

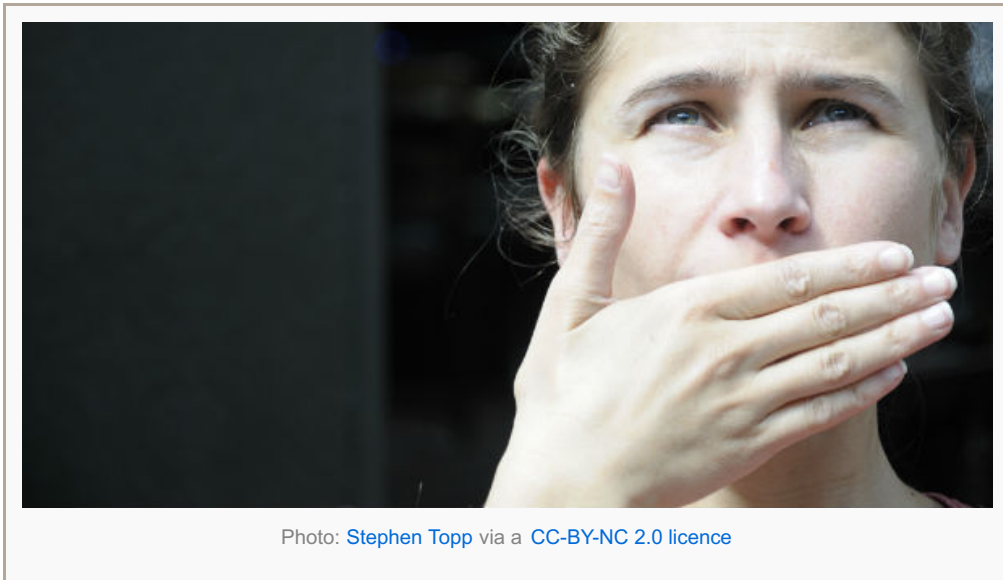
The Law Commission's dangerous proposals would turn whistleblowers and journalists into 'spies'

 [democraticaudit.com /2017/03/10/the-law-commissions-dangerous-proposals-would-turn-whistleblowers-and-journalists-into-spies/](https://democraticaudit.com/2017/03/10/the-law-commissions-dangerous-proposals-would-turn-whistleblowers-and-journalists-into-spies/)

By Democratic Audit UK

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*Suppose a journalist received information about the secret services from a whistleblower, but decided not to publish it – perhaps even because they thought it might damage national security? Under the Law Commission's proposals to replace the Official Secrets Acts with a single Espionage Act, both the journalist and whistleblower could be jailed. And if they did publish it, the journalist would no longer be able to rely on a public interest defence. **Jim Killock** says these proposals to update the UK's laws around the unauthorised disclosure of official data are yet another attack on the freedom of the press.*



Updating antiquated laws is, of course, important. As the Law Commissioner David Ormerod [wrote](#): “Currently the Official Secrets Act 1911 provides the principal legal protection in the United Kingdom against espionage, despite the fact it was enacted in the run up to the First World War.”

The Commission's [proposal](#) to replace the Official Secrets Acts with a single 'Espionage Act' might sound sensible, but it threatens to chill free speech and investigative journalism. It also overlooks the fact that some sections of the acts, including the 1920 Official Secrets Act, have been modernised several times after failed prosecutions of journalists and the *Sunday Telegraph* in 1969, the 1977-78 (the [ABC trial](#)) and in light of the acquittal of whistleblowing civil servant Clive Ponting in 1985. The Law Commission report, astonishingly and reprehensibly, appears to have been written in ignorance of these cases, the criticism which followed them and the legal changes then made.

The Open Rights Group was made aware of the Law Commission's proposals by investigative journalist [Duncan Campbell](#), who is one of the two journalists ever to have been charged with spying (Section 1 of the 1911 Official Secrets Act) and one of only three journalists to have been charged with receiving leaked information (Section 2 of the 1911 Official Secrets Act). The 1978 'ABC' case saw Campbell, along with fellow journalist the late [Crispin Aubrey](#), charged with leaking and then spying after talking to a former soldier source, even though no material was published. Campbell was also charged with espionage for “collecting information” – the core duty of every journalist. The information concerned was published or not officially secret but was alleged to be “too much” in the view of government officials of the day.

Campbell faced up to 30 years in prison and his co-defendants 16 years. The espionage charges against all three were dropped after even the prosecutor found the ‘collecting information’ charge against Campbell absurd, and the trial judge Mr Justice Mars-Jones had declared espionage charges against journalists and sources to be “oppressive”. The jury found the three guilty of the “outdated” leaking charges under Section 2, which the then-Labour government had given a manifesto commitment to repeal before the journalists and source were arrested. The trial judge found that no punishment was appropriate in these circumstances and imposed no punishment (giving conditional discharges).

Although ignored entirely by the Law Commission study, the case was groundbreaking and led to greater transparency about the UK’s intelligence agencies, thanks mostly to Campbell’s tenacious investigations. The Commission’s proposals, as shown below, would threaten this and hinder attempts to hold the government to account.

Who is the enemy? Previously information would have to be shared with ‘an enemy’ for someone to be charged with espionage. The Commission suggests that using the word ‘enemy’ could have ‘negative diplomatic consequences’ in a trial, and suggests it is replaced by ‘foreign power’. The entities that could be considered to be foreign powers would include certain companies.

Who can be accused of espionage? Espionage would be “capable of being committed by someone who not only communicates information, but also by someone who obtains or gathers information.” This would include journalists who received information from a whistleblower, even if they chose not to publish it – as happened with Campbell in 1978. Previously, someone who was outside of the UK could only be charged with espionage if they were a British Officer or subject. Under the proposals, the accused would only need a “sufficient link” with the UK.

Prosecution: The prosecution would previously have had to prove that damage has occurred. Under the new proposals, they would only have to show that the defendant was aware of the damage that could be caused.

Citing the ease with which individuals can share sensitive information, the Commission proposes increasing prison sentences to 14 years.

The plans appear to be squarely aimed at the *Guardian* newspaper, who in 2013 broke the news that the UK and US were running programmes capable of monitoring the world’s communications. The *Guardian*, and subsequently the *Washington Post*, ran a series of articles based on evidence leaked by the whistleblower, Edward Snowden.

As a recent Guardian editorial [pointed out](#): “This paper was very careful in what information it disclosed. What we published might have been embarrassing, but we believed that it was not damaging.” This meant that the paper could not be charged under the 1989 Official Secrets Act. But under the Law Commission’s proposals, Alan Rusbridger and the other Guardian journalists who handled the files could have been charged with spying and handed prison sentences of up to 14 years if found guilty. Given that under the same proposals, they would be denied a statutory public interest defence, a guilty verdict would appear likely. Snowden, a US national, could also have been charged.

Following the backlash to the Law Commission’s proposals, May denied any involvement and said that they were initiated by the former PM David Cameron when she was still Home Secretary. However, as the Home Office were listed as having been involved in the pre-consultation process, she cannot have been completely unaware of them. Add in her particular interest in surveillance powers and her reputation for keeping a firm hand on her department and the details, and her statement seems very hard to take at face value.

The UK’s media must not be weakened in this way, especially given the potential consequences should the secret agencies abuse their power; the Law Commission needs to ditch its plans.

This post represents the views of the author and not those of Democratic Audit.

Jim Killock is the Executive Director of the Open Rights Group, which has organised a [petition](#) for the Law Commission's proposals to be dropped.

