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# Media freedom and journalist safety in the UK Online Safety Act<sup>\*</sup>

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## ABSTRACT

In the digital era, journalists are targeted with online abuse including serious threats of violence. These censorship tactics are a direct threat to media freedom. Although the UK Government intended to tackle online abuse of journalists in the Online Safety Act 2023, provisions fit for that purpose never materialised. This paper reveals why that was the case and what can be done about it. It finds that there is ongoing tension in the press industry about press regulation, with implications for journalist safety; that the Government carved out special privileges for the press' online content but did not similarly protect journalist digital safety; that journalist safety was largely ignored in Parliament; and that repeated Government disintegration and shifting policies stripped away provisions that could have been improved to better protect journalists. This paper concludes with suggestions for how journalist safety can be better protected in the OSA regime.

**KEYWORDS** Media freedom; content moderation and regulation; journalist safety; Online Safety Act; online abuse

[Online abuse in below-the-line comments] could either make people just walk away and not want to be involved ... or it might toughen them up and make them want to take on the fight. Would you agree with that? (Member of Parliament, Committee of the Department of Digital, Culture, Media and Sport)

I do not think that journalists need to be toughened up. I do not think that anybody should be expected, as part of their job, to be subjected to abuse, harassment, vile threats or sexualised threats of violence.<sup>1</sup> (General Secretary, National Union of Journalists)

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<sup>\*</sup>All websites accessed October 2023.

<sup>1</sup>Digital, Culture, Media and Sport Committee 8th Report, *The Draft Online Safety Bill and the legal but harmful debate* Volume 1 Oral and Written Evidence (2021–22, HC 1039), Michelle Stanistreet Q192.

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## Introduction

Threats against journalists have transformed. Journalists now not only worry about getting threatened, harassed, surveilled, arrested, imprisoned – or even murdered<sup>2</sup> – because of their work – they also must worry about online abuse and violence.<sup>3</sup> Online abuse is the weaponisation of online speech to intimidate and silence journalists and the reporting they produce.<sup>4</sup> It includes intimidation, harassment, doxing (the disclosure of personal details, such as a journalists' home address alongside threats), mobbing, and disinformation campaigns (i.e. #presstitute).<sup>5</sup> This online abuse can lead to physical stalking and violence.<sup>6</sup> These censorship tactics impinge freedom of expression when they are used to silence any online speaker; but when they are deliberately employed against members of the 'fourth estate' they also attack media freedom.<sup>7</sup> Media freedom is engaged because online abuse impedes journalists from fulfilling their democratic functions of seeking truth, informing the public, and acting as 'watchdogs' by holding power to account.<sup>8</sup> If journalists self-censor, switch from political beats to something that will attract less abuse, or are forced to drop out of the profession because of concerns over their safety, then democracy and the public interest ultimately suffers. These effects are especially worrisome in the current communicative ecosystem where the public desperately needs high-quality, honest, and reliable journalism to combat disinformation

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<sup>2</sup>It was only in 2019 that a young journalist, Lyra McKee, was murdered while reporting in Northern Ireland.

<sup>3</sup>Julie Posetti and Nabeelah Shabbir, 'The Chilling: A Global Study of Online Violence against Women Journalists' *International Center for Journalists/UNESCO* (2 Nov 2022) <[https://www.icfj.org/sites/default/files/2023-02/ICFJ%20Unesco\\_TheChilling\\_OnlineViolence.pdf](https://www.icfj.org/sites/default/files/2023-02/ICFJ%20Unesco_TheChilling_OnlineViolence.pdf)>. See also Julie Posetti, Diana Maynard and Kalina Bontcheva, 'Maria Ressa: Fighting an Onslaught of Online Violence: A Big Data Analysis' *International Center for Journalists* (20 March 2021) <[https://www.icfj.org/sites/default/files/2021-03/Maria%20Ressa-%20Fighting%20an%20Onslaught%20of%20Online%20Violence\\_0.pdf](https://www.icfj.org/sites/default/files/2021-03/Maria%20Ressa-%20Fighting%20an%20Onslaught%20of%20Online%20Violence_0.pdf)>. Other online violence case studies of journalists are available, including studies of abuse targeting Carole Cadwalladr, Rana Ayyub, Ghada Oueiss and Carmen Aristegui: <<https://www.icfj.org/our-work/online-violence-big-data-case-studies>>.

<sup>4</sup>Nobel Prize winning journalist Maria Ressa has spoken widely on the 'weaponization of social media' by the Duterte administration in the Philippines which made her a target of his regime.

<sup>5</sup>The Chilling (n 3) 8 asserts that 'Online violence against women journalists is one of the most serious contemporary threats to press freedom internationally'.

<sup>6</sup>ibid.

<sup>7</sup>Many scholars have written about media freedom as distinguished from freedom of expression. See, for example, Helen Fenwick and Gavin Phillipson, *Media Freedom under the Human Rights Act* (Oxford University Press 2006) 20–33; Jan Oster, *Media Freedom as a Fundamental Right* (Cambridge University Press 2015) 51 and Jacob Rowbottom, *Media Law* (Hart 2018) 7–24 to list a few.

<sup>8</sup>This paper therefore asserts a democratic conception of media freedom based on the instrumental good that journalists and the media provide to democratic society. This paper thus draws on the more recent works of Jan Oster, *ibid* 141, Damian Tambini, *Media Freedom* (Polity Press 2021) 141, Peter Coe, *Media Freedom in the Age of Citizen Journalism* (Elgar 2021) 119 and the earlier works of Eric Barendt, *Freedom of Speech* (Oxford University Press 2005) 419–26 and Judith Lichtenberg, 'Foundation and Limits of Freedom of the Press' (1987) 16 *Philosophy & Public Affairs* 329. Lord Justice Leveson, *An Inquiry into the Culture, Practices, and Ethics of the Press* (HC-780, 2012) 2012 vol 1, 63 also used this theoretical foundation (emphasising public participation and holding power to account): see Gavin Phillipson, 'Leveson, the Public Interest and Press Freedom' (2013) 5 *JML* 220, 229.

and sensationalist click-bait content proliferated by platforms driven by profit.<sup>9</sup>

This paper thus asserts that journalist safety is a core component of media freedom, which must include journalist online safety in the digital era.<sup>10</sup> The prevalence of digital censorship tactics from both state and private actors against journalists demands positive state intervention to support journalist safety to ensure the ‘fourth estate’ exists to continue its essential work. These protections are not just about protecting journalists or press institutions for their own interests, but about instrumentally protecting the public interest that journalism serves in democracy.<sup>11</sup>

There are many forms that positive state intervention could take and there are certainly soft options that could help stem online abuse.<sup>12</sup> Some of those are gaining momentum as journalism advocates fight for change.<sup>13</sup> The evidence, however, confirms that online abuse against journalists remains pervasive.<sup>14</sup> There are also limits to soft measures, which can simply conceal Government inaction to adequately tackle the problem.<sup>15</sup> To illustrate, the

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<sup>9</sup>Yochai Benkler, Robert Faris and Hal Roberts, *Network Propaganda* (Oxford University Press 2018) 10, list an ‘aggressive editorial counteraction’ by the mainstream media as one of the best solutions to counteract disinformation and to educate the masses. See also Dame Francis Cairncross, *The Cairncross Review: A Sustainable Future for Journalism* (February 2019) discussing the importance of the sustainability of high-quality journalism.

<sup>10</sup>As Oster (n 4) 94 notes, the ECtHR has held that ‘there are special obligations of the state to protect the media, especially to protect journalists from acts of violence as they exercise their journalistic work’ referring to *Özgür Gündem v Turkey* App no. 23144/93 (ECtHR, 16 March 2000). That case notably found that freedom of expression ‘may require positive measures of protection, even in the sphere of relations between individuals’ (para 43). See also Coe (n 5) 100, 120. The ECtHR in *Dink v Turkey* App nos. 2668/07, 6102/08, 30079/08, 7072/09 and 7124/09 (ECtHR, 14 September 2010) para 137 came to a similar conclusion: ‘States are obliged to put in place an effective system of protection for authors and journalists as part of their broader obligation to create a favourable environment for participation in public debate ...’ (translation done by the author in Tarlach McGonagle, ‘Positive Obligations Concerning Freedom of Expression: Mere Potential or Real Power?’ in Onur Andreotti (ed) *Journalism at Risk: Threats, Challenges and Perspectives* (Council of Europe Publishing 2015) 9. I argue that in the digital era, these media freedom conceptions are equally as applicable. I am working on a more fulsome analysis of these issues in ongoing work.

<sup>11</sup>See e.g. Tambini (n 5) 54–56, 138, 173–73 arguing for positive state intervention to protect media freedom.

<sup>12</sup>The DCMS commissioned a guide for journalists to combat online abuse: Beth Grossman, ‘Combatting Online Harassment and Abuse: A Legal Guide for Journalists in England and Wales’ (Media Lawyers Association, June 2021). This Report, however, largely puts the responsibility for combatting online abuse on journalists.

<sup>13</sup>National Union of Journalists, ‘NUJ Safety Report 2020: NUJ Members’ Safety Survey’ (November 2022) <<https://www.nuj.org.uk/resource/nuj-safety-report-2020.html>>.

<sup>14</sup>The Government has recognised the need to protect the digital safety of journalists. DCMS & Home Office, National Action Plan for the Safety of Journalists (9 March 2021) <<https://www.gov.uk/government/publications/national-action-plan-for-the-safety-of-journalists/national-action-plan-for-the-safety-of-journalists#next-steps>>. See also DCMS, National Action Plan for the Safety of Journalists, Call for Evidence Report (3 Nov 2021) <<https://www.gov.uk/government/consultations/safety-of-journalists-call-for-evidence/public-feedback/call-for-evidence-report>> (it launched another survey in March 2022 but as of October 2023 has not published those findings (see National Action Plan for the Safety of Journalists, Written Update (Jan 2023) <[https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/1128442/Written\\_Update\\_-\\_January\\_2023.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1128442/Written_Update_-_January_2023.pdf)>).

<sup>15</sup>*ibid.*

Government-led National Action Plan for the Safety of Journalists, announced in 2021, lists a task for the Government to ‘Introduce an Online Safety Bill’ and a further task for ‘Facebook and Twitter’ to ‘respond promptly to complaints of threats to journalists’ safety’.<sup>16</sup> But as this paper shows, the Online Safety Act 2023 (OSA)<sup>17</sup> did not specifically address journalist safety, there are obviously other platforms that disseminate abuse than just the two listed, and by many accounts the post-Musk Twitter/X era has struggled with remedying abuse.<sup>18</sup>

The focus of this paper is therefore on the more forceful option of legislation regulating internet search and social media platforms. These legislative efforts are directly relevant because much of the abuse targeting journalists unsurprisingly occurs on social media platforms. However, creating discord in the press industry, online abuse is also published in below-the-line comments sections of newspapers. A legislative approach therefore exposes many other media freedom concerns for the press. They have concerns that any governmental regulation of online content (and platform implementation of those regulations) may lead platforms to censor news articles and harm the press’ market saturation and economic sustainability.<sup>19</sup> Moreover, the news press in the UK (unlike the broadcasting press) have not been directly regulated by the Government in the modern era and online safety regulations applicable to the press’ content could intrude onto the press’ coveted autonomy from Government regulation.<sup>20</sup>

The legislative trajectory of the OSA thus provides a compelling case study of media freedom in the digital era through the lens of journalist safety. Several key observations can be drawn. First, the Government set out to tackle online abuse targeting journalists and other ‘public figures’ (by which it meant politicians) in the OSA, noting its serious impact on democracy and public participation – but repeatedly failed to include provisions that would effectively do so.<sup>21</sup> The government may have thought that it was achieving its policy aims to protect journalists and other public figures

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<sup>16</sup>ibid.

<sup>17</sup>Online Safety Act 2023.

<sup>18</sup>One of Musk’s first upheavals included mass layoffs on the Trust & Safety team. See also BBC journalist Marianna Spring’s Tweet ‘When Elon Musk tweeted about a BBC Panorama investigation, it unleashed a torrent of abuse against me from trolls. It proved what I’d revealed about the site struggling to protect users. Here’s what it’s like being at the centre of a Twitter troll storm’ (31 March 2023).

<sup>19</sup>Platforms already ‘censor’ online content including news articles. This issue was raised as a concern by DMG (who complained about platform bias against its content) but was also raised by GMG and the News Media Association: DMG Media para 5; GMG (near end of submission); News Media Association 2.1.10-14 in Joint Committee on the Draft Online Safety Bill 1st Report, *Draft Online Safety Bill Volume 2 Oral and Written Evidence* (2021–22, HL 129, HC 609).

<sup>20</sup>With the lapse of the Licensing Act in 1694: see Tom O’Malley and Clive Soley, *Regulating the Press* (Pluto Press 2000) 20.

<sup>21</sup>As outlined below, the DCMS, *Internet Safety Strategy* (Green Paper, Oct 2017) 51 and DCMS and Home Department, *Online Harms* (White Paper, CP 57, April 2019) 12–21, 23, 25, 31, 47–75 both noted the importance of protecting journalists and other public figures from online harms.

in the infamous ‘legal but harmful’ provisions and it assured Parliament that was the case.<sup>22</sup> But those provisions were weak and ineffectual and publicly scorned as ‘censorship’ (with one Minister deriding them as legislating for ‘hurt feelings’).<sup>23</sup> The Government ultimately scrapped them, replacing them with even more deficient ‘user empowerment’ provisions.<sup>24</sup> The ‘illegal content’ provisions<sup>25</sup> may help get rid of some of the obviously criminal abuse journalists endure and may elicit meaningful change; but significant gaps remain – most notably the failure to include pile-on harassment. This legislative ineffectiveness transpired despite the continued advocacy by journalists and journalist organisations about the ongoing pervasive online abuse journalists face and the need for regulation.<sup>26</sup> Second, online journalist safety clashed with other media freedom concerns. Press businesses successfully sought assurances that the OSA would exempt the press from its safety duties and that platforms would be barred from censoring the press’ content.<sup>27</sup> On the other side of the debate, journalists, journalism advocacy groups, and press regulators called for regulation of certain press content (especially below-the-line comments) and the imposition of standards in the industry.<sup>28</sup> No discussions were made about how to resolve those apparent tensions. Instead, at the urging of the influential press lobby and supporters in Parliament, the Government exempted social media companies from taking action against (i.e. removing, flagging, etc.) ‘recognised news publisher’ content,<sup>29</sup> legislated and subsequently strengthened privileges for ‘recognised news publishers’<sup>30</sup> and undefined ‘journalistic content’<sup>31</sup> and exempted the press from taking steps to ensure

<sup>22</sup>DCMS, *Draft Online Safety Bill* (Cm, CP 405, May 2021) s 41(5).

<sup>23</sup>Kemi Badenoch, Conservative MP, stated this on Twitter (13 July 2022).

<sup>24</sup>OSA s 15 ‘user empowerment duties’, s 16 ‘interpretation’ (n 17).

<sup>25</sup>*ibid* s 9 ‘illegal content risk assessment duties’, s 10 ‘safety duties about illegal content’ for user-to-user services; s 26 ‘illegal content risk assessment duties’, s 27 ‘safety duties about illegal content’ for search services. Section 59 defines ‘illegal content’. Schedule 7 ss 3–11 lists ‘priority offences’ which include Offences against the Person Act 1861 (threats to kill), offences under the Public Order Act 1986, s 4, 4A, 5 (including harassment, alarm and distress) and Protection from Harassment Act 1997 (s 2 harassment, s 2A stalking, s 4 putting people in fear of violence, s 4A stalking involving fear of violence or serious alarm and distress), Crime and Disorder Act 1998 (s 31 racially or religiously aggravated public order offences, s 32 racially or religiously aggravated harassment), as well as similar offences in Northern Ireland and Scotland. Those listed here include offences most relevant for tackling harms against journalists, but many other priority offences are enumerated in Schedule 7.

<sup>26</sup>For example, Chris Philp while undersecretary championed the ‘legal but harmful’ provisions throughout his tenure and made many promises on behalf of Government that abuse against public figures, specifically politicians, would be dealt with in these provisions: HC Deb 27 January 2022, vol 707, cols 1126–27 (Chris Philp); HC Deb 19 April 2022, vol 712, cols 93–95, 97 (Nadine Dorries as Culture Secretary). But when Damian Collins and then Paul Scully took over the role in quick succession those provisions were scrapped. See text in ‘legal but harmful circus’ sub-heading (n 194)–(n 208) below.

<sup>27</sup>See notes 102, 119 and accompanying text below.

<sup>28</sup>See notes 101, 123–31 and accompanying text below.

<sup>29</sup>OSA s 55(2)(g) exempting ‘news publisher content’ from the definition of ‘regulated user-generated content’ (n 17).

<sup>30</sup>*ibid* s 18 ‘Duties to protect news publisher content’; s 56 ‘Recognised news publisher’.

<sup>31</sup>*ibid* s 19 ‘Duties to protect journalistic content’.

below-the-line comments did not contain unlawful content that the OSA otherwise prohibited the public from publishing online.<sup>32</sup> It also notably granted news publishers a special regime to complain about platform censorship of its content<sup>33</sup> – but did not grant journalists a special regime to report abuse. Ultimately, the media freedom issue of online abuse of journalists was ignored entirely.

There are some parameters to the conclusions drawn. For example, this paper analyses press lobbying in official and publicly accessible means; yet other press interests may have been conveyed via less official means (for instance, Rupert Murdoch's infamous annual summer parties, often frequented by leading politicians).<sup>34</sup> It also examines legislative debates in Parliament which are confined to what was explicitly stated on record. It therefore necessarily excludes back-door wheeling and dealing and other more diffuse factors that could have influenced the legislative process. The machinations of law-making are often contested and fraught. Parliament's effectiveness at translating its policy goals into legislation was further compounded in the OSA because of the repeated disintegration of successive Governments. In total, from the Green Paper through to Royal Assent, the OSA was led by four different Prime Ministers and eight Culture Secretaries. And in the last critical six months of the Bill's debate in the Commons, a whopping three different Prime Ministers, two Culture Secretaries, and in a key turn of events, three different under-secretaries were charged with championing the Bill in Parliament.<sup>35</sup> In short, the inability of the Conservative parliamentary party to form a stable government (with a concomitant *enabling* of a swinging door of Ministers with different policy objectives) formed the backdrop of the final, most important months of the OSA.<sup>36</sup> These events likely impacted certain outcomes.

With those considerations in mind, this paper is organised as follows. It first provides a snapshot of online abuse targeting journalists in the UK and globally. It then provides an overview of the OSA and its relevance to journalism and the press. Next, it examines the trajectory of the journalism provisions in the pre-legislative reports to identify the Government's initial objectives *vis-à-vis* journalism. It then examines the specific provisions concerning journalism in the Draft Online Safety Bill (OSB) and explains how they work and who they benefit.<sup>37</sup> It then sheds light on why journalist safety was not protected as a media freedom interest by examining: the

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<sup>32</sup>*ibid* Schedule 1, s 4 'limited functionality services'.

<sup>33</sup>*ibid* s 32 (search services) s 21 (Category 1 platforms).

<sup>34</sup>It is widely reported that Keir Starmer and Rishi Sunak attended Murdoch's 2023 annual summer party, for example.

<sup>35</sup>They were Chris Philp, Damian Collins, and Paul Scully.

<sup>36</sup>See n (26).

<sup>37</sup>Draft OSB (n 22).

lobbying efforts by journalists, press businesses, and other press organisations; Parliamentary debates in the House of Commons and House of Lords; and the Government's policy changes, subsequent amendments, and final provisions in the OSA. Lastly, it provides some concrete recommendations that could be implemented in the OSA regime to better protect journalist digital safety.<sup>38</sup> In so doing, it does not suggest that banning abusive but legal speech is the answer. But it is vital to identify digital safety as a media freedom concern and query legislative options for tackling that abuse. Such solutions could easily mirror and compliment the positive protections for the press' content and recognised news publishers in the OSA (e.g. requiring platforms to conduct risk assessments of abuse against journalists, mandating that platforms implement a direct complaints route for journalists to action abuse, and mandating that platforms develop tools to monitor and collect data on abuse, to list a few).<sup>39</sup> The severe impacts of online abuse on media freedom and the democratic and constitutional functions that journalists perform demands considered thought to potential reforms.

### Online abuse of journalists as media freedom

In 2019, young journalist Lyra McKee was tragically murdered while reporting in Northern Ireland.<sup>40</sup> Her friend and colleague, Leona O'Neill, witnessed and subsequently wrote about Lyra's murder. As she was dealing with the traumatic impact of those events, she was subject to online abuse and disinformation campaigns on YouTube, Twitter, and Facebook, including accusations that she invented Lyra's murder or that she was responsible.<sup>41</sup> This led to her experiencing 'night terrors, panic attacks and [being] unable to sleep for weeks and weeks on end' as well as living in fear for her and her children's safety.<sup>42</sup> Her efforts at reporting the abuse to the platforms were initially futile. She told *The Guardian* 'I hope they act and deal with these dangerous platforms spreading false, harmful content that has resulted in me fearing for my safety and having to take the matter to the police.'<sup>43</sup>

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<sup>38</sup>Outside the scope of this Paper, but which will be addressed in subsequent work, there are also very legitimate concerns about how to define journalism in the digital era and whether journalists and the press should receive special protections over the public's speech at all.

<sup>39</sup>These could include systems designs solutions, some of which are canvassed in the latter section of this Paper. See Nicolas Suzor and others, 'Human Rights by Design: The Responsibilities of Social Media Platforms to Address Gender-Based Violence Online' (2019) 11 *Policy & Internet* 84 and Evelyn Douek, 'Content Moderation as Systems Thinking' (2022) 136 *Harv L Rev* 526.

<sup>40</sup>See Henry McDonald, 'Twitter and Facebook to act over online abuse of Lyra McKee's friend' *The Guardian* (27 June 2019) <<https://www.theguardian.com/society/2019/jun/27/twitter-facebook-act-online-abuse-lyra-mckee-friend>>.

<sup>41</sup>*ibid.*

<sup>42</sup>*ibid.*

<sup>43</sup>*ibid.*



Recent empirical evidence has found that over half of journalists have endured online abuse,<sup>44</sup> while anecdotal evidence corroborates those experiences as journalists have reported receiving bomb threats on Twitter,<sup>45</sup> threats to rape their infants,<sup>46</sup> have their genitals mutilated, be burned alive, and killed.<sup>47</sup> The National Union of Journalists' surveys found that members 'received online death threats, rape threats and other threats to physically harm them, their families, and their homes' and that '51% of all respondents said they had experienced online abuse in the last year' and that the 'safety of media works has deteriorated further' since then.<sup>48</sup> NUJ Scotland's survey similarly found that 'cyberbullying affected the way 50% of respondents worked'.<sup>49</sup> In its surveys, the NUJ has documented horrendous instances of online abuse. For example, it reported numerous instances of paramilitary groups in Northern Ireland seeking to silence journalists with increasingly severe online death and rape threats, including a shoot-to-kill order issued against a journalist by those who had recently carried out serious violent attacks, and threats made by a suspected criminal with links to loyalist paramilitaries and far-right groups to rape and murder a journalist's infant.<sup>50</sup> These are but a few examples of many documented instances of online abuse that journalists endure because of their work. Certain beats attract more abuse (i.e. politics and sports)<sup>51</sup> but it permeates journalism and the political spectrum.<sup>52</sup>

Although abuse is largely disseminated on social media platforms it is also published in below-the-line comments, with one UK journalist opining that abusers are 'becoming bolder, more threatening and more

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<sup>44</sup>See NUJ Safety Report (n 13) and National Action Plan (n 14). See also Alana Barton and Hannah Storm, 'Violence and Harassment against Women in the News Media: A Global Picture' *International Women's Media Foundation* (2014) 14–15: <<https://www.iwmf.org/wp-content/uploads/2018/06/Violence-and-Harassment-against-Women-in-the-News-Media.pdf>> and Michelle Ferrier, 'Attacks and Harassment: The Impact on Female Journalists and their Reporting' *Trollbusters and IWMF* (Sept 2018) <<https://www.iwmf.org/wp-content/uploads/2018/09/Attacks-and-Harassment.pdf>>.

<sup>45</sup>David Batty, 'Bomb Threats Made on Twitter to Female Journalists' *The Guardian* (1 April 2013) <<https://www.theguardian.com/technology/2013/jul/31/bomb-threats-twitter-journalists>>.

<sup>46</sup>The Chilling (n 3) 11.

<sup>47</sup>Caroline Criado-Perez, "'Women that Talk too much Need to Get Raped": What Men Are Really Saying When They Abuse Women Online' in Dunja Mijatović (ed) *New Challenges to Freedom of Expression: Countering Online Abuse of Female Journalists* (OSCE 2016) 13. See also Silvio Waisbord, 'Mob Censorship: Online Harassment of US Journalists in Times of Digital Hate and Populism' (2020) 8 *Digital Journalism* 1030; OSCE, 'Legal Responses to Online Harassment and Abuse of Journalists: Perspectives from Finland, France and Ireland' *OSCE Representative on Freedom of the Media* (2019) <<https://www.osce.org/files/f/documents/1/6/413552.pdf>>.

<sup>48</sup>NUJ (n 1) paras 6, 10.

<sup>49</sup>ibid para 33.

<sup>50</sup>See NUJ Evidence in Appendix 2 of House of Lords Digital and Communications Committee, *Free for all? Freedom of Expression in the Digital Age* (2021, HL 54).

<sup>51</sup>NUJ Safety Report (n 13).

<sup>52</sup>Eliza McPhee, 'Leigh Sales Calls Out Sick Left-wing Trolls for Bombarding Female ABC Stars with Hideous Sexual Insults Every Day – As Her High-profile Breakfast TV Colleague Is Forced Underground' *MailOnline* (14 Sept 2021) <<https://www.dailymail.co.uk/news/article-9988177/Leigh-Sales-slams-trolls-abusing-ABC-journalists-Lisa-Millar-forced-Twitter.html>>.

vicious'.<sup>53</sup> Confronting the abuse on its own website, *The Guardian* analysed the 70 million comments on its website over a ten-year period (in its Web We Want project) and ultimately found that comments targeted 'women [journalists] and journalists from black and ethnic minorities' despite men making up the vast majority of its regular opinion writers.<sup>54</sup> Whereas some news publishers appear to be taking steps to address abuse in below-the-line comments, others are not, and there is significant criticism within the industry that there are no standards and comments sections are poorly regulated or not regulated at all.<sup>55</sup>

In terms of abusive speech, empirical studies have documented that journalists did not receive any or adequate support from their employers (many were told things along the lines of to 'toughen up'<sup>56</sup> and some who sought help were denied assignments or fired)<sup>57</sup> while platforms were ineffective at curtailing the abuse (only providing options to block or delete abusers, which does not work for journalists who must keep an online presence and social media channels open with the public to do their work. It also does not prevent the widespread dissemination of abusive content).<sup>58</sup> Moreover, notwithstanding that much of this abusive content is criminal – the UK has laws against making threats and harassment, for instance<sup>59</sup> – there is widespread perception that police lack training and resources or are in some instances ignorant of the severity of the online abuse.<sup>60</sup> For example, local Cumbria journalist Amy Fenton, who was forced into hiding with her young child after receiving online threats, noted that up until a man was sent to prison for threatening to rape her, 'the consistent message from the police when I reported it was that they had to balance these individuals' right to freedom of speech and expression with my right to be safe'.<sup>61</sup> This perspective was mirrored by BBC journalist Marianna Spring, who in evidence to the DCMS Committee examining the OSB, poignantly observed that the Met does not take online abuse seriously, and that 'rape and death threats I have had, including from someone who appears to

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<sup>53</sup>NUJ Safety Report (n 13) 15.

<sup>54</sup>Becky Gardiner and others, 'The Dark Side of Guardian Comments' *The Guardian* (12 April 2016) <<https://www.theguardian.com/technology/2016/apr/12/the-dark-side-of-guardian-comments>>.

<sup>55</sup>See Law Commission, *Modernising Communications Offences: A Final Report* (Law Comm No 399, 2021) para 4.8 (comments out of IPSO's scope).

<sup>56</sup>The Chilling (n 3) 12.

<sup>57</sup>NUJ Safety Report (n 13).

<sup>58</sup>The Chilling (n 3) 57, 162.

<sup>59</sup>E.g. Offences against the Person Act 1861, s 16; Protection from Harassment Act 1997, ss 2, 2A, 4, 4A; Public Order Act 1986, ss 4, 4A, 5; Crime and Disorder Act 1998, ss 31, 31; Criminal Law (Consolidation) (Scotland) Act 1995 s 50A; Criminal Justice and Licensing (Scotland) Act 2010 (asp 13) ss 38–39; Protection from Harassment (Northern Ireland) Order 1997 (S.I. 1997/1180 (N.I. 9)) art 8–9.

<sup>60</sup>The Chilling (n 3) 14.

<sup>61</sup>See Helen Pidd, 'Barrow Journalist Hounded Out of Cumbria for Reporting Court Case' *The Guardian* (29 May 2020) <<https://www.theguardian.com/uk-news/2020/may/29/barrow-journalist-hounded-out-of-cumbria-for-reporting-court-case>>.

have a prior conviction for stalking and harassing a female police officer, have not been taken seriously at all. Absolutely nothing has happened; no progress'.<sup>62</sup> She was also critical of social media platforms, opining that they promote hateful content and valued economic gain over safety.<sup>63</sup>

The experience of journalists in the UK represents a global phenomenon of online abuse of journalists.<sup>64</sup> For example, BBC Persia news presenter Rana Rahimpour endures state-sponsored threats such as 'we will arrest you, we will rape your daughter in front of you, then cut your heads off'.<sup>65</sup> Before investigative journalist Daphne Caruana Galizia was assassinated by a car bomb in Malta she was subject to online threats and disinformation tactics.<sup>66</sup> Another targeted journalist, Nobel Prize-winning investigative journalist Maria Ressa (who experiences rampant online abuse including calls for her to be 'publicly raped to death')<sup>67</sup> encouraged the UK Parliament to address online abuse and disinformation targeting journalists in legislation because it 'pounds you into silence', poignantly asserting 'I am fighting for justice in the real world and justice in the virtual world. That is what I feel has been taken away from me – justice. I hope you bring back some of it'.<sup>68</sup> The UN General Assembly and the Human Rights Council have adopted several resolutions condemning online violence against journalists.<sup>69</sup> The UN special rapporteur for freedom of expression has also made clear that states have responsibilities to protect online journalist safety and has called for treaty bodies to develop definitions of online violence.<sup>70</sup> International organisations are also starting to track online abuse alongside other threats to journalists. The Council of Europe has a platform that reports on the online abuse of journalists, and its 2022 report found that the UK was one of the jurisdictions with the highest reports of abuse (alongside Poland, the Russian Federation, Serbia, and Slovenia).<sup>71</sup>

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<sup>62</sup>Marianna Spring (n 1) Q 146.

<sup>63</sup>ibid Q 135.

<sup>64</sup>See Big Data Analysis Case Studies (n 3).

<sup>65</sup>Rana Rahimpour, 'Rape, Death and Arrest Threats Reality for Rana Rahimpour as BBC Submits UN Complaint' *inews.co.uk* (23 March 2022) <<https://inews.co.uk/opinion/rape-death-and-arrest-threats-reality-for-rana-rahimpour-in-iran-as-bbc-prepares-to-submit-complaint-to-un-1532326>>.

<sup>66</sup>Margaux Ewen, 'We Must Do More to Address the Online Harassment of Women Journalists' *Freedom House* (3 Nov 2023) <<https://freedomhouse.org/article/we-must-do-more-address-online-harassment-women-journalists>> commenting on the 2021 Report finding that the Malta Government had created a climate of 'impunity' which led to Daphne's assassination.

<sup>67</sup>Big Data Analysis Case Study, Maria Ressa (n 3).

<sup>68</sup>Maria Ressa (n 19) Q 193–194.

<sup>69</sup>UN GA Resolution A/C.3/72/L.35/Rev.1 (2017) and UN GA A/RES/74/157 (2019).

<sup>70</sup>Irene Khan, 'Reinforcing Media Freedom and the Safety of Journalists in the Digital Age' *UNHRC, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression* (20 April 2022) UN Doc A/HRC/50/29 118–12.

<sup>71</sup>Council of Europe, 'Defending Press Freedom in Times of Tension and Conflict' *Annual Report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists* (2022) <<https://rm.coe.int/platform-protection-of-journalists-annual-report-2022/1680a64fe1>> pages 57–60.

The effects of abuse can be severe. Some journalists have been forced into hiding with their children on advice of police,<sup>72</sup> have had to change their routes to work and move house after being targeted by the far-right,<sup>73</sup> have stopped working in beats that generate the greatest abuse – for example, politics – or considered leaving or have left journalism altogether.<sup>74</sup> This abuse therefore has negative impacts for the public interest and for maintaining a healthy democracy.

Much of the current literature focuses on online abuse of journalists as a gendered issue, predominately impacting women journalists and journalists from other minority backgrounds and intersectional identities.<sup>75</sup> This is perhaps unsurprising given how the digital era has reproduced the violence women face in the physical world.<sup>76</sup> However, there are some gaps in the literature (some of the most renowned studies have only analysed abuse targeting women journalists and not men, for example).<sup>77</sup> It is also clear that some male journalists experience abuse. A recent UK example is the sensationalist speculation over the identity of the unknown accused BBC broadcaster (before Huw Edwards's family publicly disclosed his identity) that led to certain male BBC presenters abused on social media and forced to call the police. In any event, the evidence of online abuse of journalists is clear and compelling. If, as the literature suggests, it targets and silences women journalists more than men, it nonetheless remains a grave media freedom concern.

## What is the Online Safety Act 2023?

The OSA is ground-breaking legislation in the UK because it regulates certain user-generated content on the internet (hosted by search engines and on social media platforms) for the first time.<sup>78</sup> While it was one of the first Western liberal democracies to consider this legislation, it now lags behind the EU's *Digital Services Act*,<sup>79</sup> Australia's *Online Safety Act*<sup>80</sup> and

<sup>72</sup>See NUJ Safety Report (n 13) and Pidd (n 61).

<sup>73</sup>NUJ (n 19) para 11.

<sup>74</sup>NUJ Safety Report (n 13); Rhys Evans, 'The Challenges of Making News for a Multinational State – A View from the UK' Reuters (14 Feb 2022) <<https://reutersinstitute.politics.ox.ac.uk/challenges-making-news-multinational-state-view-uk>>.

<sup>75</sup>The Chilling (n 3).

<sup>76</sup>See, e.g. Bridget A Harris, 'Technology and Violence Against Women' in S Walklate, K Fitz-Gibbon, J Maher and J McCulloch (eds) *The Emerald Handbook of Feminism, Criminology and Social Change* (Emerald Publishing Limited 2020) 317.

<sup>77</sup>The Chilling (n 3).

<sup>78</sup>In addition to Data protection regulations: see Information Commissioner's Office, 'Social Net, Working and Online Forums – When Does the DPA Apply?' (June 2013) <<https://ico.org.uk/media/for-organisations/documents/1600/social-networking-and-online-forums-dpa-guidance.pdf>> and the Council Directive (EU) 2010/13/EU Audiovisual Services Media Directive [2010] OJ L 095.

<sup>79</sup>Council Regulation (EU) 2022/2065 of 19 October 2022 on a Single Market For Digital Services and amending Directive 2000/31/EC (Digital Services Act) [2022] OJ L 277/1.

<sup>80</sup>Online Safety Act 2021, No. 76, 2021 (commenced 23 January 2022) (Australia).

forerunner Germany's *NetzDG*.<sup>81</sup> Regulation has been seriously considered for the better part of a decade as global concerns about online abuse and disinformation have intensified in light of the upsurge in claims of foreign interference in elections, the rise of populist and extremist politics globally, and the use of online platforms to organise anti-democratic and terrorist activities, proliferate the exploitation of children, and to silence, intimidate, and harass others. The OSA imposes obligations on platforms (e.g. social media) and search services (e.g. Google) to operate its services using proportionate processes and systems designed to minimise the posting, proliferation, and dissemination of 'illegal content' (defined as criminal wrongs) and content harmful (though not necessarily criminal) to children and to force platforms to enforce their respective terms of service transparently and consistently. (Indicative of the OSA's diluted provisions, the OSA omits non-criminal but unlawful speech, such as defamation, privacy invasions, and other tortious wrongs). The most stringent requirements ('safety duties') are on 'Category 1' services (e.g. large companies which will include Facebook, Twitter, TikTok, and smaller platforms deemed to have high risk). The Office of Communications (Ofcom) is tasked with regulating, has daunting enforcement powers, and can impose formidable financial and criminal penalties on platforms and senior corporate employees for breaches.

The OSA sets out the parameters of how the regime will operate but it remains largely skeletal legislation – much of it will be left to Ofcom to set in codes of conduct and other guidance documents,<sup>82</sup> in regulation, and by what each social media platform includes in their respective terms of services. Accordingly, there is still significant room to work out the details of how the regime will operate.

### **The government intended that the OSA would tackle abuse against journalists**

The online abuse of public figures was one of the many online harms that the Government sought to tackle through regulatory action. The impetus for the OSA started six years ago with the Internet Safety Strategy Green Paper in October 2017.<sup>83</sup> This was followed by the Government Response in May 2018<sup>84</sup> and the Online Harms White Paper in April 2019.<sup>85</sup> After consultations on the White Paper, the Government's Initial Response was

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<sup>81</sup>Network Enforcement Act (1 Sept 2017) Bundesgesetzblatt, Teil I (Germany).

<sup>82</sup>OSA mandates Ofcom produce certain Codes (ss 41–51) and Guidance (ss 52–54) (n 17).

<sup>83</sup>Green Paper (n 21).

<sup>84</sup>DCMS, *Government Response to the Internet Safety Strategy Green Paper* (Government Response to Green Paper, May 2018).

<sup>85</sup>White Paper (n 21).

published in February 2020<sup>86</sup> followed by the Full Response in December 2020.<sup>87</sup> The Government then published the Bill in draft form in May 2021 so that it could be subject to committee and legislative scrutiny.<sup>88</sup> A Joint Committee of the two Houses of Parliament and a committee of the Department of Digital, Culture, Media, and Sport each embarked on extensive consultations and reviewed voluminous written submissions and oral testimony from civic society organisations, social media and technology companies, academics, and other interested parties. Concomitantly, the House of Lords Digital and Communications Committee produced a report on ‘Freedom of Expression in the Digital Age’ which sought evidence concerning the OSB.<sup>89</sup> The various committee reports were published<sup>90</sup> and responded to by the Government.<sup>91</sup> The Bill was then introduced in Parliament and sent to the Public Bill Committee which accepted additional written and oral evidence from interested parties. The OSB then underwent several amendments,<sup>92</sup> the most relevant being amendments made on 20 December 2022 that removed the ‘legal but harmful’ provisions and added additional duties on platforms regarding news publisher content. Shortly thereafter the OSB went up to the House of Lords. It received Royal Assent in October 2023.

The early Government reports demonstrate that the original intentions of legislation were to address the growing prevalence of serious online harms – including abuse of public figures, described as journalists and politicians.<sup>93</sup> The Green Paper specifically listed the prevalence of online abuse and threats experienced by women MPs and journalists that resulted in ‘silencing their voices and reducing their visibility’.<sup>94</sup> Likewise, as part of its sweeping recommendations, the White Paper set out to tackle harms against public figures including journalists,<sup>95</sup> expressly citing a survey by the International

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<sup>86</sup>DCMS and Home Department, *Initial Consultation Response to Online Harms White Paper* (Feb 2020) <<https://www.gov.uk/government/consultations/online-harms-white-paper/public-feedback/online-harms-white-paper-initial-consultation-response>>.

<sup>87</sup>DCMS and Home Department, *Online Harms White Paper: Full Government Response to the Consultation* (Cm, CP 354, Dec 2020).

<sup>88</sup>Draft OSB (n 22).

<sup>89</sup>Freedom of Expression in the Digital Age (n 55).

<sup>90</sup>Joint Committee on the Draft Online Safety Bill 1st Report, *Draft Online Safety Bill Volume 1 Report* (2021–22, HL 129, HC 609); DCMS Committee 8th Report, *The Draft Online Safety Bill and the legal but harmful debate* Volume 1 Report (2021–22, HC 1039).

<sup>91</sup>DCMS, *Government Response to the Report of the Joint Committee on the Draft Online Safety Bill* (Cm, CP 640, 17 March 2022); DCMS Committee, *The Draft Online Safety Bill and the Legal but Harmful Debate: Government Response to the Committee’s Eighth Report*, *House of Commons Paper* (2021–22, HC 1221); DCMS, *Government Response to the House of Lords Communications Committee’s Report on Freedom of Expression in the Digital Age* (2021) <<https://committees.parliament.uk/publications/7704/documents/80449/default/>>.

<sup>92</sup>March 17, 2022 (carried over until May 11, 2022), June 29, 2022, December 9, 2022, December 20, 2022, and January 18.

<sup>93</sup>White Paper (n 21) 12–21, 23, 31.

<sup>94</sup>Green Paper (n 21) 51.

<sup>95</sup>White Paper (n 21) 25, 74–75.

Federation of Journalists which found that 64% of women journalists had experienced online abuse<sup>96</sup> and *The Guardian's* findings from its Web We Want project.<sup>97</sup> Other than highlighting the importance to the public of having 'high-quality news' the White Paper did not mention any other media freedom concerns.<sup>98</sup>

### The press lobby raised other media freedom concerns

The early reports did not directly link abuse of public figures as a specific media freedom concern, but focused on its detrimental impact to women's public participation. This was unfortunately not corrected by press lobbying efforts. The lobbying instead exposed immediate tensions between journalists and their advocates and press employers. A full analysis of the White Paper consultations is out of scope of this paper (there were over 2400 responses plus roundtable discussions not publicly available).<sup>99</sup> The Government's report, however, indicates there was strong advocacy from the press employer lobby. The press sought assurances that it would receive exemptions in the OSA so its content (including below-the-line commentary) was out of scope and special privileges so that platforms would not censor its content. Press employers largely ignored concerns about online journalist safety.<sup>100</sup> To illustrate, the NUJ campaigned for provisions to protect journalist online safety,<sup>101</sup> but the News Media Association, representing press businesses, advocated *against* the inclusion of the harm of abuse of public figures, fearing it would be subverted to censor news.<sup>102</sup> It further declared the White Paper 'a grave threat' with 'repressive chilling effect' on 'press freedom' listing many 'press freedom' concerns – conspicuously omitting journalist safety.<sup>103</sup> It is not that the News Media Association's concerns were not legitimate. The media's democratic role is to act as a check on state power including politicians, and an ill-defined and ill-regulated provision protecting political actors from abuse could lead to serious chilling effect. But those concerns could be addressed through lawful and throughout provisions and not simply end discussion on potential solutions.

<sup>96</sup>ibid 24 citing IFJ, 'IFJ Global Survey Shows Massive Impact of Online Abuse of Women Journalists' (23 Nov 2018) <<https://www.ifj.org/media-centre/news/detail/article/ifj-global-survey-shows-massive-impact-of-online-abuse-on-women-journalists.html>>.

<sup>97</sup>White Paper 25 (n 21) referring to Gardiner (n 59).

<sup>98</sup>ibid 71.

<sup>99</sup>I requested access to certain evidence but was denied: Letter from Department for Science, Innovation & Technology to author (2 Nov 2023). Some evidence was, however, available via press websites.

<sup>100</sup>News Media Association, 'Consultation on the Online Harms White Paper Response of the News Media Association' (1 July 2019) <[https://newsmediauk.org/wp-content/uploads/2022/10/Online\\_Harms\\_White\\_Paper\\_News\\_Media\\_Association\\_Response\\_1\\_July\\_2019\\_sr.pdf](https://newsmediauk.org/wp-content/uploads/2022/10/Online_Harms_White_Paper_News_Media_Association_Response_1_July_2019_sr.pdf)> 1–2, 10–14.

<sup>101</sup>NUJ, 'NUJ Submission to the Online Harms White Paper' (June 2019) <<https://www.nuj.org.uk/resource/nuj-submission-to-the-online-harms-white-paper.html>> 5–6.

<sup>102</sup>News Media Association (n 100) 10.

<sup>103</sup>ibid 5.



Following the White Paper, the Government immediately emphasised the vital role of a free press to democracy and its desire to protect ‘media freedom’.<sup>104</sup> But those concerns were about protecting recognised news publishers and journalistic content – the earlier concerns about protecting public figures and journalists from online abuse slowly fell off the radar. This change in focus was solidified in the Government’s Full Response which highlighted that online abuse of those in public life would be remedied in the ‘legal but harmful’ provisions (where platforms would have to take steps to assess risk of certain harms on their platforms).<sup>105</sup> That was the extent of discussion concerning online abuse of journalists. Yet the press’ other media freedom concerns gained prominence and were translated into specific legal protections for the press which would only be strengthened as the legislative process continued. Citing the ‘importance of upholding media freedom’ the Government made two important commitments to the press.<sup>106</sup> First was that content published by a ‘news publisher’ on their own websites would be exempt from the OSA’s scope.<sup>107</sup> The press sought this exemption because it did not want platforms to take action against news articles or user-generated below-the-line comments for economic and sustainability reasons (more user engagement leads to more clicks on content which leads to greater advertising revenue and market saturation via search engine and social media algorithms).<sup>108</sup> The Government offered little rationale for excluding below-the-line commentary other than mentioning ‘enabling reader engagement with the news’ and generically referencing ‘press freedom’.<sup>109</sup> Second was the commitment to protect ‘journalistic content’ from the risk that social media platforms would remove or otherwise censor or diminish that content in carrying out its duties.<sup>110</sup> This was to ensure that the ‘invaluable role of a free media’ was preserved.<sup>111</sup>

The pre-legislative process demonstrates that the Government was initially committed to protecting public figures including journalists from serious and chilling online abuse. Its plans to tackle it, however, were weak – and without thought to how abuse impacting journalists was unique (journalists often endure volumes of abuse and cannot simply leave the digital sphere to avoid it because they require an online presence to disseminate their content and receive tips and information from sources). In contrast, although early reports did not express concern about

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<sup>104</sup>Initial Response (n 86) ch 2, para 14, Executive Summary para 2; ch 1 paras 1–9; ch 3 para 5.

<sup>105</sup>Full Response (n 87) Part 2, Box 9 ‘Anonymous Abuse’, ch 2 para 4.

<sup>106</sup>*ibid* Joint Ministerial Statement paras 22–23; Part 1, para 1.10.

<sup>107</sup>*ibid* para 1.10.

<sup>108</sup>Impress, Lexie Kirkconnell-Kawana (n 1).

<sup>109</sup>Full Response (n 87) Part 1.

<sup>110</sup>*ibid* para 1.11, 4.1.

<sup>111</sup>*ibid* Joint Ministerial Statement para 23.



granting the press special privileges or exemptions, after intervention from the press lobby the Government quickly included, defended, and improved special protections for the press on the justification of upholding ‘media freedom’.

### **The Draft OSB failed to protect journalist safety but protected other press interests**

The Draft OSB delivered on those problematic promises and failed to incorporate specific provisions to protect journalists from online abuse. Consequently, no provisions protecting the media freedom issue of journalist online safety emerged.

Journalists enduring online abuse would therefore have to make use of general provisions. But those provisions were unsatisfactory from the start. The OSB intended to mandate that platforms remove ‘illegal content’ but that was largely and controversially delegated to the Secretary of State to define in regulation.<sup>112</sup> The other provisions intended to capture abuse against public figures were the infamous ‘legal but harmful’ provisions, which sparked immediate controversy that the Government never managed to shake.<sup>113</sup> It is doubtful these provisions would have tackled online abuse of journalists to any degree. Many platforms already ban threats, harassment, and abusive content and have reporting and complaints mechanisms in place – it is simply that those are ineffective.<sup>114</sup> Moreover, the provision mandating that platforms make available a process for users to make complaints about content or censorship did not specify what process was actually required.<sup>115</sup> It was also available to all users which would likely inhibit its effectiveness. The inadequacy of these provisions to protect online journalist safety in the Draft OSB is relevant because the Government’s ambition to tackle online abuse of journalists fell exceptionally short. There was therefore ample reason for the press to lobby to argue for greater protections for online journalist safety.

The lack of protection for online journalist safety can be juxtaposed with other media freedom concerns. In a win for certain media freedom interests, the OSA exempted the press from applying the safety duties to content on their own websites, including user comments below-the-line.<sup>116</sup> Importantly, two other significant exemptions for the press were carved out: search

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<sup>112</sup>Draft OSB s 41(5) (n 22).

<sup>113</sup>*ibid* s 46.

<sup>114</sup>See for example the ‘The X Rules’ <<https://help.twitter.com/en/rules-and-policies/x-rules>> and ‘Facebook Community Standards’ <<https://transparency.fb.com/en-gb/policies/community-standards/>>.

<sup>115</sup>Draft OSB, ss 15, 24 (n 22).

<sup>116</sup>OSA, Schedule 1, s 4 (n 17).

engines and social media platforms were exempted from applying any safety duties (e.g. removing, minimising, or otherwise censoring) ‘news publisher content’ (including below-the-line comments) at all.<sup>117</sup> Social media platforms therefore do not have to take action on articles and associated user commentary generated by *The Times*, *The Mirror*, *The Sun*, or any other ‘recognised news publisher’ (which ostensibly could include extremist publications posing as legitimate journalism) including any user commentary on that content, even if such content was criminal or violated the platform’s terms of service. Examples of evidence provided during the legislative process include antisemitic and racist comments appearing in *The Sun*, conspiracy theories in *The Telegraph*, comments degrading women in public life appearing in *MailOnline*, and comments suggesting how to kill and injure a history scholar, which, according to her testimony, appeared in the comments sections of *The Telegraph*, *The Times*, *MailOnline* and the *Express*, including the misogynistic suggestion that she should be ‘be burnt at the stake like a witch’.<sup>118</sup>

In addition to the exemptions, the press’ content also received special privileges. While the news publisher exemptions place news publisher content out of scope, the OSA does not ban social media platforms from taking action against such content (despite calls from certain press employers for a total ban).<sup>119</sup> To disincentivise social media platforms from removing journalistic content out of fear of sanction, there is a special duty on social media companies to consider ‘journalistic content’ and implement a special censorship complaints procedure available to journalists and users sharing journalistic content.<sup>120</sup> After further press lobbying, the Government later added further protections for ‘recognised news publishers’<sup>121</sup> and many other benefits for the press on the justification of upholding media freedom.<sup>122</sup>

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<sup>117</sup>OSA s 55(2)(g) exempts ‘news publisher content’ from the definition of ‘regulated user-generated content’ and ‘news publisher content’ is defined in s 55 (8–10). OSA s 57 excludes ‘recognised news publisher’ content from search services’ safety duties (n 17).

<sup>118</sup>See OSB Deb 14 June 2022, col 361–62 (Alex Davies-Jones) and Public Bill Committee Written Evidence, Session 2022–23 (June 2, 2022) (Professor Corinne Fowler).

<sup>119</sup>DMG Media para 5; GMG (near end of submission); News Media Association 2.1.10–14; Peter Wright, Alison Gow & Matt Rogerson Q 143, Joint Committee (n 19).

<sup>120</sup>OSA s 19 (n 17).

<sup>121</sup>*ibid* s 18; the content of ‘recognised news publishers’ was also included in a provision protecting ‘content of democratic importance’ (s 17).

<sup>122</sup>*ibid*, Government exempted ‘recognised news publishers’ from liability from the ‘false communication’ offence (s 179); amended the ‘recognised news publisher’ definition to permit publishers to clip or edit their content; added provisions requiring platforms and Ofcom to report on the impacts that the regimes have on news publisher and journalistic content (s 158) and provisions requiring Ofcom to take into account adverse impact on the availability of journalistic content on the service and confidentiality in journalistic sources in issuing information notices (s 124(2)(k)(i)(ii)). I aim to address these exemptions and provisions in subsequent work, but I preliminarily note that these provisions may not actually protect the press’ content or high-quality journalism.

## **Press lobbying exposed disagreement in the industry about how to protect 'media freedom'**

There were four official opportunities for lobbying after the Draft OSB was published: the Joint Committee, the DCMS Committee, the House of Lords Freedom of Expression Committee, and the Public Bill Committee all received written and oral evidence from interested parties. The evidence reveals that journalists and journalist organisations strongly advocated for Parliament to include provisions in the OSA to protect journalists from online abuse and consistently raised online abuse as a threat to journalism. However, the press businesses – largely mainstream new outlets – failed to advocate for journalist safety and instead focused on securing stronger protections for the press' content.

## **Press employers failed to advocate for journalist digital safety**

There was consistent and compelling evidence that journalists experienced online abuse causing a direct media freedom concern before the House of Lords Committee,<sup>123</sup> the Joint Committee<sup>124</sup> and the DCMS Committee.<sup>125</sup> Key points that were repeatedly raised include: that journalists were subjected to abuse including doxing, harassment, stalking and threats of torture, rape and death;<sup>126</sup> that platforms were ineffective and unhelpful, often finding that abuse did not violate their terms and conditions; that police did not take journalists seriously;<sup>127</sup> that press employers did not provide adequate support, ignored the issue, or fired the journalist for seeking help,<sup>128</sup> and that online abuse was intimidating journalists into silence, preventing them from reporting in the public sphere, and caused many journalists to consider leaving and actually forcing journalists to leave journalism altogether.<sup>129</sup> Notably, there was poignant evidence from Nobel Prize-winning journalist Maria Ressa and BBC journalist Marianna Spring, as highlighted above. The NUJ particularly stressed that the

<sup>123</sup>Lords Committee Appendix 2 Evidence (n 55): NUJ; S J Atherton; Rachel Coldicutt OBE; Reser; Ruth Smeeth, Index on Censorship & former MP Q 41–42; Dr Sharath Srinivasan Q 65; Dr Fiona Vera-Gray, Q 73; Seyi Akiwowo, Glitch Q 88; Renate Künast MP Q 150; Gill Phillips, GMG Q 156 (briefly noting abuse of a Jewish writer in the comments section of social media); Dr Nicholas Hoggard Q 162; Robert Colvile, Director, Centre for Policy Studies & columnist for *The Sunday Times* (noting that women colleagues receive far worse abuse than he does) Q 200.

<sup>124</sup>Joint Committee Evidence: NUJ; The Publishers Association; SumOfUs; Gina Miller; Dame Margaret Hodge MP; Maria Ressa Q 194; Nina Jankowicz Q 53 (n 19).

<sup>125</sup>DCMS Committee Evidence: NUJ; Marianna Spring; Michelle Stanistreet; Kirkconnell-Kawana, Impress Q 182, 193–194; Seyi Akiwowo, Glitch, Q 122; Cordelia Tucker O'Sullivan, Refuge, Q 125; Rt Hon Maria Miller MP, Q 126 (n 1).

<sup>126</sup>The Publishers Association, Joint Committee (n 19).

<sup>127</sup>Michelle Stanistreet Q 189, DCMS Committee (n 1).

<sup>128</sup>Nina Jankowicz Q 55 and Maria Ressa Q 193, Joint Committee (n 19).

<sup>129</sup>SumofUs, Joint Committee (n 19); Marianna Spring Q 144–145, DCMS Committee (n 1); Michelle Stanistreet Qs 189, 191, DCMS Committee (n 1). See also Pidd (n 61).

OSA needed to take concrete steps to solve the prevalent online abuse against journalists. It recommended greater platform support (e.g. tracking, removing, and stopping abusive content), better communication with journalists, a specific fast-track complaint route for the media to report abuse and for abuse to be referred to police, among many others. It also sought obligations on press employers to proactively help journalists enduring online abuse and to remove and stop abusive below-the-line comments.<sup>130</sup>

There was less evidence of abuse targeting journalists in the Public Bill Committee; however, there was substantial evidence of abuse of academics, public figures, and women politicians on social media and in the comments sections of mainstream newspapers including threats to hang, kill and rape.<sup>131</sup> And in all committees, many women and a few men gave evidence about the atrocious online abuse they experienced as politicians or public campaigners, so the issue of online abuse against those in public life was always at the fore.<sup>132</sup>

The impetus for the OSA was to improve online safety. It is therefore remarkable that very few press-related entities mentioned or advocated for protecting journalists against online abuse – indeed, as shown below, though not strictly a press entity, only one book publishing organisation did.<sup>133</sup> Instead, the press employers, which participated resoundingly throughout the legislative process, raised concerns about platforms censoring the press' content and the need for the Government to ensure and support 'media freedom' in the OSA. The press businesses providing written evidence included the BBC,<sup>134</sup> Channel 4,<sup>135</sup> Channel 5,<sup>136</sup> DMG Media,<sup>137</sup> GMG,<sup>138</sup> ITV,<sup>139</sup> News Media Association,<sup>140</sup> the Professional Publishers Association,<sup>141</sup> Sky,<sup>142</sup> BT, COBA, NBC Universal, TalkTalk, Virgin Media O2, and Warner Media.<sup>143</sup> Providing extensive additional

<sup>130</sup>See NUJ Evidence, DCMS Committee (n 1), Joint Committee (n 19) and Lords Committee (n 55).

<sup>131</sup>Professor Corinne Fowler & Antisemitism Policy Trust, PBC (n 118); PBC Deb (OSB) 24 May 2022, col 107 (Kyle Taylor, Fair Vote).

<sup>132</sup>See notes 123–125; See also Local Government Association Evidence to Joint Committee (n 19) and PBC (n 118).

<sup>133</sup>The Publishers Association, Joint Committee (n 19).

<sup>134</sup>BBC, Joint Committee (n 19); Public Service Broadcasters (BBC, Channel 4, and Channel 5) PBC (n 118).

<sup>135</sup>Channel 4, Joint Committee (n 19).

<sup>136</sup>Public Service Broadcasters (n 134).

<sup>137</sup>DMG, DCMS Committee (n 1), Joint Committee (n 19), Lords Committee (n 55), PBC (n 118).

<sup>138</sup>GMG, DCMS Committee (n 1), Joint Committee (n 19), Lords Committee (n 55).

<sup>139</sup>ITV, Joint Committee (n 19) was one of the few Press entities that advocated for the OSA to prevent platforms from publishing online harms. See also: ITV, DCMS Committee (n 1); Joint Submission of BT, Channel 4, COBA, ITV, NBC Universal, TalkTalk, Virgin Media O2, and Warner Media, Joint Committee (n 19).

<sup>140</sup>News Media Association, Lords Committee (n 55); News Media Association, DCMS Committee (n 1); News Media Association, Joint Committee (n 19); News Media Association, PBC (n 118).

<sup>141</sup>Professional Publishers Association, Joint Committee (n 19).

<sup>142</sup>Sky, Joint Committee (n 19), PBC (n 118).

<sup>143</sup>Joint Submission of BT and others (n 139).

oral submissions were DMG Media,<sup>144</sup> GMG,<sup>145</sup> the News Media Association,<sup>146</sup> and the Society of Editors.<sup>147</sup> The Chartered Institute of Journalists similarly failed to address online abuse of journalists.<sup>148</sup> While the Independent Media Association,<sup>149</sup> Hacked Off,<sup>150</sup> and Impress<sup>151</sup> did not advocate about journalist safety, they gave extensive submissions on the press' contribution to online harms and misinformation and the need for better industry standards and regulation.

Of these press entities, DMG, GMG Media, and the News Media Association participated the most (and were notably the only advocates for the news as opposed to broadcasting press, the latter of which is already regulated by Ofcom). DMG never mentioned online abuse of journalists to any committee. GMG was more sympathetic to online abuse generally, and in one written submission stated that *The Guardian* and *Observer* reported extensively on many of the real and serious harms the OSA sought to address (footnoting the Cambridge Analytica investigations, Facebook files and Christchurch shootings) but did not otherwise advocate for journalist safety.<sup>152</sup> The News Media Association similarly focused on obtaining exemptions and benefits for the press.

Perhaps unsurprisingly, major social media platforms and internet and technology companies gave evidence at all stages of the process, and some even expounded on their commitment to journalism; yet none mentioned online abuse of journalists or any need to support journalist safety.<sup>153</sup>

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<sup>144</sup>Peter Wright, DMG, Joint Committee (n 19); Peter Wright & Lizzie Greene, Lords Committee Qs 153–159 (n 55).

<sup>145</sup>Matt Rogerson, GMG, Joint Committee (n 19); PBC Deb (OSB) 26 May 2022, col 164–172 (PBC) (Matt Rogerson); Matt Rogerson & Gill Phillips, Qs 153 – 159, Lords Committee (n 55).

<sup>146</sup>PBC Deb (OSB) 26 May 2022, col 164–172 (Owen Meredith).

<sup>147</sup>Alison Gow, Society of Editors, Joint Committee (n 19).

<sup>148</sup>Chartered Institute of Journalists, Lords Committee (n 55).

<sup>149</sup>Independent Media Association, DCMS Committee (n 1); Independent Media Association, PBC (n 118); Independent Media Association, Lords Committee (n 19).

<sup>150</sup>Hacked Off, DCMS Committee (n 1), Joint Committee (n 19), PBC (n 118).

<sup>151</sup>Impress, DCMS Committee (n 1), Joint Committee, (n 19). Lexie Kirkconnell-Kawana, Impress, DCMS Committee (n 1).

<sup>152</sup>GMG, Lords Committee (n 55).

<sup>153</sup>DCMS Written Evidence: Facebook; Twitter (n 1). DCMS Oral Evidence: Elizabeth Kanter, TikTok; Iain Bundred, YouTube; Niamh McDade, Twitter; Richard Earley, Meta (n 1). Joint Committee Written Evidence: Facebook (Meta); Google UK (Youtube); Reddit; Snap Inc.; TikTok; Twitter; Wikimedia Foundation UK (n 19). Oral Evidence: Theo Bertram, TikTok; Leslie Miller, Youtube; Markham C Erickson, Google; Nick Pickles, Twitter (n 19). Lords Committee Written Evidence: Facebook; Google; techUK; Twitter (n 55). Oral Evidence: Richard Early, Facebook Qs 207–21; Katy Minshall, Twitter Qs 207–213; Google, Katie O'Donovan Qs 234–242; Snap Inc, Henry Turnbull Qs 243–251; Tik Tok, Elizabeth Kanter Qs 243–251 (n 55). PBC Written Evidence: Facebook (Meta); Wikimedia; Twitter; Google UK; Mid-Sized Platform Group (n 118). Oral Evidence: PBC Deb (OSB) 24 May 2022 (Ben Bradley, TikTok; Katy Minshall, Twitter; Richard Earley, Meta; Katie O'Donovan, Google UK; Lulu Freemont, techUK) (n 118).

### **The press exemptions highlighted industry tension about regulating below-the-line comments**

The press lobbying was largely successful. But, as shown below, the exemptions for the press highlighted tensions within the journalism industry, which came to a head when considering whether below-the-line comments should be exempted from the OSA. For example, the Lords Committee requested supplementary evidence from GMG and DMG on their respective comment moderation practices. GMG responded by highlighting its Web We Want project's findings and outlining its robust moderation processes;<sup>154</sup> DMG, however, merely included two brief paragraphs on the issue and instead dedicated the rest of its voluminous submission to expounding on how Google's algorithms discriminate against its content (DMG was not asked about this).<sup>155</sup> The press businesses' robust defences of moderation practices continued throughout each committee, even in the face of staunch criticism from journalists, journalists organisations and press reform organisations. For example, in oral evidence, the Joint Committee directly asked GMG and DMG about the abuse of journalists online and about what steps they take to ensure harmful content does not appear in below-the-line comments.<sup>156</sup> GMG briefly responded that *The Guardian* conducted research into comments on its website and found that 'negative comments particularly target women and journalists from black and ethnic minorities'.<sup>157</sup> DMG failed to respond to the question of online abuse of journalists at all.

In contrast, many journalists, press regulators, the NUJ and civic organisations had the opposite view.<sup>158</sup> They strongly advocated that the press should not be excluded from safety duties in the OSA, detailing inadequate self-regulation and highlighting many instances of widespread abuse in comments.<sup>159</sup> Impress supported the NUJ's initiative, especially regarding harassment, and further advocated for a provision that would ensure press accountability and industry standards for below-the-line comments.<sup>160</sup>

A full analysis of newspaper comments sections is beyond the scope of this paper, but it is clear that the perspectives of journalists and the press employers in evidence here differ,<sup>161</sup> as do the various approaches to moderation of online newspapers (*The Guardian*, for example, heavily moderates content

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<sup>154</sup>GMG, Lords Committee (n 55).

<sup>155</sup>DMG, *ibid*.

<sup>156</sup>*ibid* Q 147.

<sup>157</sup>*ibid*.

<sup>158</sup>Hacked Off, Ev 1433 paras 44–45 and Ev 517, Joint Committee (n 19). See also PBC Deb (OSB) 24 May 2022, col 101 (Demos); PBC Deb (OSB) 26 May 2022, col 131 (Antisemitism Policy Trust).

<sup>159</sup>*ibid*; NUJ paras 38–40, DCMS Committee (n 1), Joint Committee (n 19).

<sup>160</sup>Impress, Lexie Kirkconnell-Kawana Qs 182, 184, 193, 194, DCMS Committee (n 1).

<sup>161</sup>See also Matthew d'Ancona Q 135, DCMS Committee (n 1) and Robert Colvile, Lords Committee (n 55) mentioning abuse in comments sections.

and has numerous tools, resources, and information concerning its approach, whereas *MailOnline* does not).<sup>162</sup> And anecdotally, *MailOnline* does not moderate comments on all stories (even sensationalist articles that arguably instigate abusive comments) and unmoderated comments are not regulated at all.<sup>163</sup> The tension over below-the-line comments in newspapers exposes not only the ongoing anxiety in the UK about press regulation in the post-Leveson era but also the press' economic concerns about maintaining user engagement features. The pressures arising from these issues may require re-evaluation of the adequacy of industry regulation that has permitted news publishers to publish abusive user commentary.<sup>164</sup>

### **The press must advocate for journalist digital safety**

This critique about the lack of robust press employer advocacy for journalist safety is not just levelled at the press employers who participated in the process – indeed, those that submitted evidence without addressing journalist online safety or failed to submit evidence also missed an opportunity to further media freedom. It is concerning that the public broadcasters<sup>165</sup> – especially the BBC – failed to advocate for journalist safety given the documented evidence that many of its journalists endure abuse.<sup>166</sup> Even if mainstream press entities have internal policies aimed at protecting journalists, there is an absence of evidence demonstrating that journalists find these measures adequate. Moreover, many journalists in the UK are not employed by mainstream news outlets and lack the significant resources required to manage online abuse themselves.<sup>167</sup> Online abuse therefore remains a serious concern that the whole industry should champion. To start, the press needs to rid itself of abusive below-the-line comments and ensure that press regulators have the requisite enforcement powers. Otherwise, the press' exemption in the OSA may be on perilous ground. Advocating

<sup>162</sup>See Gardiner (n 59).

<sup>163</sup>See *MailOnline's* House Rules at <<https://www.dailymail.co.uk/home/article-1388145/House-Rules.html>> but see, for example, Mark Nicol, 'Need a Leg-up, ma'am? Troops in King Charles's Mounted Ceremonial Battery Mock Female CO Struggling in the Saddle for Ceremony Amid Dissent in the Ranks' *MailOnline* (January 31, 2023) <<https://www.dailymail.co.uk/news/article-11672685/Troops-mock-female-struggling-saddle-ceremony-amid-dissent-ranks.html#reader-comments>> which contained inevitable misogynistic comments including, 'She should get back to the barracks and iron the lads bed sheets. That's a good little girl.' IPSO acknowledges on its website that unmoderated comments are not within IPSO's remit and a specific breach of the Editor's Code must be alleged: <<https://www.ipso.co.uk/complain/our-complaints-process/reader-comments-and-user-generated-content/>>.

<sup>164</sup>The Lords Report (n 55) did not address journalist safety at all: see paras 128–138, 176–178. The Lords did not mention online abuse of journalists in debates on the Report: House of Lords Freedom of Expression (Communications and Digital Committee Report) Deb 27 October 2022, col 1608–42.

<sup>165</sup>See BBC & Public Service Broadcasters (n 134).

<sup>166</sup>See Marianna Spring & Rana Rahimpour (discussed above) and abuse of Sarah Smith in Rhys Evans, 'The Challenges of Making News for a Multinational State – A View from the UK' *Reuters* (14 Feb 2022) <<https://reutersinstitute.politics.ox.ac.uk/challenges-making-news-multinational-state-view-uk>>.

<sup>167</sup>The Chilling (n 3) 26.



for journalist online safety, however, need not clash with the press' other media freedom concerns – as I outline below, many provisions could have been included in the OSA to protect journalist safety without changing the status quo of state non-interference in regulation.

### **Parliament's consideration and protection of media freedom**

With that backdrop, the final amendments to the OSB highlight two key themes: the Government was remarkably ineffective at translating its policy goal to protect journalist digital safety into adequate legal protections – but it took steps to protect other media freedom interests (supported by the legacy press and allies in Parliament).

#### ***Parliament was persuaded to strengthen exemptions and privileges for the press to uphold 'media freedom'***

The Government strengthened some protections for the press' online content, citing 'a free press' as 'one of the pillars of our democratic society'.<sup>168</sup> It created a new 'must-carry' and complaint regime<sup>169</sup> for recognised news publisher content – which mandate that platforms notify news publishers before it takes action on any news publisher content – in addition to the special complaint regime for 'journalistic content'.<sup>170</sup> It also enhanced protections for below-the-line commentary on news publishers' websites.<sup>171</sup> In defending that policy, it noted that:

the need to safeguard media freedom outweighs the limited risks that may be posed in any comment sections. User comments are crucial for enabling reader engagement with the news and encouraging public debate, as well as for the *sustainability of the news media*. (emphasis added)<sup>172</sup>

The reference to the 'limited risks' of the comments section does not accord with the empirical evidence and clearly favoured the press employers' conceptions of media freedom over journalist safety. Notably the Law Commission did not recommend exempting below-the-line comments from its proposed updates to communications offences.<sup>173</sup> Moreover, both

<sup>168</sup>DCMS, 'Fact Sheet on Enhanced Protections for Journalism within the Online Safety Bill' (23 Aug 2022) <<https://www.gov.uk/government/publications/fact-sheet-on-enhanced-protections-for-journalism-within-the-online-safety-bill/fact-sheet-on-enhanced-protections-for-journalism-within-the-online-safety-bill>> para 4.

<sup>169</sup>OSA s 18 (n 17).

<sup>170</sup>ibid s 19.

<sup>171</sup>ibid, the OSA prohibits the Secretary of State from removing the exemptions: s 220(3) (exemption for recognised news publisher content from the definition of regulated user-generated content) and s 220 (10) (below-the-line comments on a news publisher websites).

<sup>172</sup>DCMS Fact Sheet (n 168) para 16.

<sup>173</sup>Law Commission (n 60) para 4.3 'harmful communications' offence which was not implemented in the OSA.



Labour<sup>174</sup> and SNP<sup>175</sup> sought to restrict and remove the exemption, citing inadequate IPSO regulation and many instances of abuse appearing in comments published by the *Sun*, *Telegraph*, and *MailOnline*.<sup>176</sup> Further attempts were made by several Lords to subject below-the-line comments of the largest newspaper websites to the OSA safety duties<sup>177</sup> and to narrow the definition of ‘recognised news publishers’ to publishers of an approved and independent regulator. But treating the amendments as a death knell to a free press in the UK, Lord Black (notably the chairperson of the *Telegraph Media Group*) hyperbolically compared the proposed latter amendment as forcing the press into regulation by holding a gun to its head, while Lord Faulks (chairperson of IPSO) selected the classically inflated comparison to the Sword of Damocles.<sup>178</sup> Both expounded the importance of a free press to democracy and its important history and protection in the UK – but without any mention of online safety of journalists. In the end, the Government remained committed to exempting recognised news publishers from moderating below-the-line comments in accordance with the OSA. It justified its decision by noting that it was ‘persuaded’ by the press lobby that user engagement features were ‘integral to freedom of the press’.<sup>179</sup> Accordingly, there was a clear divide within the press and Parliament about regulating below-the-line comments, pitting journalists, the NUJ, and some press regulators against the interests of press publishers. The posturing about ‘media freedom’ doomed any creative or thoughtful discussion on resolving these tensions and exposed ongoing industry divide in post-Leveson UK.

### **Journalist digital safety was largely ignored**

The success of the press in obtaining privileges in the OSA can be contrasted with the lack of success of journalists in securing digital safety protections. The tranche of evidence concerning abuse of journalists provided throughout the legislative process did not translate into any specific protections for journalists in the OSA. Notably, online abuse of journalists and its impact on media freedom and democracy was never mentioned in the House of Commons or the Public Bill Committee and was only briefly mentioned in the House of Lords (by several women peers).<sup>180</sup> The lack of debate concerning journalist safety is troubling.

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<sup>174</sup>PBC Deb (OSB) 14 June 2022, col 359 (Alex Davies-Jones).

<sup>175</sup>ibid col 359 (Kirsty Blackman).

<sup>176</sup>ibid col 360–363 (Alex Davies-Jones).

<sup>177</sup>HL Deb 23 May 2023 vol 830, cols 840 (Lords Clement Jones, Lipsey, McNally); HL Deb 12 July 2023 vol 831, Cols 1776–78 (Lord Lipsey).

<sup>178</sup>HL Deb 23 May 2023 vol 830, col 842 (Lord Faulks) and col 844 (Lord Black). See also HL Deb 12 July 2023 vol 831, Col 1780–82 for similar discussion.

<sup>179</sup>PBC Deb (OSB) 14 June 2022, col 363–64 (Chris Philp).

<sup>180</sup>HL Deb 1 Feb 2023, vol 827, cols 738–39 (Baroness Kennedy); HL Deb 22 June 2023 vol 831, col 419 (Baroness Bennett).

The abuse of public figures more broadly was not wholly ignored – indeed, several MPs raised the awful online abuse they and their families have endured while carrying out their democratic roles,<sup>181</sup> including a deep-fake picture of an MP’s young son being beheaded shared on social media,<sup>182</sup> a picture of a human hand holding a gun pointed at the MP which social media refused to remove,<sup>183</sup> and death and rape threats and abuse along the lines of people wishing they could watch an MP burn in a car alive.<sup>184</sup> The murders of the late Jo Cox and Sir David Amess reverberated throughout the debates,<sup>185</sup> with one MP noting that Sir Amess was passionate about remedying the ‘vile misogynistic abuse’ that women public figures endure.<sup>186</sup> Similarly, in the Public Bill Committee, several women MPs raised serious concerns about the horrific abuse that politicians across the political spectrum face (noting recent rape and death threats which Twitter failed to respond to,<sup>187</sup> and someone showing up at an MP’s office with a knife).<sup>188</sup> Many women in the House of Lords gave similar harrowing accounts of abuse.<sup>189</sup> Abuse against politicians is chilling to democratic participation and should be more robustly addressed.<sup>190</sup> There remains a wide gap, however, between the resources of elected politicians, who often have employees to moderate accounts, collect evidence, and refer threats to police,<sup>191</sup> and physical security protections,<sup>192</sup> that journalists, especially freelance journalists, simply do not.

### ***The government failed to translate its policy goals into legislation***

In response to the accounts of harrowing abuse raised largely by women parliamentarians, the Government assured members that this abuse would be addressed in the ‘legal but harmful’ provisions, the ‘illegal content’

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<sup>181</sup>HC Deb 16 December 2021, vol 705, col 1186; HC Deb 13 January 2022, vol 706, cols 724 & 728; HC Deb 27 January 2022, vol 707, cols 1125–1126; HC Deb 19 April 2022, vol 712, col 107; HC Deb 5 December 2022, vol 724, col 87; HC Deb 17 January 2023, vol 726, col 281.

<sup>182</sup>HC Deb 27 January 2022, vol 707, col 1125.

<sup>183</sup>HC Deb 12 July 2022, vol 718, col 187, 191, 197–198, 205–206.

<sup>184</sup>HC Deb 19 April 2022, vol 712, cols 94–97.

<sup>185</sup>*ibid* col 93. See also The Scottish Parliament (Hybrid Meeting of the Parliament) (23 Feb 2022) 10–11.

<sup>186</sup>*ibid* (Mark Francois).

<sup>187</sup>PBC Deb (OSB) 7 June 2022, col 270 (Alex Davies-Jones), cols 273–74 (Kim Leadbeater and Kirsty Blackman).

<sup>188</sup>PBC Deb (OSB) 13 Dec 2022, col 35–36 (Charlotte Nichols); PBC Deb (OSB) 7 June 2022, col 271–274 (Kim Leadbeater).

<sup>189</sup>HL Deb 1 Feb 2023, vol 827, col 694 (Baroness Merron); cols 701–702 (Baroness Anderson of Stoke-on-Trent); cols 738–39 (Baroness Kennedy) col 752 (Baroness Foster); HL Deb 19 May 2023 vol 830, Col 194–95 (Baroness Kidron); HL Deb 19 May 2023 vol 830, col 204 (Baroness Merron); Cf HL Deb 22 June 2023 vol 831, cols 418–419 (Baroness Fox warns against criminalising).

<sup>190</sup>Labour sought provisions to protect people taking part in elections but those were rejected by Government: PBC Deb (OSB) 7 June 2022, col 271–274 (Kim Leadbeater).

<sup>191</sup>HL Deb 1 Feb 2023, vol 827, cols 701–702 (Baroness Anderson).

<sup>192</sup>HL Deb 1 Feb 2023, vol 827, cols 731 (Baroness Grey-Thompson).

provisions, and because the OSA would require platforms to enforce their own terms.<sup>193</sup> An examination of those promises, however, demonstrate that they were largely overstated.

### ***The ‘legal but harmful’ circus***

Perhaps the biggest challenge the Government faced was defending the controversial ‘legal but harmful’ provisions. As outlined above, the ‘legal but harmful’ provisions were inadequate to tackle online abuse of public figures, but the Government could have taken steps to improve those provisions. Indeed, both the Joint and DCMS Committee suggested it do so, with the Joint Committee specifically recommending increasing protections in this category to tackle online abuse deterring women from entering politics and participating in political and democratic life.<sup>194</sup> (The Lords Committee recommended removing those provisions, or alternatively, altering them to better protect free speech).<sup>195</sup> Instead, the Government remained on the defensive, distracted by the relentless criticism from free speech advocates. It was forced to make repeated efforts to quell the ‘outrage’ from members of its own party that the Bill would ‘censor’ legal speech by repeatedly assuring members that the Bill would not restrict legal speech or stifle freedom of expression.<sup>196</sup> Chris Philp, while Undersecretary of the Bill, in an op-ed in *The Times* even tried to convince if not the public then his fellow legislators that the provisions would not censor legal speech – even explicitly stating that ‘platforms can choose to do nothing’ if they have harmful content on their site.<sup>197</sup> But despite those efforts at political persuasion, in a volte-face (likely compounded by the rapid change in Conservative leadership in fall 2022 where the OSB was led in Parliament by three different Ministers in the span of three months) the Government capitulated to free speech advocates<sup>198</sup> and axed the ‘legal but harmful’ provisions. It was done at the very late stages of debate in the House of Commons, leaving little room for further efforts to improve those provisions.<sup>199</sup> The move was widely

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<sup>193</sup>See HC Deb 27 January 2022, vol 707, cols 1127; HC Deb 19 April 2022, vol 712, cols 93–95, 97; HL Deb 22 June 2023 vol 831, col 423 (Lord Parkinson).

<sup>194</sup>JC Report (n 90) paras 152–155. The DCMS Committee expressly cited the evidence of journalists and the NUJ but did not make a specific recommendation regarding journalist safety: DCMS Report (n 90) paras 14–15.

<sup>195</sup>Freedom of Expression in the Digital Age (n 55).

<sup>196</sup>HC Deb 19 April 2022, vol 712, cols 116–17; HC Deb 12 July 2022, vol 718, col 160, 164, 180; PBC Deb (OSB) 7 June 2022, col 265 (Chris Philp); PBC Deb (OSB) 9 June 2022, col 300 (Chris Philp). See also PBC Deb (OSB) 13 Dec 2022, col 31 (Damian Collins) who acknowledged this even after Government scrapped them. The provisions focused on transparency: HC Deb 19 April 2022, vol 712, cols 99, 112, 135; HC Deb 12 July 2022, vol 718, col 160.

<sup>197</sup>Chris Philp, ‘Online Safety Bill Poses No Threat to Free Speech’ *The Times* (24 May 2022).

<sup>198</sup>PBC Deb (OSB) 13 Dec 2022, col 33–34 (Damian Collins).

<sup>199</sup>The change was announced 5 December 2022 (the second day of Third Reading) and again 17 January 2023 in the House of Commons.

condemned by opposition parties,<sup>200</sup> civic organisations,<sup>201</sup> and many Lords.<sup>202</sup>

Problematically, the ‘legal but harmful’ provisions were replaced with even less adequate provisions. ‘User empowerment duties’<sup>203</sup> were inserted, requiring Category 1 providers to provide features (if ‘proportionate’ to do so) for adults to filter non-verified users and to have some control over *very limited* defined content (the only content that may be applicable to certain journalists is abusive content that targets or incites hatred against people of a particular race, religion, sex, sexual orientation or gender reassignment).<sup>204</sup> As mentioned above, these provisions are not sufficient for journalists.<sup>205</sup> Moreover, journalists face attacks from coordinated accounts and cannot possibly manage those onslaughts of abuse themselves.<sup>206</sup> Also added was a provision mandating that Category 1 services offer adults a ‘user identity’ feature but that will not likely tackle anonymous abuse.<sup>207</sup> These late changes prevented meaningful deliberation. It was clear that opposition parties were disappointed but had to move the OSB forward.<sup>208</sup> Accordingly, the ‘legal but harmful’ provisions were inadequate to begin with, proved immensely distracting, were dumped at the last minute, and replaced with worse provisions that came too late for any meaningful debate or change.

### ***The pitfalls of the ‘illegal content’, ‘threatening’ and ‘false’ communications provisions and the vague and general complaints regime***

The ‘illegal content’ provisions likely have the greatest potential to improve journalist safety by remedying the obviously criminal and worst forms of online abuse journalists endure.<sup>209</sup> The ‘illegal content’ provisions include ‘priority offences’ encompassing threats to kill, harassment, stalking, and

<sup>200</sup>HC Deb 5 December 2022, vol 724, cols 31, 31, 87 (Kirsty Blackman and Alex Davies-Jones). Labour tabled amendments to set minimum standards for platforms’ terms and include safety duties for adults, but those were rejected by Government: HC Deb 17 January 2023, vol 726, col 274, 288–290. See also HC Deb 17 January 2023, vol 726, col 315, PBC Deb (OSB) 13 Dec 2022, col 30–32 (Alex Davies-Jones).

<sup>201</sup>PBC Written Evidence (n 118): HOPE not hate; Carnegie UK; Full Fact.

<sup>202</sup>HL Deb 1 Feb 2023, vol 827, cols 704 (Baroness Hollins); HL Deb 1 Feb 2023, vol 827, cols 763–64, 769 (Lord Clement-Jones). Deb 9 May 2023 vol 829, col 1752–52 (Baroness Stowell); HL Deb 1 Feb 2023, vol 827, Col 1501, HL Deb 9 May 2023 vol 829, col 1681–1691 (Lord McNally).

<sup>203</sup>OSA ss 12 (10)–(12) (n 17).

<sup>204</sup>OSA s 16 (n 17). Despite Government’s assurances: PBC Deb (OSB) Deb 13 Dec 2022, col 36 (Damian Collins).

<sup>205</sup>Julie Posetti, ‘Fighting Back Against Proliferous Online Harassment: Maria Ressa’ in Larry Kilman (ed) *An Attack on One is an Attack on All: Successful Initiatives To Protect Journalists and Combat Impunity* (UNESCO, 2017) <<https://unesdoc.unesco.org/ark:/48223/pf0000259399>>.

<sup>206</sup>The Chilling (n 3) 21.

<sup>207</sup>OSA s 64 (n 17).

<sup>208</sup>See note 198.

<sup>209</sup>See note 25.

public order offences that are already criminal.<sup>210</sup> A new ‘threatening communications offence’ was also introduced.<sup>211</sup> If Ofcom provides robust guidance outlining how platforms are to assess this content, these provisions could elicit meaningful change.

Yet drawbacks remain. The ‘threatening communications’ offence, for example, demands a high bar (e.g. the sender must have ‘intended’ (directly or recklessly) that the person enduring the abuse would ‘fear that the threat would be carried out’) which may not prevent a lot of abuse endured by journalists. It is also questionable how a platform is to assess ‘intention’ and whether the recipient would be in ‘fear that the threat would be carried out’, and do so quickly. Additionally, harassment typically requires a ‘course of conduct’ which may not be obvious to platforms especially if perpetrators utilise many accounts.<sup>212</sup> These offences also do not capture the realities of online abuse. It may be that obvious threats are captured (e.g. ‘I will rape you’) but what about attacks suggesting a journalist should be ‘taken care of in the streets’ and ‘thrown in Guantanamo Bay’, or viral memes superimposing male genitals over a female journalists’ face, or statements like ‘somebody should take that smile off your face, and a bit of acid will do it’?<sup>213</sup> Disinformation and mob tactics are also regularly used to discredit journalists and whip up a frenzy of hate and potentially, violence.<sup>214</sup> Ultimately, these types of threats, including indirect threats, are regularly reported but platforms state that they do not violate their terms of service.<sup>215</sup> In the House of Lords, Baroness Kennedy successfully fought for a last-ditch amendment to include some indirect threats.<sup>216</sup> It is not clear, however, that the provisions in the OSA will significantly change the problem of indirect threats that journalists endure.

Another major concern is the standard by which platforms must make decisions. The OSA states that the ‘size and capacity’ of the provider is relevant, as is whether the judgment was made by a human or

<sup>210</sup>OSA Schedule 7 (n 17).

<sup>211</sup>*ibid* s 181.

<sup>212</sup>Law Commission (n 60) para 2.56.

<sup>213</sup>HL Deb 22 June 2023 vol 831, col 413–415; HL Deb 6 July 2023 vol 831, col 1331–33 (Baroness Kennedy).

<sup>214</sup>Posetti, *Fighting Back* (n 205).

<sup>215</sup>Nina Jankowicz, Joint Committee (n 19); HL Deb 19 May 2023 vol 830, col 201 (Baroness Gohir); HL Deb 1 Feb 2023, vol 827, cols 738–39 (Baroness Kennedy); HL Deb 19 May 2023 vol 830, col 190–91 (Baroness Morgan).

<sup>216</sup>This was campaigned for by Baroness Kennedy vigorously (HL Deb 22 June 2023 vol 831, col 413–415; HL Deb 6 July 2023 vol 831, col 1331–33). See also HL Deb 19 May 2023 vol 830, col 190–91 (Baroness Morgan); HL Deb 19 May 2023 vol 830, col 201 (Baroness Gohir); HL Deb 22 June 2023 vol 831, col 413–415, HL Deb 6 July 2023 vol 831, col 1331–33, HL Deb 1 Feb 2023, vol 827, cols 738–39 (Baroness Kennedy); HL Deb 22 June 2023 vol 831, col 420 (Baroness Merron). Cf HL Deb 6 July 2023 vol 831, Cols 1581–86 where Baroness Fox and Lord Moylan sought to remove the ‘threatening’ and ‘harassment’ Public Order Act offences from the Bill entirely, and HL Deb 1 Feb 2023, vol 827, col 703 where Lord Frost intoned that Government isn’t responsible for addressing online abuse of public figures.

automated.<sup>217</sup> The provider must have ‘reasonable grounds to infer that all elements necessary for the commission of the offence, including mental elements, are present or satisfied, and does not have reasonable grounds to infer that a defence to the offence may be successfully relied upon’.<sup>218</sup> It remains to be seen how effective these provisions are; it is clear, however, that Ofcom will need to provide effective guidance to ensure platforms enforce ‘reasonable grounds’ in a meaningful way and do not permit platforms to escape responsibility by pleading lack of capacity.<sup>219</sup>

There are other provisions in the OSA that aim to tackle certain online abuse which may tangentially capture some abuse directed at journalists (e.g. the offences of cyberflashing or stirring up hatred on protected grounds).<sup>220</sup> The new ‘false communications offence’<sup>221</sup> could tackle certain abuse, for example, tactics accusing a journalist of collusion with foreign agents.<sup>222</sup> However, platforms will be faced with difficulty in applying these provisions (did the person know the message was false? Is the message, in fact, false?) in addition to the obvious freedom of expression concerns that a zealous application and enforcement of this provision may cause. The general reporting and complaints regime remains vague and it is questionable how effective it will be.<sup>223</sup> Notably, the OSA does not address pile-on harassment which is a tactic often deployed against journalists. This omission is troubling because it runs contrary to the Law Commission’s suggestion in its report recommending updates to communications crimes. In that report, the Law Commission reasoned that the criminal justice system was not best placed to enforce the scale of pile-on harassment crimes<sup>224</sup> but that the OSA regulator, through the ‘rigorous application of existing offences’ (including s 7(3A) of the *Protection from Harassment Act 1997* which criminalises group harassment) and the new ‘harmful harassment’ offence it recommended Parliament enact, was better placed to tackle this abuse.<sup>225</sup> However, these offences were not included in the OSA, in contradiction to the Law Commission’s expectations.

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<sup>217</sup>OSA s 192 (n 17).

<sup>218</sup>ibid s 192(6).

<sup>219</sup>ibid s 193 ‘Ofcom guidance about illegal content judgments’.

<sup>220</sup>ibid Part 10 ‘Communications Offences’. These cyber offences were recommended by the Law Commission (n 60) HC Deb 19 April 2022, vol 712, col 98.

<sup>221</sup>OSA s 179 (n 17). Notably ‘recognised news publishers’ are exempt from the commission of this offence (s 180(1)).

<sup>222</sup>See Carly Nyst and Nick Monaco, ‘State Sponsored Trolling: How Governments Are Deploying Disinformation as Part of Broader Digital Harassment Campaigns’, *Institute for the Future* (2018) <<https://legacy.iff.org/statesponsoredtrolling/>>

<sup>223</sup>OSA s 32 (search services) s 21 (Category 1 platforms) (n 17).

<sup>224</sup>Law Commission (n 60) para 1.32.

<sup>225</sup>ibid para 5.69, 5.90, 5.12; See *Protection from Harassment Act 1997*, s 7(3A).

### ***Merely enforcing platform terms and conditions won't bring about change***

Finally, the Government has consistently maintained that because the OSA will require platforms to enforce their terms this will elicit change. But that view is misplaced. Many platforms, especially smaller and extremist platforms do not have terms and conditions that ban such content but permit its dissemination.<sup>226</sup> Furthermore, as Elon Musk's takeover of Twitter demonstrates, terms and conditions can transform at the whims of private owners. And the Government refused to set minimum standards mandating what social media must have in their terms and conditions.<sup>227</sup> As the volume of evidence above demonstrates, platform policies are not effective because they do not adequately consider a lot of this content to be in violation of their terms. Journalists have consistently described platform's actions to tackle abuse as 'woefully inadequate'<sup>228</sup> and there is no indication that without regulatory intervention that this will change. There is therefore a colossal disparity between the Government's promises and the reality of online abuse of journalists.<sup>229</sup>

### ***Gender-based online violence against journalists impacts media freedom***

This paper has critiqued the Government for failing to implement its early vision to remedy online abuse against women journalists in the OSA.<sup>230</sup> This paper does not offer an overt feminist or intersectional critique of the lobbying efforts, Parliament debates, or Government decision-making. Yet there is a glaring gendered feature of the legislative trajectory that is worthy of mention. The journalists advocating about online abuse and seeking remedy in the OSA, their industry supporters, as well as other public figures and politicians similarly seeking remedy were predominantly women.<sup>231</sup> The OSA may have been shaped by this reality.<sup>232</sup>

<sup>226</sup>See Diana Rieger and others, 'Assessing the Extent and Types of Hate Speech in Fringe Communities: A Case Study of Alt-Right Communities on 8chan, 4chan, and Reddit' (Oct–Dec 2021) *Social Media + Society*. See also HC Deb 19 April 2022, vol 712, cols 94, 107, 114, 131.

<sup>227</sup>HC Deb 17 January 2023, vol 726, col 274, 288–290 (Labour tabled amendments).

<sup>228</sup>Maria Ressa in 'Fighting an Onslaught of Online Violence' (n 3) 12.

<sup>229</sup>Government even admitted that some abuse public figures endure may not obviously be criminal, stating that the platform (and Ofcom and the judiciary) would have to conduct a 'balancing exercise': PBC Deb (OSB) 7 June 2022, col 273–276 (Chris Philp).

<sup>230</sup>See Green Paper (n 21) and White Paper (n 21).

<sup>231</sup>See NUJ (n 101), Professor Fowler (n 118), Alex-Davies Jones MP (n 118), Lords Committee Evidence (n 123), Joint Committee Evidence (n 19), DCSM Committee Evidence (n 125), Parliamentary debates (n 181)–(n 189). There are of course a few men who also raised abuse as an issue, for example, Robert Coleville noting that women journalists endure or abuse than he does (n 123) and male parliamentarians raising abuse they endured, e.g. (n 182).

<sup>232</sup>For example, after the 'legal but harmful' provisions were dropped, the Government routinely rejected amendments that would require platforms to complete risk assessment of harms to adults, covering, harassment, misogyny, antisemitism and so forth: PBC Deb (OSB) 7 June 2022, col 259; PBC Deb (OSB)



## How the OSA and Ofcom can support journalist digital safety

I do not wish to overstate the gaps in the OSA. The OSA is ultimately skeletal legislation. Its success largely depends on how well the regime operates, what decisions Ofcom makes in its guidance and codes, and how diligent and effective Ofcom is at enforcing the regime. Ofcom must establish itself as a competent regulator.<sup>233</sup> Although the aims of the OSA are for Ofcom to review platforms' systems and enforce accountability and transparency, ultimately platforms (and Ofcom through its guidance and codes) will have to make decisions on content – and do so in line with freedom of expression. Making decisions on content is mired in difficulty but it is a role the judiciary traditionally has done, and in the digital era, a role that platforms and now private boards (i.e. Meta's Oversight Board)<sup>234</sup> are starting to do. The main point, however, is that abuse of journalists should be addressed in the OSA regime.

The critique put forth in this paper is meant to be productive. The Government has acknowledged that online abuse of journalists has negative implications for media freedom.<sup>235</sup> The National Action Plan for the Safety of Journalists has already gathered additional empirical evidence confirming that journalists in the UK continue to endure awful online abuse.<sup>236</sup> It remains to be seen whether the Action Plan will have concrete impacts on eliminating the online abuse of journalists. The lack of focus on online journalist safety in the OSA is, however, troubling.<sup>237</sup>

Nonetheless, there are still avenues for Ofcom to ensure that journalist safety is supported through existing provisions. This should be supported by the Government based on its public statements of backing journalist online safety.<sup>238</sup> The most efficient and probable is through Ofcom guidance

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28 June 2022, col 685 (Alex Davies-Jones). HL Deb 9 May 2023 vol 829, col 1752–52 (Baroness Stowell); HL Deb 1 Feb 2023, vol 827, Col 1501 (Lord McNally); HL Deb 1 Feb 2023, vol 827, cols 763–64. And although the House of Lords eventually agreed to include a provision requiring Ofcom to produce guidance (not a code) on harms to women and girls, this does not specifically consider journalists: HL Deb 12 July 2023 vol 831, col 1763–64.

<sup>233</sup>And not an 'instrument of censorship'. I mention recent criticisms of Pakistan's Broadcasting regulator as an example of regulator intervention that is arguably problematic: Raksha Kumar, 'As Pakistan approaches a crucial election, its media watchdog bans critical voices from TV' *Reuters* (3 Oct 2023) <<https://reutersinstitute.politics.ox.ac.uk/news/pakistan-approaches-crucial-election-its-media-watchdog-bans-critical-voices-tv>>.

<sup>234</sup>Kate Klönick, 'The Facebook Oversight Board: Creating an Independent Institution to Adjudicate Online Free Expression' (2020) 129 *Yale Law Journal* 2418.

<sup>235</sup>See National Action Plan (n 14).

<sup>236</sup>*ibid.*

<sup>237</sup>The NUJ was the main entity that fought for journalist safety in the OSA and was the only one to recommend specific provisions in the OSA to help tackle abuse against journalists. It is therefore puzzling that the Government reportedly initially excluded the NUJ and it had to fight for a seat to be there. IFJ, 'Online abuse: "It is about silencing any woman who dares to speak out and to have an opinion"', NUJ General Secretary Michelle Stanistreet' (23 Nov 2022) <<https://www.ifj.org/media-centre/news/detail/category/vaw/article/nuj-general-secretary-michelle-stanistreet-online-abuse-it-is-about-silencing-any-woman-who-dares-to-speak-out>>.

<sup>238</sup>E.g. Those it has made with regards to the National Action Plan (n 14).



and codes of conduct (though judicial interpretation, continued press lobbying efforts, or legislative amendments are also avenues that may help journalists). I do not intend to canvass the plethora of potential approaches to regulatory design and content moderation, but note that there is a growing body of literature recommending a systems-design focus on content regulation (and many attempts were made to ensure that the OSA remained focused on systems rather than content).<sup>239</sup> There are, however, some provisions that could protect the media freedom interest of online journalist safety that could be implemented quite easily given that they are in line with other provisions in the OSA.<sup>240</sup> These could include: Ofcom requiring platforms to conduct regular risk assessments on how journalists are impacted by illegal and harmful content;<sup>241</sup> requiring platforms to follow up with substantive measures to ameliorate those risks that would still enable journalists to carry out their public facing work; mandating that social media platforms provide a specific process for journalists (and others receiving a high volume of abuse thereby impeding their work for the benefit of the public interest) to report abuse and have it quickly actioned; to track, monitor, and respond to accounts receiving pile-on attacks; to develop and implement tools and other resources to predict when journalists will face an onslaught of abuse and take appropriate action;<sup>242</sup> to require platforms to implement policies and resources to detect and prevent repeat attackers from continued abuse and assuming new identities;<sup>243</sup> to provide data to researchers, including those working on developing tools to monitor and track online abuse;<sup>244</sup> to require platforms to have certain design and friction measures in place to respond to abuse on journalists' accounts; to compile and provide information to the journalist or to police when journalists are targeted with abuse; and to provide an outside appeal mechanism (e.g. to Ofcom) for journalists to seek assistance if platforms fail to take adequate action (though this latter provision will likely require legislative amendment). These mechanisms would not interfere with traditional conceptions of a free press in the UK. These provisions would also be in line with other special processes for the press and journalistic content in the OSA.

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<sup>239</sup>Douek (n 39).

<sup>240</sup>These suggested measures are targeted to the OSA's legislative framework but others could also be implemented, including broader policy measures. I would like to acknowledge the thoughtful recommendations in *The Chilling* (n 3) 235–37, 241–43 which many of the recommendations are based on.

<sup>241</sup>See note 232 regarding guidance on harms to women and girls.

<sup>242</sup>*The Chilling* (n 3) 241–43.

<sup>243</sup>*ibid.* Diana Maynard is currently managing a research team developing a computational model to predict and track abuse against journalists. See Julie Posetti, Diana Maynard and Nabeelah Shabbir, 'Guidelines for monitoring online violence against female journalists' (3 Oct 2023) OSCE <<https://www.osce.org/representative-on-freedom-of-media/554098>>.

<sup>244</sup>*The Chilling* (n 3) 242.

Additional provisions could provide journalists with greater protection – but may require the press to make some changes (which is likely inevitable as the mainstream press advocate for greater government intervention to sustain it, which can only be justified on the basis that it is of some higher standard than other speech online). Some of those provisions could mirror those advocated for by the NUJ, such as mandating that the press take appropriate action to prevent the publication of abuse in news content and below-the-line comments and mandate that the press provide resources to journalists as a workplace safety issue to help manage abuse, among others. The point of these provisions would be to ultimately protect media freedom and the ability of journalists to carry out their essential functions in the public interest – not to ‘censor’ the press. Without changes, the media freedom provisions in the OSA remain out of balance and skewed against the media freedom interest of journalist safety.

## Conclusion

This paper has shown that despite the Government’s early aims to include provisions in the OSA to help tackle abuse targeting journalists, no provisions fit for that purpose materialised. The Government failed to truly grapple with the weaponisation of speech to silence journalists and the implications that has for democracy. Further, while many journalists and journalist organisations gave evidence demonstrating that online abuse is pervasive, real, and silencing and attacks the freedom of the press, most of the press lobby did not advocate for journalist online safety and instead dedicated their submissions to ensuring that the press received other exemptions and benefits in the OSA. Ultimately, conceptions of ‘media freedom’ favoured the press’ independence, economic and sustainability interests, and not, and arguably at the expense of, journalist safety. Nevertheless, journalist digital safety is a core media freedom that must be treated as such by press owners and the Government. If it is ignored, media freedom, democracy, and the public interest will ultimately suffer. This paper is an encouragement for the parties to come together and take concrete steps to protect journalist digital safety and the public interest it serves.

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