

DFF

Digital
Freedom Fund

The Digital Freedom Fund (DFF) supports partners in Europe to advance digital rights through strategic litigation. This is one of a series of case studies, which highlight the work of DFF's grantees working to protect digital rights.

Key actors

Big Brother Watch (BBW) and Centre for Women's Justice (CWJ) have been working in partnership to challenge the intrusive and discriminatory policy that pressurised victims of rape and sexual violence to give up excessive amounts of mobile phone data to police.

Big Brother Watch (BBW)

BBW is an independent non-profit organisation that exposes and challenges threats to privacy, freedoms and civil liberties. It carries out advocacy and campaigns, parliamentary lobbying, public interest litigation, and produces research and investigations that inform policy and public debates.

Centre for Women's Justice (CWJ)

CWJ is a charity that brings strategic law challenges and ensures access to justice for women who have been victims of male violence. Through its work, CWJ brings together specialist lawyers, academics and other experts in the field of violence against women, with those working on the frontline as activists, survivors and service providers.

BBW and CWJ have jointly contributed to this litigation, bringing their individual expertise to the case. BBW has extensive knowledge of privacy, data protection and digital rights and CWJ has specialist understanding of women's rights, particularly with respect to victims of rape and sexual violence.

Centre for Women's Justice v. UK National Police Chiefs' Council

Case facts at a glance

Case name

Centre for Women's Justice v. UK National Police Chiefs' Council

Case outcome

Police forces in England and Wales have now withdrawn controversial 'digital strip searches' that pressurised victims of rape and sexual violence into signing forms that allowed the police and criminal investigators to access excessive quantities of their mobile phone data. Centre for Women's Justice launched a legal action against the practice with support from Big Brother Watch. They wanted to demonstrate that it constituted a traumatic violation of the rights to privacy and data protection, and also raised serious concerns about access to justice and the respect of women's rights.

Background to the case

The practice of 'mobile phone extraction' (i.e. reviewing messages, images, communication and other data on a person's phone) is routinely deployed by police forces to aid criminal investigations. Used lawfully and proportionally, this practice can uncover vital data to help solve crimes and secure justice. However, criminal investigators abused these powers in cases concerning women who were victims of rape and/or sexual violence.

In April 2019, the National Police Chiefs' Council formally established the practice of mobile phone extraction. They introduced 'Digital Processing Notices', which allowed the police to collect large amounts of personal mobile phone data from victims of crime. Big Brother Watch (BBW) carried out research that revealed the police were coercing victims into handing over masses of personal data, which in many cases was not relevant to an investigation at all.

BBW was concerned that the practice of obtaining and storing mobile phone data was disproportionately affecting victims of rape and sexual violence, most of whom were women. In order to address this they carried out research and produced a witness statement in support of a legal challenge by the Centre for Women's Justice (CWJ) against the National Police Chiefs' Council. CWJ represented two women who challenged police demands for their personal data as a condition for conducting an investigation into sexual violence they had reported. BBW carried out extensive research in order to provide evidence in support of the women's claims.

“ Our investigation shows that rape victims are being systematically denied justice if they defend their data rights. Victims of no other crimes are expected to surrender their digital lives to such speculation and scrutiny.

Silkie Carlo, Executive Director, Big Brother Watch

A sustained public advocacy campaign proved instrumental for driving policy change on 'digital strip searches'

BBW and CWJ worked together on the legal proceedings, with BBW preparing a comprehensive witness statement. They also jointly produced a formidable body of research and public awareness-raising material. Together these actions influenced the police's decision to subsequently withdraw the controversial 'digital strip search' forms. The public advocacy campaign included a dedicated website, robust media relations and a public petition demanding policy change.

BBW gathered data through a series of freedom of information requests, which demonstrated the extent to which the practice of obtaining mobile phone data was widespread across police forces throughout the UK. BBW's research alerted the British media, parliamentarians and policy makers to the pernicious practice of storing excessive mobile phone data from victims.

CWJ has supported the women involved in pursuing the litigation to speak anonymously about their personal experiences. This resulted in accurate and authentic media coverage of their stories and highlighted the injustices that these women have experienced.

The research and advocacy campaign was vital in influencing a report by the Information Commissioner's Office in June 2020, which found that the police's approach to obtaining and securing mobile phone data from victims was unlawful and damaging. The police subsequently released a statement acknowledging that they had scrapped the policy and were revising their approach to securing mobile phone data. The women supported by CWJ have now stayed their cases while they wait to ensure that future policies introduced are satisfactory and lawful.

The fight to end 'digital strip searches' has been won, but policy concerns remain

In July 2020, it was reported that the number of people prosecuted and convicted for rape in the UK has fallen to its lowest levels since records began. The Victims Commissioner for England and Wales, Dame Vera Baird, described this situation as "utterly shameful". With this backdrop it is deeply worrying that the coercive 'consent' forms used by the police forced women to make a choice between the pursuit of justice on the one hand, or the protection of their privacy on the other. In some cases, if a woman refused to consent to her mobile phone data being examined and stored then she faced the threat of the criminal investigation being abandoned.

BBW and CWJ have helped to prevent future 'digital strip searches' from taking place, but they remain concerned about the number of women who may have dropped a claim in the past because they refused to give up their personal mobile phone data after reporting a crime against them.

BBW and CWJ will be closely watching any new policy that is introduced in place of the 'digital strip searches.' Their complimentary expertise will allow them to scrutinise any future policies to ensure that they not only respect privacy and data protection rights, but that they also respect gender and equality rights.

“ We are relieved that these forms have finally been withdrawn from use, but they should never have been used in the first place. Their effect has been to delay rape cases and deter many victims from coming forward or continuing with their cases. We will work with the defendants to ensure something fair and proportionate is put in its place.

Harriet Wistrich, Director, Centre for Women's Justice



DFF's role



Financial assistance

DFF provided financial support to enable BBW to support this case with a witness statement and research. DFF's financial support played a vital role in bolstering the case through the research and public advocacy that BBW carried out in support of the litigation.



Strategy support

DFF provided critical advice and support on BBW's strategy and approach during the grantmaking process.



DFF workshops on digital rights litigation

BBW attended DFF's Litigating Algorithms workshop in Berlin, which brought together litigators from across Europe and the US.

“ It's been a tough campaign. For us the money is critical, but also the moral support and belief goes a long way. The DFF workshop in particular was excellent. I learnt a lot from other litigators facing similar challenges.

Silkie Carlo, Executive Director, Big Brother Watch