

## Letter to MPs and Peers: rebuttal

### Investigatory Powers (IP) Bill House Of Commons Debate 15<sup>th</sup> November & House of Lords Debate 16<sup>th</sup> November on Baroness Hollins' Amendment (The Proposal)

I am the Editor in Chief of Trinity Mirror South East and Get West London and the Uxbridge Gazette, the Ealing Gazette, the Gazette and the Staines and Hounslow Chronicle Informer newspapers come under my remit.

1. The author represents Trinity Mirror: a large publishing body which owns local newspapers across the country and several national publications. This is not the independent local press – it is a very wealthy and powerful body.
2. TMG have been attacked many times by the NUJ and other journalists' bodies for cutting jobs at local newspapers and ultimately closing titles, as well as failures of corporate governance.
3. They have chosen to hire and pay expensive lawyers vast sums to defend hacking claims in the High Court in London, rather than hire and pay reporters to staff local newspapers.
4. Phone hacking occurred at TMG to a far greater extent than any other newspaper (including even the News of the World). Instead of properly investigating it and admitting it when first alleged in 2007 and 2012, TMG spent years denying it and covering it up. This ended up costing them millions of pounds in court costs in judgements in 2013 and 2015.
5. If they had created or joined a recognised regulator the hundreds of hacking claims they face could be settled in low cost arbitration. Instead they have chosen to pay tens of millions of pounds to expensive media lawyers on both sides over 5 years. £50 million has been the price of TMG rejecting Leveson; money that could have been spent on journalists' salaries.
6. The section 40 penalties would have made no difference to TMG as they have lost every single claim, with adverse costs awards agreed by them in almost every case. The section 40 benefits would have saved them millions upon millions.
7. If TMG editors are worried about job losses from court costs they should be condemning their Directors for the cover-ups and the wasted money paying lawyers, and for not embracing the Leveson system.

I refer to the Proposal that, if implemented, would mean that any relevant publication that is not a member of a Recognized regulator (and their arbitration scheme) would have to pay ALL the costs of Court proceedings for alleged interception of communications even if that newspaper won the case and was found not to have been involved in any wrongdoing whatsoever.

- No, the proposal means the opposite.
- Leveson's system offers an arbitration service which is cheaper than court action for both parties. It is also quicker, and more accessible.
- If a newspaper chooses not to take the cheaper option of low-cost arbitration, then under s40 and the amendment they are liable for both sides costs – because they have forced the case into court. But under the current arrangements, TMG has been found liable for – or agreed to pay - both sides costs in every one of over one hundred hacking claims (except for one case where some of the costs were split). So, neither s40 nor the amendment would have had any effect on the position, but would have saved the company millions of pounds.

I wish to express my deep concern as to the potential impact of the Proposal on the publications for which I am responsible. My concern also extends to the potential activation of s.40 of the Crime And Courts Act, which the Proposal echoes.

The implementation of either or both Clauses could have a devastating impact on the local press, not only financially but also could have profound restrictions on our ability to investigate and hold to account those whose behaviour deserves to be exposed in the public interest.

Far from it.

1. See above. Local papers are paying the price for the nationals in the group refusing to join a recognised regulator and instead are taking huge losses spread throughout the group.
2. Baroness Hollins' amendment applies only to phone hacking. Local newspapers have not been accused of wide-spread phone hacking, so this measure would not apply directly to them.
3. If newspapers sign up to independent regulation under the Leveson system, then not only can they use low-cost arbitration to resolve claims – which is far better for them financially and, consequently, from a free speech perspective, as it reduces the risk of “chilling” by wealthy litigants – but section 40 works the other way, so that litigants who refuse to use the arbitration system on offer will be liable for their own costs, win or lose the case. This is far better than the status quo for newspapers.
4. Several independent local newspapers have already signed up to a proper regulator, IMPRESS, which is recognised under the Leveson system. They are relying on section 40 commencement so that they can be protected from litigious bullies. Whereas newspapers owned by Trinity Mirror can always dip into the company's financial resources (albeit, precedence suggests that Trinity Mirror would sooner use company finances to fight hopeless legal battles for their national titles), local independent publishers do not have that luxury.

I would respectfully ask you, as you consider your decision for the next vote on November 16<sup>th</sup>, to take into account the particular position of the local press.

As above, the local press has only to gain from this provision. Indeed, many of the independent local press are relying on it.

Lord Justice Leveson concluded in his report that local newspapers had not been accused of being involved in unlawful or illegal acts and, in effect, should not be punished for the actions of others (please see the relevant extracts from his Report annexed to this letter)

That is part of why his provisions are only beneficial to the local press (although it should be noted that he criticized other behaviours of some elements of the local press).

There are four principle reasons why we believe implementation of the Proposal (and indeed section 40 of CACA) would prejudice the news media in general and the local press in particular:-

- 1) Publications could be forced to abandon legitimate investigations into the behaviour of and/or stories about the wealthy and powerful under threat of paying all the costs of Court proceedings regardless of the outcome. The way the Proposal is set out means that the claimant would have his/ her costs paid by the newspaper even if the claim had no merit.

But it is easy to avoid this – sign up to a Leveson-audited regulator. Then, you will not only retain the status quo, but an improvement on it, as wealthy litigants will be forced to use arbitration – cheaper for the press – or pay *their own* legal costs, *win or lose*.

It would not apply if the claim had no merit. The text of the statute makes this clear.

By way of example, if, without breaking the law, a newspaper was shown emails legitimately in the public interest from a confidential source exposing a claimant's wrongdoing, the claimant could make an unmeritorious accusation that the emails were either illegally intercepted or phone hacking was engaged in order to extract an apology or the abandonment of the story.

The claimant would need to advance evidence that the claimant was hacked before being able to bring a claim that survived to a costs award. Without that the case would be struck out and costs awarded accordingly.

Even if it was acting completely lawfully, the newspaper would have a choice of either backing away from the story or paying a huge costs bill, particularly if there was a confidential source to protect who would not be able to give evidence as to the provenance of the material, for fear of losing their job or worse. This would have an enormous chilling effect on the duty to hold wrongdoers to account, particularly if the purpose of the threat was to block unwanted criticism even if that criticism was justified.

This is wrong, for reasons set out above. Even the man who propagated this nonsense, Roy Greenslade, has backtracked on it.

If a claimant had valid evidenced which was arguable but ultimately wrong then currently they can bring a case, and even they lose seek to leave the newspaper out of pocket. Under section 40 that cannot happen if the newspaper joins a recognised regulator.

It has been said that local newspapers should not worry because they have not been found to "hack" phones or act illegally and therefore will not be sued and that our concerns are a "smokescreen". I believe that misses the point. We are concerned about the misuse of the provisions of the Proposal and I believe that these unintended potential outcomes have been overlooked.

No-one has ventured any evidence as to how the amendment could be "misused". It clearly applies to illegal interception of communications. Section 40-style costs incentives were proposed by Sir Brian Leveson – a senior judge, and enacted - after due consideration - by Parliament.

Section 40 and indeed my amendment both contain a provision to ensure that judges have discretion.

- 2) S.40 of CACA is subject to a ten week consultation recently launched by the Culture Secretary. This consultation includes the canvassing of views of interested parties as to how to proceed with s.40 of CACA. One potential outcome from the consultation is that s.40 could be repealed in its entirety. If this happens, the inclusion of the Proposal onto the Statute Book would be an anomaly given that Parliament would have decided that it would be unfair to punish the press in one piece of legislation but not in another virtually identical scenario. Given that there is uncertainty as to the future of s.40 of CACA, any discussion as to the implementation of the Proposal should be left to another time and the IP Bill should be allowed to continue to make its passage into legislation without interruption.

The consultation itself is an attack on free speech, as it reruns the questions of the Leveson Inquiry on regulation of the press, but substitutes a conflicted politician (the Secretary of State) for an independent judge.

The legislation, as explained above, does not “punish the press” but provides an incentive to the industry to properly regulate themselves.

Legislation is not anomalous. If the Government decided to yield to the demands of the press industry lobby and return to the days of the PCC, it could try to persuade Parliament to repeal bit pieces of statute. These are desperately weak arguments.

We, along with approximately 2500 other publications and websites are regulated by IPSO and contractually will continue to be regulated by contract for at least another five years.

There is nothing prevent regulators signing up to IMPRESS as well, until the contract with IPSO runs out.

There is nothing preventing IPSO changing its rules to become a proper regulator – except for the position of their members.

Public policy should not be affected by the private contractual arrangements of companies designed to create “facts on the ground”.

IPSO is an independent press regulator with teeth, which upholds the Editors Code of Practice, deals with complaints about its breach, requires the prominent publication of corrections and adverse adjudications, and monitors and enforces standards, with sanctions including power to fine up to £1 million.

IPSO has:

1. Launched zero investigations
2. Issued zero fines, let alone ones of £1m
3. No control over the Standards Code that it purports to uphold; which is under the control of newspaper editors
4. It has no “teeth” – it cannot require an apology; and it cannot prevent a newspaper rejecting its authority or victimising those who complain
5. Never required a correction or a published adjudication with equal prominence to the code breach for any prominent breach (such as one on the front page)
6. It has not provided an affordable arbitration scheme for claimants which its members would be required to offer

However, it has:

7. Issued several letters to newspapers calling for section 40 to be abandoned
8. Made media appearances calling for s40 to be abandoned

So, it is less a “regulator”, and more a lobbying organisation. It is controlled by wealthy publishers via the RFC, which controls its rules, finances and code.

In these respects it is just like the PCC.

Local newspapers together with the vast majority of the industry have publicly demonstrated their commitment to upholding the highest journalistic standards by joining IPSO and committing to abide by the Editors’ Code of Practice. It would be grossly unfair and an attack on basic Freedom of Speech rights to punish those who have chosen to be regulated by an established body along with the overwhelming majority of publishers

instead of joining to an untested organisation (ultimately financed by one person) with a tiny membership including hyperlocal publications and microbusinesses.

By joining the sham-regulator IPSO (which is a near clone of the PCC) newspapers have merely demonstrated their wish to reject the recommendations of the Leveson Inquiry. There is no evidence that newspapers abide by the code any more than previously as there is no incentive for them to do so.

As set out above, section 40 is not an “attack on basic Freedom of Speech rights” but in fact offers free speech protections for those who choose to join a recognised regulator.

IMPRESS, the Leveson-audited regulator, is referred to here as “untested”. In fact, it has been tested – by the independent Press Recognition Panel, which found it passed Leveson’s tests for independence and effectiveness. IPSO has not been tested and, like the PCC before it, would fail Leveson’s tests.

One cannot attack IMPRESS for its funding being ultimately from one person, when that person has absolutely no influence on its rules and operations, while defending IPSO which is directly funded by newspapers and, crucially, is controlled by the wealthy newspaper groups through the Regulatory Funding Company.

4) Local papers would also be vulnerable to spurious complaints from disgruntled subjects of press reports including convicted criminals and those accused of unfair consumer practices, who could begin legal proceedings, safe in the knowledge that they would not be liable for any costs even if they lost and therefore could exert economic pressure upon the newspaper to apologise or pay damages to avoid a court case for which the newspaper would have to pay all the costs.

As above, such an abuse of the process would be struck out, and under the statute the judge retains discretion over final costs awards, where the interests of justice require it.

I am most grateful that you have given this issue your consideration and I would respectfully ask you to take the above matters into account when you vote next week. A vote in favour of the amendment could have an enormous negative impact on the local press.

Yours sincerely



Ceri Gould

Editor in Chief

Trinity Mirror South East

**An Inquiry into the Culture, Practices and Ethics of the Press**

## **The Rt Hon Lord Justice Leveson. November 2012**

### **Executive Summary and Recommendations**

#### **The commercial background para. 19 page 6**

19. As to the commercial problems facing newspapers, I must make a special point about Britain's regional newspapers. In one sense, they are less affected by the global availability of the biggest news stories but their contribution to local life is truly without parallel. Supported by advertisements (and, in particular, local property, employment, motor and personal), this source of income is increasingly migrating to the internet; local councils are producing local newsletters and therefore making less use of their local papers. Many are no longer financially viable and they are all under enormous pressure as they strive to re-write the business model necessary for survival. Yet their demise would be a huge setback for communities (where they report on local politics, occurrences in the local courts, local events, local sports and the like) and would be a real loss for our democracy. Although accuracy and similar complaints are made against local newspapers, the criticisms of culture, practices and ethics of the press that have been raised in this Inquiry do not affect them: on the contrary, they have been much praised. The problem surrounding their preservation is not within the Terms of Reference of the Inquiry but I am very conscious of the need to be mindful of their position as I consider the wider picture.

Indeed – hence section 40 – a new protection for the local press.

Here is Leveson's recommendation:

*26. It should be open any subscriber to a recognised regulatory body to rely on the fact of such membership and on the opportunity it provides for the claimant to use a fair, fast and inexpensive arbitration service. It could request the court to encourage the use of that system of arbitration and, equally, to have regard to the availability of the arbitration system when considering claims for costs incurred by a claimant who could have used the arbitration service. On the issue of costs, it should equally be open to a claimant to rely on failure by a newspaper to subscribe to the regulator thereby depriving him or her of access to a fair, fast and inexpensive arbitration service. Where that is the case, in the exercise of its discretion, the court could take the view that, even where the defendant is successful, absent unreasonable or vexatious conduct on the part of the claimant, it would be inappropriate for the claimant to be expected to pay the costs incurred in defending the action.*

#### **Volume 1 Part C The Press Chapter 2 The press: history, governance structures and finances**

##### **Para. 10 The regional press p.152**

10.12 In relation to regional and local newspapers, I do not make a specific recommendation but I suggest that the Government should look urgently as what action it might be able take to help safeguard the ongoing viability of this much valued and important part of the British press. It is clear to me that local, high-quality and trusted newspapers are good for our communities, our identity and our democracy and play an important social role. However, this issue has not been covered in any detail by the Inquiry and, although the extent and nature of the problem has been made clear, the Inquiry has heard no evidence as to how it might be addressed. I recognise that there is no simple solution to this issue. I also recognise that many efforts have been made over the years to try to find a solution, and that many of the options for public support that have been canvassed are not appropriate. This does not make the need to find a solution any less urgent. I should also, perhaps, make it clear that the regulatory model proposed later in this Report should not provide an added burden to the regional and local press.

In saying *“I should also, perhaps, make it clear that the regulatory model proposed later in this Report should not provide an added burden to the regional and local press”*, he is saying that it would not. The model proposed not only does not cause added burden, but it in fact lifts a further burden, of the current chilling effect of wealthy litigious bullies.