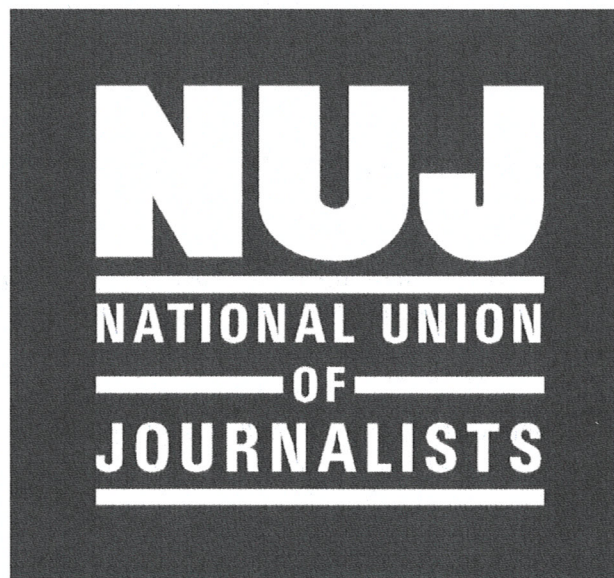


**Review of the
Prohibition of Incitement to Hatred Act 1989**

Submission from the National Union of Journalists



December 2019

Introduction: The National Union of Journalists, UK and Ireland represents the majority of full time, professional journalists working in the Republic of Ireland across the print, broadcast and digital sectors and in new agencies.

Founded in 1907 the union, as the voice of journalists and journalism in the UK and Ireland, has 30,000 members.

The union represents full time staff and freelance journalists including reporters, editors, production journalists, photographers, videographers and content creators as well as those working in public relations, book publishing.

The NUJ welcomes the review of the Prohibition of Incitement to Hatred Act 1989 and we have indicated a willingness to take part in the consultation process through participation in a public workshop.

This submission would form the basis for our contribution to any workshop. Prof Michael Foley, Vice Chair, NUJ Ethics Council and Séamus Dooley, Assistant General Secretary/Irish Secretary look forward to representing the NUJ in the proposed consultative workshops.

As a union representing media workers, we have a strong commitment to defending the right to freedom of expression and would always be alert to the danger of the unintended consequences of inhibiting or curtailing press freedom in a manner which could be detrimental to democracy.

The right to freedom of speech is cherished by journalists. The right to freedom of expression brings with it responsibilities which are recognised by the NUJ.

NUJ members are required to subscribe to our **Code of Conduct, (Appendix 1)** and the NUJ in Ireland was a founder member of the Press Council of Ireland, (PCI) contributing significantly to the development of the PCI Code.

Point 9 of the NUJ Code of Conduct States: *“A journalist “produces no material likely to lead to hatred or discrimination on the grounds of a person’s age, gender, race, colour, creed, legal status, disability, marital status, or sexual orientation.”*

9P T lead to hatred

This principle is reflected in the more recent Code of Practice of the Press Council:

(8) “The press shall not publish material intended or likely to cause grave offence or stir up hatred against an individual or group on the basis of their race, religion, nationality, colour, ethnic origin, membership of the travelling community, gender, sexual orientation, marital status, disability, illness or age.”

The work of ethical journalists must be predicated on these principles.

Article 10 of the European Convention on Human Rights sets out the duties and responsibilities inherent in the exercise of the right to freedom of expression.

Article 10 of the Universal Convention on Human Rights states:

Article 10

Freedom of Expression

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This Article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

2. The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

The NUJ acknowledges the importance of striking a balance between freedom of speech and the regulation of speech which is intended to stir up hatred or prejudice against an individual or groups on the basis of defined characteristics and without any claim to serving the public interest.

The right to express controversial views, to express unpopular opinions and even to express views which some people may find offensive is important to a free press and to democracy.

Limiting hate speech is not about avoiding giving offence or curtailing the right to freely express an opinion but about seeking to prevent or to punish the abuse of the right to freedom of expression in a manner which has harmful consequences. Often it is not the opinion that might be harmful but the manner it is expressed.

Many of the challenges being considered by the review are also being considered in the United Kingdom and attention is drawn to the submission of the NUJ to the White Paper on Online Harm published by the NUJ in June 2019 (Appendix 2).

Role of the media: It is recognised that the review is part of a wider programme aimed at addressing the problem of intolerance and hatred.

An open, tolerant democracy also needs a thriving media. Citizens are entitled to a diversity of media and to independent, verified news and current affairs to help inform their decisions and opinions.

The NUJ has long called for a Commission on the Future of the Media in Ireland which would address issues of ownership and control, diversity, plurality and training as well as media literacy.

The media performs a vital role in calling power to account and in challenging public figures and powerful people who directly or indirectly exploit ignorance, fear and intolerance. In the recent bye-elections the media played a significant role in alerting the public to racist comments made by candidates.

The promotion of strong independent media and the protection of public serving broadcasting is vital to democracy.

In seeking to address the failure of social media platforms to adequately address online abuse it is important that the rights of independent, ethical journalists and journalism are not compromised or that journalism does not become collateral damage in the belated attempt to enforce standards and compliance by social media conglomerates.

As noted in the introduction to the Review the law on incitement to hatred sits within a wide body of international and Irish law designed to protect against racism, harassment, discrimination and defamation.

The NUJ draws attention to the long overdue implementation of libel reform and to the chilling effect of the current libel regime on media freedom. We also note that whilst the good name of those who can afford to take an action is fully protected both in the Constitution and law, the safety of vulnerable people who are abused online or suffer hatred is not sufficiently protected from the cause of the harm done to them.

Platform or publisher?

Social media providers such as Facebook, Google and Twitter must be forced to accept that they are publishers of material and made amenable to the same regulations as broadcasters and publishers of newspapers, magazines and books. The contention that social media providers are merely platform providers is unacceptable and is not a sustainable argument.

Prohibition of Incitement to Hatred Act 1989: The legislation enacted in 1989 made incitement to hatred (hate speech) a crime in Ireland. The context in which the legislation was introduced is important.

The legislation does not take into account the digital revolution or the dramatic changes wrought by the emergence of social media platforms and the prevalence of unmediated comments devoid of ethical or regulatory oversight.

In considering our response to the proposed change in legislation the Irish Executive Council of the NUJ hosted a seminar in Dublin on 16th November 2019. Delegates and observers provided concrete examples of the damage caused by social media posts, in particular to women journalists who are frequently the subject of abuse on Twitter.

In considering the preliminary issues outlined in the Review we offer the following observations:

1) The list of protected characteristics covered by the Act and whether these should be changed: The current Act deals with incitement on the grounds of race, colour, nationality, religion, ethnic or national origins, membership of the travelling community and sexual orientation.

The NUJ would be opposed to extensive changes in this section. Protected characteristics must be unambiguous. An exhaustive list is likely to include groups not easily identifiable and thus lead to significant confusion and ultimately make the law unworkable.

There is a logic in including “disability”, consistent with the Equality Act, the NUJ Code of Conduct and the Press Council code.

2) The use of the term ‘hatred’ in the Act and whether this should be changed: Under the 1989 Act, in order to be an offence, the words or material must be intended or likely to stir up “hatred” against one of the protected list of groups.

It is accepted that this is a high threshold and the NUJ believes that such a bar is required in order to achieve the necessary balance between regulating harmful abuse of the right to freedom of expression and the fundamental right to hold and express opinions.

From the perspective of the media a high bar is especially important in the context of the role and function of the media and the national and international protections enjoyed.

The Act is designed to deal with hateful behaviour which is of such an order that it causes harm and is deserving of legal punishment through criminal prosecution.

We do not believe that the term “hatred” is weaker than “prejudice” or “hostility”.

3) Whether the wording of the 1989 Act is adequate to deal with online communications:

The NUJ believes the legislation should be amended to make explicit reference to online speech.

The 1989 Act is understood to cover incitement via modern technologies and online behaviour but it is demonstrably clear that the law has not been effective in controlling online behaviour.

A more explicit wording is necessary. Providers of such platforms must be regarded as publishers and carry the same explicit liabilities as broadcasters and publishers of newspapers and magazines.

We note that the 1989 Act refers to distributing written material to the public or a section of the public.

Social media posts must be defined as public posts and there is a need for clarity on this issue.

Posts on social media sites can be theoretically limited to followers or ‘friends’ and could therefore be argued not to be public. The impact of hateful comments on such posts can be extremely damaging and the NUJ has a particular concern at the targeting of female journalists on comment sections of social media sites.

These are public comments and should be legally recognised as such if hurtful, hate speech is to be regulated in a meaningful way.

4) Proving intent or likelihood:

It is also accepted that the phrase “intended or likely to stir up hatred” is a high threshold.

The NUJ believes that such a threshold is necessary for a criminal prosecution. Inadvertent actions in any field can have adverse consequences.

The need to prove “intent or likelihood” is important to the media in terms of ensuring that only deliberate attempts to harm through abuse of the right to freedom of expression are subject to prosecution.

If the intention is to avoid incitement to hatred the current wording is adequate. Any amendment could alter the balance in a manner which would damage the right to free expression.

Appendix 1

NUJ code of conduct

A journalist:

1. At all times upholds and defends the principle of media freedom, the right of freedom of expression and the right of the public to be informed.
2. Strives to ensure that information disseminated is honestly conveyed, accurate and fair.
3. Does her/his utmost to correct harmful inaccuracies.
4. Differentiates between fact and opinion.
5. Obtains material by honest, straightforward and open means, with the exception of investigations that are both overwhelmingly in the public interest and which involve evidence that cannot be obtained by straightforward means.
6. Does nothing to intrude into anybody's private life, grief or distress unless justified by overriding consideration of the public interest.
7. Protects the identity of sources who supply information in confidence and material gathered in the course of her/his work.
8. Resists threats or any other inducements to influence, distort or suppress information and takes no unfair personal advantage of information gained in the course of her/his duties before the information is public knowledge.
9. Produces no material likely to lead to hatred or discrimination on the grounds of a person's age, gender, race, colour, creed, legal status, disability, marital status, or sexual orientation.
10. Does not by way of statement, voice or appearance endorse by advertisement any commercial product or service save for the promotion of her/his own work or of the medium by which she/he is employed.
11. A journalist shall normally seek the consent of an appropriate adult when interviewing or photographing a child for a story about her/his welfare.
12. Avoids plagiarism.

The NUJ believes a journalist has the right to refuse an assignment or be identified as the author of editorial that would break the letter or spirit of the NUJ code of conduct.

The NUJ will support journalists who act according to the code.

NUJ code of conduct was updated in 2011.

Appendix 2



NUJ submission to the Online Harms White Paper

June 2019

The National Union of Journalists, founded in 1907, is the voice for journalism and journalists in the UK and Ireland. It has 30,000 members and represents journalists working in broadcasting, newspapers, news agencies, magazines, book publishing, public relations, photography, videography and digital media.

Introduction

The Online Harms White Paper is far-reaching and ambitious in scope. It seeks to find ways for the UK government to protect its citizens from the ills caused by the internet and the consequences of the vast global reach and power of private companies such as Facebook, Google and YouTube. It attempts to address how these companies should be responsible for the material they publish/host on their platforms. As consensus appears to be growing for regulation and a regulator who sets codes of conduct, the NUJ, together with organisations such as the Society of Editors and civil liberty groups, calls for care to be taken that press freedom and freedom of expression do not become collateral damage in the battle to limit the reach of child pornographers, terrorist organisations and Moldovan misinformation factories. The German Network Enforcement Act, commonly known as NetzDG, is said to have proved successful in forcing hate speech off social media platforms; however, media commentators are already claiming it has had a “chilling” effect. (The NUJ is unable to comment on this, but clearly a balance between freedom of speech and regulation is essential).

A thriving democracy needs a thriving press. Citizens making decisions in democratic processes must be properly informed, require access to a plurality of voices and need to be able to trust – or at least have clarity about – the source of the information they receive. The NUJ’s submission will address the effect that Twitter and other social media messaging services have had on our members, the way they have been used to harass and verbally abuse journalists, and women journalists in particular. Having a presence on Twitter is vital for many journalists; they need it for their work. The White Paper quotes the International Federation of Journalists survey of female journalists which found two-thirds had experienced online abuse – death or rape threats, sexist comments, cyberstalking, account impersonation and obscene messages and two-fifths admitted to self-censorship in the face of this abuse. The Guardian’s 2016 research also showed that of the 70 million comments

left on its site over a 10-year period, women and black men were much more abused than the majority of the writers – white men.

The White Paper is an attempt to tame the Wild West of the internet, but while new laws may be needed to catch up with new technology, legislation is already in place to deal many of the transgressions the internet platforms allow. There are laws to combat hate crime, copyright breaches, there are those on privacy, defamation, obscenity, intellectual property edits, regulations against indecency and terrorism. They just need to be applied equally to people using internet platforms and, where appropriate, the owners of the platforms.

The online harm of journalism

1. Journalism has been radically transformed by the arrival of the internet. It has radically transformed the way news and information is gathered and disseminated. It has radically transformed newspaper production. It has been the wrecking ball of a business model in which adverts paid for the news and editorial and advertising were separate beasts. Advertisers have flocked to Facebook and Google while newspaper revenues have plummeted. In her 156-page report on the UK news industry, Dame Frances Cairncross highlighted how the number of “fulltime frontline” journalists had fallen from 23,000 in 2007 to 17,000 today, that newspaper annual advertising spend dropped by 69 per cent (£3.2 billion) and annual circulation revenue declined by 23 per cent (£500 million). Facebook and Google are expected to take 71 per cent of all the money spent in the UK on digital advertising by 2020, according to OC&C Strategy Consultants, which also predicted that traditional broadcasters, such as the BBC, ITV and Sky, could lose a combined £1bn per year if rival services from Amazon, Facebook and YouTube became dominant players in the TV industry during the next decade.
2. Cairncross was told how the reduction in journalist numbers had affected the quality of news and the closure of titles had further reduced media plurality. Research by the Media Reform Coalition shows that three companies dominate 83 per cent of national newspaper circulation; five companies account for 80 per cent of national newspaper newsbrand reach; five companies command 80 per cent of local newspaper titles; and two companies own nearly half of all commercial analogue radio stations.
3. The way people receive and consume news has changed. Half the people who own voice-activated digital appliances use them for news and information. If they want to know what’s news, they ask Alexa or they get information from Facebook, Instagram, Google, iTunes, podcasts, WhatsApp, Snapchat and YouTube. As part of her review, Cairncross recommended a **News Quality Obligation**: online platforms would be under an obligation or “regulatory supervision” requiring them to improve how users understand the origin of a news article and the trustworthiness of its source. **The NUJ supports this.**

4. The NUJ has called for a levy on Facebook and Google to fund public-interest journalism. Having helped themselves to the free content provided by journalism, they must now pay up. Google and Facebook have since set up media projects, but the amounts involved are relative peanuts.
5. The pressure on newspapers, caused by the loss of online advertising revenue to Google and Facebook, has led to some resorting to clickbait copy – sensationalist headlines and stories – generating clicks for advertisers, and there has been a creeping blurring of advertorials and a rise in native advertising (paid ads that match the look, feel and function of the media format in which they appear) which is skewing good journalism.

An independent regulator for online safety

6. The White Paper calls for a new statutory duty of care for tech companies to take responsibility for the content they publish/host. There will be an independent regulator, funded by industry in the medium term, with powers to levy substantial fines and impose penalties on individual members of senior management for infringements. This regulator will set out codes of practice and will require annual transparency reports from relevant companies. Firms will have to adopt effective and easy-to-access user complaints methods which will be overseen by the regulator.
7. The Department for Digital, Culture, Media & Sport (DCMS) select committee report, *Disinformation and 'fake news'*, which won cross-party support and is commended as an important piece of work by the NUJ. It described Facebook as digital gangsters who broke privacy and competition law and needed regulation. Damian Collins, the committee's chair, said: "Democracy is at risk from the malicious and relentless targeting of citizens with disinformation and personalised 'dark adverts' from unidentifiable sources, delivered through the major social media platforms we use every day."
8. **The NUJ supports the need for much greater transparency from the tech giants. Facebook has clearly shown a dereliction of duty with its cavalier attitude to privacy of personal data and its lack of responsibility for hosting the sort of content outlined by the committee.**
9. Facebook is beginning to get the message; or so it seems. Other countries have brought in legislation to curb its operations and fears that demands, especially in the US, for the technology behemoth to be broken up, could be the reason why Nick Clegg, Facebook's head of global affairs and communications, said in a speech in Berlin this month (June 2019) that online companies needed help to police their sites for harmful content and political advertising. "It would be a much easier task, as well as a more democratically sound one, if some of the sensitive decisions we have to make were instead taken by people who are democratically accountable to the people at large, rather than by a private company. After all, why should a private company decide who is or isn't a legitimate participant in an election?" he said.

10. Ofcom enforces the Broadcasting Code for TV and radio. This covers causing harm and offence, crime, disorder, hatred and abuse, impartiality and due accuracy, protection of under-18s, and privacy as well as commercial interests. This code is generally thought to work well and there is much to commend it in terms of considering a code for internet platforms. Broadcasters such as ITV have long argued that the internet platforms should be subject to similar rules. The NUJ's own code of conduct provides an ethical framework for news gathering. The Independent Press Standards Organisation and Impress have codes, as does the BBC. The Ofcom Broadcasting Code covers professional broadcasting organisations, but its principles should apply to the internet. However, those posting on the internet will not be professional journalists and will include people who wilfully or unwilfully misreport, mislead and be offensive. Moderation is a logistical, ethical and political minefield. Do we rely on an army of Mark Zuckerberg's fact checkers and algorithms? AI solutions or news-rating systems such as NewsGuard, cited in the White Paper? Perhaps all of the above, plus Wiki-style crowd-sourced policing – under the auspices of an independent of government regulator.
11. Would it make more sense for the functions of the regulator to be split – so Ofcom dealt with the “news and information” aspects of regulation (with increased powers) while the Electoral Commission could police unethical and illegal activities during elections. A new regulator, say Ofweb, would deal with the broader issues of child protection, sexting, misuse of data, terrorism and other illegal activities (these are clearly areas outside the NUJ's remit).
12. News organisations must act responsibly when presenting information made available on the internet, be it Daesh propaganda or in the case of the shootings in Christchurch, New Zealand when The Sun, Daily Mail and Daily Mirror all included edited footage shot by the gunman on their websites (the Mirror later removed it).

Online abuse of journalists

13. The White Paper includes research and examples of the use of Twitter (and other social media) by internet trolls. Many journalists need Twitter to promote their work, the work of their news organisation and to promote themselves as freelance journalists. This exposure has led to many of our members have been the focus of vile abuse, rape and death threats. Women, in particular, are targets. The union had to call in the police following death threats made to our members and women say they have been forced to close their account because of unrelenting abuse and the failure of Twitter to act.
14. Online trolls routinely use Twitter to silence women. A survey by NUJ Scotland showed cyberbullying affected the way 50 per cent of respondents worked. It also found the main sources of cyberbullying were via Twitter (65 per cent of responses) and also in comments on online articles or commentaries. Twenty-eight per cent were threatened with violence or serious harm to themselves and 5 per cent were

subjected to threats of violence or serious harm to their families. Much of the abuse was political, but there were also cases of sectarian, sexist, racist and homophobic abuse. One respondent said the abuse was: “Persistent, threatening, specific and sinister. Was evident they were monitoring my personal movements.”

15. Journalists who write about traditionally male topics, such as sport, technology, or gaming, are also often singled out. Emma Barnett, who had previously written about technology, told the Huffington Post: “I’d get responses like, ‘How the f**k do you understand this? You don’t know what you’re f**king talking about, get back in the kitchen.’” Kathy Sierra was a successful technology writer before she was targeted by the trolls and had her personal details, including her home address, published on the internet. She went into hiding and was offline for six years. TV presenter Sue Perkins shunned the internet for four months when she was mobbed by Twitter users, all because it was suggested she might replace Jeremy Clarkson on Top Gear.
16. The NUJ supported the case of Scottish journalist Angela Haggerty. She had been the subject of abuse and online trolling since editing Phil Mac Giolla Bháin’s book *Downfall: How Rangers FC Self-destructed*, published in 2012. One of Angela’s abusers, David Limond, was jailed for six months for remarks he made in a podcast after being found guilty in December 2013 of religiously and racially aggravated breach of the peace. The NUJ supported Angela during the case and she has been a leading advocate against online abuse of journalists ever since.
17. Twitter and other social media messaging organisations are not acting to stop this abuse or ban serial offenders. **The NUJ agrees the new regulatory framework must make clear companies’ responsibility to address this harm and sanctions must exist if they do not take appropriate action and it notes the White Paper’s reference to the Digital Public Contact programme to make it easier for the public to report online crimes.**
18. Employers also have a duty of care to their employees. The Health and Safety Executive in its stress management guidelines states that no one at work should be exposed to unacceptable behaviour (such as bullying, harassment and abuse), regardless of the source of that behaviour, when or where it occurred. The union’s health and safety committee is campaigning for employers to acknowledge that they have an obligation under the Health and Safety at Work Act (H&SWA) 1974 to carry out “suitable and sufficient” assessments of risks which can be reasonably foreseen and then institute “reasonable precautions”. Employers must support their journalists and report online abuse to the police.
19. Journalists, as part of their job may also be exposed to shocking, violent and unpleasant images on the internet. The effects of having to work with this disturbing material can be just as pronounced as first-hand experiences of war or reporting on humanitarian crises, according to Jenni Regan, a former senior media adviser for Mind, the mental health charity. Again, employers must show a duty of care to their

employees, but the NUJ has experience of news organisations being slow to deal with this issue.

Media Literacy

20. Media literacy is vital in helping people negotiate the internet, learn how to find respected news sources and differentiate between rumour, pastiche, propaganda and misinformation, as well as protect themselves from harm. For young people, many of whom learned to use the iPad in their pram, it can be a minefield. They are constantly targeted by a range of vloggers and “influencers” paid by advertisers to promote their wares. Digital marketing company, Exposure Ninja, claims on its website: “A whopping 81 per cent of the population trusts the advice they get from bloggers, making them very powerful advocates for any brand online.” The NUJ has taken part in a media literacy roundtable convened by the DCMS and held a meeting during Media Literacy Week which brought together experts in this field and our members. Michelle Stanistreet, NUJ general secretary, said the union had a long tradition of supporting ethical journalism, promoting a diverse media industry and regularly worked with journalism colleges: “Boosting our critical capacity to weed out what’s been fact-checked from what has not is the challenge we all face and a skill we need to help our children acquire from the earliest possible age. Trust in journalism underpins all this work – as does having a media which reflects the world it depicts.”

21. Media literacy needs to be embedded in the curriculum from early years onwards. **The NUJ is keen to be involved in the government’s proposed new online media literacy strategy, together with the major digital, broadcast and news media organisations, the education sector, researchers and civil society, as suggested in the White Paper.**

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