



Ministry of
JUSTICE

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Thank you for your letter of 4 January. I enjoyed seeing you, Murdoch and Rebekah again, and am grateful to you for setting out your concerns so clearly. Let me deal with them in turn.

Data Protection Act

We are not proposing to criminalise any conduct that is not currently against the law. However I do understand your, and the media's concerns more generally, about the introduction of custodial sentences for breaches of section 55 of the Data Protection Act 1998 in clause 129 of the Criminal Justice and Immigration Bill. We have no wish to curtail legitimate and responsible journalism and when the proposed penalties were being designed it was not considered that they would have that effect. We are not aware that section 55 has caused any problems such as a "chilling effect" since the Data Protection Act came into force. The penalties were proposed and strongly argued for by the Information Commissioner to strengthen the protection of individuals' rights to respect for their privacy.

The Government's starting point was that the current definition of the offences and the current defences in the DPA would strike the right balance between freedom of expression and privacy, in line with the European Convention on Human Rights and the Data Protection Directive. The assessment was that journalists would be able to rely on one of five defences in section 55(2) of the DPA – in particular, they may rely on the defence that the unlawful act was justified, in all the circumstances, as being in the public interest. But I have reviewed the proposals in the light of the important points which you and others have made. As I explained when we met I was increasingly minded to consider inclusion of provision for the reasonable belief of someone at the time an offence was committed. I understand that there will still be considerable anxiety about the potential impact of this measure and that there is, therefore, a case of reconsidering it in slower time. Alongside this, I am faced with the overwhelming need to achieve Royal Assent for the Bill by 8 May 2008, when the existing legal restrictions against prison officers taking industrial action otherwise terminate. Taking all these factors into account, I am making appropriate recommendations to colleagues and I will

be back in touch once I have collective agreement on the way forward. I would be grateful if, meanwhile, my thinking was not made public until it is announced to the House.

Conditional Fee Arrangements

I know that the conduct of some lawyers using conditional fee agreements, certainly in the past, in publication cases may leave something to be desired to say the least. Aggressive litigation tactics are commonplace. There is little doubt that some lawyers do attempt to work the fee systems (which were put in place to help ordinary people, irrespective of means, to access justice) to their maximum advantage. I am particularly concerned that some of the impacts of this behaviour may have been disproportionately felt by the regional media.

Having said that, without CFAs many people would not be able to afford legal assistance in these often sensitive and potentially personally very damaging areas. It is important that there is access to legal support to help individuals clear their name, rebuild their reputation, deal with gross invasions of privacy or correct other such serious and potentially life-changing wrongs. I am sure you will agree that in dealing with concerns about lawyers' activities and the media's freedom of expression we must be careful not to take actions that would harm the ability of the average citizen to deal with such legal problems on as equal terms as possible with the party whom they feel has wronged them.

I recognise that the existing costs control mechanisms may not have been working as effectively as they should be and that some reforms are needed to tackle the excess, and to help balance access to justice for claimants with fairness to defendants. We have been looking at this in some detail with the Master of the Rolls, the Civil Justice Council (CJC) and key representatives from both sides of the industry. A considerable amount of work done has been done with the CJC, which led to our own consultation paper issued last August setting out proposals on success fees and premiums. You may have seen the 2006 Report by the Constitutional Affairs Select Committee into many of the issues you raise on CFAs and costs. I understand that two major media organisations – News International and the BBC – have separately entered into voluntary costs protocols with some leading defamation firms, which includes many of the elements the CJC and we have proposed.

I am however now looking at where we may need to go further, with the proposals on the table as a starting point. It may perhaps be useful for a small group of your Heads of Legal to come in for a more detailed discussion with Bridget Prentice, who is taking this work forward for me.

Freedom of Expression Audit

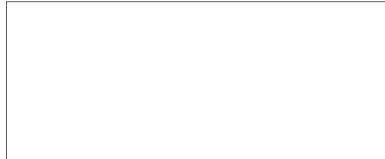
Many thanks for reminding Gordon and me of the speech I made about this in 2000 and prompting us to take action on it and for the ideas you set out. I am now working on turning this into a reality and sketched out some of my ideas over lunch at with the Society of Editors last month. I'm aiming to let you and colleagues have a more detailed paper on this over the next couple of months.

There are, as you know, already some equivalent "audits" in operation. One is under section 19 of the Human Rights Act by which Ministers have to sign a certificate on the face of a Bill as to whether the Bill's provisions appear to be compliant with the ECHR, or not. This simple device has ensured a greater awareness across government of ECHR issues – one of which, of course, is compliance with Article 10 on freedom of expression. The second is the Impact Assessment, which is carried out on all

significant policy proposals, and may include an assessment of human rights implications. In my view the new focus on freedom of expression should build on these analyses – both to ensure coherence, and also to avoid unnecessary duplication of effort within Government. I will be consulting my Ministerial colleagues on this matter and will then come back to you.

I am sending copies of this letter to Rebekah and Murdoch.

Yours,



JACK STRAW