

clear | compelling | approachable

PUBLIC INTEREST

Iain Goldrein QC

Public Interest

In criminal law, there is no overriding ‘public interest’ defence. Nor is there a definition of what constitutes the public interest.

Thus save for limited statutory exceptions (eg the Data Protection Act 1998) the primary forum for arguing public interest is not necessarily the court-room.

Can public interest be raised outside the court-room, and if yes, when and how - in the context of the Director of Public Prosecutions’ (DPP)’s interim guidelines?

On 18 April 2012, the DPP issued, “**Interim guidelines for prosecutors on assessing the public interest in cases affecting the media.**” These guidelines set out the approach to be taken by prosecutors as to whether to charge journalists with criminal offences that may be committed in the course of their work. They are non-exhaustive; see para 32, and are open to [three-month] consultation. The issue of the public interest is central to the guidelines.

The DPP has proposed the following examples of conduct which is capable of serving the public interest:

- » Conduct which is capable of disclosing that a criminal offence has been committed, is being committed, or is likely to be committed;
- » Conduct which is capable of disclosing that a person has failed, is failing, or is likely to fail to comply with any legal obligation to which s/he is subject;
- » Conduct which is capable of disclosing that a miscarriage of justice has occurred, is occurring or is likely to occur;
- » Conduct which is capable of raising or contributing to an important matter of public debate;
- » Conduct which is capable of disclosing that anything falling within any one of the above is being, or is likely to be, deliberately concealed.

There is no provision in the DPP’s guidelines which makes express reference to a journalist’s state of mind.

Is there a basis in criminal law for advancing a journalist’s “reasonable belief” as relevant to the public interest?

In **Terry v. Persons Unknown** Tugendhat J was open to argument in civil proceedings that the reasonable belief of a journalist could be relevant to the Article 8/Article 10 balancing exercise (see paras 70-73). The guidance of the Press Complaints Commission expressly refers to such reasonable belief.

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Any such belief must be “responsible” (see *Jamel Mohammed v. Wall Street Journal Spirl*); ie in this context, there should be fully reasoned objective grounds for such belief. This should be accompanied by a clear audit trail which demonstrates the rigorous and structured responsibility with which such investigative journalism has been undertaken at journalist and editorial level (see the House of Lords Select Committee on *The Future of Investigative Journalism*).

In summary: As to the public interest, in the appropriate case, there should be presented to the police before any decision as to prosecution, the case for the journalist. The ‘hearing’ in this context is not in a court room; in reality it is the prosecutor sitting at his desk, reading all the evidence. Thus the case for the journalist on “public interest” should be prepared thoroughly, including reference to any potentially relevant code of practice, case law as to public interest, and parallel analysis of those limited statutory provisions where public interest is expressly provided as a defence.

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