

# ***Steering Committee on Media and Information Society***



Paris, 1<sup>st</sup> April 2015

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## **Draft list of questions for CDMSI members on the implementation of Council of Europe standards related to safety of journalists and other media actors**

### **UNITED KINGDOM GOVERNMENT'S RESPONSE**

#### **1. Which are the existing mechanisms to ensure investigation and prosecution of attacks against journalists and other media actors?**

There are no special mechanisms applying to attacks against journalists and other media actors. The general criminal law applies. All such attacks should be reported to the police who are responsible for the investigation of the crime. Where a suspect is identified and charged, in England and Wales it for the independent Crown Prosecution Service (CPS) to decide whether to prosecute, depending on the circumstances of the case and applying the Code for Crown Prosecutors. There are no criminal or other legal provisions specific to attacks of the kind described in the question.

#### **2. Are there any non-judicial mechanisms, such as parliamentary or other public inquiries, ombudspersons, independent commissions, as useful complementary procedures to the domestic judicial remedies guaranteed under the ECHR, specifically dealing with threats and crimes targeting journalists and other media actors?**

Non-judicial but authoritative remedies for issues of special concern to journalists are provided by the Independent Reviewer of Terrorism Legislation and the Interception of Communications Commissioner's Office. Both have published reports on the impact and application of UK laws covering police investigations and security services activities during 2015 and in both cases their reports were acknowledged by the UK Government in the process of undertaking legislative reforms.

### **3. Is the confidentiality of journalists' sources of information protected in both law and practice?**

There is a strong public interest in protecting a free press and freedom of expression in a democratic society, including the willingness of sources to provide information to journalists anonymously.

The UK Government has accepted the recommendation made by the Interception of Communications Commissioner that extra protection should apply in respect of requests by public authorities to access communications data where the purpose is to identify a journalistic source. This reflects the sensitivities and complexities of considerations relating to protecting the public interest in the confidentiality of sources of journalistic information and its impact. A revised Code of Practice was introduced earlier this year which requires all such requests to be approved by a judge.

The Investigatory Powers Bill will put the requirement onto the face of primary legislation. Under this new legislation, all applications to intercept communications must be authorised by a Secretary of State and approved by a Judicial Commissioner.

Further, a code of practice will require the Secretary of State to apply particular consideration in cases where the subject of the interception might reasonably assume a high degree of privacy, or where confidential information is involved. The code will specify further safeguards which must apply when seeking a warrant and to the retention and dissemination of any confidential material that may be required. It will also make clear that any case where confidential information is retained should be notified to the Investigatory Powers Commissioner.

### **4. Does the domestic legislation in your country regarding defamation/libel include criminal law provisions?**

No. Defamation and libel is entirely a matter of civil law in the United Kingdom.

### **5. What are the procedural guarantees (the right to defence, the periods of limitation applicable to defamation suits, *exceptio veritatis* (defence of truth) and the burden of proof, presumption of good faith etc.) included in the civil and/or criminal legislation related to defamation?**

In England and Wales the Defamation Act 2013 contains a number of substantive and procedural provisions which provide protection for freedom of speech. These are general in nature and apply equally to cases involving journalists/other media actors and other cases. The Act came into force on 1 January 2014 and includes:

A serious harm test to help discourage trivial claims – this provides that a statement is only defamatory if it causes or is likely to cause serious harm to the claimant's reputation. In the case of bodies trading for profit, the test is one of serious financial harm;

A defence for those publishing on matters which they reasonably believe are in the public interest;

Defences of truth and honest opinion;

A defence of qualified privilege to protect fair and accurate reports of a wide range of public material;

A defence of qualified privilege for peer-reviewed reports in scientific and academic journals;

A defence for website operators in respect of material published by third parties on sites which they operate, provided they comply with a complaints procedure aimed at putting the complainant in contact with the poster of the material.

The limitation period for a defamation claim is one year from the date of the publication. The 2013 Act contains a single publication rule to prevent repeated claims against a publisher about the same or substantially the same material.

Scotland and Northern Ireland have separate legal systems. The law on defamation is broadly similar, but certain of the specific provisions in the 2013 Act do not apply or are governed by earlier legislation or the common law. The limitation period in Northern Ireland is one year, but a period of three years applies in Scotland.

**6. In the domestic legal framework, are state officials protected against criticism and insult at a higher level than ordinary people, for instance through penal laws that carry a higher penalty?**

In relation to defamation the law applies generally and no distinction is made in relation to state officials.

**7. Do laws on the protection of public order, national security or anti-terrorism have safeguards for the right to freedom of expression? What are these safeguards?**

The UK firmly supports the right to privacy, freedom of expression and a free media. These are essential qualities of any functioning democracy and we are proud of the UK's free, open and independent press. We are fully committed to meeting our obligations under international human rights law, including Article 19 of the International Covenant on Civil and Political Rights and Article 10 of the European Convention on Human Rights. Promoting these values is a key priority of the British Government both here and abroad.

The activities of our security and intelligence agencies are governed by one of the world's most robust legal framework and oversight arrangements, which ensures UK intelligence activity adheres to strict principles of necessity, proportionality and legality. All UK security and intelligence agencies are obliged to uphold the law at all times.

The agencies are not self-tasking. All agency work is tasked by government in response to ministerial priorities, and authorised by either the Home Secretary, Foreign Secretary or another Secretary of State. Every decision to authorise activity is based on extensive legal and policy advice. Warrants are legally required

to be necessary, proportionate and carefully targeted, and we judge them on that basis.

The UK has one of the strongest oversight frameworks in the world. There is rigorous democratic accountability and oversight, including from the relevant Secretary of State, the Interception of Communications and Intelligence Services Commissioners and the cross-party Intelligence and Security Committee of Parliament (ISC), with additional scrutiny and redress through the Investigatory Powers Tribunal.

The draft Investigatory Powers Bill will strengthen this system of oversight and authorisation even further, by introducing a 'double-lock' for the most intrusive warrants, including interception and all of the bulk capabilities, so that these cannot come into force until they have been approved by a judge. It will also create a powerful new Investigatory Powers Commissioner to oversee how these powers are used.

**8. Are the following instruments translated into the national language and disseminated widely, in particular brought to the attention of judicial authorities and police services? Are these made available to representative organisations of lawyers and media professionals?**

- Recommendation CM/Rec(2011)7 of the Committee of Ministers to member states on a new notion of media, 21 September 2011.
- Guidelines of the Committee of Ministers of the Council of Europe on eradicating impunity for serious human rights violations (2011)
- Recommendation 1876 (2009) of the Parliamentary Assembly on the state of human rights in Europe: the need to eradicate impunity
- Guidelines of the Committee of Ministers of the Council of Europe on protecting freedom of expression and information in times of crisis, adopted on 26 September 2007
- Recommendation CM/Rec(2004)16 of the Committee of Ministers to member States on the right to reply in the new media environment
- Recommendation CM/Rec(2000)7 of the Committee of Ministers to member states on the right of journalists not to disclose their sources of information.
- Recommendation CM/Rec(2007)15 of the Committee of Ministers to member states on measures concerning media coverage of election campaigns
- Recommendation CM/Rec(2007)2 of the Committee of Ministers to member states on media pluralism and diversity of media content
- Recommendation No. R (2003) 13 on the provision of information through the media in relation to criminal proceedings
- Belgrade Conference of Ministers Resolution n° 3 Safety of Journalists

The Department for Culture, Media and Sport (DCMS) and the Foreign and Commonwealth Office (FCO) promote awareness of the above Council of Europe instruments, standards, declarations and recommendations across the UK administration (including other government ministries) through existing policy coordination channels.

The UK administration does not have a dedicated process in place for specifically drawing these instruments to the attention of judicial authorities and police services.

It is expected that the representative organisations of lawyers and media professionals make their own arrangements to consult the relevant Council of Europe communications channels including the CDMSI website page.

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