

CONFIDENTIAL FILING

Quia Timet Unjunctions

LEGAL  
PROCEDURE

February 1987

Referred to	Date	Referred to	Date	Referred to	Date	Referred to	Date
<del>9.2.87</del>							
<del>12.2.87</del>							
<del>16.2.87</del>							
<del>23.2.87</del>							
25.2.87							
<p>PREM 19/2296</p>							

cc/c



Lord Advocate's Chambers  
Fielden House  
10 Great College Street  
London SW1P 3SL

Telephone Direct Line 01-212 0515.  
Switchboard 01-212 7676

The Rt Hon Lord Hailsham of St Marylebone  
CH FRS DCL  
Lord Chancellor  
House of Lords  
LONDON SW1A 0PW

25 February 1987

CDP 20/2

Dear Hailsham,

**INJUNCTIONS AND INTERDICTS  
AGAINST PUBLICATION**

at tiap

I refer to your letter of 18 February to Patrick Mayhew on Quia Timet Injunctions and related matters.

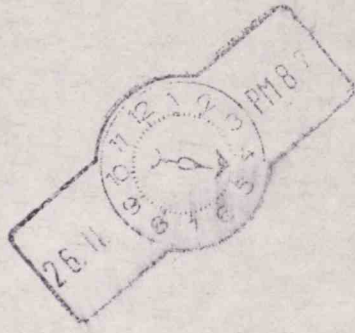
I am content with your proposed terms of reference for the committee of officials, on the understanding that the examination of the existing practice should extend to co-operation between interested departments, and the practice relating to the seeking of undertakings not to publish, prior to the institution of proceedings.

I am copying this to the Prime Minister, the Lord President of the Council, the Foreign Secretary, the Home Secretary, the Solicitor General and Sir Robert Armstrong.

Yours  
Kinnear

CAMERON OF LOCHBROOM

LEGAL PROC. Quia Timet Injunction Feb 87



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*CLB*



ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

XXXXXXXXXXXX

01-936-6407

23 February 1987

The Rt Hon Lord Hailsham of St Marylebone CH FRS DCL  
Lord Chancellor  
House of Lords  
LONDON S W 1

*CDP*  
*24/2*

*Dear Quintin,*

*at flat*

QUAI TIMET INJUNCTIONS : IMPROVEMENT TO LAW AND PRACTICE

Thank you for your letter of 18 February, about quia timet injunctions, which I found very helpful. I am grateful, too, to Douglas Hurd, Geoffrey Howe and Kenny Cameron (who will be receiving copies of this letter) for their comments on this subject.

The way now seems to be open for the setting up of a committee of officials. Subject to the views of colleagues, I agree that the committee's terms of reference should be as proposed by you.

I am copying this letter to the Prime Minister, the Lord President, the Foreign Secretary, the Home Secretary, the Lord Advocate and to Sir Robert Armstrong

*Yours,*

*Lord*

*—*

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Legal Procedure: Quasi-Timet @ 871



CONFIDENTIAL

Mr Powell

NW

cc/c



CDP

24/2

**CABINET OFFICE**

70 Whitehall London SW1A 2AS

01-270 0101

*From the Secretary of the Cabinet and Head of the Home Civil Service*

Ref. A087/498

Sir Robert Armstrong GCB CVO

23 February 1987

*My dear Derek,*

*at triaf*

I have seen the Solicitor General's letter of 9 February proposing a review of the working of quia timet injunctions, and the Lord Chancellor's reply.

I suggest that, when the report is ready, the Lord Chancellor should bring it, with his recommendations, to OD(DIS) - the Ministerial Sub-Committee which has been set up to deal with cases of unauthorised publication of material the disclosure of which would be prejudicial to national security. The Lord Chancellor and the Lord Advocate would of course be invited to attend, as would other Ministers with a departmental interest.

I am sending copies of this letter to Patrick Wright, Brian Cubbon, Michael Saunders, Norman Adamson and Charles Powell.

*Yours etc*

*Robert*

Sir Derek Oulton KCB QC

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LEGAL PROC. Quia Tinet Lyncian Feb 87

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DAS

ape

10 DOWNING STREET  
LONDON SW1A 2AA

From the Private Secretary

23 February 1987

Dear Richard,

QUIA TIMET INJUNCTIONS: IMPROVEMENTS TO LAW AND PRACTICE

The Prime Minister has seen the exchange of correspondence between colleagues, starting with the Solicitor General's letter of 9 February and concluding with the Lord Chancellor's reply of 18 February, on possible changes in the law or procedure relating to interlocutory injunctions. She agrees that a committee of officials should be asked to consider the proposals in the Solicitor General's letter and report. She hopes that their consideration can be conducted briskly, with a report to Ministers well before Easter.

I am copying this letter to the Private Secretaries to the Lord President, the Foreign Secretary and Home Secretary, the Legal Secretary to the Law Officers and to Sir Robert Armstrong.

yours sincerely,  
Charles Powell

C D POWELL

Richard Stoate, Esq.  
Lord Chancellor's Office

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*With the Compliments  
of*

PRIVATE SECRETARY

20 FEBRUARY ..... 19<sup>87</sup>

LORD ADVOCATE'S CHAMBERS  
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10 GREAT COLLEGE STREET  
LONDON SW1P 3SL

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CCPC

CDP  
23/2

PS/Solicitor General

INJUNCTIONS AND INTERDICTS AGAINST PUBLICATION:  
IMPROVEMENTS TO LAW AND PRACTICE

attias

The Lord Advocate has seen the Solicitor General's letter of 9 February to the Lord Chancellor on Quia Timet Injunctions.

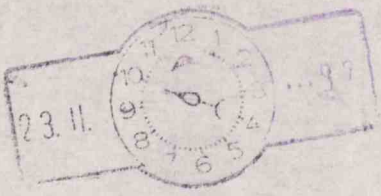
As the Solicitor General is aware, the Lord Advocate shares his desire to make these procedures more effective throughout the United Kingdom, and would wish his officials to be included in the committee to examine the problems.

I am copying this to the Private Secretaries to the Prime Minister, the Lord Chancellor, the Lord President, the Home Secretary, the Foreign and Commonwealth Secretary and Sir Robert Armstrong.

*Am.*

A G MAXWELL  
20 FEBRUARY 1987

LEGAL PROC. Quia Tinet Injunction Feb 07



FROM:

THE RT. HON. LORD HAILSHAM OF ST. MARYLEBONE, C.H., F.R.S., D.C.L.

CPG  
①



HOUSE OF LORDS,  
LONDON SW1A 0PW

Prime Minister  
The Lord Chancellor agrees  
to a Committee of officials  
to examine this problem. 18  
It would report to an  
expanded OD(OIS).

February 1987

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My dear Paddy:

You might like to suggest a target  
date for its report, say Easter. Agree?

Quia Timet Injunctions : Improvements to Law and Practice

CDP  
19/2

Thank you for your letter of 9 February. I have also seen Douglas Hurd's letter of 12 February and agree with you and Douglas that the best way forward is to seek advice from a committee of officials. As Douglas rightly emphasises, any legislation in this area can easily be presented as an attempt by the Government to muzzle the press. This risk is all the greater if procedural advantages are to be conferred on the Crown in the use of what are essentially remedies of private law which are available to all litigants.

Yes  
ms

Your letter raises three main difficulties the Crown faces when seeking a quia timet injunction (although the same points arise in respect of all types of interlocutory injunction). The first is the need to establish a cause of action against the person to be named in the interlocutory order. I am not sure whether this requirement can be obviated without upsetting the settled principles on which injunctions have always been granted. If there is no cause of action against a potential defendant, there would appear to be no ground on which the court can properly restrain him, however temporarily.

/...2

The Right Honourable  
Sir Patrick Mayhew QC MP  
Solicitor-General  
Law Officers' Department  
Royal Courts of Justice  
Strand  
London WC2A 2LL

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Your second point concerns the limited territorial effect of an injunction granted in England and Wales or Northern Ireland or an interdict in Scotland, and the consequent need to make an application for an order in each of these law districts in order to cover the whole of the United Kingdom. You suggest that it ought to be possible for such an order to take effect automatically in the other law districts. Provision has, of course, been made for the reciprocal recognition and enforcement within the UK of non-money judgments (i.e. those granting a relief or remedy not requiring payment of a sum of money) in Schedule 7 to the Civil Jurisdiction and Judgments Act 1982 which has just come into force. However, these arrangements do not apply to interlocutory orders and it would be useful to obtain the advice of officials on the question whether such orders should be recognised and enforced automatically in the other law districts.

I suggest we also need to bear in mind the position of the Channel Islands, the Isle of Man, the Republic of Ireland as well as other EC Member States and third countries. Whilst this is a matter on which officials will no doubt advise, I doubt whether those territories and countries can be induced to agree to the automatic enforcement of a foreign interlocutory order. Any such agreement would have to be on a reciprocal basis and we would need to consider most carefully the consequences of automatic enforcement of such foreign orders here. It may, however, be possible to agree on arrangements whereby the notification of an interlocutory order to the foreign court would give a prima facie right to an ex parte order by the foreign court which would run until the first occasion when the defendant could be summoned before the foreign court to show cause why the order should not be continued.

e/ Your final point concerns the limited effect of an injunction on a person who is not named in that injunction. The power of the court to punish for contempt in such a case is not

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so much concerned with the breach of an injunction (which is not, in any event, addressed to that person) as with knowingly interfering with the administration of justice by causing that order to be thwarted. Provided that the non-party has knowledge of the terms of the injunction and knows that what he is doing is a breach of the terms of that injunction it is possible to apply for his committal for contempt. As you infer, the key to this question is the means of bringing an injunction to the notice of persons who might otherwise make the order of no effect. This is again a matter on which officials could usefully advise. It would, in this context, be helpful if officials were also to examine further the type of injunction you have mentioned as being granted in the Republic of Ireland.

With these points in mind, I would take up your proposal that a committee of officials examine these matters and report. Subject to your views and those of colleagues, I would suggest that the terms of reference of the committee might usefully be framed along these lines:

"to consider and report whether any, and if so what, changes are desirable in the law, practice or procedure relating to interlocutory orders granted by a court in a part of the United Kingdom to restrain the unlawful disclosure or use of information, and in particular to consider,

(i) what steps are necessary to make the substance of such orders effective in other parts of the United Kingdom and elsewhere, and

(ii) what steps are needed to promote the effectiveness of such orders in respect of persons who are not party to the litigation".

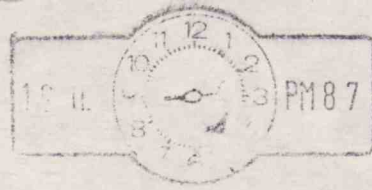
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I am copying this letter to the Prime Minister, the Lord President, the Foreign Secretary, the Home Secretary, the Lord Advocate and to Sir Robert Armstrong.

yrs :  


Legal Procedure

QIA TIME



For Instructions

2/17



cc/c

FCS/87/037

Lord Chancellor will  
be reacting shortly.  
CDD  
16/2.

SOLICITOR GENERAL

Quia Timet Injunctions: Improvements to Law and Practice

at nap

1. Thank you for sending me a copy of your letter of 9 February to Quintin Hailsham proposing that consideration should be given to undertaking legislation to improve the law and practice relating to Quia Timet Injunctions. I entirely agree with your views concerning the unsatisfactory nature of the law as it stands at present. If Quintin Hailsham and others agree with your suggestion that a committee of officials should be set up to look into the matter, we should be happy to participate.

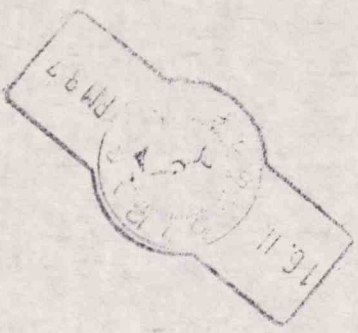
2. I am copying this minute to the Prime Minister, the Lord Chancellor, the Lord President, the Home Secretary, the Lord Advocate and to Sir Robert Armstrong.

(GEOFFREY HOWE)

Foreign &amp; Commonwealth Office

16 February 1987

LEGAL PROC. Quia Tunc Injunctio feb 87



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CCPC



QUEEN ANNE'S GATE LONDON SW1H 9AT

12 February 1987

Dear Patrick,

CM  
13/2

QUIA TIMET INJUNCTIONS:  
IMPROVEMENTS TO LAW AND PRACTICE

You have invited comments on the proposals contained in your letter of 9 February to Quintin Hailsham. I agree that recent events have shown that court procedures are not adequate to prevent determined people from publishing information obtained in breach of an obligation of confidentiality. You have identified the two weaknesses - the local jurisdiction and the restriction of the courts' control to persons identified in advance as likely to publish the information. I share your view that careful thought is needed before we decide to legislate, not least because any legislation would be fiercely denounced in some quarters as an attempt by the Government to muzzle the media.

You have suggested that the best way to handle this matter would be to obtain advice from a committee of officials. If Quintin Hailsham agrees that this is the best way forward, I think that the Home Office should be represented on that committee. It might also be helpful to have someone from Northern Ireland who is familiar with any special features of the jurisdiction there.

I am copying this letter to those who received copies of yours.

Yours,  
Douglas

The Rt Hon Sir Patrick Mayhew, QC, MP

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LEGAL PROCEEDINGS: Quia Tenuit Injunction  
Feb 87.



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CCPC

2



ROYAL COURTS OF JUSTICE  
LONDON, WC2A 2LL

01-936 6494

9 February 1987

*Prime Minister*  
*This is a helpful first step towards amending the law to make 'blanket' injunctions possible. But you might await the Lord Chancellor's reaction before weighing in yourself.* ✓ *ms*  
*CDP 10/2*

*Dear Quentin:*

QUIA TIMET INJUNCTIONS: IMPROVEMENTS TO LAW AND PRACTICE

The recent article in the New Statesman about the Zircon project, and the earlier brush with that magazine over the valedictory message from Sir James Craig, have persuaded the Attorney General and me that Ministers need to consider seriously whether we cannot make improvements to the law and practice relating to quia timet injunctions. There appear to be two particular difficulties; first the need to establish a cause of action (for example breach of a confidence owed to the Crown) against each potential defendant the Crown wishes to pursue; and, secondly, the need to obtain injunctions (or their equivalent) in each of the jurisdictions in this country. The difficulty in obtaining a quia timet injunction against the New Statesman (resulting in the embarrassment of publication of details of the Zircon project and making those who seek to protect our secrets look increasingly foolish as they fail to secure that protection) exemplifies the first problem; the case of Sir James Craig's valedictory message not appearing in the New Statesman but in the Glasgow Herald exemplifies the second.

As you know, it is not possible for a quia timet injunction to be obtained to prevent the publication of material unless the Crown can point to the Defendant's intention to publish in circumstances where the Crown has a cause of action against the Defendant - an

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injunction is always "ancillary" relief even if it is effectively all a Plaintiff is seeking. Before the publication of the New Statesman article on the Zircon project, we had been advised by Treasury Counsel that the evidence then available would not have made it proper to apply for an injunction against the magazine because there was no prima facie case against them.

The question then arises whether the Court has jurisdiction over persons not parties to an action in circumstances where a Plaintiff has successfully obtained an injunction against another. In the present case, the Crown had successfully obtained an injunction against Campbell on 21 January. The Court has jurisdiction to restrain persons who are not parties to the action from assisting the Defendant to commit a breach of the injunction against him. However, as the injunction is still in personam, the Court would need to be approached with evidence that a non-party was about to assist the Defendant to disobey the injunction before the non-party could be enjoined.

A non-party can be given notice of an injunction already obtained against a Defendant. And such a person can be committed for assisting the Defendant to disobey the injunction. O.45 r.7(6) suggests that in cases of urgency telephone notice may be sufficient to invoke the Court's contempt jurisdiction. But the Court's jurisdiction over non-parties is linked to their assistance of the Defendant disobeying the Order against him. The non-party would not be assisting the Defendant if the material or information (even though unpublished) had been passed by the Defendant to the non-party before notice of the injunction had been given to the Defendant. This happened in the case of the New Statesman. When notice of the injunction against Campbell was given to the magazine it was already on the streets, and of course the damage had already

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been done. Pirated copies of the Secret Society TV programme on the Zircon project had begun circulating. The video is now being shown openly outside the House (the position in the House is governed by the Speaker's ruling) and Treasury Counsel, the Attorney General and I were driven to the conclusion that Government could not successfully apply to the Court for an injunction against the showing of the video, since we would have to tell the judge that any claim of national security had gone after the publication of the New Statesman article.

The problem highlighted by the case involving Sir James Craig is that an injunction of an English or Welsh Court does not have effect in Scotland, Northern Ireland or elsewhere. Thus, to obtain comprehensive cover at least three applications need to be made and there has to be a separate cause of action in each jurisdiction to support a claim for an injunction or interdict. While we were successful in preventing publication of Sir James Craig's letter in this country, a separate application had to be made against the Glasgow Herald who had received a copy of the letter from the New Statesman.

This leads us to conclude that a Plaintiff should at least be able to obtain an injunction having a "national" effect; for example where notice of an injunction, obtained against an English newspaper, given to a Scottish newspaper would carry with it the force of a sanction in the Scottish Courts and vice versa on the principle of reciprocity.

However, we also consider that proposals for change should go further and encompass what has been termed a "blanket injunction". Such an Order once obtained against one person would be capable of binding others on notice. Non-parties would, in effect, be in the same position as parties and it would not be necessary to prove that the non-party was assisting the Defendant to disobey the injunction. I believe that a procedure of this nature operates

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in the law of the Republic of Ireland. In the case of the Joan Miller book, "One Girl's War", for example, although we eventually failed in our application for reasons principally relating to the Irish Constitution, we at one stage obtained an injunction restraining the Defendant publishers and "any person having notice of the making of the Order" from selling, distributing or communicating any part of the contents of the book. Were we to provide for blanket injunctions in our law we would probably have to arrange that the words quoted would only be included if a strong and cogent case for their inclusion have been put to the Judge. Such an order would no longer be in personam but against all the world (or at least against all those who have notice) and would catch unpublished material even if handed over by the Defendant before he had notice of the injunction.

There was a clear causal connection between the Crown's cause of action against the Defendant publishers in Ireland and acts further down the line - selling, distributing or communicating any part of the contents of the book. We doubt whether it would be acceptable to have a "blanket injunction" enjoining any person having notice of the making of the Order where such a causal connection did not exist. If a newspaper had got details of the Zircon project from a source other than Campbell, we are not sure that even notice of an "Irish" type injunction would have prevented it from publishing.

There are, of course, problems with the question of notice of a "blanket injunction". It takes a considerable time to telephone all those (newspapers, TV, radio etc) likely to want to publish material. And in order to ensure that notice is effective it would probably have to be given personally to a responsible person, for example the Editor.

If the Government were to legislate to improve the effectiveness of quia timet injunctions or interdicts, our principal concern would be to ensure that improvements applied where the Crown was plaintiff and national security was in issue. We could see, too, a case being



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made out for applying them to cases of a breach of the duty of confidence owed to the Crown.

Very careful thought, however, would be needed before legislating to pass the benefits to all potential plaintiffs for all causes of action, although Ministers would be open to being persuaded that it would be easier to defend the passage of legislation if it applied to all plaintiffs equally and did not single out Government for special treatment.

I would be grateful for views on the above from you and colleagues. I wonder whether the best way to handle this matter would be if you were to set up a committee of officials from the main Departments concerned to look at the matter and report to Ministers. I am copying this letter to the Prime Minister, the Lord President, the Foreign Secretary, the Home Secretary, the Lord Advocate and Sir Robert Armstrong.

*Lans,*  
*Atty*  
—

The Rt Hon The Lord Hailsham of  
St Marylebone CH FRS DCL  
House of Lords  
London SW1

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2009:02

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