

Meeting with Edward Garnier and media representatives.

17 January 2008

Attendees:

Maria Eagle MP

Edward Garnier QC

Alistair Brett - Legal Manager of Times Newspapers

David Newell - Director of the Newspaper Society

Guy Black - Corporate Affairs Director Telegraph Media Group

Richard Thomas - Information Commissioner

Dileeni Daniel-Selvaratnam - Private Secretary

Nicola Westmore – Policy lead Information Rights Division

Mel Nebhrajani - MOJ lawyer

1. Further to a commitment made during the passage of the CJ& I Bill, ME met with Edward Garnier and representatives from the newspaper society to discuss the provisions in the bill relating to penalties for misuse of data

2. The newspaper reps primary concerns

- i. The penalty of imprisonment for journalists was wholly disproportionate to the mischief identified.
- ii. Would create a huge chilling effect on Article 10 rights, used to prevent genuine journalism
- iii. Preference for the clause to be removed in its entirety.
- iv. Perfectly adequate sanctions under the law of privacy.

3. ME queried whether theirs was an argument for a defence rather than the offence itself

4. Alistair Brett stated their position was firmly in line with ECHR principles - journalists should not be in a position where they face imprisonment except where they have been stirring up public disorder. AB indicated he did not think it was right for journalists to be imprisoned - it was a different case where private investigators steal information. The test of what is in the public interest is very subjective.

5. They also queried the difference in threshold between the criminal and civil offence.

6. Richard Thomas outlined the intention of the sanctions was to deter - he was a strong supporter of effective self-regulation.

7. Edward Garnier commented that it could be for the SGC to make pronouncements to increase understanding for all.

8. David Newell stated that their position was one that was unanimously held across the media, that they had been re-iterating the arguments above for quite a while - still waiting on Government to come back to them.

9 Alistair Brett detailed the Counsel's opinion they had obtained on the difference in the burden of proof between the criminal and civil sanctions. On the civil side only have to prove a reasonable belief it was in the public interest whereas the criminal side requires a higher burden proof as you are required to show it actual is in the public interest (not just a reasonable belief). He offered to share the opinion with ME.

10. MOJ lawyer clarified that it relates to two different situations - one relating to where you lawfully have the information (i.e. are the data controller) and the other where you are not in lawful possession of the information.

11. ME raised the issue of alternatives and what their views were on what the defence should say. It was agreed by the representatives that it should be amended to 'a reasonable belief' so the threshold was the same.

12. David Newell summarised that their position would be that

- i. Would want to know what the period from when it is on the statute book and when it would have legal effect
- ii. It should include a reasonable belief defence
- iii. Should be triggered after appropriate consultation to get agreed guidance.

13. Richard Thomas stated the ICO would produce a statement of prosecution policy and that any guidance would be very generous to genuine investigative journalism. He would like to see a consensus of guidance of self-regulation of what is not in the public interest. On being pressed by David Newell on whether this would be agreed guidance, RT stated he would obviously consult in its production but would be for ICO to issue as they feel appropriate. RT conceded that it is very difficult to produce a definitive view of the public interest.

14. ME concluded the meeting by agreeing to get back to the representatives after considering the issue further with the JS.

Post meeting wash-up with officials:

1. Need to check the position with No.10
2. ME felt the concession could be something that would work and that something was needed to be done.
3. MoJ Lawyers to speak to Parliamentary Counsel
4. RT to write a letter endorsing this line.
5. ME to write to the Newspaper Society following agreement of the JS to the proposed approach.