[GB] Government responds to its Call for Evidence on the impact of social media on the administration of justice

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On 5 March 2019, the Attorney General's Office published the Government's response to its call for evidence examining the impact of social media on the administration of justice. The response revealed that although the risk to the legal process has increased with the proliferation of social media in recent years, it nevertheless remains relatively minor and it is still at a level whereby it does not pose a serious threat to the criminal justice system.

The call for evidence was launched in September 2017 by the then Attorney General, Jeremy Wright, and closed on 8 December 2017. It asked for examples of trials affected by commentary on social media, placing particular attention on the issues of active proceedings, as well as violations of reporting restrictions and anonymity orders. Submissions were made by media organisations, judges, legal practitioners, academics and members of the public. Interestingly, no submissions were received from social media companies.

The call for evidence was prompted by the collapse of the 2015 Angela Wrightson murder trial following an "avalanche of public outrage on social media" in reaction to legitimate news coverage and the prohibition of further reporting of the case until the conclusion of the retrial at a different venue. The following year, nine media organisations appealed against the imposition of these reporting restrictions. The Court of Appeal substituted an order under section 45(4) of the Senior Courts Act 1981 requiring the media not to place any report of the criminal proceedings on their Facebook profiles and to disable users' comments on their respective online articles. This, however, was "an unusual and exceptionally high-profile case, rather than illustrative of a wider problem." Members of the judiciary indicated that they had the necessary tools to mitigate the risk of prejudicial social media posts (e.g. requiring editors to remove a newspaper story from social media, or directing juries to avoid or disregard social media comments). However, concern was expressed over such tools potentially causing unnecessary delays to the trial process and an additional drain on resources.

A key area of concern that emerged from the evidence was that some social media users might be unaware of what constitutes a breach of an anonymity order or might not be conscious of the extent to which their posts could prejudice

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criminal proceedings. This is particularly the case in relation to young individuals, who are the most active social media users. In response, the Attorney General's Office will promote the safe use of social media as part of a public legal education campaign. A dedicated contempt of court webpage has been launched on the public sector information website gov.uk to explain in an accessible manner the potentially serious consequences of using social media to undermine the administration of justice. In addition to these efforts to support public understanding, the Judicial Office will develop user-friendly and comprehensive guidance for jurors on the use and abuse of social media.

Another area of concern involved the issue of legal liability for social media posts. This is linked to the wider debate about the responsibilities of media organisations, individual users who post on social media, and social media companies themselves. To address this concern, the Attorney General's Office has agreed a new working relationship with Facebook, Google and Twitter so that unlawful posts or material which risk contempt of court can be flagged and promptly removed, if necessary.

The malicious disregard of legal prohibitions by social media users who clearly intend to disrupt the trial process emerged as another relevant cause for concern. The evidence, however, showed that such behaviour can be managed by relying on existing powers. In several cases, deliberate offending was targeted by the police and led to prosecutions. The Attorney General's Office will continue working with cross-government partners to improve the enforcement of the law on anonymity online and inform the development of the forthcoming Online Harms White Paper, which will include activities taking place on social media.

Overall, the response to the call notes that the use of social media gave rise to new challenges, but that these are "not unmanageable." Given this position, no new legislation was proposed.

Policy Paper: Response to Call for Evidence on the Impact of Social Media on the Administration of Justice (5 March 2019)

https://www.gov.uk/government/publications/response-to-call-for-evidence-on-the-impact-of-social-media-on-the-administration-of-justice

BBC and Eight Other Media Organisations, R (on the application of) v F and D [2016] EWCA Crim 12 (11 February 2016)

https://www.bailii.org/ew/cases/EWCA/Crim/2016/12.html

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