

## FINAL

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# Claims against the public bodies fuel 54% surge in privacy cases

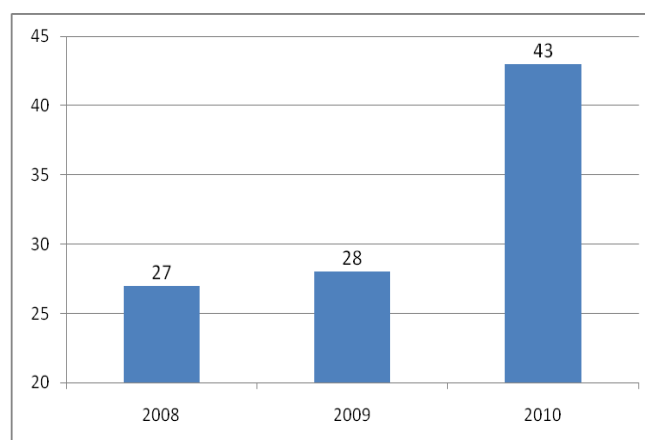
- Public sector failing to predict when it is breaching rights to private life
  - More celebrities fighting to protect their privacy

The use of privacy arguments in UK court cases has soared 54% in the last year, fuelled largely by a surge in claims against public sector organisations, reveals new research by Sweet & Maxwell, the legal information provider.

The number of reported court cases where a privacy argument was used is up from 28 in 2009 to 43 in the last twelve months.\* (See Graph)

In the last few years, court cases based on an individual's right to a private life have mushroomed from just being about celebrities protecting their privacy to being about private individuals wanting protection from alleged intrusion by the state.

### **Number of privacy proceedings in UK courts**



\*(Data to May 2010)

Sweet & Maxwell says that of the 43 cases reported, 22 were brought against the public sector, up from 17 cases in the previous year, making up 51% of all privacy cases.

Sweet & Maxwell says that problems arise when a public body fails to consider whether their interference in an individual's right to privacy is necessary and proportionate to any public interest that there might be in interfering with the right in the first place.

Jonathan Cooper, barrister at London's Doughty Street Chambers and editor of Sweet & Maxwell's 'European Human Rights Law Review' comments: "The right to

respect for private life is increasingly important in the 21<sup>st</sup> century. Once your private life has been violated it is very difficult to recreate it.”

“Privacy was once something we could take for granted, but as our privacy is increasingly encroached upon by public bodies, people are resorting to the law to protect themselves.

“As Sweet & Maxwell’s research shows, protecting the right to respect for private life is a growing area of law. Privacy law is no longer the preserve of wealthy celebrities concerned with media intrusion. Privacy is about all of us and our relationship with the State and each other.”

“Although the right to a private life has been well developed in international human rights law the UK has lagged behind in the development of this legal concept.”

Experts have warned that Britain is at risk of becoming a ‘surveillance society’ with Human Rights group Privacy International earlier this year describing Britain as: “the most surveillance-intense country in the democratic world”.

The problem was highlighted by a recent Investigatory Powers Tribunal that criticised Poole council ([Paton v Poole Borough Council](#)) for using ‘covert surveillance’ techniques, normally reserved to monitor terror suspects, to monitor Jenny Paton and her family during a dispute over which school catchment area the family belonged to.

Sweet & Maxwell says that while the use of privacy law in the UK has been almost exclusively reserved to celebrity versus media in the past, the spread of privacy arguments to other areas reflects a changing attitude towards the use of privacy laws in the UK courts.

Jonathan Cooper explains that the growth in privacy cases stems from the fact that privacy claims could not be argued before the entry into force of the Human Rights Act. He adds, “One of the most important features of that Act is its recognition of the importance of privacy and the fact that it gives an enforceable right to respect for private life. The definition of private life includes physical and moral integrity, identity, as well as the right just to be. What actually constitutes a lawful interference of one’s privacy or private life can be open to challenge.”

### **Examples of privacy cases brought by private individuals**

Further issues that formed the basis for privacy cases in the last year include:

- An Egyptian national living in the UK had his bank account frozen and his travel rights restricted following the inclusion of his name in a list of people associated with terror suspects, as designated to the UN. The claimant applied that his inclusion on this list was a breach of his privacy rights.
- A man who was placed on the ‘Violent Persons Register’ claiming that the subsequent distribution of this register to other local authorities and partner organisations was in breach of his right to a private life

- A mother applying for Wikimedia (The proprietors of Wikipedia) to release the IP address and information of the author of an online article about her, in which she contested that information disclosed in the article was private.

### Celebrity privacy cases return

The number of celebrities taking legal action to protect their right to privacy has bounced back after just two cases were recorded in 2009. In the last twelve months,\* nine cases were recorded where high profile individuals brought legal proceedings against individuals or the media for breaching privacy. (To May 2010)

Privacy cases from high profile individuals make up 21% of total privacy cases in 2010, compared to just 7% in 2009.

Sweet & Maxwell explain that this is the area in which privacy law has been most abundant in previous years, but concerns are growing that UK courts are increasingly granting high profile figures so-called 'gagging orders', preventing the media from reporting details of their lives, at the expense of free speech.

This follows a succession of wealthy and powerful figures using the Human Rights Act to prevent the publication of damaging allegations on the basis that it breached their right to privacy.

In some cases, they obtained "super-injunctions" that even prevented the media from reporting the existence of any injunction.

Jonathan Cooper comments: "Free speech remains the mainstay of a democracy, but this does not give the media the right to run roughshod over the privacy rights of others. There must be a balance."

"Privacy rights cannot be used to undermine free speech and vice versa. Where there is a public interest in interfering with privacy rights, the media must be entitled to publish."

"There is a real fear that emergency injunctions are becoming increasingly common, whereby a judge can grant an interim injunction at very short notice without a full and proper hearing."

In a case at the High Court last month Colin Montgomerie, the Scottish golfer, won a temporary gagging order, preventing a UK tabloid newspaper from printing details about his private life.

Tiger Woods was granted a similar order earlier this year, preventing the British media from reporting on fresh allegations into his private life.

The former England captain John Terry also received a temporary injunction on the media, preventing them from reporting allegations that he had been engaged in an extramarital affair, but this was later overturned in the High Court.

## ENDS

Notes to Editors:

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Press enquiries:

Jonathan Cooper  
Doughty Street Chambers  
020 7404 1313  
[j.cooper@doughtystreet.co.uk](mailto:j.cooper@doughtystreet.co.uk)

Nick Mattison or Gordon Carver  
Mattison Public Relations  
Tel: 020 7645 3636

Peter Wylie  
Corporate Communications Manager  
Sweet & Maxwell  
Tel: 020 7393 7123