

Anonymity (Arrested Persons) Bill [HL]

HL Bill 30 of 2017–19

Summary

The [Anonymity \(Arrested Persons\) Bill \[HL\]](#) is a private member's bill introduced by Lord Paddick (Liberal Democrat). The bill received its first reading in the House of Lords on 4 July 2017 and is due to receive its second reading on 1 March 2019. The bill proposes to prohibit the publication of information about those who have been arrested—including their name, address and image—until they have been charged. The bill also outlines circumstances where these restrictions would not apply. Setting out the purpose of the bill, Lord Paddick explained:

There have recently been a series of cases where historic sexual offence allegations have received extensive coverage in the media but have not led to any criminal charges, ruining reputations. While these have involved high-profile individuals, other cases have ruined the reputations of ordinary people locally when criminal allegations have been made public, even when the Crown Prosecution Service takes no further action. The bill would make it unlawful for the identity of a person arrested to be published unless or until either they are charged with, or summonsed for, an offence, or a judge agrees that it is in the interests of justice, the public interest or human rights, to do so. It would apply to all criminal offences and not just those of a sexual nature.¹

Key Provisions

Clause 1 would prohibit the publication or broadcast of the name, address and any still or moving picture of a person who has been arrested, if such information could lead members of the public to identify the individual as the person suspected of committing the offence in question. Subsection 2 of the clause sets out that these restrictions would remain in place unless, or until, the individual is charged with the offence for which they were arrested.

Clause 2 (subsections 1 and 5) proposes that a crown court judge would have the power to direct that the reporting restrictions set out in clause 1 would not apply in individual cases, either in their entirety or in relation to specified matters and time periods only. Under the clause, this direction could be made by a judge where it is:

- required to comply with the Human Rights Act 1998;
- in the interests of justice; or
- otherwise in the public interest.

In regard to what is considered in the “interests of justice”, subsection 2 of the clause would provide a non-exhaustive list of examples where it may be pertinent for a judge to make such a direction. Examples given include: where it may lead to additional complainants coming forward, where it could lead to information which assists the investigation and where it could lead to information which assists the arrested person. Subsection 3 of the clause sets out who would be able to apply for such a direction

from the judge, or ask for it to be reviewed, and includes the court itself, the person who has been arrested, a chief constable, a prosecuting authority or any other person who is considered by the judge to have sufficient interest. Subsection 4 would mean that if a joint application is made by the arrested person and the chief constable or prosecuting authority, the court would have to make the direction.

Clause 3 would make it a summary offence to contravene the reporting restrictions set out in clause 1 of the bill. It also sets out the different methods of reporting, who would be responsible for any offences. For example, in the case of a newspaper, the proprietor, editor and publisher would be responsible, whereas for a broadcaster, any 'body corporate' engaged in providing the service in which the programme is included, and any person with functions corresponding to those of an editor of a newspaper, would be liable. In addition, subsection 2 of the clause states that the Director of Public Prosecutions or the Director of the Serious Fraud Office would need to give consent for proceedings under clause 3 to begin.

Clause 4 sets out a defence which would be available to those who breach clause 1, stating that if those charged under clause 3 were not aware, and neither suspected nor had reason to suspect, that the publication or programme in question was of, or included, the prohibited matter in question, they would not be able to be prosecuted under the bill.

Clause 5 outlines that the penalties available would be a prison term not exceeding six months, a fine not exceeding the statutory maximum, or both.

If an offence is committed by a body corporate clause 6 would apply. The clause sets out that if the offence is proved to have been committed with the consent or connivance of a senior officer of the body corporate—or a person purporting to act in such a capacity—both that individual and the body corporate would be guilty of the offence and liable to be proceeded against.

Clauses 7, 8 and 9 relate to interpretation, the making of orders and miscellaneous matters such as territorial extent, with the bill applying to England and Wales only.

Debate on Anonymity on Arrest

Following several high-profile cases where individuals have had their identity publicised on arrest—such as Christopher Jefferies² and more recently a couple arrested in connection with drones flown over Gatwick airport³—there has been a debate as to whether a suspect's identity should remain confidential at arrest and not be made public until, or unless, they have been charged.

Arguments in Favour of Naming Suspects

Those in favour of naming suspects at arrest argue that it can encourage other victims to come forward and potentially lead to the discovery of further evidence. For example, the former executive director of the Society of Editors, Bob Satchwell, holds this view, and has argued that in the case of the BBC broadcaster, Stuart Hall, if he had not been named on arrest "he might never have been brought to court", as his victims were not known to one another (although this claim is disputed by former Chief Constable of the British Transport Police, Andy Trotter).⁴ The case of the serial sex offender John Worboys has also been identified by solicitor Kate Gould as an example of where it was appropriate for the police to release information, as following his arrest, 85 victims came forward.⁵

It has also been argued that banning the publication of suspects' identities would be tantamount to a system of "secret arrests". Journalist Joshua Rozenberg supports this claim and highlights concerns that such a ban "would amount to a major change in the criminal justice system in England and Wales".⁶ Addressing concerns that innocent people can have their reputations damaged by having their arrest publicised, he argued that "the solution is not to confine news of arrests to the internet rumour-mill", but rather it is for the public to understand that "sometimes there can be smoke without fire".⁷

Expressing similar concerns to Rozenberg, Kirsty Hughes, the former chief executive of [Index on Censorship](#) (an organisation that campaigns for free expression and speech) argued that "de facto anonymity for people who have been arrested would reverse the principle of open justice that we have in the UK and could lead to people being arrested and taken into custody without anyone knowing about it".⁸ Acknowledging that anonymity may be appropriate in certain circumstances, she stated however that "sweeping powers for secrecy should not be the norm".⁹

Arguments Against Naming Suspects

In contrast, Andy Trotter (former Chief Constable of the British Transport Police and chair of the Association of Chief Police Officers Communications Advisory Group) has argued that "naming everyone arrested risks tarnishing the reputations of innocent people", citing the example of an individual who had been arrested for the theft of a mobile phone, but who was later proved to have found the phone and was trying to hand it in to police.¹⁰ Sharing the concerns of Mr Trotter, Robert Buckland (Conservative MP for South Swindon and Solicitor General since July 2014) has argued that the "need for some reform is pressing".¹¹ Voicing his view in 2013, he stated:

If you think about someone who might be wrongly accused [...] that [accusation] is going to be on Google for the rest of his life and he will never be able to get away from it.¹²

Proposing a solution, Mr Buckland contended that there should be a presumption of anonymity at arrest and that media organisations should have to seek permission from magistrates before naming individuals, with a punishment available if they failed to do so.¹³ In 2010, Mr Buckland supported a private member's bill which looked to put restrictions on reporting arrestees' identities (further information on the bill can be found on page 5 of this briefing).¹⁴

Frances Crook, chief executive of the Howard League for Penal Reform, has also called for anonymity for those who have been arrested and argued that the changes should be enshrined in law claiming that it is not just in high-profile cases where "people's lives are blighted".¹⁵ In addition, Ms Crook called for a "proper decision-making process" to decide whether someone's identity should be revealed. However, she is against attaching a criminal sanction to the proposed new law, stating that "I don't want to see more people going to prison—journalists or anyone else".¹⁶

Focusing on the way the police communicate with the press in relation to arrests, a report by the House of Commons Home Affairs Committee on police bail highlighted the case of Paul Gambaccini, a BBC radio presenter who was arrested on suspicion of historic sexual offences in 2013, but never charged.¹⁷ Claiming that he was a "victim of a "fly paper" investigation"—where a suspect's name is made public to see if it attracts further complainants—Mr Gambaccini stated that it was not clear who had made his name public, an action which led to the BBC suspending him without pay.¹⁸ His solicitor, Kate Goold, argued that in situations where it would be appropriate for the police to release a suspect's identity, it should be done through a formal release, which should be governed by a set of rules.¹⁹

The committee agreed with this suggestion in its recommendations, stating:

The police should not release information on a suspect to the media in an informal, unattributed way. If the police do release the name of a suspect it has to be limited to exceptional cases, such as for reasons of public safety.²⁰

The committee also recommended that the police monitor and publish the number of instances where the identity of a suspect has found its way into the public domain via an unattributed source.²¹

In relation to claims that not disclosing arrestees' names could amount to 'secret arrests' and is an affront to open justice, barristers Anthony Heaton-Armstrong and David Wolchover have argued that the appropriate forum for justice is in the court, "not the pages of the tabloid press".²² In addition, they have said that the view that if a suspect is not named in the media their arrest is secret is "fundamentally misconceived", as arrestees have the right to be represented by a member of the legal profession and generally have their arrest communicated to a family member or nominated person.

Sexual Offences

Some commentators, such as the former chairman of the Bar Council, Maura McGowan QC, have argued that anonymity should be available for suspects of sex offences only, due to the stigma attached to those offences.²³

A report by the House of Commons Home Affairs Committee on the issue of police bail focused on anonymity of defendants, specifically those who have been accused of a sexual offence. The report looked at the historic debate on the topic. It argued that the issue had become prominent again due to Operation Yewtree and other similar investigations. In addition, the committee found that the advent of social media facilitated public discussion in a way "unprecedented in human history" and had the potential to amplify the reputational damage done when a suspect was named.²⁴ In its recommendations, the committee stated that those accused of committing a sexual offence should have the same right to anonymity as the victim, unless or until they are charged with an offence.²⁵ This view was supported by Nigel Evans (Conservative MP for Ribble Valley), who was cleared of nine sex offences in 2014.²⁶ Expressing his support, Mr Evans stated, "I don't believe that people ought to be plastered all over every national newspaper just to fish other people out".²⁷

However, others, such as Jill Saward, who was a victim of rape, have responded to proposals to give anonymity rights to suspects, calling them "insulting".²⁸ Ms Saward argued that making a special case for sex crime suspects "implies that victims are lying" and stated that the policy is problematic as "we know that many people who are rapists are multiple rapists [...] when one victim comes forward often there isn't enough evidence there, you need the evidence of other people". Peter Watt (former National Services Director of the NSPCC) also believed that such proposals were problematic and argued that naming suspects gave other victims the strength to speak out, stating that "Rolf Harris and Max Clifford and others are possibly only behind bars for their vile crimes because of the ability of the police to name suspects".²⁹

Commenting on the committee's recommendations in response to an oral question in March 2015, the then Home Secretary, Theresa May, stated that the issue had to be dealt with on a case-by-case basis and that the assumption of anonymity on arrest was right in general, "but there will be cases when it is right for the police to ensure that the name is put out so that other people can come forward to report crimes by the same perpetrator".³⁰

Anonymity (Arrested Persons) Bill 2010–12

The issue of anonymity on arrest was debated in the House of Commons in the 2010–12 session when a similar private member’s bill was introduced by Anna Soubry (then Conservative but now Independent MP for Broxtowe). The Anonymity (Arrested Persons) Bill aimed to prohibit the publication or broadcast of the name, address or image of a person arrested for an offence if such information would potentially lead members of the public to identify the individual as the person suspected of committing that offence. The bill had its second reading on 4 February 2011; during the debate Ms Soubry withdrew the bill following a commitment by the then Government to examine the law on contempt of court.³¹

Law Commission Consultation on ‘Contempt of Court’

In November 2012, the Law Commission published a consultation paper on the issue of contempt of court.³² It focused on several issues which had arisen from cases, including the challenges posed by new media to existing laws which pre-dated the internet age and the “continuing need for limits on media coverage in order to protect the administration of justice and the right to a fair trial”.³³

Highlighting the case of Christopher Jefferies and his “vilification” by the press when arrested for the murder of Joanna Yates, the consultation proposed that the Home Office should request that the Association of Chief Police Officers (ACPO)³⁴ disseminate guidance to police forces encouraging them to adopt consistent decision-making in regards to releasing information about arrestees following requests from the media.³⁵ Detailing the content of this proposed guidance, the Law Commission explained:

We consider that such policy should establish that, generally, the names of arrestees will be released but that appropriate safeguards will need to be put in place to ensure that some names are withheld, for example, where it would lead to the unlawful identification of a complainant, where the arrestee is a youth or where an ongoing investigation may be hampered. We consider that such safeguards should be widely defined given that once a name is released, it may not be possible to retract it.³⁶

Responses to the Consultation

Responding to the consultation, the Information Commissioner’s Office (ICO) focused on the proposal to disclose the names of suspects to the media, arguing that it was unclear how a policy where names of arrestees are “generally” released would comply with data protection and human rights legislation.³⁷ It also contended that the approach “not only increases the likelihood of a contempt of court offence occurring, but also increases the risk of an individual not having a fair trial”.³⁸

Instead, the ICO suggested that adopting a case-by-case approach “is far more likely to be compliant with the DPA [Data Protection Act]”, with considerations such as the gravity of the offence and public interest being taken into account when making a decision as to whether disclosure is appropriate.³⁹ It also questioned why an approach of publishing non-identifiable information—such as age, gender and offence—was not the preference.⁴⁰ However, the ICO agreed with the need for guidance for police forces, stating:

Balancing the rights of defendants to a fair trial, the rights of publishers to freedom of expression (informing public discussion) and an individual’s right to a private life can be challenging and it is right that there should be guidance to ensure that there is a consistent approach to requests.⁴¹

Lord Justice Treacy and Mr Justice Tugendhat provided a judicial response, which represented the views of the President of the Queen's Bench Division, the Senior Presiding Judge, Lord Justice Leveson, Lord Justice Goldring, and other senior judges. They argued that the decision to publish the name of a person who had been arrested should be made on a case-by-case basis and after consideration of the individual's rights, including under article 8 of the [European Convention of Human Rights](#) (ECHR).⁴² Furthering this, they said that they would "adopt" the words of Lord Justice Leveson:

The current guidance in this area needs to be strengthened. For example, I think that it should be made abundantly clear that save in exceptional and clearly identified circumstances (for example, where there may be an immediate risk to the public), the names or identifying details of those who are arrested or suspected of a crime should not be released to the press nor the public.⁴³

Explaining the reasoning behind this decision, they argued that the police arrest many people who are never charged and that publicising an arrest can cause irremediable damage to a person's reputation, as even if the police publicise that the person was never charged, this fact is unlikely to receive as much attention as the initial arrest did.⁴⁴ The case of Christopher Jefferies (which was also referred to by the Law Commission) was given as an example of such a situation.

Government Position

In May 2013, Theresa May, then Home Secretary, wrote a letter to Alex Marshall (former chief executive at the College of Policing) on the topic of anonymity of suspects.⁴⁵ In the letter, Mrs May highlighted concerns about the different approaches taken by police regarding the anonymity of suspects upon arrest and charge, stating that "I strongly believe there should be no right to anonymity at charge apart from in extremely unusual circumstances". However, Mrs May added:

I believe that there should be a right to anonymity at arrest, but I know that there will be circumstances in which the public interest means that an arrested suspect should be named. I would like you to work on new guidance that makes this clear.⁴⁶

A BBC News article claimed that the letter was sent as ACPO finalised new guidance on how officers should engage with the media and reported that the guidance stated that "save in exceptional and clearly identified circumstances, the names or identifying details of those who are arrested or suspected of a crime should not be released by police forces to the press or the public".⁴⁷

In December 2015, Lord Morris of Aberavon (Labour) asked the Government whether "a protocol should be agreed to rationalise and improve on the present system of names of persons interviewed by the police but not charged being made public on a case-by-case basis".⁴⁸ Responding, Lord Bates, then Minister of State for the Home Office, said that the release of the name or details of a suspect by the police is an operational decision and referred to the guidance published by the College of Policing on relationships with the media, which he said:

Makes clear that decisions on releasing the names of those who are arrested or suspected of a crime should be made on a case by case basis and that the police should not do so unless there are clearly identified circumstances to justify it, such as threat to life or the prevention or detection of crime. This guidance will be reviewed by the College early in the New Year. It is the Government's position that, in general, there should be a right to anonymity before the point of charge. However, there are circumstances where the police decide it is in the public interest that an arrested suspect should be named.⁴⁹

The College of Policing guidance about naming on arrest says:

Police will not name those arrested, or suspected of a crime, save in exceptional circumstances where there is a legitimate policing purpose to do so. This position is in accordance with recommendations and findings of the [Leveson Inquiry](#) (part I), the [Information Commissioner](#) and the Home Affairs Select Committee. A legitimate policing purpose may include circumstances such as a threat to life, the prevention or detection of crime, or where police have made a public warning about a wanted individual.⁵⁰

Further Information

- House of Commons Library, [Anonymity in Rape Cases](#), 7 February 2012
- House of Commons Library, [Anonymity \(Arrested Persons\) Bill \[Bill 9 of 2010–11\]](#), 2 February 2011

¹ Text provided by Lord Paddick on request from the Library.

² Brian Cathcart, [‘The Ordeal of Christopher Jefferies’](#), *Financial Times* (£), 8 October 2011.

³ BBC News, [‘Gatwick Drone Arrest Couple Feel ‘Completely Violated’](#), 24 December 2018.

⁴ Mark Easton, [‘Suspects Should Have Right to Anonymity at Arrest—Theresa May’](#), BBC News, 15 May 2013.

⁵ House of Commons Home Affairs Committee, [Police Bail](#), 20 March 2015, HC 962 of session 2014–15, p 6; and Caroline Flint, [‘Anonymity is an Enemy of Justice’](#), *Independent*, 6 June 2010.

⁶ Joshua Rozenberg, [‘Yes, Suspects Are Sometimes Innocent—But Secret Arrests Are Not the Answer’](#), *Guardian*, 10 April 2013.

⁷ *ibid.*

⁸ Owen Bowcott, [‘Press Intrusion: Don’t Name Suspects in the Media Until Charged, Urges MP’](#), *Guardian*, 21 April 2013.

⁹ *ibid.*

¹⁰ Mark Easton, [‘Suspects Should Have Right to Anonymity at Arrest—Theresa May’](#), BBC News, 15 May 2013.

¹¹ Owen Bowcott, [‘Press Intrusion: Don’t Name Suspects in the Media Until Charged, Urges MP’](#), *Guardian*, 21 April 2013.

¹² *ibid.*

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ *ibid.*

¹⁷ House of Commons Home Affairs Committee, [Police Bail](#), 20 March 2015, HC 962 of session 2014–15, p 6.

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ *ibid.*

²¹ *ibid.*

- ²² Anthony Heaton-Armstrong and David Wolchover, 'Anonymity Before Charge—Part 1', *Criminal Law and Justice Weekly*, 4 May 2013.
- ²³ BBC News, '[Sex Case Defendants 'Should Get Anonymity'](#)', 16 February 2013.
- ²⁴ House of Commons Home Affairs Committee, '[Police Bail](#)', 20 March 2015, HC 962 of session 2014–15, p 4.
- ²⁵ *ibid.*, pp 4–5.
- ²⁶ BBC News, '[MP Nigel Evans Cleared of Sexual Assault](#)', 10 April 2014.
- ²⁷ BBC News, '[Sex Crime Suspects Deserve Anonymity, MPs Say](#)', 20 March 2015.
- ²⁸ *ibid.*
- ²⁹ *ibid.*
- ³⁰ [HC Hansard, 23 March 2015, col 1114.](#)
- ³¹ [HC Hansard, 4 February 2011, col 1214.](#)
- ³² Law Commission, '[Contempt of Court: A Consultation Paper \(No 209\)](#)', November 2012.
- ³³ *ibid.*, p 1.
- ³⁴ Now known as the [National Police Chiefs Council \(NPCC\)](#).
- ³⁵ Law Commission, '[Contempt of Court: A Consultation Paper \(No 209\)](#)', November 2012, p 9.
- ³⁶ *ibid.*
- ³⁷ Information Commissioner's Office, '[The Information Commissioner's Response to the Law Commission's Consultation on 'Contempt of Court'](#)', 25 February 2013, pp 1–2.
- ³⁸ *ibid.*, p 1.
- ³⁹ *ibid.*, p 2.
- ⁴⁰ *ibid.*, p 1.
- ⁴¹ *ibid.*, p 2.
- ⁴² Lord Justice Treacy and Mr Justice Tugendhat, '[A Judicial Response to Law Commission Consultation Paper No 209](#)', 4 March 2013, p 4.
- ⁴³ *ibid.*, p 5.
- ⁴⁴ *ibid.*
- ⁴⁵ Mark Easton, '[Suspects Should Have Right to Anonymity at Arrest—Theresa May](#)', BBC News, 15 May 2013.
- ⁴⁶ *ibid.*
- ⁴⁷ *ibid.*
- ⁴⁸ House of Lords, '[Written Question: Rights of Accused](#)', 24 December 2015, HL4723.
- ⁴⁹ *ibid.*
- ⁵⁰ College of Policing, '[Authorised Professional Practice: Engagement and Communication: Media Relations](#)', May 2017 (last updated January 2019).

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