

Reforming media regulation

Submission by George Eustice MP to module 4 of the Leveson Inquiry

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Introduction

I worked for the Conservative Party as Head of Media under Michael Howard for eighteen months between the end of 2003 and May 2005 and then as Press Secretary to David Cameron for almost two and a half years, until the end of October 2007.

My four years experience of managing the media for the Conservative Party led me to conclude, reluctantly as a Conservative, that some new statutory measures were necessary to underpin self regulation and to make the Editors' Code work effectively. I think that relatively minor changes in the regulatory framework could make a big difference in raising standards and that this represents the best last chance to arrest the apparent terminal decline of the newspaper industry.

I also think that the press are wrong to fear change. A credible regulatory framework recognised in statute would protect journalists too. Firstly by strengthening their public interest defence when they are justified in crossing boundaries and secondly by providing for some reliable checks and balances in the system before you get to the stage where the police have to launch dawn raids and make arrests.

Our electoral cycle means that there is never a good time for politicians to broach the contentious issue of press regulation. The last Conservative government should have introduced some form of statutory regulation after the Calcutt Inquiry but failed to do so. Tony Blair only dared deliver his "feral beast" speech days before he was due to leave Number 10 meaning it had no impact.

I believe that politicians of all parties have abdicated their responsibility in this area of policy for too long and, in some cases, have attempted to either hide behind or blame the courts instead. I hope that your inquiry will encourage politicians to fulfil their obligation to implement thoughtful policy responses to the current crisis in journalism. I also hope that, as well as listening to the industry, the inquiry will take into account the views of moderate groups representing journalists and the public such as the Media Standards Trust which has done good work in this area.

Clarity about the objective

Some people say, "it is the job of the **press** to hold politicians to account." I think a more accurate analysis would be to say that it is the job of the **electorate** to hold politicians to account through the ballot box. The job of the press in a democratic society is to provide the electorate with accurate and reliable information and to expose

the electorate to a wide range of differing opinions so that the individual voter is able to make an informed decision of their own accord.

I think this is a vital distinction because those who claim that it is the role of the press to hold politicians to account are implicitly conceding that the press are the highest authority in the land who hold all others to account but who are themselves accountable to no one; it is that attitude which has contributed to some of the problems we see today. Often, when the owners of newspapers talk about “free speech”, they actually mean the unbridled power that they themselves possess to act as propagandists to mould public perceptions. We actually need a media culture which promotes free speech for all.

If you make it your objective to deliver a media which strives to provide the electorate with accurate and reliable information, it follows that the key aim should be to **raise standards in journalism**. I think that should guide the work of your inquiry.

The case for statutory regulation

While the introduction of any form of statutory measure, however light touch, is seen as anathema to many vested interests in the press, I believe that such fears are misplaced and their arguments feeble. I reject the claim that the introduction of statutory measures would, of itself, have a “chilling effect” on the press, stifle free speech or somehow put the press under the control of the government.

We already have statutory regulation of our broadcast media and yet some of the best investigative journalism in Britain is carried out by programmes such as *Panorama* and *Dispatches*. The existence of a statutory regulator does not stop the *BBC's Watchdog* from secretly filming and exposing rogue traders virtually every week. Programmes like *Newsnight* or *Channel 4 News* are not known for ‘going easy’ on politicians despite being bound by a statutory code.

Last week, the House of Commons unanimously supported the introduction of a new statutory law relating to defamation at Second Reading and we already effectively have a privacy statute set out in the Human Rights Act. The principle of accepting some statutory laws relating to the press has therefore already been universally accepted.

When it comes to the so called “chilling effect” of statutory regulation, I think this is massively exaggerated and, in any event, should be balanced against the chilling effect that the status quo has on political discourse. For instance, what about the chilling effect of a belligerent press on the ability of politicians to actually exercise free debate about the regulation of the media?

I also disagree with those who, citing the phone hacking scandal, imply that we simply need to ensure that the police enforce existing laws and that nothing else needs to be done. It is ironic that those who express concerns about the “chilling effect” that any new statutory body might have on our press then advocate an alternative system which

envisages the police kicking down doors and launching dawn raids on news organisations as a matter of routine.

By way of comparison, we have a Health and Safety Executive which is established in statute and works to ensure that businesses have the right sorts of compliance and internal management procedures in place to reduce the likelihood of negligence in the workplace. I think we could borrow aspects of that model because we need to find a credible and proportionate way of ensuring the press abide by the law.

We have a broadcast media that is trusted by the public and respected around the world but we have a print media which has lost its way, is not generally believed by the public and faces declining circulations, financial losses and an uncertain future. We should not deny our newspapers a future by condemning them to the status quo.

Credit where credit is due

I think in designing a new model for press regulation, it is worth reflecting on some of the good practice that exists in our press today.

I think it is important to avoid the vilification of “tabloid journalism” in this inquiry. In defence of papers like *The Sun* and the former *News of the World*, political columns by writers such as Trevor Kavanagh and Fraser Nelson were well informed and cogent but written in an accessible way. We should value the role of tabloid journalism in connecting the mass public with current affairs because you will never get three million people to read *The Guardian* or *Telegraph*.

Much of your inquiry has focused on the omnipresence of Rupert Murdoch as a powerful proprietor to whom politicians paid court. However, it is worth remembering that, although *The Sun* was ordered to back Labour in 2005, the *News of the World* remained neutral and the *Sunday Times* endorsed Michael Howard. So, while it is true that Rupert Murdoch interfered in the editorial policy of some of his papers, it is not true of all.

The Daily Mail is often singled out for criticism for having its own agenda and an overbearing editor. However, unlike the situation at *The Sun*, in my experience, Lord Rothermere, the proprietor of *The Daily Mail*, scrupulously refused to get engaged in editorial policy.

While papers like *The Daily Mail* and *Daily Express* certainly have an agenda, they deserve credit for being generally (but not always) consistent and for campaigning on issues and values rather than party politics per se.

I think *The Guardian* has generally managed to nurture a more democratic internal governance structure than most papers. While it is not politically benign, there is a genuine attempt to separate fact from conjecture, from opinion in its reporting. This

makes it unusual among national newspapers in broadly abiding by that particular part of the Editors' Code.

The *Times* sometimes suffers from its craving to be "the paper of record" which means its editorial position is generally rather timid. However, what it does better than most is third party comment by encouraging contributions from all sides of the political spectrum.

The *Independent* was unfairly singled out for criticism by Tony Blair in his "feral beast" speech. I never understood why he picked on the underdog in that way because, while they used to place great emphasis on their editorial opinion, they generally separated those opinions from their news coverage and that is an entirely legitimate approach for a newspaper to adopt.

Finally, and by no means least, my impression was always that the regional newspapers took the Editors' Code and the PCC far more seriously than any national newspaper and they generally approached their responsibilities under that code far more conscientiously. National newspapers may well look down their noses at the regional press but if they had a little less swagger and had showed the same commitment to upholding the integrity of the Editors' Code as regional newspapers did, the system might not be broken.

In defence of 'off the record' briefing

I think it is important to recognise the value of 'off the record' briefing which is often unfairly maligned as being in some way, a 'dark art'. Many people confuse 'off the record' briefing with unattributable (ie anonymous) briefing but there is an important difference. An unattributable briefing is when someone is quoted as saying something without the courage to be identified. On becoming Head of Press at the Conservative Party, I soon learned that there were many people who apparently justified the tag of "senior Tory." Unattributable briefings are usually poisonous and unhelpful from the point of view of the political party but do serve a purpose in enabling journalists to report what people are saying in private.

However, 'off the record' briefing is where nothing appears within quotation marks. Its sole purpose is to allow a press secretary to guide journalists and help them understand the context around the story they think they have and it therefore contributes to greater accuracy and reliability in news coverage.

The fundamental challenge that any press secretary faces is how to bridge two completely different timetables. For a political party forming a policy can be a lengthy process lasting weeks or months. There are many different people to be consulted, internal differences of opinion to be reconciled and conclusions can shift throughout the process. In sharp contrast, the journalist who picks up a snippet of that government process through gossip wants to run a story right away. If you don't return their call

within an hour, they will call you again. They will be under intense pressure from their news desk to file their copy.

Sometimes the small piece of the jigsaw they have come across leads them to the wrong conclusions. Sometimes it is already out of date. Off the record briefing allows a press secretary to invisibly enter the story and make sure that rogue elements of it are removed or adjusted and to do so without compromising the policy making process. Of course, it depends on a bond of trust between the journalist and the press secretary to work. A press secretary who lies will very quickly lose the ability to brief off the record and a journalist who breaches the code will cease to receive off the record briefings.

While I agree with much of the analysis given in the witness statement of Alastair Campbell, I disagreed with the suggestion that the Lobby Briefings had been improved by making them 'on the record'. Some journalists in the lobby told me that the effect of this move was to make the briefings less informative. Instead, they became a sort of duel where journalists would show off and the official spokesman would try to stonewall them. The dispensing of background information was given out over the phone to favoured journalists once the formal briefing was over.

I think that, in opposition (but after I left), the Conservative Party mooted the idea of televising lobby briefings so that they became more like the US system. The theory was that it would make them more serious and civilised. The idea was ruled out, rightly in my view. If you televised the lobby briefings, they would simply become a prop for broadcast packages. All of the emphasis would be on getting the 'two way' shot of the political correspondent asking their clever question. Meanwhile, the official spokesman would be condemned to be portrayed by broadcasters as snivelling and defensive.

I would make the official lobby briefings fully 'off the record' once again.

Policy proposals and conclusions

Your inquiry has received a considerable amount of evidence about the problems that exist within our current media culture. I do not intend to repeat that analysis but to conclude with some concrete recommendations that I hope you will consider.

- 1) **A new Press Adjudicator to replace the PCC with more powers of sanction.** When it comes to maintaining accuracy and maintaining general standards in day to day newspaper content, I favour a new Press Adjudicator to replace the PCC which would be funded by the industry but would have new powers to dictate the size and prominence of any corrections and to levy fines for serious breaches of the Editors' Code. I am interested in the proposal by Lord Hunt to use a system of contracts to bind its members to such sanctions but I do not believe such a system would be sufficient on its own.
- 2) **A compliance role for Ofcom.** While I support self regulation when it comes to daily news content, I think that there is a role for an independent body

established in statute (such as Ofcom) that could focus on improving the internal governance of newspapers to make sure that they are organised in such a way that allows them to comply with both the Editors' Code and the law. For instance, this could set down requirements for an editor to formally sign off a decision to breach someone's privacy before the action is taken and editors should be required to show what prima facie evidence they received to demonstrate that a breach of privacy would be in the public interest. This is what broadcasters are already required to do, so Ofcom would be suited to performing this role. However, Ofcom would have no role in dealing with day to day disputes on individual news stories.

- 3) **A credible public interest test.** The phone hacking scandal and the widespread use by most national newspapers of an illegal market in personal information was caused because the definition of the public interest has been far too elastic and, all too often, has meant what editors wanted it to mean. The definition of the public interest contained in the Editors' Code is inferior to that used by broadcasters who follow a more detailed and thorough approach when it comes to assessing the public interest. Newspapers and broadcasters should follow the same approach when it comes to judgements about the public interest.
- 4) **A right of appeal to the ICO in privacy cases.** While I support independent self regulation when it comes to maintaining general standards of journalism and the accuracy of news content, I think that privacy cases are different in that they relate to possible breaches of existing laws. The challenge is to establish affordable access to redress for members of the public when their privacy is breached. A complainant who is unhappy with the way their case has been handled by the Press Adjudicator, should have the right to appeal to the Information Commissioner's Office. The existence of such a backstop would create the sort of pressure within the system needed to establish the credible enforcement of a public interest test by both papers and any new Press Adjudicator in the first instance. The right of appeal would be restricted to privacy cases and would apply to all media, including internet sites whether or not they opted to become members of the Press Adjudicator.
- 5) **Separating fact from opinion.** The Editors' Code should be redrafted to strengthen the section relating to the requirement to separate out fact, conjecture and opinion. At the moment, this is simply a sub paragraph. It is a vitally important principle if we are to enhance the quality of journalism so should become a section in its own right and should be expanded. I understand the points made by some of your witnesses in saying that it is difficult to enforce, but we should not give up. Regional newspapers do separate out their opinion from their news coverage far more diligently than most national newspapers. A greater emphasis on this principle might be achieved by setting out in the code a presumption against using conjecture or opinion in a news story headline. It could also state far more clearly a presumption that opinion must appear in a separate editorial article and that, where practical, the basis for any conjecture

should be sourced. Arbitrating over such disputes would remain the role of the Press Adjudicator.

Conclusion

I think that a package of measures along these lines strikes the right balance between taking a light touch approach and maintaining self regulation of newspaper content while also ensuring that newspapers abide by the law without having to be routinely investigated by the police. Crucially, there is no extension of statutory regulation to new areas under these proposals, simply some additional measures in statute to ensure compliance where the case for statutory regulation has already been accepted. Finally, it would not require the formation of any new statutory body, simply an additional role for two statutory bodies already in existence.

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