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### **Reforming Media Contempt in England and Wales – submissions to The Law Commission’s Consultation by Professor Tim Crook for the Chartered Institute of Journalists.**

The Law Commission has invited the Chartered Institute of Journalists to address 137 different questions over their proposals to reform the law of contempt. The consultation paper report runs to 475 pages.

The Institute would prefer to avoid excessive duplication of points and observations being made by other journalism bodies and focus on the issues which principally concern the profession of journalism and media law.

We begin by praising the quality, extent and detail of the research undertaken by the Law Commission which is of the highest quality and as always promulgated with the very best of intentions.

We enormously appreciate the courtesy and inclusivity of engaging with the Institute and seeking our thoughts and concerns.

Throughout its long history the Chartered Institute of Journalists has consistently supported the rule of law and independence and integrity of the judiciary within a democratic constitution.

There has never been and would never be any occasion when Institute members would countenance publications and conduct undermining the right of anyone to fair trial, due process and the proper administration of justice.

These values have always been at the heart of professional journalism in England and Wales and throughout the United Kingdom and British Isles in respect of the other legal jurisdictions of Northern Ireland, Scotland, Isle of Man and Channel Islands.

We thought we would make some broad observations about the historical and comparative media law context of ‘media contempt law’, highlight current problems which require addressing, and do our best to respond to as many of the direct questions relevant to the Institute as possible.

## **Our concerns**

We believe the lesson of media law reform is that when there is not enough qualitative and quantitative data to justify change, this should be avoided. Another important caveat, which everyone in law reform is conscious of, is that singular bad narratives, experiences and cases do not make a good reason for a change in the law. Bad cases do not make good law.

The terms of reference provided to the Law Commission are unhelpful in parts by disconnecting the investigation into reforming Contempt Law from central and peripheral operations of media contempt law that are becoming more problematic. Media contempt transcends the full and expanding nexus of reporting restrictions being developed for the criminal justice system and legal system adjuncts.

This is particularly the case with widening legal anonymity provisions where notions of moral righteousness combined with the desire for encouraging witnesses to provide evidence results in ‘shadow secret justice.’

This is where any potential infringement of statutory anonymity orders, such as under the Youth Justice and Criminal Evidence Act 1999 has media contempt implications. In the multiple murder trial of Lucy Letby at Manchester Crown Court, a portfolio of YJCEA orders on adult witnesses, including the parents of the infant victims, and the attempted murder victims meant it was impossible to identify the alleged murder victims.

This is a ‘jigsaw identification jeopardy’ which leaves the media contempt liability with journalists and their publishers. Prior to the judges engaged with the case imposing restrictions, all of the alleged murder victims had been properly identified and reports of that identification, quite rightly remain on the public record in print and digital publication.

It must be surely unconscionable that media contempt law results in the suppression of the public identification of any individual declared by legal process to have been the victim of the offence of murder. It is even worse that the censorship by such process becomes retrospective in terms of what has already been placed in the public domain.

Another media contempt issue arising from the use of 1981 Contempt of Court Act restrictions by the trial judge is that he controlled the reporting of the outcome of the case by using section 4(2) to prevent any publication of the jury’s verdicts until all verdicts had been returned or he decided that it would not be possible for the jury to reach any more verdicts.

How did the use of this media contempt power properly protect the administration of justice? How could the reporting of the jury’s own verdict have any impact on their ability to reach later verdicts? If the purpose was an anticipation that outside the courtroom anyone might publish information not known to the jury, how can it be argued that the risk then was any greater than at any other time during the long trial?

It can also be argued that the Court of Appeal, Criminal Division’s decision to issue a postponing section 4(2) order on their decision in Lucy Letby’s substantial appeal until after the outcome of her retrial is problematical.

Journalists and media publications in the US jurisdiction, where such restrictions are regarded as unconscionable and unconstitutional, were already beginning investigative journalistic inquiry into the safety of Ms Letby's convictions. These concerns have subsequently accelerated. If at any stage in the future, it is decided that her convictions are unsafe and unsatisfactory, the operation of media contempt laws and reporting restrictions in her case will need to be investigated by independent inquiry or commission.

The inadequacies of the appeal process in media contempt are growing more relevant. An appeal process which is discouraged by precedent, costs and limitations for further challenge is unhelpful and oppressive to the media interest in preserving open justice.

Increasing restrictions and censorial measures against media publication tend to be a happy prerogative of government and Parliaments because it is usually cost-free and often provides an opportunity to punish the messenger of unhappy and unpopular news.

The road to hell is often paved with good intentions and the CIOJ has a long memory of media law reform creating unintended consequences which substantially damaged and undermined the public interest in reporting law cases fairly and accurately, and in the long term have, arguably, undermined the public's trust, faith and confidence in the legal system.

Briefly, while it is positive that there seems to be some willingness to decriminalize media contempt law, some of the other proposals are more worrying. These include shifting the time for the liability for media contempt prosecutions from the arrest of a suspect to the time of charge.

The Law Commission also recommends giving courts formal statutory powers to order news publishers to remove archive that might prejudice future trials. This proposal risks creating so many more problems for journalists and their publishers.

Judicial activism in the UK Supreme Court case of *ZXL v Bloomberg* in 2022 ([Bloomberg LP v ZXC \[2022\] UKSC 5 \(16 February 2022\)](#)) has already made it virtually impossible to identify crime suspects at the time of arrest on privacy grounds.

This severely hampers police inquiries and creates the vacuum in which false information on social media was said to have played a role in precipitating the riots after this year's murder of three children in Southport.

A similar problem arose with the murder of Anita Rose in Suffolk when it was being wrongly propagated that Somali migrants had been arrested.

We are sorry to report a full-blown crisis in open justice and growing censorship of criminal investigations and trials throughout the legal system of England and Wales.

We are getting complaints from our members that media contempt laws are being manipulated and abused.

The Metropolitan Police and Crown Prosecution Service, and indeed, the BBC knew that Huw Edwards had been arrested and charged with serious indecent child image offences.

These vital public interest facts were concealed and covered up for months until only a few days before his first court appearance. The departure from normal procedure may have been due to 'privacy law' concerns about his welfare, and this is another example of how the developing media respect to the right of privacy, all judge-made with no Parliamentary legislative oversight, is now morphing and refracting into media contempt law practice.

The recent High Court ruling in [WFZ v BBC in 2023](#) demonstrates this.

Mrs Justice Collins Rice developed new legal ground in protecting the anonymity of crime suspects on 29<sup>th</sup> June 2023 by imposing an injunction against the BBC which prevented the identification of a high national and international public profile person, referred to as WFZ, who is under active criminal investigation for serious criminal sexual offences.

The judge issued the injunction on the main ground that 'the court is sure to a criminal standard of proof that there would be a substantial risk of serious prejudice to the administration of justice.' (See: <https://www.bailii.org/ew/cases/EWHC/KB/2023/1618.html>).

It is more than likely police, CPS and the government knew the man arrested for murdering the three young girls in Southport was in alleged possession of a terrorist Al Qaeda training manual and the biological toxin ricin which is a terrorist or warfare agent.

They had concealed this information from the public until such time a decision was made to formally charge him with relevant criminal offences in respect of the Al Qaeda training manual and biological toxin.

There is growing public concern about how police and government represented the accused person as a matter of fact at the time of his arrest and charge and the subsequent implications arising from the public announcement of the additional charges.

Media contempt laws were used to prevent publication of the fact that Chris Kaba, shot by a police officer who was eventually acquitted for his murder, had himself shot a man in both legs at a nightclub only a few days before.

He was a major figure in London gangland warfare and had serious previous criminal convictions since he was 13. His family wanted media contempt laws to keep this secret until the end of any future inquest.

### **Is there not a case for the abolition of media contempt law?**

In any comparative law analysis, England and Wales has a major objective correlative in terms of the US common law jurisdiction. The scale of similar practice; particularly in criminal trial procedure provides an alternative narrative and history. A federal system of law and multiple states jurisdictions have successfully ensured the successful administration of justice without giving courts censorial powers extending beyond their courtroom walls.

There is no empirical evidence that this has resulted in any measurable impact of denial of fair trial and increased incidence of miscarriage of justice compared to UK legal jurisdictions.

There is no compelling empirical evidence that reporting the truth, or even prejudicial commentary about legal cases, whether civil or criminal, disrupts and disables the administration of justice. (See pages 86 to 89 of *Comparative Media Law and Ethics*, by Tim Crook, Routledge 2009)

There is increasing evidence in terms of the practice in England and Wales criminal justice that the judges and courts are beginning to realise that the most serious and sensitive criminal trials can deliver fair and unprejudiced justice according to the evidence.

The retrial of Lucy Letby proves that if she can be properly and fairly convicted of an attempted murder having already been convicted of seven murders of infants and several attempted murders then contempt by publication is a misnomer, an anachronism, superfluous, unnecessary and potentially purely an abuse and exercise of censorial power.

Of course, this is not what the Appeal Court: Criminal Division ruled in [Letby, R. v \[2024\] EWCA Crim 1278 \(24 October 2024\)](#). But the learned judges, as a point of principle, declared that the trial judge was correct in deciding that Letby could receive a fair retrial in June 2024 and that it would be fair to try her.

The case did engage a discussion of the publicity given to her case and its scale and intensity.

This decision was also in the context of developing jurisprudence such as [BKR \[2024\] 1 WLR 1327 \[2023\] EWCA Crim 903](#) at [34] to [50], and [Ng \[2024\] EWCA Crim 493](#) at [21] to [25].

There is additional proof with the examples of Max Clifford and Rolf Harris who after being found guilty of serial sexual offences and while in prison were subject to subsequent jury trials for similar offences and acquitted.

This is the clearest evidence that through judge direction, jury respect for a trial process where decisions are made on the evidence before them, that so-called media prejudice, however intense and overwhelming, does not deny people the right to a fair trial under Article 6 of the Human Rights Act and ECHR.

Is it not time to explore by way of law reform whether England and Wales should adopt the US First Amendment approach which recognises justice can be protected by *voir dire* in jury selection and judge directions?

Is it not the case that Contempt powers need to be restricted to judges being able to control their own proceedings; not the media coverage outside.

### **Gathering empirical data to much better inform the legal reform issue**

The Ministry of Justice and Judiciary of England and Wales need to assist the Law Commission with much more information and data about the nature, scale and extent of exercising media contempt powers.

How many media contempt orders and related court reporting restrictions are being made by courts in the England and Wales legal system? Under the 1981 Contempt of Court Act they

can prohibit media publication under Section 11 forever and they can postpone under Section 4(2) the reporting of trials.

The Scottish legal jurisdiction maintains a publicly accessible database.

Under practice directions any court in the English and Wales jurisdiction must keep a record of any court reporting restriction, its scope and extent, the time any postponing order is limited to, and these must be available to any inquiring journalist. There is certainly an argument the information should be disseminated to PA Media for example. At the very least any order should be filed and recorded with the Ministry of Justice centrally.

Is this practice taking place as a matter of course? Where is the information being collated? How can the Law Commission obtain access to it? There surely must be an accumulating database of such orders, when they were made, their content and reason for imposition.

The CIOJ had asked for this information under FOI in relation to just one year (2022) and we were told it would be too expensive to obtain. It is an acute matter of public interest that this information should be obtainable, retrievable and available.

Some of our members have complained to us that judges ‘are out of control’ in imposing secret justice court orders with barely any scrutiny or challenge. We have also received concern that courts are not even keeping proper and easily accessible records of their media restriction orders.

### **Understanding the source of UK media contempt law**

Media contempt law in Britain is based on rather disreputable case histories of judicial and state abuse of power and authoritarianism. It is not the case that it is necessarily derived from real risks of prejudice and unfair manifestation of harmful communication justifying punishment for publication.

The excellent Law Commission consultative document raises the issue of whether media contempt law is ‘criminal.’

The experience of journalists is that it has always manifested itself as such. The sanctions facing journalists and their publications in media law history derive from judges exercising common law jurisdictional powers to determine the proceedings before them. The exercise of these powers has generally been summary justice with judges acting in their own cause.

The defendant journalist and publication have been tried by the very people who construct themselves and their constitutional process as the victim. Trial by jury for media contempt has never been available.

Furthermore, contempt petitioners used to be either defendants or prosecutors. Major issues arose about the right of representation, quality of trial, route and quality of appeal following summary disposal.

The purpose of the 1981 Contempt of Court Act, when debated in Parliament and elsewhere, was to bring clarity and fairness to a confusing and problematic body of law and replace common law contempt. Unfortunately, this was not the result. What arose was a two-tier system. Common media law contempt remained a worrying jeopardy always there in the background.

Common law contempt had the advantage of requiring proving intent and to the criminal standard of proof. The precedents indicate its use to effectively suppress and punish journalists and their publications campaigning for any perceived flaw or failure in the legal system.

1981 CCA media contempt discriminates against journalists and their publishers by being a strict liability offence where intention does not have to be proved, though the *actus reus* has to be proved to the criminal standard. Again, I recall that the tradition of media contempt law and spirit of 1981 legislation was that publications *per se* and at most the editorial leader of the publisher, i.e. the Editor, was supposed to be the figurehead for any media contempt publication in the role of defendant.

However, during the 1990s there was the rather disappointing vista of the Divisional Court deciding to personally impose a fine of £500 on an individual regional BBC journalist whose professional mistake in identifying an adult crime victim had precipitated prosecution, with the approval of the Attorney General.

My view at the time is that this was unduly retributive, betrayed the spirit of media contempt law, manifested itself as an exercise of prejudice against the profession of journalism, and subjected the contemnor to a level of humiliation and punishment for doing her job which an employee in any other field of professional work is never subject to.

This was an unintended mistake on the journalist's part, for which there was profound regret and remorse and abject public apology offered.

The *ad hominem* extension of media contempt power in this case highlighted the problem of media contempt law investing judges and their courtrooms arbitrary powers of censorship and punishment which I do not believe to be justifiable in an advanced democratic society and settled constitution with effective balance of powers.

The disreputable origin of media contempt law can certainly be identified as starting with the 1820 Cato Street Conspiracy trials at the Old Bailey with the prosecution of a group of five men arrested for plotting to blow up the government.

The *Observer* ignored a judge's direction not to report the first and second of three trials and its editor Mr Clement was fined £500 for contempt of court. The conspirators were found guilty and executed.

This was the origin of the false idea that reporting the first of a series of jury trials for the same offence or even the same defendant(s) can prejudice later ones. It could be argued that media contempt law books have developed this mythical notion on an entirely false premise. Six jurors had in fact deliberated in two of the succeeding trials. The reporting ban was about covering up the fact the government had been using paid *agent provocateurs* to entrap the conspirators (See *Comparative Media Law and Ethics* 71-4).

In 1949, national newspaper editor Sylvester Bolam was focusing on a strategy of sensationalism, and was able to make the *Daily Mirror* Britain's best-selling daily newspaper.

He approved publication of an article that an unnamed man (who was serial killer John Haigh- known as the acid bath murderer) had confessed and drunk the blood of one of his victims with the headline: 'The Vampire Will Never Strike Again.'

There was no provable and actual prejudice. The Jigsaw identification was remote. John George Haigh had been arrested and was later convicted of murder. But he was not named in the newspaper. It was a questionable leap of assumption to suggest that publishing this material might have prejudiced his trial; particularly when at the trial Haigh admitted everything he had told the police and unsuccessfully pleaded insanity.

Mr Bolam was unfairly and unjustly jailed for three months for contempt of court. By 1953, he had fallen out with the paper's editorial director and resigned. He died a few months later at the age of 48. His widow said this was largely due to the stress and humiliation of being sent to Brixton Prison by Lord Chief Justice, nicknamed 'Tiger' Goddard.

Goddard provided the biased summing up which led to the wrongful conviction and hanging of Derek Bentley in 1953. Derek was 19 with learning difficulties and had given himself up to the police before his burglary accomplice Christopher Craig shot and killed a police officer on a warehouse roof in Croydon. (See: [Bentley \(Deceased\), R v \[1998\] EWCA Crim 2516 \(30 July 1998\)](#))

The 1979 *Sunday Times* victory at European Court of Human Rights in their campaign for the victims of Thalidomide gave no justification for creating a statutory framework for reporting suppression powers with no rights of appeal.

But this is what happened when Parliament approved the oppressive 1981 Contempt of Court Act. The case was all about a court injunction in 1972 gagging the *Sunday Times*, then edited by Sir Harry Evans, from looking into the cause of birth defects linked to Thalidomide.

The High Court dispute over legal settlements was not before any jury. The injunction was not lifted for four years until 1976. Strasbourg said the right to freedom of expression guarantees not only the freedom of the press to inform the public but also the right of the public to be properly informed, and the 'Thalidomide disaster was a matter of undisputed public concern.'

Instead of respecting the court's decision the government and judiciary generated the 1981 Contempt of Court Act. This created statutory media contempt with unlimited fines and 2 years imprisonment for publications which were proved beyond reasonable doubt to create a substantial risk of serious prejudice to the administration of justice.

As it was 'Strict Liability', intent did not have to be proved. Giving judges formal powers to prohibit and postpone reporting through court orders had never been done before. There was no right of appeal provided for.

The increase in controlling and limiting freedom of expression was unprecedented.

The lamentable history of the legislating for the 1981 Contempt of Court Act is a warning over any future extension of media law contempt powers. It is vital that there are no more media and court reporting restriction powers proposed and eventually passed through legislation.

From 1981, I had to personally campaign exhaustively, at the time with support from Liberty and the National Union of Journalists, for a right of appeal against reporting restrictions in the Crown Court and decisions to exclude media and public from being present in open court. This required judicial review, a negotiated settlement with the UK government following admissibility from the European Commission at Strasbourg prior to full court hearing. This move was further supported by George Glenton, past President of the CIOJ and then Chair of the Central Criminal Court Reporters' Association. The section 159 appeal process legislated for in the 1988 Criminal Justice Act should have been present in the original 1981 CCA. It was supposed to be a bearing own costs fast track process, but it has been appropriated by the high cost media lawyer profession and weakened by the reluctance of senior judges to recognise and respect the lack of power and vulnerability of the media and journalistic position in open justice.

Key precedents discourage appeals. See [Pembrokeshire Herald, Re \(leave to appeal\) \(Rev1\) \[2021\] EWCA Crim 1165 \(27 July 2021\)](#) and [ITN News & Ors v R. \[2013\] EWCA Crim 773 \(21 May 2013\)](#)

A substantial costs jeopardy for using this process remains and was certainly not the intention of Lord Chief Justice, Lord Geoffrey Lane, who recognised the need for media and journalism rights in this area during the 1980s.

The cap on further appeals (Court of Appeal: Criminal Division was legislated for as appeal ceiling) was criticised and opposed by me, but my advice on this was not taken. Why should significant open justice and freedom of expression issues in law not have any recourse for review and appeal at the UK Supreme Court level?

In the end, censorship and secret justice could lead to the public losing respect, faith and confidence in police, judiciary and the courts system. This is the very opposite of the laudable aim of protecting and preserving the administration of justice.

### **Historical development of media contempt powers**

The first standalone book on journalism and media law ever published in Britain was, so far as I have been able to establish, *The Pressman And The Law* by barrister-at-law G.G.L. Bridgman and published by Pitman in 1938.

Chapter II from pages 40 to 44 covered 'Contempt of Court'. The final sentence is instructive: 'Contempt of court is a misdemeanour punishable by fine and/or imprisonment in the discretion of the court.' The chapter's subheadings are also revealing about the arbitrary nature of media contempt law and the discretion it has given judges and courts to abuse freedom of expression and open justice with their inherent constitutional powers: 'Truth no defence'; 'Prejudicing a pending trial'; 'Interference with judicial proceedings' and 'Scandalizing the court.'

‘Scandalizing the court’ was a key aspect of the triptych liability which hung over journalists and their publications throughout the 20<sup>th</sup> century. In the 1930s it even meant a contempt of court conviction for an editor of a Birmingham newspaper which had dared to describe a judge as ‘an impudent little man in horsehair.’

Does this invalid and delegitimised jurisprudential source underpin contemporary media contempt law? I would argue that it does in the way common law and statutory powers are utilised to censor and control with seemingly righteous and practicable objectives exercised as a matter of caution because of an exaggerated and fearful demonization of media effects.

By the time of the publication of the first edition of *McNae’s Essential Law for Journalists* in 1954 (publication by Staples) the chapter on ‘Contempt of Court’ had extended from pages 49 to 65. More than a page was devoted to the *Daily Mirror* contempt of court and jailing of its editor, including the fact that the newspaper had been fined separately £10,000 which the Bank of England inflation calculator provides a contemporary value of nearly £300,000.

The latest 27<sup>th</sup> edition of *McNae’s* continues to have a discrete chapter on Contempt of Court from pages 303 to 330, but media contempt law transcends so many dimensions of the subject area that it is present and relevant across perhaps one quarter of the 601 page volume and penetrating the substantial range of additional online chapters.

The Chartered Institute of Journalists would advise the Law Commission ‘enough is enough’ or ‘trop de loi’ a notion which may or may not sound better in French.

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We would advise abolishing common law civil media contempt. We would advise changing the 1981 Contempt of Court Strict Liability Rule so that intent needs to be proved in statutory media contempt.

We would abolish imprisonment as any potential penalty for media contempt and limit the potential fine or award of damages in any High Court Divisional Court trial prosecuted by the Attorney General to no more than £500,000.

We would advise keeping the ‘proceedings are active’ point for the media contempt rule in the CCA 1981 at arrest and other starting points such as issuing a warrant for arrest. In the civil area of the law the only potential risk of prejudice arises with the very rare situation of a jury trial. It would be sensible to abolish any media contempt liability in respect of all civil proceedings.

Interferences with the administration of justice should follow the CCA 1981 requirement of there being a substantial risk of serious prejudice/impedance to the administration of justice.

The substantial risk and serious prejudice qualifiers should also apply to any potential breach of Section 4(2) orders.

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**Law Commission opens a further consultation in light of the contempt issues that arose after the Southport murders 3<sup>rd</sup> March 2025**

The Law Commission [urgently opened a further consultation on media contempt](#) in the light of the row over what was released to the public about the perpetrator of the murderous mass stabbing attack on the children's dance class in Southport on 29<sup>th</sup> July 2024.

Axel Rudakubana killed three children and injured ten others at a Taylor Swift-themed yoga and dance workshop.

There's been an intense political debate about the lack of accurate information released by the authorities at the time of his arrest and how this contributed to the public disorder that unfolded across the UK in the days afterwards.

The Government, CPS and Merseyside Police have argued they were constrained by media contempt of court law on what could be said after a suspect has been arrested.

Prime Minister Sir Keir Starmer said these limitations ensured the surviving victims and relatives of those murdered could be sure the person responsible stood trial and faced justice.

Rudakubana was arrested at the scene and charged with three counts of murder, ten counts of attempted murder, and possession of a bladed article. He could not be named because at the age of 17 he was still a youth in law.

These reporting restrictions were lifted on 1st August by Liverpool Crown Court because it was thought the misinformation about his identity had been fuelling the developing riots.

He would have also turned 18 six days later and as an adult defendant would have been fully identifiable.

The news media portrayed him as a British born Christian schoolboy involved in acting and drama and he was represented in a widely used photograph when younger in his school uniform.

The police did not release his custody photograph offering a much more realistic and menacing depiction until he pleaded guilty on 20<sup>th</sup> January 2025.

The public was not told detectives had found that he was producing ricin, a deadly poison often used as a terrorism agent, and was also in possession of an Al-Qaeda training manual.

He would not be charged under the Biological Weapons Act 1974 and Terrorism Act 2000 for possession and production of ricin and a PDF copy of a military study of an al-Qaeda training manual until October 2024.

The public were not told until after his guilty pleas in January 2025 that he had a history of violent and concerning behaviour and had been referred to the anti-extremism programme Prevent three times between 2019 and 2021. Or that he was not accepted into the scheme because the authorities had been unable to associate him with a terrorist ideology.

The Home Secretary, the Justice Secretary and the Attorney General all asked the Law Commission to expedite its reporting on the parts of their review looking at the powers of government and law enforcement to counter misinformation and disinformation, including where there are possible national security or public order consequences of failing to do so.

The CloJ has urged the Law Commission to liberalise media contempt law and adopt the American approach where police and authorities reveal as much as they can because by experience their jury trial system can easily counter serious media prejudice.

The Institute argues that in the context of the third decade of the 21<sup>st</sup> century, the UK constitution needs to adopt a much more mature and pragmatic approach to balancing the right to fair trial with freedom of expression and the media.

The retention of a strict liability criminal offence for media contempt infantilises professional journalism and the administration of justice.

The consultation response drawn up by PPB Chair Professor Tim Crook argued that there has to be a requirement of intent in media contempt- a conscious desire or purpose to cause a particular result, or the criminal threshold of recklessness- a conscious disregard of a substantial risk of serious prejudice, and these have to be proved beyond reasonable doubt.

The Institute recommends removing the word 'impeded' from the statutory definition.

Professor Crook said the concept was discredited in the case law from 2011 when two newspapers were successfully prosecuted for contempt by vilification of a suspect in a sensational murder case.

He said the court erroneously misapplied the serious libelling of a crime suspect by two national newspapers to constitute a level of 'vilification' which might have prevented him from being able to assemble a defence case.

The Institute submission contended: 'This was a classic example where UK law inappropriately fantasises media publication risk and damage and makes decisions on hypothetical notions that have no root or basis in reality and empirical evidence. The suspect concerned was properly de-arrested.

The police were interested in him as a result of malign information generated by the individual eventually convicted of the murder allegation; not the surrounding media coverage of his alleged background.

The innocent suspect collected substantial libel damages from news publications for content about him which constituted 'the vilification.' The suspect was never charged, never went to

trial, and there was absolutely no cogent evidence that his right to fair trial had ever been interfered with. He was fully exonerated on multiple levels of public and private communication and in the media-sphere. There was no need for this issue to have been framed by a media contempt prosecution.

Professor Crook said: “We would argue that ‘impeded’ needs to be deleted because it is anachronistic, superfluous and unnecessary law. Any conduct which impedes the administration of justice whether by action or communication is already covered at common law by the criminal offence of perverting the course of justice.”

The CloJ supports the Law Commission’s proposal for a public interest defence which covers the necessities of public safety and national security and ‘ensures that public discussion of matters of public interest is not unnecessarily or disproportionately restricted where proceedings are active.’

An existing defence under Section 5 of the 1981 Contempt of Court Act depends on the public debate being merely incidental to active proceedings.

The ‘merely incidental’ phrase served the purpose of protecting publications from being able to discuss public interest issues and debate that coincidentally happened to be the subject of criminal proceedings.

Hence the acquittal of the *Daily Mail* under this defence in 1982 for a Malcolm Muggeridge article which did not reference the trial in any way and the conviction of the *Sunday Express* for an editorial which did. We do not think a distinction between media communication ‘merely incidental’ to active proceedings and ‘directly related’ to active proceedings needs to be retained.

The Institute has put forward a radical and far-ranging defence which specifically protects the public interest for the publication of information in good faith of anything concerning active proceedings. And for any future court determining whether a substantial risk of serious prejudice had occurred, that court is required to take into account how the eventual trial dealt with the ‘serious prejudice issue’. This would be by:

1. Minimising or removing the risk of ‘serious prejudice’ by moving the trial to another location in the England and Wales jurisdiction;
2. Recognising the delay in holding the trial between arrest, charge and jury adjudication providing a ‘fade factor’ in respect of potential jurors’ memories of past media coverage;
3. Minimising or removing the risk of ‘serious prejudice’ by appropriate directions of the trial judge to the jury;
4. Minimising or removing the risk of ‘serious prejudice’ by the holding of a *voir dire*-the questioning of potential jurors to ensure those selected had not been seriously prejudiced by the media publication;
5. As a last resort, and should the court not be satisfied that the risk of serious prejudice has been avoided by any one or combination of 1-4, holding a jury-less

criminal trial so as to eradicate the presence of serious prejudice on the part of any determination of the verdict in respect of the facts in the criminal case.

The Institute proposes that any court determining the media contempt issue must accept the defence should it be satisfied that the alleged serious prejudice had been abrogated by any one of, or combination of 1 to 5.

Professor Crook said no communication of factual information concerning Axel Rudakubana at the time of his arrest and charge should have risked denying his victims and their families justice through a future criminal trial.

He added: 'The very idea that any amount of media prejudice should provide any legal system the right to halt or cancel a criminal trial process is, in our opinion, unconscionable.'

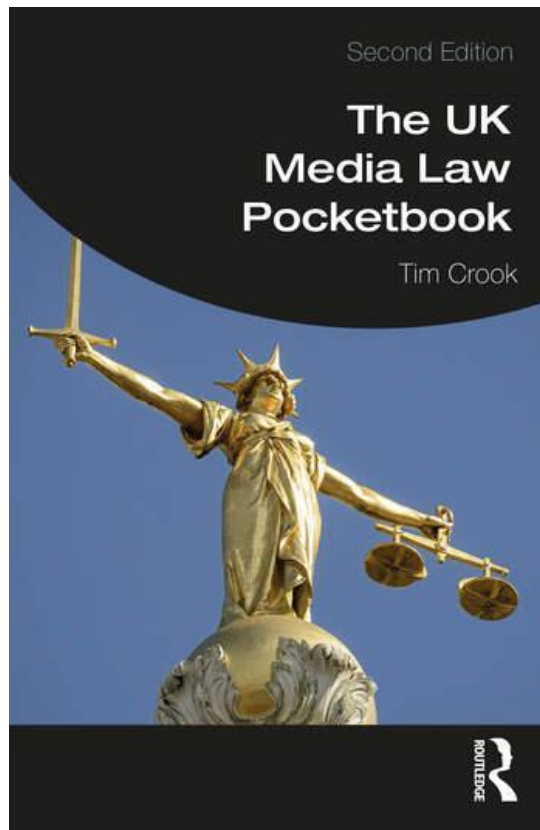
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Further useful links.

The Law Commission 9<sup>th</sup> July 2024: ['We are conducting a review of the law on contempt of court and considering the need for reform to improve its effectiveness, consistency, and coherence.'](#)

The Law Commission 3<sup>rd</sup> March 2025: ['Law Commission opens a further consultation in light of the contempt issues that arose after the Southport murders.'](#)

Media Lawyer Gill Phillips in Press Gazette 17<sup>th</sup> April 2025: [Why UK's contempt of court laws need reform for digital age. Disorder after the Southport stabbings last summer has been called an "indirect result of contempt of court laws".](#)



The second edition of *The UK Media Law Pocketbook* presents updated and extended practical guidance on everyday legal issues for working journalists and media professionals. This book covers traditional print and broadcast as well as digital multimedia, such as blogging and instant messaging, with clear explanations of new legal cases, legislation and regulation, and new chapters on freedom of information and social media law. Links to seven new online chapters allow readers to access all the most up-to-date laws and guidance around data protection, covering inquests, courts-martial, public inquiries, family courts, local government, and the media law of the Channel Islands and the Isle of Man. Tim Crook critically explores emerging global issues and proposals for reform with concise summaries of recent cases illustrating media law in action, as well as tips on pitfalls to avoid.

*The UK Media Law Pocketbook* is a key reference for journalists and media workers across England, Wales, Scotland, and Northern Ireland. The book's companion website provides downloadable sound files, video summaries, and updates all the developments in one of the most dynamic and rapidly changing fields of law. Visit <https://ukmedialawpocketbook.com>.

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