

**CONSULTATION ON THE INTERIM GUIDELINES FOR
PROSECUTORS ON ASSESSING THE PUBLIC INTEREST IN
CASES AFFECTING THE MEDIA**

CONSULTATION QUESTIONS

The consultation closes on 10 July 2012. Please let us have your response by that
Responses can be submitted by email to HQ.mediaguidelines@cps.gsi.gov.uk

When responding, it would be helpful if you could complete this pro forma with the
requested information (see Consultation Process document for further information).

Please fill in your name and address, or that of your organisation if relevant. You may
withhold this information if you wish, but we will be unable to add your details to our
database for future consultation exercises.

Contact Details:

Please supply details of who has completed this response.

| | |
|--|--------------------------------|
| Response completed by (name): | CRIMINAL BAR ASSOCIATION |
| Position in organisation (if appropriate): | |
| Name of organisation (if appropriate): | CRIMINAL BAR ASSOCIATION |
| Address: | 289-293 HIGH HOLBORN LONDON |
| Postcode: | WC1V 7HZ |
| Contact phone number: | 0207 611 1475 |
| Contact e-mail address: | |
| Date: | 9TH JULY 2012 |

In what capacity are you responding (please enter Y in the appropriate box)

| | |
|---|--------------------------|
| As an individual | <input type="checkbox"/> |
| As a journalist or on behalf of a journalist | <input type="checkbox"/> |
| As another member of the media | <input type="checkbox"/> |
| As, or on behalf of, a member of the legal profession | <input type="checkbox"/> |
| On behalf of a public sector organisation | <input type="checkbox"/> |

Other (please specify)

SPECIALIST BAR ASSOCIATION

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QUESTION 1

At paragraph 28 we have identified the approach to be taken. We have set the relevant question out again below.

Please indicate, using the drop down menu whether you agree that it is a question which should be considered.

Please can you reply using “Y” for yes and “N” for no; if you do not want to let us have your views, please ignore the drop down menu in the appropriate box.

| | |
|--|---|
| Whether the public interest served by the conduct in question outweighs the overall criminality? | Y |
|--|---|

QUESTION 2

At paragraph 31 we have identified the factors that we consider to be relevant in deciding whether the public interest is served. We have set out those factors again below.

Please indicate alongside each factor, using the drop down menu, whether you agree that it is a factor which should be considered.

Please can you reply using “Y” for yes and “N” for no; if you do not want to let us have your views on any particular factor, please ignore the drop down menu in the appropriate box.

| | |
|--|---|
| (a) Conduct which is capable of disclosing that a criminal offence has been committed, is being committed, or is likely to be committed | Y |
| (b) Conduct which is capable of disclosing that a person has failed, is failing, or is likely to fail to comply with any legal obligation to which s/he is | Y |
| (c) Conduct which is capable of disclosing that a miscarriage of justice has occurred, is occurring or is likely to occur | Y |
| (d) Conduct which is capable of raising or contributing to an important matter of public debate | Y |
| (e) Conduct which is capable of disclosing that anything falling within any one of the above is being, or is likely to be, deliberately concealed | Y |

QUESTION 3

If you consider that there are other factors relevant in deciding whether the public interest is served, please set them out here:

We consider that a further criteria should be included which will assist in deciding whether the public interest is served, namely whether the conduct in question is capable of disclosing that a person in public office or in a position of National or Local importance is deceiving or misleading the public at large. If this is so, we are of the view

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QUESTION 4

At paragraph 33 we have identified the factors that we consider to be relevant in assessing the criminality. We have set out those factors again below.

Please indicate alongside each factor, using the drop down menu, whether you agree that it is a factor which should be considered.

Please can you reply using “Y” for yes and “N” for no; if you do not want to let us have your views on any particular factor, please ignore the drop down menu in the appropriate box.

| | |
|--|---|
| (a) The impact on the victim(s) of the conduct in question, including the consequences for the victim(s) | Y |
| (b) Whether the victim was under 18 or in a vulnerable position | Y |
| (c) The overall loss and damage caused by the conduct in question | Y |
| (d) Whether the conduct was repeated or likely to continue | Y |
| (e) Whether the public interest in question could have been served by some lawful means | Y |
| (f) Whether the conduct in question included the use of threats, harassment or intimidation | Y |
| (g) The impact on any course of justice, for example whether a criminal investigation or proceedings may have been put in jeopardy | Y |
| (h) The motivation of the suspect insofar as it can be ascertained (examples might range from malice or financial gain at one extreme to a belief that the conduct would be in the public interest at the other) | Y |
| (i) Whether the public interest in question could equally well have been served by some lawful means | Y |

QUESTION 5

If you consider that there are other factors relevant in assessing the criminality, please set them out here:

The Criminal Bar Association take the view that criminality can also be assessed by considering whether the conduct was conducted by an individual or was part of a corporate strategy. (word count expired, to continue in question 6.)

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QUESTION 6

Please let us know here if you have any other comments that you would like us to consider:

Q5 Continued: The conduct should be considered to be in a higher bracket of criminality if it has been undertaken as a corporate and/or systemic approach in much the same way as the law considers culpability under Health and Safety legislation. Furthermore, we are of the opinion that consideration should be given as to whether the

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