



The Economist  
25 St James's Street  
London SW1A 1HG

From the Editor



RECEIVED  
2011

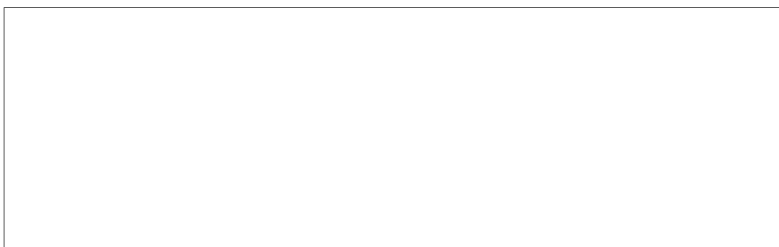
FAO Ben Milloy  
Complaints Officer  
Press Complaints Commission  
Halton House  
20/23 Holborn  
London  
EC1N 2JD

December 8th 2011

Dear Ben,

Thank you very much for your letter. We are grateful to Mr Assange for pointing out that one of the allegations is for "minor rape". We have changed it on our website, so that we now refer to "sex-offence allegations". We are sorry for the mistake.

Yours sincerely



**John Micklethwait**  
Editor-in-Chief

**Ben Milloy**

---

**From:** Shanahan, Fergus [redacted]@he-sun [redacted]  
**Sent:** 07 December 2011 15:24  
**To:** Ben Milloy  
**Cc:** Justin Walford  
**Subject:** Re Julian Assange

**Follow Up Flag:** Follow up  
**Flag Status:** Flagged

Dear Ben,

On Assange, pro tem as we investigate, I have done the following without prejudice.

Looking at other papers and the internet, there is widespread concurrence that Assange faces the prospect of two charges of rape, but there are differences of interpretation owing to the Swedish justice system, so some wire services say he faces one charge of "minor" rape and one of sexual coercion. So in a spirit of goodwill, I am amending the Online reference to say he is being sought for extradition on charges of rape and sexual coercion.

Please let me have your acknowledgement that this is OK with the PCC.

Yours sincerely,

Fergus Shanahan

---  
"Please consider the environment before printing this e-mail"

The Newspaper Marketing Agency: Opening Up Newspapers:

<http://www.nmauk.co.uk/>

This e-mail and any attachments are confidential, may be legally privileged and are the property of NI Group Limited (which is the holding company for the News International group, is registered in England under number 81701 and whose registered office is 3 Thomas More Square, London E98 1XY, VAT number GB 243 8054 69), on whose systems they were generated.

If you have received this e-mail in error, please notify the sender immediately and do not use, distribute, store or copy it in any way.

Statements or opinions in this e-mail or any attachment are those of the author and are not necessarily agreed or authorised by NI Group Limited or any member of its group.

NI Group Limited may monitor outgoing or incoming emails as permitted by law. It accepts no liability

**Ben Milloy**

---

**From:** will.gore [redacted]  
**Sent:** 15 December 2011 10:49  
**To:** Ben Milloy  
**Subject:** Julian Assange

**Your reference - 115619**

Dear Ben

Thank you for your letter of 5 December to Chris Blackhurst regarding the complaint from Julian Assange, which has been passed to me.

Mr Assange has highlighted one particular passage in the article under complaint, which as far as I am aware accurately reports a tweet made by a Guardian journalist, James Ball, who previously worked for Wikileaks. We made reference to the tweet in the context of a report about how Wikileaks and the Guardian were both blaming each other for the security breach which led ultimately to the content of a large cache of unredacted diplomatic cables becoming widely known.

Our (web only) article, which was supplied by the respected news agency, Associated Press, and which was published in the same form by media outlets around the world, appeared only a day after knowledge of the unredacted cache became widespread. It reflected accurately the position of Wikileaks, which blamed the Guardian for the security breach, and the position of the Guardian, which claimed that fault lay with lax security by Wikileaks and Mr Assange. There was considerable confusion at the time of publication about what precisely had happened to lead to the security breach and I do not believe we misled readers by faithfully and contemporaneously reporting the dispute. We did not pass judgement on where blame lay for the breach.

You will note that AP reported having made several attempts to contact Wikileaks staff but without success. The article did, however, immediately after the reference to James Ball's tweet note that Wikileaks had, via its own Twitter feed, "contested statements by [David] Leigh and others, warning of 'continuous lies to come'." I think readers would have been left in little doubt that Wikileaks rejected all claims about it being to blame for the security breach.

In all the circumstances I do not see that Mr Assange's complaint raises a breach of the Code. However, if he wishes to place on record his specific response to Mr Ball's tweet, we would be prepared to add a footnote to the article online. I would suggest that it could read:

*Julian Assange has contacted us to respond specifically to a tweet by James Ball, which is referred to in our article above. Mr Assange categorically denies Mr Ball's contention that he [Mr Assange] re-used an old password when publishing encrypted data. Mr Assange maintains that fault for the security breach does not lie with himself or Wikileaks.*

I would welcome your thoughts on this suggestion and hope that we might be able to bring this matter to an amicable resolution.

Please do contact me if you would like to discuss the case.

best regards  
Will

Will Gore  
Deputy Managing Editor  
London Evening Standard, The Independent, i & Independent on Sunday

[will.gore@standard.co.uk](mailto:will.gore@standard.co.uk)

**theguardian**

Kings Place, 90 York Way  
London N1 9GU  
Telephone 020 3353 2000  
guardian.co.uk

Ben Milloy  
Press Complaints Commission  
Halton House  
20/23 Holborn  
London EC1N 2JD

16 December 2011

Dear Mr Milloy

Thank you for your letter of 6 December 2011 (ref 115617) regarding the complaint from Julian Assange in respect of three articles published by the Guardian. The articles are:

1. A news story headlined, Julian Assange extradition appeal: QCs clash over 'conceptions of consent', published on guardian.co.uk on 13 July 2011 and in the paper the following day. See: <http://www.guardian.co.uk/media/2011/jul/13/julian-assange-appeal-sexual-complaints>

2. An analysis piece headlined, WikiLeaks decides to make public all US state department cables, published on guardian.co.uk on 1 September 2011 and in shorter form in the paper the following day. See: <http://www.guardian.co.uk/media/2011/sep/01/wikileaks-make-public-all-state-cables>

3. A comment piece headlined, Steve Jobs v Julian Assange: what makes a good biography?, published on guardian.co.uk on 26 October 2011. See: <http://www.guardian.co.uk/commentisfree/2011/oct/26/biography-steve-jobs-julian-assange>

Mr Assange alleges the first article breaches the Code on accuracy where it refers to "charges". We do not accept his claim. The Guardian's article is an accurate account of proceedings in court, where the word "charges" was used repeatedly, including by the judge, Lord Justice Thomas, and counsel for the Swedish prosecution authority, Clare Montgomery QC. I attach a copy of our reporter's shorthand notes with four relevant sections highlighted. These are translated below:

(i) Judge: "We are not concerned with whether this is a good case or a bad case but whether what is charged amounts to a crime".

(ii) Montgomery: "This is a case where if the charge alleges violence . . ."

(iii) Montgomery: "The charge relates to actions which nobody suggests she was positively . . ."

(iv) Montgomery: "There is nothing to suggest here the prosecution has any intention to bring the case as it is described in some of the witness statements, rather it is as is put in some of the charges".

Guardian News & Media  
A member of Guardian Media Group plc  
Registered Office  
Kings Place, 90 York Way  
London N1 9AG  
Registered in England Number 808398

MOD100061268

A reference to charges need not be inaccurate where it is used informally as a synonym for "accusations" and "complaints" — two terms that appear in the opening sections of the article before we report the arguments heard in court. The case for "charges" is in any case supported by the fact that the case set out in the European Arrest Warrant were found by our courts to be equivalent to charges. This was relevant to establish as extradition is not permitted for investigation or questioning but must be for the purposes of conducting a criminal prosecution. The judgment (attached) says between paragraphs 149 - 153:

"The questioning is not for the mere investigation of a suspect . . . In our judgement Mr Assange is on the facts before this court "accused" of the four offences . . . On the basis of an intense focus on the facts he is plainly accused . . . Plainly this is a case that has moved from suspicion to accusation supported by proof.

". . . we would not find it difficult to hold that looking at what has taken place in Sweden that the prosecution had commenced. Although it is clear a decision has not been taken to charge him that is because under Swedish procedure that decision is taken a late stage with the trial following quickly thereafter . . . There can be no doubt that if what Mr Assange had done had been done in England and Wales, he would have been charged . . . Looking at it through cosmopolitan eyes on this basis criminal proceedings have commenced against Mr Assange."

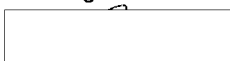
Mr Assange says the second article is incorrect where it explains the posting of an encrypted Wikileaks file on the Pirate Bay site on 7 December 2010. Our article says, "It was never apparently realised that the file-set included Assange's copy of all the classified US cables". Mr Assange says he told the Guardian in an interview on 3 December that the encrypted Cablegate file had already been mirrored". The interview was an online Q&A with readers in which Mr Assange said: "The Cable Gate archive has been spread, along with significant material from the US and other countries to over 100,000 people in encrypted form. If something happens to us, the key parts will be released automatically."

We believe his statement refers to the so-called "insurance file", which could apparently be opened with a unique password key that Wikileaks said it planned to release if Wikileaks got taken down. The document uploaded on 7 December, when Mr Assange was under arrest, was encrypted but used the internal passwords. Although it contained all the US cables, it's a different file.

In the third article, Mr Assange objects to being described as a "fugitive" from rape allegations. The article is an opinion piece and we contend the author is entitled to her view that Mr Assange's vigorous attempts to resist returning to Sweden, where he is wanted over the accusations, constitute avoidance of the judicial process. In the first extradition hearing, chief magistrate Howard Riddle concluded: "It would be a reasonable assumption that Mr Assange was deliberately avoiding interrogation before he left Sweden." See: <http://www.guardian.co.uk/media/2011/feb/24/julian-assange-extradition-sweden-verdict>. Mr Assange has offered to be questioned by a variety of means that do not involve going to Sweden (means which the British judges said they were "far from persuaded" were practicable) but will not surrender to prosecution.

In conclusion we see no breach of the Code on any of the counts made by Mr Assange.

Kind regards



Elisabeth Ribbens  
Managing Editor

① \*

~~3. Judge~~

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$

Ans 2

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$   $\rightarrow$   $\frac{1}{2} \times 2 = 1$

conclusion  $\rightarrow$   $\frac{1}{2} \times 2 = 1$

the ... of ... to ... of ...

"roughed up" get, broke ... prepared  
 party ... her, her ... "may not  
 have seen a free ..."

~~Part~~  
 The ... of ... to ...

The ... the ... covered to see ...

The ... of ... in ...

A ... of ...

arg

AA ... of ...

the ... of ...

... of ...

... of ...

primary ...

the ... of ...

The ... of ...

the ... of ...

... of ...

→ ACM

f part 7 v v v v v v v v v v  
come 2/3 v v v v v v v v v v  
7 7 2 and ... 2/7 ... 99 part ... 7 ...  
v = 1/2

→ use on account

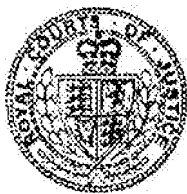
v v v v v v v v v v v v v v v v  
1/2 v v v v v v v v v v v v v v  
about 7 v v v v v v v v v v

\* Extr 7 m 7 cond ... 1/2 ... m 7 ...  
m v 7 v v v v v v v v v v v v v v  
v v v v v v v v v v v v v v v v

7 v v v v v v v v v v v v v v v v  
7 v v v v v v v v v v v v v v v v  
v v v v v v v v v v v v v v v v  
v v v v v v v v v v v v v v v v

\* h / dero ... v v v v v v v v v v  
exercice / v v v v v v v v v v v v v v





Neutral Citation Number: [2011] EWHC 2849 (Admin)

Case No: CO/1925/2011

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**DIVISIONAL COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Wednesday 2 November 2011

Before :

**THE PRESIDENT OF THE QUEEN'S BENCH DIVISION**  
**(SIR JOHN THOMAS)**  
**and**  
**MR JUSTICE OUSELEY**

Between :

<b>Julian Assange</b>	<b><u>Appellant</u></b>
<b>- and -</b>	
<b>Swedish Prosecution Authority</b>	<b><u>Respondent</u></b>

.....  
.....  
Mr Ben Emmerson QC and Mr M Summers (instructed by Birnberg Peirce) for the  
Appellant  
Ms Clare Montgomery QC, Mr A Watkins and Ms H Pye (instructed by CPS) for the  
Respondent

Hearing date: 12 and 13 July 2011

.....  
**Judgment Approved by the court**  
**for handing down**  
**(subject to editorial corrections)**

**If this Judgment has been emailed to you it is to be treated as 'read-only'.  
You should send any suggested amendments as a separate Word document.**

fairly be described as the commencement of the prosecution, the boundary between suspicion and investigation and prosecution had been crossed. Looking at the matter in the round, Mr Assange passed the threshold of being wanted for prosecution.

149. It is clear on the extrinsic evidence that a decision has not been taken to charge him. Under the law of Sweden that decision will only be made after he has been questioned again. Under Swedish procedure, that decision is made at the conclusion of the investigation and, according to the evidence before the Senior District Judge, the defendant will then be given the right to examine all the documents relating to the case.
150. In our judgment, the fact that under the criminal procedure of Sweden he may be required to answer further questions before a decision is made to charge him or that the fact that the full file has not yet been provided are not decisive. The former is not an uncommon procedure on the continent and many systems do not permit access to the file until sometime after it is clear the person is accused of an offence. The fact that the Court of Appeal of Svea used the word "suspected" or that the prosecutor in her supplemental material has said he is "accused" takes the matter no further. The real question is whether the fact that it is clear that a final decision has not been made to prosecute or charge Mr Assange means that he is not "accused of the offence". The questioning is not for the mere investigation of a suspect, but to ensure that there is no proper basis for the accusation not to proceed swiftly to trial, where the focus is likely to be on what is admitted, denied or put on a different light in the answers to the questions.
151. We do not see why looking at the matter through cosmopolitan eyes it cannot be said that a person can be accused of an offence even though the decision has not finally been taken to prosecute or charge; *Ismail* makes clear one cannot simply look at the matter as a common lawyer. In our judgment Mr Assange is on the facts before this court "accused" of the four offences. There is a precise description in the EAW of what he is said to have done. The extraneous evidence shows that there has been a detailed investigation. The evidence of the complainants AA and SW is clear as to what he is said to have done as we have set out. On the basis of an intense focus on the facts he is plainly accused. That is, as Lord Steyn said, decisive.
152. As it is common ground that a criminal investigation about someone's conduct is not sufficient to make a person an accused, a further way of addressing this broad question is to ask whether the case against him has moved from where he can be seen only as a suspect where proof may be lacking or whether there is an accusation against him supported by proof: cf the distinction made by Lord Devlin in *Hussein v Chong Fook Kam* [1970] AC 942 at 948. Plainly this is a case which has moved from suspicion to accusation supported by proof.
153. Although we have approached the matter by asking the broad question posed by Lord Steyn as to whether Mr Assange was accused, it was the submission of Mr Assange that the court should ask the question asked by the Divisional Court in *Ismail*, namely whether a step had been taken which could fairly be described as the commencement of the prosecution. It is, in our view, clear that whilst Lord Steyn approved that approach, it was not the only approach to the question of whether he was an accused. The issue was to be addressed broadly on the facts. But, even if the court was constrained to determine whether someone was an accused by solely considering the

question of whether the prosecution had commenced, we would not find it difficult to hold that looking at what has taken place in Sweden that the prosecution had commenced. Although it is clear a decision has not been taken to charge him, that is because, under Swedish procedure, that decision is taken at a late stage with the trial following quickly thereafter. In England and Wales, a decision to charge is taken at a very early stage; there can be no doubt that if what Mr Assange had done had been done in England and Wales, he would have been charged and thus criminal proceedings would have been commenced. If the commencement of criminal proceedings were to be viewed as dependent on whether a person had been charged, it would be to look at Swedish procedure through the narrowest of common law eyes. Looking at it through cosmopolitan eyes on this basis, criminal proceedings have commenced against Mr Assange.

154. In our view therefore, Mr Assange fails on the facts on this issue.

#### **Issue 4: Proportionality**

155. Mr Assange submitted that even if under the EAW he was technically a person accused of offences, it was disproportionate to seek his surrender under the EAW. That was because, as he had to be questioned before a decision was made on prosecution, he had offered to be questioned over a video link. It would therefore have been proportionate to question him in that way and to have reached a decision on whether to charge him before issuing the EAW.
156. It is clear from the Report of the European Commission on the Implementation of the Framework Decision (COM (2011) 175 Final, 11 April 2011), that there was general agreement between the Member States, as a result of the use of EAWs for minor offences technically within the Framework Decision, that a proportionality check was necessary before a judicial authority in a Member State issued an EAW. This statement was a strong reminder to judicial authorities in a Member State contemplating the issue of an EAW of the need to ensure that the EAW was not used for minor offences. It is not a legal requirement. There is, however, almost universal agreement among prosecutors and judges across Europe that this reminder to conduct a proportionality check should be heeded before an EAW is issued.
157. It was submitted on behalf of Mr Assange proportionality was also a requirement of the law on the following basis. The Framework Decision as an EU instrument is subject to the principle of proportionality; reliance was placed on the effect of the Charter of Fundamental Rights, *R(NS) v SSHD* [2010] EWCA Civ 990 and the decision of the Higher Regional Court in Stuttgart in *General Public Prosecution Service v C* (25 February 2010), as reported at [2010] Crim LR 474 by Professors Vogel and Spencer. We will assume that Mr Assange's argument that an EAW can only be used where proportionate, complex as it is, is well founded without lengthening the judgment still further to express a view on it.
158. However, the argument fails on the facts. First, in this case, the challenge to the issue of the warrant for the arrest of Mr Assange failed before the Court of Appeal of Svea. In those circumstances, taking into account the respect this court should accord the decision of the Court of Appeal of Svea in relation to proceedings governed by Swedish procedural law, we do not consider the decision to issue the EAW could be said to be disproportionate.