

Dear Mr Wolfe,

I am writing to give you early notice of an amendment which I have tabled to the Data Protection Bill, which would, if passed, carry significant consequences for the legislative landscape in which the Press Recognition Panel operates.

A copy of this amendment is appended to this letter and can be found on pages 19-20 of this amendment paper published this morning (New Clauses 20 and 21, and Amendment 144): https://publications.parliament.uk/pa/bills/cbill/2017-2019/0190/amend/data_rm_rep_0503.pdf.

This amendment would introduce a version of costs-shifting, as the Panel has repeatedly stated is necessary (and upon which the Panel's very existence was initially premised) for data protection claims.

Data protection claims are in the same class of "media claims" as those covered in [section 42 \(4\)](#) of the CCA 2013 by the, as yet uncommenced, section 40 of the CCA 2013. This is confirmed by the fact that even IPSO's arbitration scheme [includes DP claims](#) alongside the other media claims set out in s42 of the CCA.

This amendment would operate identically to section 40 of the Crime and Courts Act 2013, with a number of alterations, notably;

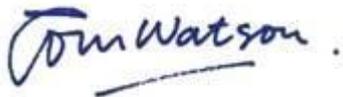
- a. Clarification of the disapplication of the costs-shifting presumption against non-recognised-regulated publications where the claim is trivial or vexatious;
- b. An exemption from the penalty element of the clause for unregulated relevant publishers who are not-for-profit, or whose (and this would exempt 15% of the local/regional newspaper market)
 - i. ownerships' annual turnover is not in excess of £100m, and,
 - ii. who publish predominantly in Scotland, Wales, Northern Ireland or on a local or regional basis.

Commencement would be immediate.

The Labour Party remains committed to the cross-party agreement signed in 2013, and the system of independent regulation of the press which the Panel was established to audit.

I thank you for your work, and hope you will find these amendments meet as best they can, given the scope of the bill before Parliament, the recommendations the Panel has made in previous "State of Recognition" Reports.

Yours sincerely,



Tom Watson MP

Costs-shifting for data protection claims: text of the amendments (New Clauses 20 & 21, and amendment 144)

NC20

Insert the following new Clause—

“Publishers of news-related material: damages and costs

(1) This section applies where—

- (a) a relevant claim for breach of the data protection legislation is made against a person (“the defendant”),
- (b) the defendant was a relevant publisher at the material time, and
- (c) the claim is related to the publication of news-related material.

(2) If the defendant was a member of an approved regulator at the time when the claim was commenced (or was unable to be a member at that time for reasons beyond the defendant’s control or it would have been unreasonable in the circumstances for the defendant to have been a member at that time), the court must award costs against the claimant unless satisfied that—

- (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator, or
- (b) it is just and equitable in all the circumstances of the case, including, for the avoidance of doubt,
 - (i) the conduct of the defendant and
 - (ii) whether the defendant pleaded a reasonably arguable defence,to make a different award of costs or make no award of costs.

(3) If the defendant was not an exempt relevant publisher and was not a member of an approved regulator at the time when the claim was commenced (but would have been able to be a member at that time and it would have been reasonable in the circumstances for the defendant to have been a member at that time), the court must award costs against the defendant unless satisfied that—

- (a) the issues raised by the claim could not have been resolved by using an arbitration scheme of the approved regulator (had the defendant been a member), or
- (b) it is just and equitable in all the circumstances of the case, including, for the avoidance of doubt,
 - (i) the conduct of the claimant and
 - (ii) whether the claimant had a reasonably arguable claim,to make a different award of costs or make no award of costs.

(4) This section is not to be read as limiting any power to make rules of court.

(5) This section does not apply until such time as a body is first recognised as an approved regulator.”

NC21

Insert the following new Clause—

“Publishers of news-related material: interpretive provisions

(1) This section applies for the purposes of section (Publishers of news-related material: damages and costs).

(2) “Approved regulator” means a body recognised as a regulator of relevant publishers.

(3) For the purposes of subsection (2), a body is “recognised” as a regulator of relevant publishers if it is so recognised by any body established by Royal Charter (whether established before or after the coming into force of this section) with the purpose of carrying on activities relating to the recognition of independent regulators of relevant publishers.

(4) “Relevant claim” means a civil claim made in respect of data protection under the data protection legislation, brought in England Wales by a claimant domiciled anywhere in the United Kingdom.

(5) The “material time”, in relation to a relevant claim, is the time of the events giving rise to the claim.

(6) “News-related material” means—

- (a) news or information about current affairs,
- (b) opinion about matters relating to the news or current affairs, or
- (c) gossip about celebrities, other public figures or other persons in the news.

(7) A relevant claim is related to the publication of news-related material if the claim results from—

- (a) the publication of news-related material, or
- (b) activities carried on in connection with the publication of such material (whether or not the material is in fact published).

(8) A reference to the “publication” of material is a reference to publication—

- (a) on a website,
- (b) in hard copy, or
- (c) by any other means; and references to a person who “publishes” material are to be read accordingly.

(9) A reference to “conduct” includes a reference to omissions; and a reference to a person’s conduct includes a reference to a person’s conduct after the events giving rise to the claim concerned.

(10) “Relevant publisher” has the same meaning as in section 41 of the Crime and Courts Act 2013

(11) A relevant publisher is exempt if it satisfies Condition A or B.

(12) Condition A is that the publisher has a constitution which-

- (a) requires any surplus income or gains to be reinvested in the publisher, and
- (b) does not allow the distribution of any of its profits or assets (in cash or in kind) to members or third parties.

(13) Condition B is that the publisher-

- (a) publishes predominantly in Scotland, or predominantly in Wales, or predominantly in Northern Ireland or predominantly in specific regions or localities; and
- (b) has had an average annual turnover not exceeding £100 million over the last five complete financial years.

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Clause 205, page 122, line 10, leave out “Section 190 extends” and insert “Sections [*Publishers of news-related material: damages and costs*], [*Publishers of news-related material: interpretive provisions*] and 190 extend”