PRESS AND PRESS FREEDOM

A Selection of Articles from My Blog (2011-2017)

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In 2011, most journalists had yet to hear of Lord Justice Leveson. It was still widely believed that “phone hacking” was the work of a single rogue reporter. And Detective Chief Inspector Gene Hunt, from BBC’s “Life on Mars”, was a recent cultural icon. I had yet to give any significant thought to the subject of press regulation, but my attention was drawn to a committee of MPs who were on to something and I wrote the following ...

“I’m Hayman and I’m ’aving hoops”

Lovers of Life on Mars may have thought that DCI Gene Hunt was giving evidence to the Home Affairs Select Committee yesterday. In fact, it was a real (ex-)cop, former Assistant Commissioner Andy Hayman.

Since he was once head of Scotland Yard’s anti-terrorist activity, there must be a more serious side to him than he presented to the committee. (There must be, mustn’t there?) But it was hard to discern as he gave a jaw-dropping explanation of his role in the phone-hacking enquiry and subsequent appointment as a columnist on the Times. Apparently it had been “a boyhood dream” of his to be a journalist. (One can understand reporters wishing sometimes that they were cops. It comes as a surprise that the dream goes the other way, too.)

Apart from giving us an opportunity to wonder whether the fictional Hunt had been based on Hayman or vice versa, little was learned about the investigation from Mr Hayman, or from Assistant Commissioner Yates (more about “Yates of the Yard” in a moment). The real story came from the former Deputy Assistant Commissioner Peter Clarke, who had been in day-to-day charge of the original investigation alongside his responsibility for conducting anti-terrorist work.

Two themes emerged from his evidence. First, the obstructive behaviour of News International and, second, the low priority accorded to the investigation, once the royalty hackers had been brought to book. Clarke told the committee “I was as certain as I could be that [News International] had something to hide”, reinforcing the point with the assertion that “This was a global organisation with access to the best legal advice … deliberately trying to thwart a criminal investigation.”

The MPs were having trouble understanding (weren’t we all?) why the police didn’t take a tougher line with News International – why they didn’t act like, well, like police in pursuit of a criminal. Seems obvious, really.

And this takes us to the nub of it. To break through News International’s obstruction, the police needed sufficient evidence to justify a reasonable suspicion that something was up. They did, of

course, have 11,000 pages of evidence. But that seems to have been too much for the police working in the anti-terror squad.

Undoubtedly, they had a point. The terrorist threat is very real. And it was especially fresh in the minds so soon after the 7/7 bomb attack on London. Far better to be hauled in front of a select committee for letting hackers run amok, than suicide bombers. But there are other departments in the Metropolitan Police Force for whom investigating corporate misbehaviour could reasonably have been accorded a higher priority.

MPs also wondered why the police didn't look at a sample of the evidence to see what might be there. Mr Clarke's response was that the job was only worth doing if it were done properly.

And that, I think, was his big mistake. Doing a job "properly" doesn't always mean turning over every stone. When I led the forensic team at one of the UK's Big Four accounting firms, we knew that the key was to identify the one or two crucial elements that really turn a case. Turning over every stone was a luxury that our clients couldn't always afford and didn't always need.

And so it was for former Deputy Assistant Commissioner Clarke. He had an urgent need not to compromise his anti-terrorist work. But he was also "as certain as [he] could be" that News International were hiding something. What he needed was enough evidence to justify access to News International's files. What he had was the files of News International's private detective, Glenn Mulcaire. A preliminary review of those papers should have been conducted in order to see if they provided the reasonable suspicion needed to unlock the doors at News International. From what we now know, it seems that such a review would have been successful.

And so we come to "Yates still at the Yard". We had seen the Assistant Commissioner before: during the "cash for honours" enquiry; in connection with the trial of Paul Burrell, former butler to Princess Diana; and in 2009 when he had been asked to review the position regarding telephone hacking by News of the World in the light of an article in the Guardian suggesting that the problem was more widespread than the two criminal convictions implied.

He had been asked by his superior officer to find out whether there was anything new which would require a further investigation. He concluded that there wasn't. There was nothing new. Somehow, his conclusion came to be reported that there was nothing at all. But there was something. Something old: the same old 11,000 pages of evidence from the Mulcaire files; the same old belief that News International had something to hide; and, so it seems, the same old reluctance to look into it.

Life on Mars? You could almost hear the background music working through the Bowie repertoire. Under Pressure, Absolute Beginners and The Laughing Gnome ...

When the Leveson Inquiry was ongoing, many people argued that it would be impossible to regulate the press, because everyone with a website was now a publisher. Not so. I wrote the following piece and sent a copy to the Inquiry, just in case they needed any assistance with the point.

Leveson and the Living Trees

Like many people, I have been following **The Leveson Inquiry** intermittently. As someone with a background in **regulatory policy**, I am particularly interested in the way that many witnesses have expressed a concern that regulation of the press has become inseparable from regulation of the individual because the internet has given any individual with a website (or even just a Twitter account) the power to be a journalist. I think the argument is flawed.

Standard techniques of regulatory analysis help to show why, starting with a structural breakdown of the process by which the product – in this case, a press article – is created and delivered to the consumer:

- ***Fact-finding (or "news gathering"):*** This is the process of finding out raw information other than by reading material that has already been published. This first stage in the process includes good old-fashioned journalism. It also includes behaviour which occupied much of Leveson's time in the early hearings, such as phone-hacking, which is illegal, and the pursuit of celebrities, which is typically not illegal but has caused much concern, not least to the celebrities themselves.

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  It is clear that this step has nothing to do with the internet and can be regulated (or not) without interfering with the benefits which the internet has brought us.

- ***Converting the raw data into publishable content:*** This is essentially the process of writing-up the content or selecting photographic image(s) in a form for publication. It is a necessary step in the process on the road to publication, but the unpublished word seems to present no regulatory issues.

- ***The decision to publish:*** This is the point at which someone decides to make the output from step 2 publicly available – whether for purchase or free of charge, and in hard-copy or online. It is the step which featured, in various ways, in evidence to Leveson from witnesses such as **Max Mosley** (who has **argued for advance notice** before private information about individuals is published) and **Alastair Brett** (who was involved in the Times Newspaper's decision to reveal the name of the **NightJack** blogger).

- ***The distribution of published material:*** This is the process of passing on the published word to readers. In my (current) analysis, it includes printing and distributing hard copy, making content available online and aggregating existing publications into new formats.

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  It may be that there needs to be a sub-division within this activity, but if the decision to publish (step 3) was properly taken, there is plainly no need to restrict the distribution and, if publication was improper, it seems to me that the appropriate target for regulatory action is the publisher not the mechanism by which it was distributed. The sole exception would be a distributor who deliberately distributed material which they knew had been published in breach of the regulations.On that basis, there is no reason why search engines and other automated news aggregators would be, or need to be, brought within the ambit of any regulations.

More work may be needed but, at first sight, this analysis suggests that steps 2 and 4 might essentially be free from regulation and step 1 can be regulated as if there were no internet because the internet plays no part.

That leaves us with step 3: the decision to publish. Here the internet does play a part, because it enables virtually anyone to be a publisher. Lord Justice Leveson has told us that he is keen not merely to be regulating “work produced on dead trees” (page 81 of **Rupert Murdoch’s second day of evidence**). But, in terms of his inquiry, it is only the publishers with power (or influence) who are a concern.

I have yet to determine a metric for determining which publishers have “power”, but I venture to suggest that is more sophisticated than mere readership (otherwise, **Stephen Fry’s Twitter account**, with over 4 million followers, would seem to qualify).

My current hypotheses for further investigation are (a) a measure of the readership multiplied by the volume of words published (which would rule out not just Twitter accounts, but actually most single-handed blogs too) and (b) a combination of readership and news-gathering power. I may be mistaken here, but it seems to me that the “press” we worry about are those who publish “news” (and comment), not those who publish only comment.

Another big obstacle which threatened to stop the Leveson Inquiry from reaching a sensible conclusion was the Press's own trenchant opposition to statutory regulation. As a mechanism to get over this perceived hurdle, I wrote the following piece whilst Lord Justice Leveson was still working on his report, although as I later found out, I wasn't the only commentator to have this idea.

Leveson could legislate for a non-statutory regulator

The press are against statutory regulation of their activities. That is **the message they have been sending to the Leveson Inquiry**. But most people fear that, without a legislative underpinning, press regulation will be toothless. How then to reconcile those two opposing views? Do it like this …

Create a statutory regulator which has two roles: (1) to *exempt* from its own regulation all those members of the press who are regulated by another suitable body and (2) to *regulate* the rest.

If the independent regulator failed to deliver, the statutory body would be ready with power to step in

If the press can create – or persuade someone else to create – an independent regulatory body which has sharp enough teeth to police the press, the statutory body need do no more than keep a beady eye on the independent regulator. There would be no need to carry on any direct regulation of its own.

But if the independent regulator failed to deliver, the statutory body would be there with the power to step in – a power that had already been enacted.

What if the press couldn't all agree on a suitable regulator? They don't need to. With a regime like this, there would be no objection to having multiple regulators. So long as each of the regulators was approved by the statutory body, that would be allowed.

In practice, the cost of having multiple regulators would most likely deter the individual press barons from wanting more than one regulator, but that would be their choice – and at their expense. The State should pay only for the statutory body, not for the independent regulators.

And if one or more publishers wanted to opt out of independent regulation and submit themselves to regulation by the statutory body, that could be allowed too.

Summer 2012. The press was still waiting for Leveson and Prince Harry was about to embark on his second tour of duty in Afghanistan. One of them sparked an outcry by removing his clothes in front of a camera (or maybe more than one camera).

Harry's Bottom and the Right to Privacy

Today's big argument is said to be about privacy and the public interest. I think there must be more to it that that. Most commentators seem to be going round in circles.

Prince Harry, currently third in line to the throne, went to a hotel room and took his clothes off in the presence of a bunch of other people. One of his companions (or maybe several) took photos and made them available to the press. By Wednesday of this week, the photos were accessible on various overseas websites, but the British press declined to publish them. On Thursday night, The Sun newspaper decided to break ranks. It put one of the photos on the front page of its Friday edition and all hell broke loose.

The Editors' Code says it is unacceptable to photograph individuals in private places without their consent. This was undoubtedly a private place. (I'm referring to the hotel bedroom, not Harry's crown jewels, although they are a private place too.)

The question has moved on. Can a photo still be private once it has become highly public?

The only exception permitted by the Code is where there is a public interest in breaching the normal rule. For these purposes, the "public interest" does not mean anything the public is interested in. It means (because the Code explains it this way) things like exposing crime, protecting public safety and so on.

The Sun argues that "there is a clear public interest in publishing the Harry pictures, in order for the debate around them to be fully informed." That is just circular: it is effectively arguing that it is in the public interest to see the photos so that we can debate whether we should see them.

The Sun's argument continues, rather pathetically, that questions arise over Harry's security in Las Vegas. The photos don't help with that, because the photos don't show where his protection officers were at the time. (There has been no suggestion that the naked girl in the photos was assigned to protect Harry, but if she was, she seems to be standing in the wrong place.)

Critics of The Sun's decision say there is no public interest in seeing these photos. I am inclined to agree with that. But it's simply not

good enough. The photos are widely available on the internet. Not on some obscure site that one might find if one was lucky or really clever with a search engine. The photos are on Time magazine and USA Today, with datelines suggesting they have been there since Wednesday (ie two days before The Sun published). Not only that, pretty much all the news media have reported the name of the Hollywood site which initially exposed the pictures (see Postscript below) – many of the media helpfully providing a direct link to the site (or unhelpfully, depending on your point of view).

The question has moved on. The events may have been private when they occurred and even when they were photographed. But did they lose their privacy once they became publicly available?

Anyone familiar with regulatory policy will recognise an elephant trap here. If we say that privacy in a matter exists only for so long as the matter remains unpublished (or not widely published – whatever that might mean), we create an incentive for photographers to take photos of precisely the sort that the Editors' Code is clearly trying to prevent. All we have done is impose an initial hurdle that the photos need to be already out there via someone else's website before our Editors can (re-)publish. That is not good policy-making.

But until editors in overseas territories adopt a similar privacy policy to UK editors, the incentive to take photographs will still exist, at least in relation to people with an international reputation. And unless the Editors' Code is extended to banning even the mention of the names of sites where such photos can be found, the rule here in the UK is pointless.

In most circumstances, it is no defence to wrongdoing to say that it is widely practised by others, so we might as well do so. Everyone who joined in the riots last summer "because lots of other people were doing it" added to the violence, the damage and the difficulty in bringing matters back under control. It is right that they be punished. But repeating a secret that is no longer a secret (or re-publishing a photo that is electronically accessible to anyone who wants to see it) seems to add nothing to the harm. The harm was done by the initial publishers earlier in the week and by those who reported the site to the wider world.

I don't like what The Sun has done. But if we are serious about protecting privacy, it is insufficient to blame them for breaking the rule. We need to make the current rule a lot tougher. And that means condemning, equally, all those editors who pointed the British public to the photos (or gave enough information to facilitate a search).

In November 2012, The Leveson Report was published. Within 24 hours, the key battle-ground was already very clear. Indeed, it looked like the argument might already have been lost before before it had even properly started. As it turned out, things were not quite that bad. But, as subsequent events have demonstrated (see, for example, page 19 of this book), things were not all that good either. As of September 2017, the battle is still ongoing.

Leveson – Is the battle already lost?

What are the chances of being able to write a 2,000 page report on press regulation and walk away with all-party support (or even all-Party support)? Plainly, not very high. This final stage of the inquiry could have been – should have been – handled differently.

Leveson has proposed an independent regulator of the press, set up by the press themselves. The focus of the storm swirling around this recommendation is the addition of a statutory body to validate the new regulator (on an ongoing basis) and to act as a backstop regulator of any press bodies who decline to join the system.

The judicial model is to make findings of fact and reach a judgement at the same time. The regulatory model is different.

Having proposed this very idea myself several months ago, I am obviously a big supporter of it now. But, after months of increasingly strident voices speaking out against any form of statutory intervention, was it reasonable to hope that the anti-statute lobby would suddenly drop their objections when they saw the nature of the proposed statute? It appears not.

The Prime Minister has described legislation as "a Rubicon " he refuses to cross. In doing so, he has made it very difficult for himself to change his mind. Historically, of course, the famous crossing of the Rubicon was by Julius Caesar. In Caesar's case, it was a deliberate message, to be interpreted as an act of war. Leveson's proposal is intended as an act of peace. But peaceful intentions aren't always enough to avert a war. Something more was needed.

The problem is, I think, with the process of problem-solving. The judicial model is to make findings of fact and reach a judgement (or, in this case, a recommendation) at one and the same time. The regulatory model is different: it is to publish the findings of fact before moving on to discuss remedies.

Yesterday's report revealed Leveson's conclusions that, amongst other things, the press had wreaked havoc with the lives of innocent people and that politicians and the press had been too close (whilst also clearing Jeremy Hunt of bias over the BSkyB bid). There was plenty in the report to form a backdrop to discussions over a way forward; to identify options; to draw out the

objections and then figure out how to sidestep them. Instead, the proposals were developed in secret.

For example, by suggesting Ofcom as the body to validate the new system and act as a backstop regulator, Leveson gave the Prime Minister an opportunity (which he took) to make the cheap point that the chair of Ofcom is a government appointment. But it is no more than a debating point which sounds good in the House. The new body doesn't have to be Ofcom (or a new mechanism could be found to appoint its chair). This is the sort of detail that could have been ironed out in advance with more open discussion about the remedy once the findings of fact had been laid before us.

As matters stand on the morning after the afternoon before, it is looking distinctly possible that David Cameron has declared a key part of the proposals to be toast. It didn't have to be that way. I still hope, fervently, that a way out of the impasse can be found.

"Plebgate" taught us that, if certain elements of the police are out to get a public figure, it can help to have some of the press onside. "Millergate" taught us that, if the press is out to get a public figure - say, for example, the politician in charge of implementing press regulation - well, that's the end of them, then. Pour encourager les autres.

Has the press done to Miller what police did to Mitchell?

It is not that long ago that the press were pointing to Andrew Mitchell MP and asking: "**If the police can do that to a government minister, what chance the rest of us.**" I now find myself asking whether we shouldn't just substitute "press" for "police" and "Maria Miller" for "Andrew Mitchell".

As someone who has **written supportively** about the Leveson proposals and recently given advice to an emerging **Leveson-compliant regulator**, I haven't been all that impressed with Maria Miller's line on press regulation. Last year, she told Andrew Marr the Leveson arrangements could be **"redundant"**. Soon after, **the Prime Minister corrected her**.

The press use different techniques from the police. But they usually get their man – or woman

But there seems to be a huge gap between what has recently been written about **Mrs Miller and her expense claims** and what might constitute fair comment or accurate reporting. Part of the problem lies with the MPs who passed judgment on Mrs Miller. Their **report** runs to over 25 pages with a further 90 pages of appendices but, crucially, no executive summary. As a result, misunderstandings and misrepresentations abound which, dare I say it, the press have actively chosen to exacerbate.

MPs overruled the findings of the Parliamentary Commissioner

It is said that a **"secretive committee of MPs"** overruled the findings of the Parliamentary Commissioner for Standards. Since the Committee in question published their decision and their reasons in the aforementioned report, it is difficult to see how the description "secretive" can be justified.

The Commissioner's role is to **investigate complaints when they are made**. It would go against all known standards of natural justice if the Commissioner were to act as investigator, prosecutor, judge and jury. In our system of justice, an accused person can expect to be tried by a jury of their peers. And that is what Parliament does.

There is a case to be made that MPs take the phrase "jury of their peers" a little too far. As any profession knows, it doesn't look good to the outside world if complaints and disciplinary matters are looked

at only from within the closed club of practitioners. It is increasingly common for independent lay members to sit on assessment panels, often forming a majority of the panel and/or taking the chair.

The House of Commons process is somewhat archaic. But that is hardly the fault of the Culture Secretary.

MPs reduced the amount Mrs Miller was required to repay by 85%

MPs are permitted to re-claim the interest they pay when mortgaging a second home for parliamentary duties. The Commissioner found that Mrs Miller had over-claimed on her allowable mortgage interest by some £44,000. It is said that the Standards Committee reduced the repayment to £5,800. In fact, they reduced it to zero. This was because the MPs found the Commissioner to have been quite wrong in her findings. The £5,800 was a quite separate matter (discussed below).

Many people take out a second mortgage on their home in order to finance expenses which may be quite unrelated to their property. Plainly, if MPs raise finance in that way, the mortgage interest should not become a reclaimable expense. The Commissioner held that Mrs Miller had broken the rules on this. But the facts were rather different. Mrs Miller bought the house in question, with a mortgage, before she became an MP. Subsequently, she took out a further mortgage to re-modernise the property, again before she was an MP.

Once she was elected to a constituency outside London, she became entitled to reclaim mortgage interest on the London property (or on the other property but not, of course, on both). She made such a claim. The Commissioner deemed that she should claim only on the original amount of the mortgage, not the costs of bringing the home up to modern standards. The Standards Committee rejected this.

The Standards Committee decided that the rule was intended to disallow claims made against borrowings made *after* one becomes an MP and not to discriminate against MPs who had made financing decisions before they entered the House. So the £44,000 repayment wasn't reduced to £5,800. It was struck out.

Mrs Miller was using public money to house her parents

In 2009, the former Labour MP and minister, Tony McNulty, was found to have **claimed £60,000 of expenses on his parents' home**. It appeared to some that Maria Miller had done the same thing. This was the substance of the original complaint against Mrs Miller, lodged by Labour MP, John Mann. In reality, the two cases had very little in common, other than the fact that McNulty and Miller both have parents.

The Commissioner rejected this complaint. Her findings are that Mrs Miller's parents went to live with Mrs Miller in 1996, almost a decade before she became an MP at the 2005 election. The Commissioner describes Mrs Miller as having "caring responsibilities" for her parents who are "financially dependent" on her. The living arrangements were quite plainly not created in order to secure public funding for her parents, nor did they have that effect once Mrs Miller became an MP.

Mrs Miller's actual housing costs exceeded the maximum claimable and remained above the maximum when scaled down by 2/7ths to reflect the proportion relating to her parents. So she was entitled to the maximum amount regardless of whether her parents lived with her or not.

Mrs Miller was required to repay £5,800

And so to the £5,800. The Standards Committee devote just five paragraphs out of 70 to this item and they are less than fully clear. The position seems to be as follows.

In 2008/09, the fourth year for which Mrs Miller was making expense claims as an MP, interest rates fell. All other things being equal, Mrs Miller's claim for interest reimbursement should have fallen too. But all other things were not equal.

Mrs Miller was, as mentioned above, not reclaiming all of the interest, because it exceeded the maximum reclaimable. Moreover, by this time, she had increased the mortgage on her home on two separate occasions. She was not allowed to claim for the related increases in interest and she did not do so.

So when the interest rate reductions kicked in, Mrs Miller was reclaiming rather less than the full amount of the interest that she paid. When her interest payments fell, the payments still remained above the limit. It is when the interest is scaled down to reflect the proportion of the loan which pre-dated her election and by 2/7ths to reflect the proportion relevant to her parents that the amount fell £5,800 below the maximum permitted.

Mrs Miller failed to spot this at the time. Hence the required repayment.

The 30-second apology was not good enough

At the end of the report in which they had cleared Mrs Miller of the two original allegations made against her and, in doing so, overturned the Commissioner's major finding, the Standards Committee described Mrs Miller's behaviour during the process as "legalistic". This was not meant as a compliment. They ordered her to apologise for adopting this attitude.

For a group of individuals whose primary role is to make the laws of the land, it is an odd choice of a word intended to convey criticism.

But that is the word they chose.

The **apology** has been timed at 30 seconds and is said by many to be inadequate. The press have made much of this. The same press who **ridiculed Nick Clegg** for his much longer apology in 2012 over the tuition fees U-turn.

In my lifetime, I have received (and made) a fair few apologies. I doubt that many of them have exceeded 30 seconds. You can tell when an apology is heart-felt and it's not by reference to its length.

The reality is that a forced apology is unlikely to be sincere, especially when given by an MP who has been cleared of the two quite serious allegations made against her. I have no doubt that the press would have seized on the apology no matter how it had been given. Have we not seen before how a fulsome apology is described as **"forced to grovel"**?

Mrs Miller threatened the press in an attempt to prevent publication

Having failed to secure the immediate resignation of Mrs Miller, the Daily Telegraph **alleged** that, back in 2012, her aides had threatened the newspaper in an attempt to prevent publication of the expenses story.

Mrs Miller's office denied the allegations, saying they were pointing out to a journalist that she was harassing the MP's elderly parents (one of whom was particularly vulnerable at the time). The **transcript of the conversation** supports that.

If a cabinet minister who is in regular meetings with editors on government business cannot get fair treatment from the press for herself and her parents, what chance everyone else? The press use different techniques from the police, but they usually get their man (or woman) with results that can be just as devastating.

Turning their backs on a central tenet of the Leveson recommendations, the mainstream press created IPSO, which they said would be "the toughest regulator anywhere in the developed world". Yeah, right. In much the same way that the audience for Donald Trump's inauguration was "the largest audience ever ... period."

Moses and the Culture Secretary

It has been a strange week for those of us who took a keen interest in press regulation as a result of the **Leveson Inquiry**.

On Tuesday evening, Sir Alan Moses, chairman of the **Independent Press Standards Organisation**, gave the inaugural lecture named in honour of that body, in which he spoke scathingly of those who challenge the effectiveness of his organisation, witheringly of the alternative press regulator and irreverently of a new organisation which has been mandated by Royal Charter to give an official seal of approval to those press regulators which, unlike his own, comply with a set of standards mapped-out by Lord Justice Leveson.

> The press were arguing that there wasn't anything newsworthy in the story they were now all publishing

By Wednesday morning, supporters of IPSO were popping-up on TV and radio news programmes, asking us to believe that IPSO's regulatory regime had been the catalyst for self-restraint amongst print editors. The trigger for this claim was not the Moses lecture, but the revelation on BBC's *Newsnight* that the print media had failed to publish a story about an embarrassment in the love life of Cabinet Minister, John Whittingdale.

So, was Leveson wrong after all? Has the press – with IPSO's help – proved themselves more than able to mend their ways without the steps that Lord Justice Leveson recommended?

In a word, no. We have been treated to bellyful of cant from news publishers and those – directly or indirectly – on their payroll.

The central tenet of Sir Alan Moses's **lecture** was that the only way one can impose and enforce obligations on the press is through a legislated licensing system, "by saying you must not publish save under licence." Well, Moses, that's a load of bulrush.

Statutory regulation exists in many forms without imposing a licensing regime. Telecommunications companies **haven't needed a licence since 2003**, but are still regulated by **Ofcom**. Employers don't require a licence to take on staff, but they must comply with a mass of **employment regulation**. And there are **food regulations** aplenty, but no one needs a licence to cook.

Building on his false premise, Sir Alan developed the argument that the only way to introduce press regulation was if the publishers "had [been] persuaded to do so." This led him to conclude that press regulation has to be a matter of choice for publishers – a choice as to those obligations to which they would submit and those which they would reject. "In reality," he said, "it was for the press to say how far they were prepared to go."

And because the press did exactly that – decide how far they would go and how little that would be – Sir Alan has convinced himself that the press is "doing *precisely* what [Leveson] wanted."

Of course, it is no such thing. The independent Media Standards Trust carried out a thorough **analysis** of IPSO and found that:

> "instead of delivering 'all the key elements Lord Justice Leveson called for in his report', as … IPSO has claimed, IPSO satisfies only 12 of the 38 Leveson **recommendations** that are needed for a press self-regulator to be independent and effective". [hyperlink added]

Since that statement was made, IPSO has made some **changes**, but not enough to make more than a **dent** in the shortfall between their rules and Leveson's recommendation.

Leveson had been clever enough to anticipate the press's unwillingness. He had recommended legal cost incentives to be imposed on publishers who do not subscribe to a regulator which met the standards he set out – incentives which the press have been most anxious to see dispensed with and which Sir Alan simply ignored.

So, if Sir Alan Moses failed to convince with his argument, what about the editors and former editors who popped-up the next morning to praise the press for their restraint in not disclosing John Whittingdale's embarrassing liaison before he was appointed to the Cabinet and put in charge of the final steps required to implement the post-Leveson settlement?

Their argument was utterly undermined within hours when the papers did the exact opposite and reported the embarrassing details. Several, such as the Daily Mirror, managed to do so twice: once as news relating to the embarrassing story and a second time under the guise of a story that the MP was to face a "sleaze probe". Others in the press made the topic the subject of a leading article in addition to a news story, attempting to argue that there wasn't actually anything newsworthy in the story they were now all publishing.

The leading campaigners against press intrusion, **Hacked Off**, found themselves walking a tightrope. Intrusion into an MP's private life is no part of their agenda, but they have been questioning why

Whittingdale hasn't carried out a crucial duty relating to press regulation. As Culture Secretary, it fell to him, last November, to issue the necessary "**commencement orders**" to bring into force the final link in the post-Leveson legislation – the very cost incentives which were central to the whole Leveson settlement. But Whittingdale didn't do his job. He announced last October that he was "not convinced" of the need to implement the legislation enacted by parliament (with cross-party support). He was unilaterally reversing a decision of Parliament. Hacked Off were **not happy**.

If, at the time of Whittingdale's decision, the press were holding back on an embarrassing story, he had an obvious conflict of interest – or, at the very least, the perception of one. Before the story broke nationally, Hacked Off **questioned whether his position had been compromised**. In doing so, they revealed no details of the embarrassing facts, but they could be criticised for giving readers sufficient information to enable the facts to be found online.

When *Newsnight* took the story to the nation, Hacked Off was asked whether Whittingdale's U-turn on policy should be called into doubt. They were not slow to **say that it should**. It was all too easy for opponents of the Leveson proposals to spin this as Hacked Off criticising the print media for failing to publish an intrusive story about Whittingdale, even though that wasn't actually Hacked Off's message.

Suddenly, it was hard to find a piece about Hacked Off that wasn't accusing them of hypocrisy and describing the Whittingdale story as a non-story … although that didn't stop the press from using the attack on Hacked Off as an excuse to recite the Whittingdale story yet again.

The need for press regulation worthy of the name has never been more clear.

It's 2017 and the battle for the regulatory regime proposed by Leveson goes on. The "research" and the "detailed submission" referred to (and linked to) in the penultimate paragraph below are quite damning of the press's behaviour on this issue.

A pressing need for regulation …

In 2012, when I clicked on a link in order to watch a family friend appear in front of the **Leveson Inquiry**, I little realised just how much the subject of press regulation would get under my skin. Sometimes in a **good way**. But, all too often, it's more like **formication**.

I **wrote about Leveson** at the time. In the five years that have passed since then, I have attended several dozen seminars on the subject of press conduct, **publicly castigated** the chairman of one press regulator and privately debated with the **chairman of another**.

Along the way, I have met a number of journalists who would like to see a change in the way the industry conducts itself and many of the folk at Hacked Off who are campaigning to achieve that outcome. Contrary to the impression given in the press, Hacked Off is not a collection of luvvies. They are mainly **lawyers, journalists and victims of press abuse** (something which the Daily Mail may try to claim it has acknowledged **here**).

It is beyond irony that those very freedoms are being used to flood the public with misinformation in a campaign to get the government to bend to the publishers' will.

In recent weeks, the press has **bombarded its readers** with warnings that the Government is threatening to destroy centuries of press freedom by imposing financial penalties on publishers which do not sign-up to **IMPRESS**, the "state regulator" (no, actually it's not – it's just a regulator). These warnings are utterly misleading on so many levels. I have published my brief **research** into the deception and made a more **detailed submission** to the Department for Culture Media and Sport and the Home Office.

We expect our press to inform the public and hold power to account. That is why press freedom is valued so highly. It is beyond irony that those very freedoms are being used to flood the public with misinformation in a campaign to get the government to bend to the publishers' will. It's just another demonstration of how much our press needs a regulator that lives up to **Leveson**.

Press freedom ... sans frontieres.

Reporters Sans Frontieres: not my idea of a knock out

I was disappointed to **read recently** that the UK has dropped to 40th place in the **World Press Freedom Index**. Among the 39 countries which are said to offer the press greater freedom than the UK are South Africa, Surinam and Namibia, according to the ranking body **Reporters Sans Frontieres**. But then I noticed that the UK's ranking was three places ahead of the USA which guarantees **freedom of the press** under its constitution. What's going on here?

It seems ironic that the World Press Freedom Index should be so lacking in transparency

Naturally, I followed through with some research into the ranking mechanism. It is **detailed and, in places, mathematical**, which gives the impression of a well thought-out, objective methodology. Or maybe not. At its core, is a **series of questions**, many of which are highly subjective.

Take, for example, Question B6, which asks the respondent to rate from 1 to 10: "How easy is it for authorities to force the firing" of a journalist? The lower the score, the higher the supposed freedom. The two ends of the scale are 1 for powerless and 10 for fire at will. But there appears to be no guidance on how the intermediate scores should be assigned in an objective way.

How can the respondent even begin to answer the question unless the evidence trail from the sacking to the authorities (if they were involved) is transparent? It requires a significant degree of freedom of information to know that sackings are at the behest of the authorities, rather than merely suspecting that they are?

Elsewhere in the questionnaire, we find subjectivity combined with ambiguity. For example, Question D7 asks the respondent to rank from 1 to 10: "Do journalists practise self-censorship for fear of … civil law suits or criminal prosecution". Quite apart from the apparent absence of guidance on how to avoid subjectivity in the scoring, the question fails to distinguish between the withholding of true stories and the withholding of false (or unchecked) stories.

The distinction is important. If the press are deterred from publishing *true* stories, because the targets of the story can threaten costly litigation, that is a problem. Think of Jimmy Savile. But if a well-

functioning law of defamation is encouraging the press to censor themselves from publishing lies or discourages them from being reckless about whether there is any truth in the matters reported on, that would be a good thing. The index apparently rates the latter as a negative.

This is a particularly interesting question for the UK, currently, where the press has campaigned so vociferously against **section 40 of the Crime and Courts Act 2013**. Some argue that this law would remove the fear of civil law suits by protecting the press from the oppressive costs of civil law suits (so long as the story is true), whilst others – most notably the publishers themselves – argue that section 40 is attack on press freedom. At a time of such debate, who should be the arbiter of the correct score for the UK? Certainly not the press themselves who have **demonstrated** that they cannot be trusted to tell the truth about this matter.

I was particularly intrigued by Question D11, which asks: “How concentrated is media power?” Clearly a score of 10 (denoting a single owner for all media) reveals a lot about the absence of media freedom. But is it right to assign a score of 1 (the most freedom) to a country in which each owner has just one publication?

One publication per owner certainly indicates diversity, but that isn’t the same as freedom. Consider a country like the UK where there is a fair degree of concentration within a few owners. Does that concentration really lead to a *lowering* of press freedom? Is it not the case that the scale of media ownership by certain publishers gives them a power which adds to their freedom, rather than constraining it? If our press weren’t as powerful as they currently are, would they, for example, have been able to resist section 40 and **Leveson 2**?

It would be interesting to know the rationale for the framing of the questions and for assigning scores. It could also be very informative to see the individual scores assigned to individual countries, question by question. All I have found on the RSF site is **very high level groupings**. I have contacted the RSF Secretariat (twice) to ask for more information and inviting a response to the points underpinning this article. I have received no reply. It seems ironic that Reporters Sans Frontieres (strapline “for freedom of information”) should be operating a World Press Freedom Index that is so lacking in transparency.