

**Submission to module four of the Leveson inquiry
by the Hacked Off campaign
June 2012**

1. Hacked Off came into existence in the spring of 2011 to campaign for a public inquiry into the phone hacking scandal and related matters. It enjoyed the support of many victims of press abuse and of many leading journalists. In July 2011 it pressed for a broad remit for the Leveson Inquiry and since then it has continued to work towards the objectives expressed in its manifesto: <http://hackinginquiry.org/news/hacked-off-manifesto/>
2. Hacked Off is not making a proposal for a regulatory regime for the press. What follows instead, in brief, are a number of points we wish to raise at this stage of the inquiry, partly as a reflection of our particular experience and partly because we feel they need to be raised and may not be by others.

REGULATION

3. Our view of the parameters of good regulation is set out in the manifesto and may be summarised as follows: we hope to see effective regulation that is capable not only of addressing complaints properly but also of investigating bigger problems and ensuring lessons are learned. Regulation should be independent of both the industry and the government.
4. We believe that little if anything should survive from the Press Complaints Commission, which, working under the auspices of PressBof, is now clearly seen not to have been independent, and, though it mediated on behalf of members of the public, did not regulate in the public interest.
5. More than 60 years of experience, since the first Royal Commission on the Press, leave no doubt that voluntary self-regulation of the press has been used by editors and proprietors to frustrate or blunt repeated efforts to tackle low standards, bad practices and low ethical awareness. Last chances have repeatedly been offered and accepted, only for promises of reform and of better behaviour to prove hollow.
6. Proprietors and editors have used their considerable power over these years to create a false dichotomy between voluntary self-regulation and statutory regulation, the latter being presented as akin to fascist state control of the press. Hacked Off trusts that the Inquiry has seen, and will see in Module Four, ample evidence that statute can, if necessary, serve as a valuable tool in creating effective regulation that is not an arm of the state.
7. Witnesses have argued that the current crisis in the press results not from a failure of regulation but from failures to enforce the law. Again this is untrue, as experience in the libel courts demonstrates. We would not have seen the successive scandals of Robert Murat, Kate and Gerry McCann and Christopher Jefferies if the law of libel alone had been sufficient to restrain and deter reckless and damaging journalism. Several national newspapers have shameful records as repeat libel offenders, not only in these cases but in many others. The law, even when enforced, has been treated as a mere inconvenience.
8. Hacked Off is fundamentally opposed to any step in the direction of censorship, nor does it wish to see tighter libel laws (it supports the work of the Libel Reform Campaign). Neither of these would help address the problem before the inquiry, which is a crisis in the culture of national newspapers resulting from the sustained exercise of power without responsibility. Effective regulation can help to change that, and we will return to the issue of responsibility below.

MOTORMAN

9. Hacked Off regrets that the evidence yielded by Operation Motorman has not been more fully aired at the inquiry. Our reasons are set out here:
<http://hackinginquiry.org/comment/leveson-time-to-lift-the-lid-on-motorman/>
10. At the very least, we believe, the Motorman files reveal sustained complicity in or tolerance of wrongdoing and illegal activities by several leading national newspaper groups. The opportunity has been missed to place this before the public and to test witnesses in detail on what happened and what lessons have been learned.
11. Motorman is not mere history. The activities recorded in the files were concurrent with the activities of Glenn Mulcaire (which are central to the inquiry), while Steve Whittamore, though convicted for accessing personal data, continued to be employed by the Daily Mail until 2007 and by the Daily Express until 2010.
12. Blagging and data mining, moreover, clearly had the potential to assist papers other than the News of the World in phone-hacking.
13. Nor is Motorman purely a matter of 'who did what to whom'. It is an important window into the culture of unethical practice in parts of the national press, and the opportunity has been lost to require editors and others to explain their papers' actions.
14. Newspapers complicit in the Motorman activities, having escaped the requirement to justify their actions in detail, are certain to assert their unproven innocence and will exploit this position in the future.

PUBLIC INTEREST DEFENCES

15. Hacked Off believes that, while there is an urgent need for measures to bear down upon journalism that operates against the public interest, there is also an urgent need for measures to foster and promote good journalism that serves the public interest.
16. The inquiry report will provide an opportunity to support measures that would reduce factors currently 'chilling' public interest journalism in some difficult and challenging areas.
17. We see a need for explicit public interest defences to be available for those investigating with a view to disclosure in relation to offences under, notably:
 - the Bribery Act 2010
 - the Regulation of Investigatory Powers Act (RIPA) 2000
 - the Computer Misuse Act 1990
 - the Official Secrets Act 1988
 - Misconduct in Public Office
 - English defamation law
18. There can be no objection in general principle to such defences since they exist in other Acts and since the Director of Public Prosecutions weighs the public interest when making decisions on prosecutions. Making them explicit would remove a deterrent to good journalism, as argued here:
<http://hackinginquiry.org/news/journalism-and-the-public-interest-a-hacked-off-initiative/>
19. We urge the inquiry to lend support in principle in its report to the introduction of new public interest defences in law.

PART TWO

20. Hacked Off notes with concern that doubt has been cast on the desirability of, or the practicality of, delivering part two of the inquiry. We believe part two to be essential in the cause of justice for the victims of phone hacking and for the public at large, which should be told the truth about what happened in the national press.

21. Criminal and other legal proceedings cannot be relied upon to perform the tasks of investigation and exposure assigned to part two of the inquiry. If part two were not to go ahead the public might never be told, to give a few examples from many:
 - how, where and by whom voicemail hacking for journalism was invented,
 - the full story of the hacking of Milly Dowler's voicemails,
 - whether phone numbers acquired by Steve Whittamore were hacked,
 - what services Burton Copeland supplied to News International,
 - how many MPs were Mulcaire targets, and how many peers,
 - the truth or otherwise of allegations that other newspapers engaged in hacking,
 - what collusion there may have been between editors in decisions not to report the hacking scandal,
 - how the News of the World gained access to the mobile numbers of people in witness protection.
22. The objective of the News International cover-up and, we argue, of the pact of silence among other newspapers in 2006-11 was to prevent such information from reaching the public and the victims of hacking. Part two is needed to ensure that that dishonest objective is not fulfilled.
23. We acknowledge that part one has touched on issues to be dealt with in part two, but it has done so largely – and explicitly – without addressing the ‘who did what to whom’ matters at the heart of part two. If it is argued that part one could not tackle matters of personal responsibility it cannot also be argued that part two need not go ahead because those matters have been dealt with in part one.
24. Scope remains, no doubt, to adjust the terms of reference for part two in the light of the experience of part one, but Hacked Off believes a retreat from the principle of a fact-finding part two would be wrong and unjust.

MEDIA OWNERSHIP

25. The Hacked Off manifesto noted the importance of preventing domination by over-powerful media organisations and the inquiry has elicited abundant evidence that News Corporation and its subsidiaries have enjoyed and exploited excessive power in this country in recent years.
26. The creation of a new regulatory regime alone will clearly not be sufficient to prevent the accumulation and abuse of such power in future, and we urge the inquiry to make recommendations for tighter controls on the scale and extent of the ownership of media organisations by any individual or company.

RESPONSIBILITY

27. Evidence to the inquiry demonstrates a number of shortcomings in journalism practice and culture, but none is more corrosive than the existence of a culture without responsibility or accountability, a culture which has penetrated deep into newsrooms and manifests itself in a great variety of ways.
28. One such way involves the byline, which is the journalist's name on top of the article. One of the traditional functions of the byline is that it is the reporter's way of saying he or she takes responsibility for the words that follow, yet the inquiry has heard of instances of false bylines, of cases where reporters' names were attached to articles without their knowledge or involvement, of articles altered beyond recognition by editors after the reporter has had last sight of it. The effect is to engender a cynicism among both journalists and the public about the significance of the byline, and to strip it of its association with responsibility.
29. Evidence from the National Union of Journalists and others has also noted the loss of collective power among journalists. This has had the twin effects of leaving reporters

and sub-editors less able to resist pressures from above, and also of leaving them with less responsibility for what is published.

30. At the other end of the newsroom is the editor: what of his or her responsibility? Editors have traditionally considered it a point of honour that they are responsible for what their papers publish and the editor has acted as the voice of a paper both in public ('I stand by our story') and in relations with organisations such as the PCC. Yet in evidence before the inquiry editors have repeatedly exhibited an unsurprising inability to know all that was happening at their newspapers. They were not informed; things were kept from them; they were on holiday or tied up elsewhere. It is clear that, however powerful editors are in their organisations, they cannot practically take responsibility for all that goes on.
31. Nor do newsdesks – the teams of lesser editors that are operationally in charge – assume responsibility when things go wrong. As national newspaper journalism has become more casualised, newsdesk journalists have gained in importance, yet collectively and individually they are as anonymous to the public as they have been to the inquiry, and the inquiry has not, we believe, heard of an instance of a newsdesk member being sacked or disciplined over any of the failures that have been discussed before it.
32. This vacuum of responsibility is profoundly unhealthy and must tend to inhibit efforts to raise standards, and it has been aggravated both by the absence of effective regulation from outside – the PCC has been too weak and newspapers very rarely hold each other to account in public for failures – and by the propaganda power of the press, which has enabled news organisations to drown out and intimidate critics.
33. The press, from the wealthy proprietor down to the most junior reporter, has power, but it has not had responsibility. While many journalists have none the less acted ethically too many have not, and all would benefit from a regulatory regime capable of instilling a sense of responsibility at every level.

THE POWER OF THE PRESS

34. As mentioned above, there is a long history of recommendations for change in the press industry and an equally long and consistent history of the press avoiding real change. This has been both a triumph of press power and a failure of politics. Can it happen again?
35. The will is undoubtedly there to make it happen again. At no stage in the inquiry have newspapers individually or collectively acknowledged fault and apologised to the public for any general weakness of standards, let alone a systemic failure. (News International has made an apology, but only in relation to the hacking scandal). On the contrary, their mood has been one of defiance and denial. Even the failure of the PCC, evident to most outside the industry, has been accepted only grudgingly by many industry insiders. There is no appetite for reform in the national press, and just as there was determined resistance in 1949, 1962, 1977, 1990 and 1993, we should expect determined resistance again in 2012.
36. Significantly, part of the inquiry's remit concerns the relationship between the press and politicians, a relationship exploited in the past by editors and proprietors bent on preventing meaningful reform. The inquiry will thus be alert to the risk, which is not without irony, that its report could yet fall through one of the cracks it will seek to repair.
37. The press has also used its more overt powers in the past to swamp debate, cause confusion and delay and so win advantage. Despite the rise of other media the press still has an unrivalled ability to set the political agenda and the agenda of public debate and to spread disinformation.
38. If history is a guide, after the Leveson Report is published (and also before), we may expect the press aggressively to argue, among other things:
 - that any regulation involving statute is akin to state censorship;

- that there is no crisis in the press, only one rogue organisation;
- that the law is already sufficient to solve any problems, providing it is enforced;
- that effective regulation will mean dull newspapers and financial ruin for the press;
- that reform will benefit only the rich, the powerful and the famous;
- that the inquiry was biased and in other ways flawed.

39. Hacked Off hopes that the report itself will address and rebut these arguments.

40. If history is a guide there is also a risk that, in the effort to discredit the report, those involved in producing it and those who have given evidence or put forward arguments not welcomed by the national press, including victims of press abuse, will be subject to personal attack and privacy intrusion.

41. Hacked Off hopes that the report will put news organisations on notice that their conduct in this period will not only be judged by the public but may be ultimately the subject of scrutiny by a new – independent and effective – regulatory body.

42. Finally, Hacked Off expresses the hope that the Leveson Report will be accessible to, and may be read with ease by, the widest possible public. We urge that it should be published, not only online, but also in a printed form capable of national distribution through bookshops and newsagents at an affordable price.

Hacked Off
12 June 2012

ENDS