

Submission to the Leveson Inquiry by Tony Harcup (Senior Lecturer in Journalism Studies, University of Sheffield)

This memorandum is in response to the questions posed by the inquiry about “how newsrooms operate” and the “coverage and substance of the editors’ code”. In addressing these questions it will focus on the narrow point of how a “conscience clause” as proposed by the National Union of Journalists (NUJ) might help improve journalistic standards and ethics. I have worked as a journalist and I now teach ethics, amongst other things, on journalism courses at the University of Sheffield that are accredited by the National Council for the Training of Journalists (NCTJ), the Broadcast Journalism Training Council (BJTC) and the Periodicals Training Council (PTC). I am a member of the NUJ and the Association for Journalism Education (AJE) but this memorandum is submitted in a personal capacity. I have conducted research into the ethics of journalism over the past decade, and this memorandum draws on research conducted for the books *The Ethical Journalist* (2007), *Newspaper Journalism* (2010) and the research paper *Journalists and ethics: the quest for a collective voice* (2002).

Almost ten years ago the NUJ began to raise the issue of a “conscience clause” to protect any journalist ordered to act unethically. In doing so, the union was reviving a concern it had expressed back in 1931, when it appealed to newspaper proprietors and editors to refrain from instructing staff to use “distasteful and unseemly” methods of covering stories or getting pictures, and the union went on to promise “to treat the case of a member who was dismissed for refusing to carry out instructions repugnant to his sense of decency, as one of victimization, ie to maintain him while getting fresh employment” (Mansfield, 1936: 372). When the NUJ established its code of ethical conduct for journalists in the 1930s it became the first organisation within the UK press to have such a code.

The inquiry has already heard (in the submission from the NUJ) that journalists working for the *Daily Express* twice reported their own newspaper to the Press Complaints Commission (PCC), in 2001 and 2004. After some journalists complained of feeling pressurised to produce stories to fit a pre-conceived editorial line, a meeting of *Express* journalists passed the following motion: “This chapel is concerned that *Express* journalists are coming under pressure to write anti-Gypsy articles. We call for a letter to be sent to the Press Complaints Commission reminding it of the need to protect journalists who are unwilling to write racist articles which are contrary to the National Union of Journalists code of conduct” (quoted in Ponsford, 2004). The NUJ wrote to the PCC asking it to insert a “conscience clause” into its editors’ code of practice, whereby journalists who refused unethical assignments would be protected from disciplinary action or dismissal. The request was rejected in what appeared to the paper’s journalists to be peremptory fashion.

In 2005 the NUJ national executive drafted model wording for such a conscience clause: “A journalist has the right to refuse assignments or be identified as the author of editorial which would break the letter and spirit of the code. No journalist can be disciplined or suffer detriment to their career for asserting his/her rights to act according to the code” (Gopsill and Neale, 2007: 255). After lengthy debate within the union’s branches, chapels, Ethics Council and conference, the following clause was enshrined in the NUJ’s own code of conduct, where it remains today: “The NUJ believes a journalist has the right to refuse an assignment or be identified as the author of editorial that would break the letter or spirit of the code. The NUJ will fully support any journalist disciplined for asserting her/his right to act according to the code” (NUJ, 2010: 22).

When issues of journalistic ethics climbed the political agenda in the summer of 2011, the question arose: would so-called “hackgate” have happened in a newsroom within which journalists were empowered to speak out about unethical and questionable practices? Could it possibly have been more than mere coincidence that the scandal had occurred in a workplace from which independent trade unions had in effect been banished? Journalist Paul Foot had long ago warned that the cowed and subservient atmosphere found within some newsrooms following the Wapping dispute of the 1980s would prove fatal for journalistic standards, because active NUJ chapels within newsrooms provide a vital forum in which “journalists can collect and discuss their common problems, free from the management hierarchy. A recognised trade union adds to the spirit of independence inside a newspaper which is so crucial to successful investigative journalism” (Foot, 2000: 86). Of course, as the one-time editor of *Socialist Worker*, he would say that, wouldn’t he? But that does not automatically invalidate his point.

Journalists such as the late Paul Foot may have needed no empowerment to speak out, but should journalistic standards depend solely on the presence of such outspoken individuals within every workplace? As suggested by the actions of the *Express* NUJ chapel referred to above, the presence of a collective may make it easier for ethical voices to be raised within a workplace; as when NUJ members at one local newspaper walked out for a day in defence of a photographer who had been disciplined after refusing to take a snatch picture of a disabled five-year-old outside school, following appeals by the child’s mother for an end to media attention (McIntyre, 2004).

Most journalists do want to do a decent job and not to be ashamed of their craft. That is why many believe that a conscience clause might redress the balance slightly and help create a climate within newsrooms whereby, just occasionally, a senior, middling or even lowly journalist might feel able to ask: “Hang on a minute, are we sure we should be doing this?” Many journalists have adherence to the editors’ code written into their contracts of employment, notwithstanding the fact that ordinary journalists below the rank of editor have no say in how the PCC code is drafted, amended or implemented. That being the case, ought they not to be able to expect that they might be defended if they put their head on the chopping block by telling their boss: “What you are instructing me to do goes against the code, is unethical, and I will not do it”? Even with a conscience clause in place, such action is likely to be rare indeed. Frivolous recourse to playing the conscience card would be discouraged by the inescapable reality that using it in such a way would hardly be likely to improve anyone’s career prospects in a competitive industry. However, editors and proprietors might have reason to be grudgingly grateful if an ethical intervention saves them from themselves, as was the case in 2006 when a group of *Daily Star* journalists prompted a rethink about the wisdom of the paper running a spoof version of a supposed Islamic *Daily Fatwa* (Burrell, 2006).

It is worth noting that “hackgate” took place within a highly pressurised and constrained newsroom, whereas the journalist who did the most to expose it, Nick Davies, enjoys an unusually autonomous working relationship with his own newspaper. It would, of course, be simplistic to deduce from this fact that a hierarchical newsroom is an ethical accident waiting to happen whereas relative journalistic autonomy produces more ethical journalism – and we should not forget that broadsheet newsrooms have also produced unethical journalism, as attested to by the cases of Johann Hari at the *Independent* (Milmo, 2011) and Jayson Blair at the *New York Times* (Mnookin, 2005) - but might there not be at least an element of truth in such a deduction?

Could adding a conscience clause to journalists' codes of practice and editorial guidelines help protect ethical journalism? We will never know unless we try it, but the evidence seems to point towards a qualified yes. The chances are that it would be used very rarely if ever, but its mere existence could help contribute to a healthier workplace culture within newsrooms in which questions can sometimes be asked and objections can occasionally be voiced. Editors and proprietors might fear that empowering their journalists even in such a mild way as envisaged in a conscience clause could result in unacceptable editorial interference, but the historical record suggests that would not be the case. When I researched ethical interventions by journalists working on six provincial newspapers in the north of England and the English midlands, I found just three modest instances over the years, one of which involved staff objecting politely to their newsdesk compiling a macabre league table of reporters' success or failure at "death knocks" to bereaved families (Harcup, 2002: 110). That study from 2002 concluded: "Without a collective voice and collective confidence, control of the ethics of journalism will remain largely in the hands of editors and proprietors, with individual journalists being left with little choice but to do what they are told or resign – conditions of production hardly conducive to a journalism that contributes to a well-informed citizenry... [J]ournalistic ethics cannot be divorced from everyday economic realities such as understaffing, job insecurity, casualised labour, bullying and unconstrained management prerogative" (Harcup, 2002: 112). Events in the decade since have done nothing to challenge that conclusion.

A workplace in which ethical concerns can be discussed by journalists both informally and formally, individually or collectively, can surely only be good for journalism and ethics alike, because the essence of journalism is the asking of questions. That was a lesson learned the hard way during an earlier newspaper scandal, the plagiarism by Jayson Blair at the *New York Times*, after which journalists were promised by their editor: "The cure for what has ailed us is called journalism. The only way to communicate is to speak up in an atmosphere where outspokenness is... never penalized" (quoted in Mnookin, 2005: 213). A conscience clause as proposed by the NUJ, offering journalists some form of contractual protection, might be one small step in the direction of making that more possible for more journalists than it has been in recent years. How it would be framed and enforced would require careful thought although it might be that the precise details would be of less significance than the symbolic value of such a clause. Even if it were to be rarely invoked, mere knowledge of its existence could help to empower journalists. Such knowledge could provoke a moment of reflection by those involved in the editorial process and that moment could turn out to have been a crucial one. Such a pause for reflection might just be enough to prevent the next unethical outrage at source, before anyone is harmed and before judges and lawyers are once again appointed to pick through journalism's dirty laundry basket in public.

A conscience clause will not heal all of journalism's ills. It is a modest proposal that addresses just one element of the complex relationship between ethics and journalism. However, given what has taken place in a system of almost totally unconstrained management prerogative, a conscience clause might be a modest step worth taking.

Sources:

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Statement of Truth

I believe the facts stated in this witness statement are true.

Signed (Tony Harcup)

Date 27 January 2012