



JOINT COMMITTEE ON PRIVACY AND INJUNCTIONS



CALL FOR EVIDENCE

Joint Committee on Privacy and Injunctions

A new joint committee has been appointed by both Houses of Parliament to consider privacy and injunctions. The Joint Committee comprises 13 MPs and 13 Peers. It will take oral and written evidence and make recommendations in a report to both Houses. The Joint Committee invites interested organisations and individuals to submit written evidence as part of the inquiry.

The Joint Committee would welcome written submissions on all or any of the following questions:

- (1) *How the statutory and common law on privacy and the use of anonymity injunctions and super-injunctions has operated in practice***
 - a. Have anonymous injunctions and super-injunctions been used too frequently, not enough or in the wrong circumstances?*
 - b. Are the courts making appropriate use of time limitations to injunctions and of injunctions contra mundum (i.e. injunctions which are binding on the whole world) and how are such injunctions working in practice?*
 - c. What can be done about the cost of obtaining a privacy injunction? Whilst individuals the subject of widespread and persistent media coverage often have the financial means to pursue injunctions, could a cheaper mechanism be created allowing those without similar financial resources access to the same legal protection?*
 - d. Are injunctions and appeals regarding injunctions being dealt with by the courts sufficiently quickly to minimise either (where the injunction is granted or upheld) prolonged unjustifiable distress for the individual or (where an injunction is overturned or not granted) the risk of news losing its current topical value?*
 - e. Should steps be taken to penalise newspapers which refuse to give an undertaking not to publish private information but also make no attempt to defend an application for an injunction in respect of that information, thereby wasting the court's time?*
- (2) *How best to strike the balance between privacy and freedom of expression, in particular how best to determine whether there is a public interest in material concerning people's private and family life***
 - a. Have there been and are there currently any problems with the balance struck in law between freedom of expression and the right to privacy?*
 - b. Who should decide where the balance between freedom of expression and the right to privacy lies?*
 - c. Should Parliament enact a statutory privacy law?*
 - d. Should Parliament prescribe the definition of 'public interest' in statute, or should it be left to the courts?*
 - e. Is the current definition of 'public interest' inadequate or unclear?*
 - f. Should the commercial viability of the press be a public interest consideration to be balanced against an individual's right to privacy?*

- g. *Should it be the case that individuals waive some or all of their right to privacy when they become a celebrity? A politician? A sportsperson? Should it depend on the degree to which that individual uses their image or private life for popularity? For money? To get elected? Does the image the individual relies on have to relate to the information published in order for there to be a public interest in publishing it (a 'hypocrisy' argument)? If so, how directly?*
- h. *Should any or all individuals in the public eye be considered to be 'role models' such that their private lives may be subject to enhanced public scrutiny regardless of whether or not they make public their views on morality or personal conduct (i.e. in the absence of a 'hypocrisy' argument)?*
- i. *Are the courts giving appropriate weight to the value of freedom of expression in 'celebrity gossip' and 'tittle-tattle'?¹*
- j. *In the context of sexual conduct, should it be the case that a person's conduct in private must constitute a significant breach of the criminal law before it may be disclosed and criticised in the press?*
- k. *Could different remedies (other than damages) play a role in encouraging an appropriate balance?*
- l. *Are damages a sufficient remedy for a breach of privacy? Would punitive financial penalties be an effective remedy? Would they adequately deter disproportionate breaches of privacy?*
- m. *Should we introduce a prior notification requirement, requiring newspapers and other print media to notify an individual before information is published, thereby giving the individual time to seek an injunction if a court agrees the publication is more likely than not to be found a breach of privacy? If so, how would such a requirement function in terms of written content online eg blogs and other media?*
- n. *Should aggravated damages be payable if a media publisher does not give prior notification to the subject of a publication which a court finds is in breach of that individual's privacy?*
- o. *Is section 12 of the Human Rights Act 1998 appropriately balanced? Should the media's freedom of expression be protected in stronger terms? Or is there a disproportionate emphasis on the media's freedom of expression over the right to privacy? Has Section 12 of the Human Rights Act 1998 ensured a more favourable press environment than would be the case if Strasbourg jurisprudence and UK injunctions jurisprudence were applied in the absence of Section 12?*
- p. *Is the test in section 12 for an injunction to be granted too high a threshold? Should that test depend on the type of information about to be published? Has the court struck the right balance in applying section 12?*
- q. *Is there an anomaly requiring legislative attention between the tests for an injunction for breach of privacy and in defamation?*

¹ The courts have referred to this type of information, eg. "tittle-tattle about the activities of footballers' wives and girlfriends". See, for example, *Jameel v Wall Street Journal Europe SPRL* [2006] UKHL 44, [2007] 1 AC 359 at 147, [2006] 4 All ER 1279, at [147], *CTB v Newsgroup Newspapers Ltd and another* [2011] EWHC 1232 (QB) at [33], *ETK v News Group Newspapers Ltd* [2011] EWCA Civ 439, at [11].

(3) Issues relating to the enforcement of anonymity injunctions and super-injunctions, including the internet, cross-border jurisdiction within the United Kingdom, parliamentary privilege and the rule of law

- a. *How can privacy injunctions be enforced in this age of ‘new media’? Is it practical and/or desirable to prosecute ‘tweeters’ or bloggers? If so, for what kind of behaviour and how many people – where should or could those lines be drawn?*
- b. *Is it possible, practical and/or desirable for print media to be restrained by the law when other forms of ‘new media’ will cover material subject to an injunction anyway? Does the status quo of seeking to restrict press intrusion into individual’s private lives whilst the ‘new media’ users remain unchallenged represent a good compromise?*
- c. *Is enough being done to tackle ‘jigsaw’ identification by the press and ‘new media’ users? For example see Mr Justice King’s provisional view in *NEJ v. Wood* [2011] EWHC 1972 (QB) at [20] that information published in the Daily Mail breached the order of Mr Justice Blake, and the consideration by Mr Justice Tugendhat in *TSE and ELP v. News Group Newspapers* [2011] EWHC 1308 (QB) at [33]-[34] as to whether details about TSE published by The Sun breached the order of Mrs Justice Sharp.*
- d. *Are there any concerns regarding enforcement of privacy injunctions across jurisdictional borders within the UK? If so, how should those concerns be dealt with?*
- e. **PARLIAMENTARY PRIVILEGE:**
 - i. *With regard to the enforcement of privacy injunctions and the breaching of them during Parliamentary proceedings, is there a case for reforming the Parliamentary Papers Act 1840 and other aspects of Parliamentary privilege? Should this be addressed by a specific Parliamentary Privilege Bill or is it desirable for this Committee to consider privilege to the extent it is relevant to injunctions?*
 - ii. *Should Parliament consider enforcing ‘proper’ use of Parliamentary Privilege through penalties for ‘abuse’?*
 - iii. *What is ‘proper’ use and what is ‘abuse’ of Parliamentary Privilege?*
 - iv. *Is it desirable to address the situation whereby a Member of either house breaches an injunction using Parliamentary Privilege using privacy law, or is that a situation best left entirely to Parliament to deal with? Indeed, is it possible to address the situation through privacy law or is that constitutionally impermissible? Could the current position in this respect be changed in any significant way? If so, how?*

(4) Issues relating to media regulation in this context, including the role of the Press Complaints Commission and the Office of Communications (OFCOM)

PCC

- a. *Do the guidelines in section 3 of the Editors’ Code of Practice correctly address the balance between the individual’s right to privacy and press freedom of expression?*
- b. *How effective has the PCC been in dealing with bad behaviour from the press in relation to injunctions and breaches of privacy?*
- c. *Does the PCC have sufficient powers to provide remedies for breaches of the Editors’ Code of Practice in relation to privacy complaints?*

- d. *Should the PCC be able to initiate its own investigations on behalf of someone whose privacy may have been infringed by something published in a newspaper or magazine in the UK?*
- e. *Should the PCC have the power to consider the balance between an individual's privacy and freedom of expression prior to the publication of material – or should this power remain with the Courts?*
- f. *Is there sufficient awareness in the general public of the powers and responsibilities of the PCC in the context of privacy and injunctions?*

OFCOM

- g. *Do the guidelines in Section 8 of the Ofcom Broadcasting Code correctly address the balance between the individual's right to privacy and freedom of expression?*
- h. *How effective has Ofcom been in dealing with breaches of the Ofcom Broadcasting Code in relation to breaches of privacy?*
- i. *Is there a case that the rules on infringement of privacy should be applied equally across all media content?*

You need not address all these questions. Short submissions are preferred.

Submissions, which should be original and not copies of papers written for Government consultations or any other inquiry, must be received by **Thursday 6th October**.

A copy of the submission should be sent by e-mail to **privacycommittee@parliament.uk**. Submissions in Word format are preferred. Paper submission can be sent to: **Scrutiny Unit, House of Commons, London, SW1P 3JA**

Personal contact details supplied to the Committee will be removed from evidence before publication. However, personal contact details will be retained and used for specific purposes relating to the Committee's work, for instance to seek additional information or to send copies of the Committee's report.

Evidence becomes the property of the Committee, and may be printed, placed on the Internet or circulated by the Committee at any stage. You may publicise or publish your evidence yourself, but in doing so you must indicate that it was prepared for the Committee. Evidence published other than under the authority of the Committee does not attract parliamentary privilege. If your evidence is not printed, it will in due course be made available to the public in the Parliamentary Archives.

All communications to the Committee about the inquiry should be addressed through the clerk or the Chairman of the Committee, whether or not they are intended to constitute formal evidence to the Committee.

FURTHER INFORMATION:

Committee Membership is as follows:

Mr John Whittingdale MP (Chairman)

Mr Ben Bradshaw MP

Mr Robert Buckland MP

Philip Davies MP

George Eustice MP

Paul Farrelly MP

Martin Horwood MP

Eric Joyce MP

Mr Elfyn Llwyd MP

Penny Mordaunt MP

Yasmin Qureshi MP

Ms Gisela Stuart MP

Nadhim Zahawi MP

Lord Boateng

Lord Black of Brentwood

Baroness Bonham-Carter of Yardbury

Bishop of Chester

Baroness Corston

Lord Dobbs

Lord Gold

Lord Harries of Pentregarth

Lord Hollick

Lord Janvrin

Lord Mawhinney

Lord Myners

Lord Thomas of Gresford

Media Enquiries:

Liz Parratt, Press Officer, House of Commons. Tel: 0207 219 1708 parrattl@parliament.uk

Committee Website: <http://www.parliament.uk/business/committees/committees-a-z/joint-select/privacy-and-superinjunctions/>

Watch committees and parliamentary debates online: www.parliamentlive.tv

Publications / Reports / Reference Material: Copies of all select committee reports are available from the Parliamentary Bookshop (12 Bridge St, Westminster, 020 7219 3890) or the Stationery Office (0845 7023474). Committee reports, press releases, evidence transcripts, Bills; research papers, a directory of MPs, plus Hansard (from 8am daily) and much more, can be found on www.parliament.uk

More information on submitting evidence is available online:

http://www.parliament.uk/parliamentary_committees/witness.cfm

If you wish to be added to the mailing list for future notices, please contact:
privacycommittee@parliament.uk