



PRESS FREEDOM IN THE UNITED KINGDOM
MARCH 2014



WAN-IFRA is the global organisation for the world's newspapers and news publishers, with formal representative status at the United Nations, UNESCO and the Council of Europe. The organization groups 18,000 publications, 15,000 online sites and over 3,000 companies in more than 120 countries.

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This report was authored by WAN-IFRA Press Freedom Director Andrew Heslop and is based on meetings held between 15-16 January 2014, notes and observations drafted by mission delegates, and written submissions requested following WAN-IFRA's visit to the United Kingdom. WAN-IFRA's Jessica White provided additional research.

ABOUT WAN-IFRA

The World Association of Newspapers and News Publishers (WAN-IFRA) is the global organisation of the world's press, representing in excess of 18,000 publications, 15,000 online sites and over 3,000 companies in more than 120 countries. The organisation was created by the July 2009 merger of the World Association of Newspapers and IFRA, the research and service organisation for the news publishing industry. The two organisations share a 110-year history as the global representatives of the world's press.

The WAN-IFRA mission is simple: "To be the indispensable partner of newspapers and the entire news publishing industry worldwide, particularly our members, in the defence and promotion of press freedom, quality journalism and editorial integrity, and the development of prosperous businesses and technology."

The organisation serves as a worldwide platform for the exchange of ideas, information and experiences among its members and other participants in the news publishing industry.

As a trade association with a human rights mandate, WAN-IFRA is unique among global industry organisations. Its first objective is the defence and promotion of press freedom and the economic independence of newspapers, which is an essential condition to that freedom.

WAN-IFRA oversees initiatives to ensure that the press' essential role in society is understood and respected. The organisation fights to protect copyright online, to maintain open coverage of newsworthy events, and to help newspaper companies go "green". WAN-IFRA represents the newspaper industry in all international discussions: it has formal associate status at UNESCO, and consultative status at the United Nations and the Council of Europe. It also works closely with the 79 national newspaper associations within its membership.

Visit www.wan-ifra.org/pressfreedom for more information on our press freedom activities.

INTRODUCTION: WHY THE UNITED KINGDOM? WHY NOW?

Concerns over the extent of political involvement in new press regulation coupled with international outrage over the British government's reaction to the Guardian newspaper's coverage of digital surveillance revelations prompted engagement with press freedom issues in the United Kingdom.

WAN-IFRA has closely followed¹ the key events concerning proposals to overhaul press regulation in the United Kingdom, from the exposure of the phone hacking scandal and subsequent Inquiry chaired by Lord Justice Leveson, through to his detailed recommendations and the ensuing debate over the nature of a new system of regulation.

On 24 January 2013, WAN-IFRA put its name to a joint letter² sent to British Prime Minister David Cameron on behalf of the Coordinating Committee of Press Freedom Organisations, an international group representing leading press freedom advocacy organisations. The Committee was concerned by the potential for the introduction of regulation backed by statute for the British press, a response to the recommendations made by the Leveson Inquiry report published on 29 November 2012.

The spectre of political involvement in the reform of British press regulation raised alarm within the industry and amongst press freedom advocacy groups. The ensuing process that led to the final drafting of the Royal Charter on the Self-regulation of the Press, the enactment of the legislation supporting it, and the rejection of an industry-proposed alternative signalled – from the international perspective – a willingness to introduce laws specifically targeting the press in a country otherwise cited as an example of unfettered press freedom.

1. 'Press Freedom Under Attack in the UK - Special Dossier' <http://www.wan-ifra.org/node/84217/>

2. 'Joint Letter to Members of Parliament', 24/01/2013: <http://www.wan-ifra.org/node/99669/>

In the midst of this, the Guardian newspaper published on 5 June 2013 the first of a series of articles based on information provided by former National Security Agency (NSA) contractor, Edward Snowden, uncovering widespread online surveillance of private individuals by the US and UK governments. The subsequent pressure to cease reporting, destroy 'evidence', and shut down debate on the critical issues raised by the newspaper's reporting led to widespread international condemnation of the British government's actions and its negative impact on public interest investigative journalism in the country. Most worrisome was the overall message of silencing the press in the name of national security, a familiar recourse for governments worldwide to take when faced with public scrutiny.

Even the suggestion of a decline in Britain's regard for press freedom risks serious repercussions in other parts of the world. The British legal and political systems continue to be held as examples internationally, remaining particularly influential within Commonwealth countries. Our investigations in the United Kingdom were motivated by the assumption that both the regulation issue and the attacks against the Guardian have direct consequences on this perception.

How changes to the system of press regulation are managed in the UK will have an unparalleled impact beyond its shores. From the international perspective, the issues alleged to be at fault with the reform process required further investigation. The information transmitted to the rest of the world by the vast majority of the UK media has suggested press freedom will suffer as a result of current reforms. Coupled with the UK government's equation of journalism with terrorist activities, its attempts to shut down debate on issues of grave public interest, and clear disregard for the principle of a free press through attacks against the Guardian, a year of unprecedented focus on press freedom issues in a developed democracy culminated in the WAN-IFRA mission to explore whether press freedom has indeed been dealt a blow in the United Kingdom.

TERMS OF REFERENCE

Aims and objectives, circulated ahead of meetings and in press statements prior to the mission:

As part of its two day press freedom fact-finding and advocacy mission to the United Kingdom (15 and 16 January 2014), The World Association of Newspapers and News Publishers (WAN-IFRA) aims to meet with as diverse a range of groups and individuals as possible, to discuss areas of concern regarding the British press and to inform a written report on the situation.

As a global membership organisation, WAN-IFRA is concerned not only about the impact that media regulation has on press freedom in the UK, but also the impact it has internationally. Repressive regimes can use such regulation to justify their own actions. Our visit in January is to hear as many different opinions as we can fit into such a tight schedule, in an attempt to clarify the key differences and outline the various positions. As an exercise in fact-finding, we feel an investigation of this nature will benefit our worldwide membership in their understanding of the issues that have unfolded in relation to the UK press following Lord Justice Leveson's Inquiry. We hope that it will also contribute to the public understanding in some way.

Equally, in terms of clear press freedom advocacy, we feel the necessity to examine the reaction to the *Guardian* newspaper's publication of the National Security Agency 'leaks' supplied by Edward Snowden. The WAN-IFRA membership is deeply concerned by the role of the British authorities in their intimidation of the *Guardian's* reporting, and equally by the conflation with terrorism of journalistic activity. We aim to investigate these elements as part of our overall assessment.

THE DELEGATION

Erik Bjerager - Editor-in-Chief and Managing Director, Kristeligt Dagblad, Denmark / President, World Editors Forum

Vincent Peyrègne - CEO, WAN-IFRA

Zaffar Abbas - Editor-in-Chief, Dawn, Pakistan

Roger Parkinson - Former President and Publisher of the StarTribune / Former Publisher, CEO, and Chairman of the Toronto Globe and Mail / Past President, WAN-IFRA

Randi Øgrey - CEO, Mediebedriftenes Landsforening, Norway

Kjersti Løken Stavrum - General Secretary, Norwegian Press Association

Matti Kalliokoski - Senior editorial writer, Helsingen Sanomat, Finland

Jonathan Cooper - Vice President Media Relations and Employee Communications, Digital First Media, USA

Ebbe Dal – European News Publishers' Association (ENPA)

Andrew Heslop – Editor, Press Freedom, WAN-IFRA

Stephen Fozard - Legal Affairs and External Relations Manager, WAN-IFRA

As observers:

Claudio Paolillo - Inter-American Press Association (IAPA)

Edward Seaton - Inter-American Press Association (IAPA)

Alexandre Jobim – International Association of Broadcasting (IAB)

Barbara Trionfi – International Press Institute (IPI)

Rony Koven - World Press Freedom Committee (WPFC)

Joel Simon - Committee to Protect Journalists (CPJ)

LIST OF MEETINGS

The Rt. Hon. Maria Miller MP – Secretary of State for Media, Culture and Sport
 The Rt. Hon. John Whittingdale MP – Chairman of the Culture, Media & Sport Select Committee
 Lord Lester of Herne Hill QC

Article 19 – Thomas Hughes, Executive Director; Barbora Bukovská, Senior Director for Law and Policy
 Index On Censorship – Kirsty Hughes CEO; Pdraig Reidy, Senior Writer
 English PEN – Jo Glanville, Director

The Newspaper Society – David Newell, Director; Lynne Anderson, Director of Communications
 The Newspaper Publishers Association – David Newell, Director
 Press Complaints Commission (PCC) – Lord Hunt of Wirral, Chair
 IPSO - Independent Press Standards Organsiation – Paul Vickers, Chairman of the Implementation Group / Legal Director, Trinity Mirror
 Commonwealth Press Union Media Trust – Lindsay Ross, Consultant
 Society of Editors – Ian Murray, President; Bob Satchwell, Executive Director

DMG Media (Associated Newspapers) – Peter Wright, Editor Emeritus
 Telegraph Media Group – Lord Guy Black, Executive Director; Ed Taylor, Head of Public Affairs
 The Guardian – Alan Rusbridger, Editor-in-Chief; Matt Rogerson, Head of Public Policy; Tony Danker, International Director
 The Independent, i, Independent on Sunday and the London Evening Standard - Will Gore, Deputy Managing Editor; Doug Wills, Managing Editor, London Evening Standard

Ethical Journalism Network – Aidan White, Executive Director
 Hacked Off – Brian Cathcart, Executive Director; Hugh Tomlinson QC, Chair; Evan Harris, Associate Director; Jane Winter; Christopher Jeffries; Tom Rowland
 The IMPRESS Project – Jonathan Heawood, Director
 Media Standards Trust – Martin Moore, Director

Charlie Beckett – Director of Polis / Head of Department, London School of Economics
 Angela Phillips – Senior Lecturer, Goldsmiths, University of London
 Natalie Fenton – Professor of Media and Communications, Goldsmiths, University of London
 Damien Tambini – Research Director, Media and Communications Department, London School of Economics
 Steven Barnett - Professor of Communications, University of Westminster
 George Brock – Head of the Department of Journalism, City University
 Tim Luckhurst – Professor of Journalism, University of Kent
 Julian Petley – Professor of Screen Media, Brunel University

1. REGULATION

WAN-IFRA's mission report should not be read in isolation; it is highly recommended for readers to go to the supporting documents or to follow the digital links that form an essential part of this report. It is also strongly recommended for readers to acquaint themselves with the text of the Leveson Inquiry report and, in particular, the recommendations it outlines.

Our examination of the regulation debate looks at issues that have arisen in the aftermath of the publication of the report 'An Inquiry into the Culture, Practices and Ethics of the Press'³ by the Rt. Hon. Lord Justice Leveson (November 2012). The recommendations contained in the Inquiry's report were intended to suggest a future course of action for press regulation and governance consistent with maintaining the freedom of the press, whilst ensuring the highest ethical and professional standards. Specifically, in 47 recommendations⁴ for what a new regulator should look like, the Leveson Report attempted to lay down a prescription for a new system, drawing on testimony heard during the course of the Inquiry and taken in the context of previous inquiries and investigations into the conduct of the British press.

The key recommendations included:

- Newspapers should continue to be self-regulated - and the government should have no power over what they publish;⁵
- A new press standards body created by the industry and a review of the code of conduct;
- Legislation backing that body, to ensure regulation is independent and effective;
- The arrangement would provide the public with confidence that their complaints would be dealt with seriously - and ensure the press were protected from interference.⁶

In the 11 months between publication of the Leveson Report and the adoption of the Royal Charter on the Self-Regulation of the Press, the nature of these recommendations and the best way to enact them has been bitterly contested. This has led to the current impasse – the Royal Charter is now in place, supporting legislation has been enacted, but the industry has refused to give its backing. The industry's plans to operate outside of the Royal Charter, potentially exposing them to penalties as a result, underline the seriousness of their objections. This report provides a snapshot of some of the key concerns related to this process and that were presented to us during our visit.

1.1 End of an era

Motivated by public outcry over the phone hacking scandal that revealed journalists, predominantly from News International title News of the World, had obtained information using illegal means, the Leveson Inquiry identified major shortcomings in the ability of the current regulatory system to ensure the "accountability and responsibility of the press."⁷

The British press has operated under a system of voluntary self-regulation since 1953, but the Leveson Inquiry identified a litany of failure in the regulatory system, over a number of years, to meaningfully enforce it. Exposure from 2009 onwards of the extent of the hacking scandal, evidence of alleged criminal behaviour, and a breakdown in ethics and adherence to codes of practice within certain newsrooms contributed to the corrosion of public trust in the written press. The political climate, feeding off public anger and the efforts of campaign groups against illegal, unethical press behaviour, demanded that standards should be properly enforced by a genuinely independent body. Voluntary self-regulation was deemed insufficient on its own to compel the British press to do better.



WAN-IFRA delegation meets industry representatives and media organisations at the Press Association offices

3. <http://www.levesoninquiry.org.uk/>

4. 'An Inquiry into the Culture, Practices and Ethics of the Press', the Rt. Hon. Lord Justice Leveson, November 2012. Executive Summary (pp.32-38)

5. BBC Q&A Press Regulation, <http://www.bbc.co.uk/news/uk-21797513>

6. *Ibid.*

7. 'Demystifying Leveson's Report and Recommendations,' Article 19, 24/12/2013

Previous inquiries and reports dating since 1947 have attempted to deal with the conduct and behaviour of the press. Citing implications for the freedom of the press, state regulation has been consistently opposed by the industry itself – both as a point of principle and as evidence of a sustained political campaign to limit the press’ reach. Critics argue the industry – and specifically a succession of highly influential press owners – has simply been unwilling to cede power or influence. The lines of communication exposed by the Leveson Inquiry between newsrooms, police stations and political office fired this argument by providing a glimpse into just what that power had come to mean for certain elements of Britain’s press.

Without the power and authority to enforce standards, compel members towards better practice, or impose fines for breaches of its codes of practice, in essence, the current self-regulatory system operated as a complaints handling mechanism as opposed to a genuinely effective regulatory body.

A voluntary Press Council was replaced by the current Press Complaints Commission (PCC) in 1991, following publication of a government-commissioned report by Sir David Calcutt QC. His inquiry, motivated by a perceived failure in the basic ethics of journalism in the 1980s, was tasked “to consider what measures (whether legislative or otherwise) are needed to give further protection to individual privacy from the activities of the press and improve recourse against the press for the individual citizen.”⁸

The press, responding once more to the renewed threat of statutory controls, were given an 18-month window in which to establish a Press Complaints Commission and demonstrate “that non-statutory self-regulation can be made to work effectively.”⁹ Editors of both national and regional newspapers drew up the first Code of Practice¹⁰ for the new PCC to administer, with commitments from all publishers and their editors to abide by its rules.

Change, 20 years in the making

In a follow-up report published in 1993, Sir David Calcutt found the new PCC inadequate to meet the demands and expectations of his earlier inquiry:

“On overall assessment, the Press Complaints Commission is not, in my view, an effective regulator of the press. The Commission has not been set up in a way, and is not operating a code of practice, which enables it to command not only press but public confidence. It does not, in my view, hold the balance between the press and the individual. The Commission is not the truly independent body which it should be. The Commission, as constituted, is, in essence, a body set up by the industry, financed by the industry, dominated by the industry, operating a code of practice devised by the industry and which is over-favourable to the industry.”¹¹

Sir David’s recommendations were for a tough new statutory regime, proposing a revised code of practice that he included along with his report. While these proposals were rejected by the Government and Parliament, the PCC did enact changes designed to strengthen its role in response. As Lord Justice Leveson noted in his report nearly 20 years later, however:

“[T]hese changes did not amount to the creation of the organisation envisaged by Sir David Calcutt in his first report, but rather a PCC that met the minimum requirements of a Government increasingly disinclined to effect major reforms of the system of press regulation and fearful of the political ramifications of any such change.”¹²

Two decades on from the Calcutt Report, Lord Justice Leveson’s conclusion on the PCC was equally damning:

“The PCC was not independent from the industry it was overseeing, causing problems both of substance and of perception. The way in which it and the self-regulatory system more generally conducted itself in public was often unhelpful. The purported investigations into press misconduct, most notably the two reports into phone hacking, were ineffectual and inadequate; and their conclusions, apparently exculpating the News of the World (NoTW), and, as it happens all other titles, from the accusations of serious misconduct, gave false comfort to policy-makers and the public. Taken together these factors caused the self-regulatory system to fail. However good the rest of the work that the PCC did, it steadily lost the trust of key stakeholders, culminating in a final flight of trust and confidence in the wake of the revelations which triggered this Inquiry to be set up.”¹³

8. About the Press Complaints Commission – History’, <http://www.pcc.org.uk/about/history.html>. Retrieved 15/02/2014

9. *Ibid*

10. Editors’ Code of Practice <http://www.pcc.org.uk/cop/practice.html>

11. Review of Press Self-Regulation, Sir David Calcutt QC, January 1993. Chapter 5, para 5.26, p 41. <http://www.official-documents.gov.uk/document/cm21/2135/2135.pdf>. Retrieved on 16/2/2014

12. ‘An Inquiry into the Culture, Practices and Ethics of the Press’, the Rt. Hon. Lord Justice Leveson, November 2012. Volume I, Part D, Chapter. 1, para 6.16 (p. 214)

13. ‘An Inquiry into the Culture, Practices and Ethics of the Press’, the Rt. Hon. Lord Justice Leveson, November 2012. Volume IV, Part J, Chapter. 4, para 1.5 (p. 1515/16)

How to compel without cajoling

Due to its voluntary membership basis, the PCC could not compel publishers to join. Northern & Shell (publisher of the *Express* newspaper titles) withdrew from the PCC¹⁴ in January 2011, a move widely believed to have undermined the Commission's effectiveness within the industry. Citing this as a major structural failure, the Leveson Report highlighted broad agreement that any PCC replacement should have jurisdiction over all major news publishers.

A previous PCC Chair, Sir Christopher Meyer, told the Leveson Inquiry: "No system of self-regulation can survive the wilful refusal of a major player to take part. There may be a case for back-stop law or regulation making membership of the PCC compulsory."¹⁵

Lord Justice Leveson concluded:

"Whilst there is limited enthusiasm for statutory provision to ensure comprehensive coverage of a regulatory regime, there is widespread recognition that statute may be the only way of delivering this goal."¹⁶

Lord Hunt, current Chairman of the PCC, acknowledged in a statement on the PCC website the need to move forward with a new system of regulation. "Above all it is absolutely key that the result is a new regulator with effective sanctions and teeth, and independent from the industry and from the Government."¹⁷

The challenge resulting from the Leveson Inquiry was clear: how to balance effective self-regulation with the oversight deemed necessary to enforce it.

1.2 The Royal Charter

On 30 October 2013, in the presence of the Privy Council of ministers, Her Majesty Queen Elizabeth II gave her approval to the *Royal Charter on Self-regulation of the Press*. This was the culmination of a highly contested eleven-month period, initiated to find a solution to the process of establishing a new regulatory system that would satisfy the public, the press and the political establishment in the wake of the Leveson Inquiry findings. The Charter – which was not a recommendation of the Leveson Inquiry – is designed to guarantee that any replacement to

14. 'PCC statement on Northern & Shell's withdrawal from press self-regulatory system', <http://pcc.org.uk/news/?article=Njg3NA==>. Retrieved on 15/02/2014

15. 'An Inquiry into the Culture, Practices and Ethics of the Press', the Rt. Hon. Lord Justice Leveson, November 2012. Volume IV, Part K, Chapter. 7, para 3.7 (p. 1752)

16. 'An Inquiry into the Culture, Practices and Ethics of the Press', the Rt. Hon. Lord Justice Leveson, November 2012. Volume IV, Part K, Chapter. 7, para 3.27 (p. 1756)

17. Lord Hunt of Wirral, response to the Leveson Report, 29/11/2012, <http://www.pcc.org.uk/news/index.html?article=ODE1Ng==>

the Press Complaints Commission complies with the Leveson Report recommendations and ensures higher journalistic standards: a new self-regulatory body would therefore be overseen by an independent Recognition Panel. The Royal Charter outlines how this body is to function and provides the statutory underpinning for its authority to take effect.

Opposing Lord Justice Leveson's recommendation for direct legislation of the press, foreseen in the Inquiry Report as falling under the purview of Ofcom (the UK broadcast regulator, governed by the 2003 Communications Act), Prime Minister the Rt. Hon. David Cameron MP initially declared, "It would mean for the first time we have crossed the Rubicon of writing elements of press regulation into law of the land."¹⁸



WAN-IFRA delegation meets members of the Hacked Off campaign group

Described as a 'half-way house' alternative, the Royal Charter establishes the legal framework for the new structure of regulation set out by the Leveson Inquiry. It allows for the combination of a system of self-regulation with an additional layer of independent oversight that is governed by law – not by Ofcom, as recommended, but rather through the establishment of an independent Recognition Panel. The Royal Charter was proposed as a means to "take parliament out of the equation,"¹⁹ offering a compromise that avoided explicit statutory underpinning of the press while providing sufficient guarantees of oversight tied to law.

18. 'Leveson report: David Cameron refuses to 'cross Rubicon' and write press law' published in the *Guardian* 29/11/2012, <http://www.theguardian.com/media/2012/nov/29/david-cameron-refuses-to-write-press-law>. Retrieved on 15/02/2014

19. Rt. Hon. John Whittingdale MP

A Royal Charter is a formal document issued by a monarch granting a right or power to an individual or a 'body corporate'. In the United Kingdom, they have been used to establish universities and other large organisations or institutions. Royal Charter, for example, established the BBC. This is the first time one has been used to impose regulation on an unwilling industry.

The Leveson Report recommended that the industry set up its own self-regulator and then submit it for recognition to a separate oversight body (Ofcom, or an independent recognition commissioner supported by Ofcom officials). This body would assess whether the required threshold for recognition under the new system had been met by the self-regulator and effectively audit the new body to ensure it satisfied the Leveson Report recommendations.

Under the Royal Charter, a Recognition Panel is to be established to act as the oversight body instead of Ofcom. The Royal Charter and associated legislation underpins its work and allows for the 'incentives' outlined in the proposals to be applied. Unless a newspaper belongs to a Regulator approved by the Recognition Panel, it faces being penalised by exemplary damages in libel and privacy actions, and a costs regime that gives the courts the power to order a newspaper to pay the plaintiff's costs even if it wins the case.

The Royal Charter defines the role of the Recognition Panel as the following:

The Recognition Panel has the functions, in accordance with the terms of this Charter, of:

- determining applications for recognition from Regulators;
- reviewing whether a Regulator which has been granted recognition shall continue to be recognised;
- withdrawing recognition from a Regulator where the Recognition Panel is satisfied that the Regulator ceases to be entitled to recognition; and
- reporting on any success or failure of the recognition system.²⁰

Opposition

The Royal Charter may not be the equivalent of full state control of the press, but it does introduce an extra layer of oversight underpinned by statutory

legislation that until now has been absent from UK press regulation. For a press formerly self-regulated, the Rubicon has indeed been crossed and the Royal Charter provisions have introduced a level of oversight based in statute, albeit at arms length from the political establishment.

In an editorial dated 28 October 2013, the *Guardian* asked "how on earth is the country that did so much to create the idea of a free press on the verge of using a medieval instrument to help regulate it?"

"Its [the Royal Charter] intent was to avoid more direct statutory underpinning of regulation but, in reality, it merely channelled things through the back door of Buckingham Palace rather than the front door of Westminster. The use of this obscure device has done enormous damage to the process of finding a better system of press regulation. Because the privy council's role in such matters is effectively no more or less than that of the government of the day, it has introduced an element of political influence – no matter how distant – into the control of the press."

Historically, proposals for some form of statutory regulation have been entirely resisted by the press, and no parliament has been prepared to force through statutory regulation, even in the face of the press' worst abuses.

In his statement to the delegation, Ian Murray, President of the Society of Editors, claimed, "the overwhelming majority of the press disagree with government about the principle of statutory underpinning to allow any element of the state a role in the regulation of the press."²¹

The WAN-IFRA delegation encountered, broadly, two opposing positions regarding the Royal Charter – one committed to the idea that its provisions offer the best way forward, and the other, notably from within industry, opposed to the provisions it contains.

For those committed to the approach, the Royal Charter is a way of guaranteeing the Leveson Recommendations are enforced. Initial scepticism over the choice of such a method of delivering the Recommendations has been replaced by a firm belief among supporters that it does offer sufficient protections for freedom of expression. In terms of viability, they see no feasible alternative mechanism that could provide both the standards expected and level of independence demanded by the Leveson Inquiry.

20. The Royal Charter on the Self-Regulation of the Press, section 4 'Functions', 4.1

21. Ian Murray, editor of the Southern Daily Echo and President of the Society of Editors, oral briefing made to the WAN-IFRA delegation 15 January 2014,

The level of animosity between the two positions was explicit during our visit, suggesting the extent to which the process that brought about a 'solution' to the Leveson Inquiry recommendations has left deep scars. Accusations of fuelling myth and mistruths are levied at the press for failing to provide adequate coverage of the new proposals; campaign groups are accused of acting from a politically motivated agenda that targets, in particular, the popular press.

The WAN-IFRA mission uncovered broad disagreement over whether the legislation at the core of the Royal Charter risks inviting political interference in the operation of the press. Significant concern has been raised over the politicisation of a process that saw the Royal Charter emerge in its current form. Beyond that, in its current form, the new self-regulator proposed by the press will meet most but not all of the Leveson Report Recommendations.

Process

The industry is unlikely to submit its new regulator, the Independent Press Standards Organisation (IPSO), for recognition under the Royal Charter scheme because this would mean submitting to statutory underpinning of press regulation.

Criticism of the political process behind the establishment of the terms of the Royal Charter rests on "fundamental concerns about the involvement of politicians," and as a result a genuine "fear of what this means for the future."²² How this process unravelled has majorly contributed to the current impasse.

In February 2013, the operative provisions of a draft state-sponsored Royal Charter were published. Despite concerns that the draft "had been a compromise, but one the press was willing to work with,"²³ the industry – in close negotiations with the Secretary of State and other senior political figures – expected continued engagement. "There were only slight differences, and arguably the press' version was preferable to the government's version."²⁴ The sentiment was that an agreement was close.

Opposition politicians and campaign groups criticised these discussions for taking place behind the scenes, in contrast to the Leveson Inquiry that had been conducted in the open. By early March, these growing

frustrations resulted an attempt to force the Leveson Recommendations into law by risking the derailment of an entirely separate media reform bill.

A last-minute amendment forwarded by Labour peers in the House of Lords sought to tag the Leveson Report Recommendations to the Defamation Bill – a piece of legislation five years in the making and seemingly contextually inappropriate for the type of broader regulation proposed by the Inquiry. This very nearly derailed the efforts of the libel reform campaign, and the Defamation Bill – hailed as a recent example of positive media reform – was almost buried. Timing meant the Bill had to be brought to parliament before May 2013 at the latest, otherwise a two-year legislative process would be lost.

"Instead of waiting for a dedicated Bill for this particular Leveson reform, their Lordships have deftly appropriated the Defamation Bill for their purpose, even though the Bill was never intended to have anything to do with the Leveson Report."²⁵

For the Prime Minister, the threat was that political opponents would use every Bill due to be heard during that session of parliament to pass the Leveson Recommendations into law – thus slowing the work of parliament. Following Lord Puttnam's attempt to hijack the Defamation Bill, Lord Skidelsky next tabled amendments to the Enterprise and Regulatory Reform Bill. Ultimately political frustration is believed to have cut short negotiations between the industry and the government over the Royal Charter; what happened next effectively destroyed the process.

According to industry representatives, events that took place in the early hours of Monday 18th March 2013 ended chances for a settlement that carried the backing of the press. Behind closed doors, and without the industry's knowledge, leading members of the Labour, Liberal Democrat and Conservative parties along with representatives of the Hacked Off campaign group met to agree a final draft of the Royal Charter.

The deal was announced in parliament by the Prime Minister the following day as a cross party agreement. New statutory provisions that the industry is unable to reconcile would also support the Charter:

22. Paul Vickers, Chairman of the IPSO Implementation Group / Legal Director Trinity Mirror, statement made to the WAN-IFRA delegation 15 January 2014.

23. *Ibid*

24. Rt. Hon. John Whittingdale MP

25. David Allen Green, 'The Defamation Bill does not need this "Leveson amendment"', *The New Statesman*, 5/3/2013, <http://www.newstatesman.com/politics/2013/03/defamation-bill-does-not-need-leveson-amendment>. Retrieved on 15/2/2014

- A provision providing that certain Royal Charters can only be changed when the arrangements for amending them - as laid out in the Charter - require the approval of a two-thirds majority of both Houses of Parliament;
- Provisions allowing for exemplary damages to be awarded in certain circumstances in an action against a publisher who is not a member of an approved Regulator;
- Provisions requiring that in most circumstances costs should be awarded against publishers who successfully defend certain civil claims, if the publishers are not regulated by an 'approved regulator' (i.e. a regulator recognised by a chartered recognition panel).

The lack of parliamentary debate or opportunity for public consultation also raised concern from the industry and rights groups, undermining a process already deeply mistrusted by those naturally opposed to any threat of political involvement in press regulation. Opponents of the Royal Charter maintain the suspicion of a political trade-off, at the expense of any genuine commitment to finding the best possible solution.

The Crime and Courts Act 2013²⁶

The Crime and Courts Act 2013 contains a section dedicated to outlining the damages and costs relevant to publishers "of news-related material" and forms a significant part of the legal underpinning of the Royal Charter scheme.

The Royal Charter is said to contain 'incentives' for publishers to join a self-regulator recognised under the scheme - a way to ensure universal coverage by the new system. There is no legal requirement forcing publications to sign up to a particular regulator; similarly, regulators also have to volunteer for the job.

However, those signed up to a recognised body will avoid the threat of exemplary financial penalties and are offered wider protections under the approved regulator.

Opponents regard the 'incentives' as coercive, however, applying exclusively to publications signed up to an approved regulator under the Royal Charter. They argue – and leading counsel have advised - that this contravenes European Human Rights law and will have a chilling impact on freedom of expression. The industry believes newspapers and magazines would be effectively blackmailed into signing up by a law that imposes significant exemplary damages and costs in libel and privacy actions against publishers.

26. <http://www.legislation.gov.uk/ukpga/2013/22/contents/enacted>

Lord Anthony Lester agreed that, rather than being 'incentives' as claimed, "punitive damages become a coercive threat."²⁷

The argument in support of these measures, while acknowledging the uncertainty around their application, rests on the basis that they are both a necessary and proportionate response, supporters say. An arbitration process contained in recommendations for the new self-regulator is designed to handle all but the most serious of complaints, while the Act contains enough flexibility in terms of the discretionary application of the law so as to limit the use of exemplary damages: proposals specify that exemplary damages could be awarded only if the defendant showed "a deliberate or reckless disregard of an outrageous nature for the plaintiff's rights."²⁸ However, most newspapers oppose the arbitration system required by the Royal Charter because, unless granted dispensation by the Recognition Panel, it would be compulsory and free for the complainant to use. Regional newspapers in particular fear that many of the complaints over accuracy, which the PCC currently resolves at no cost, will be turned into defamation cases in which newspaper will have to pay both damages and the cost of the hearing.

The two-thirds majority clause

The Enterprise and Regulatory Reform Act is the second piece of legislation underpinning the Charter system. It states the Royal Charter can only be changed or amended with a two-thirds majority vote in both the House of Parliament and the House of Lords. It is designed as a protection 'lock' against the passing of more stringent legislative measures. However, the press argues this also means parliament could – with a two-thirds majority – vote for stronger controls over regulation.

"It [the two-thirds majority] is in fact an open invitation to future politicians to restrain the press from exposing the secrets of the powerful. It is easy to imagine such a majority being constructed in the grip of some moral panic. Anyone who thinks the press is overreacting should consider blatant attempts made by government aides last year to intimidate *The Daily Telegraph* over its investigation into the expenses of Maria Miller, the Culture Secretary."²⁹

While the newspaper industry will always need a two-thirds Parliamentary majority if it finds any aspect of the Royal Charter unworkable and needs to change it, under British law one Parliament cannot bind

27. Lord Lester of Herne Hill QC, interviewed 16/01/2014 in The House of Lords

28. Press regulation: Lord Black attacks exemplary damages plans', the *Guardian*, 25/3/2013: <http://www.theguardian.com/media/2013/mar/25/press-regulation-lord-black-damages>

29. 'Not a charter for press freedom', The Sunday Times, 3/11/2013, <http://www.thesundaytimes.co.uk/sto/comment/leaders/article1335282.ece#>

another, so a future Government which wished to tighten the Charter could remove the two-thirds majority requirement by repealing the legislation that imposes it with a simple majority of a single vote. It is at this point, advocates for the Charter say, a regulator would walk away and the system would cease to operate.

Press concerns

A number of broader concerns regarding the implication of the Royal Charter system were raised by the industry and are briefly summarised below:

- **Costs win or lose**

Publishers not belonging to an approved regulator can be made to pay the plaintiff's costs - even if entirely vindicated. The way the legislation is structured means that membership of an approved regulator does not guarantee protection against exemplary damages and costs orders.

- **Re-writing of the Editors' Code of Practice**

Under the Royal Charter, the board of an approved regulator has responsibility for the committee that writes the Editors' Code of Practice and has to approve any changes. This would mean the body that enforces the law for journalists also makes it. The separation of the powers is therefore lacking.

- **Forced apologies**

The meaning is entirely lost if the industry is 'forced' to apologise – apologies only have value if sincere. Forced apologies are not a feature of full statutory broadcasting regulation and not even a court in libel cases can 'make' anyone apologise.

- **Group/third party complaints**

There is a risk of third parties or lobby groups (with significantly more funds/resources, etc.) raising complaints on behalf of individuals and imposing an agenda on reporting.

- **Arbitration**

Under the Royal Charter, the industry would be obliged to set up an arbitration system that is largely free for complainants to use. Regional newspapers are particularly alarmed at the prospect of having to fund a scheme that would inevitably open the floodgates to compensation claims. Under IPSO, arbitration could be introduced but only after a pilot scheme.

- **Lack of future proofing**

There is criticism from rights groups and media companies that the Leveson Recommendations do not

account for digital publishing and the de-nationalised nature of the current media environment – that it is effectively mid-20th Century legislation proposed for a 21st Century news environment. Additionally, websites run by newspaper groups are subject to the Royal Charter provisions, yet those run by Internet companies, for example Google, are not covered.

1.3 The end of press freedom in the UK?

International human rights standards do not prescribe a specific model of press regulation.³⁰ Any system must, however, meet a three-part test for it to be compatible with the right to freedom of expression:

- Prescribed by law
- In pursuit of a legitimate aim
- Necessary in a democratic society

More on the purpose and how each part of this test is defined can be found in ARTICLE 19's 'Legal Analysis of the *Royal Charter on Self-Regulation of the Press*'³¹.

WAN-IFRA itself has a global membership spread across numerous different regulatory environments, each enjoying varying degrees of press freedom according to how authoritarian or democratic the governing regime, and how much – or little – legislation interferes with the press.

The Royal Charter system was proposed as a way to avoid direct legislation governing the press regulator. This is not state regulation, but the principle of zero legislative oversight in press regulation in the United Kingdom has been breached.



WAN-IFRA delegation meets UK-based media rights and press freedom organisations

30. 'UK: Final Draft Royal Charter on Self-Regulation of the Press – Legal Analysis', Article19, page 7: <http://www.article19.org/resources.php/resource/37316/en/uk:-royal-charter-on-self-regulation-of-the-press>
31. <http://www.article19.org/data/files/medialibrary/37316/13-10-24-LA-uk.pdf>

This does not mean “the end of press freedom” in the United Kingdom; rather it marks a significant shift in terms of how the press is regulated. The Royal Charter, while underpinning a system of independent self-regulation that is backed by legislation, is defined by ARTICLE19 as a system of ‘co-regulation’ – neither fully self- or fully state-regulated:

“[T]he proposal for press regulation in the UK is untested, but may offer a new construct for press accountability. Its nature (which establishes the Royal Charter as the basis of self-regulation in combination with incentives in the Crimes and Court Act) resembles the model of co-regulation, where the basis of the self-regulation is established in legislation. This hybrid model represents neither a model of strict state control nor a voluntary and autonomous self-regulation model.”³²

Examples of co-regulation can be seen in other European countries such as Ireland, Denmark and Finland, which enjoy higher press freedom rankings in the *available indexes*³³ than the United Kingdom under its current voluntary self-regulation system. What works for one country does not, however, automatically mean it will work in another.

British exception

The British press and the environment in which it operates is noted to be a unique exception to other national examples, with a fiercely guarded independent nature that permits it to vigorously pursue enquiries where others may not.



WAN-IFRA delegation meets Lord Anthony Lester QC in the House of Lords

The delegation recognised that the uniqueness of the British press has, in part, evolved out of its freedom from legislative hindrance. A “vibrant, vociferous and

free and popular press, read by millions, is part of our way of life.”³⁴

By nature, governments have a legislative instinct and are less inclined to voluntarily repeal legislation to provide for greater freedoms. Any shift away from the ideal should give serious pause for thought, regardless of the wrongs such a step seeks to redress. While self-regulation is widely acknowledged as the preferable, least restrictive model, the proviso, however, is that it should have meaningful impact.

1.4 A note on the Independent Press Standards Organisation – IPSO³⁵

The industry’s response to the call made by the Leveson Inquiry to establish an independent self-regulator, initiated during the Inquiry itself, did not satisfy the recommendations made in the final report. The industry committed to redrafting its proposals - The Independent Press Standards Organisation (IPSO) - in order to satisfy the Inquiry recommendations.

The events surrounding the passing of the Royal Charter led the industry to withdraw support for the process. The industry is establishing a new regulator and does not intend to submit it for recognition when a Recognition Panel is established under the state-sponsored Royal Charter, because it does not believe that politicians should be involved in the regulation of the press. On 1st May, the newspaper industry submitted its own Charter before the Privy Council – the group of ministers designated to handle Charter applications on behalf of the monarchy. There was no statutory component.

On 8 October 2013 the Secretary of State informed Parliament in an oral statement that the Press Charter had been rejected by the Privy Council.

The newspaper industry considers the grounds upon which the IPSO proposal was rejected were not lawful and took the matter to Judicial Review because:

- there was a breach of the right to be heard;
- a breach of the duty of adequate consultation;
- that the procedure followed was “conspicuously unfair” and hence an “abuse of power”; and
- that the decisions under challenge were irrational

The Court rejected this Judicial Review, but the industry is now appealing the decision.

The press – broadly speaking, national, regional and magazine titles with the exception of the *Guardian*,

32. ‘UK: Final Draft Royal Charter on Self-Regulation of the Press – Legal Analysis’, Article19, page 8: <http://www.article19.org/resources.php/resource/37316/en/uk:-royal-charter-on-self-regulation-of-the-press>

33. World Press Freedom Index, Reporters Without Borders, <http://rsf.org/index2014/en-index2014.php>. Retrieved on 15/02/2014

34. Ian Murray, editor of the Southern Daily Echo and President of the Society of Editors, oral briefing made to the WAN-IFRA delegation 15 January 2014

35. <http://www.ipso.co.uk/>

the Financial Times and the Independent, all three of which are yet to take a public position – have signed contracts with the IPSO regulatory system. Over 90% of publications in the UK are in alignment with the new industry regulator. They believe the IPSO system satisfies the Leveson Recommendations while maintaining the self-regulation model.

The industry hopes its own self-regulator will be operational by May 2014.

1.5 A note on the IMPRESS Project³⁶

The emergence of *IMPRESS - the Independent Monitor for the Press*, proposes an alternative regulatory model and seeks to meet the criteria set out by the Leveson Inquiry. Jonathan Heawood, founding director of IMPRESS, describes it as “an incubator to develop plans for a credible, compliant, independent regulator.”

“The purpose of IMPRESS is to support the integrity and freedom of the press while encouraging the highest ethical standards in journalism. IMPRESS stands up positively for press freedom. A ‘sunset clause’ in its Articles of Association would cause IMPRESS to dissolve itself if any future government modified the legal operating environment for press regulation so as to curtail press freedom. IMPRESS would also advocate strongly against the use of any other political mechanism to limit the freedom of the press or individual freedom of expression.”³⁷

Currently, no newspaper has signed up to the IMPRESS regulatory model, therefore it is unable to seek recognition under the provisions of the Royal Charter. Critics dismiss it as a distraction but, if it were to get off the ground, IMPRESS has told a Parliamentary Select Committee³⁸ that it may not seek recognition under the Royal Charter. Concerns surrounding the impact of the ‘incentives’, particularly the chilling effect they may have on publishers unwilling to sign up to a recognised regulator, have led to on-going legal consultations as the project continues to evolve. It is worth noting that the Leveson Inquiry recommended that:

“It should be possible for the recognition body to recognise more than one regulatory body, should more than one seek recognition and meet the criteria, although this is not an outcome to be advocated and, should it be necessary for that step to be taken, would

represent a failure on the part of the industry.”³⁹

Should the IMPRESS Project decide to gain recognition under the Royal Charter criteria, the full system will become operative and the IPSO-regulated press will face the potential costs and damages outlined under the Royal Charter provisions.

Conclusion

The vast majority of the British press adhere to professional standards and abide by ethical practices. The actions of a minority should not tarnish the entire profession and there should be greater acknowledgment of the essentially positive public interest role of journalism in the United Kingdom.

The hacking scandal has caused a severe breach in confidence between the public and the press that needs to be addressed. It is important, however, not to convolute the hacking scandal with the current regulatory debate. British law provides appropriate remedy for illegal activity in proven cases of wrongdoing. Furthermore, failures in civil litigation are not the responsibility of the press. Wider reforms and improved access to affordable, efficient civil litigation should be demanded to ensure public confidence in this recourse.

The corporate culture inside media organisations where abuses of professional and ethical codes of conduct have been uncovered should be closely examined and the reasons for the breakdown fully exposed. Work should be done throughout the media structure to reinstate professional standards and regain public trust in journalism. Media professionals should be at the heart of instigating this, with full transparency and a commitment to public accountability.

There is a suggestion of ‘political payback’ in the current regulation reform process following the MPs expenses scandal exposed by the press, and it should be acknowledged that this could have negatively influenced, not only how a new system of regulation has been established, but also the motivation behind calls for tighter controls over the press.

In accordance with international human rights law, self-regulation provides for the least restrictions on

36. <http://impressproject.org/>

37. The IMPRESS Project Prospectus, <http://impressproject.org/prospectus/>

38. Culture, Media and Sport Committee, Oral evidence: Dealing with complaints against the press, HC 1032

28/1/2014: <http://data.parliament.uk/writtenevidence/WrittenEvidence.svc/EvidenceHtml/5929>

39. An Inquiry into the Culture, Practices and Ethics of the Press’, the Rt. Hon. Lord Justice Leveson, November 2012. Volume IV, Part K, Chapter 7, para 6.37 (p.1779)

press freedom. Any move away from this preferred situation should be fully debated and explained in an open, public and transparent manner in order to properly weigh the implications for current and future societies.

Self-regulation, however, should be meaningful and effective, providing for adequate complaints handling, a way of ensuring high professional and ethical standards, and firm protections for freedom of expression.

Self-regulation under the Press Complaints Commission (PCC) was perceived to have failed both the public and the profession of journalism, although its role as a complaint handling body has been praised.

There is an element of statutory underpinning to the Royal Charter system that makes adherence problematic for those – particular the press - unwilling to cede any ground to legislation specifically governing the press.

Publishers are not encouraged to ‘voluntarily’ sign up to a regulator governed by the Royal Charter system – punitive damages for non-compliance are an explicit threat should they decide not to. This defies any definition of ‘voluntary’ as understood by the WAN-IFRA delegation.

The United Kingdom suffers from its lack of constitutional-level guarantees for freedom of expression. Fundamental rights will inevitably be subject to the whims of parliament and interpreted by the ‘government of the day’. With no legal safety net for journalism, press freedom will continue to rely on benign political promises. Arguably, written legal protection for the press could help mitigate the fear expressed by some publishers of falling under a regulatory system that is established in law and that could be detrimentally changed if parliament so chose. How this (for example a UK Bill of Rights) could be achieved without encouraging the United Kingdom’s withdrawal from the European Human Rights Convention should be further explored.

The speed of implementation of the Royal Charter proposal, coupled with the lack of legislative scrutiny, parliamentary vote or public consultation, has undoubtedly contributed to a general lack of understanding around the issues. The entire negotiation process in the build-up to a deal on a new system for regulation should have been more transparent.

The exclusion of the industry in the final drafting process of the Royal Charter was a major error, if

the intention was for a genuine improvement in the culture, ethics and professionalism of the press. A solution that did not include any of the media industry is entirely counterproductive, and can be described as no form of solution at all.

Editors representing a wide cross-section of the industry should be responsible for drafting or amending any new Code of Practice, with the assistance of individuals from outside the profession. They should all be independent of any regulatory body or legally defined oversight committee.

There has been a real lack of public discussion about the implications of the issues raised by the Leveson Inquiry and their effects – positively or negatively – for freedom of expression in the United Kingdom. The on-going polarisation between the different sides in the debate has not helped.

The Royal Charter system - used as an example or transposed elsewhere to countries lacking the United Kingdom’s historic commitment to human rights - risks an open invitation for abuse in other parts of the world.

Political assurances that the Royal Charter scheme provides a hands-off solution for press regulation and can guarantee press freedom are somewhat undermined by the readiness of the UK government to intervene against the *Guardian* newspaper.

2. PRESS FREEDOM AND THE GUARDIAN NEWSPAPER

Revelations of mass surveillance programmes run by the National Security Agency (NSA) in the USA and Government Communications Headquarters (GCHQ) in the United Kingdom have captivated the world's attention since the *Guardian* newspaper published the first in a series of startling articles on 5th June 2013. Issues of privacy in the digital age, the role of the state in justifying surveillance in the name of national security, and the level of oversight – or lack thereof – by political representatives are just some of the issues to have been brought in to focus over recent months.

The debate has resonated throughout the capitals of Latin America and Europe. It led to the introduction of resolutions at the United Nations and sparked a broad policy review in the United States that is playing out both in the courts and the political arena. The adage “Who watches the watchers?” has become an international talking point at the highest levels.

Except, in the United Kingdom, the debate has been rather more subdued. The *Guardian*, in revealing information disclosed by former NSA contractor Edward Snowden, has become the victim of a severe political backlash that has deeply shocked international observers and press freedom advocates. Pressured to hand over the Snowden data in the interests of national security, threatened with legal action and the prospect of having its reporting shut down, as well as undergoing the bizarre spectacle of government security officials overseeing the destruction of computer equipment in the newspaper's basement, the publication and its journalism has been under intense pressure to self-censor.

The newspaper is accused of “aiding Britain's enemies”⁴⁰ by revealing the apparatus of state security, and was told enough debate had been heard. Its editor-in-chief, Alan Rusbridger, has been summoned before a parliamentary inquiry and questioned as to whether he and his newspaper “love this country.” The partner of the lead reporter covering the Snowden leaks was detained under anti-terrorism legislation at Heathrow airport, while an on-going police investigation will determine whether the *Guardian* and its staff “committed terrorism offences” in pursuing and communicating its reporting of “stolen” top-secret information.

In total, these are actions more commonly seen in authoritarian regimes, where telling the press what to do is a regular part of government business. Such aggression intimidates journalists and their sources, while criminalising the profession chills reporting of government activities and undermines “the independence and integrity of the press that are essential for democracy to function.”⁴¹

Thanks to the *Guardian's* reporting, the world learned that security agencies are able to access digital information on an unprecedented scale and intercept data from global infrastructure housing Internet and telephone networks. These revelations should have a profound impact on the way we, as global citizens – ever more reliant on digital communications – view and interact with our world.

In short, the *Guardian* newspaper has been a frontline defence against what has been the most unprecedented recent attack on press freedom in an established democracy. The international press has flocked to the publication's side to denounce the pressure and support its journalism, firmly regarded to be in the highest (global) public interest. WAN-IFRA's mission to the United Kingdom was an extension of this solidarity and a reaffirmation of the need to protect the values of investigative journalism for the sake of press freedom worldwide.



WAN-IFRA delegation meets Alan Rusbridger and colleagues at the *Guardian's* London offices

40. 'The paper that helps Britain's enemies', Daily Mail, 9/10/2013: <http://www.dailymail.co.uk/debate/article-2451557/daily-mail-comment-the-Guardian-paper-helps-britains-enemies.html>

41. The Reporters Committee for Freedom of the Press, 'Open letter to the House of Commons Home Affairs Committee', 2/12/2013. http://www.rcfp.org/sites/default/files/2013-12-02-Home_Affairs_Cmte_letter.pdf

2.1 “If we say it is not in the public interest, then you shouldn’t be publishing.”

When a publication is told by government security officials “there has been enough debate,” the natural response of any journalist would be to do the precise opposite and amplify that debate.⁴²

Initial attempts to stop the *Guardian’s* reporting came two weeks after the first story based on Snowden’s leaks was published on 5th July 2013. Two senior British officials met with *Guardian* editor Alan Rusbridger and his deputy, Paul Johnson, to demand the handover of the Snowden files held by the newspaper. Their argument was that the material had been stolen; the *Guardian* countered with its belief in the substantial public interest of the scale of government surveillance and extent of collaboration between technology and telecoms companies, particularly “given the apparent weakness of parliamentary and judicial oversight.”⁴³

Three weeks of further revelations led to another visit by government officials. The tone had markedly changed, one of the officials reportedly saying, “You’ve had your fun. Now we want the stuff back.” The message was that “patience with the newspaper’s reporting was wearing out.”⁴⁴

They expressed fears that foreign governments, in particular Russia or China, could hack into the Guardian’s IT network. But the Guardian explained the security surrounding the documents, which were held in isolation and not stored on any Guardian system.

They expressed fears that foreign governments, in particular Russia or China, could hack into the Guardian’s IT network. But the Guardian explained the security surrounding the documents, which were held in isolation and not stored on any Guardian system.

However, in a subsequent meeting, an intelligence agency expert argued that the material was still vulnerable. He said by way of example that if there was a plastic cup in the room where the work was being carried out foreign agents could train a laser on it to pick up the vibrations of what was being said. Vibrations on windows could similarly be monitored remotely by laser.

42. Alan Rusbridger, meeting with the WAN-IFRA delegation, 16 January 2014

43. ‘NSA files: why the *Guardian* in London destroyed hard drives of leaked files’, 20/08/2013: <http://www.theGuardian.com/world/2013/aug/20/nsa-snowden-files-drives-destroyed-london>

44. *Ibid.*

Between 16 and 19 July government pressure intensified and, in a series of phone calls and meetings, the threat of legal action or even a police raid became more explicit.

At one point the Guardian was told: “We are giving active consideration to the legal route.”

The Guardian’s lawyers believed the government might either seek an injunction under the law of confidence, a catch-all statute that covers any unauthorised possession of confidential material, or start criminal proceedings under the Official Secrets Act.

Either brought with it the risk that the Guardian’s reporting would be frozen everywhere and that the newspaper would be forced to hand over material.

“I explained to British authorities that there were other copies in America and Brazil so they wouldn’t be achieving anything,” Rusbridger said. “But once it was obvious that they would be going to law I preferred to destroy our copy rather than hand it back to them or allow the courts to freeze our reporting.”⁴⁵

Negotiations began with government officials over the best way of responding to demands that the material be destroyed, but without compromising either journalists or their sources. Ultimately the files could be used in an eventual prosecution of Edward Snowden, while computer records could be forensically analysed to reveal which journalists had accessed or worked on them.

The solution came on 20 July when two GCHQ officials watched over *Guardian* staff as they took angle grinders and drills to the hard drives and memory chips, destroying the *Guardian’s* UK-based Snowden data.

It was a unique encounter in the long and uneasy relationship between the press and the intelligence agencies, and a highly unusual, very physical, compromise between the demands of national security and free expression.

But it was largely a symbolic act. Both sides were well aware that other copies existed outside the UK and that the reporting on the reach of state surveillance in the 21st century would continue.

“It affects every citizen, but journalists I think should

45. *Ibid.*

be aware of the difficulties they are going to face in the future because everybody in 2013 leaves a very big digital trail that is very easily accessed," Rusbridgersaid.⁴⁶

The *Guardian's* reporting on the NSA leaks has continued from the USA and Brazil. Unlike their British counterparts, journalists in America are protected by the first amendment, guaranteeing freedom of speech.

2.2 David Miranda

The detention at Heathrow airport under Schedule 7 of the UK Terrorism Act 2000 of David Miranda, the partner of *Guardian* journalist Glenn Greenwald who has been instrumental in breaking the story on the NSA files, was further evidence the government would use criminal law against newspapers.

On 18th August, Mr Miranda was detained while transiting between flights from Germany to Brazil, where he lives with his partner. He had his personal electronic items confiscated and was held for an unprecedented nine-hours without charges being brought against him. The reason for his detention was suspicion that he had been transporting data connected to the Snowden leaks.

The only use for Schedule 7 is for the purpose of determining whether a detained person is a terrorist. Under the Act, a terrorist is defined as 'a person involved in committing, preparing or instigating acts of terrorism.'

Lord Charles Falconer, one of the barristers who helped introduce the original Act, spoke out on the misuse of Schedule 7 in David Miranda's case in a *Guardian* editorial. "Publication in the *Guardian* is not instigating terrorism," he said.

"Schedule 7 does not contain a power to detain and question journalists simply because the state thinks they should not be able to publish material because of the damage publication might do, or because they do not approve of where the information came from. The state has exceeded its powers in this case. The sooner the courts make this clear, the better."⁴⁷

The apparent misuse of this particular element of anti-terror legislation places journalists, and those

aiding journalistic work, under suspicion of being terrorists or having involvement in terrorist activities. This is clearly an outrageous and deeply disturbing connection to make. Media rights groups have since sought assurances from the Prime Minister and his government that the necessary inquiries would be made to ensure any inference of association between journalism and terrorism is not part of official policy. The response came on 19th February 2014, when three High Court judges dismissed a challenge that David Miranda had been unlawfully detained. The ruling backed the use of Schedule 7 of the Terrorism Act because:

- Although it was "an indirect interference with press freedom", there was not only compelling but "very pressing" evidence of a risk to national security.
- It was justified because a Cabinet Office official testified that the release of 58,000 highly classified GCHQ files Miranda was carrying would be very likely to cause great damage to security and possible loss of life.
- The judges refused to recognise that the seized files were "journalistic material" and insisted they included stolen raw data that did not warrant any freedom of expression safeguards.
- The judges dismissed claims that schedule 7 was used by the police only because it avoided any need to get prior authorisation from a judge to seize material from individuals involved in journalism.

David Miranda will now take his case to the Court of Appeal. A *Guardian* statement read:

"We're disappointed by today's judgment, which means that an act designed to defeat terrorism can now be used to catch those who are working on fundamentally important issues. The judgment takes a narrow view of what 'journalism' is in the 21st century and a very wide view of the definition of 'terrorism'. We find that disturbing."⁴⁸

the guardian

46. 'NSA files: why the *Guardian* in London destroyed hard drives of leaked files', 20/08/2013: <http://www.theGuardian.com/world/2013/aug/20/nsa-snowden-files-drives-destroyed-london>

47. 'The detention of David Miranda was an unlawful use of the Terrorism Act', 21 August 2013: <http://www.theGuardian.com/commentis-free/2013/aug/21/terrorism-act-david-miranda-detention>

48. 'David Miranda detention at Heathrow airport was lawful, high court rules', 19/2/2014: <http://www.theGuardian.com/world/2014/feb/19/david-miranda-detention-lawful-court-glenn-greenwald>

2.3 Journalism = Terrorism

Increasing demands towards the end of 2013 for the *Guardian* to answer questions as to whether its reporting compromised national security prompted the establishment of a House of Commons select committee. Alan Rusbridger was called to appear before the committee on 3 December.

Warning of the chilling effect for press freedom, rights groups highlighted that such a measure risked pushing editors and journalists towards self-censorship: the threat of parliamentary action potentially burying future stories of public interest.⁴⁹

Nevertheless, and on the back of a wave of international support before his appearance, Alan Rusbridger set out a passionate defence of the *Guardian's* work and the fundamental principles at stake.

In one of the more surreal exchanges, the *Guardian* editor was asked about his patriotism:

Committee chair, Keith Vaz: *Some of the criticisms against you and the Guardian have been very, very personal. You and I were both born outside this country, but I love this country. Do you love this country?*

Alan Rusbridger: *We live in a democracy and most of the people working on this story are British people who have families in this country, who love this country. I'm slightly surprised to be asked the question but, yes, we are patriots and one of the things we are patriotic about is the nature of democracy, the nature of a free press and the fact that one can, in this country, discuss and report these things.*

Vaz: *So the reason why you've done this has not been to damage the country, it is to help the country understand what is going on as far as surveillance is concerned?*

Rusbridger: *I think there are countries, and they're not generally democracies, where the press are not free to write about these things, and where the security services do tell editors what to write, and where politicians do censor newspapers. That's not the country that we live in, in Britain, that's not the country that America is and it's one of the things I love about this country – is that we have that freedom to write, and report, and to think and we have some privacy, and those are the*

*concerns which need to be balanced against national security, which no one is underestimating, and I can speak for the entire Guardian staff who live in this country that they want to be secure too.*⁵⁰

There have been calls for the *Guardian* to be prosecuted under section 58A of the Terrorism Act 2000, "which makes it an offence to communicate information that might aid terrorism." Media rights group ARTICLE 19 identifies problems with the legislation, including the vague and widely drawn definition of 'communications' and the lack of a public interest defence. "Governments frequently use national security arguments and anti-terrorism powers to suppress the free flow of information and ideas. The shroud of secrecy surrounding matters of national security can allow governments to extend their reach beyond reasonable limits in response to a variety of pressures, thus damaging the very freedoms and rights they purport to defend."⁵¹ The Newspaper Society and other organisations campaigned hard before and during the passage of the Official Secrets Act, RIPA, terrorism and subsequent counter-terrorism legislation to avoid such risks to journalism, journalists and their sources.



Guardian editor, Alan Rusbridger talking with WEF President, Erik Bjerager

49. 'Open letter to Home Affairs Committee highlighting concerns over press freedom, 2/12/13: <http://www.article19.org/resources.php/resource/37379/en/uk:-open-letter-to-home-affairs-committee-highlighting-concerns-over-press-freedom>

50. 'MPs' questions to Alan Rusbridger: do you love this country?' 3/12/2013: <http://www.theguardian.com/media/2013/dec/03/keith-vaz-alan-rusbridger-love-country-nsa>

51. Article 19 Briefing Notes – WAN-IFRA Mission 2014

The distinction between public interest defence and criminal activity was addressed to Alan Rusbridger during the select committee hearing:

Mark Reckless: *I think you have committed a criminal offence in your response. Do you think that it would not be in the public interest for the CPS [Crown Prosecution Service] to prosecute or should it be dealt with by the authorities in the normal way?*

Alan Rusbridger: *I think it depends on your view of a free press. In America, the attorney general has said within the last two weeks that, from what he had seen so far, he had no intention of prosecuting [the journalist who broke the story] Glenn Greenwald. He's gone further. He said that under his watch he will not prosecute any journalist doing their duty. In New York this month I debated with the former general counsel of the NSA Stuart Baker. He distinguishes between what Snowden did and journalists do. He says once information is in the hands of journalists, it is protected material. In my reading of the DPP [director of public prosecutions] and the guidelines he laid down during the Leveson process, is that public interest will weigh very carefully and very highly in any deliberations he takes.⁵²*

The on-going police investigation into the *Guardian* was confirmed by Scotland Yard's head of counter-terrorism, Assistant commissioner Cressida Dick, appearing before the select committee after Mr Rusbridger on 3rd December.

It appears "possible that some people may have committed offences" she told MPs as she updated them on the investigations into the large amount of material seized from David Miranda in August. The information is being examined for breaches in the Official Secrets Act and for the potential that terrorism offences have been committed involving communicating information about members of the intelligence services.

Conclusion

Speaking to parliament ahead of establishing the select committee that would go on to question Alan Rusbridger, Prime Minister David Cameron claimed, without any evidence, that the *Guardian's* actions had damaged British national security. To-date no charges

have been brought, and as investigations continue, still no evidence of a threat to Britain's national security interests has emerged. The Prime Minister's comments suggest an unprecedented level of political interference in the freedom of the press and he should be strongly encouraged to clarify his statements while distancing his government from any action that conflates terrorism with journalism.

Alan Rusbridger's appearance before parliament, like many other editors before him, can be seen as an appropriate reaction in terms of efforts to examine the wider impact of the newspaper's revelations. He stated clearly that the *Guardian* behaved responsibly in its reporting of the Snowden leaks and went to great lengths to ensure sensitive material did not get into the public domain. That he should be questioned over the publication's journalistic activity is deeply worrying, however, while the government's rationale for destroying the data files is entirely surreal given they were well aware copies existed outside of the country. Their actions would appear designed purely as intimidation.

Critics suggest some of the activities of the *Guardian* may well have been illegal and that judgment should be reserved regarding the overall benefit of its revelations until police inquiries have run their course.

Why rival publishers have been so silent over their support for the *Guardian* remains a definitive low point, however, especially given the current impasse in the regulation debate and the apparent need for solidarity within the media fraternity. There was a perception among some who spoke with the WAN-IFRA delegation that this lack of support could be in response to the *Guardian's* revelations of the phone hacking scandal that exposed News International journalists to arrest and prosecution. Others suggested support for the *Guardian* over Snowden has been limited for sound, principled reasons about national security and the public interest. But as Alan Rusbridger stated, tying in the WAN-IFRA mission's two main focus areas, "If the press can't see the public interest difference between hacking and the NSA reporting, then the argument for self-regulation is rendered meaningless."

The Snowden revelations have undoubtedly contributed to our understanding of how the digital world operates, and ultimately confront us with the responsibility to protect real-world rights and freedoms with equivalent urgency in the online environment.

52. 'MPs' questions to Alan Rusbridger: do you love this country?' 3/12/2013: <http://www.theGuardian.com/media/2013/dec/03/keith-vaz-alan-rusbridger-love-country-nsa>

Whistle-blowers play an important role in revealing information “that has not been made public because other laws have either blocked its disclosure or failed to force its release. This is especially important in the area of intelligence and national security where public disclosure is limited and abuses can remain undetected by standard legal mechanisms.”⁵³ Journalists should not be penalised for covering these stories.

The *Guardian* disclosures have prompted a vital public debate about mass surveillance in democracy and have “exposed the possible violation of the fundamental human rights of millions of people worldwide.” The benefit to the public outweighs “the demonstrable harm to national security.”⁵⁴

Ultimately tension between secrecy and transparency will continue to exist, especially as democratic societies adapt to ever-widening boundaries of the online environment. Our digital identity will increasingly define us in a globalised, connected world, and the ability to protect this is crucial. Anything less just won’t be freedom.

ADDITIONAL CONCERNS FOR PRESS FREEDOM

The terms of reference for the WAN-IFRA mission cited two focus areas: the regulation debate and the *Guardian* case. However, additional press freedom concerns were brought to our attention during the course of the mission and subsequent research, and it would be remiss not to include reference to some of the key issues for the purposes of this report.

Potential misuse of DA-Notices

Led by an advisory body called the Defence, Press and Broadcasting Advisory Committee (DPBAC), the DA-Notice system (known as Defence Notice or D-Notice until 1993) is a voluntary code of conduct guiding the exclusion of certain categories of information, such as military missions, anti-terrorist operations in the country, and espionage.

The DA-Notices are intended to provide to national and provincial newspaper editors, to periodicals editors, to radio and television organisations and to relevant book publishers, general guidance on those areas of

national security which the Government considers it has a duty to protect. The Notices have no legal standing and advice offered within their framework may be accepted or rejected in whole or in part.

Institutional procedures for deciding on “sensitive information” have been called into question, especially in the wake of the *Guardian*’s stories about mass surveillance. Writing in the *Guardian*, Simon Jenkins points to how the press seems to be “cowed” by a regime of informal notification of “defence sensitivity.” The DA-Notice has been used to “warn editors off publishing material potentially embarrassing to politicians and the security services.” Calls for a review of the system have added to fears that this process of “voluntary censorship” could become more draconian in the future.

Journalist arrests

Delays in investigations into alleged bribery and phone hacking have raised criticisms among human rights and media groups. Some suspected journalists arrested in the Metropolitan police’s linked inquiries have been kept under investigation for up to two years with no charges being brought. According to the Press Gazette, at least 61 journalists have been arrested since April 2011. Of these, 11 journalists were arrested and kept on bail for an extended period, only to be cleared of all wrongdoing.

In September 2013, human rights group Liberty called for a six-month limit on the time people can be kept on police bail. James Welch, legal director for Liberty, stated: “Bail is a crucial police tool but, with no time limit, people’s lives are being put on hold and ruined by onerous bail conditions with no end in sight.”

Criticisms were also made about the “dawn raids” used to arrest a number of journalists. Neil Wallis, former Deputy Editor of the now defunct *News of the World*, was arrested in a dawn raid in 2011 and put on police bail for 20 months until 2013, when prosecutors said he wouldn’t be charged. Listing a number of incidents, Wallis described the experience as “purgatory” for the uncertainty it imposed on him and his family. WAN-IFRA received the testimony of another journalist whose home was raided in the early hours and who was subsequently kept on bail for over a year. He is charged with ‘Conspiracy to cause misconduct in public office,’ and is now preparing his defence ahead of a trial at the Old Bailey:

“My name is Vince Soodin. I am a 39-year-old journalist currently employed by The Sun newspaper as the Online News Editor.

53. Article 19 Briefing Notes – WAN-IFRA Mission 2014

54. *Ibid.*

Last August 2013 I was charged with 'Conspiracy to cause misconduct in public office'. My alleged crime: to have communicated with a police officer who had unofficially contacted The Sun's newsdesk in the summer of 2010 about two potential stories... both of which I argue are in the public interest."

(See page 38 of the Annex to read Vince Soodin's complete testimonial)

Safeguards for journalistic materials

Proposed changes to the Deregulation Bill have caused alarm as a clause could alter the process for obtaining "production orders" with regard to material obtained by journalists. This clause would take away important statutory safeguards for journalistic material against unlawful seizure by the police, through repeal of provisions in Schedule 1 of the Police and Criminal Evidence Act 1984 (PACE).

In a letter to Cabinet Office ministers responsible for the bill, The Newspaper Society, which represents regional media, protested against the bill which "could enable the current statutory safeguards to be removed completely, reduced, weakened or otherwise radically altered at any later time, without the prior consultation of the media affected nor detailed parliamentary scrutiny of the effect."

The underlying rules governing whether police can have access to material will remain the same but without media organisations being present it is feared that judges will be more easily persuaded to authorise police seizures of journalistic material. This measure threatens essential protections for journalists from being forced to hand over material to the police.

The Government has agreed to retain the PACE provisions for journalistic material and has undertaken to put down an appropriate amendment to the Deregulation Bill. However, the Home Office intends to consult on the Leveson recommendations which would reduce the PACE protections and align them with the weaker counter-terrorism provisions which the media opposed. The media intend to oppose any such implementation of the additional Leveson recommendations in this area.

Digital Freedom and Internet legislation

While the UK upholds online freedom, there are worrying trends on the criminalisation of social media, mass surveillance and proposals to introduce web filters:

- Blocking of "extremist" websites and online content:

The existing process for taking down websites deemed to breach the law is under Section 3 of the Terrorism Act 2006. As part of the government's revised counter-terrorism strategy, it is designed to deny access from public buildings to websites that feature unlawful material. The campaign group Big Brother Watch warns that: "there is a danger that political figures become embroiled in deciding what we can and cannot see online. The starting point should be if material meets a criminal threshold, can those involved be prosecuted. Blocking must never become an easier alternative to prosecution."

- Framework for copyright: The Digital Economy Act has provisions that allow the UK government to order Internet service providers (ISPs) to block websites and suspend customers accused of downloading materials with copyrights. Rushed through just before the 2010 general election, this legislation did not receive lengthy scrutiny before being approved. Two of the United Kingdom's largest ISPs – BT and TalkTalk – have been arguing that they should not be put in the position of policing their customers, and have also fought against the idea that they should have to pay for the systems to allow this to happen. After two years of legal challenges against the legislation, the court of appeal ruled in March 2012 that the act was legal and compatible with European law, allowing government to compel Internet providers to send out warning letters to subscribers accused of illegal file-sharing.

- Internet surveillance: In 2012, the government proposed to extend its surveillance powers with a draft Communications Data Bill. Dubbed the "Snoopers' Charter" by civil liberties campaigners, the Home Office stressed that the Bill was intended for targeted surveillance only. But according to Index on Censorship, it "would have made the surveillance and storage of UK citizens' communications data the norm, allowing an intrusion into the privacy of British citizens that would have chilled free expression." Amid fierce opposition from the Liberal Democrats, the bill was dropped after a joint parliamentary committee published a damning report criticising the "sweeping powers" given to the Secretary of State. But the Home Secretary has since revived the need to bring forward a similar law. Hints towards new legislation leave on-going concerns about limiting abuses of powers and ensuring a balance between security and freedom of expression.

Threats from Data Protection legislation

The media - broadcast and press - are strongly opposed to the wider recommendations of the Leveson Report for changes to the few UK laws which specifically protect journalistic activities, journalistic material and sources. The Recommendations suggested the

reduction and removal of specific statutory exemptions and protections for journalism, journalistic material, and protection of sources in the Data Protection Act 1998 (already at risk under the new [EU draft data protection regulation](#)). The Leveson Recommendations would make the Information Commissioner's Office (ICO) the day-to-day statutory regulator of the UK press and other media, leading to the reduction of the protection of journalistic material and journalistic sources from the police. The government expressed concern about the implications of the data protection proposals, but the ICO is already consulting on guidance and the government is reviewing sentences and will consult on the Leveson Recommendations to amend the legislation on both data protection and police access to journalistic material.

The Leveson Recommendations on police/media relationships have also caused concern about a reduction in the release of information to the media that is of legitimate interest to the public, as well as the creation of difficulties for whistle-blowers to reveal police misconduct.

RECOMMENDATIONS

There is growing evidence, reported by the WAN-IFRA membership, that the British approach – either in terms of regulation, or in the misuse of terrorism and national security legislation - is being used by repressive regimes to excuse their own practices towards the press. The British government must take steps to ensure that it upholds the high standards of press freedom expected from a leading democracy with a long tradition of guarding these values. It should reiterate clearly to the international community that it continues to support a free and independent press, and back these statements with discernable action at home to support rather than punish journalism.

Foreign governments should not look to transpose the British model of regulation to their own national example. Individual solutions should be sought that deal with specific national contexts, all while respecting internationally recognised standards for freedom of expression.

Self-regulation remains the ideal model for press regulation in that it guarantees the least restrictions to the freedom of the press. The Royal Charter and the associated legislation that backs it up represent a level of statutory regulation for the press in the UK. This is a fundamental shift from the current system of regulation, and a departure from the principle of zero involvement of politicians in press regulation. The implications of this should be the subject of wider public consultation.

The UK industry's concerns over political interference in the press are well founded, given the acrimonious process that resulted in the Royal Charter and its recent actions against the Telegraph and *Guardian* newspapers. A lack of constitutional-level guarantees for freedom of expression expose the press to the potential risk of further attack depending on the prevailing political culture. Better overall protections for journalism in the UK should be sought that remove punishments for free speech and seek instead to preserve it.

Any regulatory system of the press must have the support of the industry itself. Discussions that exclude the press, or that are conducted without transparency or public consultation, should be avoided.

The UK government needs to step back from any further involvement – perceived or otherwise - in the regulation issue, and should seek to distance itself from any statements or actions that pressure the editorial independence of the press which could invite accusations of authoritarian control over public debate.

The UK press should be fully supported in its efforts to create and implement a credible framework for self-regulation. The goal should be reinforced to show how a model of self-regulation, without statutory underpinning, could work in the interests of the public and the profession of journalism.

The highest standards of professionalism and ethical practice should be encouraged at every level of the media structure as the best defence against political interference or unnecessary legal restrictions on the freedom of the press.

Public interest journalism should be defended and supported at every level, and the press should be encouraged to pursue investigative reporting as an essential benefit to society.

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I. Professor Charlie Beckett

Anyone interested in the impact of Leveson and the proposal for a Royal Charter should read some of the detail. The Leveson Inquiry report is a treasure trove of evidence about the good and (mainly) the bad of British newspaper journalism. The various regulation proposals are also worth looking at in detail to dispel some of the myths put about by both the newspapers themselves and some of the lobby groups involved. But allow me to give a more intuitive response to what might emerge from what has been an appallingly messy bit of policy-making by all involved.

I do not think that the newspapers' proposal (IPSO) for a revised version of the Press Complaints Commission gives strong or independent enough redress for those hurt by press malpractice. It's a feeble response from the industry but I think it should be given a chance. The principle of self-regulation is so important in a media ecology where broadcasting is already heavily regulated and so dependent on the BBC. We need a viable private press alternative.

I understand entirely the rationale behind the Royal Charter proposal. Its creators have come up with an ingenious structure that tries to safeguard press freedom according to the letter of the law. But in the harsh reality of the relationship between power and the press I think that the Royal Charter proposal for independent regulation is a fundamentally flawed idea.

I do not think that it will end media freedom in the UK. But I do think that any system that has an element of political influence - however remote and indirect - is a mistake. Firstly, it sends a terrible signal around the world to governments who want to introduce what they will also call 'sensible measures' to limit the worst abuses of the press. Nowhere at any time in history have politicians sought willingly to extend media freedom unless forced to do so.

Secondly, I believe that it will have a chilling effect on good journalism as well as bad. The press should be allowed to be vicious, partisan, and even, at times to act illegally. The Royal Charter doesn't end that in itself. But I do believe that it will encourage powerful people with expensive lawyers to try to reshape the relationship between the authorities and the journalist.

I also do not think it will solve most of the problems Leveson identified. It won't tackle issues such as the lack of plurality of ownership and the business model problem for private journalism in the UK. Phone hacking was already illegal. It was failure of the police as much as the press that its full extent went unnoticed. Many of the other abuses stem from vicious competition in a declining industry. Leveson won't solve that.

This is an important time for British journalism but I do not subscribe to the view that this is an epochal moment. I don't think the value of British journalism will be drastically affected either way. There are much bigger economic and technological forces at work that offer much greater threats and opportunities. But this is a point when you should either trust the politicians or the press. Despite my respect for the former and my criticisms of much of what the latter do, I think the public interest is in self-regulated, independent newspaper journalism.

Professor Charlie Beckett was a journalist for the BBC and ITN before founding the Polis journalism think-tank at the LSE where he is now Head of the Department of Media and Communications. He is on twitter as @CharlieBeckett

II. Professor Steven Barnett

Just under 25 years ago, in April 1989, Britain's Conservative government established a committee of enquiry into the press. It followed multiple and flagrant breaches of ethical standards, gross distortions of the truth, and serious intrusions into privacy during the 1980s. During the hearings, several proprietors and editors conceded that they had gone too far, but promised reform and pleaded for another chance to establish an effective system of self-regulation.

The Committee's chairman, Sir David Calcutt, accepted their assurances and recommended a new self-regulatory body, the Press Complaints Commission (PCC), operating independently from the industry, which would devise and implement a professional Code of Conduct. Unfortunately, while the industry did indeed set up the PCC, it ignored Calcutt's key principles and established a body which – as Calcutt himself concluded 18 months later – was dominated by the industry and designed to protect its own interests.

During the course of the Leveson inquiry, it became clear that the scale of press abuse this time around exceeded the 1980s, and that sections of the press were repeatedly breaching their own code of practice with impunity. We heard shocking revelations of cynical distortion, vindictive bullying, gross intrusions into private grief and the systematic theft of private medical, tax and phone records. This was not public interest journalism but a form of victimisation in pursuit of "scoops" and higher circulation which was wholly indifferent to personal suffering.

In response, Sir Brian Leveson again proposed a framework of independent self-regulation. But this time, he wanted to ensure that its independence would not be compromised. He therefore proposed an independent body, wholly outside the influence of government or industry, to audit the self-regulator and ensure there was no industry backsliding. Leveson's modest system has been endorsed by all three main parties, the general public, civil society groups, the NUJ and staunch free speech advocates such as Sir Tom Stoppard and Salman Rushdie.

The British press responded exactly as it did to Calcutt. First, it orchestrated a full-throated scaremongering campaign about the risk to press freedom. As the great former Sunday Times editor Sir Harry Evans has said: "The misrepresentation of Leveson's main proposal is staggering. To portray his careful construct for statutory underpinning as state control is a gross distortion." Let us be absolutely clear: the Charter framework now in place does not allow the slightest opportunity for political interference.

Second, the press established its own regulator, IPSO, which purported to follow Leveson's principles. Independent analysis by the Media Standards Trust shows that IPSO fails on 20 out of 38 relevant Leveson recommendations. It is a slightly modified PCC, neither independent nor effective.

If we leave self-regulation to IPSO, the combination of declining circulations and ferocious competition amongst national newspapers in the UK will guarantee hundreds more victims of press mistreatment over the next decade. Leveson's proposals were designed to protect ordinary people from abuses of corporate power while safeguarding independent, watchdog journalism. The Charter framework achieves precisely that, and is no threat whatsoever to press freedom.

Steven Barnett is Professor of Communications at the University of Westminster and an established author and commentator, specialising in media policy, regulation and journalism ethics. He is on the editorial board of the British Journalism Review. His last book, The Rise and Fall of Television Journalism, was published in 2011 by Bloomsbury Academic. Email: s.barnett@westminster.ac.uk. Twitter: @stevenjbarnett.

III. Press Regulation, the State-Sponsored Royal Charter and Why Ipso is the Solution to Maintaining Britain's Free Press - David Newell, Director, Newspaper Society and Newspaper Publishers Association

The Leveson Report on the Culture, Practices and Ethics of the Press recommended "voluntary independent self-regulation". The State Sponsored Royal Charter is the polar opposite of that recommendation.

There was no parliamentary scrutiny of its terms nor any consultation with the press or the public. It allows politicians to interfere in the regulation of the very voices which hold them to account on behalf of their readers and investigate such cases of corruption and wrong-doing as the MPs' expenses scandal.

Newspapers and magazines which decline to be bound by it now face the prospect of being punished in the libel courts for refusing to succumb to state press regulation by having to pay punitive damages and the other side's costs, even if they are innocent and win the case.

Despite these legislative 'incentives' designed to bring the press to heel, not a single newspaper or magazine is willing to sign up to the politicians' charter. It has been condemned by human rights groups and freedom of expression campaigners around the world. The British public is itself overwhelmingly opposed to giving politicians control over press regulation.

Britain's press is already subject to numerous criminal and civil laws covering everything from libel and defamation, and contempt of court to phone hacking. There is simply no need for further state intervention into press regulation.

But the industry has accepted the need for a new and tougher system of self-regulation to replace the Press Complaints Commission. After more than a year of extensive preparatory work, it has established the framework for a voluntary, independent system of press regulation which is believed to be the toughest in the western world.

The Independent Press Standards Organisation (IPSO) will deliver on the Leveson principles, binding the industry to an enduring regulatory system and one which will be of real benefit to the public. But crucially this system will be underpinned by contract law and not by Parliament. It will allow the press to retain its fundamental democratic freedom to scrutinise politicians and others in positions of power.

The vast majority of UK news and magazine publishers are ready to take part in IPSO - a huge achievement given that each company will have to sign legally binding five-year contracts that will guarantee IPSO its independence and give it tough powers of investigation and enforcement, including the ability to impose £1 million fines for serious and systemic wrongdoing.

A wholly independent appointments process overseen by the former Head of the Supreme Court has now begun the appointments procedures that will deliver a Chairman and Board for IPSO. The new regulator is expected to be up and running by May 2014.

IPSO will provide real protection for ordinary people affected by media coverage. It will have tough powers and sanctions to ensure the sort of practices described at the Leveson Inquiry can never happen again. But it will also ensure that British people can still rely on a free press, able to expose wrongdoing and hold the powerful to account, one of the cornerstones of our democracy for the past 300 years.

IV. Why independent self-regulation is good news for journalists - Jonathan Heawood

Independent self-regulation of the press is good news for press freedom and professional journalism. It is the middle way between state regulation and self-interested regulation by news publishers. It keeps politicians' noses out of press regulation but makes publishers more accountable to their public. And it protects journalists from the chilling effect of libel bullies. At The IMPRESS Project, we think these are important benefits. That's why we are setting up an independent self-regulator in line with the recommendations in the Leveson Report.

For 60 years, the British press has practised a form of self-regulation, most recently through the Press Complaints Commission (PCC). The PCC was an effective mediator between complainants and editors on a case-by-case basis, but it utterly failed to prevent serious and systemic abuses by some newspapers. It brought the British press into international disrepute and contributed to a collapse of trust in journalism. Its form of self-interested regulation is now dead. Like the parrot in the Monty Python sketch, you can nail it back to the perch, in the form of the Independent Press Standards Organisation (IPSO), but you can't breathe life into it. Self-regulation in this country is no more. It has ceased to be. It has kicked the bucket. Anyone who believes in press freedom and professional journalism urgently needs to find a viable alternative.

Lord Justice Leveson gave us that alternative. He rejected both self-regulation and statutory regulation. Instead, he proposed a form of self-regulation which is subject to independent oversight – independent self-regulation. This combines the virtues of self-regulation with the benefits of statutory recognition. The recognition process does not make membership compulsory, but it does, indirectly, give the regulator authority over news publishers.

After some political wrangling, Leveson's proposed statute to enable the recognition process was substituted with a Royal Charter, which sounds authoritarian but is in fact a way of increasing the democratic legitimacy of the process. This Charter bars politicians from any active involvement in regulation, and can only be modified by a two-thirds majority in both Houses of Parliament. Members of a regulator which is recognised under the Charter will be protected against exemplary damages and costs-shifting. Publishers which flout this system will be exposed to these risks. These incentives to not amount to compulsion, but they do create a very real choice for news publishers of all kinds: hold yourself accountable to decent standards of journalism and receive protection against legal threats – or go it alone.

Despite the grotesquely distorted coverage it has received in some newspapers, the Royal Charter does not amount to state licensing and does not introduce a new press law. It simply establishes an independent body – the Recognition Panel – which will monitor whether the regulator is enforcing the existing editors' code. This is a unique opportunity for the British press to show the world that it takes journalism seriously. If we miss this opportunity, statutory regulation will inevitably follow.

Jonathan Heawood is Founding Director of The IMPRESS Project, which aims to establish an independent self-regulator for the press in line with the Leveson Report.

V) Preserving press freedom in the UK - Professor Tim Luckhurst

Britain's newspaper industry responded to the Leveson Report with commendable decency. Pausing only to note that all the offences discussed at Lord Justice Leveson's inquiry were already either actionable or criminal, it acknowledged that a new version of self-regulation might, nevertheless, be desirable. So, the industry devised the Independent Press Standards Organisation (IPSO). It is strong independent and ready to start work.

Sadly, supporters of state sanctioned regulation want more. They fear self-regulation that can secure ethical standards. Like every ideologue that has sought to replace the British tradition of press freedom with state sanctioned journalism, they dislike our free, raucous and mischievous press. So, rejecting a solution with high universal appeal, they insist that newspapers must obey the terms of a Royal Charter written by politicians.

None of their frequent displays of arrogance has done more to expose the illiberal sanctimony that motivates Britain's campaigners for press reform. Their flagship campaign organisation, Hacked Off, rejects the lessons of three centuries in which a press free from state sanctioned regulation has spoken truth to power and exercised the sanction of public opinion on behalf of its readers. Instead, Hacked Off and the politicians who support it promote the right of a self-appointed elite to define the public interest. Heaven forbid that the newspaper industry might put its own house in order; the state must intervene where its presence can do only harm.

And so, on the fundamental issue of press freedom, battle lines in Britain are defined as essentially unchanged since the first attempt to re-impose state supervision of British newspapers failed utterly in 1949. Hacked Off will demand state underpinning of regulation no matter what a coalition ranging from *The Daily Telegraph* to the Daily Mirror suggests. The risk looms that the IPSO scheme will be undermined before it can win public trust.

This is lamentable because the threat posed by regulation underpinned by a Royal Charter is stark. The principle of separation between the state and journalism is enshrined in Article 19 of the Universal Declaration of Human rights, the European Convention and the first amendment to the US Constitution. Hacked Off's effort to depict state supervision as compatible with freedom cannot reconcile the obviously irreconcilable.

It is time to stop pretending that the Royal Charter as proposed by Hacked Off and Britain's political leaders does not grant politicians power over newspapers. Power to certify a press regulator would be exercised by a 'recognition body' empowered by the state. This body would be ultimately accountable via parliament to a minister. A government determined to get the press it wanted as opposed to the press it deserved could use this 'hands-off' influence to reduce newspapers' independence.

Do not imagine that this is a matter for Britons alone. No democrat should ignore the international consequences of decisions made in London. Britain's example on issues of free speech is followed throughout the world. If Westminster imposes the politicians' Royal Charter, no matter how benign the consequences in the first instance, the excuse will be used mercilessly by regimes determined to crush their critics.

Tim Luckhurst is Professor of journalism at the University of Kent and a former editor of The Scotsman

VI. Hacked Off Position Statement for WAN-IFRA - Brian Cathcart

The UK has an unusually powerful and generally very profitable national press: a handful of titles dominate the national conversation to a degree not seen in most countries. Recently most of them suffered grave governance failures, leading to unlawful and unethical practices by journalists that caused harm to thousands.

This is challenging for journalists everywhere, most of whom trust their colleagues in other countries to do good, but the problem had to be confronted. The UK did so in a manner of which any democracy would be proud.

When the public demanded action, government and opposition jointly agreed to establish a public inquiry under a senior, independent judge who was explicitly barred from undermining freedom of expression.

For a year he listened to interested parties including victims of press abuses, academics and newspaper representatives, and he reported in 2012. He made two main evidence-based findings: news publishers had 'wreaked havoc in the lives of innocent people' and they had operated a sham 'self-regulator' which, instead of providing redress and upholding standards, served to cover up wrongdoing.

Mindful of the need to protect free expression, the judge recommended that the press continue to regulate itself, but in view past failures he proposed that a new body, free from influence by politicians or the industry, should periodically audit the self-regulator to ensure it meets specified standards of independence and effectiveness. The judge also addressed the infamously high cost of legal proceedings in civil media cases, which gravely disadvantages all but the richest complainants, recommending that the self-regulator offer cheap, quick arbitration.

He said participation in an audited self-regulator should be voluntary but should be very advantageous to news publishers in terms of governance, public trust and legal costs.

Implementing these proposals, politicians maintained their cross-party approach during intensive consultations with editors and others. They agreed many changes requested by editors. Notably, instead of creating the audit body by statute (to which editors objected) they used the relatively inoffensive device of Royal Charter. The Charter was endorsed by every party in Parliament.

The Charter system safeguards the press from political influence and a unique lock ensures that it can only be amended by a two-thirds vote of both Houses of Parliament and providing the independent audit body agrees. And if a self-regulator then objects it can withdraw without penalty, nullifying any change.

The Charter system has compelling democratic legitimacy. It has the support of the judge, the elected Parliament, victims of press abuses, the National Union of Journalists, leading figures in free expression and the overwhelming majority of the public.

The Charter also complies with the European Convention on Human Rights and poses no threat to free expression – indeed it offers unprecedented protections to investigative journalism. Several countries ranked above the UK in the World Press Freedom Index demand greater accountability from news publishers, in some cases under statute.

The UK has found a good solution to a challenging problem. Journalists everywhere should support it.

Brian Cathcart is Founder/Executive Director of Hacked Off and a Professor of Journalism at Kingston University. Hyperlinks provided by Hacked Off.

VII. John Witherow, Editor, The Times

Britain has a fateful decision to make. As it debates the future of press regulation it can choose to retain an industry that is free to investigate, inquire and insult, subject to numerous criminal and civil laws and answerable to its readers. Or it can allow the wrongdoing of a few to become the pretext for forcing the press to serve at the pleasure of those it holds to account.

The stakes are as high abroad as they are at home. Plans for regulation by a politicised royal charter would jeopardise priceless British freedoms won over many centuries. Just as ominously, they are already being used by authoritarian leaders elsewhere to justify tighter control of the media.

In Ecuador, President Rafael Correa has cited the British case in support of one of the most repressive media laws in South America. In Kenya, where a fearless press serves many of the purposes of a political opposition, government figures invoke the charter to explain new laws giving officials powers to fine and de-register journalists too critical of the authorities.

The World Press Freedom Committee and the International Press Institute have said the charter would have “a chilling impact” on journalism from South Africa to Sri Lanka. The 2014 World Press Freedom Index argues that “civil society could only be alarmed” by the charter scheme. The Index on Censorship called the day Parliament voted on it “the day British democracy shot itself in the foot”.

I agree. Regulation by the political parties’ charter would establish a legal mechanism for political interference in the British press. The idea appals Americans for the same reason that it will delight Vladimir Putin and the increasingly censorious government of Recep Tayyip Erdogan in Turkey. It crosses a line that no one who understands the value or fragility of freedom should cross: the line between good journalism and state control, however cleverly disguised.

That is why The Times endorses an alternative – the Western world’s toughest system of newspaper self-regulation, run by an Independent Press Standards Organisation (IPSO). Like the regulatory system envisioned by Lord Justice Leveson, IPSO will have the power to require prominent corrections, investigate alleged wrongdoing and, in serious and systemic cases, levy fines of up to £1 million. Unlike a regulator underpinned by statute, it will be truly independent.

Britain has some of the world’s toughest libel laws and a justice system that already acts against journalists who commit crimes. The demand for regulation by royal charter is a step too far. What began as an important effort to limit media intrusion in the digital age has become an assault on one of our most precious freedoms. That its supporters see it differently does not make them right. On the contrary, in pursuit of the narrow aim of curbing tabloid excesses, they are acting as if blind to the broader danger of stifling free speech.

Britain in the 21st century should be a beacon of liberty, not a symbol of censorship to authoritarian regimes. With independent self-regulation, a free press can continue to play its vital role.

VIII) The *Guardian* and UK press freedom seen from the rest of the world - Matti Kalliokoski, senior editorial writer, Helsingin Sanomat (Finland)

The United Kingdom has traditionally been a role model of well-functioning press freedom for many countries. Of course it is in many ways a model of its own constitutional peculiarities, but the general image seen from abroad has been clear: if politicians or public servants behave in an inappropriate way, the press will publish the news without those in power able to prevent it.

There are many reasons for this reputation. The UK parliamentary system is an example for other countries. "The Mother of Parliaments" is in London. The history of a free press has a strong British flavour. As a great world power of its time, Commonwealth countries especially have a special relationship with the UK. They still often adopt best – and worst – practices from the UK government. The position of the English language as a true world language of course makes the export of ideas easier.

The attacks on the *Guardian* newspaper by the UK government – the investigations, the use of terrorism laws and the threatening of individual journalists – are therefore not only domestic issue within the British Isles. They also have repercussions in other countries. And it is not only the pressure put on the *Guardian* that is having its worldwide effect. It has to be seen in the context of attempts by the politicians to impose forced "self-regulation" on the UK press.

When the specific pressure put on the *Guardian* and the general pressure put on the UK press are looked at together, the overall picture is very tempting for those in power in less democratic countries. If you can say that although publishing some news is in the public interest, it can also threaten the national security interests of the country, you impose very straightforward acts of pressure on journalists. And if there is improvement needed in the general code of conduct for the press, you can force a nominally self-regulatory system on the industry by creating financial penalties.

If a political leader is criticised by the international community, he (and very seldom she) can now refer to the UK example: "If it is possible in a leading Western country known for its press freedom and parliamentary traditions, why are we blamed when we follow the same path?" The balance between press freedom and national security interests can be a delicate one, but it is in the public interest for methods used by security officials to be discussed openly.

The threat to press freedom is not limited to less democratic countries only. Unfortunately many governments in countries with well-established democracies have the tendency to increase financial pressures on newspapers and to call for "more effective" self-regulation when the press is making the lives of politicians less comfortable. In many cases, 'uncomfortable' is collateral damage caused by a press playing its proper role in a democratic society.

Matti Kalliokoski was also a mission delegate on the UK visit

IX) Vince Soodin - Testimonial

My name is Vince Soodin. I am a 39-year-old journalist currently employed by The Sun newspaper as the Online News Editor.

Last August 2013 I was charged with 'Conspiracy to cause misconduct in public office'. My alleged crime: to have communicated with a police officer who had unofficially contacted The Sun's newsdesk in the summer of 2010 about two potential stories.

One tip revealed that a fox had attacked a young child at a school - a topical piece at the time coming a week after a fox had crept in to family home and mauled baby twins leaving them with horrific injuries. The second story revealed police were searching a property that belonged to a convicted serial killer over fears he had murdered others. Both stories I argue are in the public interest.

However now I am one of 17 journalists from The Sun, The Daily Mirror, The Daily Mail and Daily Star and the defunct News of the World charged and facing trial at the UK's top criminal court The Old Bailey - usually reserved for those facing murder and terrorism trials.

My ordeal started in August 2012 when I was subjected to dawn raid by police officers from The Metropolitan Police's Operation Elveden investigating payments to public officials from journalists.

Shortly after 6am, my doorbell rang and I answered the door to eight police officers who promptly arrested me. Officers then went straight to my bedroom to wake my girlfriend, not allowing me to tell her what was happening. Within minutes the police were bagging up my computers and rifling thorough everything in my home.

I was taken away from my girlfriend to a police station and put in a cell while police continued to search my home. I was kept in the cell for five hours before my solicitor arrived. I was then questioned for around four hours about my sources for those 2010 articles before being released on bail.

The police questioned me two more times - one occasion I was grilled for three hours before covering the US Presidential elections for The Sun. I was kept on bail for more than a year as the Crown Prosecution Service delayed making a decision on my case causing further anguish for my family and myself.

Finally on August 20 last year, I was charged with 'Conspiracy to cause misconduct in public office', which led to my suspension from work and I have been preparing for trial this May ever since. The arrests of more than 60 journalists in the UK have had a chilling effect on British journalism. Reporters are now fearful about the contact they have with public officials who could be potential whistle-blowers about the public services in the UK.

The manner in which the arrests have been carried out has been shocking. Dawn raids by anything between six and 12 police officers. My colleagues, many of whom have young families, have seen officers rifling through their children's belongings. One colleague was forced to pick up his sick child from a sofa as police believed evidence was hidden under the youngster.

Hopes of swift justice so we could defend ourselves have also been dashed. The first Sun reporter to be arrested was held in October 2011. He is still yet to face trial. It will be THREE years before he does. So far no reporter has actually gone on trial, with many of us arrested in 2012. Only last week on February 26, 2014, another colleague was charged 20 months after being arrested. He will probably not face trial until the spring of 2015.

The effect of the arrests has been devastating on reporters' lives. Two sadly tried to commit suicide but thankfully failed in their attempts. While many talented journalists have seen their careers wrecked because they have been put on hold for so long.

There have been more than 60 arrests of journalists in the last two years. The police have changed tact and appear to have abandoned the heavy-handed 6am raids, but are worryingly secretly contacting reporters and questioning them under caution about their sources - without the public knowing. We understand around 30 reporters have been questioned in this way. If the journalists do not cooperate, they are threatened with arrest. Journalists are now being charged as result of being questioned under caution.

Meanwhile public officials are being arrested for merely being in contact with journalists - even if they have not been paid for information. And police officers and prison officers have been sent to jail after they were exposed as newspapers sources.

What is happening to the journalists in the UK - a country proud of its free press and which should be setting the standards for journalists around the world - is certainly alarming. Many of us now look forward to fighting back against the allegations against which I believe threaten journalism in this country and our ability to hold those in power to account.

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55. www.n-p-a.org.uk / www.newspapersoc.org.uk

56. www.bigbrotherwatch.org.uk

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WAN-IFRA and the Swedish International Development Agency (SIDA) established a partnership in 2010 that allows WAN-IFRA to broaden and develop its press freedom and media development activities to support free and financially sustainable media worldwide. Visit www.wan-ifra.org/pressfreedom for more information on our press freedom activities.





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