



CONSULTATIVE COUNCIL OF EUROPEAN PROSECUTORS (CCPE)

**Questionnaire for the preparation of the CCPE Opinion No. 8
on the relationship between prosecutors and media**

Replies from the Crown Prosecution Service (CPS)

A. Introduction:

The Recommendation Rec(2003)13 of the CoE Committee of Ministers on the provision of information through the media in relation to criminal proceedings referred to the following:

- the commitment of the member states to the fundamental right to freedom of expression and information as guaranteed by Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms;
- the media have the right to inform the public due to the right of the public to receive information, including information on matters of public concern, under Article 10 of the Convention, and they have a professional duty to do so;
- the importance of media reporting in informing the public on criminal proceedings, making the deterrent function of criminal law visible as well as in ensuring public scrutiny of the functioning of the criminal justice system;
- the rights to presumption of innocence, to a fair trial and to respect for private and family life under Articles 6 and 8 of the Convention constitute fundamental requirements which must be respected in any democratic society;
- the possibly conflicting interests protected by Articles 6, 8 and 10 of the Convention and the necessity to balance these rights in view of the facts of every individual case, with due regard to the supervisory role of the European Court of Human Rights in ensuring the observance of the commitments under the Convention.

B. Questions:

A. Existing legal provisions and regulations

Please note that the use of 'prosecutors' in these responses refers specifically to lawyers employed by the Crown Prosecution Service (CPS) – it is not used as a shorthand for the CPS as a whole.

Press officers also refer to press officers and some communications staff authorised to speak to the media. It should be assumed that, unless stated otherwise, all communication is carried out with press office support.

1. Is the relationship between prosecutors and media determined by law or other written provisions? Describe them briefly.

There is no one piece of legislation that defines how prosecutors should deal with the media. Prosecutors and other public office holders are bound by the provisions of the Official Secrets Act 1989 with regard to the disclosure of information. They are also subject as are others to the Data Protection Act 1998. Offences such as misconduct in a public office may also apply - see the CPS [Media Guidelines](#). With regards to disclosure of lawfully requested information the CPS have a media protocol in place to deal with such requests which is available on our website.

(<http://www.cps.gov.uk/publications/agencies/mediaprotocol.html>)

2. Are prosecutors authorized to have direct relations with media? If this is not the case, who communicates the information concerning judicial and criminal cases to the press?

Prosecutors are authorised to speak to the media about particular issues/cases as agreed with communications staff, and with the support of a press officer. Press engagement is encouraged, particularly among senior Headquarters (HQ) staff and the Chief Crown Prosecutors who head up the CPS Areas.

If approached directly in court, prosecutors, and those acting on behalf of the CPS, are expected to provide basic information (i.e. factual information about a case which is in the public domain such as the particulars of a charge). This should be done without the need to refer to the press office. Any request for more detailed or general information should be passed through the press office.

Contact between CPS employees and the media is also covered in the CPS Code of Conduct. In summary, dealing with the media is a specialist role and only those specifically authorised may do so. If an employee is approached by a member of the media seeking information or comments on a CPS case or any other official matter the request should always be declined and the caller referred to the Area Communications Manager/HQ Press Office.

3. Which other persons are authorized to provide information to the press within the framework of these cases (police service, lawyers, parties to a proceeding, other persons)?

Other prosecuting authorities, the police, Judiciary and the Courts & Tribunals Service regularly provide information about criminal proceedings to the media. Their internal procedures are a matter for them to comment on. Other parties involved in proceedings – such as defence firms – also engage with the press.

4. Do you have any experience of joint communication by several public authorities (e.g. prosecutor and police)?

Yes, joint statements are sometimes used in high-profile or complex cases. Press events can also be held jointly as this can provide journalists with all of the information they need in an efficient manner.

5. During which stage of the procedure can prosecutors communicate the information (make a distinction between the pre-trial investigation (including formal accusation), the court proceedings and the situation after the judgment)?

Pre-trial: Charging Stage

Before a charge, the CPS will generally only confirm that it is considering evidence in relation to a specific incident, if asked. No details of the allegations will be released.

At the time of charge, the CPS will sometimes release (either proactively or upon request) a short statement outlining the charges. This statement will normally contain basic information about the alleged criminality.

If a decision is made not to charge, the CPS will, where there is a public interest in doing so, make public that decision, and give reasons as far as is appropriate.

Pre-trial: Post-Charge

In some cases which are particularly high profile, or complex, the media may be invited to attend a briefing so that key facts surrounding the prosecution can be explained, and logistics relating to media handling can be arranged. Information given at this stage is embargoed until it is heard in open court, or to the end of proceedings.

During trial

The opening statement from the prosecution is sometimes made available, in order to help the press report the prosecution case accurately.

As the trial progresses, prosecution material (e.g. CCTV footage shown to the court) may be released to the media as it is shown to the jury. The media are entitled to this material under the Media protocol on the release of prosecution materials agreed between the CPS, the Association of Chief Police Officers and the media. This does not give the media a right to this material, but indicates the prosecuting authorities' commitment to openness and transparency where appropriate and where there are no legal reasons not to. For example, the victims and/or witnesses in a case are consulted where appropriate before material is released. This Protocol is aimed at helping the press to accurately report ongoing criminal proceedings. It is not intended as a commitment to release archive footage from cases.

At the end of a trial

Prosecutors may make a statement at the end of a case, and are often interviewed and asked to explain the prosecution case in detail or to discuss the challenges faced by the prosecution with certain types of cases. This may also include discussion over the CPS Policy in a certain area – the vast majority of CPS Policy is available on our website.

6. Are the judges authorised to inform the press? If this is the case, during which stage of the procedure?

Information in relation to England and Wales:

Judges in England and Wales do not have any role as prosecutors. Unlike some jurisdictions, there is no 'investigating judge'. The judge in England and Wales is wholly independent of the executive and therefore of the prosecuting authorities. The role of the judge in criminal trials is as an impartial arbiter of the law and to ensure the proper administration of justice. The judge has no prosecutorial function at all.

Open justice is a key principle and although there are some statutory exceptions in the interests of justice, in general, judges deliver their rulings in open court to which the public and the media have admittance, and their rulings can be reported by the media. In addition there is provision under the [Criminal Procedure Rules](#) Part 5.8 for information and documents to be provided to the public and the media by the court.

Following the judgment in R (Guardian News and Media Limited) v City of Westminster Magistrates' Court [2012] EWCA Civ 420, further practice guidance may be issued on the exercise of the discretion under rule.5.8.(7).

The key part of judicial conduct is that judges do not discuss their cases or rulings, or comment on any individual case other than in giving judgment. Judgments stand alone, and judges do not amplify or explain their judgments to the media.

Judges do not respond to public criticism of their judgments either to the media or in court. If a judge is factually mis-reported, or there is a likelihood that a case might be misinterpreted, perhaps because it is complex, high-profile or controversial, the Press Office for the Judiciary can assist the judge by issuing a statement or a written copy of the ruling, so that the media can report more accurately.

Requests for interviews are usually declined and would not be undertaken without the senior judiciary having been consulted. Judges do occasionally speak to the media. For example, during the recent launch of the Sentencing Council's Consultation Paper on Sex Offences, the judicial members spoke about the work of the Council and the consultation, but not about any individual cases.

These principles are not in statutory law, but are contained in guidance to judges. There is a very strong and important convention underpinning the guidance. They are intended to preserve the dignity of the judicial office and ensure there is no appearance of bias or anything that might undermine the judge's impartiality or independence.

7. Is there supervision on the relationships between prosecutors and media in your country? By whom and how?

Prosecutors are civil servants and are therefore bound by the Civil Service Code and the Official Secrets Act 1989.

8. Are there specific rules which guarantee that the information communicated to the press does not violate the privacy, the human dignity and the presumption of innocence? What are the measures to avoid the phenomenon of “trial by press”?

The Contempt of Court Act 1981 imposes a duty on anyone publishing/broadcasting information about criminal proceedings to avoid creating a substantial risk of prejudice to those proceedings. This applies directly to the CPS when publishing information on its website, etc, and journalists are reminded of their general legal obligations when given information about a case – although responsibility for complying with those obligations rests firmly with the media.

The CPS must also abide by its duty as a data controller under the Data Protection Act 1998 and as a public authority under the Human Rights Act 1998 - there must be a justification for releasing information that may adversely affect the privacy of any individual, including defendants and victims.

9. Are there any sanctions (either disciplinary sanctions or other types of sanctions) against public prosecutors who break the rules of inter-relationships with media?

Contact with the media is covered within the CPS Code of Conduct. Failure to comply with the rules (summarized at question 2) may result in action taken under the CPS disciplinary procedure.

In addition, rules relating to confidentiality in general are covered in the CPS Code of Conduct. In summary, employees must not breach confidentiality in the course of their employment, particularly in respect of personal or sensitive information. Failure to comply may result in action being taken under the disciplinary procedure. Employees must not inappropriately disclose or misuse confidential information acquired in the course of employment that they know about Ministers, employees, contractors, individuals involved in a case, or other organisations working with the CPS. Under the Civil Service Code, civil servants must not disclose official information without authority. This duty continues to apply after employees leave the Civil Service. The Official Secrets Act 1989 applies to CPS employees and, by signing their contract of employment, they agree that they will not disclose information acquired through official duties to any unauthorised person or authority. All employees holding official information, on paper or in computerised form, are responsible for keeping it safely and in accordance with any security classification. They may not give or show any unpublished official document of any description, without the CPS' authority, to anyone who is not authorised to see it. Similarly, no unauthorised or premature communication of any information to which an officer has access in the course of official duties may be made to any person, including the media. Particular care must be taken at all times to avoid mentioning confidential official matters to anyone outside the office, or in such circumstances as to incur a risk of them being made public. All requests for information by the press should be referred to the Area Communications Manager/HQ Press Office.

10. How do the prosecution services deal with the security risks caused by disclosure of information concerning the prosecutors and the cases?

The Press Office does not release information without the agreement of the lawyers in the case, and material likely to cause a security risk is very unlikely to be released. Personal information (phone numbers etc.) about prosecutors is not generally released, and the practice of referring the media through a press office allows any potential security risk to be properly assessed by the organisation through our Departmental Security Unit.

Paragraph 4.12 (g) of the Code for Crown Prosecutors states that in cases where public interest immunity does not apply, special care should be taken when proceeding with a prosecution where details may need

to be made public that could harm sources of information, international relations or national security. It is essential that such cases are kept under continuing review.

11. Are there any provisions set forth to forbid publishing a public prosecutor's (or a judge's) name when he/she is in charge of a case? Are there any procedures that in practice tend to prevent such a publishing?

A prosecutor in court (a barrister) is required to give their name to the media, unless an order is made otherwise. CPS solicitors are often named, though their permission is sought. On some occasions, it may be felt that the head of an Area or Division is named as the ultimate decision maker rather than a more junior member of staff.

B. Organisation of communication

12. How prosecutors communicate with the press (press releases, press conferences, directly by telephone or e-mail, use of social networks etc.)?

The CPS communicates with the press through:

- Its website
- Social media
- Press releases
- Press statements (shorter, and assumes knowledge of the case or issue at hand)
- Press briefings – like press conferences though not normally televised
- Articles submitted to newspapers
- Interviews
- Statements outside court after trials
- Background discussions to give wider context to inform journalists but not for immediate use.
- Telephone, email and in person.

13. Can press conferences or other releases be made by prosecutors in cases of international investigations? If yes, which procedure do you follow?

Yes, this will be determined on a case by case basis. In extradition cases, the CPS does not comment until a suspect is in custody.

14. Is there communication with all the media or with some (newspapers, audiovisual media, and internet)?

The CPS engages with all professional journalists. Unaccredited, freelance journalists, such as individuals writing blogs, are engaged with where resources allow.

Any person seeking information from the CPS can also request it via the Public Enquiry point or the Freedom of Information Unit.

15. Are there regulations prohibiting public prosecutors to give an advantage to single journalists (and/or leaving out some of them)?

No.

16. How is the communication organized by the prosecution services? Do they have spokespersons? If yes, what is their status and are they prosecutors? If no, do the prosecutors communicate themselves? Do they need an authorization to do so? Are prosecutors supervised in this field?

Communication is done in agreement with, and with the support of, the CPS Press Office.

17. How does the media communicate with the prosecutors (official representatives, specialized journalists, necessary authorizations)?

The CPS is unable to respond to this question as it relates to procedures operated by media organisations/bodies.

18. What kind of information may be disclosed (names of parties, witnesses, prosecutors, certain facts disclosed due to an investigation, whether or not linked to the case)?

The Press Office will routinely disclose:

- The names of defendants and the offences that they have been charged with.
- The reasons for a decision to charge/not to charge (when legally appropriate)
- The reasons for actions taken in particular stages of a case (when legally appropriate)
- Brief details of the allegation – where and when it occurred, the damage caused, etc.
- Details of relevant policy

The Press Office will not routinely disclose:

- Personal information not given in open court
- Details of exactly what has been said in court – journalists should attend court so they can hear exactly what is said by the prosecutor.
- The argument put forward by the defence – this is for the defendant's legal representatives to discuss.
- Details of investigations or arrests as these are a matter for the police.
- Details of a court order as that is a matter for the Courts service.
- A defendant's criminal record, which is held by the police.

19. Is there an official policy encouraging prosecutors to respond to the needs of media, and how is this policy implemented?

The Media Protocol provides guidance to CPS prosecutors on key points they need to consider when providing the media with access to prosecution materials, in particular after a conviction or a guilty plea has been entered. The Media Protocol provides that where there is a conviction or a guilty plea entered, the CPS should normally recognise and wherever possible respond to the need for the media to have swift access to information, and provide materials taking into account victim and witness considerations and availability of resources to provide the material. The purpose of the Media Protocol is also to demonstrate the prosecution team commitment to providing the public with an open and transparent prosecution process whenever the law and interests of justice permit it. The protocol enables the police, the CPS and the media to work in partnership to provide the public with access to factual information about criminal convictions.

20. Are the prosecutors' communications with media systematically monitored and evaluated by using monitoring, feedback from the public, communication surveys or other measures?

A survey of journalists is carried out periodically. Media coverage is monitored, and output is measured in terms of website analytics, social media engagement.

C. Proactive media approach of the prosecution service

21. Has the prosecution service developed a proactive media approach (access to prosecutor's decision, bringing a selection of relevant cases to the attention of the media)?

The CPS is committed to openness and transparency, and is often accountable to the public through the media. We endeavour to explain our decision making, raise awareness of our work, and fulfil requests for information where possible in order to build confidence in the organisation, particularly among victims and witnesses.

22. Has the prosecution service developed activities to explain the work of prosecutors to the general public and media and to inform them about recent developments (open day in prosecutor office, visiting courts, publishing booklets, developing online teaching materials)?

The CPS engages with the public through localised community engagement, as well as through the media. Teaching materials were also developed a number of years ago to help classroom learning about the court process.

23. Can communication with media be used as an investigative tool (for instance by spreading identikit around or even pictures showing the commission of a crime)? If yes, please specify.

Prosecutors have no investigative function in England and Wales. However, the police may use the media to issue an appeal to the public.

D. Professional training of prosecutors and journalists, their ethics, conduct and means of communication

24. Are prosecutors trained during their initial and continuous training on the requirements of the European Convention on Human Rights as regards freedom of expression and access to information?

When the Human Rights Act 1998 was implemented in 2000, all CPS employed lawyers underwent classroom training on it. Following that, training on human rights is accessed via e-Learning on the CPS e-learning platform, Prosecution College. There is a module in this course on Article 10 of the European Convention on Human Rights (ECHR), which provides the right to freedom of expression, and examines the circumstances when that right can be curtailed or interfered with (i.e. by a prosecution against the individual). The perspective is on whether individuals should be prosecuted for what they have said or done (usually under the Public Order Act 1986). There is also a module relating to Information Sharing, which considers what information the CPS can provide to victims/witnesses/third parties, and the practical issues/ECHR Articles which are engaged when giving out information (particularly whether giving out information might breach an individual's right to a private and family life under Article 8, or a suspect's presumption of innocence until convicted under Article 6). The training is recommended for all prosecutors but not at any specific point in their initial or continuous training.

25. Are prosecutors trained on how to interact with media?

Prosecutors are always supported by press officers, who give advice and help on interaction with the media. Further training can be made available if required.

26. Are journalists trained on how to interact with the prosecution services?

This is really a question for the media, but formal journalistic training includes media law training and court reporting.

27. Are there joint training courses, conferences, seminars, etc. organized for prosecutors and journalists in order to help them to better understand each other's role and support each other, in the context of striking the right balance between the above-mentioned rights and the presumption of innocence and the right to protection of private life?

No, however Chief Crown Prosecutors do seek to build constructive relationships with the media in their Areas.

28. Are there professional associations of media and journalists competent to regulate their interaction with the prosecution services?

There are professional media associations (e.g. National Union of Journalists). Interactions with prosecution authorities are the same as with other Government departments, where a well established process of right to reply, and avenue of complaint on both sides works well.

E. Regulation of media activities

29. Is there an internal board (or another institution) that regulates the activities of media or deals with the complaints lodged against media because of the violation of an individual right within the framework of a criminal procedure?

The Press Complaints Commission is an industry regulatory body and the recent Leveson Inquiry has led to further debate on press regulation.

Any reporting that creates a substantial risk of serious prejudice to criminal proceedings may lead to a prosecution by the Attorney General for contempt of court.

30. Please describe criminal, administrative and/or civil procedure concerning libel, slander, and/or similar violations of a person's reputation. What is the role of the prosecution service in these matters?

Libel is a civil matter in England and Wales and one in which the CPS have no involvement

31. Please give information about criminal or administrative liability of journalists and the penalties provided by law.

.The CPS website may be accessed for further information on the Guidelines for Prosecutors on assessing the public interest in cases affecting the media.

32. Please describe protective measures available, respectively within criminal and civil procedures (seizure or prohibition of publications) and the role of prosecutors. Are there measures in your country that are or might be considered as a form of preventive censorship? Is there a role for the prosecutors in supervising media activities?

There are automatic reporting restrictions that prevent publication that identifies children and young people who appear in youth court proceedings as victims, witnesses or defendants (section 49 Children and Young Persons Act 1933) and victims of rape and other serious sexual offences (section Sexual Offences Act 1992). The court also has a power to make an order prohibiting a publication that identifies children and young people who appear in adult courts (e.g. Magistrates' Courts and Crown Court) as victims, witnesses and defendants (section 39 Children and Young Persons Act 1933). The court can make this order on application by the parties to the case (prosecution or defence) or by any interested person, which includes the child or young person and the media, or of its own motion. It must give the parties and interested persons the opportunity to make representations before the order is made. An application can be made to lift an order under section 39 or the automatic restriction imposed by section 49 when a youth is convicted. Again, all parties and interested persons must have the opportunity to make representations before the court decides whether to lift the order. Breach of these reporting restrictions is a summary offence, punishable with a fine, and the CPS brings prosecutions against those who breach reporting restrictions.

If the CPS becomes aware of any material published on the internet that appears to breach a reporting restriction or that appears to amount to a contempt of court, we will draw it to the publisher's attention and request that the matter is removed. The CPS will refer to the Attorney General any publications that appear to amount to a contempt of court so that he can consider instituting contempt proceedings. Publications may amount to a contempt if they breach an order made by the court, e.g. under section 11 Contempt of Court Act 1981, not to publish the name of a person, or if they cause a serious risk of prejudice or impediment to the administration of justice e.g. by publishing derogatory material about a suspect/offender or details of his previous convictions.

In addition, a voluntary system operates within the UK known as the Defence Advisory (DA) Notices System, which is overseen by the Defence, Press and Broadcasting Advisory Committee. The DA-Notice System is a means of providing advice and guidance to the media about defence and counter-terrorist information the publication of which would be damaging to national security. The system is voluntary, it has no legal authority and the final responsibility for deciding whether or not to publish rests solely with the editor or publisher concerned. CPS prosecutors play no role in the DA Notice System.

33. If a prosecutor is criticized by media for reasons connected with the criminal proceedings, is there a role to play for the prosecutorial associations?

Where a prosecutor is criticised by the media for reasons connected with criminal proceedings, it will invariably prompt an internal fact-finding investigation to determine whether the issues require a more formal disciplinary investigation or whether the facts do not justify any further action.

34. Is the prosecutor bound by a duty of discretion even if a media campaign has been started against him or her?

The rules regarding contact with the media and confidentiality contained within the CPS Code of Conduct, and obligations under the Civil Service Code and Official Secrets Act 1989, would continue to apply in such circumstances.

35. Do you have any institutions (different from public prosecutors' associations) having the power to reply if there are improper media attacks against the prosecution service or individual public prosecutors?

If the CPS feels it has been wrongly represented in the media it is dealt with on a case by case with the media outlet in question.

F. Other information

36. Do you have other information or comments about the communication between prosecutors and media in your country? If yes, please describe this information or comments.

No.