



Counter Terrorism Policing
5th Floor, New Scotland Yard
Richmond Terrace
Victoria Embankment
London
SW1A 2JL

13th December 2024

Dear Professor Lewis and the Contempt of Court Project Team

Thank you for the opportunity to respond to the consultation on proposed changes to the law on contempt of court, aimed at improving its effectiveness, consistency and coherence.

This is a combined response to the consultation, contributed to by National Police Chiefs Council (NPCC), the College of Policing (CofP) and Counter Terrorism Policing (CTP).

As national representatives of policing in England and Wales, we fully support the consultation's aims. We believe the time is right to have this conversation. As recent events have shown, the current approach is unsustainable, pitting public safety against the right to a fair trial. In our view, we have an analogue contempt process that is not surviving contact with the digital world.

Our submission brings together several parts of policing in England and Wales with different areas of responsibility, to offer a shared view, supported by responses to consultation questions that are relevant to specific areas of business.

As a result of your consultation, broadly we would like to see:

1. **comparisons with systems in other territories** where they successfully balance the release of information with the right to a fair trial, and an exploration of what lessons from these systems could inform proposals for reform of contempt laws in England and Wales;
2. dialogue across the criminal justice system that seeks to reach **a collective view on how the competing risks can be balanced**, and agreement on how this can be tested now (before any potential change to legislation is complete) and in a safe manner, without testing it on active proceedings and therefore risking the integrity of those proceedings being compromised;
3. a **decision-making framework** that enables entities with different legal responsibilities to balance competing risks;
4. **organisations and individuals held accountable** for behaviour that risks undermining investigations, prosecutions and the right to a fair trial;
5. **joint consideration of whether contempt by publication proceedings should be brought**, between the Director of Public Prosecutions, IPSO: the independent regulator for the UK print and digital news industry; and Ofcom: broadcast industry regulator;
6. **proceedings remaining active at the point of arrest.**

We will explain why we are calling for each of these outcomes, before outlining specific responses to a selection of your consultation questions from different parts of policing.

1. International comparisons

- a. Internationally, highly competent and ethical criminal justice systems – some akin to ours – take different approaches to the release of information when proceedings are active, and many deliver safe and fair justice with greater degrees of transparency.
- b. A recent example of the type of information that authorities in other territories have released comes from August 2024. Austrian authorities announced that they had disrupted a plot to attack a Taylor Swift concert in Vienna. In the days following the arrests, they held press conferences at which they publicly released the following details:
 - i. Details of chemical substances and technical devices found in the main suspect's home;
 - ii. Details of the suspects' nationalities;
 - iii. Details of the suspects' employment;
 - iv. Details of the arrest and that one of the suspects did not resist arrest;
 - v. Summary of what the suspects had said in interview, including discussing their plans to kill and that they had uploaded to the internet an oath of allegiance to ISIS; and that another had refused to talk;
 - vi. Details of the authorities' views on the suspects' mindset and ideology that had inspired them.
- c. When the public in the UK look at media reporting of cases like this and see that the Austrian public is being given information that policing in this country would say cannot be shared at that stage in order not to prejudice a trial – they have every right to wonder if this is true. That can lead to some people believing the police and other authorities are deliberately withholding information for other reasons other than to ensure a fair trial can be held. This risks creating a corrosion of trust in policing and distrust in the state, both factors that could also contribute to public safety being put at risk in the longer term.
- d. We would welcome a wider look at comparable systems overseas and further consideration of whether there are any learnings that could be used to inform proposals for reform of contempt laws in England and Wales.

2. Collective criminal justice system view

- a. We understand that any changes to the contempt of court legislation cannot result in risking defendants' rights to a fair trial. We also appreciate that the legislation, however modified, will always contain some restrictions and what can be said once proceedings are active, to ensure the integrity of the justice system.
- b. The untenable situation we describe in this consultation response is not a problem for policing to solve alone. It needs to be part of a wider whole system criminal justice response.
- c. We would like to ask partners from across the criminal justice system to outline how they might support policing in addressing these issues and agreeing a collective way forward in the short-term, before any proposed changes to legislation takes effect.
- d. We would welcome the Law Commission leading a discussion across the criminal justice system with the aim of arriving at a collective view on how the risks that are inherent in the current situation can be mitigated. It is untenable for policing to be in a position where our actions could have jeopardised a defendant's right to a fair trial, or where we have failed to protect the public and maintain order.
- e. If there was a collective agreement on how the current legislation and strict liability test could be pushed further, we would welcome views on how this could be tested in a way that would not impact active legal proceedings.

3. Decision-making framework

- a. Different entities within the criminal justice system have different legal responsibilities, which can lead to them also having competing priorities and factors to take into account when making decisions, despite working towards shared criminal justice aims.
- b. The police's core duty is to protect the public by detecting and preventing crime. Among our core operational duties are preserving order and bringing offenders to justice.
- c. Decision-making in policing is guided by the [Code of Ethics](#) (non-statutory), the [Code of Practice for Ethical Policing](#) (statutory) and the [National Decision Model](#). When making decisions about what and how to communicate with the public, specifically via the media, we are guided by the [Media Relations Authorised Professional Practice](#). We have a duty to engage with the media in an open, accessible and professional way whilst also respecting our duty of confidentiality to individuals and to the court process.
- d. This summer, policing faced a dilemma: the tension between open communications and preventing legal prejudice, versus an infringement of our operational duties regarding preserving order. There was widespread speculation online about the suspect in the incident in Southport in which three girls were killed and other people injured. As an arrest had been made, police were restricted in what further information could be released. The first priority was securing justice for the victims and their families. Merseyside Police released the information they could to quell misinformation and urged the public not to speculate as it could prejudice future legal proceedings. Despite this, speculation and associated misinformation / disinformation continued and contributed to encouraging people to carry out protest activity, which resulted in widespread public disorder across the country over a number of days, putting public safety at risk.
- e. The cost of policing the public disorder this summer currently stands at £31 million and is expected to rise. During the 12 day period of rioting, over 40,000 hours' worth of shifts for public order officers were stood up to protect communities.
- f. The personal impact these events had on many officers across the country, many of whom were injured, must also be taken onto consideration. There may also be longer term consequences of the disorder which impacts future police recruitment.
- g. It has been widely speculated by commentators such as Jonathan Hall KC that if more information could have been safely and more quickly released about the suspect in the Southport investigation, with the aim of correcting the misinformation and disinformation circulating online, it could have had the effect of quelling the potential for widespread disorder.
- h. Over the last 10 years, social media has grown exponentially but the framework in which the police can communicate details of investigations has not adapted to account for this, and the way in which the public consume information. We would welcome recognition of the role unchecked misinformation and disinformation about high profile criminal incidents, that rightly concern the public, can have in creating a febrile environment where the risks of disorder breaking out is higher. We would like the legal framework to acknowledge that this risk exists.
- i. We would welcome more clarity on the strict liability test. We do not believe an exhaustive list of information that can be released would necessarily be workable, because every decision would depend on the circumstances of the case. But we do believe there is room to offer stronger reassurance in cases where a tipping point has been reached and where releasing information that could help counter misinformation and disinformation to address public safety risks, would be helpful. Flexibility is required to mitigate the clear risks to public safety.
- j. The public impact of terrorism is unique and events that appear like terrorism can cause the same public alarm. Ambiguous events are becoming increasingly common and unlike other crime types, carry the risk of copy-cat and / or retaliatory offending. Within these cases, clarity for the public is at a premium

- k. Counter Terrorism Policing (CTP) has established three tipping points that would lead to public comment needing to be made on ongoing public inquiries, where normally no public comment would be made while proceedings are ongoing. These are:
 - i. Where there is a significant risk to public safety;
 - ii. Where there is a significant risk to national security;
 - iii. Where there is a criminal investigation related to the running of the proceedings.

This approach could provide a helpful starting point for discussions about a decision-making framework.

4. Greater accountability

- a. We would like to see greater accountability for breaches of current or future contempt of court legislation.
- b. This is particularly important when individuals with significant public profiles, some in elected office, use their platform to fuel narratives of conspiracy and cover-up, at times when the criminal justice system clearly applies and the CPS have made that clear. This creates challenges for policing and other authorities who are restricted in what information they can release due the impact this could have on the defendant's right to a fair trial.

5. IPSO, Ofcom and DPP jointly considering contempt by publication proceedings

- a. We concur with the response submitted by the Association of Police Communicators (APComm) (section 7.12 of their response). There would be benefit in the system having a regulated contempt of court process which is accountable and that can effectively sanction contempt of court breaches.

6. Proceedings remaining active at point of arrest

- a. We concur with the response submitted by the Association of Police Communicators (APComm) (section 5.101 of their response). We strongly believe that criminal proceedings should remain "active" at the point of arrest and not be shifted to point of charge. Whilst we are acutely aware of the limited practical impact this has on compliance with the Contempt of Court Act, movement on this could inadvertently provide a 'green-light' for non-compliant earlier reporting. It is important to note that, operationally, the integrity of an investigation is perhaps most acute at the point of arrest, whilst investigative and operational activity is underway.

Thank you for your willingness to hear a collective view from policing about the impact the current contempt of court legislation is having on our work, particularly in such a different operating environment to when it was introduced.

We look forward to your recommendations and welcome the opportunity to clarify or expand on any of the points we have raised in our response to your consultation.

Yours sincerely,



Assistant Commissioner Matt Jukes
National Lead for Counter Terrorism Policing



Assistant Commissioner Pippa Mills
NPCC Communications Advisory Group



Chief Constable Gavin Stephens
Chair, National Police Chiefs' Council



Chief Constable Andy Marsh
Chief Executive Officer, College of Policing