

19 March 2018

Submission from Global Witness

To the Data Protection Bill Committee

DATA PROTECTION BILL – CLAUSES 168, 169 AND 205 (2) (b)

Global Witness is concerned that the above amendments to the Data Protection Bill made in the House of Lords have the potential to inhibit freedom of expression. We understand that these are due to be considered in Committee, House of Commons, on 20 March (tomorrow).

Global Witness has serious concerns about the proposed clauses 168 and 169 and 205 (2) (b) (“the costs clauses”) and is writing to express its support for the Government’s amendments No 50, 60, 61 and 72 to take out these clauses that threaten freedom of expression.

Global Witness is an independent, not-for-profit organisation that works with partners around the world to fight for justice. Global Witness processes personal data for the purpose of journalistic investigations that expose the hidden links between demand for natural resources, corruption, armed conflict and environmental destruction. Global Witness has often faced unwarranted legal claims by individuals seeking to stifle its reports. Examples include the unsuccessful injunction application by Denis Christel Sassou Nguesso in 2007¹ - and an unsuccessful data protection claim by Beny Steinmetz and others in 2014² which we believe was commenced in order to stifle our public interest reporting.

The costs clauses would have a major chilling effect on Global Witness’s work, on the free speech of other not-for-profit organisations who publish news related material and on the willingness of

¹ See *Long Beach Ltd and Nguesso v Global Witness Ltd* [2007] EWHC 1980 (QB) where Stanley Burnton J, dismissing the application for an injunction, said: “Once there is good reason to doubt the propriety of the financial affairs of a public official, there is a public interest in those affairs being open to public scrutiny.”

² *Steinmetz v Global Witness Ltd* [2014] EWHC 1168 (ch).

mainstream media organisations to cover and publicise the important reports and findings made by such organisations.

Clauses 168 and 169 create punitive costs consequences for publishers who have not subscribed to a recognised regulator, and mirror the proposed s40 Crime and Courts Act 2013, which the government has stated it will repeal. Clause 205 (2) (b) is the commencement clause. Global Witness, and other not-for-profit organisations, are likely to fall within the definition of “relevant publishers”, as a publisher of news-related materials through a non-charitable arm (Crime and Courts Act 2013)³. If these clauses are enacted, Global Witness would have to pay punitive costs (its own and the losing party’s) for data protection civil claims even if the court had found in Global Witness’s favour.

The sole purpose of these costs penalties is to force publishers to join a state-sponsored press regulator and to use its arbitration system. Section 168 (3) requires that costs orders must be made against relevant publishers of ‘news-related material if they are not members of a recognised regulator’ – IMPRESS. The exceptions are when the court is satisfied that the issues could not have been resolved by the regulator’s arbitration scheme (had the publisher been a member), or it is “just and equitable” to make a different award of costs. The exceptions are entirely discretionary, uncertain and limited in scope given the context and create a presumption of costs against the publisher.

The threat of costs consequences, even in a legal case where the publisher is successful, would have a highly undesirable impact on non-profit and civil society organisations that adhere to extremely high standards in their investigations into corruption and inequality, but do not have the resources to risk the uncertain prospect of litigation. These provisions fail the tests of necessity and proportionality. Global Witness has faced costly legal threats and claims by powerful individuals and companies, including African dictators and wealthy multinational corporations. The costs consequences for non-profit publishers would be disproportionate and excessive and would inhibit important investigations and reporting. This runs counter to Article 10 of the European Convention on Human Rights, the right to freedom of expression.

[One example](#) is in evidence to a Parliamentary Select Committee in 2008. Global Witness published the credit card records of a company of Denis Christel Sassou Nguesso, the son of the president of

³ <http://www.legislation.gov.uk/ukpga/2013/22/schedule/15/enacted>

Congo Brazzaville, that suggested he was personally profiting from sales of state oil and had been using state money to fund his lavish lifestyle. Sassou Nguesso sought an injunction against Global Witness in an attempt to suppress the information. Global Witness won the case. Mr Justice Stanley Burton said in rejecting Sassou Nguesso's claim: 'Once there is good reason to doubt the propriety of the financial affairs of a public official, there is a public interest in those affairs being open to public scrutiny.'

Global Witness noted in its evidence to parliament: "Regardless of the UK judge's ruling in favour of Global Witness's right to publish this information in that case, and the awarding of costs to us, the practical implication is that we incurred £50,000 in legal costs that have not been recovered as the applicant has not paid them... Had Global Witness lost the case we would have incurred costs of around £100,000 which, for a non-profit organisation, could be crippling." If these costs clauses were in place for a similar claim in data protection, Global Witness would face paying both sides' costs despite winning the case.⁴

The fact that these measures effectively pressurise publishers to join a regulator that has been through a controversial process of state-approved recognition backed by Royal Charter, sits uncomfortably with the ethics of Global Witness and other groups campaigning around human rights, transparency and accountability. Global Witness is not a member of IMPRESS – and does not wish to be forced into membership of a regulator that is not designed to deal with not-for-profits engaged in publishing. Compliance with IMPRESS'S Code – especially arbitration costs – is inappropriate and potentially costly for non-profit organisations.

In summary, the impact on non-profits and civil society representatives cannot be overstated: it would make it costly and almost impossible to carry out investigative journalism. Global Witness and other campaigning publishers could find themselves paying costs to powerful vested interests in data protection claims, even if the data processing for journalistic purposes is accurate, responsible and in the public interest.

We support the Government's amendments to take out these clauses, as their removal is essential for the continued publication of news-related material of public interest; to protect third sector organisations who publish such material and to promote freedom of expression.

⁴ The judgement – 15th August 20017 https://www.globalwitness.org/documents/17057/the_judgement.doc