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Sharing information covered by injunctions

Dear Accounting Officer

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Action

Where an accounting officer's organisation is considering applying for a "super-injunction", the Accounting Officer should follow the attached guidance in recognition of the significant impact of super-injunctions on public and parliamentary accountability.

In particular, as part of the process for determining whether to seek or renew a super-injunction, the Accounting Officer should explicitly inform ministers whether or not they consider it necessary to seek that any Order provide for information to be shared with the Comptroller and Auditor General (C&AG) in order to meet statutory audit requirements. Both the Public Accounts Committee (PAC) and the C&AG expect the C&AG to be informed of any matter with potential material financial consequences.

Context

Following the discovery of a data incident in August 2023 where a spreadsheet with names of individual applicants for the Afghan Relocations and Assistance Policy (ARAP) and its predecessor scheme was emailed outside of official government systems, the Ministry of Defence requested an injunction. The High Court granted a super-injunction in September 2023.

Subsequently, the Government set up a scheme (the Afghanistan Response Route) to resettle those who were previously thought to be at highest risk as a result of the data incident, and were not eligible for ARAP. In light of the super-injunction, neither the Chair of the Public Accounts Committee (PAC) nor the C&AG were informed about the existence of the scheme until the super-injunction was lifted in July 2025.

On 14 November 2025, the PAC published its report on the Afghanistan Response Route.[1] This included a recommendation that the Treasury issue guidance on how Accounting Officers should act in the event of super-injunctions. This guidance is annexed.

By its nature, the considerations for any application for an injunction will be heavily dependent upon the specifics of the issue at hand, and ultimately dictated by the terms of any injunction granted by the courts. Therefore, it is not appropriate or possible to prescribe a specific course of action that must be followed in respect of informing the PAC and the C&AG, but the guidance sets out the relevant factors that should be taken into account whenever a department is considering applying for a super-injunction. Nevertheless, both the PAC and the C&AG expect the C&AG to be informed of any matter with potential material financial consequences so that they may determine the significance of such information for their statutory audit responsibilities.

It should be remembered that these are just part of a wider set of issues that should be assessed if a department is considering applying for an injunction. In such circumstances, departments should engage the Government Legal Department at the earliest opportunity, who can advise on establishing an appropriate review process, as well as matters of substance, to ensure all factors are given due weight.

David Fairbrother

Treasury Officer of Accounts

[1] Fifty-fourth Report of Session 2024-26, HC1391: https://committees.parliament.uk/work/9371/afghanistan-response-route-arr/publications/

Annex: Guidance on the sharing of information with Parliament and the C&AG in relation to matters covered by super-injunctions

The term “super-injunction” is not a term of art but is widely understood to refer to injunctions which are accompanied by an interim non-disclosure order containing a prohibition on reporting the fact of proceedings.

Where an injunction is being considered, the Government Legal Department should be engaged at the outset. It will advise on the process to be followed to ensure all relevant issues are considered, as well as provide advice on the substantive issues.

Super-injunctions have a significant impact on public and parliamentary accountability. Anyone involved in instructing on or drafting a draft order for the super-injunction should consider seeking that the Order can provide where information can be shared on a limited and confidential basis, to enable what limited scrutiny is possible in the circumstances, balanced against other relevant considerations.

In circumstances where spending is involved, it may be appropriate to seek to include both members and clerks of the Public Accounts Committee. In addition, the organisation’s Accounting Officer will need to consider if the Comptroller and Auditor General (C&AG) and, so far as necessary, NAO staff supporting them, will need to be informed in order to determine the significance of such information for their statutory audit responsibilities (both financial audit and value for money examinations). Both the PAC and the C&AG expect the C&AG to be informed of any matter with potential material financial consequences.

In relation to financial audit, the C&AG’s statutory duties and rights of access are set out in the Government Resources and Accounts Act 2000. These apply to any audit conducted by virtue of an enactment or agreement, as set out below.

- The C&AG will need sight of all relevant information required to fulfil their statutory function of ensuring that the audited body’s accounts present a true and fair view.
- The C&AG has a statutory right of access to any documents relating to the audited body’s accounts.
- The audited body has to give the C&AG “any assistance, information or explanation” they require in relation to those documents.

In relation to value for money examinations, the C&AG’s statutory rights of access are set out in section 8 of the National Audit Act 1983. These apply to any body falling within the C&AG's statutory value for money examination remit.

As part of the process for determining whether to seek or renew a super-injunction, the Accounting Officer should explicitly inform ministers whether or not they consider it necessary for any Order to provide for information to be shared with the C&AG in order to meet these statutory requirements. In making this determination, the Accounting Officer should in turn consult their organisation’s senior officer responsible for finance (usually Finance Director, Chief Financial Officer or Director General for Finance).

In circumstances where an Accounting Officer considers that information should **not** be shared, they should make the case to ministers, including documenting the reasons for non-disclosure and the period for which that position is expected to apply.

Ultimately it is for the courts to determine whether to grant an injunction, and if so what terms apply to that, and the department must respect this. Breach of an injunction is a contempt of court.