

Introduction to Special Issue: Threats to Media Freedom in the United Kingdom

Media freedom in the United Kingdom has come under scrutiny in recent years. In 2023, the publication of findings of a survey categorised the UK's environment for media freedom as only 'Partially Open'. The negative ranking was based on modelling data from numerous sources and published by Index on Censorship.¹ There is no denying that journalism in the UK is facing numerous challenges, which have been compounded in recent years due to the development of technology. These challenges include the rise of mis/disinformation, which has become a growing concern for journalists trying to fight it, often at the detriment of their own safety.² Online harassment has become a particular issue for journalists, with a survey by the Media Lawyers Association in 2020 noting that 92% of members who had responded reported that abuse of journalists had increased, with the two most common forms of abuse being online abuse and harassment.³ Women journalists are more likely to be subject to online harassment than their male counterparts⁴ and in some instances, online abuse leads to offline attacks against journalists.⁵ We have seen journalists engage in self-censorship because of these attacks that are taking place on them,⁶ which can lead to a chilling effect on freedom of expression. In addition to this, newsrooms are facing technological challenges, such as the development of Artificial Intelligence, and concerns about how this can be used in newsrooms

¹ Index on Censorship, 'Major new global free expression index sees UK ranking stumble across academic, digital and media freedom' (Index on Censorship, 25 January 2023) <<https://www.indexoncensorship.org/2023/01/major-new-global-free-expression-index-sees-uk-ranking-stumble-across-academic-digital-and-media-freedom/>>

² T.J. Thomson, Daniel Angus, Paula Dootson, Edward Hurcombe & Adam Smith, 'Visual Mis/disinformation in Journalism and Public Communications: Current Verification Practices, Challenges, and Future Opportunities' [2022] *Journalism Practice* 16(5) pp. 938-962; Sacha Altay, Manon Berriche and Alberto Acerbi, 'Misinformation on Misinformation: Conceptual and Methodological Challenges' [2023] *Social Media + Society* 9(1) pp. 1-13; Ema Kušen and Mark Strembeck, 'Politics, sentiments, and misinformation: An analysis of the Twitter discussion on the 2016 Austrian Presidential Elections' [2018] *Online Social Networks and Media* 5 pp. 37-50; Elizaveta Gaufman, 'The Trump carnival: popular appeal in the age of misinformation' [2018] *International Relations* 32(4) pp. 410-429; May O. Lwin, Si Yu Lee, Chitra Panchapakesan and Edson Tandoc, 'Mainstream News Media's Role in Public Health Communication During Crises: Assessment of Coverage and Correction of COVID-19 Misinformation' [2023] *Health Communication* 38(1) pp. 160-168; Darina Sareliska and Joy Jenkins, 'Truth on Demand: Influences on How Journalists in Spain, and Bulgaria Responded to Covid-19 Misinformation and Disinformation' [2023] *Journalism practice* 17(10) pp. 2178-2196

³ Beth Grossman and Caoilfhionn Gallagher QC, 'Combating Online Abuse and Harassment: A Legal Guide for Journalists in England and Wales' (*Media Lawyers Association*, June 2021) <<https://medialawyersassociation.files.wordpress.com/2021/06/combating-online-harassment-and-abuse-23.06.2021-09.10-5.pdf>>

⁴ International Center for Journalists, 'The Chilling: A global study of online violence against women journalists' (International Center for Journalists, November 2022) <https://www.icfj.org/sites/default/files/2023-02/ICFJ%20Unesco_TheChilling_OnlineViolence.pdf>

⁵ International Center for Journalists, 'Online Violence Early Warning System' (International Center for Journalists, 2023) <<https://www.icfj.org/our-work/online-violence-early-warning-system>>

⁶ International Center for Journalists, 'The Chilling: A global study of online violence against women journalists' (International Center for Journalists, November 2022)

without damaging public trust in journalism,⁷ all on top of them facing financial cuts due to a drop in revenue.⁸

With these numerous issues, it is clear that the protection of journalism is of the utmost importance and the current Labour government has recognised this to be the case, with the Prime Minister Sir Keir Starmer writing in *The Guardian* that journalism is the lifeblood of democracy.⁹ Indeed, journalism in the UK has often been protected through legislation, such as defences in the Defamation Act 2013 and the passing of the Human Rights Act 1998 which incorporated the European Convention on Human Rights (ECHR) into UK legislation, with Article 10 recognising a specific right to freedom of expression. Furthermore, case law has often seen journalism afforded specific protections, such as qualified privilege (prior to the passing of the Defamation Act 2013) and judges have often been keen to emphasise the important watchdog role that journalism plays in society.¹⁰

In the first article of this special issue, Tong and Horton examine judicial discourse surrounding journalism since the landmark case of *Reynolds v Times Newspapers*¹¹ by using an n-gram analysis and qualitative analysis of discourse about journalism in 228 journalism-related judgments from 2002 to 2023. Findings suggest that there has been a fluctuating increase in cases, particularly those involving defamation and libel, and a rise in non-news organisation as sole or primary defendants. While judicial discourse acknowledges the important role that journalism plays in society, findings suggest that this acknowledgement has weakened over time and instead there is more of a focus on journalist's responsibilities, ethics and the role of journalism as a watchdog, particularly emphasising Article 10(2) ECHR which acknowledges that freedom of speech is not an absolute right: it comes with responsibilities. This changing discourse, as Tong and Horton note, has the potential to impact media freedom in the UK by influence what journalists are able to cover and shape perception of those who might pursue legal action against journalists and news media.

Alongside changes in judicial discourse, there have been changes in the legislative arena with the development of technology. The introduction of the Online Safety Act 2023 was designed to put in place new rules for social media and search engines, enforcing a duty of care on them to protect users, particularly younger people, from harmful content that is published online.¹² In his opinion piece, Sir Keir Starmer heralded the Act, noting that it 'will introduce new

⁷ Charlotte Tobitt, 'How News UK and Reach are using AI in the newsroom' (Press Gazette, 26 September 2024) <<https://pressgazette.co.uk/publishers/digital-journalism/how-news-uk-and-reach-are-using-ai-in-the-newsroom/>>; Matthew Smith, 'AI in journalism: how would public trust in the news be affected?' (YouGov, 11 April 2024) <<https://yougov.co.uk/technology/articles/49105-ai-in-journalism-how-would-public-trust-in-the-news-be-affected>>

⁸ Francois Pierre Nel & Coral Milburn-Curtis, 'Down, but not out: journalism jobs and media sustainability in the UK' in Timothy Marjoribanks, Lawrie Zion, Penny O'Donnell and Merryn Sherwood. (eds) *Journalists and Job Loss* (2021, Routledge).

⁹ Sir Keir Starmer, 'Journalism is the lifeblood of British democracy. My government will protect it', *The Guardian*, 28 October 2024 at <<https://www.theguardian.com/commentisfree/2024/oct/28/keir-starmer-journalism-lifeblood-british-democracy-labour>>

¹⁰ *Reynolds v Times Newspapers Ltd* [1999] 4 All ER 609.

¹¹ *ibid.*

¹² GOV.UK, 'UK children and adults to be safer online as world-leading bill becomes law' (GOV.UK, 2023) <<https://www.gov.uk/government/news/uk-children-and-adults-to-be-safer-online-as-world-leading-bill-becomes-law>>

protections from abuse, as well as respecting recognised news publisher content'.¹³ However, concerns still exist surrounding the Act's ability to protect journalists from harassment and there are no specific protections for journalists in the Act.¹⁴ Alongside concerns surrounding journalists' safety, the Act also gave rise to concerns surrounding the protection of journalism itself, particularly in relation to the following issues including what is considered to be journalistic content under the Act's definition and also the protection of confidential sources, which could be threatened under s.122. These issues are discussed within two of the articles in the special issue.

In their pieces surrounding the Online Safety Act, Townend and Kira examine how, despite the Act attempting to protect journalism, it may, in fact create new challenges by providing digital platforms with the power of acting as gatekeepers and deciding who benefits from the privileges afforded by the Act as it is these platforms that now have a duty placed on them to moderate harmful content. Indeed, concerns surrounding whether or not these platforms can be effective moderators is questioned, particularly so as in the past there have been criticisms surrounding their role in moderation.¹⁵ Sections 18 and 19 of the Act focus on the protection of 'news publisher content' and 'journalistic content' and emphasise a need to protect journalism, but as Townend and Kira discuss, it is not necessarily clear who is entitled to these protections and the powers afforded to the platforms to regulate content has the risk of making them gatekeepers of journalism. They state how this differs from other jurisdictions, particularly Canada and Australia, and cite the dangers that this can bring.

In addition to concerns surrounding the role that platforms create, issues in the Act surrounding the lack of protection for the work journalists undertake has also been highlighted. In the second article focusing on the Online Safety Act, Gerbrandt sets out the Act's shortfalls and how its lack of protections for journalists has the potential to act as a threat to journalism and media freedom. In particular, Gerbrandt notes that the main threats from the Act include Ofcom's potential to break end-to-end encryption which could impact investigative journalism, particularly so in relation to deterring whistleblowers from coming forward. Gerbrandt also details how the Act provides a lack of specific protections for journalists who are subject to online abuse. The article argues that there is a need for institutional protections for the press based on ethical processes of journalism with effective oversight.

Alongside the Online Safety Act 2023 being a predominant issue, in recent years there has been polarising debate surrounding another threat that the industry faces: Strategic Lawsuits against Public Participation (SLAPPs). In his editorial piece, the Prime Minister emphasised

¹³ Sir Keir Starmer (n 9).

¹⁴ Ricki-Lee Gerbrandt, 'Media freedom and journalist safety in the UK Online Safety Act' [2024] *Journal of Media Law* 15(2) 179-212; ARTICLE 19, 'UK: Online Safety Bill is a serious threat to human rights online' (ARTICLE 19, 25 April 2022) < <https://www.article19.org/resources/uk-online-safety-bill-serious-threat-to-human-rights-online/>>; Madeline Earp, 'How UK Online Safety Bill threatens encryption, secure communication, and reporting on migration' (Committee to Protect Journalists, 27 January 2023) < <https://cpj.org/2023/01/how-uk-online-safety-bill-threatens-encryption-secure-communication-and-reporting-on-migration/>>

¹⁵ Big Brother Watch, 'Five Things You Need to Know About the Online Safety Bill' (Big Brother Watch, 3 October 2023) <<https://bigbrotherwatch.org.uk/2023/10/five-things-you-need-to-know-about-the-online-safety-bill/>>

that SLAPPs need to be tackled¹⁶ but did not state how the current Labour government intend to do this. An attempt to address SLAPPs came from the passing of amendments to the Economic Crime and Corporate Transparency Act 2023, however, this has been met with some criticism as it focuses solely on economic crimes as opposed to public interest journalism more broadly and also has a subjective test surrounding how to identify a SLAPP.¹⁷ While there are those claiming that there is a SLAPP problem in the UK, others state that such a problem is exaggerated and that the UK is not a 'libel hotspot'¹⁸ as s.9 of the Defamation Act 2013 was introduced to address libel tourism and, in 2022, the Royal Courts of Justice noted that there had been a drop in the number of defamation claims issued in London.¹⁹ Despite the contestation of the issues surrounding SLAPPs, the amendment to legislation was passed prior to the 2024 General Election. In their article for this special issue, Coe, Moosavian and Wragg examine the efficacy of policy and legislation responses to SLAPPs in Europe, England and Wales. They examine how the Economic Crime and Corporate Transparency Act 2023 is out of step with European approaches and that its remit is too narrow to tackle SLAPPs. They examine the use of early dismissal mechanisms to root out SLAPP claims at an early stage and discuss how the provisions in the Act are limited, putting forward an alternative model dedicated towards early dismissal of SLAPP cases.

Certainly, there are a number of press freedom issues within the UK and this special issue does not detail an exhaustive list of the legislative developments that could impact journalism,²⁰ but it does highlight particularly problematic pieces of legislation and how journalism protections have the potential to be weakened over time as a consequence of these changes. Addressing these legislative issues will not be a magic bullet for journalism. While it is important that legislation is addressed to protect media freedom, we also need to be aware that other avenues, such as the development of media literacy, should be utilised to try and address issues surrounding trust in journalism.²¹ Nonetheless, with the current government reaffirming their desire to protect media freedom and journalism, addressing the issues raised within this special issue seems paramount as, in an age of mis/disinformation, protecting good journalism is imperative.

¹⁶ Sir Keir Starmer (n 9).

¹⁷ UK Anti-SLAPP Coalition, 'The UK Anti-SLAPP Coalition calls for the Anti-SLAPP PMB to be amended to ensure it protects everyone speaking out in the public interest' (UK Anti-SLAPP Coalition, 28 February 2024) <<https://antislapp.uk/2024/02/20/anti-slapp-pmb-amendments/>>; Owen Meredith, 'NMA Responds To Second Reading of SLAPP Bill' (*News Media Association*, 23 February 2024) <<https://newsmediauk.org/blog/2024/02/23/nma-responds-to-second-reading-of-slapp-bill/>>

¹⁸ Defamation tends to be the main vehicle for bringing forward SLAPP claims

¹⁹ Ministry of Justice, 'Post-Legislative Memorandum: The Defamation Act 2013' (Ministry of Justice, October 2019) <<https://assets.publishing.service.gov.uk/media/5d9f31ceed915d399eb2165f/post-legislative-memorandum-defamation-act-2013.PDF>>

²⁰ See Centre for Freedom of the Media, 'Media Freedom Under Attack: Examining legislative threats to media freedom in the United Kingdom' (Centre for Freedom of the Media, January 2025) <<https://cfom.org.uk/wp-content/uploads/2025/01/Threats-to-Media-Freedom-Report-.pdf>>

²¹ King's College London, 'UK has internationally low confidence in political institutions, police and press' (King's College London, 30 March 2023) <<https://www.kcl.ac.uk/news/uk-has-internationally-low-confidence-in-political-institutions-police-and-press>>