in many civil jurisdictions, an appeal to Strasbourg may not stand much success even with the application of the doctrine of margin of appreciation for domestic law tradition.

Professional journalists and their publishers remain highly troubled by the considerable jeopardy they face from civil actions for misuse of private information if they identify anyone being investigated prior to criminal charge for any kind of serious crime.

There is a fear that secrecy and anonymity will engage 'mission creep' and indeed extend to those arrested, tried and convicted.

In March 2023, there was indeed evidence of this risk when the College of Policing plans to give the green light to police forces wishing to keep names of suspects accused of many serious offences secret and then did a U-turn after intense criticism.

Following pressure and advice from the Information Commissioner on data protection law it seems The College of Policing was moved to propose guidance that forces no longer 'should' name those charged with crimes including indecent exposure, domestic violence or child sexual abuse, instead advising that individuals 'can be named'.

This led to a significant outcry of criticism and complaints from journalism industry bodies with detailed warnings from experienced crime reporters about how this would undermine open justice and damage the public interest and trust in policing and criminal justice.

By Monday 27th March 2023, the online journalism trade press was reporting that there had been a U-turn. However, a more interventionist policy by the Information Commissioner on how public bodies interpret privacy rights could lead to more instances of scale-backs on previously accepted conventions in public disclosure practice.

The current APP (Authorised Professional Practice) on Media Relations is set out at <https://www.college.police.uk/app/engagement-and-communication/media-relations>

The public row over the proposed changes is effectively summarized in the article published by *Police Professional* "[No changes to police media relations guidance without consultation, says college after 'deep concerns' raised.](#)" See: Hold The Front Page '[New police guidance would making naming of suspects optional.](#)' and Press Gazette '[Police could keep names secret after](#)

[charge under new draft guidelines. The proposed guidance states that forces “can” name charged suspects. The current advice is they “should.”](#)

Rebecca Camber wrote for Mail Online: [‘Secret justice and how the Nicola Bulley fiasco is driving the police to make another catastrophic error.](#)

Mike Sullivan wrote for the Sun: [‘Cop plans to stop public knowing who has been charged with crime could let rapists like David Carrick carry on attacking.’](#)

Hold The Front Page: “Police chiefs back down on suspect naming plan in ‘huge victory for press.’” See: <https://www.holdthefrontpage.co.uk/2023/news/huge-victory-for-press-hailed-as-police-chiefs-back-down-on-suspect-naming-plan/>

Press Gazette: “Police U-turn to say suspects ‘should be named’ on charge after Press Gazette story prompts backlash.” See: https://pressgazette.co.uk/media_law/police-name-on-charge-policy-proposal-reversed/

Other useful links for this case history discussion:

[BBC Statement on losing the case](#)

[BBC Statement on deciding not to appeal](#)

[Campbell v MGN Ltd \[2004\]](#)

[S \(a child\), Re \[2004\]](#)

[Appeal Court PNM v Times Newspapers Ltd](#)

[UK Supreme Court ruling 2017 PNM v Times Newspapers Ltd](#)

[In re Guardian News and Media Ltd \[2010\]](#)

[Hannon v News Group Newspapers Ltd](#)

[ERY v Associated Newspapers Ltd](#)

[ZXC v Bloomberg LP](#)

[Reynolds v Times Newspapers 1999. Lord Nicholls.](#)

[Yougov poll on public opinion concerning anonymity for crime suspects.](#)

[Mosley v United Kingdom 2011.](#)

[MGN v United Kingdom 2011.](#)

This is a simple outline of how to survive the law in English journalism and media communication. For more information read: UK Media Law Pocket Book 2nd Edition 2022 and Comparative Media Law & Ethics (new edition due 2023-4) by Tim Crook. The companion website of the UK Media Law Pocketbook is continually updated. See: <https://ukmedialawpocketbook.com/> This is a dynamic publication and will be updated regularly between the frame of yearly editions at: <https://ukmedialawpocketbook.com/about/> The most recent version will be dated in the pdf file name.

I hope it does not need saying that this guide has been written by a human being with all the fallibilities that that implies. I take full responsibility for any mistakes and omissions, and offer advance apologies should these become obvious to the reader. At the same time, do please email me any corrections, mistakes and key omissions you think are needed and I will do my very best to correct and amend. My email address is: t.crook@gold.ac.uk

This ebook has been sponsored and endorsed by the Broadcast Journalism Training Council which is a vital body that does excellent work liaising and supporting the training and educational relationship in broadcast journalism between universities and the industry.

The content has also been endorsed and adopted as a continuing professional development text by the Chartered Institute of Journalists.

I am very grateful for the opportunity to write and make available this guide. And I wish all readers a fulfilling and enjoyable career in broadcast and multimedia journalism.

Sincerely and respectfully, Tim Crook. Goldsmiths, University of London, 15th October 2023.

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Professor Tim Crook BA Hum BA Open LLB LLM PhD of Goldsmiths, University of London is Chair of the Professional Practices Board and past president of the Chartered Institute of Journalists which is the world's longest established professional association of journalists and only such body with a Royal Charter.

He is the author of *Comparative Media Law & Ethics*, *UK Media Law Pocketbook*, (Routledge 2009 & 2013 with 2nd editions in 2022 and 2024) and *BJTC Media Law, Regulation and Ethics Handbook* (annual).

From 1981 to 2000 he ran a specialist news agency covering the Royal Courts of Justice and Central Criminal Court for UK broadcasters and was the UK's first specialist broadcast legal affairs correspondent for IRN/LBC.

He negotiated the first recorded broadcast from the Lord Chief Justice's Court of the valedictory ceremony for Master of the Rolls Lord Denning in 1982, and campaigned against courtroom secrecy throughout the 1980s and 1990s.

In the process, he secured a European Court of Human Rights settlement with the UK government following a judicial review in his name which exposed the lack of any appeal or legal remedy against court reporting bans and decisions to exclude the press and the public from Crown Court proceedings.

This resulted in the special Section 159 appeal procedure in the 1988 Criminal Justice Act which provides the media with a direct appeal route to the Court of Appeal Criminal division against Crown Court reporting bans and secret hearings.

Professor Crook received a Campaign for Freedom of Information Award in recognition of the achievement in improving the rights of journalists and news publishers in 1988.

He presented two significant appeals against courtroom secrecy at the Appeal Court during the 1990s. Between 2016 and 2022 he advocated several Freedom of Information cases exposing the lack of Article 10 rights in several First Tier Tribunal and Upper Tribunal Information rights system appeals. When pursuing judicial review, a High Court judge said it was a matter for Parliament to legislate for the Strasbourg view there is a standing right for state information.

He founded media law and ethics teaching at Goldsmiths, University of London and has been lecturing and seminar leading there for 33 years. He was a visiting media law instructor to the BBC for over 20 years. He also campaigned and lobbied for the inauguration of a law department at Goldsmiths. In 2019 he received a special award from the Broadcast Journalist Training Council for services to Journalism and Journalism training.

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The UK Supreme Court in Parliament Square
Image: Tim Crook.