Written evidence submitted by Index on Censorship (3 May 2019)

- Index on Censorship has defended media freedom and journalists for more than 45 years.

- We are concerned that UK domestic developments that fail to safeguard media freedom undermine the FCO’s ability to promote global media freedom and combat disinformation.

- Home Office refusals of visas for journalists invited to the UK to speak at events, receive awards and take up training opportunities are a significant problem.

- Incidents such as the widely-condemned arrests of Trevor Birney and Barry McCaffrey in August 2018 in connection with alleged theft of documents from the office of the Police Ombudsman for Northern Ireland (PONI) impact the FCO’s ability to promote global media freedom.

- The government’s failure to safeguard media freedom in the Counter-Terrorism and Border Security Act 2019 drew international concerns.

- Proposals in the Online Harms White Paper released in April 2019 have raised widespread concerns about impacts on media freedom.

1. Index on Censorship, a registered charity and company, campaigns for freedom of expression worldwide. We publish work by censored writers and artists, promote debate, and monitor threats to free speech, and have more than 45 years’ experience in this field. Defending media freedom and the safety of journalists is a core part of our work. Index incubated and developed the Mapping Media Freedom project, which recorded 4,863 media freedom threats and violations in 43 countries over four years between 2014 and 2018. We are also founder members of the US Press Freedom Tracker, which documents threats to media freedom in the United States. We support journalists facing censorship through our Freedom of Expression Awards Fellowship and Journalists’ Toolbox, an online resource that brings together articles in English, Arabic, Spanish and Russian about threats to journalists and ways these threats are being tackled internationally.

2. Index is submitting evidence because of the FCO’s important role in supporting media freedom and journalists at risk globally and because we have concerns that UK domestic initiatives that fail to safeguard media freedom undermine the FCO’s ability to do so.

3. Index analysis of European countries in 2018 demonstrated extremely concerning trends, which also impact media freedom worldwide. The Index report Demonising the media, which analysed threats to media freedom and journalists, identified key themes:
- National security and counter-terrorism legislation being misused to limit the freedom of journalists to report on the work of government and politicians. Our report documented 269 cases where national laws have been obstacles to media freedom. This includes the case of five journalists — Ragıp Duran, Hüseyin Aykol, Mehmet Ali Çelebi, Ayşe Düzkan and writer Hüseyin Bektaş — sent to prison in Turkey in 2018 for participating in a solidarity campaign for the shuttered pro-Kurdish Özgür Gündem newspaper. It also includes the case of five websites blocked without judicial oversight in France on grounds that they “incite or defend terrorism”, as well as the admission by UK police that they had used powers under terror legislation to obtain the phone records of Tom Newton Dunn, political editor of The Sun newspaper, to investigate the source of a leak in a political scandal.

- Political interference, either directly or by discrediting journalists. This includes the increasing use of smears against the industry as a whole. Leading political figures in countries from the UK to Hungary have smeared journalists and media outlets critical of them, dismissing their reports as “fake news”; they have thus created an environment in which reporters are demonised, and thereby more vulnerable to abuse both online and offline. For example, in November 2016, during a press conference, Slovakian Prime Minister Robert Fico called journalists “dirty, anti-Slovak prostitutes” and in August 2017, during a press conference, Fico accused a reporter of being “controlled by the opposition”.

- Online harassment, which is particularly targeted towards female journalists. Our report found that such harassment is so commonplace - and so successful in silencing many of those targeted - that it is underreported and underestimated. Examples covered in the report include journalist Nadia Daam, who was subjected to an online harassment campaign after one of her broadcasts on Europe 1 radio in 2017. Following the broadcast, Daam was targeted on social media – particularly on Twitter. Abuse included pornographic insults, death threats and threats to her child. Her email address was used to subscribe her to pornographic and paedophile websites. There was also an overnight attempt to break into her house. In 2016, stolen nude photos of Vonny Leclerc (formerly Moyes), a journalist for Scottish newspaper The National, were posted online in an attempt to harass and intimidate the journalist. Online trolls called for Polish journalist Ada Borowicz to be raped after she published the story of an attack on a woman in Italy.

- Incidents connected to protests, where journalists are often among the first responders. Threats to journalists’ safety come both from protesters and police. During demonstrations in 2018 journalists sustained serious injuries at the hands of French police. In Greece, journalists covering rallies in protest at the renaming of Macedonia were repeatedly threatened by nationalist demonstrators.
- Public broadcasters being turned into state broadcasters. Threats to the independence of public broadcasters is of particular concern to Index on Censorship as this appears to be an area that is underreported and where little is being done to reverse trends. The examples of Poland and Hungary give particular cause for concern. Overhauled in 2016, Telewizja Polska - the largest broadcaster in Poland - is now under the direct control of the ruling conservative Law and Justice Party. The Polish legislation was modelled on the Hungarian changes implemented by that country’s ruling party Fidesz. In each country, the restructuring resulted in the elimination of hundreds of positions, including dozens of journalists.

4. Journalists are subject to physical violence, legal threats and arrest. In April this year, for example, Romanian investigative journalist Emilia Şercan - whose work includes investigations into the police and high-ranking officials - reported receiving death threats. At a public event held in Washington in 2018, White House correspondents said receiving death threats had become “the norm” for journalists. In 2018 three journalists were killed in Europe (Ján Kuciak in Slovakia, Jamal Khashoggi in Turkey, Viktoria Marinova in Bulgaria).

5. Legal threats and lawsuits aimed at silencing journalists are a major problem. Currently there are more than 1,000 lawsuits against journalists in Croatia. Even if the prospects of success may be non-existent a wealthy litigant can silence a journalist or media outlet through the threat of months or years of high legal costs of responding. Such lawsuits are sometimes referred to as “SLAPP” (Strategic Litigation Against Public Participation) suits, from their use in the United States against campaigning groups. At the time of her murder (see paragraph 15) investigative journalist Daphne Caruana Galizia was facing more than 40 lawsuits. There is lack of information about the extent of this problem because threats of legal action are frequently accompanied by a demand that the threat not be disclosed. In Malta The Shift has taken a courageous stand challenging this.

6. Index is acutely aware of the threats facing journalists internationally. We publish work by censored journalists, our fellowship programme supports journalists from all over the world and we campaign for journalists who face censorship. For example, although a court in Azerbaijan released prominent investigative journalist Khadija Ismayilova in 2016 she remains under a travel ban. David Kaye and Michel Forst, UN special rapporteurs on freedom of opinion and expression and the situation of human rights defenders, respectively, have called for the ban to be lifted and said: “The measures against Ismayilova by the authorities go far beyond what is legitimate. It is detrimental to her individual case and also to the exercise of independent journalism in the country.”

7. A particular concern is the challenges faced by journalists in exile and the use of travel bans by authoritarian regimes to control journalists and growing restrictions on journalists’ ability to travel. Home Office refusals of visas for journalists invited to the UK to speak at events, receive awards and take up training opportunities is of particular concern. For example, a journalist
from Yemen who works with international journalists covering the country’s civil war was initially refused a visa in 2018 to attend vital safety training in the UK, while Syrian Wael Resol who was given an award for his work supporting journalists in Iraq, was denied a visa to attend the award ceremony.

8. The reputation and capabilities of the UK in promoting global media freedom and combating disinformation is undermined by such incidents. Similarly, threats to media freedom in the UK damage its reputation as a world leader on media freedom. Examples include the arrests of Trevor Birney and Barry McCaffrey in August 2018 in connection with alleged theft of documents from the office of the Police Ombudsman for Northern Ireland (PONI). Both men were involved in making the documentary No Stone Unturned, which investigated the murders of six men in Loughinisland village in 1994 and raised questions about alleged collusion between police and loyalists. The arrests have been widely condemned, but Birney and McCaffrey remain on bail at the time of writing.

9. Legislative initiatives which undermine media freedom raise a significant credibility challenge. Recent examples include the Counter-Terrorism and Border Security Act 2019 and the Online Harms White Paper, described below.

10. The Counter-Terrorism and Border Security Act 2019 drew international concerns during its passage through Parliament. The United Nations special rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Fionnuala Ní Aoláin, raised serious concerns related to media freedom. Clause 2 of the Act criminalises publication of an image of clothing or an article (such as a flag) in a way that raises “reasonable suspicion” that the person doing so is a member or supporter of a terrorist organisation. “I am concerned that Clause 2 runs the risk of criminalising a broad range of legitimate behaviour, including reporting by journalists, civil society organizations or human rights activists as well as academic and other research activity. I consider that the provision falls short of the requirements of the principle of legality under Article 15 ICCPR and Article 7 ECHR. I am particularly troubled by the intention to attach serious criminal consequences (including imprisonment) to conduct that merely raises “reasonable suspicion” without requiring that membership in or concrete support of proscribed organizations is actually established.”

11. In relation to Clause 2 the Media Freedom Representative of the Organization for Security and Co-operation in Europe (OSCE), Harlem Désir, recommended “... that the UK government adopt more narrow definitions to ensure that journalistic work in particular will not fall within the scope of this provision, including that ‘reasonable suspicion of being a member or supporter of a proscribed organization’ is more clearly defined ...” “As it stands, the law could have an impact on the freedom of the media. I am concerned that the provision has the potential to criminalize

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1 Submission by the Mandate of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, OL GBR 7/2018, 17 July 2018, para. 14.
a too broad range of behaviour, and risks creating a chilling effect on journalistic freedom to report on the concerned organization.” These views were not taken into account.

12. Schedule 3 of the Counter-Terrorism and Border Security Act 2019 introduced very wide and intrusive new powers to stop, detain and search, aimed at “hostile activity”. A consultation on a draft Code of Practice for implementing schedule 3 recently closed. The draft code would permit access to confidential journalistic materials by border officers (see paragraphs 89 and 90). This is a deeply disappointing setback for media freedom in the UK.

13. In April the government released its Online Harms White Paper, with proposals that are likely to have far-reaching media freedom implications. The proposals include a new statutory duty of care to tackle a wide range of online harms, including disinformation and violent content. Even the smallest companies are in scope. In combination with substantial fines and possibly even personal criminal liability for senior managers this is likely to create a very strong incentive to remove content. Based on the proposals it is difficult to envisage how “harmful” news online would escape being removed.

14. Index has filed official alerts relating to the case of Trevor Birney and Barry McCaffrey, the Counter-Terrorism and Border Security Act 2019 and the Online Harms White Paper with the Council of Europe’s platform to promote the protection of journalism and safety of journalists. The platform is a public record of serious concerns about media freedom and safety of journalists in Council of Europe member states, as guaranteed by Article 10 of the European Convention on Human Rights (ECHR). Index and the Association of European Journalists (AEJ) have reacted in a statement to the UK’s initial response to the alert concerning the Online Harms White Paper, expressing disappointment at the lack of detail in the response.

15. As regards the FCO’s role in supporting individuals and groups that promote global media freedom and combat disinformation, Index urges the FCO to actively and systematically pursue issues and individual cases, bilaterally and through regional and international fora. For example, through its relations with Malta, a Commonwealth country, the FCO should do its utmost to pursue the case of investigative journalist Daphne Caruana Galizia, assassinated in Malta in 2017. The case is a shocking example of the dangers journalists face and the failure of states to bring perpetrators to justice.

16. As concerns the best priorities and approaches for the FCO in this field, we highlight the importance of cross-government coordination. The FCO will not be in a strong position to promote and support global media freedom when UK initiatives such as the Counter-Terrorism and Border Security Act 2019 fail to safeguard media freedom. Cross-government consideration at an early stage of how the media freedom impacts (and wider freedom of expression impacts) of emerging initiatives could be perceived internationally could help to reduce negative impacts, improve the UK’s alignment with international human rights standards and avoid undermining
the FCO's credibility when it comes to promoting global media freedom and combating disinformation.