

The Leveson Inquiry: Culture, Practice and Ethics of the Press

Addendum to Witness statement from Professor Christopher Megone, Professor of Inter-Disciplinary Applied Ethics at the University of Leeds, 20th July 2012.

Further to Lord Leveson's invitation to add written clarification on certain points that arose in my oral witness statement given on Monday 16th July I am writing to comment on four points.

Comment 1. i) In the discussion (p.97 of the transcript) I mentioned a duty of impartiality which I took to be one of the constraints that a regulator may impose on the freedom of the press. (This duty arises because the press has the moral function, in a free and democratic society of providing citizens (readers, viewers etc.) with reliable information in the light of which to make choices both about matters of politics, health, public welfare, security etc. and about how to lead their own lives. Or in other words this impartiality constraint is one of those which serves to secure the public interest function of the free press.)

ii) Mr Jay (Counsel to the Inquiry) then noted that: "Under the [current PCC] code, the press is free to be partisan, presumably because society has made a judgment that the "rights of the press" are more important in terms of being able to be partisan than other rights in being impartial. How do you see that working?"

iii) In response to this I agreed (and I am now glossing my response a little) that in the area of informing the public the press both presents factual information and presents opinion, and I accepted that (for at least some parts of the press and media) we allow partisanship or partiality with respect to *opinion*.

I believe that the 'rights of the press' allow such partiality with respect to opinion because we accept that in matters such as ethical or political principle, for example, there is room for debate and it is acceptable for different parts of the press to contribute to such debate from different perspectives. We accept in other words that the debate can be carried on between parts of the press, and that at least for many organisations there is no need to attempt to present all sides to the debate (which is very challenging as those who work for the BBC etc will know).

And so by implication I was holding that, with respect to the facts (or 'the news section', p.98) we may suppose that, by contrast, there is a duty of impartiality; and that this is because here the press serves its role by attempting to set before the readers or viewers the objective facts.

iv) My position here seems to involve a commitment to a descriptive role for journalists or the media with respect to facts or news. Given this role, partiality might by contrast distort the account of what has happened, leave out facts in a way which misleads, or select facts with a partial goal in mind.

One can see how this might be done in reporting on complex financial issues for example. Today I heard two reports on Microsoft's 3rd quarter financial position. In one (on Radio 4) it was reported (baldly) that Microsoft had made the first quarter loss in its 26 year history, a loss of £300 million. This might lead one to think that Microsoft was doing badly. In the second account (on BBC World Service), it was reported that Microsoft had made the first quarter loss in its 26 year history, a loss of £300 million (actually reported by WS in dollars). *But* they added that this loss was due to writing down losses on a loss-making investment, and that Microsoft's underlying performance showed a 10% increase in profits. This would lead one to think Microsoft was doing fine.

I'm not saying deliberate partiality was involved here, but one can see how facts in this area could be presented for partial purposes. (The current reporting on the so-called Libor 'rate-fixing' case is another good example.)

v) In response to what I said Lord Leveson then intervened:

"But that's not entirely straightforward, is it? Because I could present a set of facts which are facts but which I have chosen very carefully to reflect an opinion which may not entirely be in any sense balanced." (p.99)

I accepted this, noting that, for example, media organisations reporting on the Leveson inquiry might themselves have interests which they allowed to colour their selection of the facts so as to create a certain impression of their competitors in their readers or viewers....But I went on to claim that the opinion side should not intervene in the news side in this way.

Lord Leveson then said: "Yes, well, I understand. As I say though, the problem is that there isn't a bright line between fact and comment."

In responding to this I went on to try to insist that, although there may be grey areas, the press should still distinguish news from comment.

And Lord Leveson's final comment was "Although the code actually creates its own bright line, the requirement to distinguish."

vi) I think that at the time I did not fully manage to digest Lord Leveson's insights here, and I'd like to note the importance of the point I now take him to be making.

I'll try to summarise that point now. I've attempted to draw a distinction between facts which should be impartially presented and opinion or comment which may (at least for many organisations) be partial. As Lord Leveson notes the PCC code creates its own bright line here (Code Point 1 (iii) requires that the Press must distinguish clearly between comment and fact). However I agree with his Lordship that it is misleading to think that there is a bright line here.

I think it is clearly possible to misrepresent news by distorting facts (deliberately missing out important qualifying material, for example, or knowingly falsifying what occurred). It is also possible to select facts for the purposes of presenting a particular partial opinion, and if this is done consciously this might also be seen as distortion.

However there is always a requirement to make some selection with regard to the facts reported in presenting a news item. (There are just too many 'facts' for everything to be included). Judgement here requires picking out those facts that seem most 'salient' for the purposes of conveying what occurred. However I fully accept that the notion of salience here is a tricky matter. For what appears salient in a situation will depend to some extent on the viewpoint of the reporter. Ethical or political principles will have a bearing here, but so will the possible interests of those on whom the facts bear. Or, at the very least, trying to determine what facts are salient from an 'impartial' perspective is a very challenging matter.

To take a very simple example reporting on a financial matter such as the so-called Libor rate-fixing might depend on whether one has the perspective of a saver or a borrower, an investor or a banker or a regulator; or in other financial stories what appears salient might depend on whether one is a seller or a buyer, or a defender or critic of free markets.

vii) So in sum, when one considers the notion of the 'saliency' of the facts used to present a story one can see that the distinction between fact and comment (or opinion) will at least on some occasions be very hard to draw. (But I am inclined to think that on other occasions we will still be able to recognise where facts are being distorted for partial reasons.)

I therefore accept that a revised press code of ethics will need to be careful in this area. I also think that this is a classic case to illustrate the importance of developing wise professional judgement by using ethical case studies that illuminate the challenges around the abstract formulation of ethical principles presented by a code.

Comment 2. The second point which I wish to add to briefly arose in connection with my view that, when we consider the principles in codes, developing good judgement in their application requires that the codes be 'lived' codes. This was in connection with Mr Jay's question about balance and the need to weigh the importance of conflicting principles (pp.103-105).

Lord Leveson intervened (p.105) to refer to our work for the Institute of Chartered Accountants in England and Wales (ICAEW) on Promoting Integrity in Organisations. In that work we make the point that developing integrity in an organisation can't be done just by having a code – a code is virtually worthless unless lived.

This was clearly relevant to the point I was making but in my response I also referred to some other work my Centre has done, this time for the Royal Academy of Engineering. The Academy produced a statement of four ethical principles, but in order to bring to life these rather abstract principles we developed a Practical Ethics Guide for practising engineers. This guide consists essentially of 18 ethics case studies designed to help engineering professionals think through what these principles come to in concrete situations. In other words this is a way of helping to bring a code to life.

So this guide was also relevant to the point I was making, but I had not sent it through to the Inquiry. ***So I now attach this RAE ethics guide as a pdf.***

Comment 3. The third point I wished to make arose from the discussion of the PCC code of ethics/conduct and the concerns I had expressed about it. I think this additional comment is necessary because of the terminology I used at the time. I suggested the desirability of the code expressing certain '*aspirational*' concerns, but I was not very clear on what I meant by 'aspirational' in this context (pp.116-119 of my evidence).

But I also wanted to follow-up on this point because I saw that, in the afternoon's evidence, Onora O'Neill stated that "she wouldn't go for the aspirational in a press code" (pp. 79 of her evidence). My feeling on viewing/reading her evidence at this point is that although I appear to endorse inclusion of aspirational features and she appears to reject them, we are not in fact at odds. And I think this is because I was using the term 'aspirational' in a slightly loose sense whilst Onora was using it in a way which has become fairly conventional in the discussion of codes.

My main point in this area had been in response to Mr Jay's question as to why it was a fault for the code to be so full of prohibitions. My concern was that this presented ethics as primarily arising in the area of wrong-doing, as something to attend to in order to prevent bad behaviour. I described this as rather a negative view of ethics. By contrast I felt the code

should focus on a more positive goal of developing good professional judgement, of which good ethical judgement is an important component.

I had earlier also commented on the need for the code to be a more cohesive document. And I felt both this and the presentation of a more positive conception of ethics in professional life could be achieved in part by setting out the critical general features of the public interest to which the free press contributes: (very roughly speaking) i) presenting citizens (readers/viewers/listeners) with the information they need to make choices about social and political life and about their own lives; and ii) holding to account those in positions of authority (in a wide range of fields) who serve the public (or as Lord Leveson suggested in discussion with Professor O'Neill "providing for the public the opportunity *for the public* to hold power to account" p.66).

Something overarching of this sort would I think help to provide what Professor O'Neill described as "an animating principle of the code" (p.78 of her evidence). However I then went on to suggest that the code could also be improved by focusing on more positive standards of behaviour rather than prohibitions. Here I pointed (or perhaps gestured) towards features of good journalism such as accuracy and rigour, truthfulness, and trustworthiness. And it was here that I used the term 'certain aspirational things' (p.119 of my evidence).

It is at this point that I might seem in conflict with Onora O'Neill's rejection of 'the aspirational'. However I think that there is not in fact a conflict here.

What I was trying to get at was the following. The current PCC ethics code includes at present a number of prohibitions. These are either behaviour types that are completely ruled out (never to be done) eg prejudicial reference to an individual's race, or behaviour types that are conditionally prohibited (prohibited except in certain circumstances) eg persistent questioning of individuals (prohibited except when the public interest overrides).

Ethics does cover the unconditional or conditional prohibition of behaviours. But my view was that the code could also focus more on the positive standards of behaviour which one could expect in good journalism. Thus for example it could focus on standards of rigour and accuracy – a commitment to seeking out and carefully presenting to the public important information (not simply "*not* publishing inaccurate, misleading or distorted information"). This includes traditional positive attributes of good journalism – cross-checking facts, scrutinising testimony, weighing evidence and the like.

But the reason I used the term 'aspirational' here, and I admit the usage was loose, was because I was trying to get at behavioural concepts which are, in technical terms, 'limit' notions – that is these concepts admit of perfect limits. So there is in principle an ideal of the perfect checking of facts, scrutinising of testimony and weighing of evidence. But in real life such perfection is of course impossible, not merely because we are fallible but because we accept that there are limits of time, cost, physical capacity etc. which we accept as qualifying any reasonable conception of accurate and rigorous reporting. In other words we accept that in real life an excellent reporter in terms of rigour and accuracy will fall short of perfection.

Health is a similar 'limit' concept. A fully healthy person is a perfect ideal, but in real life when someone says they are in excellent health they are not expected to conform to that perfect ideal – they are expected to adhere to a reasonable standard of perfect health, to be a reasonable way along the road to the unattainable ideal of perfect health.

So when I used the term 'aspirational' I wanted to capture the nature of positive terms like accurate and rigorous as limit concepts. But I absolutely accept that what the code should do in making reference to these positive attributes is set out an expectation of the rigour and

accuracy that can be reasonably expected. And this seems to me entirely in line with what Professor O'Neill says about accuracy and rigour on pp.78 to 80 of her evidence.

Equally although I used the term aspirational here I take myself to be in agreement with her rejection of the idea that the code should require journalists to perform 'to an outstanding standard'. What is required positively is that they perform in these areas to an adequate standard (O'Neill p.78), or one that can be reasonably expected.

Thus I take Professor O'Neill, in rejecting the 'aspirational' in an ethics code, to be rejecting the idea that a code should demand of good journalism some adherence to an outstanding standard. And I agree with this. But this meaning in her use of 'aspirational' was not what I was aiming to convey when I used the term.

In sum my point about the code focusing much more on positive behaviours, as well as having an over-arching conception of the public interest purpose of good journalism, is I think in line with what O'Neill says (even though we appear, in an illusory way, to differ about the notion of aspirational).

Comment 4. My final comment concerns my response to Lord Leveson on pp. 113-116 of my evidence. Lord Leveson had asked (p.113) whether it was simply the responsibility of members of the media – printers, journalists, editors, media owners to ensure that the code of conduct/ethics for the press be a 'lived' document.

I accepted that ensuring this should also involve those external to the media. They should be involved in some kind of ethical oversight body, which might have responsibility for the development and maintenance of the ethics code, and for overseeing its implementation by media organisations. My suggestion, as in my initial written evidence, was that these media organisations might prepare something like a corporate governance report, on an annual basis, reporting both against the guidelines of the press code and in terms of the ethical culture of their organisation. This report might then be submitted to the ethical oversight body.

The question then arose as to who might be on such an oversight body. Lord Leveson noted that Ofcom had argued strongly against it containing current members of the media. At the time I agreed that having current members of the media might not allow for independent reflection on practice. This is because they could be too heavily embedded in the current behavioural norms and unable to view them with sufficient critical detachment.

On the other hand I noted that my experience of inter-disciplinary ethics was that it benefited from involving both people with experience on the ethics side and people with practical experience of the host discipline/profession. So in this case there would be a need for people with experience of journalism/media work and also those with experience in ethics.

On further reflection I can see that those who had recently ceased working in the profession might have the necessary relevant experience as media practitioners to be of value to such a body. But they could also be open to the same worry as just noted for current media practitioners, namely that their long acculturation in media work made it difficult for them to be critically independent of behavioural norms which they themselves had long experienced. However I'm inclined to think the value of their practical media experience would outweigh this.

Nonetheless in light of this concern I would now add that one possibility, in relation to the inclusion of practitioners, would be to include **both** such recently retired media practitioners **and also** journalists/practitioners who are relatively new to their work, perhaps four or five years into a career. In our experience with other professions, such fairly junior people often have enough professional experience to have a developed understanding of their work, but are not yet so embedded in cultural practices as to find it difficult to critically appraise the implicit values or accepted norms of their profession or organisation.

As I've indicated my view would be that the committee should also include people with a reasonable theoretical knowledge of the ethical issues relevant to the profession. I believe this should include philosophers but might also include lawyers (academic or practising lawyers), and other related academic disciplines. It might also be useful for such an oversight body to have members from other professional bodies (perhaps from their standards committees).

I hope these additions are of some help and that my oral evidence was of some use as it stood. I thank the Inquiry for the thoughtfulness and courteousness with which I was treated in giving evidence on Monday.

Yours Sincerely,

Christopher Megone