

LEVESON INQUIRY

Evidence Submitted to the Leveson Inquiry Team

by

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Introduction

I welcome this inquiry and wish to give evidence.

I regard a free press as a vital ingredient to a healthy democracy. A free press however, is an extension of free speech and freedom of association. It is not and should not be a freedom for large organisations and corporations to damage other people's lives and reputations. The phrase a "free press" is sometimes used by owners and editors to justify exploiting people and the public in order to maximise sales. I believe that this point has not been sufficiently considered in previous inquiries and reports; consequently large corporate organisations have been able to avoid their responsibility to society by falling back on a 'freedom of the press' defence. The long struggle for freedom of the press was never intended to defend rich and powerful corporate interests. It was a struggle for the right of ordinary citizens to establish freedom of speech and freedom to report on the activities of those in power. Those in power now include the press barons - a term that reflects a long established concern.

I believe the press should be free to campaign for their political aims but this needs to be balanced against the public's right to receive accurate news. The view so eloquently expressed by C P Scott that "Comment is free, but facts are sacred" is a good standard by which to judge a newspaper. (Note: C P Scott wrote 'A Hundred Years' in 1921. The essay's famous sentence "Comment is free, but facts are sacred" has endured as the ultimate statement of values for a free press.)

I think it is important that any new regulatory body or legislation should avoid pre-publication censorship. No pre-publication censorship is important as a defence of investigative journalism. The ability of another organisation or individual to prevent publication could have a chilling effect on investigative journalism. This poses difficulties in relation to privacy as it inevitably involves risk for a newspaper in deciding whether to publish information that may turn out to be unjustified. I would argue however that if editors are to justify their frequently very large salaries then the public has a right to expect them to take the risk of publishing information that may result in a critical finding by any new regulatory body or by a court.

I became increasingly concerned in the 1970's and 80's by the declining standard of much conventional journalism and this led to my Freedom and Responsibility of the Press Bill in 1992. I arranged public hearings for the Bill and it attracted much comment at the time. I took evidence from people who had been hurt by invasive or false journalism in much the same way that your Committee is currently doing. It is sobering to re-read that evidence and to see how little has changed. There were other reports at the time, most notably Calcutt <http://hansard.millbanksystems.com/commons/1990/jun/21/calcutt-report> so it is important that this time we find more durable and effective reforms.

My Bill did not include protection of privacy. It proposed a statutory body with two arms; one to protect press freedom and the other to act as a regulatory body dealing with complaints. The Bill was eventually talked out. There were two publications that arose from this Bill. One was a book jointly authored by Tom O'Malley and myself called *Regulating the Press* (Pluto Press 2000 ISBN: 978-0-7453-1197-5), and the other was a very limited edition (about 1000 copies) of the evidence given to my Bill called *Report of the Special Parliamentary Hearings on the Freedom and Responsibility of the Press Bill* (Crantock Publications. Editor Mike Jempson. No ISBN number). There is a copy in the library of the House. Hansard contains the full debates on the floor of the House.

The path I followed with that Bill is not the path I would follow now although I believe the Bill played an important part in moving the debate forward and it challenged many of the complacent views expressed by editors and owners at that time. I received a lot of support from the public and from a substantial number of journalists who were also worried about declining standards of honesty and abuse of press power. I also received many requests to include privacy in the Bill but I was reluctant to do so because there was at that time no counter balancing Freedom of Information Act or any explicit protection of press freedom and I was worried that without such protection good investigative journalism could be damaged.

There is a hard choice to be made between self-regulation and regulation based on statute law. The TV and radio companies do operate with a statutory structure and that has not prevented investigative journalism. If we were to go down that road then I would favour a two pronged approach as in my Bill where there is also a duty to protect and enhance press freedom.

The case against statutory regulation is in my view more about the campaigning nature of newspapers rather than the restriction of investigative journalism. BBC and, to a lesser extent, ITV are seen as middle of the road so people on the left regard them as 'conservative' and people on the right as 'liberal'. There is a case for a campaigning role for newspapers including political campaigning. So the Guardian is 'left wing' the Mail 'right wing'. I don't have a problem with this as long as there is some effort made to balance the news and to report accurately.

The existing PCC clause emphasizes accuracy in news reporting and the papers are notoriously bad at this. The Mail tops the list of complaints to the PCC on accuracy. If we accept the campaigning role of newspapers then they will have a bias in their choice of coverage and on the spin they put on it but that is no excuse for gross inaccuracy or deliberately omitting counter views especially on hot topics. This takes me back to the importance of C P Scott's quotation that comment is free but facts are sacred.

From an early stage of my Bill, many in the press who defended the status quo argued that accuracy was not possible as we all interpret events differently. It was a strange argument given that the first article in their code was a

statement in favour of correction of inaccuracy! It is clearly true that there may be disputes over an accurate interpretation of events but two points need to be remembered. Firstly, if there is an inaccuracy that comes to light then correction is possible. Secondly, good journalists are quite capable of indicating uncertainty where it exists. It is instructive to read some 19th century reporting when journalists often indicated their limited view of an event or qualified their statements by using phrases like “in your correspondent’s observations...”.

In sum, reporting of events needs to be as straight as possible while comment can be as exciting and as biased as the writer feels necessary.

I favour a non-statutory approach BUT only if it is independent of the media corporations and has real and effective teeth. At the time I presented my Bill there was a majority of editors on the PCC. It was nonsense and they fought very hard against losing that control and fought equally hard against most other reforms. The corrections column recently introduced by the Daily Mail was rejected out of hand when I first proposed it to them nearly thirty years ago! The press owners and editors have been their own worst enemies. Virtually every reform has had to be dragged out of them. There are a few exceptions but not too many. Most of the press refused to co-operate with my hearings or to give evidence but it didn’t stop them attacking me or trying to rubbish my efforts. Then and now they act like a privileged power elite determined to cling onto every advantage they possess and to do so by claiming that any regulation will diminish press freedom. They have earned their title of ‘press barons’.

Regulation could be a serious threat but not if it defends the public against actions that undermine rights of privacy and puts the financial success of large corporate media groups below the public’s right to receive accurate information. Accuracy in news reporting is possible along with corrections where necessary and insistence on high standards in accuracy does not and must not inhibit freedom of expression on opinions. Articles in newspapers are opinion. News is news.

An independent PCC should:

1. Be made up predominantly of non-media people. There is a case for a senior journalist or editor on it simply to give a journalists' point of view but it should be minimal.
2. There is a case for a conciliation process. This can be helpful to people who want an agreed settlement but the new PCC would have to be far more proactive than the present one. Conciliation needs to recognise that the complainant is often an inexperienced person with limited resources – they need a degree of protection or help. I refer to this further below.
3. It should be funded like other regulatory bodies. (See http://www.fsa.gov.uk/pubs/other/reg_funding.pdf for some examples.) I would prefer a direct levy on the newspapers. If a newspaper chooses not to pay then I see no reason why they should continue to be exempt from VAT. The Exchequer may find it difficult to justify a single exemption so the alternative might be to have a different category for any newspaper that refused to accept the authority of the new PCC and that would bring it into a different tax category. An alternative might be to give membership of the new body a status in any court proceedings so that a good reputation would offer a degree of protection to the paper in any legal action taken against it. This could act as mitigation in any sentence of a court where a financial penalty was involved.
4. It should have the power and resources to call for evidence. It must be able to call editors and owners to give evidence as well as journalists; it should have the power to recommend a correction, clarification etc. and if the paper fails to comply this should be available as evidence in court if the complainant chose to go to court. The same could apply to the positioning of the correction and its prominence. It should be able to legally assist a complainant in taking a case to court if they felt it necessary to do so. (See annex 1 below.) The new PCC would be proactive; i.e., not waiting for a complaint but if they saw an inaccuracy or invasion of privacy that in their view was not justified to call the editor to justify the action of the paper without waiting for (or needing) a complaint. Too often invasion of privacy is taken for granted. The existing PCC code says that invasion of privacy can only be justified with a strong public interest defence. People's sex lives rarely fall into that

category. There is a grey area especially for some public figures but in most cases the invasion is not justified even by the PCC's existing code. The onus on the editors here is heavy. I took up a case against the Mail a few years ago because they had published the picture of a young child on the front page with the story about the child's mother being sent to prison on the evidence given by the child's grandmother. The case involved drugs and the paper was given the information by the grandmother as well as permission to use the picture. The story was a relevant public interest one as it involved the difficult decision facing a relative when a child's welfare is threatened, but you do not need to publish a picture of the child. The defence argued by the paper when I challenged it was that the grandmother had given permission. That is inadequate. The editor should have been aware of this and taken responsibility for it.

The PCC code currently claims to protect privacy but then goes on to qualify it by public interest defences listed separately below the code. Some of these are obvious and commendable – detecting crime, protecting public health etc. The big let out clause comes with the following: “Preventing the public from being misled by an action or statement of an individual or organisation.” It is this clause that allows the press to get away with gross invasion. They need only claim that the public is being misled by an individual - often a celebrity, politician or sports personality - because they are hiding, for example, a sexual relationship. Clearly this could be important if the individual or organisation is being grossly hypocritical and was seeking to tell the public one thing while practising another. An elected politician claiming to uphold family values while having an affair is an obvious example. To be valid the defence would have to involve both actions by the individual – the claim to uphold the sanctity of marriage combined with having an affair. Very often these stories, whether about politicians or others, are simply about the sexual relationship. The majority of cases are in my view primarily about increasing sales and therefore advertising revenues – they are not about freedom of the press and they are not about public interest in the sense of causing the public to be concerned.

The most outrageous part of this behaviour is the double standards applied by newspapers. The sexual activities and examples of hypocrisy on the part of editors, owners and journalists rarely hit the headlines and they are very adept at covering up these stories. Subject to guidance from the Inquiry on confidentiality for the victim I can produce a letter from the lawyers (Olswang)

who were at that time representing a victim of serious sexual harassment at the Sun by the then editor. I refer to this further below.” The case also involved the use of News International stationery to send harassing letters to the victim. News International did not pursue enquiries or inform the police. In this case News International imposed a gagging order on the victim which to the best of my knowledge still applies. Would any other organisation or individual have got away with such behaviour? I doubt it.

The public interest part of the PCC code reads as follows:

The public interest

There may be exceptions to the clauses marked * where they can be demonstrated to be in the public interest.

1. The public interest includes, but is not confined to:
 - i) Detecting or exposing crime or serious impropriety.
 - ii) Protecting public health and safety.
 - iii) Preventing the public from being misled by an action or statement of an individual or organisation.
2. There is a public interest in freedom of expression itself.
3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.
4. The PCC will consider the extent to which material is already in the public domain, or will become so.
5. In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.

My comments on this are as follows:

- 1.i) Agreed;
- 2.ii) Agreed;
- 3.iii) This has to be strengthened. It needs an addition saying “...where the individual or organisation is keeping information from the public which should

be in the public domain in order to prevent or expose harm to the public interest". (There may be a better formulation but I hope my point is clear.);

2. This needs to go – I can see no justification for it;

3. Agreed;

4. This needs tightening up. A newspaper is not like a blog run by an individual. It is a large and powerful organisation. At present all that is required for a newspaper to breach privacy is to say it is on a blog or the internet. After that anything goes! I would add to this clause something along the following lines: "Editors must make a judgement about the accuracy and the public relevance and importance of the information. It must not be an excuse for invading privacy". (Again, there might be a better formulation.);

5. Agreed.

The wording of the public interest exceptions is interesting. I would suggest that the wording in: 1. "The public interest includes, but is not confined to:" (I have underlined part of this sentence), combined with article 1.iii) and article 2., all suggest a code written to allow flexibility in judgement beyond what is desirable. It is, I would suggest, clearly written with the intention of creating a weak code. The committee that writes the code is made up of editors from newspapers and magazines. It should not be.

Standards for newspapers and editors.

I think it would be very useful if we could have a 'kite mark' system for both newspapers and editors. To ensure editors and journalists set themselves high standards there needs to be some system of rewards. It is important in this crisis for journalism to remember that there are many excellent journalists and photographers who have lost their lives or incurred serious injury reporting from dangerous places. The activities we read about from time to time need to be set against the courage and conviction of these journalists. The same applies to photographic journalists often referred to as the paparazzi.

It should be possible for a newspaper and its editor to claim that their paper achieves high standards of journalism. This could be done by checking it against the number of upheld complaints awarded against a newspaper by the new PCC. If there are other ways of achieving high standards let them be used.

A newspaper owner should be able to punish an editor whose paper attracts too many upheld complaints by reducing salary or losing a bonus. An additional option could be annual prestigious awards carried prominently in the media and perhaps including reference to those editors and journalists who have attracted particular criticism from the new PCC as a negative award. The aim must be to reward high standards that could create a general

assumption of quality and a readiness to expose bad or corrupt practices in the industry. If there were to be awards for quality journalism then any news item written by the journalist could have his qualification next to his name. This would encourage newer journalists to seek that status and, one would hope, attract additional payment for their work. I do not favour a system where journalists can be 'struck off' like a lawyer or Doctor. I think this could be misused.

Ownership

It is very easy to conclude that the media empires ought to be broken up and I would certainly agree that some of them, especially News International, have excessive market share but I am conscious with newspapers already losing sales and profitability that there is a case for cross subsidy but I don't have sufficient knowledge of this area of policy to comment in detail. The case for a more proactive interest by the Competition Commission seems to me to be strong.

I am not convinced that media ownership ought to exclude foreign nationals – I think the key is to get the right type of regulation rather than worry about the nationality of owners.

The relationship between politicians and the media.

Newspapers need to revisit their coverage of politics. There is a symbiotic relationship between the media and politics and some years ago I attempted to persuade the press that there was a good case for the politicians and senior press mangers/journalists to discuss how politics was being covered and whether we were doing justice to the electorate in the coverage. The Guardian agreed - no other paper did.

Even in the age of the internet and declining newspaper sales the press still plays an important part in informing the public about politics. The headlines alone can set the agenda and are often used to rubbish an individual politician. The newspapers have increasingly seen themselves as the bulwark against political power without recognising that without elected politicians, democracy is just as much at risk as it is if the press were to disappear. It is obviously important for the press to question politicians closely but it is not desirable if this is done with an assumption that the politician's motives are always dishonest or dubious. The often quoted journalist's assumption of "Why is this bastard lying to me" is incredibly destructive if used as a general assumption. The citizens of our country elect politicians and they have a right to know what

they are doing and that should include the positive as well as the negative. In recent years the press has emphasised the negative and in doing so they undermine the public's trust in the political process.

I believe it would be beneficial if there could be meetings between press and politicians held in public to discuss how well we are meeting the public need to be well informed about politics. This is a challenge to politicians as well as the press as we have retreated into a ghetto mentality not least because we have come to assume that newspapers are 'out to get us'. Society does not need a cosy relationship between politicians and press but I think it would benefit from more open discussion about the reporting of politics.

I am of the opinion that meetings between owners, editors and senior politicians have been too frequent, too secret and too cosy. In future all such meetings should be announced publicly and the agenda published. The meetings should be infrequent.

Informal meetings between other politicians and journalists are different and some understanding of what has been happening is useful. When I was first elected the Times still carried news items of what MPs said in Parliament and you had a reasonable chance of getting your Parliamentary activities covered. In the 1970's and 80's I realised that the usual reliance on Parliament being reported in the press was not going to last. I realised that the only way I was going to get coverage of serious issues was by identifying a reporter with an interest in the subject and then informing them of what I intended to do or say. They would then be more likely to cover it. Similarly journalists would contact me when they had some information and suggest I put down a question or write to a Minister and then we would jointly develop the story. There is nothing inherently wrong in this and currently it is one of the few ways an MP is going to get publicity for their work in Parliament. This troubles me. If we look at coverage of elected members' activities over the last 10 or more years they rarely get their name mentioned in the report even though it has come from their Parliamentary activity. The name attached to the story will be the Minister's or some other commentator. I am not sure how the electorate is supposed to know what their MP is doing if their name is never attached to the story. Part of the reason for the growing disenchantment with Parliament (not just party politics) is that the only publicity is negative (quite appropriately at times – MPs' expenses) while no positive reporting or identifying an MP's activities is covered. This is seriously bad for democracy.

Newspapers should also make more information about editors, owners and journalists available to their readers. They are surprisingly secretive and make it difficult to track down responsible people on the paper. Look at the web sites and with a few honourable exceptions you cannot easily find the name of the editor let alone the owner. It is also difficult to find journalists' names on the web sites. When I asked a journalist at the Times why they didn't give out email addresses he replied that they would get too many green ink letters – they should try being an MP! If others can cope with this I can't see why journalists can't.

There is also a strong case for regular appearances of editors at public forums where they could be questioned. Why are they so inaccessible? I sometimes think we ought to extend the Freedom of Information Act to cover newspapers! In all seriousness, the press ought to be more easily available to the public. If they really believe in accountability then they ought to be taking the lead on this and increasing access.

If newspapers regard themselves as guardians of our rights and freedoms then we have to ask "who guards the guards?"

Annex 1

A recent example of my own might serve to demonstrate why an individual might need the support of the new PCC when faced with a powerful newspaper.

A grossly inaccurate report had appeared based on evidence I had given on MP's/Peers expenses to the Senior Salaries Review Body. The PCC forwarded a letter to me from the solicitor for the newspaper offering me a letter to be published putting my point of view. I dismissed this angrily saying it was their mistake and they must put it right. Back came another letter from the solicitor suggesting a correction that they would publish. The PCC asked if I would be satisfied with that. I added some points making it much stronger. It was then published in a very prominent way and that was satisfactory. The point is that someone without my experience receiving a letter from the PCC enclosing a letter from the solicitor for a major newspaper suggesting that the letter (drafted for them) will suffice might well feel obliged to accept. Many people will not feel able to represent themselves when faced with a solicitor acting for

a newspaper and without any serious support from the PCC. The new PCC must be prepared to represent a person when they are on their own against a major corporation. The PCC currently see themselves as simply a post box between the complainant and the newspaper and are reluctant to take a view unless the complainant refuses to accept the newspaper offer and then the complaint has to go to full adjudication. Point 2 of the PCC guidance summarises their approach as follows:

2. The investigation

When we write to the editor we will send him or her a copy of your complaint and a copy of the article about which concerns have been raised. We will ask the editor to respond to your complaint and a copy of his or her reply will be sent to you. If it still appears that there may have been a breach of the Code, our primary aim will be to find a satisfactory resolution to your complaint.

Annex 2.

I had heard persistent rumours of serious bullying and sexual harassment at the Sun newspaper but found it difficult to get supporting evidence. Eventually I received supporting evidence from separate sources. When I revealed this I was only able to get the story covered by the BBC, the Independent and the Guardian – all on one day only. The settlement with the victim was in the order of £500,000. This has been unofficially disputed but I suspect those who dispute the figure are ignoring the in-patient costs resulting from the sexual harassment. A number of News International journalists were asking other journalists in the House of Commons “which woman it was” and listing two or three departments. When I raised this with the editor I received a reply from Rebecca Wade challenging me on how many women had been sexually assaulted in the Parliamentary Labour Party! I wrote to Rupert Murdoch on two occasions and received no reply. Eventually the Sun told me they were not going to enter into any further correspondence on the case. News International’s settlement with the victim included a gagging clause.