

BAJ NEWS

No 70

September 2014

FULL STEAM

There may be a new hand on the tiller but, as the testimonials on page 2 demonstrate BAJ continues to steer a positive course through the choppy waters so prevalent in our industry in recent years, writes Nick Townsend.

Since founder and former general secretary Steve Turner retired, our principal aim has been to ensure that the transition from such a well-established regime, to the new one, should be as seamless as possible. We are confident that has been the case.

We have strived to ensure there has been no interruption in what BAJ has, for so many years, done best: responding swiftly and robustly to members' problems, providing a personal and effective service.

Putting together this issue, I chanced upon the comments of a member we assisted with a copyright issue back in 1997. She suggested that BAJ should stand for Bloomin' Amazin' Job and compared founder and former general secretary Steve Turner, now life president, with Superman.

Though accolades are generally more restrained, it has been a remarkable story. Despite the lowest subscription levels of the professional journalists' associations, we believe – and our members constantly attest to the fact – that BAJ continues to offer the best value for money. As one member, whom we assisted earlier this year during a very stressful period, put it: 'For the cost of a few drinks each month you have a really strong support team behind you when you need it.'

Steve Turner retired after 21 years of assisting members in conjunction with his wife, membership secretary

BAJ continues fight for members' rights

Deborah Thomas, although typically, even as this newsletter is produced, he is still working on one long-running case.

In the first few months, with the sterling work and support of my colleague Annette Raitz and our office manager Sian Stevens, and advice from the barristers we retain at Outer Temple Chambers, I have already assisted more than 60 members with issues which have ranged from paternity rights and flexible working (see separate article on this subject) to disciplinary matters and threats of redundancy.

Since January, we have negotiated settlements totalling in excess of £100,000. And that doesn't include redundancy pay-outs.

Annette, our copyright solicitor, has

also successfully sought redress for members in numerous copyright cases.

The most regrettable factor is that our involvement has too often been the consequence of poor management – a feature of the industry that hasn't changed since I started out in the days of hot metal.

In many ways, the concerns for journalists have scarcely altered since Steve started the Association. The first BAJ News was sent to members in February, 1993. It included a front-page item urging then Mirror Group chief executive David Montgomery to end the 'uncivilised' sackings of some 74 casuals and 16 staff journalists.

Edition No.1 also contained a major item on the Calcutt report, a 63-page

report, reviewing Press Self-Regulation. In Sir David Calcutt's view, the Press Complaints Commission set up by the newspaper industry two years previously, had failed to protect the public, was not an effective regulator and was beyond reform. It should be replaced by a powerful statutory tribunal. His views were not countenanced by John Major's Government.

More than two decades later, two of the subjects most relevant to journalists remain the same: staff cuts and regulation.

Though the climate has settled to an extent since the post-2008 crisis, these remain uncertain times for many members. In the last two months alone, the axe has descended at Telegraph Media Group and is threatened at Express Newspapers. Barely a day passes without an individual member or group contacting us with an issue relating to possible job losses. The only job growth area appears to exist in the cold hard world of human resources.

Which is why it is as important as ever to be a HAJ member, with access to legal assistance relating to any employment or copyright issue.

And just a reminder, on top of that, we offer the 24-hour legal helpline for advice on any other matter, and the tax helpline.

It has been a demanding period, and I would like to express my appreciation for the support of our NEC members: chairman Bob Bayliss, Crawford McAfee and Jean Carr.

PLEASE TURN TO PAGE TWO

And BAJ News also moves forward

After 70 editions of BAJ News, this is the final one to be published in paper form. In common with the policy of many organisations, future editions will be available online. There are a number of reasons for this, other than the environmental one. Primarily the NEC believes that the sum spent on a printed version can be better invested in the quality of service we provide to members. It also has the significant advantage of

greater topicality and can be updated regularly, and will give members the opportunity to comment directly on BAJ topics.

However, if any members would still like a paper version, we can continue to provide this if they contact the office, by phone (020 7353 3003), letter (to 89, Fleet Street, London EC4Y 1DH), or email (office@hajunion.org.uk)

FROM PAGE ONE

Please note that we have two NEC vacancies (see separate item on page 3).

I would be pleased to hear from any members who would be interested in helping the union in any way, particularly in the area of social

media. Any suggestions on any innovations and improvements we can make would also be gratefully received.

Please contact me at: nick.townsendbaj@btconnect.com.

And here's what members are saying about us ...

"If you ever have any doubts about joining BAJ read this and sign up now.

They helped me win my case and gave me vital support and back up night and day throughout the whole process. When the going got tough they got going.

Nick Townsend the acting general secretary handled all aspects of the case in a thoroughly professional and compassionate way. He understands journalism and journalists. Nick also has a team who will work with you providing really professional advice and strong administrative support. Thanks to Annette Raitz and Sian Stevens. I have no hesitation in recommending BAJ to any journalist. Their service and professionalism when you really need it has been outstanding.

For the cost of literally a few drinks each month you have a real strong support team behind you when you need it."

Note: This case was the subject of a confidentiality clause

"After 30 years in journalism online and off – I found myself editor of a small website, owned by 'entrepreneurs' with no experience of publishing in any medium.

Three years into the job – where I had done great things in extremely trying circumstances – the management began to blame

me for its own inadequacies. In a hostile and barely legal fashion, they began to put pressure on me to leave with a settlement, and to make me feel very uncomfortable at work.

I was so glad to be in the BAJ. When they took over negotiations for me, the stress decreased considerably and the (incredibly slippery) management realized they would have to play by the book, or end up losing in court.

It's too complex a story to tell here. But suffice to say, I don't think I could have achieved a better resolution – and I am very grateful to the union's lawyers and negotiators for all their efforts and advice."

Note: This member has asked to remain anonymous

These were among our member Ali Kefford's tweets after Annette Raitz provided speedy and effective assistance with a copyright issue

Ali Kefford @akefford22h

"Joining British Association of Journalists best thing I did last year. They support their members - rather than Hacked Off."

"Time to big up my union, the BAJ. Just received deluxe service to sort serious copyright breach. Brilliant lawyer and support from Gen Sec."

NEW GENERAL SECRETARY



Nick Townsend

Nick Townsend has been in post as Acting General Secretary since 1 November 2013. NEC are impressed and confident with the way he has steered the union. He and the team have handled a raft of employment cases for our members with aplomb and dedication.

As resolved by NEC in June 2013, we totally support Nick as General Secretary going forward. Should any other member wish to be considered for the role please contact chairman Bob Bayliss c/o the BAJ office at 89, Fleet Street, London EC4Y 1DH, providing a CV and letter explaining why you wish to apply, by 12 October 2014.

Changes t

On 1 June this year, some small but important changes to the permitted uses were made so that copyright law is better suited to the digital age.



There are already certain categories of use of copyright which do not infringe the owner's right; all of which have to be within the realm of 'fair dealing'. The most important permitted uses are: the making of temporary copies, fair dealing for research and private study, fair dealing for criticism, review and news reporting, incidental inclusion, certain educational uses and certain library uses.

These permitted uses do not apply to photographs which cannot be reproduced without permission for reporting current events.

The following new exceptions are now law:

1. The Copyright and Rights in Performances (Disability) Regulations 2014 allows those with a disability or groups representing them to make copies of materials in different formats. For example, it is hoped that this will substantially increase the amount of audiobooks

and large print books.

2. The Copyright and Rights in Performances (Research Education, Libraries and Archives) Regulations 2014 mean that libraries can begin to scan materials and make them available in digital collections. This applies to all copyrighted materials and is designed to make it easier to build, and make available digital collections of all types of content from books to magazines music to film and video.

A case of Monkey Business



BAJ's copyright lawyer Annette Raitz has handled some complex matters during her many years with us. But few of her cases have been quite as bizarre as the recent row over the 'monkey's selfie'. Annette looks at the arguments from her legal perspective.

It all began, innocently enough, when wildlife photographer David Slater attempted to bring the plight of the crested black macaque monkey, an endangered species, to the world's attention. He set up his camera to enable the monkeys themselves to release the shutter. From numerous blurred images one or two spectacular shots emerged. They were syndicated and earned Slater a reasonable fee. All fine, so far...

But then Wikimedia published the photos, Slater claimed he was the copyright owner and asked the free media repository to take down the images. They have refused, arguing that under US copyright law there is

What a self-portrait: the macaque monkey

no copyright owner because a monkey is not a person. In English law, too, to own copyright the author must be a qualifying person, so a monkey cannot be the copyright owner.

One legal expert argues that the photograph was not Slater's intellectual creation and so he cannot be said to own the copyright. With hindsight, perhaps, Slater should either have ensured that he kept the shutter control in his hand by remote means so that he had ultimate control of the shot or he should have kept the precise means by which the photograph was taken a professional confidence and thus preserved his claim on his copyright.

o our copyright laws

By Annette Raltz,
BAJ's copyright lawyer

3. Under The Copyright (Public Administration) Regulations 2014 public bodies can now publish everything they hold online. The aim is to make it easier for people to see what their local bodies are doing without having to attend council offices to read materials.

In addition, on 1 October 2014, three further exceptions will become law. These relate to making copies for private use (sometimes called format shifting), caricature, parody and pastiche, and quotation.

Private use

The new law means that making a copy of a work is not an infringement, provided that what you are copying from is your "own copy" or a "personal copy", it is made for your private use and its intended use is either directly or indirectly commercial.

Caricature, Parody or Pastiche

The law will now allow people to make some limited, reasonable, use of creative content protected by copyright, for the purpose of caricature, parody or pastiche, without having to obtain the permission of the rights holder.

Please note that these changes do not affect the law of libel or slander. If there is a defamatory portrayal or description of someone or something, the law of defamation would apply. In addition, copyright law expressly protects an author's moral right to object to "derogatory treatment" of a work. Copyright law defines what amounts to "derogatory treatment" and this remains unaffected by these changes.

Quotation

As it stands, the law allows fair dealing with copyright materials for the purpose of criticism, review and news reporting. In October 2014 this will be extended to cover quotes. It will no longer be necessary to ask permission from the copyright owner to use a quote - provided that the use is accompanied

by a sufficient acknowledgment of the source, the use is reasonable and fair and it is no more than is required for the specific purpose for which it is used.

If you are uncertain of what you are permitted to do, BAJ can provide legal guidance to help you. It is better to check before you act than after.

COPYRIGHT NEWS UPDATE

If you are a photographer, artists or writer whose work is reproduced illegally, there is now simpler and cheaper redress, as Annette Raltz explains.

In the July 2013 edition, I reported that the Patents County Court was to undergo a re-brand in October. The newly-named IPEC (Intellectual Property Enterprise Court) has been steadily growing in popularity since it was first established in 2010 - and especially so since the introduction of the Small Claims Track in 2012.

The aim of the court is to provide cost-effective access to justice for the owners

of Intellectual Property rights such as copyright, trademarks and patents. The Small Claims Track is proving to be a valuable forum for photographers, artists and writers who find their work illegally reproduced, particularly online.

The IPEC deploys active case management which means that for example, if the evidence is sufficiently stated in the form of witness statements, the judge can dispense with time-consuming further evidence and cross examination of witnesses. The court can also offer the parties to a case a preliminary non-binding opinion on the merits of the case. This may hasten a settlement.

Other issues such as costs can be determined on paper again saving costs for the parties and there has been a broad trend towards cases being tried 'on paper' without the need for an oral hearing.

If members would like any further advice on this, please call the office on 020 7353 3003, or email office@bajunion.org.uk

Is new legislation our flexible friend?

The Government has made changes to the right to request flexible working, in an apparent attempt to effect a "genuine cultural change" that would make flexible working practices the norm.

What are the major changes?

Who can apply - Any employee is now entitled to make a statutory flexible working request, e.g. asking for a change in working hours or place of work. This used to just be open to parents and carers.

Handling requests - Employers no longer need to go through a strictly prescribed procedure, but simply have to deal with the application "in a reasonable manner" and within three months. Broadly, it will depend on the individual circumstances and the employer's resources.

What's stayed the same?

The required format for making a request - still requires a written application setting out the change sought. There is a template on the BIS (Business, Innovation & Skills) website.

Possible reasons for refusing a request - an employer can only refuse a request for a "valid business reason". Eight reasons are set out in the legislation, including:

Barrister PAUL LIVINGSTON explains recent change in employment legislation and looks at the likely effects

- The burden of additional costs
 - A detrimental effect on ability to meet customer demand
 - An inability to recruit additional staff.
- Employment status** - the right to make a statutory request only exists for "employees" as opposed to "workers" or those who are "genuinely self-employed", and requires 26 weeks' employment.

Number of requests - employees may only make one request per year.

What's the likely impact?

Although employees are still only entitled to request flexible working rather than being absolutely entitled to work flexibly, it does mean that employers will have to give proper consideration to such requests.

The removal of the old (ironically inflexible) procedural hoops that employers had to jump through is unlikely to adversely affect employees. An employer will still have to hold a meeting to discuss your request within good time and notify you when a decision is made.

Although some parents/carers may worry that their rights have been diluted by the extension of flexible working to all, employers are still

allowed to take into account relevant factors, such as childcare commitments. Furthermore, the changes may actually be helpful in that relatives and friends will now be able to make similar requests in order to help out.

Unfortunately, obstacles for many journalists still remain; namely the dual requirements of "employee" status and for 26 weeks' continuous employment.

1) Status - Whether you are an "employee", a "worker" or "genuinely self-employed" is, unfortunately, a fairly complex issue and where in doubt, you should contact BAJ for advice. It largely depends on factors such as whether there is an obligation on your employer to provide work/pay and you to accept work, as well as others such as the level of control over your work and how integrated you are into the business. What matters most is the factual reality - not what it says in any contract that you have.

2) 26 weeks' service This requirement was maintained primarily to give employers certainty as to the terms on which they hire employees, and would pose an obstacle to those wishing to start a



job working flexibly. However, the Government has committed itself to encourage private sector employers to offer flexible working at the recruitment stage where possible.

Conclusion

Journalism is already a profession where flexible working is prevalent; however those employees who are not happy with their working hours or location now have the right for their employer to take their concerns seriously. Employers are still legally precluded from subjecting you to any detriment or dismissing you for making a request, as well as from discriminating against you.

Ultimately, it is possible that little will change for those working for big employers. Although it is hoped that everyone will benefit in the long term from the "culture change" envisaged, what transpires in practice remains to be seen.



The National Executive Committee of the BAJ is charged with formulating policy and strategy, and scrutinising the work of the General Secretary. It consists of the full-time general secretary and five lay members. There are currently two vacancies.

It meets, currently via a telephone conference call, nine times a year (not April, August and December).

Candidates must be HAJ members and journalists for at least five years. If you're interested, please contact Nick Townsend at nick.townsendhaj@btconnect.com

SAM'S JOURNEY FROM STAFFER TO FREELANCE

Staffers have all the advantages, including resources. How do you compete?

You must have contacts, ideas and be willing to put in the hours. This isn't Monday to Friday 10-6. And you don't get a day off. It can be a culture shock at first. Take your laptop on your holiday abroad as you could have to file. Desks are not bothered if you are next to your computer or up in the Himalayas with no internet connection.

Think long term, not day by day. Have short term, medium and long term projects.

It's pretty simple, but Rule Number One: read the papers; even stuff that may not personally interest you. It's surprising how many journalists don't.

Any tips on how to get stories and features commissioned?

First, pitch the story to the right paper. It may sound obvious, but understand your market. Don't waste your time and theirs. If you have read the paper regularly you'll know whether this celebrity or that story or issue is right or not for a particular publication.

What has irritated you most?

You'd think with all the advantages of email, you could get a quick yes or no to an idea. But the majority of desks don't even reply. And sometimes they don't even tell you if they are using your piece. You just see it in the paper the next day. How long does it take to ping an email back saying 'no thanks' so that you can move it on elsewhere? It would be nice if news and feature editors on the other end of the phone could spare a couple of minutes. We all know they are busy, but that call or email could be tomorrow's splash.

Fees aren't great, though, are they? Is all the effort worth your while?

After many years on the nationals as a staffer, BAJ member Sam Johnstone plunged head first and apprehensively into the world of freelancing. Here, in a Q&A, she gives her first impressions of life on the freelance front-line.

Money hasn't changed much over the last 20 years. Just like there isn't a great bumper pay rise every year for staffers, there's no regular pay cheque being a freelance. The money's irregular; sometimes non-existent. Suddenly, you have to keep a much closer eye on your domestic budgets. Some months are always going to be better than others. A good accountant should ensure you're paying the correct tax.

How much has the freelance market changed in recent years, particularly post-Leveson?

It has been harder to get a lot of the 'kiss and tells' in because of newly-sensitive privacy issues. They'd have sailed in before. That's the end of the mega-bucks deals for the sensational sex secrets of the latest reality star and talent wannabe. But the biggest problem today is: the agent. If the agent issues a denial, the story won't get in even though you know it's true and the contact has passed two lie detector tests!

Leveson has, in reality, given agents permission to lie. If you get an agent denying a true story there are not many desks now that will go with it. There is no such thing as publish and be damned any more.

Any wealth warnings? Which have you found are the best and worst newspapers to work for? And what are the pitfalls?

I have found the worst to work for are the Daily Express and Sunday Express who don't always return calls or emails. They don't appear to understand that, if you don't treat the freelancers right they won't come

come and go. It's always good to chat and get guidance on how to make a story or feature better, and fine tune it to what will get in.

Why did you switch?

A variety of reasons. It can happen to anyone. Let's just say the way this business is going, you are big on a desk of a national one day and the next you could be setting up as a freelance.

Any regrets?

I have freedoms now that I never had as a staffer. Would I go back to a staff job? Well it would mean a cut in earnings...

Sam Johnstone is a pseudonym.

If you have any comments on this, or have your own views on freelancing, as a writer or photographer, please contact Nick Townsend: nick.townsendbaj@btconnect.com

Your finances

The audit of the BAJ's accounts for 2013 has been completed (please find enclosed), and the union's affairs found to be in order. The union had a surplus of £6,006 on the income and expenditure account.

The accounts include the statement to members required under the Trade Union and Labour Relations (Consolidation) Act 1992.

Here are our accounts for the first six months of this year. Economies and efficiencies are being made wherever possible which do not have a detrimental effect on the service to members.

INCOME

Advance/arrears	1,769.00	February	10,646.00
Donations	1,760.50	March	10,634.00
Compromise agreements	500.00	April	10,621.25
Dividends	1.03	May	10,872.13
Monthly subs received		June	10,501.50
January	10,589.75	TOTAL	67,894.16

EXPENDITURE

Legal insurance/Hotline premium	3,209.44	Postage	478.83
Legal advisers' (Employment) fees	10,495.98	Stationery/printing	40.44
Legal advisers' (Copyright) fees	3,750.00	Bookkeeping	745.00
Legal adviser's, NEC's and	278.28	Audit fees	3,660.00
MOCs/FOCs' indemnity insurance		Bank and BACS charges	1,016.41
Outside legal bills/court charges	-47.00	Rent	4,363.87
Tax Helpline	720.00	Water rates	275.58
BAJ Press Cards	1,452.18	Gen Sec travel/subsistence	92.17
Student Press Cards	35.79	Sundry expenses	2,582.23
UK Press Cards	489.76	TOTAL	76,558.09
Pay/NIC (S. Turner)	13,730.75	LOSS	-8,663.93
Pay/NIC (D. Turner)	232.18	BANK BALANCES	
Pay/NIC (S. Stevens)	11,018.18	HSBC reconciled balance	28,157.32
Pay/NIC (N. Townsend)	16,028.80	as at 30 June 2014	
Keyman Insurance	37.00	Deposit Account	35,013.79
Telephones (6) and facsimiles (2)	1,656.87	as at 30 April 2014	
Mobile telephone	25.54		
Photocopying	189.80		

UK PRESS CARDS

UK Press Cards are free to subscription-paying members who need to identify themselves on assignments. Cards, which include a photograph, are recognised by police forces throughout the UK. It is separate from the BAJ card supplied to all members.

BAJ is on the board of the UK Press Card Authority whose definition of eligibility is that the card is available to people earning the majority of their income from journalism who 'need to identify themselves in public'.

Staffers must therefore provide a letter or email from an executive of the company for which they work certifying their eligibility. Freelancers must provide a letter or email from a company for which they work regularly.

Application forms for UK Press Cards are available from our office. Please email: office@bajunion.org.uk or call 0207 353 3003.