



Northern Ireland Affairs Committee

The Rt Hon. Dame Diana Johnson DBE MP
Minister for Policing, Fire and Crime Prevention
Home Office

By email only

20 February 2025

From the Chair
Tonia Antoniazzi MP

Dear Diana,

On Wednesday 5 February my committee took evidence on *The surveillance of journalists and press freedoms in Northern Ireland*. We heard from writers and journalists including Trevor Birney and Barry McCaffrey, whom the Investigatory Powers Tribunal (IPT) [ruled in December](#) 2024 had been subject to unlawful surveillance by the PSNI and Metropolitan Police.

Their evidence provided serious cause for concern regarding the involvement and attitude of UK police forces to the surveillance of journalists. While the Chief Constable of the PSNI has announced a review following concerns raised during the Birney and McCaffrey IPT case, our witnesses noted that this extends only to the activity of that Police Service.

Given the involvement of the Metropolitan Police – and indeed Durham Police - in the case above, and understandable concern about how widespread this kind of behaviour has been and still is in relation to other members of the press, I would be grateful if you could set out what steps the Home Office is taking to ensure that police forces throughout the UK are scrutinised effectively and held accountable when it comes to allegedly illegal surveillance of journalists.

Yours sincerely

Tonia Antoniazzi MP
Chair of the Northern Ireland Affairs Committee



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Dan Jarvis MBE MP

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Tonia Antoniazzi MP
Chair of the Northern Ireland Affairs Committee
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By email only

12 March 2025

Dear Tonia,

Thank you for your letter to the Minister of State for Policing, Fire and Crime Prevention of 20 February 2025, which followed the evidence from writers and journalists heard in the Northern Ireland Affairs Committee on 5 February. This evidence expressed concern about the involvement and attitude of UK police forces on the matter of surveillance of journalists and you have asked for further information on the Government's position on this issue. I am replying as the Security Minister because investigatory powers is part of my brief.

I can assure you that the Government is absolutely committed to the preservation and protection of a free press, which is the cornerstone of democratic societies. However, it is important that the police are not prevented from taking legitimate and proportionate action to prevent and investigate crime.

Covert investigatory powers available to policing under the Regulation of Investigatory Powers Act 2000 (RIPA) and the Investigatory Powers Act 2016 (IPA) are subject to legislative safeguards, and contain additional safeguards and protections where the purpose of the activity is to acquire sensitive material, including information relating to confidential journalistic material or journalists' sources.

The primary legislation is supplemented by detailed statutory codes of practice, which provide specific guidance to which practitioners must have regard when utilising the powers. This includes specific guidance for applications to acquire material relating to confidential journalistic material and journalists' sources. The cornerstone of both regimes is that any conduct must be necessary and proportionate to the outcome sought in support of the statutory purposes available under the Acts, and that in the case of communications data for the purpose of identifying or confirming journalistic sources, regard is given by a judicial commissioner to the public interest in protecting sources of journalistic information.

Your letter sought reassurance that the activity which was deemed unlawful in the Birney and McCaffrey Investigatory Powers Tribunal (IPT) case is not widespread. It is important to note that this case concerned an investigation that occurred in 2013 and therefore prior to the introduction of the IPA. The IPA created the role of the Investigatory Powers Commissioner, bringing together a strengthened oversight regime under one dedicated regulatory body. The Commissioner provides robust independent oversight of the use of investigatory powers, including those exercised under RIPA. The Commissioner and his inspectors audit and inspect the use of investigatory powers to ensure compliance. The Commissioner is under a duty to publish annual reports on the operation of these powers.

This includes a statutory obligation under section 234(2)(c) of the IPA to include information about the operation of the safeguards in relation to confidential journalistic material and sources of journalistic information. Oversight of communications data acquisition (which was of particular relevance to the aforementioned IPT case) was further strengthened, with the introduction of prior independent authorisation for applications for the prevention and detection of crime. The Investigatory Powers Commissioner is responsible for this independent prior authorisation, which in practice is delegated to authorising officers in the Investigatory Powers Commissioner's Office.

The IPT provides an effective judicial right of redress for anyone who believes they have been subject to unlawful action by a public authority with investigatory powers. The IPT can, and indeed does, direct suitable redress, where a claim is upheld.

Given the robust safeguards that have been introduced in the time since the activity in question was carried out, it is our view that the right balance has been struck between protecting press freedoms and the use of investigatory powers, but we continue to keep all legislation under review.

Thank you again for your letter on this important matter and I hope my reply goes some way to reassuring the Committee.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Dan Jarvis', with a horizontal line underneath.

Dan Jarvis MBE MP
Security Minister



Northern Ireland Affairs Committee

Dan Jarvis MBE MP
Minister for Security
Home Office
2 Marsham Street

By email only

28 April 2025

From the Chair
Tonia Antoniazzi MP

Dear Dan,

Thank you for your response dated 12 March to my letter regarding the surveillance of journalists in Northern Ireland and the behaviour of UK police forces in relation to journalist surveillance.

While I am grateful for your correspondence, I am concerned that it fails to acknowledge some key points of the December 2024 Birney and McCaffrey Investigatory Powers Tribunal (IPT) judgment.

I would therefore be grateful if you could address the following points:

- Firstly, your response seeks to provide reassurance that activity deemed unlawful in the case is not widespread, citing the creation of the Investigatory Powers Commissioner (IPC) in 2016 under the IPA to provide independent oversight. You state that “this case concerned an investigation that occurred in 2013 and therefore prior to the introduction of the IPA”. This is not correct. Despite the introduction of the IPC in 2016, surveillance activity that was deemed unlawful by the IPT continued until 2018, when an application for Directed Surveillance Authorisation was made by the PSNI against the two journalists and communications data from Mr McCaffrey’s phone was sent by the Metropolitan Police to Durham Police.
- Secondly, your response omits any reference to the breaches of ECHR Article 10 (freedom of expression) rights in relation to the protection of journalists. The IPT made this finding based on the surveillance activity undertaken by police forces. The Tribunal noted that necessary consideration was not given as to whether there was an overriding public interest justifying an interference with the integrity of a journalistic source.



Northern Ireland Affairs Committee

My colleagues and I are concerned to ensure that the Government is made fully aware of the precise circumstances surrounding the IPT judgment, and the precise findings of the judgment itself.

Only on that basis might the lessons of this case be learned properly. To that end, I look forward to your reply.

Yours ever,

Tonia Antoniazzi MP
Chair of the Northern Ireland Affairs Committee

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14 May 2025

Dear Tonia,

Thank you for your letter dated 28 April. I appreciate the opportunity to address the additional points raised in respect of the Birney and McCaffrey Investigatory Powers Tribunal (IPT) judgment.

In my previous letter I stated that the judgment concerned an investigation in 2013, prior to the Investigatory Powers Act 2016 (IPA) coming into force. This was in relation to the acquisition of communications data (CD) under the Regulation of Investigatory Powers Act 2000 (RIPA) by the Metropolitan Police Service in 2012 and by the Police Service of Northern Ireland (PSNI) in 2013. The process by which these authorisations for CD were acquired under Part 1 of RIPA was replaced by Part 3 of the IPA. You correctly point out that the IPT set out within their judgment that, on 31 August 2018, a Directed Surveillance Authorisation (DSA) was obtained. This was obtained under RIPA by the PSNI, which was then cancelled on 18 September 2018.

A DSA is an authorisation granted under section 28 of RIPA and is not made via the IPA. An application for a DSA authorisation that relates to journalistic sources must refer to and consider Articles 8 and 10 of the European Convention of Human Rights (ECHR). The request must also explain how it is necessary and proportionate, as outlined in paragraph 9.37 to 9.43 of the Covert Surveillance and Property Interference Code of Practice. The Investigatory Powers Commissioner has a statutory responsibility to keep under review (including by way of audit, inspection and investigation) the exercise of functions under Part 2 of RIPA (s229 IPA) and publishes annual reports in relation to how these responsibilities are fulfilled.

Whilst I cannot comment on the specifics of operational cases or IPT judgments, it is important to note that the IPA was introduced to provide additional and more robust governance for the use and oversight of investigatory powers by law enforcement and intelligence agencies. This includes safeguards for authorisations, independent oversight and inspection by the Investigatory Powers Commissioner and his office. For example, non-urgent applications for a CD authorisation now go to the Investigatory Powers Commissioner's Office (IPCO) for prior independent authorisation before the CD can be acquired from a telecommunications operator (s60A IPA). If an urgent authorisation is required, it may usually be authorised without this prior independent approval. However, if the purpose of the urgent authorisation is to identify a source of journalistic information, it will not take effect until such time as it is approved by a Judicial Commissioner (as outlined at s77 IPA). Additionally, it may be worth noting that Part 3 IPA was commenced in part in December 2016, then amended substantially in 2018 to introduce the independent

authorisation requirement from IPCO. There was then a staged implementation of this new requirement until 2020.

In addition to the above, your letter specifically refers to a breach of Article 10 of the ECHR in the Birney and McCaffrey case. The Government is clear that it is in the UK public's interest to protect the free press and freedom of expression as part of a democratic society. This includes the willingness of sources to provide information to journalists anonymously. As such, safeguards for data acquisition and use of surveillance in relation to sensitive professions are built into the IPA. For example, where the intention is to request CD to identify a source of journalistic information, the public interest justifying the request must override the public interest in protecting the source.

The acquisition of CD under Part 3 of the IPA will only be a justifiable interference with an individual's Article 8 rights (right to respect for private and family life) and, in certain circumstances, Article 10 (freedom of expression) of the ECHR if the conduct being authorised or required to take place is necessary, proportionate and in accordance with the IPA. This is set out in Chapter 8 of the revised draft [CD Code of Practice](#) (the CD Code), to ensure public authorities are clear on the circumstances of CD acquisition involving the sensitive professions.

In practice this means that an application for CD made by a UK public authority, listed at Schedule 4 of the IPA, for the purpose of identifying or confirming the role of an individual as a source should give special consideration to necessity, proportionality and specifically draw attention to potential infringement of rights, the public interest in source protection and collateral intrusion. For these cases, Judicial Commissioner approval must be sought *prior to* the acquisition of the CD taking place, other than where there is an imminent threat to life, as set out at section 77 of the IPA. All public authorities are expected to keep comprehensive records in respect of their CD applications, as set out at paragraph 8.33 of the CD Code, and sensitive applications should be marked for the particular attention of the Investigatory Powers Commissioner's Office at their next inspection.

The new and revised IPA Codes of Practice were laid in Parliament on [31 March](#) and are subject to parliamentary review, with debates commencing on 12 May. At present, the Government expects public authorities, including law enforcement agencies and operational partners, to have due regard for the guidance in the [draft Codes](#) to assist in applying changes brought in via the Investigatory Powers (Amendment) Act 2024.

I am also aware that the PSNI are conducting an independent review, titled the [McCullough Review](#), into conduct by the PSNI arising from concerns raised in relation to surveillance of journalists and other groups. It would not be appropriate for me to comment on an ongoing review, however, please be assured that I will continue to closely review the progress of this.

Thank you again for your letter and for the opportunity to provide further clarification on this important issue.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Dan Jarvis', with a horizontal line underneath.

Dan Jarvis MBE MP
Security Minister

To: Tonia Antoniazzi MP, Chair, Northern Ireland Affairs Committee From: Trevor Birney and Barry McCaffrey Date: June 10, 2025

Subject: Factual Inaccuracies and Omissions in Security Minister Dan Jarvis MP's Correspondence Regarding Our IPT Judgement, and New Revelations Concerning MI5's Conduct.

Dear Ms. Antoniazzi,

We are writing to you in response to Security Minister Dan Jarvis MP's letters dated March 12, 2025, and May 14, 2025, concerning the Investigatory Powers Tribunal (IPT) judgement in our case. We appreciate your continued efforts as Chair of the Northern Ireland Affairs Committee to scrutinise these matters effectively. However, having reviewed Mr. Jarvis's correspondence, we feel compelled to provide further evidence of factual inaccuracies, misleading statements, and significant omissions that undermine the credibility of his attempted reassurances to your committee.

While we acknowledge the Minister's engagement, his letters regrettably demonstrate a fundamental misunderstanding or deliberate downplaying of the IPT's findings and the ongoing implications for journalistic freedom and accountability of state agencies.

Our primary concerns regarding Mr. Jarvis's arguments are as follows:

1. **Misrepresentation of Surveillance Timeline and Oversight Effectiveness:** Mr. Jarvis's initial letter stated that our case "concerned an investigation that occurred in 2013 and therefore prior to the introduction of the IPA." His subsequent letter of May 14 attempts to clarify this, acknowledging that "on 31 August 2018, a Directed Surveillance Authorisation (DSA) was obtained." This clarification, however, only serves to highlight the inadequacy of his initial assessment and, more critically, the continued failure of oversight mechanisms.

As you correctly pointed out in your April 28 letter, the **unlawful surveillance activity in our case continued until 2018**. This is a critical point. The Minister's attempt to compartmentalize the surveillance into a "pre-IPA" phase for communications data and a separate "post-IPA" phase for the 2018 DSA ignores the overarching and continuous nature of the unlawful intrusion into not only our work, but the journalistic investigations of many other colleagues. The fact that a DSA was "obtained under RIPA" in 2018, two years after the IPA introduced new oversight mechanisms (including the IPC), directly refutes the Minister's assertion that the IPA provided "additional and more robust governance" that would have prevented such incidents. The continued unlawful surveillance under the RIPA framework, with the IPC in place, demonstrates that the existing or new governance structures were either insufficient or were not being properly applied to protect journalists. The phased implementation of the IPA up to 2020, as the Minister notes, does not excuse the fact that unlawful surveillance was still authorised and conducted during this period under the auspices of an oversight body that should have prevented it. We will make reference to MI5's misleading evidence to Mr Justice Leveson later in this letter.

2. **Omission of ECHR Article 10 Breaches and Public Interest Test Failures:** Mr. Jarvis's letters notably downplay or entirely omit the critical finding by the IPT regarding the breaches of our **ECHR Article 10 rights (freedom of expression)**. In his May 14 letter, he acknowledges that "your letter specifically refers to a

breach of Article 10 of the ECHR in the Birney and McCaffrey case" but then pivots to a general statement about protecting the free press and outlines IPA safeguards.

What Mr. Jarvis fails to squarely address is the IPT's specific finding that **"necessary consideration was not given as to whether there was an overriding public interest justifying an interference with the integrity of a journalistic source."** This was not a procedural oversight; it was a fundamental failure to apply the crucial public interest test that underpins journalistic freedom. The IPT's judgement makes it clear that the authorities did not demonstrate a proper understanding or application of the "overriding public interest" required to justify such intrusive surveillance. The Minister's general statements about safeguards "built into the IPA" do not address why these safeguards utterly failed in our case, even when they supposedly applied. Simply having codes of practice or legal provisions is meaningless if the operational agencies fail to adhere to their spirit and requirements, particularly concerning the protection of journalistic sources.

3. Lack of Meaningful Accountability and Concrete Preventative Measures:

Both of Mr. Jarvis's letters offer no concrete proposals for accountability for the unlawful surveillance we endured. He speaks of "additional and more robust governance" under the IPA and refers to an "ongoing review" (the McCullough Review) by the PSNI. These are insufficient. Internal reviews, particularly by the very force implicated, do not constitute independent accountability for unlawful actions by state agencies. There is no mention of disciplinary action, compensation, or any specific new training or protocols directly addressing the systemic failures highlighted by our case. The reliance on existing or newly laid codes of practice, without acknowledging the documented failures in their application, provides no genuine reassurance against future unlawful surveillance.

Furthermore, and perhaps most critically, the Committee is no doubt aware of a recent development that fundamentally undermines any assurances provided by the Security Minister regarding the integrity and accountability of intelligence agencies.

Recent reports, widely covered by the BBC and other reputable news outlets, have revealed that **MI5 deliberately lied to a judge and misled Mr. Justice Leveson in a separate, yet equally disturbing, case.** Specifically:

- MI5 intentionally provided false information to the High Court in an attempt to secure an injunction preventing reporting on a neo-Nazi agent.
- More alarmingly, MI5 subsequently misled the Investigatory Powers Commissioner's Office (IPCO) in its review of the matter, providing false evidence to multiple courts and bodies, including Sir Brian Leveson, who had been tasked with overseeing their conduct.

This revelation, which has emerged since the Minister's last letter, is not merely a "procedural misstep" but a stark demonstration of a systemic willingness within a key intelligence agency to engage in dishonest practices and obstruct justice, even at the highest levels of judicial and independent oversight. The fact that MI5 has been found to have "deliberately and repeatedly" lied in court and misled the very oversight body intended to hold it accountable, renders Mr. Jarvis's assurances about "independent

oversight and inspection by the Investigatory Powers Commissioner and his office" profoundly concerning and, frankly, unbelievable.

This pattern of deception from a state agency that possesses immense powers of surveillance and intrusion is deeply alarming. It suggests that if MI5 is prepared to mislead the courts and oversight bodies in one instance, the public cannot have confidence that it is not engaging in similar dishonest practices in others, including those related to the surveillance of journalists.

Given these revelations, our personal experience of unlawful surveillance, and the clear deficiencies in Mr. Jarvis's current explanations, we urge the Northern Ireland Affairs Committee to demand the following:

1. **An unequivocal acknowledgement of the specific breaches of ECHR Article 10 in our case and concrete steps to prevent their recurrence, beyond mere reiteration of existing codes.** This must include explicit guidance and training for all agencies on the "overriding public interest" test for journalistic sources.
2. **A transparent process for accountability regarding the unlawful surveillance we endured, leading to demonstrable consequences for those responsible.**
3. **An immediate and independent inquiry into the extent of MI5's deceptive practices, as revealed in the recent news reports, and robust measures to ensure that intelligence agencies can no longer mislead courts or oversight bodies.** This must restore public confidence, which has been severely eroded.
4. **Fundamental reforms to the oversight framework for intelligence agencies, particularly the IPCO, to ensure their genuine independence and effectiveness in holding these powerful bodies to account.** The current system, as evidenced by both our case and the recent MI5 revelations, is clearly not fit for purpose.

We believe that without addressing these points comprehensively and transparently, the government risks sending a dangerous message about its commitment to press freedom and democratic accountability.

Yours sincerely,

Trevor Birney Barry McCaffrey