

Data Protection Bill

Leveson Part 2 amendment

An amendment to the Data Protection Bill to complete the Leveson Inquiry (“Leveson Part Two”) is to be debated in the Lords on Monday May 14th straight after Oral Questions.

This amendment was first passed in the House of Lords (in a different form) but removed by the Government at Committee Stage in the Commons. It was subsequently re-tabled at Report Stage in the Commons by a cross-party group of MPs: Rt Hon Ken Clarke QC (Conservative and Father of the House), Rt Hon Ed Miliband (Lab), Brendan O’Hara (SNP), Christine Jardine (Lib Dem), Liz Saville-Roberts (Plaid Cymru), and Dr Caroline Lucas (Green).

There was a Government rebellion in the Commons, led by former Lord Chancellor Ken Clarke MP and former Attorney General Dominic Grieve MP. All opposition parties voted in support. The Government avoided defeat only by making a deal with the Democratic Unionist Party (whose votes were ultimately the difference) to offer them a non-statutory “named-person review” of press ethics in Northern Ireland, alongside a review by the ICO into data standards in 4 years’ time.

That “review” in Northern Ireland;

- will not have adequate powers (it has no powers to obtain evidence – documentary or from witnesses), and nor will the ICO review;
- is confined only to data standards, rather than wider standards;
- will not cover the criminality, corruption and cover-up that Leveson 2 is designed to investigate;
- is founded on a fabricated construct that Leveson part 1 did not cover Northern Ireland (it did explicitly and took evidence from NI witnesses);
- breaches the cross-party agreement that press inquiries and reviews should be independent of politicians and Government because it is government-sponsored and staffed.

It is also dubious practice in a parliamentary democracy for the Government to win votes on the basis of sweeteners arranged in secretive meetings with another party.

Summary purpose of the Part Two amendment

This amendment would require the Government to establish a public inquiry into (at least) data protection breaches at national newspapers. This would cover most of the remaining Terms of Reference of the Leveson Inquiry which were due to be investigated as “Part Two” of the Inquiry.

Part Two of the Inquiry was cancelled by the Government in March. This was against the express wishes of the Inquiry Chair Sir Brian Leveson, who wrote to the Government saying he “fundamentally disagreed” with this decision. Remarkably, before the Government published this letter, the Culture Secretary told the House of Commons and the public that Sir Brian “agreed with the Government”.

The amendment would include requirements for the Inquiry to consider further points raised by Sir Brian in his letter:

1. To investigate allegations of data protection breaches by social media companies;
2. To investigate how personal data is used in the dissemination of “Fake News”;

3. To consider the adequacy of existing systems of regulation for social media and the press;
4. To review the policy of the police in relation to naming suspects prior to charge or conviction.

How the amendment has change since the Commons Report Stage version

1. To remove any doubt about covering Northern Ireland, the Inquiry must “consider to what extent Part One of the Leveson Inquiry investigated Northern Ireland, and revisit the Terms of Reference of Part One in Northern Ireland as far as necessary”.
2. To address any remaining concerns about a detrimental burden being placed on local newspapers, they are now explicitly excluded from the Inquiry.
3. To address any possible concerns about inhibitions on free expression, there is now an explicit requirement that the Inquiry must balance the privacy rights of individuals with the right to freedom of expression, “while supporting the integrity and freedom of the press, and its independence (including independence from Government), and encouraging the highest ethical and professional standards”.

Why the New Clause should be reinstated to the Bill

This amendment should be reinstated because:

1. Promises to the victims to complete the Inquiry remain unfulfilled.
2. The Commons Report Stage vote showed a strong Commons appetite for completing the Inquiry – the majority of parties voted for it and there was a Government rebellion.
3. Adjustments have been made to meet concerns which have been raised, to make this amendment acceptable to the Commons.
4. It is not a satisfactory way to conduct democracy for the Government to arrange backroom deals with sweeteners for parties to avoid the prospect of losing votes.
5. Parliament will never be able to vote on the deal arranged – the “named-person review” for Northern Ireland – because it is not recognised in statute.

Detailed briefing: why an amendment to complete the Leveson Inquiry is necessary

Mass data protection breaches by the press require a Public Inquiry

1. Operation Motorman, which reported in 2006, found mass data protection breaches committed by or on behalf of newspaper publishers. Private data (such as medical records, phone bills, police records and bank data) were being stolen – harvested rather – on an industrial scale with no public interest justification on behalf of newspapers searching for stories. We now know that phone billing data was being used to hack phones. There were thousands of victims in the period 2000-2003 alone, from just one Private Investigator. The Daily Mirror, Sunday Mirror, the People, the Daily Mail, Mail on Sunday and News of the World were each responsible for many hundreds of thefts.
2. Very few of these stories were public interest investigative journalism, exposing corruption in high places or holding power to account. The data included the private medical records of the victims of crime, and the phone numbers of individuals briefly the subject of press interest. We know that the ex-directory phone number of the Dowlers was obtained from this source, and that the parents of the Soham murder victims were data-mined by the Daily Mail.

3. More evidence has since emerged, for example from [John Ford](#), who “blagged” **personal data, mainly bank and phone account information, for the Sunday Times for 15 years** in a co-ordinated operation known to senior executives. He and other whistle-blowers have testified that the practice of illegal data theft on behalf of national newspapers, with no public interest defence, continues to this day.
4. Dozens of people served prison sentences based on the evidence of Sun and News of the World journalist, [Mazher Mahmood](#) (the “fake sheikh”), **who has been convicted of perverting the course of justice** in one of his so-called stings” and is alleged to have the same thing on scores of occasions.
5. [The Sun](#) has been accused in court hearings of having paid a private investigator over 500 times to steal (by deception) the private medical information of scores of people including terrorism victims and dead children. The Sun have neither admitted nor denied this in their defence.
6. We still do not know who was responsible for authorising such widespread data theft, to what extent it continues to this day, and what regulatory steps are required to safeguard the public from any repetition. This amendment would require the Government to proceed with an inquiry that would establish facts on these matters and make necessary recommendations.

There is already an established inquiry into these matters

7. The Leveson Inquiry was set up to investigate unlawful practices, including precisely these matters, in the second half of that inquiry. The first half finished in 2012, and in both 2013 and again in 2016 the Government promised to proceed with the second half after relevant criminal trials had finished (to avoid any prejudice to those trials). In March 2018, the Government reneged on its promise and announced it would cancel Part Two.
8. Sir Brian Leveson himself was consulted in advance of this decision, as required by the Inquiries Act. Finding that the Terms of Reference of Part Two had still not been met and were in desperate need of investigation, Sir Brian was insistent that the Inquiry must be allowed to finish its work, regardless of whether he was able personally to continue as Chair. He urged the Government to consider widening the Terms of Reference further. His views were disregarded by the Government.
9. The Crossbench Peer Baroness Hollins, who gave evidence to Leveson after her family were targeted, initially brought this amendment to the Lords. She was supported by Earl Attlee, a Conservative peer and former Government Whip. That amendment was passed in the Lords, but has since been removed by Government at committee stage in the Commons. It was re-tabled at Commons Report Stage, but was narrowly defeated despite a Conservative rebellion after the Government and the DUP did a deal, the details of which are unclear.
10. The terms of reference listed in the amendments as debated have matched similar terms of reference of Part Two itself, with a few additions recommended by Sir Brian Leveson himself to satisfy the Government’s stated concern that recent events should be scrutinised. These

include the requirements to consider: the current state of industry regulation, the rise of online-only “Fake News”, the police practice of naming before charge or conviction, and allegations of improper conduct by social media companies in relation to personal data.

11. In addition to the data protection breaches which Part Two was established to investigate, a further list of matters which must be addressed by completion of the inquiry is available here: <http://hackinginquiry.org/wp-content/uploads/2018/01/Unfinished-Business-remaining-Leveson-ToR.pdf>

Press conduct has not improved

There are many examples of press misconduct since Leveson Part One.

For example;

- The intrusion into the life of the partner of the murdered fusilier Lee Rigby, whose personal life was the subject of intrusive, unsolicited and unwanted reporting after Lee’s death;
- The hounding of the victims’ families after the Shoreham air disaster;
- Intrusive reporting after the Paris Bataclan attack; and most recently
- Various cases of intrusive and abusive news-gathering after the Manchester arena bombing.

In respect of the attack in Manchester, which occurred only one year ago, the subsequent Kerslake Review reported that;

“The panel was shocked and dismayed by the accounts of the families of their experience with some of the media.

“To have experienced such intrusive and overbearing behaviour at a time of enormous vulnerability seemed to us to be completely unacceptable.

Victims told Lord Kerslake:

“By far the worst thing was the press”; and “They ... are a disgrace, they don’t take no for an answer, they have a lack of standards and ethics”.

The press remains completely unregulated

IPSO has replaced the PCC and is a very similar model where the rules and constitution are wholly controlled by the industry, who nominate members of the profession to the Board.

IPSO has been running since 2014 and has done:

- No standards investigations in four years (even the PCC managed one)
- No fines of any amount, let alone the £1m ones
- No arbitrations (since 2014)
- No front-page corrections or apologies for front-page breaches.

The IPSO arbitration scheme, despite recent announcements that it is compulsory, remains voluntary to opt into and can be opted out again. Most newspapers have not opted in and access to justice is not available for press victims.

Text of amendment

62A Baroness Hollins to move, as an Amendment to the motion that this House do agree with the Commons in their Amendment 62, at end insert “, and do propose Amendment 62B instead of the words so left out of the Bill”.

62B Insert the following Clause—

“Data protection breaches by national news publishers”

1. The Secretary of State must, within the period of three months beginning with the day on which this Act is passed, establish an inquiry under the Inquiries Act 2005 into allegations of data protection breaches committed by or on behalf of national news publishers and other media organisations.
2. Before setting the terms of reference of and other arrangements for the inquiry the Secretary of State must—
 - a. consult the Scottish Ministers with a view to ensuring, in particular, that the inquiry will consider the separate legal context and other circumstances of Scotland;
 - b. consult Northern Ireland Ministers and members of the Northern Ireland Assembly with a view to ensuring, in particular, that the inquiry will consider the separate legal context and other circumstances of Northern Ireland;
 - c. consult persons appearing to the Secretary of State to represent the interests of victims of data protection breaches committed by, on behalf of or in relation to, national news publishers and other media organisations; and
 - d. consult persons appearing to the Secretary of State to represent the interests of news publishers and other media organisations (having regard in particular to organisations representing journalists).
3. The terms of reference for the inquiry must include requirements—
 - a. to inquire into the extent of unlawful or improper conduct by or on behalf of national news publishers and other organisations within the media in respect of personal data;
 - b. to inquire into the extent of corporate governance and management failures and the role, if any, of politicians, public servants and others in relation to failures to investigate wrongdoing at media organisations within the scope of the inquiry;
 - c. to review the protections and provisions around media coverage of individuals subject to police inquiries, including the policy and practice of naming suspects of crime prior to any relevant charge or conviction;

- d. to investigate the dissemination of information and news, including false news stories, by social media organisations using personal data;
 - e. to consider the adequacy of the current regulatory arrangements and the resources, powers and approach of the Information Commissioner and any other relevant authorities in relation to
 - i. the news publishing industry (except in relation to entities regulated by Ofcom) across all platforms and in the light of experience since 2012;
 - ii. social media companies;
 - f. to make such recommendations as appear to the inquiry to be appropriate for the purpose of ensuring that the privacy rights of individuals are balanced with the right to freedom of expression, while supporting the integrity and freedom of the press, and its independence (including independence from Government), and encouraging the highest ethical and professional standards;
4. In setting the terms of reference for the inquiry the Secretary of State must—
 - a. have regard to the current context of the news, publishing and general media industry;
 - b. set appropriate parameters for determining which allegations are to be considered;
 - c. determine the meaning and scope of references to “national news publishers” and “other media organisations” for the purposes of the inquiry under this section; and
 - d. include exemptions or limitations designed to exclude local and regional publishers from the scope of the inquiry.
 5. Before complying with subsection (4) the Secretary of State must consult the judge or other person whom they intend to invite to chair the inquiry.
 6. The inquiry—
 - (a) may, so far as it considers appropriate, consider evidence given to previous public inquiries;
 - (b) may, so far as it considers appropriate, take account of the findings of and evidence given to previous public inquiries (and the inquiry must consider using this power for the purpose of avoiding the waste of public resources); and
 - (c) must, in particular, consider to what extent previous public inquiries have investigated, and made findings in relation to, events in connection with Northern Ireland within the inquiry's terms of reference, and must take such further evidence and make such further recommendations in respect of those matters as the inquiry considers appropriate.
 7. This section comes into force on the passing of this Act.”