Leveson Inquiry into the culture, practices and ethics of the press

Evidence submission from Kip Meek

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Introduction.

Thank you for the opportunity to contribute to the Leveson Inquiry.

I refer in my evidence to Tim Suter's submission to the Inquiry. As is obvious, we have discussed our submissions.

I have not taken legal advice on my submission therefore I am not, at the moment, waiving the rights you refer to in your letter to me; however I think it unlikely that I will be unable to provide any documents you might need.

The most substantive contributions to the Inquiry in my evidence are those in sections 4 and 5. Sections 1, 2 and 3 mostly provide background.

1. **Who you are and a brief summary of your career history.**

   Currently, I am a Senior Adviser to Everything Everywhere (the owners of Orange and T-Mobile) and hold a number of non-executive roles (Chairman of South West Screen, Director of the Radio Centre, etc.). In my earlier career, I was a strategy consultant and set up my own strategy consulting firm (Spectrum Strategy Consultants) which specialised in providing advice to the media and telecoms industry. In 2003 I joined Ofcom as an executive director. I was a senior partner at Ofcom from 2003 to 2007 and, while my role at Ofcom changed, the Content & Standards Group reported to me at all times during this period. It is my period at Ofcom which makes anything I have to say on the questions you have raised of possible interest to the Leveson Inquiry.

2. **A brief description of Ofcom covering (at least) its origins, status, history (in brief summary), organisation, remit, authority and powers.**

   Ofcom is the regulatory authority for the audio-visual and telecommunications sectors – i.e. television, radio and fixed and mobile telecommunications (it has very limited responsibilities towards the press sector, these being to apply a public interest test in the event of a merger between press businesses). Ofcom has responsibilities, both as a competition regulator but also as a content regulator, ensuring that the content of television and radio programmes does not infringe the various content-related parts of the Communications Act, 2003 (and previous legislation).

   Ofcom was created by the Communications Act, 2003 and assumed its powers at the very end of 2003. Prior to Ofcom's creation, five regulators covered the same patch: the Independent Television Commission, the Broadcast Standards Council, the Radio

Authority, the Radiocommunications Agency and Oftel. These agencies had responsibility for regulating the different elements within the communications industry separately – the core rationale of the Communications Act was to ensure that, as the media and telecoms industries progressively converged, a single regulator could make coherent decisions that either applied to the whole industry or (more commonly) took approaches that were consistent across the whole industry.

From its inception, Ofcom was considered to be a powerful, well-resourced and (on balance) a successful regulator. It was able to attract high calibre staff from the sectors it regulated and, in its early years, achieved a number of notable successes. For example, it created a competitive broadband market by creating regulated prices which gave incentives for competitive investment; it encouraged the so-called "functional separation" of BT (the separation of its local loop business from the rest); extended co- and self-regulation; developed the use of adjudicators to short cut otherwise overly procedural approaches; and so on.

In its early days, the most important organisational units in Ofcom were the Competition Group, the Content & Standards Group and the Strategy Group. Other parts of the organisation employed more people (for example, the group where spectrum engineers were housed) but these three groups originated the big decisions which Ofcom had to make. The key committees in Ofcom were the Policy Executive (comprised of the key full time officials) and the main board (a mixture of non-executives and three or four full time officials).

Ofcom's powers derived from statute – the Communications Act of 2003 (as previously stated) but also a series of other measures, such as successive Broadcasting, Wireless Telegraphy and Telecommunications Acts, European directives and UK competition law. Under the Communications Act, Ofcom had several explicit duties, such as the regulation of telecommunications networks and services, the encouragement of broadband, the management of the radio spectrum and so on. This list included the regulation of broadcasting services on television and radio.

3. The steps which Ofcom takes, in general terms, to discharge its regulatory function

Ofcom acts both in a reactive and proactive fashion to discharge its regulatory function. In reactive mode, it responds to complaints or issues that are raised with it by third parties. Complainants can be both companies and individuals. Examples of typical complaints from individuals are as follows: someone watching a news programme might consider it to be politically biased; another viewer, flicking through the channels, might see pornographic material on an adult channel in the clear when it should have been encrypted; someone else might feel their right to privacy had been neglected when they were filmed injured after a car crash. Companies complaining might be: broadband minnows complaining about the anti-competitive practices of broadband giants, would-be broadcasters complaining about the control of more established broadcasters over sports or film rights, mobile companies complaining their competitors had infringed their licence conditions; and so on. When responding to complaints, Ofcom has standard processes – the case is considered by

an individual or a team, a provisional view is taken and this view is then subjected to scrutiny at whatever level is merited, up to the level of the Ofcom board.

What makes Ofcom a notable regulator however is its ability to initiate reviews of policy - its ability and willingness to stand back from individual cases and ask fundamental questions about its effectiveness. A successful example of this was the Telecoms Strategic Review (TSR), conducted in 2004, which led to BT's functional separation and the creation of Openreach. Ofcom initiated the TSR and, although it addressed issues which might in any event have provoked complaints, it enabled Ofcom to look at issues in the round and to consider more radical solutions than would otherwise have materialised.

This characterisation of Ofcom activities is over-simplified. For example Ofcom also undertakes tasks routinely, such as the production of a Public Service Television Broadcasting Review, which do not fall into the simple proactive/reactive categories described above. But nevertheless the basic picture of a regulator which both responds to requests for action and on occasion takes the initiative gives a fair representation of how it operates.

4. **Ofcom's experience of regulating the media, in particular in relation to phone hacking, computer hacking, "blagging", bribery and/or corruption. To include examples and evidence which conveys the scale on which there issues came to your attention during your tenure.**

During my time at Ofcom, we had little to do with any of the activities listed above with the exception of the possible corruption in the way TV quizzes were conducted.

It is important before expanding on this issue to explain what Ofcom's powers are with respect to issues of this type. The Broadcast Code was the detailed regulation Ofcom produced to enable it to impose the protection envisaged in the Communications Act. This Broadcast Code covers the following areas:

- Protection from offensive and harmful material
- Ensuring accuracy and impartiality of news
- Ensuring individuals and organisations are treated fairly and their privacy is not unwarrantably infringed
- Ensuring there is a clear distinction between editorial and commercial content.

The examples of abuse quoted in (4) above, with the exception of the possible corruption cases discussed below, raise issues associated with the third of these topics, the unwarranted infringement of privacy. If broadcasters had been hacking people's phones in the newsgathering process and the individuals concerned had complained, then Ofcom could have considered their complaints; if they had done so, the outcome would have turned on whether the abuse had happened in an unwarranted fashion.

All the examples of abuse quoted in your list (phone and computer hacking, blagging, bribery, corruption) are illegal. This raises the question of how Ofcom and the police work together. In Tim Suter's evidence to the Inquiry, he deals with this question and explains

that police and regulator offer different approaches which can complement each other. Examples of what he means are the cases of the possible corruption, already mentioned above. In these cases, Ofcom was asked to explore whether broadcasters had set up phone-in competitions in a way that meant contestants were given the impression they could win and that encouraged them to spend money on premium rate calls - while in reality, in many instances, the callers could not win, because, for example, the winner had been identified before the phone lines were closed. This could be interpreted as a fraud and could have opened up the broadcasters to prosecution. In the event, what happened was that the lengthy and uncertain process associated with a court case was avoided and instead Ofcom imposed its own penalty on the broadcasters, relatively swiftly and (from the broadcasters' perspective) not at all painlessly. This suggests that the overlapping responsibilities of police and regulator need not generally be a problem and in contrast, if the two bodies work well together, enable swift and effective action to be taken.

5. **Your views on the strength and weaknesses of Ofcom and, in particular, your views on the steps which might be taken to improve the regulatory framework and effort.**

I will confine my remarks on this issue to content regulation and avoid the economic or competition regulatory functions which do not seem to me to be relevant to the Leveson Inquiry.

Many people have commented correctly that regulators' leverage over content is diminishing – in the past, there were a limited number of TV channels which needed access to a government-controlled resource, the radio spectrum, to be able to broadcast. Control was easy as spectrum was itself highly controlled and allocated through a licensing system to broadcasters. The situation has changed markedly. Broadcast signals can now enter our home in several different ways – terrestrially (as before), via cable and via satellite. Even more significant, over the next decade, as broadband continues to develop, most British households will become accustomed to accessing audio-visual content over the internet. This means that "broadcasters" can circumvent UK regulation, be it with respect to pornography or means of newsgathering (such as phone hacking) or any other form of regulation - if they can find somewhere on the globe from which to send out their programming and use satellite or broadband to get it into people's homes.

My colleague, Tim Suter, has proposed in his submission to the Leveson inquiry, a means of alleviating this issue – he suggests a switch to more co-regulation* in which specific broadcast licences are replaced with a system by which Ofcom sanctioned industry-authored codes which were designed to achieve outcomes which were sanctioned by statute and included in Ofcom's duties. Such codes could come from a variety of different elements within the industry – satellite channels, web sites, Public Service Broadcasters, newspapers, etc.

* There is an extensive body of thinking that has been developed on the distinctions between regulatory, co-regulatory and self-regulatory approaches. Simply "regulatory" means regulation implemented by a regulator. "Co-regulatory" means regulation implemented by a body created by the industry, but reinforced by statutes if the co-regulatory entity fails. "Self-regulation" means regulation implemented by the industry without statutory backstop powers.

In the event that organisations refused to be governed by a code, then Ofcom could impose the code that applied to their part of the industry. Under such a scheme, Ofcom would be a code-approver, but not (as now) generally act as the regulator itself.

Such a scheme would be regarded as having two very significant drawbacks. Firstly, it would be extending regulation to the press which is an explosive political issue. The Guardian newspaper, in the lead on phone hacking so far, could (I imagine) be very concerned that this reaction to the problem represented a real limitation on press freedom. Jeremy Hunt, in his recent speech to the RTS Convention in Cambridge, warned against overreacting to the phone-hacking scandal by extending statutory regulation to the press. In addition, there would be significant definitional problems (what distinguishes a paper from a magazine? Is one regulated, the other not? If both are regulated, what distinguishes a magazine from a book?) These issues could be addressed - but it would be naïve to assume they could be addressed easily or consensually.

The second drawback is that this approach would not address the problem in a fundamental way – those entities delivering content on broadband in particular could still transmit their content from overseas.

Despite these two issues, I believe Tim Suter's suggestions deserve to be explored fully and possibly to be developed further. I believe that most people like some form of content regulation and are familiar with it. The notion of content regulation is accepted in society and the objections for it are practical, not generally philosophical. The merit of Tim Suter's approach is that it is flexible and can evolve, therefore dealing progressively with the practical problems. Satellite channels might have a lighter regime than that chosen by terrestrial channels. The approach adopted in the UK might gain support internationally, such that progressively other jurisdictions might emulate the UK approach, perhaps even to the point where the ability of "broadcasters" to jurisdiction-hop (i.e. be able to choose the most liberal regime) is constrained. It may also be the case that the co-regulatory system envisaged could apply to the audio-visual sector, while the press would opt for a self-regulatory system that looked similar but had more teeth and independence than that offered by the Press Complaints Commission (PCC). Such a system could produce a "Press Code" with the same objectives as the codes developed in a co-regulatory fashion in broadcasting; Ofcom could be involved in oversight in some way; and the composition of the self-regulatory body could be very different from the PCC today.

The most fundamental points are these – the current statutory content regulation will apply to a smaller and smaller proportion of our content consumption and is clearly not future-proofed; no new approach is devoid of flaws; looking to new approaches which have the ability to evolve as markets change is a sensible way forward.