

HOUSE OF LORDS – 15th JULY 2011

My Lords. I started my working life as a trainee sports writer on Hugh Cudlipp's "Daily Mirror", a brash but intelligent, mass market, pre-Murdoch tabloid. It was the people's paper and sold five and a quarter million copies every day.

That was in the 60's. Since then I have been involved in the discussion and resolution and handling of countless editorial issues at ITV, Channel 4 and as a quasi regulator at the BBC. I have even been a complainant on occasion.

I do not want in any way to anticipate the outcome of the judicial inquiries to come, particularly on the future of press regulation. So, my remarks today in this welcome debate are designed to explore some principles and arguments that might help to inform that debate.

The knee jerk reaction to the current scandal is that the newspapers have been drinking in the last chance saloon of self-regulation for so long now, that it is well past "chucking out" time. The press has always set their face against statutory regulation, denouncing the very idea as the enemy of free speech. There is an overwhelming argument against statutory regulation, which I will come to, but I am not sure this is it.

The news and current affairs journalism of ITV, Channels 4 and 5 and Sky are regulated by the statutory media regulator, Ofcom, which drafts and polices statutory codes of behaviour and impartiality. BBC news and current affairs is overseen by two bodies, both Ofcom and the BBC Trust, with overlapping powers.

I can see no evidence whatsoever on the screen that this statutory regime inhibits responsible and robust investigation and reporting. What no regulator can do is prevent wrongdoing, BUT when broadcasters do get it wrong they get it in the neck (and the wallet) from Ofcom. The BBC Trust also has powerful sanctions. Statutory regulation in broadcast is there to ensure impartiality – but this is an entirely irrelevant concept for newspapers.

Having said this, let me state precisely why I am opposed to statutory regulation: my objection is founded on my recent experience. (Here I must declare my interest as a very recently appointed Press Complaints Commissioner – although I am speaking today in an entirely personal capacity).

The statutory regulation of media is always ex-post regulation. Ofcom does not have the power to stop publication. The remit of the current PCC does, however, include the ability to offer ex-anti direction to editors on behalf of members of the public. The PCC brokers hundreds and hundreds of effective "desist" actions to editors at the request of innocent members of the public who suddenly find themselves the centre of media attention. This can mean the withdrawal of reporters and photographers from someone's pavement, it can be the editor's agreement not to publish something, it can be an agreement to desist from simply approaching a family or individual for comments. This happens in multiple cases week in, week out at the PCC.

The notion of trying to draft a statute to enable pre-publication desist notices whilst maintaining a free press does not belong in a democracy. Such a statutory regime would undo at a stroke the good works that the PCC presently undertakes. Ordinary members of the public derive huge comfort from the power of the PCC to influence newspapers (and sometimes TV) behaviour AHEAD of publication. This is the untold good news story of the current self-regulating regime.

This MUST not be lost. For me, it is the overwhelming argument against statutory regulation.

In the debate about a new and improved form of self-regulation, of course there are lessons to be drawn from the present regime.

In my view any new model needs to pass the Caesar's wife test: it must not just be independent; it must be seen to be fully independent of those it is regulating. Any future constitution and governance structure needs to deliver transparent independence from the working press. Crucially, it will need more powers of sanction, binding on all newspapers. There must be no room in self-regulation for anyone to opt out.

The model will need to be properly resourced and therefore able to commission independent investigations as required, unlike the current PCC. Funding for the new body can still be required from the newspapers themselves as at present (no difference from broadcasting, advertising and other regulated sectors).

The Chairman, like the rest of the board and staff today, should, in future, be appointed independently and not by the papers themselves.

A robust and free press is an essential dynamic in a functioning democracy. Any new regime must serve those two principles and it must also be capable of promoting the ethical imperative. But, make no mistake: only self-regulation can be relied on to continue delivering ex-ante relief and restraint for the members of the public it serves.

A word here my Lords, and in conclusion, on what action might be taken in the interim, as we await the outcome of the judicial inquiry.

Leaving to one side – if that were possible – the unconscionable intrusions into grieving families' privacy, perpetrated by the criminal activities of the News of the World, the secondary fallout, the aftershock if you like, is the public opprobrium and scorn, both here and abroad, that has engulfed the whole of our national press, not just News International.

Your Lordships will note that I have not described this as a loss of trust. This isn't a case of losing the trust of readers. So far as the red top tabloid newspapers are concerned, I am not sure they ever enjoyed the trust of their readers! Loyalty, yes.

The recent television equivalent of this print crisis, as your Lordships may recall, was the premium phone scandal that, ironically, the press so valuably exposed. Broadcasters immediately realised that to restore their reputation they had to face up to the problem. No expense was spared on independent legal and forensic audit inquiries. Millions of pounds of compensation was voluntarily paid to charities – all the evidence gathered was handed both to the police and to the regulator.

Fines were then imposed. Reputations were restored. As President Nixon discovered, it isn't necessarily the mistake you make, it's the subsequent cover up that does for you.

My noble friend, Baroness Stowell, in her customarily insightful blog this week, wrote the following:

"The thing that's different between the print and broadcast media's separate catastrophes is (that) public trust in, and opinion of, tabloid newspapers has been low for years and they've survived without it. So the question we have to ask is: what motivation is there for newspapers to get their house in order?"

Baroness Stowell pointed out that the tipping point in public opinion was when the hacking moved from the rich and famous and powerful, the bankers the celebrities and the MPs to ordinary folk, like the Dowler family, like themselves. The papers seem to have turned on their own readers.

The noble Baroness then offers this advice to the newspapers: "So instead of the question TV execs asked themselves: "how do we restore trust?", the question for the newspaper industry to reflect on is: "Do people still think we're on their side?"

I hope the whole House will agree with me that, as a first step to demonstrating that the press is on the side of its readers, each national paper, title by title, editor by editor, should make a statement in its own columns that they condemn the chasing of scoops by criminal means; and, further, they should declare unequivocally that their paper has never taken part in any such activities. We all hope and expect that this issue is limited to what we know today. Nevertheless, I think we should be told.

GRADE OF YARMOUTH