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IN THE PUBLIC INTEREST: WHISTLE-BLOWING IN EMPLOYMENT AND THE MEDIA

A webinar from the Doughty Street Employment and Media Teams: 12 July 2021
Heather Rogers QC, Jonathan Price, Paras Gorasia and Beth Grossman

HEATHER ROGERS QC:

Good afternoon and thank you for joining us for this seminar on whistle-blowing in the public interest.

We are going to run for an hour and we are going to look at the issue from the point of view of employment law and media law.

This is a seminar that came out of discussions that we were having in the office - or in the virtual office - and we think the topics are interesting and we hope that you will too.

[Slide 1: "Overview"]
This is the format in which we're going to run:

- Paras [Gorasia] is going to start, looking at public interest disclosures from the employment point of view.
- Then, Jonathan [Price] will follow up, setting the scene from the media point of view.
- Then Beth [Grossman] will cover disclosures to the media, by employees.
- And then I'll look at some of the issues from a media perspective.

So we are theoretically – in the usual barrister way with time limits – aiming at no more than 10 to 12 minutes each.

That will allow for a bit of time for questions and answers at the end. Now, you should be able to see, on your screens somewhere - either top or bottom depending on your device – a "Q&A" function. We invite you to use that, please. Someone will be monitoring that and we will select some questions to review at the end of the session.

So without further ado, I will hand over to Paras, for the first part of this session.

PARAS GORASIA
(audio time-code: 1.23)
Thank you, Heather. Good afternoon everyone. My short talk, as Heather has explained, will be looking at the requirement for whistleblowing disclosures to be in the public interest under the Employment Rights Act 1996.

[Slide: "Statutory Basis"]
And you'll see from the slide in front of you that the starting point, of course, is the words of the statute, namely section 43B of the Employment Rights Act (**ERA**), that a qualifying disclosure means any disclosure of information which, in the reasonable belief of the worker making the disclosure, is made in the public interest and tends to show a relevant failure.

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Now you sometimes – or I sometimes - see respondents challenging a disclosure on the basis that, in fact, it isn't true. For obvious policy reasons, it's not a requirement under Section 43B of the ERA for any disclosure of information to be factually correct.

All that is required, and what a tribunal is particularly looking at, is the nature of the reasonable belief from the perspective of the worker making the disclosure. And the authority for that in the employment sphere is *Darnton v University of Surrey*.

In assessing whether there is a reasonable belief showing a relevant failure which is in the public interest by the worker, the tribunal will adopt an objective/subjective assessment of that belief, from the perspective of the whistle-blower. That can be seen in *Korashi [v Abertawe Bro Morgannwg University Local Health Board]*. We go to the next slide.

[Slide: "Reasonable belief"]
There are, in my view, two key points to take away from *Korashi* concerning reasonable belief insofar as it pertains to the public interest under Section 43.

Firstly, that the assessment of a reasonable belief is informed by the position of the individual expressing that belief or, to put it another way, a tribunal will more readily find that an accountant, for example, has formed a reasonable belief in the disclosure of information suggesting unlawful tax evasion and diversion of funds from HMRC (in effect public funds) than a cleaner in an equivalent context.

With respect to the cleaner, the tribunal may expect – probably would expect - a cleaner to take some further steps to verify or confirm the reasonable belief, before it is considered reasonable, taking into account all the circumstances of the case.

Now, for those of you who practise predominantly in media, you'll be familiar with the Supreme Court decision in *Serafin*, which I know Jonathan is going to talk to you all about later on today, and, in particular, paragraph 65, which looks at when a section 4 defence, or public interest defence, is available under the Defamation Act 2013 and when it's made out.

You'll see there's a similarity in approach between the statutory regime under section 4 [of the Defamation Act] and, of course, the requirements under the Employment Rights Act for a reasonable belief pertaining to the public interest.

The second point I wanted to make in relation to *Korashi* is where there are a number of disclosures asserted, those of you who practice predominantly in employment will be familiar with this scenario, it's important for the claimant to establish a reasonable belief - and a reasonable belief in the public interest - in relation to each disclosure. They cannot be aggregated.

[Slide; "Public Interest (1)"]
Turning to the next slide. Dealing with public interest, firstly in the employment sphere, the leading authority on whether a disclosure is in the public interest - so far as employment disputes are concerned - is the Court of Appeal decision in *Chesterton [Global Ltd v Nurmohammed]*, which

provided guidance in this area for tribunals to apply at first instance in determining whether a disclosure of information is in the public interest or not. Some of the factors which a tribunal will take into account when assessing whether this is the case, include the matters on the slide:

- Firstly, the numbers in the group whose interests the disclosure serves. So the larger the group affected by the potential disclosure of information - remember, whether it's correct or not - it's more likely to tick the public interest aspect

- The second point is the nature of interests affected – and/or the magnitude to which those interests are affected - by the wrongdoing. So effectively: is it solely a private or financial matter; does it affect, for example, the working environment, the public at large; what is the disclosure aimed at and what does it show?

- Thirdly, the nature of the wrongdoing disclosed is also relevant in ascertaining whether the public interest aspect of the test is met, namely, deliberate wrongdoing being more in the public interest than an accidental error, for instance.

- And then, finally, another factor is the identity of the alleged wrongdoer. Are we talking about a large prominent employer, or even a public body, potentially committing the wrong? A public body, or a larger employer, is more likely to invoke public interest considerations.

[Slide: "Public Interest (2)"]

We go to the next slide please. Now it's important to note in relation to the Employment Rights Act that the term "public interest" isn't actually defined within the statute and, accordingly, the tribunals and the courts have taken a case-by-case basis to this term, and it covers a very wide range of issues.

But it is important at this juncture - and we're going to circle back to it towards the end of my part of the talk - to note an observation made by Lord Wilberforce in *British Steel v Granada TV,* namely, that there is a wide difference between what is interesting to the public, and what it is in the public interest to make known.

Where the issue of public interest in respect of a disclosure is disputed, it is for a tribunal to find, as a matter of fact - as a fact-finding tribunal - whether the disclosure was, in fact, made in the public interest. An example of that can be seen in *Parsons*, where disclosures made during a disciplinary dispute were considered to be wholly in the claimant's self-interest, and, therefore, not having the requisite public interest motivation behind it, as well as the disclosure of the information.

Now, the Court of Appeal decision in *Ibrahim* is a useful reminder that the claimant's personal motivation for making a disclosure is irrelevant and the focus should always be on whether there is a genuine reasonable belief that the disclosure is in the public interest. We're going to come on to the issue of mixed motivation shortly. We go to the next slide.

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[Slide: "Public Interest (3)"]

Now the ICO has published guidance on the meaning of "public interest" in the context of freedom of information requests, which may serve a useful function in appropriate cases when assessing whether a disclosure is in the public interest or not. And of particular interest to employment practitioners are potentially the references in the citation there to "integrity" and "fair treatment". In particular, "fair treatment" could be seen as arguably encompassing anti-discrimination claims or disclosures of information.

And another authority I just wanted to bring to your attention is a case called *Fairhall*, which is an interesting EAT decision handed down about 10 days ago - 30th of June (my maths may be wrong, may be 15 or 16 days ago now) - where reference is made in the EAT decision at paragraph 5 to the tribunal at first instance opining that deficiencies in the standard of care provided by the NHS must always be a matter of public interest. Which, if we go back to the *Chesterton* principles, one of the factors is, of course, whether the wrongdoing is committed by public body and, of course, the NHS is a public body.

[Slide: "Public Interest (4)"]

The next slide shows an interesting decision on whether a worker has a reasonable belief in a disclosure being in the public interest, namely, that of *Okwu v Rise Community Action*.

Now the facts, in summary, in this case: Rise was a charity - is a charity - providing support for individuals affected, amongst other things, by domestic violence and female genital mutilation. Okwu was engaged as a worker and, during a probationary period, various performance issues arose which led to the extension of her probationary period and subsequent dismissal.

Now prior to her dismissal, but after the extension of her probationary period, Okwu made disclosures of information concerning various breaches of the Data Protection Act, due to the processing of sensitive personal data, which she handled as a matter of course, and what she said was a failure by Rise to provide secure storage and a personal mobile phone.

The employment tribunal at first instance held that Okwu's disclosures were not made in the public interest, as they solely concerned her own contractual position and performance. However, the EAT, on appeal, considered that the tribunal had erred and that Okwu's disclosures couldn't have related just to her own position, as they inevitably touched upon the position of service users – ie, the service users of Rise - and reiterated that the public interest need not be the only motivation or reason for the disclosure to qualify for protection.

[Slide: "Public Interest (5)"]

Turning to the next slide: a very recent EAT authority on the issue of public interest is *Dobbie*. That was handed down on the 11th of February this year. Some general observations in conjunction with the Court of Appeal decision in *Chesterton* were made which I've set out on that slide. Just running through the six of them very quickly:

- The first, of course, is a recitation of what I referred to earlier in my talk about Lord Wilberforce in *British Steel,* namely, that a matter of public interest doesn't necessarily equal something of interest to the public. The two are distinct.

- Secondly, the possibility that a disclosure may never come to the attention of the public does not, in appropriate cases, undermine the inherent public interest in that disclosure.

- Thirdly, a disclosure of information in respect of a one-off incident can still be in the public interest. There is no requirement for repetition, or potential repetition, for the public interest aspect to be made out.

- Fourthly, and this is more a reasons point: tribunals should give reasons for their determination as to whether a disclosure is either in the public interest or not, as the case may be.

- Fifthly, there's a presumption that disclosures which fall within the necessary statutory regime at 43B(1)(a)-(f) will be in the public interest. That's primarily due to the nature of the failures they show, which is a matter of common sense. Breach of a legal obligation - endangerment to the environment - commission of a criminal offence - all of those matters are potentially those *prima facie* in the public interest and so will qualify for protection.

- And then, finally, reiterating that purely private matters are not in the public interest. But, as we've seen with Okwu, mixed matters may be.

So that's my bit of the talk done and that leads us neatly on to Jonathan Price, who will be exploring the concept of the public interest in respect of publications from the media context. Over to you, Jonathan.

JONATHAN PRICE
(audio time code: 12.11)

[Slide: "Press as public watchdog"]
Thank you. I'm going to briefly survey how the public interest arises and is deployed in publication cases. I'm going to do that by introducing the topic from the jurisprudence of the European Court of Human Rights, because, handily, they don't recognise the same sort of silos that we do in publication cases and their statements are of pretty broad application. Then I will enter the silos and I will run through some of the publication causes of action and see where the public interest slots in.

So, the pretty well-known position of the European Court of Human Rights in its determination of article 10 cases in relation to the press, is that the press acts as a public watchdog and, as such, merits a high degree of protection. This is consistent with the jurisprudence of the Strasburg court, which

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consistently places the right to freedom expression protected by article 10 at the heart of what is necessary in a democratic society.

It is worth remembering that it's not simply the right to *say* stuff, but it's the right to *know* stuff, the right to *receive* information - the public's right to receive information - with which article 10 is concerned. In that context, the Court has repeatedly said that it's not just that the press has a right to report what's in the public interest, but a duty to impart - in a manner consistent with its obligations and responsibilities - information and ideas on all matters of public interest. And it has that duty, because that is the corollary of the right of the public to that information.

And I've used a quote here from the *Bladet Tromso* case - because that's a Grand Chamber decision, I mean the same principle has been repeated throughout the cases - but that was a decision about the identification and discussion of some private information relating to some private individuals in the context of reporting on a matter of some public interest. There was a dissent and four Judges dissented - but in a dissenting opinion of three of them, I've extracted this epithet: *"In our view, the fact that a strong public interest is involved should not have the consequence of exonerating newspapers from either the basic ethics of their trade or laws of defamation".*

Between these two quotes - so the majority opinion and this excerpt from the dissenting opinion - you find the tension that drives the whole of the law relating to disclosure in the public interest, as it relates to publication cases. That thread - that tension - is evident still in the most recent decisions in the High Court in this jurisdiction.

So the next slide please Rai.

[Slide: "The Convention approach"]
This is again about the Convention approach, because what I want to get across here is that there is another tension, if you like, this time not just in the in the substance of the application, but in the jurisprudential approach.

In the *Sunday Times v UK* case, the European Court sought to establish that the correct approach is not to seek to balance rights, or conflicting rights and principles, but to start with the principle that freedom of expression - and particularly as it relates to public interest disclosure - is paramount, and then to work with the least restrictive derogations from that principle. *"The court is faced with a choice between two conflicting principles, but with a principle of freedom of expression that is subject to a number of exceptions"* - of course, those are well known, the article 10(2) exceptions – *"and they must be strictly interpreted."*

And then I've set out - just for reference - the three-part test that the European Court uses to assess the lawfulness of the interference – (i) must be prescribed by law, (ii) it must pursue a legitimate aim and (iii) be necessary in a democratic society - and consistently where the public interest is in play, the scrutiny will be intense.

Now that is not, in fact, how the how public interest has been deployed in practice, either in the European Court or certainly not domestically, where the starting point is frequently ignored. The domestic courts have really struggled with this principle of a *duty* upon publishers to publish matters that are in the public interest. They prefer to look at it as balancing rights, as we will come to see.

So just then descending from our lofty principled perch into the domestic application. The starting point - we will start with defamation..

[Slide: "Defamation"]
..and the recently introduced defence under section 4 of the Defamation Act 2013, which is publication on a matter of public interest.

This, of course, grew out of what was known as the *Reynolds* defence, which was originally considered to be a species of qualified privilege, although that is no longer thought to be the case. This was the recognition in English law that newspapers were under this duty to impart information in the public interest, and the public had a right, a corresponding right, to receive such information.

This was put on a statutory basis in section 4. It replaces the *Reynolds* defence and it has the following three elements that come out of the strict construction of the drafting:

- The statement must be on a matter of public interest;
- The defendant must believe that publishing it is in the public interest; and
- That belief will be tested for its reasonableness.

Of these three elements, the first is purely objective and should be a fairly easy exercise for determination. I say the statement must be on a matter of public interest, but it may be *included in* a statement that is on a matter of public interest.

The second element is subjective, but must be proved. So the defendant must assert and prove that they believed at the time that they published the statement that it was in the public interest to publish it.

In the recent case of *Lachaux* - the trial of which was in February / March this year, the decision was handed down the week before last – there were two defendants, the Independent and the Standard: the Independent failed at the second hurdle, the Standard succeeded at that, but failed at the third.

Partly because the case went to the Supreme Court on the issue of "serious harm" under section 1 [of the Defamation Act 2013] and, therefore, wasn't tried until seven years after the events, the witnesses for the Independent were not able to persuade Mr Justice Nicklin that they did believe, at the time that they published the article, that it was in the public interest to do so. They were not able to persuade him because they frankly, very frankly, said that they couldn't actually remember their thought processes at the time, and he wasn't prepared to give them the benefit of the doubt.

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I'm going to move on, without going into the *Serafin* case because, although it is a Supreme Court decision dealing with section 4, the pronouncements in it on section 4 are relatively limited to correcting a couple of errors by the Court of Appeal - because its main interest was in the point about the unfair trial. So I'll move on just to look at how the defence arises in confidence and privacy cases.

[Slide: "Breach of confidence and privacy"]
The functions of the public interest in breach of confidence cases, which is the cause of action out of which privacy has grown, are potentially three-fold:

- It acts possibly as a limit on the scope of the duty of confidence;
- It can negate the duty altogether - the old principle that there's "no confidence in iniquity" - so that the confidentiality doesn't exist, it doesn't get off the ground; or
- As tends to be the case now, the issue of public interest can serve as a defence to an otherwise well-formed action in privacy or breach confidence. That tends to be how we think of it, these days, as a defence. The origins of that are probably in the *Spycatcher* case – the citation for which is there [on the slide] - and I have chosen a quote from it relevant to that.

Moving on then, through privacy and breach of confidence, to data protection..

[Slide: "Data protection"]
..we find another statutory scheme, this time in the Data Protection Act 2018, which is more complex still than section 4 of the Defamation Act, but has some similarities, but is more prescriptive.

I've tried to express this as a sort of logical proposition. It's not quite how it's drafted, but it's pretty close. So this is the part of the Data Protection Act dealing with special purposes, which includes journalism and literature and so on.

- If you are processing personal data, with a view to publication of such material - journalistic or literary material - and you reasonably believe that publishing it would be in the public interest, which is the same test as under section 4 for defamation - then a certain list of GDPR obligations don't apply.
- But they only don't apply to the extent that the controller reasonably believes that the application of those provisions would be incompatible with the special purposes, with publication of journalistic or literary material

So it's fairly convoluted. But it does require a fair degree of prior thinking by the journalist and, in light of the *Lachaux* and *Sicri* decisions, which Heather will mention in due course, it could be quite onerous to rely on this, because you're going to have to document everything, all of your thought processes, before the court would accept them. There's a sort of fairly complex decision-tree that might be needed to do that. And it doesn't end there.

[Slide: "Data protection contd"]
The Data Protection Act goes on to specify that the controller, ie in this case, the journalist or editor, must take into account in their thought process - and therefore must also document that - there's a

special importance of the public interest in the freedom of expression and information, and they must have regard to the codes of practice to the extent that those are relevant. They have got the codes of practice and guidance listed there [on the slide]: the BBC Editorial Guidelines, the Ofcom Code, or the Editors' Code of Practice. Of course, these provisions apply to people who publish outside of organisations that are strictly regulated by these codes and so they would not have to have regard to them, because they wouldn't be relevant.

Now, I am going to have to move on, so I can see I have been a little bit slow

[Slide: "Defining the public interest – some examples"]
The final thing I was going to try to deal with was, in the context of publication cases, the problem of defining what the public interest is.

I will whizz through this. The short answer is it's difficult and there's no single definition, as the BBC editorial guidelines make clear. But there are a number of sources - and I haven't listed them all, by any means - that might be worth consulting, if you're seeking to define what the public interest is for publication purposes.

[Slides: "Defining – contd"]
Rai, if you could move on, through the next couple of slides you'll see that I've taken quotes from *Reynolds,* and from her the European Court, and finally from the Philip Green case. And then that is my last slide..

[Slide: "Defining the public interest – a list"]
..which is where I'll leave you. This is a list that I've extracted from those sources of matters which are relevant to the subsistence of the public interest. So:

- As the BBC guidelines make clear, it includes freedom of expression. That sounds rather circular from a logical point of view, because if you are a journalist processing data and seeking to rely on the exemptions in the Data Protection Act, you must have regard to the special importance of freedom of expression in assessing whether or not it's in the public interest to process the data and the extent to which your exemptions apply. And if there is a public interest in freedom of expression itself, it seems that you may have already satisfied that simply by expressing yourself. But I'm sure that's not what's intended in the BBC guidelines, but that's what it says.

- There is a public interest in providing information that assists people to comprehend decisions on matters of public importance, which Paras had picked up on and a lot of the employment cases will rely on that.

- The prevention of people being misled is frequently used in privacy cases, but the degree to which people are misled, and the nature of what they're being misled about, is important. You can't simply go around correcting white lies or minor fibs and rely on the public interest.

- Exposing or detecting crime is generally always in the public interest.

- Exposing corruption, injustice, significant incompetence or negligence.

- And, as was made clear in *Reynolds,* this isn't confined to political discussion. In *Reynolds* itself, the Court was invited, that is, the House of Lords was invited, to establish the defence that became the *Reynolds* defence according to a definition that included "political speech". The Court declined to do that, finding that they shouldn't be defining public interest at all. And therefore, the public interest is broader than simply political matters, it is not confined to political discussion, it includes information relating to sporting or performing artists. This was established in a number of European Court of Human Rights decisions.

- As the Philip Green case made clear, standards of conduct in public or commercial life are generally in the public interest. And it is in the public interest to expose private individuals in their capacity as a senior figures in commercial positions, as Philip Green was.

- And public interest must account for changing perceptions of the kind of behaviour by people in positions of power. So it needs to be elastic; it needs to change over time.

Speaking of time, my time is up, and I will hand over now to Beth.

BETH GROSSMAN
(audio time code: 29.46)

Good afternoon, everybody.

[Slide: "Issues arising (1)"]
So employees who make disclosures to the media face - or former employees as well who make disclosures to the media face - a number of potential problems. The most likely is that they will be in breach of a duty of confidence relating to the information they've acquired. This would either be the general duty of confidence or a specific and contractual duty of confidence.

Even where they are not under such a duty, they may have contractual obligations not to make comments which are adverse or derogatory, even if it's not confidential. And another manner in which an employee or former employee might find themselves in difficulty is that a disclosure may amount to defamation of the company in question, or individuals at or related to the company. Or disclosures may even amount to harassment under the Protection from Harassment at 1997.

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This is sometimes surprising to practitioners when they hear this: how on earth could a protected disclosure ever amount to harassment? There is, in fact, some case authority on this point - not necessarily always finding in favour of this - although in the case of *Pertemps v Ladak*, which i'll come to again, indeed it was found that the employee's repeated attempts to make the disclosures did amount to harassment.

And for those of us who practise in employment law, or indeed those of us who sometimes advise on whistleblowing cases for the media, we can see how this might arise, because many whistle-blowers do become very focused on attempting to make the public aware of what they perceive to be a grave failure or a serious injustice. There are many times in which they will, perhaps out of frustration at how the employer or the company is handling it, or how the regulator is handling it, continue to make the disclosure in increasingly agitated terms.

[Slide: Issues arising (2)"]

Moving on to the next slide please, Rai. Now the public interest defence, whether it's for breach of confidence or privacy or defamation, may protect the employee or the former employee in terms of civil action. But it won't protect them if they are still in role from experiencing any sanction which the employer wishes to impose on them. And, moreover, they may also be sanctioned for disclosures even if those don't amount to a breach of confidence, and even if there isn't any direct contractual provision to sanction an employee.

Equally, the courts - the civil courts, that is - will often consider, and indeed should consider, the provisions around protected disclosures if they are looking at an injunction application for breach confidence or privacy or under the Protection from Harassment Act and they will normally carve out an appropriate route through for disclosures, including disclosures to the media, in order to protect the employee's, or the former employee's, article 10 rights.

[Slide: "The Employment Rights Act 1996 (1)"]

So if we move on to the next slide, we see the relevant legislative provisions under the Employment Rights Act 1996. From sections 43C to 43H, there are different manners in which different types of disclosures may be made in order to qualify for protection. So section 43C concerns disclosures to an employee or other responsible persons.

The most relevant for the purposes of the media are disclosures to third parties under Section 43G and disclosures of exceptionally serious failures under Section 43H.

Section 43J also provides that any contractual duty of confidence is void if it purports to prevent such a protected disclosure from being made.

[Slide: "The Employment Rights Act 1996 (2)"]

Moving on. Each section - moving from section 43C to 43H - creates an escalating tier of disclosure, each requiring a greater degree of justification.

The lowest level of justification is for a disclosure made directly to the employer or a responsible person. General disclosure made to a third party requires, as we will see, some specific conditions to be fulfilled. And a disclosure to a third party which doesn't fulfil those conditions, under Section 43H must meet a threshold requirement of being exceptionally serious.

The basis for this in policy arises from the principle that a breach of a duty of confidence, even if that may be justified, has increasingly serious or potentially serious outcomes for the company or people associated with that company. The further away that disclosure moves from individuals in the company itself, and the further towards the world at large, and that potential damage has to be managed against the importance of the disclosure being made.

[Slide: "s43G ERA 1996 – third party disclosures (1)"]
The usual route through – turning to the next slide please, Rai - is section 43G.

In order to qualify for protection under this, the employee must believe that the disclosure they have made is true, and such a belief must be reasonable. They must not make a disclosure for the purposes of personal gain. They must meet a further condition and they must also meet the general criteria of proving that it has been reasonable for them to make this in all the circumstances.

Moving on.

[Slide: "s43G ERA 1996 – third party disclosures (2)"]
The conditions we see in 43G - that is where an employee makes a disclosure to a third party, which can include a media organisation - are if they believe they'll be victimised by the employer, if there isn't a prescribed person outside the employer to make the disclosure to, and they believe that evidence would be concealed or destroyed, or if they've already made the disclosure and had no, or no effective, result from having done so.

Then, as we move on..

[Slide: "Reasonable belief in substantial truth"]
..we will see that, again reflecting the test for public interest which Paras described before, but this time for a disclosure to a third party under Section 43 G, the employee must prove a reasonable belief in the substantial truth of the information and the allegations being made.

This, again, is a subjective/objective test applying some of the considerations around public interest which Jonathan talked about before. The failure to seek verification may well be relevant, if there's no real urgency.

Now the test of reasonable belief in truth is different from the considerations of public interest, but there is an overlapping framework for making the assessments. If we look at *Chesterton,* we see that

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the question is what does the employee believe subjectively and is that belief objectively reasonable - that was the belief of public interest and, again, we see that in the test for truth.

Now, in the case of *Lachaux* the High Court considered the relevant tests under the Employment Rights Act and in terms of expanding the scope of what the public interest was. The important point to take away is that this test has wider parameters than the test which is applied in defamation, and the court can make a finding that a belief is reasonably held on different grounds to those advanced by the employee in question.

If we can move on.

[Slide: "Personal gain"]

Personal gain is a particularly pertinent aspect of this issue when it comes to disclosures to the media. The prohibition on making a disclosure for the purposes of personal gain was indeed partly to prevent chequebook journalism, and to prevent employees making disclosures because they thought they could get some money out of a paper or broadcaster for doing so.

But the relevant statutory provisions don't expressly preclude receipt of money; they preclude making it for the purpose, but not having that result. And they don't deal with mixed motives, and they also don't preclude donations to charities or payments to family members.

Now, this can make the question of whether the employee has made the disclosure - or the former employee has made the disclosure - for personal gain a difficult one to form a hard view as to as to whether it will get over the line or not, because, for example, if the employee makes the disclosure over a nice lunch in a restaurant, but that lunch was chosen for convenience - or if the employee chooses a newspaper who would pay over a newspaper who wouldn't, but always intended to make that disclosure and can indeed demonstrate that they had approached both, they would have gone with both, and that payment was not at the forefront of their minds - then there is considerable potential ambit under the legislation for that disclosure nonetheless to fall within the parameters of a protected disclosure.

There is comparatively limited case law on this issue. The one case I've identified, which is *Gulwell,* interpreted personal gain in an expansive sense as for the employee's own ends. This was a non-binding decisions, the first instance employment tribunal, although it strikes me that other employment tribunals would likely find similar and an employee would probably be ill-advised to push this point too hard in terms of an appeal to the EAT or above. But at the moment there's comparatively little law on the subject.

Moving on.

[Slide: "Reasonable in all the circumstances"]

Reasonableness in all the circumstances is the catch-all test at the end that considers the identity of the person to whom the disclosure is made, the seriousness of the failure, the continuation or likely re-occurrence, and if any action was taken in accordance with the previous disclosure.

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In other words, if the failure is not serious, unlikely to occur in the future, and the employer took immediate steps to rectify the situation, then an employee is going to find it much more difficult, even if all the other criteria are satisfied, to rely on Section 43G for a disclosure to the media than they would do otherwise.

If an employee cannot rely on Section 43G - moving on again, please…

[Slide: "s43H ERA 1996 – exceptionally serious failures"]
..there, the legislative provision that could potentially give them protection is under Section 43H. But this is confined to exceptionally serious failures.

This does not require a reasonableness-in-the-circumstances test, although it emphasises, and it brings to the forefront, the identity of the person to whom the disclosure is made. And it does not require that the conditions under Section 43G(2) are fulfilled, for example, that the employee is fearing victimisation or there is no prescribed person to make it to.

We see some overlap with the previous provision, however, in that, again, the reasonable belief in substantial truth is required, and it cannot be for the purposes of personal gain.

But the biggest difficulty that any individual would have in making the disclosure and relying on Section 43H, is overcoming the threshold of exceptional seriousness.

[Slide: "Meaning of 'exceptionally serious failure'"]
If we go to the next slide please Rai, this is a "fully objective criterion". And we can see from the examples I've given on this slide how it might be interpreted.

- In *Bolkavac*, we see that disclosure of information about women and girls being trafficked was an exceptionally serious failure.
- And the presence of asbestos at National Trust properties in *Collins* was also an exceptionally serious failure.

But "fully objective" is a difficult criterion to establish in any case and, as I said earlier, one of the salient features, we often see in whistleblowing cases, is that of an individual who develops something of a campaigning focus on the issue, or who becomes increasingly concerned and focused on the problem over time, and the difficulty with that increasing concern and focus, and that campaigning focus, is that very often the individual in question finds it harder and harder to make that objective analysis as to the degree of seriousness of the failing.

And indeed, this is also an issue we see more generally, from the perspective of people working within an organisation. If what that organisation does is what concerns somebody for the entirety of their working lives, then it is easier for them to attribute exceptional seriousness than it is for the outsider.

So, again, this is a criterion which I urge caution in the interpretation of for a range of reasons, although, if it can be met, it provides a very attractive and much more wide-ranging route through to protection for a disclosure to the media than under Section 43G, because the hurdles of what you must have done first are not required.

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[Slide: "Identity of disclosee"]
Moving on, please Rai. The identity of the disclosee, as I have said before, comes to the forefront in this section. We see this in the Parliamentary debate before the Public Interest Disclosure Act, which amended the Employment Rights Act. came into force: *"The Government firmly believe that where exceptionally serious matters are at stake, workers should not be deterred from raising them. This does not mean that people should be protected when they act wholly unreasonably, for example, by going straight to the press, where there could clearly have been some other less damaging way to resolve this".*

As we can see, this emphasises that policy consideration I referred to before, about ensuring that a disclosure, even if it should be made, causes the least damage possible, and therefore the increasing tiers of obligation on the individual making the disclosure, depending on who they've made that to. And, indeed, as we see in this extract from the Parliamentary debate, the Minister at the time envisaged that going straight to the press would usually be a wholly unreasonable way to proceed.

And we must interpret from that wording of Section 43H, and the regard to be had for the identity of the disclose, that going to the press will often be wholly unreasonable, even if the disclosure is objectively of an exceptionally serious failing.

[Slide: "Identity of disclosee" (Spycatcher)]
Moving on, please Rai. This reflects the position in fact in civil law, going to a breach of confidence, and we see one of the seminal cases on breach of confidence - *Spycatcher* number two - Lord Griffiths' comment that, in some circumstances, "*the public interest might be better served by a limited form of publication, perhaps to the police or some other authority, who can follow up a suspicion of a wrongdoing which may lurk beneath the cloak of confidence. Those authorities will be under a duty not to abuse the confidential information and to use it only for the purposes of their inquiry*."

That said, if we turn over….

[Slide: "Identity of disclosee" (Kay & Mounsey)]
..we see here a number of unreported cases in which the employment tribunal has found that going straight to the press is, in fact, reasonable.

- In *Kay v Northumberland NHS Trust*, the individual in question wrote a satirical open letter to the Prime Minister about the shortage of beds in the hospital.
- In *Mounsey v Bradford*, again a decision against an NHS Trust, it was reasonable to go on television to rebut criticisms of a colleague.

What is I say relevant about both of those cases, is that although they were whistle-blowing cases, as we can see from some of the facts that they contained, these were not cases in which there was much of an issue of confidence at stake. Certainly it is rarely, if ever, confidential information as to there being a shortage of beds in an NHS hospital and, equally, the criticisms of the colleague in question in *Mounsey* had already been made in public.

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So, although these decisions, perhaps, on their face demonstrate a latitude that isn't quite envisaged in the Parliamentary debates and in *Spycatcher*, I think once we look at the substance of the information involved, we see a much clearer application of those same principles. Moving on.

[Slide: "Disclosing after a settlement agreement"]

Of course, most employees will not be making protected disclosures to the media in the course of their employment, partly because they suspect or know that they would not be able to meet any criteria under Section 43G or43H, especially if they're being legally advised, or advised effectively by some other body, but also because they don't wish to jeopardise their employment.

The most common point in my experience for somebody to make these sorts of disclosures - and in the modern world these aren't necessarily disclosures to a journalist, they might be disclosures on social media to the world at large, in the hope of those being picked up by a journalist - is after the employment has come to an end. Indeed, I've also seen a number of cases where not only has the employment come to an end, but the individual in question has signed and very happily, or the employer assumed very happily agreed to sign, at the time of departure, a settlement agreement with non-disclosure provisions.

Those non-disclosure provisions are usually included, obviously, to impute a contractual duty of confidence on the individual, to prevent such disclosures in circumstances where, otherwise, the employer will have no further reach over them, their having left the course of employment and the information in question not objectively having a duty of confidence, independent of the contractual provisions of the settlement agreement.

The usual assumption, or hope, on behalf of the employer is that the employee – or the former employee - won't make a disclosure, partly because they will be in fear of being injuncted by the High Court, but also because they don't want to repay any money offered under a settlement agreement. Very often employers will make it known that the sum being offered is being offered because they are trying to buy the employee's silence.

Now, if we look at the wording of Section 43J, this section applies to any agreement between a worker and his employer, whether a worker's contract or not, including an agreement to refrain from instituting or continuing any proceedings under this Act or any proceedings for breach of contract. This is a provision which may well be cited in terms of a settlement agreement and in terms of action in respect of a settlement agreement.

Now one argument which may be run is that if a non-disclosure clause is void, the employer cannot recover damages, because the worker or former worker is not breaching a valid clause, so the employer cannot recover any proportion of what they paid out as part of that termination. The solution which some employers consider, to ensure that they might be able to retain the confidentiality of the agreement in these circumstances, is apportionment of some of the sums specifically in respect of the confidentiality provisions.

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When we think about this, on the face of it, this might want make sense, because In providing consideration for a settlement agreement, yes, an employer is usually trying to buy the silence of the former employee. But they are usually also trying to prevent disputes going and proceeding to legal action, and there may well be other matters which they are also trying to resolve and, therefore, apportionment might be considered a sensible way forward. However, the danger of a clause, which would apportion a specific sum for confidentiality is twofold.

- On the one hand, if the sum is too low, it simply becomes a paying proposition for the employee to breach the term of the NDA. If £5,000 out of a £30,000 pound settlement is for their silence, they may well take the view that that can sit in a bank account attracting interest until the employer seeks recovery of the same.
- Alternatively, if the sum is too high, there would be a different problem, which is that the employer would find themselves in breach of the rule in contract law against penalty clauses, because that would be considered penal and out of proportion to what the settlement agreement was really about.

Of course, this proceeds on the assumption that the disclosure in the first place would fall under section 43G, or section 43H, and has met all the criteria.

That brings my slides to an end. Moving on now to Heather.

HEATHER ROGERS QC
(audio time code: 56.19)

Well, I can see that we're coming up to our hour, but I think I can get through what I need to say in about 10 minutes. I hope that people who are kind enough to attend can manage to stay a little bit longer. Apologies for barristers and time estimates, but we know what they're like.

Turning to the question for the media, the big question, of course, is are you going to be able to publish, or will the court grant an injunction - and that can be an interim injunction or a final injunction.

And it is interesting, when Jonathan was talking about where the starting point is in Strasburg, if you're thinking about Article 10 is, you start with the freedom and then you have to look for a justification to restrict it, what was going to be necessary, etc - it's not quite that way it's working. It seems to me that you've got the two big ticket items: you've got on the one hand confidentiality - we're really talking about confidential information here – and we've got the interest in disclosure.

They are two big items and the well-known distillation into a single paragraph, which is always lovely when a judge does it, in the *Re S* case: when you've got Article 8 privacy, which of course encompasses reputation, on the one hand, and Article 10 on the other, the court takes the two big rights - and they have got equal status - and then looks at the justification for interfering with or restricting them, and then applies the proportionality test.

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And this is going to be a message that runs through these thoughts about how this works - which is that you have got the big picture issues, but you've got to really drill down into the facts.

[Slide: "The balance – in the FOIA context – ICO guidance"]
Rai, please, going to the next slide. Paras talked about the balance, and this was in the in the context of FOIA, which of course is a specific framework intended really to give a general right of access, as section 1 says, to information that's held by public authorities and it's good that there's a very wide approach to public interest from the ICO.

But, turning to the next slide…

[Slide: "BUT, even so…."]
.. that's followed in the ICO guidance by the recognition to these two sides of the coin: you've got, on the one hand, the big interest in disclosure; but, on the other hand, there's an interest in confidentiality. Giving space for discussion of decisions, so the policy can be made; giving space for investigations to be carried out with integrity, so that they can be effective. And so we've got, even in that context, where you've got as I've said the general right that is about getting information to the public, held by public authorities, you've got that balance kicking in.

[Slide: "The ECHR Article 10 balance"]
Turning over to the next slide, we've just got Article 10. Everybody knows what Article 10 says. It's a qualified right. Jonathan's talked about the balance and you've got there those competing factors: "*in the interests of national security*" being one of them, which is a high end of confidentiality; reputation and the rights of others; and preventing the disclosure of information received in confidence.

On to the next one..

[Slide: "Interim injunctions – s12(3) Human Rights Act 1998 (HRA)"]
Interim injunctions: bit of protection here for someone seeking to publish. It's not the old *American Cyanamid* test, where you start with "is there a serious issue is to be tried"; move on to the balance of convenience; and then game over. There's a recognition that the interim injunction is the game, and it's game over quite often if you fail at that stage, if you want to publish.

The applicant has to show that they are likely to establish at trial that publication shouldn't be allowed. Now that's generally going to mean "*probably*" succeed at trial – "*more likely than not*" to succeed at trial.

There is a bit of flexibility in that for very early stages, where there's a high risk of damage, where the court just wants to hold it over to a return date. There is a bit of flexibility, but basically you have got to prove that you are likely to win at trial.

[Slide: "The s12(4) HRA balance"]

Next slide: again, these are just reminders about where we are. Section 12(4) of the Human Rights Act: if the court is thinking about granting relief which might affect the Convention right to freedom of expression, the court has got to have *particular regard* to the importance of the Convention right.

Well, you know, so how far does that take you? Because the Convention right to freedom of expression is, itself, a qualified right - and, as judges including Sedley LJ have said, you can't think about Article 10 without thinking about Article 8 as well. So it doesn't really take you anywhere, but at least the court has got to think about freedom of expression.

OK, so those very big general issues aside, where are you going to end up, if you end up in court. Next slide.

[Slide: "On the side of confidentiality"]

On the one side, on the side of confidentiality - and of course there's a kind of cultural issue going on here. Judges were lawyers - are lawyers - and they are used to dealing with information in confidence. So there's a high regard for keeping stuff confidential.

And also, if you are a judge dealing with these things, particularly at an interim stage, there's going to be a consciousness of the fact that, once the information is published, confidentiality is destroyed. Now we know that, in the misuse of private information sphere, there's a little bit of a wrinkle about that - it doesn't necessarily go completely. But confidential information, once the necessary quality of confidence is lost, is going to go. So that is a part of the factor in thinking about what's the culture of the court, when you get in there, is thinking what the judge is going to do - it's that temptation, as they say, to "hold the ring" - just keep it going to trial. But, of course, trial means money, time, costs.

If you're looking at confidentiality: what's the nature of the information; how confidential is it - exactly like private information cases. What are you actually talking about here: how sensitive is it, what is the court going to protect.

And in terms of this context - with employee-type disclosures - the court is going to be looking at the obligations which are imposed. And that's been talked about by Paras and by Beth. The implied duty itself will be one matter, but there can be express contractual duties, and then express duties in a settlement agreement. I see these as a hierarchy of duties.

And the higher you go up the tiers, the harder it's going to be to show a public interest reason for publishing.

So skipping on to contractual duties.

[Slide: "Contractual"]

There's a bit of authority to suggest that [a contractual duty of confidence will carry a bit more weight. The *Campbell v Frisbee* case is an example of that – whether, by a contractual duty of confidence, the employer could restrain the employee from making allegations to a tabloid newspaper about what

happened during the course of the employment (such as an allegation that the employer threw a mobile phone at the employee).

The test is whether, in all the circumstances, it is in the public interest that the (contractual) duty of confidence should be breached.]

The *Prince of Wales v Associated Newspapers* case, about the Prince of Wales' diaries, is the lynchpin of how you approach this. You don't just look at whether the information is on a matter of public interest; you've got to say, well, is it so much in the public interest that the duty of confidence owed by contract should be breached.

There's a double whammy: it could all be very well that the whole thing could be, in a general sense, in the public interest. But what you need to get over is to the point that it's *so* in the public interest that the very duty of confidence should be over-ridden.

The *Saab v Dangate* case - which appears on bailii for some reason as "*Angate*" - is an interesting example of this. Where you've got, on the facts, it's people who are private investigators, who are hired and brought in to investigate possible regulatory breaches. And they find them. So they want to go to the regulators. The claimant (who hired them) had failed to show that they had gone to the media. Of course, it's part of the question here - if you're the person seeking to stop this stuff, do you go against the media, or do you go against the person with whom you've got the contract, or possibly both. The public interest failed in that case.

[Slide: "Settlement agreements – Mionis*"]*
Next slide please, Rai. This is just the tip of the iceberg - and I'm sorry if you can hear noise in the background, that's the cat and he's expecting to be fed - in the *Mionis* case, this was an agreement at the end of a defamation claim, but basically the defendant said "I'm not going to publish anything about you ever again" - that had been pretty much where it was. And the court said that was enforceable.

It didn't matter if there was something that – an Article 10 reason, for talking about the claimant again. Once you'd entered into a settlement agreement - and the interesting emphasis in the middle of that paragraph there [on the slide] from *Mionis* - where the relevant contract is in the settlement of litigation, with the benefit of expert legal advice on both sides - there's got to be a strong case. You've got bargaining - you've got parties who conclude a contract, including confidentiality - and the court is really going to uphold it

Rai, we can skip the next one which is just a bit more from *Mionis*:

[Slide: "Mionis (2)"]

[Slide: "ABC v Telegraph Media Group Ltd (Arcadia/Sir Philip Green)"]
And move on to the *ABC* case. And this is one of Jonathan's cases: *ABC v Telegraph Media,* later revealed to be Arcadia and Philip Green.

Again, this is where a whole series of NDAs had been signed. And, again, you've got the court recognising the weight that's going to apply if you've got an obligation of confidentiality in a settlement agreement. Again, it's in the middle of that quote, in the centre [of the slide] – in the sentence starting *"Provided that the agreement is freely entered into, without improper pressure.."* – and I just put a bit of emphasis on *improper* pressure – *"or any other vitiating factor and with the benefit of legal advice"* - basically, the court will enforce it.

There are get-outs there, allowing for disclosures to the police, allowing disclosure to the regulatory bodies - and, of course, any solicitor who is advising on NDAs will have in mind the SRA guidance, issued in March 2018 and updated in November 2020, about what you can and can't do in NDAs

And I will pass on, given the time constraints, without comment, about whether there's really equal bargaining power, or unfair prejudice, in that kind of case.

[Slide: "On the side of publication in the public interest"]
So on the side of the publication in public interest, this is part of my general theme here: you can't just look at the generalities, you've got to look at the specifics. It's a point that Paras made right at the very beginning: the fact that *something* is in the public interest doesn't mean that *everything* is. You've got to drill down into what is the detail.

You've got to look at the information itself. Then there's always this big question of is it in the public interest to disclose it *to the public*. Why not go to the police, why not go to some proper authority? And, of course, you've got the double whammy: if it's gone to the police, or a body that's investigating, why don't you just let them do their job?

And that's a theme that has run for many years – going back to John Francome [the jockey] and the Mirror, trying to publish things, which the court said you can take to the Jockey Club, but you can't tell your readers.

What details can you put in? You can't, as I say, be wiffly waffly about this. I know it was a misuse of private information case, but the Cliff Richard case – Sir Cliff - it was in the public interest to talk about historic allegations of abuse and all of those topics, but it was *not* in the public interest to name a particular person, who hadn't been charged, as being the subject of a search warrant and have helicopters outside his house.

And just a note and a reminder here: that if you're thinking in terms of defamation and the section 4 defence that Jonathan has talked about - you don't just have to think about it at the *beginning* of the case, you've got to look at it *as things change*. You get a complaint from somebody, you get more information, there's an inquiry which reports - you've got to look at whether or not what you originally thought was in the public interest is still in the public interest (if you are continuing to publish).

And the simple message here, which I've written in my copy of the slides, is "THINK". Think before you publish. You've got to think, and keep thinking, about it.

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[Slide: "Other practical issues"]
Some of the practical issues I picked up on the next slide, which I will just skate over very briefly, and I'm going to come back to points (1) and (4).

- The second point I just note here: confidential sources. If you're dealing with somebody and you want to protect them, you've got to be very careful from a media point of view, because of course, the thing is that employers will come after you for disclosure of documents and disclosure of the identity of sources. We've seen it down the years – from Ashworth, Broadmoor, those kind of case, going right back to *X v Morgan Grampian* - trying to find who is the leaker. That is the kind of thing that can happen against the media.

- Third party rights (the third point): just to note that the judge in the *Telegraph* case was very interested in what's the attitude of the complainants. Do *they* want this stuff to be made public, even if the details are anonymised?

So those are the kind of things just have in mind. But flipping to the next slide.

[Slide: "Contacting the subject of the allegations"]
Contacting the subject of the allegations. This is a really big point and an obvious question. In the old days, people might have thought about not going to the subject of the allegations before publication. Why? Because it would give them the chance to apply for an injunction. Why give them the chance?

But more and more, the culture is seen - and this goes back again to the culture of the courts: it's basic fairness to give somebody the chance to comment (or apply for an injunction) before you publish something. And more and more, it's being seen not just by the courts, but by journalists, as being a basic requirement of good journalism. What are the ethics of journalism that Strasburg talk about? What is the duty to verify, which ordinarily exists? Do you *always* have to go to the subject before publication?

Now, one of the things that *Serafin* did in the Supreme Court, was to make absolutely plain that it is *not* an invariable requirement of a section 4 defence [in the Defamation Act 2013] to go to the claimant. But, they go on to say, that it's always going to be considered. Essentially, you have just got to think about it: do I have to go to the claimant and, if not - I say the claimant, but they are not the claimant yet, it is the subject of the allegation - do I need to contact them? If not, why not? Is it because they won't know - they won't be able to say - I can't contact them – they won't speak to us. There's got to be, I think, a good reason not to contact, before you'll get away with it.

And as the *Lachaux* case – Jonathan's recent case - shows, failure to contact the claimant before publication can be fatal. The internal code of one of the newspapers said it's good journalistic practice for any potentially damaging stories to be put to the subject before publication. A whistle-blowing story, almost by definition, is going to be damaging.

If your own internal code says you should go, you've got to have a really good reason not to go. They hadn't thought about it – or, at least, they couldn't show that show that they had.

Think point - message point: know your own codes. Look at the professional standards to which you are subject.

[Slide: "Keeping notes and records"]
Penultimate slide, please Rai. This is a real trend now about keeping notes and records: can you document your thinking in terms of public interest?

Nicklin J, who is now in charge of the Media and Communications List, and Warby J, have both said in recent cases how important contemporaneous notes are. Now in *Lachaux* - I recommend a read of this, it's recent, it's a slightly sad story - journalists giving evidence some years after, without any contemporary documents – or virtually no contemporaneous documents (two documents and a few emails) - and the judge takes the approach of saying: look, in almost any other sphere, people have to document their decisions – lawyers, doctors, all sorts of people have to document - and it's "*not unrealistic*" to expect documents be available to record, or "*at least shed some light on*", decisions as to what was identified [as being in the public interest].

Now the judge accepted in that case that the journalists were trying to give it an honest account. But the impression from *Lachaux* – and also from *Sicri*, which was Warby J (as he then was) - you've got the sensation that the court is a bit sceptical about whether you really thought, as a media organisation, you really thought about this pre-publication. Because if you had, you should document it in some way.

And there's that slight impression that the lawyers have come up with a defence - and they've tried to run it - and then you get the witnesses, in their witness statements, trying valiantly to support it - but really it's a (gosh, almost use a bit of Latin there, it's *post hoc*) it's an after the event construction, rather than a genuine reflection of what happened at the time.

So notes and records can be useful. I think this is, for me, an instance of real cultural change.

And then finally, the very last slide, just to note:

[Slide: "And just to note – public interest and official secrets"]
We've been talking about civil remedies. There was a question, in fact, on the chatline about whether or not there can be a breach of the Official Secrets Act. The short answer to that is "yes". It depends - I mean, we obviously don't have time today to talk about the how the structure the OSA works - but there can be a criminal liability.

Just to note this: the Government is consulting at the moment on the Law Commission's proposal. The Law Commission, after a lot of consultation, came up with the idea, there should be a public interest defence. Great idea. The Government doesn't think there should be: *"We are not convinced the Law Commission's recommendations strike the right balance."*

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If anybody is interested in that area, and has the time to respond to the consultation, the links are there [on the slide]. It's open until the 22nd of July. And I think it would be - in terms of public interest and in giving it real welly in the criminal sphere - there's an opportunity there.

Now, I think even I ran over my time - sorry about that. We're 5.15pm. I don't know if we've got any pressing questions – Paras, you were monitoring the Q&A?

PARAS GORASIA
(audio time code: 1.13.37)

Yes, Heather, I think you picked up on it: one of our attendees asked about disclosure potentially breaching other obligations, and I know you touched on that in your talk.

Just for the individual who posited that question: from an employment perspective, you'll appreciate section 193 excludes members of the intelligence services from protection for whistle-blowing. But if you're not talking about potential employee or worker for one of those agencies, potentially, the OSA would impose criminal liability because there isn't a public interest exemption, as far as I'm aware, within the Act itself.

But, aside from that, Heather - you're quite right, we've overrun a little bit. So I think, with that, we can move on and let everyone go.

HEATHER ROGERS QC

Well, let's just end with a big "thank you". Thanks, obviously, to Paras, Johnathan and Beth. And to Rai, who, behind the scenes, has been organising all of this. And thanks to all of those of you who've attended. We hope to hear from you soon, and I am sure we can carry on the dialogue, after this session.

So thanks, everybody, and goodbye.