

Chapter 20: Public policy

The scope of exclusion on grounds of public policy

General

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The Gaming Board was replaced by the Gambling Commission in 2007.

Disclosure of sources of information in a publication

The general prohibition on disclosure

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Concerning the power to issue warrants to obtain information in confidential journalistic material in the interests of national security or for the purposes of preventing or deterring serious crime, see ss 20 and 28, Investigatory Powers Act 2016.

Procedural issues

Civil cases

Closed material procedures

Common law

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Parliament has now extended use of CMP.

Material protected by PII cannot be disclosed in confidentiality rings, the use of which is limited to the protection of commercially sensitive information: *Competition and Markets Authority v Concordia International RX (UK)* [2018] EWCA Civ 1881.

Competition and Markets Authority v Concordia International RX (UK) (Ibid) establishes an exception to the general ban on the use of the CMP. Applying *R (Haralambous v St Albans Crown Court)*, it was held that the High Court, on an application under sections 28 and 28A of the Competition Act 1998 to enter premises for the purposes of an investigation under the Act, may have regard to material which should not be disclosed to the subject of the warrant by reason of PII and that if that person applies to vary or set aside the warrant, the court can consider such material by way of a CMP.

The Justice and Security Act 2013

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In *Belhaj v Director of Public Prosecutions* [2018] 3 WLR 435, SC, it was held that 'proceedings in a criminal cause or matter' covers proceedings by way of High Court judicial review of decisions made in criminal causes, including for example decisions by the Director of Public Prosecutions to prosecute or not to prosecute.

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In the text, replace '(iii) section 17(1) ... (exclusion for intercept material)' with, '(iii) section 56(1) of the Investigatory Powers Act 2016 (exclusion for intercept material)'.

Criminal cases

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Closed material procedures

There is no power to order a CMP in a criminal trial, where any claim to PII will be decided in the usual way, but exceptionally may be used in other criminal contexts. Thus in *R (Haralambous) v St Alban's Crown Court* [2018] 2 WLR 357, SC, it was held that: a magistrates' court, on an ex parte application for the issue of a search and seizure warrant under s 89 of the Police and Criminal Evidence Act 1984, may have regard to material protected by PII without disclosing it to a person affected by the warrant; a Crown Court, on an application made inter partes under s 59 of the Criminal Justice and Police Act 2001 for an order authorizing retention of unlawfully seized material, can operate a CMP to have regard to information which should not be disclosed by reason of PII; and where such decisions are challenged by judicial review, the High Court can also conduct a CMP.