

Submission from Jennifer Hornsby to the Leveson Inquiry.

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### **The public interest in a free press.**

The public has an interest in

(i) being informed in matters that relate to their roles as citizens and members of electorates.

This interest derives from the role of the press in a well functioning democracy in which politicians (whether actually in government, or seeking election) are accountable for the formation policy, and government accountable for the implementation of policy.

(ii) the exposure of crime, anti-social behaviour, and injustice,

(iii) the exposure of corruption, incompetence or negligence in the conduct of public officials.

(iv) the autonomy and liberty of individuals within the rule of law.

(v) the protection of health and safety

The public interest in being informed extends to the prevention of being misinformed.<sup>1</sup>

### **The public interest in freedom of expression, and its relation to the public interest in a free press.**

The public interest in freedom of expression—thought of as the freedom to hold opinions, and to receive and impart information and ideas—is a right accruing to autonomous citizens. It has nothing to do with the press specifically. However, given the public interest in a free press, there can be reasons for special recognitions of journalists' right to free expression, and there can be special duties on the part of journalists to be respectful of others' possession of the right to free speech. Indeed the press is so situated as an institution that it may promote the free speech of individuals in ways that further the ends of a free speech regime in a democracy; and here the role of speech in communication, as against simply expression, must be appreciated.

### **Limitations and balancing of interests and freedoms**

Freedom of expression is legislatively restricted—e.g. by Article 10 of the European Convention on Human Rights, by The Racial and Religious Hatred Act 2006, and by measures included in the Criminal Justice and Immigration Act 2008. This legislation enshrines rights to equal treatment. Given that there are such rights, the press—by virtue of its communications having both a wide audience and cumulative effects—incur special duties of expression: there are duties to avoid expression which needlessly makes reference to, or makes pejorative reference to a person's race, religion, sex, sexual orientation, disability and age, or which encourages stereotypes of groups.

The press should not be free to impart information or ideas the obtaining or publication of which violates privacy rights (broadly understood so as include rights specified in Article 8 of the European Convention and rights deriving from legislation which either protects personal data or confers intellectual and other property rights).

An individual's right to privacy is not jeopardized purely through fame or celebrity or the holding of a public office. But an individual or group may put their right to privacy in jeopardy in various ways: (i) by engaging in conduct whose exposure is in the public interest, (ii) by voluntarily putting into the public domain matters that would otherwise be private, (iii) by speaking publicly on matters which lay them open to a charge of hypocrisy.

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<sup>1</sup> 1 Two recent U.S.A. studies—one conducted in Maryland ahead of the 2010 gubernatorial election, the other in New Jersey in November 2011—asked people where, if at all, they find news and information about current events, and tested their knowledge of recent current events using questions whose answers it could be agreed on all hands are matters of fact. The finding in both cases was that, regardless of their political affiliation, viewers of X-news were less informed than those who consume no news at all. There is here a *prima facie* case that X-News's broadcasts are contrary to the public interest. ['X-News' stands for a particular broadcaster; but not intending to make any political point, I don't name names.]

**Current balance between the public interest in the freedom of the press and free expression and competing aspects of the public interest.**

(a) The overall public interest is currently not well served in practice.

The intimacy between party politicians (of whichever party) and controllers of the news media may have ensured that the public interest in the democratic accountability of politicians has failed to be served. (There is no need to make a judgment on this in order to see that so long as there are alliances of the sort there have demonstrably been, the press may be liable not to act in the public interest.) The distortion of British public life which is owed to the concentration of media power is not a matter of press power alone; and the existence of the B.B.C. lessens such distortion as there might otherwise be. But there is a very high degree of *press* concentration in the U.K, as measured by leading groups' share of total daily circulations, and this should be a matter of concern to the Inquiry. The questions here do not relate simply to free markets in the economic sense (which Competition Law is designed to put in place): they relate to the public interest in such a *free market in ideas* as is a condition of politicians' democratic accountability.

Changes which prevent any greater concentration of press ownership (and indeed ensure that there comes to be less concentration) are desirable. Possible changes depend upon existing legislation in relation to competition and media ownership more generally; and it may be that such changes need to be made independently of short term recommendations to achieve higher ethical standards of press practices. But questions about changes here should not simply be set to one side: evidence to the Inquiry has highlighted *the unfree market in ideas*.

(b) The right to privacy is currently violated.

The phone hacking scandal has revealed a failure properly to protect privacy. To that particular scandal can be added plenty of examples of "blagging" private information through deception, blackmailing vulnerable or opportunistic people into breaking confidences, intruding into the grief of crime victims, blackening of characters for the sake of a "good story" albeit a false one.

Changes in regulatory practice are needed so that regulators have greater powers and a preparedness to exercise those powers in the protection of privacy.

Notice that the press has typically not been moved by any concern to exercise a right to freedom of expression in such cases as its freedom has failed to be served, or has indeed been contrary to, the public interest. The motivation for violation of privacy rights is typically commercial gain.

**Press ethics**

The current Editors' Code, which the P.C.C. has been charged with enforcing, comes a considerable way towards meeting the requirements of an ethical code. BUT:

(i) The Code has been ineffective in practice owing to inadequate enforcement, partly deriving perhaps from a lack of P.C.C. powers, and also perhaps from lack of provision within the code for the code to be known by journalists, and to be monitored by Editors.

(ii) Under the head of Discrimination, avoidance of stereotyping should be mentioned.

(iii) Under the head of Children, recognition needs to be made that they are readers of newspapers and viewers of its graphic material (as well as subjects of / potential informants on news stories).<sup>2</sup>

(iv) Under the head of Sex Cases, the media's special responsibilities are currently confined to responsibilities to children. But there are responsibilities also to adults.<sup>3</sup>

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<sup>2</sup> Children are particularly apt to be swayed by stereotyped images. And evidence from *Equality Now*, *End Violence Against Women*, *EAVES*, and *Object*, speak to the detrimental stereotyping of women by the press.

<sup>3</sup> For the underplaying in reportage of violence perpetrated against women, again see evidence from *Equality Now*, *End Violence Against Women*, *EAVES*, and *Object*.