

THE LEVESON INQUIRY

**SUBMISSIONS ON BEHALF OF THE DAILY EXPRESS,
SUNDAY EXPRESS, THE DAILY STAR, THE DAILY STAR SUNDAY
and OK! MAGAZINE**

Introduction

1. These submissions are lodged on behalf of the Daily Express, Sunday Express, The Daily Star and the Daily Star Sunday newspapers (“the Express and Star newspapers”) and OK! magazine. These newspapers are published by Northern & Shell plc, (“Northern & Shell”).
2. These submissions are intended to address a number of different matters. These are: (1) the importance of a free press; (2) specific matters relating to the Express and Star newspapers (3) issues relating to the development of the law relating to privacy; (4) issues relating to relationships between the press and the police; (5) issues relating to remedies for infringements of the law; (6) comments on press regulation.

Importance of a free press (paragraph 2.1 above)

3. The Chairman has made it plain that he is well aware of the importance of free speech, and the importance of a free press. It is only necessary to spend a limited amount of time in jurisdictions without a free press to appreciate the importance of the free press which exists in the United Kingdom. Journalists should never be discouraged from going in the opposite direction to everyone else.

4. It is therefore not intended to develop this point in written submissions. However it is worth re-emphasising that well-intentioned reforms of the press must not compromise the essential freedom of the press. This necessarily includes the freedom to print matters with which some will strongly disagree.

Specific matters relating to the Express and Star newspapers (paragraph 2.2. above)

5. Given the background leading to the establishment of this inquiry, the Express and Star newspapers, and OK! Magazine, can confirm that they have not been involved in any computer or phone hacking. There is no evidence to suggest that they were involved in any such hacking.
6. As appears from earlier submissions there are systems of control operated by news and picture desks; editorial meetings; editors; the legal team; costs management; and disciplinary procedures.

Issues relating to the development of the law of privacy (paragraph 2.3 above)

7. The evidence has established that the Editors Code published by the Press Complaints Commission Code is generally considered to be a good document. That makes important provisions in relation to issues of privacy.
8. However it is plain that the development of the law of privacy (and even whether such a law can properly be said to exist) has raised issues of controversy. The proper meaning of the “public interest defence”, and the existence of the line

between the “public interest defence” and “matters of interest to members of the public”, have been difficult to determine.

9. This lack of clarity in the law is important because many of the examples of complaints about the culture, practice and ethics of the press have related to issues of privacy, and it is likely to prove to an area of continuing controversy. Part of the reason for this is human nature: (a) some persons will provide details of their private lives (whether to the press or through other media such as twitter) which others would consider to be “far too much information”; (b) some persons will be happy and content with good press coverage, even where it is intrusive, but will be very unhappy with negative press coverage, particularly where it is intrusive; and (c) there are others who are very protective about their privacy. Experience also shows that persons will not always go through life without changing their own views and approaches to these matters, and without moving between the categories identified above. Given the press’ understandable and proper desire to expose hypocrisy (particularly in others) this inevitably leads to conflict. While the law continues to develop and refine conflict in this area is inevitable. Providing as much certainty about what is, and is not, permitted should assist in reducing such conflict.

Relationships between the press and the police (paragraph 2.4 above)

10. Proper and verifiable contact between the press and the police is essential. The press have an important role in reporting the commission of crime, and in assisting with requests for information.

11. During formal investigations into persons and even after arrests, a rule preventing contact between the press and the police during investigations increases rumours and unauthorised unofficial contact and leaks. This can be seen from the evidence relating to the relations between the Portuguese police and journalists.
12. The law of contempt of Court in this jurisdiction has, until recent years, been under employed. There are many advantages in commending its recent and proper use, as well as ensuring proper and verifiable contact between the police and the press.

Remedies for infringement of the law (paragraph 2.5 above)

13. The criminal and civil law applies to the press, as much as to any other member of society. It is not proposed to say anything further about the application of the criminal law.
14. The civil law has proved, in many respects, prohibitively expensive for both members of society, and the media. This has meant that newspapers have not been able to defend proceedings when they might have done, and individuals have not been able to pursue remedies. The Express and Star newspapers have already made submissions in relation to the establishment of a Tribunal System, which are not repeated.
15. This then leaves the issue of regulation, which is addressed below.

Press regulation (paragraph 2.6 above)

16. The Express and Star newspapers are not members of the current Press Complaints Commission ("PCC") for the reasons addressed in the evidence. The

Express and Star newspapers remain ready, willing and able to join a PCC which is independent of current editors and/or senior executives of other newspapers, credible and effective.

17. There are principled differences between the respective aims of criminal, civil and regulatory law and it is important to emphasise these. The proper aim of regulation is to enhance and maintain the reputation of the free press and to enhance and maintain proper standards of behaviour in the regulated area, see generally Bolton v Law Society [1994] 1 WLR 512 at 518-519. It is not the principle aim of regulation to punish wrongdoers. That is the aim of the criminal law, and it might be thought that published suggestions that financial regulators should impose very substantial “fines” so that there is no need to engage criminal proceedings, suggests that this understanding has become lost in other areas of regulation. It is not the principle aim of regulatory action to compensate persons who have suffered loss. That is the aim of civil proceedings, and the fact that everyone is looking for an alternative to civil proceedings says more about current failings in civil procedure than it does about anything else. Any new regulatory body established (whether by agreement or statute) for the press needs to respect these principled differences.

18. The composition of the PCC should not include current editors. Former editors, who have left the industry and who do not have continuing loyalties or animosities, might be suitable for appointment. The evidence from Express and Star witnesses suggested that consumers, academics, and lawyers, might be considered for inclusion.

19. There needs to be a credible and transparent body to make appointments to the new Regulator. Where any institution has powers and responsibilities in areas of fundamental constitutional significance which provide obvious temptations to the powerful to interfere, there needs to be an independent appointments commission for that institution. Such an appointments commission exists for the appointment of Judges. A body with power to regulate the press needs to have some equivalent credible system for the appointment of its members. Potential weaknesses in the guidance for the Office of the Commissioner for Public Appointments (OCPA) were identified by Baroness Prashar in relation to the Judicial Appointments Commission. As a result modifications were agreed for the selection of JAC Commissioners. Similar safeguards should be provided for in relation to the selection of members to the relevant appointing body for the PCC.
20. It is respectfully submitted that delegating appointment of members of the PCC to headhunters is not a reasonable substitute for a transparent appointing body. Any selection of a person to the body appointing the members of the PCC, and any selection of a person to the PCC, should comply with the Nolan principles.
21. The reach of any system of regulation needs to be decided. Any system of media regulation should regulate all of those who are producing relevant material. At present news is published both in print form, and on the internet. The trend towards internet publication is likely to continue. Although it appears that some providers of news via the internet are likely to agree to become members of the PCC, there will be relevant publishers, domiciled in other jurisdictions, who are unlikely to agree to become members of the PCC. It would

be wrong, and probably ineffective, to attempt to block otherwise unobjectionable news content on the internet simply because the supplier of the news did not want to become a member of the PCC. In these circumstances it is respectfully submitted that the PCC should remain a voluntary organisation.

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