



Criminal memoirs

Standard Note: SN/HA/2993
Last updated: 23 May 2012
Author: Sally Lipscombe
Section: Home Affairs

There is no law prohibiting convicted criminals from **publishing** their autobiographies or other writings in which their crimes may be described, or from selling their stories to newspapers or biographical writers. However, there are restrictions on criminals **profiting** from such activities. These are set out in [Part 7 of the Coroners and Justice Act 2009](#), which came into force on 6 April 2010. The Act established a civil recovery scheme that enables the courts to order criminals to pay an amount in respect of assets or other benefits derived from the exploitation of accounts of their crimes. Sums received are then paid into the Consolidated Fund (the Government's general bank account at the Bank of England).

Special rules apply to serving prisoners, who under the Prison Rules and Prison Standing Orders may be prevented from publishing material relating to their crimes while in custody. In the case of a life sentence prisoner serving a whole life term, the application of the Rules may effectively prevent any such publication during his or her lifetime.

There are also various media codes of practice advising broadcasters and journalists on making payments to criminals: public interest is the key factor.

This information is provided to Members of Parliament in support of their parliamentary duties and is not intended to address the specific circumstances of any particular individual. It should not be relied upon as being up to date; the law or policies may have changed since it was last updated; and it should not be relied upon as legal or professional advice or as a substitute for it. A suitably qualified professional should be consulted if specific advice or information is required.

This information is provided subject to [our general terms and conditions](#) which are available online or may be provided on request in hard copy. Authors are available to discuss the content of this briefing with Members and their staff, but not with the general public.

Contents

1	Background	2
2	The civil recovery scheme: exploitation proceeds orders	2
	2.1 Background	2
	2.2 The <i>Coroners and Justice Act 2009</i>	3
3	The Prison Rules	6
4	Self-regulation: media codes of practice	6

1 Background

There have been several examples in recent years of criminals who have reportedly profited from published accounts of their crimes. Although these incidents are relatively rare, some of them have attracted considerable public outrage.

In 1998, it was reported that Mary Bell, who killed two toddlers when she was eleven, was receiving payment for helping with a book about her life, *Cries Unheard* by Gitta Sereny.¹ There were many reports that Mary Bell had received £50,000 for her contribution, although this was disputed at the time. The book was also serialised in the Times.

In 2003, there was public concern that Tony Martin, who shot and killed a young burglar, had sold his story to the Mirror for £125,000; however the Press Complaints Commission ruled that there had been no breach of the relevant code of practice, instead taking the view that the payment was necessary and that the story was in the public interest.² In 2005, the BBC paid £4,500 to Brendan Fearon, the surviving burglar in the Tony Martin case, and argued that the programme was in the public interest. The programme maker stated that Fearon's participation in the programme ensured "balance".³

2 The civil recovery scheme: exploitation proceeds orders

2.1 Background

In 1998, the furore surrounding Mary Bell's paid collaboration on her biography led Jack Straw, the then Home Secretary, to ask officials to "consider whether the law relating to criminal memoirs might sensibly be strengthened".⁴ A review was conducted by an interdepartmental working group, and in October 1999 Lord Bassam of Brighton (then a junior Home Office minister) announced that the review had been completed and publication of the outcome was likely to follow in the very near future.⁵ In the event, no conclusions were actually published; however, the work of the 1998/9 review was incorporated into a later review, the results of which were published as a green paper in November 2006.⁶

The green paper presented four proposals:

¹ "Hounding of Mary Bell : Child killer forced into hiding after tabloids track her down", *Guardian*, 30 April 1998

² Press Complaints Commission, *Adjudicated complaint: PCC Investigation - Daily Mirror*, 2 October 2003

³ "BBC row over Martin burglar fee", *BBC News website*, 4 March 2005

⁴ HC Deb 22 July 1998 c548

⁵ HL Deb 11 October 1999 c7

⁶ Home Office/Scottish Executive/Northern Ireland Office, *Making sure that crime doesn't pay: proposals for a new measure to prevent convicted criminals profiting from publishes accounts of their crimes*, November 2006

- make receipt by and/or payment to convicted criminals for publications about their crimes a criminal offence;
- introduce a new civil scheme for the recovery of profits based on the provisions of the *Proceeds of Crime Act 2002*;
- extend the self-regulatory approach (i.e. codes of practice) governing the press to other groups such as book publishers and film-makers; or
- do nothing.

Following analysis of the responses to the consultation,⁷ the Ministry of Justice (which took over policy responsibility for this area from the Home Office in 2007) announced that it would be proceeding with the second of these options: namely a civil recovery scheme.

2.2 The Coroners and Justice Act 2009

The civil recovery scheme is set out in [Part 7 of the Coroners and Justice Act 2009](#), which came into force on 6 April 2010.⁸ An overview of the scheme is set out in a Ministry of Justice circular:

Part 7 of the CJA 2009 introduces a civil scheme, through which the High Court can order a **qualifying offender** to pay a sum of money to the enforcement authority in respect of exploitation proceeds obtained from a relevant offence. A person obtains exploitation proceeds from an offence where they **derive a benefit** from exploiting material **pertaining to a relevant offence** or from any steps taken or to be taken in the future with a view to such exploitation. This new kind of order is known as an ‘exploitation proceeds order’.⁹

A “qualifying offender” is a person convicted of a relevant offence by a court in the UK, or by a foreign court provided the individual in question is a UK national or resident (or was a UK resident at the time the offence was committed). In respect of foreign convictions, the offence must be one that would also have constituted an offence if it had been committed in the UK. Service offenders are also covered, as are people found not guilty of an offence by reason of insanity.

A qualifying offender can “exploit material” by any means, including by publishing material in written or electronic form, by using any media from which visual images, words or sounds can be produced, or by live entertainment, representation or interview. Benefits derived for the benefit of a third party, for example a family member of the offender, are also covered. It is irrelevant whether the material is exploited or the benefit derived in the UK or overseas: both scenarios are caught.

Only material “pertaining to a relevant offence” will be liable to the scheme:

It is this type of material that is likely to cause the most concern to victims or bereaved families. Offenders who write about prison life or the steps they have taken to

⁷ Ministry of Justice, [Making sure that crime doesn't pay – a new measure to prevent convicted criminals profiting from published accounts of their crimes: response to consultation](#), CP(R) 11/06, January 2009

⁸ [Coroners and Justice Act 2009 \(Commencement No. 4, Transitional and Saving Provisions\) Order 2010, SI 2010/816](#)

⁹ Ministry of Justice circular 2010/08, [Coroners and Justice Act 2009 – commencement of Part 7 \('Criminal Memoirs, etc.'\)](#), March 2010

rehabilitate themselves will not therefore fall within the scheme, unless their work also includes material pertaining to the offence itself.¹⁰

“Relevant offences” are defined as serious offences triable only on indictment. The scheme is therefore targeted at offenders convicted of offences such as murder, manslaughter, rape and robbery, rather than offenders convicted of lower level crimes.

The scheme applies to all qualifying convictions regardless of whether they were incurred before or after 6 April 2010; however, it does not apply to any benefits derived before this date and does not, therefore, enable retrospective recovery of payments received prior to this date.

The court can only make an order following an application by a relevant enforcement authority: in England, Wales and Northern Ireland the relevant authority is the Serious Organised Crime Agency (SOCA). SOCA may only apply for an order with the consent of the Attorney General. The Ministry of Justice circular envisages that “cases are most likely to come to light following reports in the media, which in turn may trigger correspondence from members of the public or MPs”. It advises that correspondence should be directed in the first instance to the Ministry of Justice.¹¹

Once SOCA has made an application, the court uses its discretion to decide whether to make an order (and, if so, for how much). The 2009 Act sets out a range of factors that the court must consider:

(a) the nature and purpose of the exploitation from which (or intended exploitation in connection with which) the [offender] derived the benefit;

(b) the degree to which the relevant material was (or was intended to be) integral to the activity or product and whether it was (or was intended to be) of central importance to the activity or product;

(c) the extent to which the carrying out of the activity or supplying of the product is in the public interest;

(d) the social, cultural or educational value of the activity or product;

(e) the seriousness of the relevant offence to which the activity or product relates;

(f) the extent to which any victim of the offence or the family of the victim is offended by the [offender] obtaining exploitation proceeds from the relevant offence.¹²

The court may take other matters into account if it thinks them relevant.

If the court decides to make an order, the recoverable amount cannot be greater than the total value of the benefits derived by the offer (including any secured for a third party). The order should also not exceed the “available amount”, which is the amount the offender can actually afford to pay: in the words of the explanatory notes that accompanied the *Coroners and Justice Bill* as first introduced, “it is not the intention of the scheme to cause bankruptcy”.¹³

¹⁰ Ibid, para 11

¹¹ Ibid, para 27. The address is Criminal Law Policy Unit (re: criminal memoirs), Ministry of Justice, 7.41, 102 Petty France, SW1H 9AJ.

¹² [Coroners and Justice Act 2009, section 162](#)

¹³ [Coroners and Justice Bill 2009: Explanatory Notes, para 663](#)

Any funds recovered are paid into the [Consolidated Fund](#) (the Government's general bank account at the Bank of England): the money does not go to the victim (if any) of the offence.

The Regulatory Impact Assessment on these provisions projected that they would be sparingly used, and that proceeds would be unlikely to exceed enforcement costs:

At most it is projected that two cases a year will arise, with an estimated annual cost to SOCA of around £280,000. The scheme will also have minor cost implications for the civil courts and also for the Community Legal Service if public funding were granted to defend any recovery action. On the basis of two cases per year, the financial impact is estimated to be under £90,000 per annum.

Benefits

Any proceeds recovered by the scheme are unlikely to exceed enforcement costs unless the criminal's memoirs are widely read and generate significant amounts of profit. Any money recovered will be paid into the Consolidated Fund.

Although we anticipate only a small number of cases, in terms of public perception that crime does not pay the scheme is an important one which justifies its existence even if it rarely needs to be used.¹⁴

The Assessment also summarised the human rights implications of the scheme, particularly under Article 10 of the *European Convention of Human Rights* relating to the right to freedom of expression:

Article 10 is a qualified right under the ECHR and interference with the right may be justified in pursuance of certain aims. These include the aims of protecting the rights of others and the protection of morals. The restriction is necessary in a democratic society, that is, it is compatible with the characteristics of a democratic society, specifically because of the public concern where criminals profit from their crimes, which amounts to a "pressing social need" justifying legislative action. We consider that the scheme is proportionate to the aim being pursued, particularly as it only relates to those who have committed crimes and would not prevent publication altogether, but would apply to recover the benefit from the publication. In addition, a court considering an application for an order has a discretion as to whether or not to make the order and, if so, the sum to be paid. In exercising that discretion, the court must take into account a list of factors which including the public interest in the publication and its social, cultural or educational value. Furthermore, an application for an order may not be made without the consent of the Attorney General.¹⁵

An article in the *Guardian* in December 2008 described a considerable amount of hostility to the measure from publishers and publishing bodies:

Publishing trade body the Publishers Association described the plans as "disproportionate", "impractical" and "unnecessary" in its response, saying they would "set a highly dangerous precedent for state control of publishing, putting at risk the UK's enviable and hard-won freedom of speech", and would be "impossible to implement in practice".¹⁶

¹⁴ Ministry of Justice, [Impact Assessment of new scheme to prevent convicted criminals profiting from accounts of their crimes](#), 15 December 2009, p6

¹⁵ Ibid

¹⁶ ["Publishers angry at plans to hit criminals' memoirs"](#), *Guardian*, 5 December 2008

3 The Prison Rules

The *Prison Rules 1999, SI 1999/728* (as amended) enable the Secretary of State to impose restrictions or conditions on permitted communications between a prisoner and other persons on grounds such as national security, crime prevention, and protecting the health, morals or reputation of others. Such restrictions must be proportionate and compatible with rights under the *European Convention on Human Rights*.

Paragraph 7.1(10) of *Prison Service Order 4411* provides that prisoner correspondence may not contain any of the following:

(10) Material which is intended for publication or use by radio or television (or which, if sent, would be likely to be published or broadcast) if it:

(a) is for publication in return for payment, unless the prisoner is unconvicted. However, prisoners are permitted to receive payment for pieces of artwork or work of literary merit but only if they do not contravene any of the restrictions contained within paragraphs 10(b)–(e) and only if channelled through appropriate charitable organisations. This should also not be done on a regular basis so as to constitute any form of business activity (i.e. being commissioned to write a series of books or a regular feature in a national publication). It would be for the Governor to decide if such material contravened any of these restrictions. (...);

(...)

(c) is about the prisoner's own crime or past offences or those of others, except where it consists of serious representations about conviction or sentence or forms part of serious comment about crime, the criminal justice system or the penal system;

(...).¹⁷

In a case involving the manuscript autobiography of Dennis Nilsen, who murdered six men, the court rejected arguments that confiscation of the manuscript was incompatible with his right to freedom of expression under Article 10 of the *European Convention on Human Rights*.¹⁸ Nilsen's subsequent appeal was dismissed, the Court of Appeal saying:

We do not believe that any penal system could readily contemplate a regime in which a rapist or murderer would be permitted to publish an article glorifying in the pleasure that his crime had caused him.

(...)

[Strasbourg jurisprudence] did not establish that it was disproportionate for imprisonment to carry with it some restrictions on freedom of expression...¹⁹

4 Self-regulation: media codes of practice

Various guidelines and codes of practice are in place regarding the payment of convicted criminals by journalists and broadcasters.

¹⁷ Prison Service Order 4411, *Prisoner Communications: Correspondence*, para 7.1(10)

¹⁸ *R v Governor of Full Sutton Prison ex p Nilsen* [2003] EWHC 3160 (Admin)

¹⁹ *R v Governor of Full Sutton Prison ex p Nilsen* [2004] EWCA Civ 1540

The Ofcom Broadcasting Code states that no payments should be made to criminals unless it is in the public interest:

No payment, promise of payment, or payment in kind, may be made to convicted or confessed criminals whether directly or indirectly for a programme contribution by the criminal (or any other person) relating to his/her crime/s. The only exception is where it is in the public interest.²⁰

The Press Complaints Commission code of practice imposes a similar restriction, again subject to exceptions where payment is demonstrated to be in the public interest:

Payment to criminals

i) Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates – who may include family, friends and colleagues.

ii) Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.²¹

The BBC's editorial guidelines state:

The BBC does not normally make payments, promise to make payments or make payments in kind, whether directly or indirectly (such as through fixers or intermediaries), to criminals, or to former criminals, who are simply talking about their crimes. In general the same should apply to families or relatives of criminals or former criminals. This is to protect our reputation, and the credibility of our interviewees and sources, as well as respecting the sensitivities of the victims of crime.

Any proposal to pay criminals, former criminals, their families or their associates (directly or indirectly) for interviews or other contributions relating to their crimes, must be referred to Director Editorial Policy and Standards. Payment of an actual fee will only be approved for a contribution of remarkable importance with a clear public interest which could not be obtained without payment. In such cases, only actual expenditure or loss of earnings necessarily incurred during the making of a contribution will normally be reimbursed. Note that this is not intended to inhibit the rehabilitation of criminals or prevent payment to people with a criminal conviction who are making a contribution not about their crime.

People who may not have committed a crime but whose behaviour is clearly anti-social must not normally be paid for interviews or other contributions about their behaviour. Nor normally must people whose activities have attracted such notoriety that any payment might be inappropriate, regardless of the nature of the contribution. Any proposal to make such payments, including payments in kind, must be referred to Director Editorial Policy and Standards.²²

²⁰ Ofcom, *Ofcom Broadcasting Code 2011*, para 3.3

²¹ Press Complaints Commission, *Code of Practice*, rule 16

²² BBC website, *Editorial guidelines (section 8): reporting crime and anti-social behaviour*, paras 8.4.20-1 [accessed 21 May 2010]