

16
Dec 2019

Lvl. 2

Resolved

United Kingdom

n° 91/2018

Alert created on: 04 Sep 2018

United Kingdom: Two Journalists Arrested over Alleged Theft of Documents relating to Northern Ireland Massacre

SOURCE OF THREAT ▶ State

CATEGORY  ▶ Other acts having chilling effects on media freedom

PARTNER: Index, AEJ, EFJ/IFJ

Two journalists involved in the making of a recent documentary about the killing of six men in the Northern Ireland village of Loughinisland in 1994 were arrested on 31 August 2018 in connection with the alleged theft of confidential documents from the office of the Police Ombudsman of Northern Ireland (PONI), the Belfast Telegraph reported.

The two men, film producer Trevor Birney and journalist Barry McCaffrey, were both involved in the making of the 2017 documentary film *No Stone Unturned*, directed by Alex Gibney. The film examined the police investigation into the murders – for which no one has yet been charged – and looked especially at allegations of collusion between the police and the loyalist gunmen who shot dead six men in a Loughinisland bar. It generated considerable controversy upon its release in November 2017 by naming the main suspects in the killings. Birney and McCaffrey were released on bail later on 31 August.

RESOLVED

16 Dec 2019: On 16 December 2019, given the outcome after Belfast High Court's judgment of 29 May 2019 and the Lord Chief Justice's order of 31 May 2019, the partner organisations to the Platform declared this case to be "resolved", concluding it was no longer an active threat to media freedom.

UPDATES

04 Nov 2019: In a 25 October 2019 speech in Parliament, David Davis MP urged the Home Office and the Northern Ireland Office "to keep a close eye on the development of the Loughinisland case and, when it is adjudicated, review the policies on data acquisition and retention for the PSNI and other police forces throughout the country."

➔ **Article from the Press Gazette: “MP calls for review into police handling of journalists’ data as Northern Ireland pair continue battle”**

15 Jul 2019: On 3 June 2019, the Durham constabulary and the PSNI announced that they were no longer investigating Trevor Birney and Barry Mc Caffrey.

➔ **Article from The Guardian: “Police drop investigation into journalists who made Loughinisland film”**

03 Jun 2019: On 29 May 2019, the High Court in Belfast ordered that the search warrants obtained by police be quashed. The senior judges said that they were “minded to quash the warrants on the basis that they were inappropriate.” Lord Chief Justice Declan Morgan said that the question of remedy would be discussed on Friday, 31 May. On 31 May 2019, Lord Chief Justice Declan Morgan ordered that the seized documents be returned to Trevor Birney and Barry McCaffrey. Mr Justice Morgan said that the material “does not indicate that the journalists acted in anything other than a perfectly proper manner”. He said that the granting of the search warrants was “inappropriate” and called for the documents to be returned: “We consider that there’s no reason why, subject to suitable protections, for declining to return the material in their entirety to the journalists.”

21 Mar 2019: On 20 March 2019, the journalists’ lawyers challenged the search warrants again in court. They argued there was no evidence in the public interest for the redactions made to the search warrant applications. The legal challenge to the search warrants has been granted a judicial review scheduled for May 2019.

02 Mar 2019: On 1 March 2019, Trevor Birney and Barry McCaffrey again reported to the police and the Police attempted to amend the existing bail conditions to prevent the journalists from talking publicly about the ongoing police investigation and witnesses. This attempted restriction of their freedom of speech was successfully opposed by their lawyers. On this occasion the journalists’ (pre-charge) bail was extended for the second time and until September 2019.

➔ **NUJ press release: "NUJ fury as police step up bid to thwart No Stone Unturned campaign"**

05 Feb 2019: On 4 February 2019, Trevor Birney and Barry McCaffrey won permission to challenge the legality of search warrants. Lawyers representing the journalists and Fine Point Films, the company behind the film No Stone Unturned, contend the warrants did not cover all of the material seized reports the Irish News. In the High Court in Belfast they were granted leave to seek a judicial review on all grounds of challenge - including a claim that relying on the Official Secrets Act to obtain the warrants was incompatible with their freedom of expression rights under European law.

➔ **Article published by The Irish News: “Loughinisland journalists win permission to challenge police search warrants”**

ADDITIONAL INFORMATION

- ➔ [NUJ comments on the nine-month ordeal of journalists Trevor Birney and Barry Mc Caffrey as police drop case: "Looking back with hope and anger"](#)
- ➔ [Report published on the Mapping Media Freedom platform : "United Kingdom: Two journalists arrested over alleged theft of documents relating to Northern Ireland massacre"](#)

STATE REPLIES



19 Sep 2018 | Reply from the United Kingdom authorities

- ➔ [Letter from the UK Permanent Representation to the Council of Europe](#)

FOLLOW-UPS

OSCE **04 Sep 2018** | OSCE media freedom representative seriously concerned by arrest of journalists in UK

- ➔ [Statement by Harlem Désir](#)