

LORD JUSTICE LEVESON'S INQUIRY

PART ONE: CULTURE PRACTICES AND ETHICS OF THE PRESS
MODULE 2: CONTACTS AND RELATIONSHIP BETWEEN THE PRESS
AND THE POLICE

**CHIEF CONSTABLE ANDREW TROTTER'S ANSWERS TO WRITTEN
QUESTIONS**

Guidance on media handling and communication activity at major incidents

Question 1

The Guidance encourages very close co-operation with the media, saying that the media should be accommodated and helped, that space and time should be made for them at an early stage (p.1902), and that requests for access to incident scenes should be passed to the SIO who "should allow access in appropriate cases as soon as practicable". (p.1903).

Are the rights of victims, witnesses and suspects considered when making a decision? Do you not agree that all of these categories of individuals have Article 8 rights to privacy and the police as a public authority need to respect these rights? Suspects also have Article 6 rights. If this has been considered where is the guidance?

The ACPO Guidance on Media Handling and Communication Activity at Major Incidents was implemented in September 2008, when the ACPO Media Advisory Group Guidance Notes of 2003 were current. The question ignores

the contents of this earlier general guidance which sets out the relevant legal framework and refers specifically to the rights to a fair trial and respect for privacy enshrined in Articles 6 and 8 of the Human Rights Act 1998. The general notes contain sections devoted to suspects and also the victims or witnesses of crime respectively.

For example at paragraph 1.1 at page 32, the following explanation is given in relation to victims and witnesses: *The main purpose of this note is to clarify the procedure concerning the free flow of information between the Police Service and the media. All forces try to achieve a balance between their policies of openness in giving full and accurate information to the media, and their responsibilities for victim care together with legitimate rights to personal privacy underpinned by the Data Protection and Human Rights Acts. These, together with the common law, have been taken fully into account in preparing this note.*

The guidance on media handling at major incidents is limited to major incidents as the name describes. *A major incident is any emergency (including known or suspected acts of terrorism) that requires the implementation of special arrangements by one or all of the emergency services, and will generally include the involvement, either directly or indirectly, of large numbers of people.* (See definition at top of page 4 of the guidance.) They are generally on going emergencies on a large scale where the primary police focus is saving life. The intensity of media interest usually requires special arrangements to be put in place in order to maintain public confidence. This guidance is directed primarily to this end. There is no need to reiterate what has already been set out in the General Guidance in relation to suspects, victims and witnesses.

Question 2

The guidance also suggests that the Police should not intervene if someone who is distressed or bereaved asks them to intervene to prevent members of the media filming or photographing them. (p.1902). This is reiterated in the CAG advice.

What is the justification for not intervening in those circumstances?

This question relates to paragraph 4 of Appendix (vi) which are guidelines for Metropolitan Police staff. These guidelines need to be viewed in the context of the main guidance to which they are appended. At page 33 there is the following paragraph devoted to Victim/Witness Family Support: *There are some key groups of people who can have an impact on the media management. These include victims, their families, witnesses, those arrested and their families. Measures need to be put in place operationally to support individuals affected by warrants or activity which can be through the consequence management group. This can be something to positively explain to the media to avoid some criticism. Advice should also be provided to individuals, where appropriate, on how to handle the media, particularly in the return to normality.* In other words, the police should be alive to difficulties experienced by victims, witnesses and others as a result of media interest and pressure. Jo Bird, the British Transport Police's Media and Marketing Director, gave an example in evidence of police assistance. She described how she had helped a deceased's family to deal with media intrusion by suggesting that they refer all enquiries to her.

The police are alive to ways in which they may assist others in dealing with the media but they cannot exceed their powers. Police officers have no power to restrict filming or photographing save where a criminal offence is committed or threatened.

Would you welcome the opportunity to make a complaint about members of the media to a regulator on behalf of victims or witnesses, or to protect operational integrity?

Generally it is for those whose rights have been infringed to make a complaint to any regulator. However, there are examples where referrals have been made to the Press Complaints Commission with successful outcomes. Referral to a media regulator in order to protect operational integrity may

assist when dealing with the behaviour of the media. When dealing with an individual organisation, it is often effective to speak directly to them. There would not necessarily be a need to refer a matter to a media regulator.

Question 3

The guidance leaves the responsibility for gaining permission to access private property to the media. The media will have a strong commercial reason to obtain exclusive photographs and the owner of the property may assume that anyone accompanying the police has permission to enter.

Do you confirm with the media that they have gained this permission when they accompany you on raids? If not, why not and do you now think that you should? In these circumstances, can it ever be appropriate to bring media on operations?

The guidance is clear that the media need to obtain permission from the owner to enter private property. Your question suggests it is the responsibility of the police to police whether this has been given. To date, we have not assumed this responsibility and have relied on the media to comply with their own ethics and standards and ensure this is done. This approach will be reviewed when the media guidance is updated following Lord Justice Leveson's recommendations. Clearly, where permission is not given by the owner, the media may still attend an operation if appropriate, but not enter any private premises.

Question 4

The Inquiry has heard evidence that leaks and media coverage can significantly hamper investigations (e.g. Jerry Kirkby, Clive Driscoll, Dave Harrison). The guidance envisages the need to "*allocate police resources to manage the media at the scene of an incident*" (page 1863) and says that the media may become frustrated if they are kept waiting for photographs and if they are, "*the more risk there could potentially be to the operational and investigative management of the incident. To help them, all possible ways of*

facilitating or providing visual material should be positively considered" (p1877).

Given this risk to operations, and the commercial imperative of the media to sensationalise and obtain exclusives, why does the Guidance encourage media attendance at incidents? Do you consider that other ways of informing the public and keeping their confidence (such as the internet, social media etc) may provide better protection for the privacy rights of individuals?

Please see the answer given to question 1. The guidance does not encourage media attendance at incidents and relates specifically to major incidents where the media will attend frequently and in great numbers. The resulting imperative is to reassure the public and maintain confidence by keeping the media updated. These considerations may outweigh individual rights. The extract relates purely to photographs and I do not see how the need for press photographs can be avoided, whether they are subsequently published on the internet or in the newspapers.

Question 5

The guidance does not mention the privacy rights of suspects or witnesses. It refers to victims and suspects as follows: *'there are some key groups of people who can have an impact on the media management. These include victims, their families, witnesses, those arrested and their families. Measures can be put in place operationally to support individuals affected by warrants or activity, which can be through the consequence management group. This can be something to positively explain to the media to avoid criticism'* (page 1888).

Was any legal advice taken about the privacy rights of suspects or witnesses or victims?

In the light of evidence to the Inquiry about the affect of leaks or inaccurate reporting of crime, do you accept that this Guidance is slanted towards

accommodating the media and pays insufficient attention to the privacy and fair trial rights of victims and suspects and their families?

Please see the answer to question 1.

Guidance on the release of images of suspects and defendants

Question 6

The objective of the guidance is firstly to "*encourage the release of images to the media where appropriate and at the earliest opportunity*" (p.1929)

Why should this be encouraged?

The encouragement of the release of images is adopting the general principle of openness and accessibility advocated in the Media Advisory Group Guidance of 2003 which states *the Police Service is committed to openness and accessibility. It believes in the greatest possible flow of information to the media.* The police frequently receive requests from the media for images of suspects and defendants. There are also situations when they wish to instigate the publication of images. Detailed guidance is provided on the considerations to be applied in a variety of situations when considering the release of images.

Was any legal advice taken about the risks to privacy rights of releasing images to the media?

Appendix A to the guidance sets out the legal framework and refers specifically to Article 8. It notes that *it is necessary in each case to balance the rights of the individual, including his or her immediate family, to privacy with the right of the community to be protected.*

Question 7

The letter at p 2153 refers to the release of video footage of suspects in the interview room and at police stations to the media.

How could this be justified according to the guidance? Were any further steps taken as a result of the judiciary's concern?

The release of video footage of suspects in the interview room can only be justified in exceptional circumstances. Any release should be done in accordance with the guidance which I have provided and with the agreement of the Crown Prosecution Service.

**Communication Advisory Group Guidance 2010
Individuals and companies under police investigation.**

Question 8

The guidance lists practice including that of giving general details of arrests which are designed to be informative but not identify, and the usual practice of confirming the identity or addresses of people under investigation or suspicion. The guidance simply says there is no law against this. (page 2793-4). Did you take legal advice as to this and consider the law protecting privacy rights?

At paragraph 4.14 of the Guidance it is noted that forces refer to general rather than specific locations in practice and so full details of the address are usually not given.

This question ignores the contents of Annex 1 to the Guidance, headed "The law". Specific reference is made to the Data Protection and Human Rights Acts and the considerations that need to be weighed before information is released. The reference at paragraph 4.3 to *no specific law to prevent forces identifying those they have arrested* and at paragraph 4.14 to *there is no law to say addresses should not be given* refers to the absence of any mandatory prohibition. This phraseology will be reviewed post Leveson.

Do you agree that, as a public authority, the Police Service itself has a responsibility under the HRA to protect Article 8 and Article 6 rights and that the practice described represents a significant risk to these rights?

The Police Service has a duty to comply with the Data Protection and Human Rights Acts when considering the release of information it holds. Annex 1 sets out a summary of the relevant principles.

Question 9

Taking the media on operations

The ACPO guidance on "ride-alongs" says there is no law to prevent the police taking the media on operations.

The Guidance also leaves to the media the question of obtaining consent to enter property or to film suspects.

Do you agree that a suspect who is the target of an investigation is likely to assume that the media accompanying the police has a right to enter the property?

I accept this is a possibility. Please see the answer to question 3 above.

Do you agree that, as a public authority, the Police Service itself has a responsibility under the HRA to protect Article 8 and Article 6 rights and that inviting journalists on operations to film or photograph without the permission of the suspect would inevitably be an interference with the rights protected under those Articles unless it can be properly justified?

Please see the answer to question 3 above.

The Police have positive obligations to protect Article 8 and Article 6 rights. Were these considered in the drafting of the guidance?

Please see Annex A to the Guidance.

Question 10

Police under investigation

The guidance suggests that it is best practice to release a statement which confirms details of the deceased and cause of death.

In view of evidence from Inquest about the reporting of deaths in custody and the release of inaccurate information by the Police, do you agree that there should be consultation with the family before releasing any such statement?

I agree that there should be consultation with the family before releasing any such statement.

Question 11

Paragraphs 5 and 6 of your statement – you refer to occasional complaints about the behaviour of the media and to the strain media attention can cause. Would it assist you to be able to complain to a media regulator about the behaviour of the media and its impact on operational matters or on victims or witnesses?

The referral to a media regulator may assist when dealing with the behaviour of the media. There are examples where referrals have been made to the Press Complaints Commission, with successful outcomes. When dealing with individual organisations it is often effective to speak directly to them and in such circumstances would not necessarily require the need for referral to a media regulator.