



Attorney  
General's  
Office

# **Response to Call for Evidence on the Impact of Social Media on the Administration of Justice**

**March 2019**



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# Executive Summary

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In July 2015, Mr Justice Globe discharged the jury and ordered a retrial in the case of *Regina v F & D*. This was due to a number of comments posted on social media, which Mr Justice Globe felt formed a serious threat to the trial. This was unprecedented, and as a result, the Attorney General at the time decided to issue a Call for Evidence to gather information on the impact that social media has on the criminal justice system.

The number of responses received to the Call for Evidence was relatively low. Responses were varied, but most agreed that this was a manageable problem, although one which has shown some growth. The following particular themes can be drawn out:

- Social media posts which are prejudicial or which identify those subject to anonymity orders are not uncommon, and there is an added risk that this material could be seen by jurors;
- Many social media users may be unaware of reporting restrictions and of what would constitute a breach of an anonymity order or contempt of court;
- The judiciary generally have the tools to mitigate the effects of adverse social media posts, however these tools can delay the trial process;
- The case of *Regina v F & D* was unusual and is not representative of a broader or serious threat to the administration of justice.

Responses to the issues raised include:

- The Attorney General's Office will promote the safe use of social media as part of a public legal education campaign, which will include a GOV.UK webpage;
- Work is underway to develop clear, accessible, and comprehensive guidance on contempt led by the Judicial Office;
- The Attorney General's Office has agreed points of contact with social media companies so that relevant material can be flagged and, if necessary, removed;
- The Attorney General's Office will work with cross-government partners to improve the enforcement of the law on anonymity online;
- The cross-government Online Harms White Paper will tackle wider online harms, which will include harms occurring on social media platforms.



## Part 1: Background

### Case of Regina v F & D

- 1.1 In July 2015, two teenage girls were on trial for murder. Local and national newspapers reported the trial. Those articles amounted to fair, accurate and reasonable reporting. However, some newspapers shared links to their reports on social media platforms. Numerous adverse comments were posted beneath those articles, including threats to the teenage girls and attacks on the court process.
- 1.2 As a result of comments posted on Facebook the trial judge, Mr Justice Globe, discharged the jury and ordered a retrial at a different venue several months later. A reporting restriction was also imposed to protect the integrity of the retrial. Made under section 4(2) of the Contempt of Court Act 1981 ("the 1981 Act"), it prohibited the media from further reporting on the case until the conclusion of the retrial.
- 1.3 The media appealed against the imposition of this reporting restriction. At the hearing in February 2016, the Court of Appeal decided it was not necessary and instead substituted an order under section 45(4) of the Senior Courts Act 1981, which imposed the following conditions:
  - Media organisations were not to place any report of the criminal proceedings on their respective Facebook profiles; and
  - The media were to disable the ability for users to post comments on their respective online articles.

### Call for Evidence

- 1.4 As a result of the case of R v F & D, the Attorney General at the time decided to issue a Call for Evidence to look at the impact of social media on the criminal justice system, with a focus on the areas of active proceedings and breaches of reporting restrictions and anonymity orders.
- 1.5 The Call for Evidence was launched on 15 September 2017 and was open for a 12 week period, closing on 8 December. Overall, 24 responses were received. The largest proportion was from members of the judiciary. Responses were also



received from media and other representative bodies, practitioners, academics and some members of the public. Responses were not received from any social media companies. However, discussions with Facebook and Twitter were held after the 12 week period concluded, which have informed this response.

## Part 2: Summary of Responses

### Active proceedings in which social media has had an impact

- 2.1 The Call for Evidence asked about any potential adverse impacts of social media on criminal investigations or proceedings, the steps taken to address the impact and whether the issue was addressed successfully.
- 2.2 Responses on behalf of traditional media organisations reasoned that the R v F & D case was an unusual and exceptionally high profile case, rather than illustrative of a wider problem. Other respondents, including the CPS and members of the judiciary, identified a small number of further cases in which prejudicial comments were posted on social media beneath links to fair and accurate newspaper reports about ongoing trials. Whilst these posts are unwelcome and capable of impacting on trials, the responses suggested that the trial judges had the tools to manage the posts without discharging the jury or imposing stringent reporting restrictions. This included asking the editors of the relevant newspapers to remove the newspaper story from social media, thereby removing comments posted beneath the article, or giving clear directions to the jury to avoid and disregard social media commentary. These steps mitigated the risk of prejudice posed by the posts, but could cause an unnecessary delay and additional drain on resources.
- 2.3 Some responses described cases in which social media users posted prejudicial comments separate from newspaper stories. Examples involved cases in which people close to the case set up memorial Facebook groups that shared information that could potentially create risk of prejudice. A limited number of responses described social media users sharing information about the defendants' ethnic or religious backgrounds, attacks on the trial process, and commentary about previous convictions or the alleged criminality. There were also some suggestions of misinformation being shared. Another response



described a case in which high profile social media users shared potentially prejudicial information to a large audience. Finally, another response described a user sharing an image and video of court proceedings on social media, accompanied by abusive commentary.

- 2.4 In some cases, either the judge or the police spoke to the people responsible for the posts and reminded them of the risks that the posts created and asked that the posts were removed, which was done. In other cases, the trial judge either instituted contempt proceedings against the offender or referred the matter to this office with a request that the matter be reviewed and contempt proceedings instituted. Again, whilst the existing tools mitigated the risk of serious prejudice, they could still cause delay. Moreover, some responses suggested that some practitioners were concerned about the complexities of contempt proceedings.
- 2.5 In addition to receiving specific examples of trials being impacted by evidence of social media, the Call for Evidence also received a report from Professor Cheryl Thomas on her 10 year research project into the jury system. This provided empirical evidence on the level of impact that social media can have on juries. It identified a number of issues that often caused confusion for jurors and concluded that better methods needed to be introduced to inform jurors of the rules on juror conduct, including those relating to social media. As a result, a revised juror notice, "*Your Legal Responsibilities as a Juror*", was introduced and is now used in all Crown Court centres. The notice has been approved by the senior judiciary and reinforces, rather than replaces, the judge's oral directions to the jury on their legal responsibilities.
- 2.6 The evidence from the pilot introduction of the new juror notice suggested that jurors' understanding of their legal responsibilities increased substantially in every category as a result. In particular, analysis from the pilot suggested that the new juror notice achieved almost 100% understanding by jurors, including in relation to prohibitions on use of social media, researching the defendant, and discussing the case with family and friends. This suggests that whilst posts on social media can cause considerable problems at many levels, it may now be less likely than first thought that jurors would actually see the posts.



## Breaches on social media relating to reporting restrictions, anonymity or other statutory provision

2.7 The Call for Evidence asked about social media being used to share information that breached reporting restrictions, anonymity or similar restrictions. The responses identified three broad types of information being shared:

- Information that breached reporting restrictions imposed by judges through the use of a section 4(2) order;
- Information about people who benefited from anonymity as a result of statutory provisions, including by court order;
- Information about the trial that should not be shared because it potentially amounted to contempt or a criminal offence.

### *Information that breaches section 4(2) reporting restrictions*

2.8 Responses noted that section 4(2) orders can be used to limit the information that can be published in certain scenarios. There was limited evidence, mainly from members of the judiciary, that reporting restrictions were breached on social media, especially in high profile cases; although responses also indicated that this may be increasing.

2.9 Responses on behalf of media organisations expressed the view that reporting restrictions limit the amount of legitimate information that can be shared by traditional media organisations, with concern expressed about the overuse of section 4(2) orders and similar restrictions. Their concern was that this could prevent legitimate reporting of a trial.

### *Information that reveals the identity of a person who benefits from anonymity*

2.10 A number of respondents referred to instances in which victims or others involved in criminal proceedings who benefited from anonymity were named or where sufficient information was shared that they could potentially be identified. Anecdotal examples included breaches of anonymity afforded to victims of sexual offences and juvenile defendants. In a number of instances, the respondent had referred the matters at the time to the Attorney General's Office as a potential contempt or to the police for consideration of criminal charges. Limited responses also raised concerns about search engines, with particular



concerns raised about the “related search” tool. The Standing Committee on Youth Justice noted that search engines do not remove information relating to a party once they benefit from anonymity. As a result, searching for information on the case can result in the protected information being accessible. They also raised a wider point around the law on pre-charge anonymity and the fact that children and young people are entitled to anonymity only at the point of charge, meaning there was potential for a name to become known after arrest but before the law on anonymity applied.

#### *Information that amounts to a criminal offence*

- 2.11 There was some evidence to suggest that social media was used to commit other criminal offences. The CPS provided evidence of a defendant posting information about his trial on social media, resulting in an investigation for perverting the course of public justice. Other respondents referred to cases in which photographs or recordings were taken in court, contrary to section 41 of the Criminal Justice Act 1925. Those photographs or videos were then shared on social media. The Criminal Cases Review Commission also provided evidence of social media being used in this way, reporting a case that they investigated in which jury deliberations were shared on Twitter, contrary to section 20D of the Juries Act 1974.

#### **Thematic Concerns**

- 2.12 The Call for Evidence also invited representations on thematic concerns relating to social media and its impact on the administration of justice, with a particular focus on whether there had been an increase in the level of risk posed by social media over the preceding five years. Views on this were mixed, with some concluding that the impact has not increased and others concluding that the proliferation of social media **had** caused an increase in the consumption of online news and increased the amount of information that was being shared without editorial review or scrutiny.
- 2.13 In addition to these general observations, a number of thematic concerns emerged.



### *Deliberate offending*

- 2.14 In a limited number of cases it was reported that social media users were aware of the restrictions or legal prohibitions and flouted them deliberately. Some respondents, including the CPS and the judiciary, provided examples in which defendants and interested parties shared information in the full knowledge and intention of disrupting the trial process, which could amount to either a criminal offence or contempt of court, which can be managed by existing powers. Indeed, the evidence suggested that in many cases, the behaviour was investigated by the police and led to prosecutions.

### *Lack of public awareness*

- 2.15 A far greater number of the responses suggested that the information was shared because social media users were unaware of the law or restrictions. Several respondents raised concerns that users were ignorant of restrictions or unaware of the risks posed by sharing comments, particularly in relation to young people who are more active users of social media.
- 2.16 The CPS identified a series of common misapprehensions, such as people believing that they could name complainants in sex offences if the offender is acquitted. Where traditional media posted links to social media about live trials, this could serve as a rallying point for problematic commentary, compounded by a lack of awareness about the law.

### *Lack of clarity in relation to tools and powers available*

- 2.17 A number of responses were concerned about the complexities in relation to dealing with social media. There were particular concerns regarding contempt of court, with repeated requests for consolidated guidance for the judiciary and other practitioners.

### *Legal liability*

- 2.18 Several responses raised concerns about the legal liability for social media posts. In some trials, members of the media queried whether they could be required to remove comments made beneath their news articles on social media platforms or whether it was the companies or the social media users who were



responsible for the post. This issue links to the wider debate about the responsibilities of both those who post on social media (both organisations and individual users) and the social media companies themselves. In particular, some respondents questioned whether legal liability should attach to social media companies or media organisations in cases where social media users' posts amounted to contempt or a criminal offence.

### Part 3: Government Response

- 3.1 The evidence received suggests that whilst there are new challenges with the use of social media, these challenges are not unmanageable. Indeed, the relatively low volume of responses suggests the scale of the problem is more limited in scope than the original R v F & D case might have suggested.
- 3.2 The responses also suggest that existing tools are available that can be used to some extent to manage the problems that often arise. These include:
  - Requesting newspapers or social media users (if known) to remove posts from social media to prevent comments being posted beneath.
  - In the Crown Court, using section 45(4) of the Senior Courts Act 1981 to direct media organisations to remove articles from social media platforms.
  - Referring the matter to the Attorney General's Office as a potential contempt.
  - Dealing with the offending material as a contempt in the face of court.
  - Referring the matter to local police forces for investigation into potential criminal offences.
  - Issuing strong and clear judicial directions to the jury that they should disregard any comments that they see on social media.
  - Issuing reporting restrictions under section 4(2) of the Contempt of Court Act 1981.
  - In extreme cases, discharging the jury and ordering a retrial. However, this appears to be a last resort.
  - Again, in extreme cases, referring the matter to the Criminal Cases Review Commission for further investigation into prejudicial material discovered after the end of a trial.



- 3.3 However, the Call for Evidence has helped develop the following further recommended steps in this area, alongside wider cross-government work on the broader issue of online harms.

### Response 1: Public Legal Education

- 3.4 As the evidence from Professor Cheryl Thomas demonstrated, timely and comprehensible legal education for jurors can reduce the risks of prejudice to the criminal justice system. It is likely that providing a similar level of legal education to social media users and those in the criminal justice system will also reduce the risks of social media impacting criminal trials. This is particularly important in light of evidence received which suggests that many social media users are not seeking to maliciously interfere with a trial, but simply do not appreciate the full consequences of their actions.
- 3.5 The Attorney General's Office Communications Team will work with relevant criminal justice partners to raise awareness of the risks and implications of using social media to undermine the administration of justice. Ongoing work has included the creation of a dedicated webpage to support public understanding of contempt of court, which you can access here: [www.gov.uk/contempt-of-court](http://www.gov.uk/contempt-of-court).
- 3.6 The evidence suggested that the majority of those who post prejudicial material or breach anonymity using social media may not have given much thought about the potentially serious consequences of their actions. Public Legal Education can help people understand the rule of law and the importance of an effective legal justice system, as well as ensuring they understand the laws in this area. There needs to be a more widespread understanding about the appropriate use of social media to ensure that people 'think before they post'. Last year, the Solicitor General established a Public Legal Education Committee, which comprises of experts from across the field. The Solicitor General will work with the Committee to promote how to safely comment on the administration of justice online.
- 3.7 The Attorney General's Office also works closely with Young Citizens, an organisation which helps young people to learn about the law. Young Citizens works in primary and secondary schools, supporting students to become active, engaged and motivated citizens. Work is underway to embed lessons learned



from this Call for Evidence into the teachings that they provide to students across the country. This work will help the next generation learn how to safely talk about criminal trials online, without negatively impacting on the trial process or those involved in it.

## **Response 2: Judicial Office Contempt Guidance**

- 3.8 In addition to working on guidance for the public, work is underway to develop clear, accessible, and comprehensive guidance on contempt led by the Judicial Office, working with partners including the Attorney General's Office and others. The intention is to produce comprehensive, practical, and user-friendly guidance that can be used by judges, advocates, prosecutors and the public. It will lay out the mechanisms, procedures (by reference to the applicable rules) and sanctions for use when dealing with contempt of court in its various guises, both in person and online, in order that allegations of contempt can be dealt with quickly and appropriately by the most appropriate means. This guide will address the concerns that practitioners need greater assistance on, including dealing with issues arising from the use of social media. Better and more timely enforcement of contempt and criminal laws against offenders should also contribute to a reduction in the risks to the administration of justice by acting as a deterrent to others.
- 3.9 In addition, the Independent Press Standards Organisation is preparing guidance on court reporting, with the intention of publishing in 2019. The Attorney General's Office will assist in the preparation of this guidance, which is aimed at providing journalists and editors with clear and accessible guidance on reporting on cases involving reporting restrictions. This guidance will complement guidance on reporting on cases of sexual offences, published by the Independent Press Standards Organisation in 2018. That guidance explains the protections available for victims of sexual offences and helps journalists report on the topic sensitively and in line with the legal framework and Editors' Code of practice. The Attorney General's Office worked with the Independent Press Standards Organisation to ensure that guidance included a reminder to editors of their legal duty to take reasonable care when publishing information online in relation to active criminal proceedings, and to ensure those proceedings are not prejudiced.



### **Response 3: New arrangements with Facebook, Google and Twitter on contempt**

- 3.10 As a result of the issues raised in the Call for Evidence, the Attorney General's Office is working with Facebook, Google and Twitter to address contemptuous or otherwise unlawful social media posts. This includes working with the tools provided by those organisations to allow concerns to be raised regarding such posts. These tools will ensure that social media platforms are alerted to potentially unlawful or contemptuous posts and can review them quickly, thereby mitigating the risk to the administration of justice.
- 3.11 Whilst rare, in some situations the Google Autocomplete function has identified people who are subject to an anonymity order. For example, the name of a victim of a sexual offence may appear when the offender's name is typed into the search bar. Whilst this is not a common occurrence, Google has made improvements to their Autocomplete tool to help protect against inappropriate Autocompletes. Work in this area includes an improved and prominent feedback tool which is used to implement further improvements, and a commitment to act quickly when notified of inappropriate Autocompletes by the authorities.

### **Response 4: Anonymity and reporting restrictions**

- 3.12 To ensure that the tools and powers in this area are sufficient to tackle the issues raised, the police and Crown Prosecution Service will work with government to inform the development of the forthcoming Online Harms White Paper and other related measures.
- 3.13 One response raised the issue of the law on pre-charge naming of children and young people involved in a criminal investigation. Current legislation means that juveniles cannot be named post-charge when appearing in the youth court, however there is no legislative provision covering children and young people pre-charge. The press currently self-regulate in this area, and the College of Policing have updated the Authorised Professional Practice on the process and justification for release of names pre-charge. Section 44 of the Youth Justice and Criminal Evidence Act covers this pre-charge anonymity for children and young people, but it has not been brought into force. To understand whether the current arrangements are effective, we will work with the College for Policing, the Youth



Justice Board and policy colleagues in the Department for Digital, Culture, Media and Sport. In terms of policing practice, HM Inspectorate of Constabulary and the Fire and Rescue Service were asked by the previous Home Secretary to carry out a short, targeted review of police adherence to College of Policing guidance on media relations, focussing in particular on pre-charge anonymity. The inspectorate is undertaking a scoping study this financial year, to consider where inspection activity might best be focused.

- 3.14 In the context of wider reforms to the courts and tribunals service, HM Courts and Tribunals Service will work closely with both traditional media organisations and online companies to look at how modern technology can be used to ensure information about reporting restrictions is more easily accessible.

#### **Response 5: White Paper on Online Harms**

- 3.15 Beyond the relatively narrow scope of the Call for Evidence, the Government announced earlier this year that it will publish a White Paper on the wider issue of online harms. The White Paper will include, but may not be limited to, activity which takes place on social media, and the Attorney General's Office will explore how to use this as a vehicle to take forward relevant issues discussed above. Whilst the exact scope of the White Paper is still being decided, the measures included in it will reflect the need to protect trials from this harm where appropriate.



## Annex A: List of respondents

Judiciary
Tom Crowther QC
HHJ John Burgess
HHJ Christopher Prince
HHJ Jonathan Rose
President of the Queen's Bench Division (including collated responses from the below)
Sir Henry Globe
HHJ Graeme Smith
HHJ Martin Edmunds QC
HHJ Heather Norton
Mr Justice Duncan Ouseley
Legal / justice sector
Professor Cheryl Thomas QC
Birmingham Law Society
Magistrates Association
Crown Prosecution Service
Standing Committee for Youth Justice
Criminal Cases Review Commission
Media organisations
Media Lawyers Association
News Media Association
MP
Simon Hart



<b>Other</b>
Dark Justice
False Allegations Support Organisation
Guardians of the North
Royal Statistical Society
<b>Public</b>
Four members of the public