



January 2017

## **NUJ response to DCMS consultation on Part 2 of the Leveson Inquiry and implementation of section 40 of the Crime and Courts Act 2013**

The National Union of Journalists (NUJ) is the voice for journalism and journalists in the UK and Ireland. It was founded in 1907 and has more than 30,000 members. The NUJ represents people working across the media – as staff, casuals and freelancers at home and abroad. NUJ members work in broadcasting, newspapers, news agencies, magazines, books, public relations, photography, videography and new media.

The NUJ stands up for journalists and journalism and is committed to the protection of the right to freedom of expression. The union fights to defend the right of journalists to operate in the public interest, and to do so without interference from government or vested interests of any type. Members are required to uphold the NUJ ethical code of conduct, which is a cornerstone of the union's rule book.

A key tenet of the code is principle 1 which states that members shall: "at all times uphold and defends the principle of media freedom, the right of freedom of expression and the right of the public to be informed."

### **Background**

The NUJ believes regulation of the press must be genuinely independent - of the state and of media owners. We favour a regulatory framework that includes representation from journalists and civic society.

To that end, we proposed in our submissions to the Leveson Inquiry that a sensible model to look to was the Press Council of Ireland (PCI) and the Office of Ombudsman, a model the NUJ has direct experience of, given our membership in the Republic. It is funded but not controlled by the newspaper industry. It enjoys legal privileges by virtue of being granted formal recognition in law but is not controlled by or amenable to either government or parliament.

The body has seven independent members, including the chair, and the remaining six members are drawn from the press industry, including the NUJ and News UK. There is also a press ombudsman. Under Irish defamation law the defence of fair and reasonable publication on a matter of public interest is available to member publications of the PCI of Ireland, so long as they have adhered to the code and abided by determinations of the press ombudsman and PCI.

In the face of industry hostility to such a model in the UK – indeed the industry have asserted it would be the end of press freedom – it is worth noting that the very same UK publishers with Irish editions have signed up to the Irish model. It is widely recognised as being successful, without any negative impact on freedom of expression. The UK-owned titles include the Irish Daily Mail, Irish Daily Mirror, Irish Daily Star, Irish Sun, Sunday Times, Irish Mail on Sunday and Irish Sunday Mirror.

British-owned media organisations, including News International/News UK, Associated Newspapers and the Mirror Group Newspapers have not only signed up to the Irish system but continue to play a significant role, alongside the NUJ, in the operation of the model.

It is instructive to note that these media organisations have embraced the Irish model while opposing any similar framework in the UK. The NUJ strongly believes that freedom of expression can be protected within an appropriate regulatory framework.

For many years the NUJ has called for a conscience clause for journalists, affording them contractual protection to safeguard them from being forced to act unethically by their employers. This concept was accepted by Lord Leveson, yet to date has still not been adopted by newspapers and IPSO, the industry-led regulator.

The Leveson Inquiry into the culture, practices and ethics of the press followed the revelations of widespread unethical practices and the industrialised scale of phone hacking. The NUJ successfully argued that a culture of unethical behaviour had developed at the expense of professional standards. The union demonstrated that journalists had been bullied and were themselves victims of the culture which led to the establishment of the inquiry.

Many of those in the media who sought to blame a few rogue reporters or denied the existence of unethical and criminal behaviour remain in senior positions in publishers exposed by the inquiry, choosing to scapegoat individual reporters rather than accepting corporate responsibility.

The response of News International, now News UK, was to hand over the emails of its staff to the police, putting them at risk of prosecution, doing a deal to deflect corporate proceedings in acts of cynical corporate self-interest and damage limitation. Trinity Mirror was also culpable, as recent legal proceedings have demonstrated – failing in their duty to protect journalistic sources, a sacrosanct tenet of journalism enshrined in the NUJ's code of conduct and traditionally upheld by all newspaper organisations.

Following the recommendations of the Leveson Inquiry, the coalition government established a Press Recognition Panel (PRP) by Royal Charter which uses set criteria to appoint a "recognised regulator" (or regulators). Soon after, the discredited industry-led Press Complaints Commission reinvented itself as the Independent Press Standards Organisation (IPSO). This has rejected seeking recognition from the panel. Its members comprise most national newspapers, except The Guardian and Financial Times, and many local newspapers. More recently (October 2016) Impress was accepted by the PRP as an "approved regulator" and has around 50 member publications.

The Royal Charter solution was designed to foreclose discussion of a co-regulatory framework such as the Press Council of Ireland or other models of regulation outside the control of the newspaper proprietors. The NUJ was excluded from the discussions that led to the deal and no regard was taken of the understandable public reaction to what had emerged from that inquiry.

Whilst continuing to engage constructively with IPSO (for example on the development of a whistleblowing scheme), the NUJ has maintained its criticism of a body that is controlled by the publishers, accepts only limited third party complaints, prevents journalists from being involved in the code committee and has yet to set up an arbitration panel offering cheap and easy redress to the public.

The NUJ welcomed the PRP's decision to recognise Impress as a significant development, and would similarly welcome any future regulator that demonstrates its commitment to the principles we have campaigned on for many years.

A key priority for the NUJ has been that any regulator must provide cheap and easy access to justice. Those who have suffered unjustified intrusion by the press must have the right to seek fair redress without incurring high legal costs – access to justice should not be curtailed by cost and open only to those with deep pockets.

With press freedom also comes responsibilities. The NUJ believes any regulatory model should set out the framework for an ethical press. The right of individuals to hold prejudicial views does not grant an automatic right to have those views published. Nor does it place an obligation on newspapers to publish unacceptable language or absolve media organisations from the responsibility not to generate hateful or discriminatory material. The NUJ's code of conduct states that journalists must not produce material likely to lead to hatred or discrimination on the grounds of a person's age, gender, race, colour, creed, legal status, disability, marital status, or sexual orientation.

The NUJ challenges the government's contention in its introduction to the remit of the consultation that much has changed since the publication of the Leveson report.

We note that the prime minister, Theresa May, had a private meeting with Rupert Murdoch during a 36-hour trip to the UN in New York, shortly after her elevation. This suggests that very little has changed and a cynical public has seen little evidence either of genuine reform or a change in the nature of the relationship between powerful media figures and the political establishment.

## **The consultation**

The NUJ hopes this will be a meaningful consultation. There is a widespread perception that previous commitments made to proceed with Part 2 of the Leveson Inquiry and to enact Section 40 have already been reneged upon and decisions taken in private. Concerns were heightened at the short nature of the consultation period, held over the festive period. The NUJ trusts that the secretary of state, Karen Bradley, will be taking these very important issues seriously.

## **Leveson Part 2 – DCMS consultation questions**

*Do you believe that the terms of reference of Part 2 of the Leveson Inquiry have already been covered by Part 1 and the criminal investigations? If not which terms do you think still require further investigation? Do you have evidence in support of your view? If so, please provide your evidence. Which of these two options best represents your views? Continue the Inquiry with either the original or amended terms of reference. Terminate the Inquiry. If you think the government should take another course of action to those set out in the question above, please set out your views.*

The NUJ does not believe the terms of reference of Part 2 of the Leveson Inquiry have been covered by Part 1 and the criminal investigations and the union argues that the inquiry must continue with the original terms of reference.

The union takes issue with the suggestion in the government's introduction to the remit of this consultation that much had changed since Part 1 of the inquiry. Those police and public officials found guilty of receiving payments for confidential information were convicted of crimes that are already on the statute books. The appalling behaviour of News International management in

releasing the names of confidential sources and journalists is perhaps the biggest threat to quality and ethical journalism and a free media so far this century. Long-held principles and commitments to the protection of sources were jettisoned in crude deals that saw the company trade its responsibilities to its journalists and sources, putting those individuals in the dock, in exchange for staving off the threat of corporate charges.

The second part of the Leveson Inquiry was delayed in order to avoid prejudicing a number of trials of journalists and public officials. It was always intended to be a significant part of the entire inquiry's remit, to be continued as soon as it could be without jeopardising other legal proceedings. The union has congratulated the juries in corruption trials who found journalists not guilty and thereby accepted that payments made to officials were in the public interest. However, they faced a lengthy and deeply stressful period in which many felt betrayed by their employers and scapegoated for practices that were institutionalised in a culture not of their making. At the same time they have seen whistleblowers – individuals who trusted that their identities would be kept confidential as part of the long-established and sacrosanct tenet to protect sources – criminalised and serving sentences in jail. The actions of companies like News International (News UK) and Trinity Mirror have seriously compromised the faith that whistleblowers have in journalists and damaged the likelihood of important public interest stories coming to light in the future. Why did they make this trade? What were they trying to hide? These are important questions to be considered.

Leveson Part 2 must continue because it is unfinished business. The NUJ believes it is vital that we get to learn about the extent of unlawful conduct within News International and other publications that led to the cover-up of phone hacking, scores of court cases, huge payoffs to hacking victims and ruined the careers of many journalists. At Trinity Mirror's AGM last year, the chairman, David Grigson, said the company had put by £41m to pay off those who had been hacked, but said there was no-one left at Trinity Mirror who had been associated with the hacking. This was disputed by at least one journalist who worked for the company. In both companies, it has become clear in trials that have taken place since that deals were done by the police to stave off corporate charges at the expense of individual journalists and sources.

There needs to be an investigation into the relationship between the Metropolitan Police Service and News International. Was the Met's Clouseau-style investigation into telephone hacking, which backed the company's line that it was just a couple of "rogue reporters", due to ineptitude or was it because of the cosy relationship between senior executives of both organisations, with high-ranking officers being rewarded with lucrative columns in Murdoch's newspapers?

There needs to be an investigation into the mass amnesia and "ignorance" of newspaper executives at the Leveson inquiry and at parliamentary committee hearings.

It is of pressing importance that the pay-off of hacking victim Graham Taylor, general secretary of the Professional Footballers' Association, is investigated. Did James Murdoch, then executive chairman of News International, sign it off? This must be answered as Murdoch, now chairman of Sky, has made a bid to take over the broadcaster. The culture, media and sport parliamentary select committee concluded that he showed wilful ignorance of the extent of phone hacking during 2009 and 2010 and that his father Rupert Murdoch was not a fit and proper person to exercise the stewardship of a major international company. The Murdochs dropped a previous bid for Sky because of the hacking scandal, so it is of no surprise that they are using their newspapers to lobby for Leveson Part 2 to be dropped. Indeed it makes concluding the work of the inquiry even more important.

Promises have been made that should not now be reneged upon. The family of Daniel Morgan, found with an axe in his head in a car park in 1987, believe he was about to expose police corruption when he died. His brother Alastair Morgan says the statutory Leveson Part 2 inquiry into links between journalists, police and private investigators is essential and that the family has been promised the Leveson Inquiry would look at the case after the delay over criminal prosecutions. He says that a panel set up by Theresa May, when home secretary, has been blocked by the police.

The NUJ made it clear in evidence to Leveson Part 1 that the vast majority of working journalists and photographers are not in collusion with police officers; far from it. Indeed the examples included in our submission to module 2 of Part 1 of the Leveson Inquiry demonstrated that very often journalists have to resist undue police interference whilst trying to carry out their professional duties. This included being taken to court to protect their sources and undergoing unnecessary and intrusive stop and searches when trying to take photographs in public areas.

The NUJ represents crime journalists and staff working in police press offices. In our submission to the College of Policing consultation on police and media relations draft guidelines, we noted that the British policing model is based on consent. It said that for this to work, the public needs to have confidence in the police. The media plays a vital role as a watchdog and in holding the police to account so the public can have this confidence. This is only possible when there is an open and collaborative relationship between the police and the media.

That is why the NUJ suggested a more positive statement covering police and media relations, such as: "The media play a vital role in informing the public about important matters of national and local interest. The police service has a duty to inform the public about the exercise of its powers in the interests of keeping communities safe. Subject to operational or legal constraints, the police service should set out to help journalists through proper briefing and/or provision of materials that help to tell the story of police work. Officers should start by seeking to engage with the media, be it individually or with the assistance of Police Corporation Communications Departments (CCDs) [police press offices] in the interests of helping the public to understand our work better and build public trust."

### **Consultation questions on Section 40**

*Which of the following statements do you agree with: (a) government should not commence any of section 40 now, but keep it under review and on the statute book; (b) government should fully commence section 40 now; (c) government should ask parliament to repeal all of section 40 now; (d) If government does not fully commence section 40 now, government should partially commence section 40, and keep under review those elements that apply to publishers outside a recognised regulator; (e) If government does not fully commence section 40 now, government should partially commence section 40, and ask parliament to repeal those elements that apply to publishers outside a recognised regulator.*

Significant elements of how Section 40 might operate if implemented require urgent clarification, particularly in the case of partial implementation.

On the basis of what it is possible to discern, however, the NUJ is very concerned about the implementation of the potentially punitive elements of Section 40. Enabling complainants to initiate court actions against publishers without any fear of financial consequence if proven to be baseless, would have a seriously detrimental effect on journalists and journalism and there needs to be a wider discussion about the operation of clause 3b (awarding costs). The notion that successfully

defended cases brought in the wake of significant journalistic investigations and reporting in the public interest, could still lead to a newspaper having to pay costs for the losing side is not tenable.

At a time when journalism is in crisis and the cost-cutting of many companies is impairing the ability of journalists to produce quality content, when the shockwaves caused by companies who have wilfully betrayed sources are still resonating, when many publishers are in an economically fragile state that is leading to countless rounds of redundancies and cuts – such a move could also prove catastrophic for some media companies.

By partially implementing Section 40, however, the government could provide advantages to those publishers that do have arrangements for effective regulation in place, whilst leaving those outside these arrangements with the status quo.

The NUJ believes fair and speedy arbitration, and swift redress with due prominence, should be as broadly available as possible. To that end the government should continue to encourage all publishers to operate within a system of regulation that provides an adequate arbitration service. Doing this could be an important part of rebuilding trust in journalism amongst the public.

The NUJ has for decades argued that independent arbitration that has the confidence of both the public and journalists would significantly benefit journalism and the titles in which it appears. Against a backdrop of failing business models, fake news and public contempt for journalists, this has never been more true.

Significant elements of the effect of commencing Section 40 require urgent clarification. On the basis of the information available to date, the NUJ opposes option b) and favours option (d) that the government should partially commence Section 40 and keep under review those elements that apply to publishers outside a recognised regulator. There should be advantages for publications that sign up to such regulators and their codes of conduct. The government should intensify efforts to persuade other regulators to make themselves compliant. Sir Alan Moses, chairman of IPSO, should be encouraged to reform his organisation so that it is less industry-led and that it provides a cheap arbitration service. The alternative would be to replace Section 40 with a clause in line with Irish defamation law.