

TUC SUBMISSION TO THE LEVESON INQUIRY

This submission is made on behalf of the Trades Union Congress.

AN EFFECTIVE REGULATORY REGIME

INTRODUCTION

1 The TUC welcomes this opportunity to make a submission to Module Four of the inquiry. The Trades Union Congress represents six million trade union members and has an interest in the establishment of a new and effective regulatory regime for the press for the reasons that are set out below.

2 Firstly, a number of our affiliated unions have a direct interest in the issues covered by the inquiry. Several of them have given evidence in the earlier modules. The National Union of Journalists is a core participant. Bob Crow, the general secretary of the National Union of Rail, Maritime and Transport Workers, gave oral evidence on January 25 concerning the ways in which he had been harassed by the media. Len McCluskey, general secretary of Unite, submitted evidence on March 28 concerning the harassment of himself and some of his unions' members. A number of unions that have connections with the police service were also invited to give evidence in the module concerning the press and the police.

3 Secondly, TUC unions represent workers in the media industries. These include not only journalists represented by the NUJ, but also production workers, represented by Unite and others involved in the distribution and sale of newspapers. These and other unions also represent workers in other parts of the media industries, including broadcasting. Clearly all these unions have a direct interest in media regulation that could affect their jobs and the way those jobs are undertaken. The role of unions in setting and enforcing ethical standards was referred to by the NUJ in its evidence to the inquiry and the role of unions in acting as a restraint on management is also relevant more widely in the media as it is in other workplaces.

4 Thirdly, trade unions are high profile organisations that are the subject of frequent and, sometimes, intense media coverage. The evidence given by Mr Crow and Mr McCluskey is an illustration of ways in which trade unionists have been subjected to the sort of abuse and intrusive behaviour that has been formed part of the evidence given to the inquiry during the first module. More widely we would argue that there is an institutional bias in many, if not most, sections of the press against the sort of collective values that trade unions espouse: this is a point on which we elaborate later.

5 Fourthly, the TUC has an interest in media policy and the work of the inquiry because our members, who form a substantial proportion of the public as a whole, rely on the press and the media more generally as their main source of news. We would argue therefore that we are in as good a position as any other representative body to speak on behalf of the interests of readers.

6 Finally, the TUC's interest in media policy and regulation is long standing. Our predecessors were so concerned about media bias that for most of the last century - we owned a substantial share in one of the leading national newspapers – the *Daily Herald*. This was established in the early 1900s to provide a voice for workers involved in disputes and from the 1920s until the 1960s the TUC was directly involved in the running of the paper. Whilst at one time the paper had the largest circulation of any British daily, the continuing commercial pressures, which included the difficulties of obtaining advertising for a publication whose readership consisted mainly of the low paid, eventually led to the sale of the paper and its transformation over a period of time into the present day *Sun*.

7 In the 1980s we undertook an investigation into the feasibility of establishing a new national newspaper, but as other priorities came to dominate the trade union agenda were unable to raise the necessary capital.

8 We have also made various submissions to previous inquiries into various forms of media regulation, such as the Calcutt Inquiry. We also engaged closely with the Press Council in the 1980s at a time when its role and the adequacy of the protection it offered to ordinary citizens were under close scrutiny.

9 Most recently, our 2011 Congress carried a resolution asking the TUC to develop policy on media regulation and, following that, we have consulted with unions and held a one day conference on March 19 2012 looking at media regulation.

10 The points made below have been the subject of consultation with our unions.

KEY POINTS

11 The key points of our submission are:

- Who owns the press is crucial to the democratic process and new rules are required limiting the powers of individual owners.
- A new system of regulation is needed.
- Transparency must be at the heart of the system of regulation.
- Regulation must be consistent with the need to preserve freedom of the press from state interference and from over-mighty owners.
- There must be equal access to systems of redress, which must not depend on ability to pay.

Ownership

12 It is widely accepted that media plurality is an essential prerequisite for a healthy democracy. Without a variety of sources of news and comment voters will not have the information to choose between the competing claims of rival political parties. Rich and influential groups will be tempted to dominate the political agenda through control of media outlets rather than taking their chances in a fair and open debate. It is to counter such tendencies that all democratic societies need to establish rules to ensure media plurality.

13 As the inquiry has found, the inadequacy of the current regulations in the UK is not just a theoretical issue. It is becoming increasingly apparent that the control of a large

number of media outlets, in particular national newspapers, by a small group of wealthy individuals has had a big impact on British politics in the recent past. This was the subject of Module Three of the inquiry.

14 The conclusions that we would draw both from the evidence given to the inquiry and comments elsewhere are that over a long period of time and especially over the past two decades, the leaders of both the Conservative and Labour parties have sought to court the Murdoch press and adapted their policies accordingly. It is also clear that whether or not a particular policy would win the support of the *Daily Mail* has also been a factor in policy making by the leadership of both parties.

15 Leading Labour Party figures have admitted that following the surprise defeat of the party in the 1992 election the party's leadership made a conscious decision to seek the support of the Murdoch-owned *Sun* newspaper in order to maximise the chances of winning the subsequent election. Claims have also been made, notably in Chris Mullin's diaries, that John Major would have sought to curb the powers of the Murdoch empire if he had been confident of cross-party support and that such a move would not therefore have had a detrimental impact on the coverage of his party in the Murdoch papers.

16 The extent to which press opinion influences voters has been the subject of considerable debate and it is now widely acknowledged that the press and in particular mass market Murdoch tabloids both in Australia and in the UK tend to follow rather than lead public opinion. The decision of *The Sun* to back Labour in 1997 came long after it was apparent that the party had a commanding lead in the polls. Similarly the switch from Labour to the Conservatives in 2009 came at a time when Labour was losing popular support. Nevertheless, it is clear from the evidence given to the inquiry and elsewhere that leading politicians do pay a lot of attention to the media and the national press in particular and, whilst the revelations during the course of the Inquiry have meant that more politicians have felt able to criticise Murdoch, it is clear that the press do still exert a high degree of influence over political parties and in our view there is a need to break this unhealthy relationship in the interests of democracy.

17 From a trade union point of view, the balance of editorial opinion in the national press shows a regular anti-union bias, with little or no recognition of the values of solidarity, the importance of collective action to counter the inherent advantages of employers in workplace relations and the ways in which individual workers can only exercise their rights through their unions. By way of a small example of the inbuilt bias, the term 'union boss' to describe elected leaders of trade unions is now commonplace, whilst the real bosses are frequently described as 'business leaders'. Union members are often described as being 'ordered to strike' by – such-and-such a 'trade union boss' when the reality is that no such call could be made except following a ballot of the union members affected. The evidence provided by the RMT and Unite provided an insight, not just into individual harassment of the sort that has been widely reported to the inquiry, but how these techniques are used to undermine trade union values and promote those of employers in an industrial dispute.

18 In a pluralist press, which reflected the full range of views in society, one might expect to encounter anti-union views in certain newspapers. But the problem with the English national press, which is what makes it almost unique in the EU, is its quite

remarkable political and ideological homogeneity. With the exception of the *Guardian*, *Observer*, the *Independent* stable and the *Mirror*, English newspapers are solidly illiberal in their social attitudes and equally solidly neo-liberal in their economic outlook. It is thus hardly surprising that they are so hostile to trade unions, not simply in their reporting but in their own organisations, in which, for the most part, trade unions have been de-recognised. A significant moment was the flight of the Murdoch-owned papers to Wapping early in 1986 after engineering a strike by print workers in order to be able to sack them without them having recourse to the law on unfair dismissal. This episode provokes many bitter memories and still has repercussions today. The subsequent creation of the News International Staff Association as an employer-backed organisation highlights a particular anomaly in UK employment law, whereby the existence of an organisation like this, funded by the employer and denied a certificate of independence by the Certification Officer, means that legitimate trade unions find it impossible to achieve recognition. As the TUC has made clear on many occasions, this is something that should be addressed by a change in employment law.

19 Other important points on ownership have also been highlighted by unions and campaigners in the debate on media ownership. The most important of these has been the extent to which profitability has been put before quality journalism.

20 Nick Davies' book *Flat Earth News* describes in detail the trend to extract the maximum amount of copy from the smallest numbers of journalists. Trade unions have noticed the demise of specialist industrial correspondents on national newspapers and many reporters now rarely leave their desks. There are exceptions. The *Daily Telegraph* revelations about MPs expenses shone a light on an area of public life that had previously gone unreported. *The Guardian's* persistence in pursuing the extent of phone hacking at the *News of the World* represented investigative journalism comparable with any examples from previous times. But there has been an overall trend towards what Nick Davies calls 'churnalism' where quantity counts for more than quality. The trend has been most widely noticed in British national newspapers but it has also occurred in other parts of the media world.

21 As Jim Boumelha of the International Federation of Journalists pointed out at the conference organised by the TUC earlier this year, this is a trend that is being seen in large parts of the globe. In North America, for instance, the number of journalists in newsrooms is being cut even on the most prominent and prestigious papers. This is happening too in Europe and parts of Asia.

22 At local level in the UK there has been a trend towards large conglomerates taking over local daily and weekly newspapers and then reducing editorial staff in order to maximise their profits. In some cases this has been followed either by closure of the papers, merging newsrooms or cutting editions. The trend was explained in detailed at our conference by Peter Lazenby an NUJ activist from Leeds who described how the *Yorkshire Evening Post* had seen its last edition deadline move from 4pm on the day of publication to 6pm the previous night. The result of similar moves across the country has been that there is now far less coverage of local democracy than there was even a few years ago. This has led academics like Natalie Fenton of Goldsmiths College, who also spoke at our conference, to look at alternative forms of funding for local newspapers and the possibilities of online forms of news at local level in order to raise awareness of local issues and encourage participation in local democracy. The concept

has also been developed more fully by the Co-ordinating Committee for Media Reform, which has set out proposals for public funding for certain forms of public interest journalism. The TUC believes these warrant closer examination.

23 The development of digital communication has been a further factor that has an impact on media ownership and regulation. At one level the ease with which information can now be exchanged represents a positive development. But the transformation of a desert into an ocean of information poses new hazards. How are readers to separate truth from falsehood and the reliable from the unreliable? How will high quality journalism be funded when low quality rumour mongering is available free of charge?

24 The migration of advertising from local papers to the internet also poses a problem for the local press, removing an essential source of income and leading to closure or the move to a purely on-line presence.

25 Devising an effective funding model and regulatory regime for the press is therefore a complex issue. But there can be no doubt that there is public support for reform. Opinion research conducted for the IPPR and YouGov in May 2012 showed 76 per cent of those questioned supported a fixed limit on the number of national newspapers any one person could own, with 24 per cent of those saying there should be a limit also saying that the limit should be one title and a further 38 per cent saying the limit should be two.

26 Proposals that are now beginning to emerge, particularly from the campaign groups associated with trade unions, NGOs and sympathetic academics, centre around lowering the ceiling on the percentage of media outlets that any one group can own within a particular genre.

27 The proposals have been summarised by the Campaign for Press and Broadcasting Freedom as follows:

There should be strong cross-ownership rules and clear upper ceilings on the share across media markets are needed. Any supplier with a 15 per cent share in a designated media market should be subject to a public interest test in respect of any merger or acquisition in the same or another media market. Ownership concentration and cross-ownership above the 15 per cent threshold may be permitted subject to organisations meeting certain public interest obligations in their practice. The maximum permitted holding in any of the following designated markets should be 30 per cent (national news; regional news on all platforms and in each of the following platforms – radio, television, newspapers, on line). Ofcom should have concurrent powers to initiate the public interest test rather than control resting exclusively with the Secretary of State. Determining media pluralism should involve a combination of quantitative measurement, qualitative assessment, democratic input and oversight. Media ownership regulation needs effective and continuous public consultation built-in so that public interest issues can be addressed by all of those affected.

28 The 15 per cent threshold is based on the premise that no less than six owners in a market is a suitable benchmark for pluralism in media supply rather than the four permitted under the standard merger threshold, and is justified by the public interest

benefits of pluralism for both citizens and consumers. Whilst this would not guarantee a greater range of political perspectives or more editorial coverage from a trade union point of view, it would make it more likely, as does the public interest threshold, described below.

29 The 'public interest' threshold is designed to prevent the sort of situation that has occurred on a number of occasions, including for instance the Murdoch takeover of Times Newspapers in the 1970s, when the alternative to letting a takeover go ahead has, in reality, been to allow the closure of a publication, or publications, with a consequent negative impact on the diversity the rules were meant to promote. Under these provisions a holding of up to 30 per cent would be allowed, but where the holding exceeded 15 per cent of any given market the owner would be obliged to meet public interest provision on content, much as public service broadcasters are currently required to do, such as balanced news coverage, a degree of educational material and coverage of issues of a minority interest. The public interest obligation would however not be as strict as the public service requirement imposed on broadcasters and would steer clear of editorial prescription.

30 Two further points need to be made on ownership and control. The fact that the News International printing facility at Broxbourne has the capacity to produce all national newspapers raises serious concerns about monopolisation of production. The second related point concerns distribution. The move from rail to road distribution and the dominance of the system by the major publishers make it difficult for smaller publications to have equal access to markets as their larger competitors. Most particularly, the system saddles the *Morning Star* with earlier deadlines and higher distribution costs than other daily papers. This is an issue that needs to be addressed in the interests of plurality and equal access to markets. The French system which guarantees distribution to smaller titles is one that deserves examination.

Regulation

31 On regulation, in the IPPR poll referred to above, 94 per cent favoured a strict form of regulation, with 62 per cent saying that regulation should be through a legislatively established body and only 19 per cent favouring self regulation.

32 The 2011 TUC Congress resolution called for the Press Complaints Commission to be wound up and replaced with a new regulatory body, independent of the press and government, which could earn the respect of readers, the general public and journalists alike. The resolution said it should have clear powers to order meaningful recompense and ensure that the right of reply is established.

33 The failure of the Press Complaints Commission to tackle phone hacking at the *News of the World* is now seen as symptomatic of wider failings of the PCC, as currently constituted, and a central weakness in the whole concept of voluntary self-regulation. The principal deficiencies included a limited remit as simply a complaints body, one that largely restricted itself to addressing complaints raised by individuals who had been the subject of news or comment and a reluctance, for instance, to consider cases where a group such as Muslims or immigrants or even trade unionists had been the subject of abuse. The dominance by editors, who instinctively will look to protect their own, is seen as a further weakness and even belated attempts to widen membership have only succeeded in bringing in people, who, however good their initial intentions, have

tended to adopt the established norms of the PCC rather than being in a position to change the way the commission operates. The weakness in the voluntary nature of the body was further exposed when the Express Group withdrew from membership without any apparent detrimental consequences on the newspaper group. Finally the PCC has never had the resources required to deal with issues at the sort of speed expected in the fast moving world of 24 hour news, or in the sort of depth that would have been required even to scratch the surface of the issues that have been exposed by the Inquiry.

34 Critics of a more robust form of regulatory body and in particular the editors themselves regularly criticise proposals for reform as being harbingers of state regulation and undermining the principles of freedom of the press, ignoring the fact that, as contributors to the Inquiry have repeated pointed out the press are already subject to the criminal law and other regulations, without this leading to 'state regulation'.

35 The TUC is not in a position to set out in detail the way in which a replacement body would be constituted or operate however what we can do is to set out a number of principles that we believe are essential for a new regulatory regime.

Transparency

36 The first is that the system should be transparent. Unlike other high profile bodies, newspapers have a tendency to be coy about their internal workings. It is rare to find the name of the editor of a national newspaper within any particular issue of that paper. The views expressed, often in strident terms in leader columns are rarely attributed to an individual but to the paper as such. More pertinently until recently it was extremely rare to find within any issue of a newspaper the means by which a complaint could be made about the content. That clearly is unsatisfactory.

37 In our view it should be made a requirement that each issue of a publication covered by the new regulatory regime should include details of how to submit a complaint and the means by which a complaint will be dealt with – for instance a commitment to give a considered reply within a particular time frame – say 24 hours; the means for dealing with complaints within the publication itself; and how anyone not receiving satisfaction from the internal complaints system can then pursue an issue through the more formal independent complaints mechanisms that apply as part of the new regulatory regime.

Code of Practice

38 A code of practice will be an essential feature of the new system. This must be both simple and transparent. The NUJ has had such a code for more than eighty years and we see no reason why this should not form the basis for such a wider code, we certainly consider it essential that working journalists, as well as editors, are involved in both drawing up the code and overseeing its implementation.

39 One essential feature of the code would be a conscience clause that would protect journalists from disciplinary action or suffering a detrimental impact on their career for asserting their rights to act according to the code.

40 Adoption of this code and acceptance of the authority of the regulatory body charged with its implementation would be a requirement on all publications covered by the code. The scope and limitations on publications covered are considered further below.

41 It could be that certain publications adopt more stringent requirements, for instance on impartiality and the separation of fact from comment. That would be a matter for them. But, it would be a requirement that the code was publicly and easily available for all to see, if not within the publication itself, then certainly on the publication's website.

Right of reply

42 The concept of a 'right of reply' is one that the TUC has long supported and it should be central to any new code and the regulatory regime that supports it. When errors are made then editors should be obliged to make corrections, immediately, in good faith and with equal prominence to the original article. Clearly there will be many cases in which the two parties will not agree on whether an error has been made and indeed whether the error is of such a magnitude that it requires a 'right of reply' and that is where the more formal procedures would come into play – but what is important is that the principle of acknowledging errors and correcting them, with due prominence, is made clear in the publication so that it is understood by readers and especially anyone who considers that they have suffered through wrongful publication. This is something on which there is clear public support for reform. In the IPPR poll referred to above 84 per cent said they would back a requirement on newspapers to print a correction and/ or an apology on the same page number as the original story if it reports something incorrectly, even if it is on the front page.

43 One of the principal weaknesses of the PCC was that its remit was drawn so narrowly that it was unable, as well as unwilling, to deal with instances that caused grave and widespread offence, either where an individual was in no position to make a complaint at the time or where a whole group had been the subject of misrepresentation. An important part of the new regulatory regime would be to distinguish between an item that caused harm to a vulnerable group and the right to comment or even offend in the pursuit of the right to free expression.

An Ombudsman

44 An Ombudsman should be a central figure in a new system of media regulation, being the first port of call for an individual or group who consider they have not been satisfied by the way in which a publication has handled their complaint, whether that be a denial of the right of reply, as described above, or redress in other cases such as the harassment widely reported in evidence to the inquiry, invasion of privacy, or illegal acquisition of information where there was no public interest justification. The Ombudsman system forms a central feature of the Press Council of Ireland and has been used to good effect elsewhere in UK public life. Such an office would need to be adequately resourced and could play a useful role in rebuilding public faith in the press following the revelations of the past year. But to be effective the Ombudsman and staff would need to be part of a wider regulatory body, whose composition, scope and funding are crucial issues if regulatory reform is to be effective.

Regulatory body

45 The primary duty of any new body must be to ensure the freedom of the press, from state interference, from media owners and from other aspects of the market which threaten freedom and diversity of expression. A complainant should be able to

approach the regulatory body in the certain knowledge that the service is fast and free. The service should be accessible to all and free from bureaucratic barriers.

46 The key questions that have been identified by the National Union of Journalists in its own attempts to address these issues are:

- From where should the new body gain its authority?
- What powers should the regulator have and who should regulate the regulator?
- How will the regulator be constituted and its members chosen?

On the first issue, a distinction needs to be drawn between statutory underpinning of regulation and statutory regulation. The example of Ofcom has been cited as one in which the body itself is established by statute but its operations are sufficiently arm's length to preclude fears of state or political interference. UK advertising regulation provides an example worth examination. The Advertising Standards Authority is a self-regulatory organisation. It upholds a code drawn up by the marketing communications industry but was established as independent of that industry to ensure that it served the public first and foremost. Regulation works through industry co-operation on the whole but there are legal backstop powers to deal with those who ignore ASA rulings; the ASA can refer advertisers to the Office of Fair Trading for legal action. The ASA upholds editorial freedom but does so with recourse to statutory law when self-regulation fails.

47 The argument that the 'statutory' alternative to PCC style self-regulation risks government interference in editorial ignores the evidence from European regulation that statutory powers can co-exist with the protection of media freedom.

48 One other suggestion that has been made is that the VAT exemption enjoyed by newspapers should be used as the arm's-length device between the law and the regulator. This concept has been developed more fully by the Co-ordinating Committee for Media Reform, which argues that a requirement for VAT exemption is participation in the regulatory regime. This has the advantage of both offering a voluntary opt out for any publication wishing to avoid regulation – but at a considerable price. It also establishes a floor since there would be no obligation on publications falling below the minimum level for VAT registration to participate. This is an attractive concept, however it is one that the NUJ has considered and rejected in favour of a simple system of statutory regulation along similar lines to Ofcom.

49 The source of funding of the new body will be an important issue. As noted above a weakness of the current system has been the inadequate level of funding. Fees for use are clearly not acceptable as this would defeat the objective of making the system accessible to all, which we regard as an important matter of principle. Levies on the industries are attractive and would ensure the system was self-contained and not vulnerable to cutbacks by government in times of difficulty, however on balance state funding, in recognition of the body's essential role in the democratic process might be the most effective way, perhaps with an arm's-length body to recommend a funding level.

50 The range of publications to be covered by the new body is an issue that needs to be addressed. As indicated above the registration level for VAT could be a useful and simple device to exclude small publications, with a limited reach, such as a club

publication or blog. The development of electronic publications and in some cases the links between electronic and paper publications raise more difficult issues and whilst the principle should be that the body's reach should be as wide as necessary to prevent abuse, it has been suggested that the forthcoming green paper on communications could provide an opportunity for a wider review covering broadcasting and press and new media and the regulatory regimes that apply in the different genres.

51 The levels of fines and requirement to publish corrections and apologies are also issues that require careful consideration within the new regulatory body. The fines must relate to the size of publication, its circulation and financial viability, as for instance seen in its advertising rates. Only in the most exceptional cases should a fine be on a scale that would threaten the future of a publication, though clearly they must be at a level that would act as a deterrent and are appropriate both to the publication and its resources and to the damage done by its actions.

52 The regulatory body's obligation to ensure diversity and freedom of the press should be paramount. The prominence of corrections and apologies should be such that they reflect the prominence of the original article. The days when a correction of a prominent article can be buried deep inside a publication must become a thing of the past.

Composition of the regulatory body

53 In order to address all these concerns it is essential that the new body is representative of all parties with an interest. This would include public representation, with a selection procedure to ensure a wide range of representatives who could ensure an effective voice from outside the industry. A separate obligation on this group to present its own report and to engage with the public might be ways of ensuring that they do not give way to industry pressure, as appears to have been the case to a degree with the PCC, or in any other way neglect their prime responsibility to represent readers' diverse interests.

54 Newspaper proprietors clearly should have a voice within the process, though theirs must not be the dominant voice. Similarly, editors also have a responsibility to engage in the process and should be entitled to representation on the regulatory body.

55 Journalists themselves should be represented as the profession that is in the frontline and, who as the inquiry has shown, without the protection of a robust code of conduct and a strong voice, via their trade union, in the newsroom are vulnerable to pressures to act unethically. Representation for other workers within the industry also deserves consideration.

56 Finally the public interest does not just consist of isolated individuals but is composed of groups with an identity of interests. These are many and varied, and indeed include trade unions as well as pressure groups and other interest groups. It is important therefore that every effort is made to ensure that the whole of civil society is represented to some degree within this regulatory body, once more the Press Council of Ireland should be examined as a possible model.

Conclusion

57 The TUC has always believed that a free press is as much a part of an open and democratic society as a free trade union movement. Indeed, experience teaches us that the enemies of democracy regularly target independent trade unions and critical newspapers with equal vigour.

58 The revelations of the past year have made clear the need for a new regulatory regime that protects the press from its own worst excesses.

59 Constructing such a new regime will not be easy. A balance needs to be struck between freedom and licence. The proposals set out here are intended to contribute to a wider debate.

60 Our key points are that:

- stricter limitations on ownership are essential;
- a new system of regulation is needed with transparency at its heart;
- a common code of practice is needed; and
- a new regulatory body must command the support of society as a whole as well as the press itself – owners, editors and media workers.

Statement of Truth

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

Signed ..

**BRENDAN BARBER
GENERAL SECRETARY TUC**

Date 3/07/2012