

## Evidence to the Leveson Inquiry, Module 4

### Professor Steven Barnett, University of Westminster

1. This is my third submission to the Inquiry, which will relate specifically to the questions being posed for Module 4. Relevant biographical details have been recorded in my first two submissions. While much of the content in those submissions was designed to provide a historical and contemporary diagnosis of the problems – in terms of both press regulation and media concentration issues – this submission is designed to offer ideas for resolution. My aim is to draw together, and where relevant expand on, those elements of the first two submissions which relate to remedial action for the future, and implications for policy makers.
2. Part one of this submission relates to press regulation and part two to combatting media concentration. In part one, rather than attempting to delineate a new regulatory structure, I confine myself to definitional questions around the “public interest” which the Inquiry identifies as one of the core issues for a revamped regulatory system. As a member of the Media Standards Trust’s Press Review Group, I wholeheartedly endorse the recommendations made in their submission for a comprehensive new system of press regulation with a backstop auditor. In part two, again I do not attempt a “bells and whistles” approach to a new regulatory system for combatting undue concentration of media ownership, but rather propose a number of essential changes to existing statutory and regulatory frameworks.

#### **Part One – Press regulation and the public interest.**

3. In my submission to module 1, I alluded to the distinction drawn by the Cambridge philosopher Onora O’Neill in her 2002 Reith lectures between “individual” free speech and “corporate” free speech, when she warned that we were “perilously close to a world in which media conglomerates act as if they too had unrestricted rights of free expression.”<sup>1</sup> She pursued this theme in her Reuters lecture last year when she reminded her audience that “the communication of the powerful can shape and influence, improve and damage others’ lives, and in democracies we have long since taken steps to regulate the communication of most powerful organisations”.<sup>2</sup> She argued that those steps need not involve regulating content but only the *process* by which both transparency and accountable might be achieved.
4. Integral to establishing this process in a way which does not inhibit the media’s freedom to publish is a clearly defined concept of journalism “in the public interest”. It is axiomatic within a democracy that the media’s watchdog role should be not only safeguarded but positively encouraged – if necessary, with protection from breaches of the criminal law for legitimate journalistic activity. The two vital questions here are what defines “legitimate” and who should decide. To date, this has been a combination of journalistic Codes of Conduct – which are not entirely consistent – and guidelines from the Crown Prosecution Service (currently being updated) on the circumstances in which a prosecution might or might not proceed. Neither of

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<sup>1</sup> Onora O’Neill, *A Question of Trust: the BBC Reith Lectures 2002*, Cambridge University Press, 2002, pp93-4.

<sup>2</sup> Onora O’Neill, “The Rights of Journalism and the Needs of Audiences”, Lecture to the Reuters Institute for the Study of Journalism, 21 November 2011

these approaches is satisfactory. The journalistic codes are established by editors (in the case of the press), regulators (in the case of the Ofcom) and institutions (in the case of the BBC) which have different expectations and priorities, and different concepts of the “public interest”. In particular, the notion of a public interest “in freedom of expression itself” which has been adopted by both the PCC and BBC codes can potentially be exploited to justify virtually any egregious intrusion into private lives.

5. Moreover, they appear to be developed with very little reference to public attitudes. In the case of the PCC code in particular, there is a legitimate suspicion that it is couched in vague and inchoate terms precisely to allow for the kinds of repugnant activities which the Inquiry heard in Module 1 and which are sometimes justified by newspaper editors on the grounds that (in the words of former FCC chairman Mark Fowler) “the public’s interest defines the public interest”. In this free market model, it is taken for granted that tabloid circulation figures justify celebrity (and even non-celebrity) exposure stories because members of the public buy the newspapers in large numbers.
6. In fact, there is no evidence that circulation is driven specifically by stories which rely on intrusions into personal privacy for their provenance (nor could there be). Moreover, we now have clear empirical evidence of where public opinion stands on what constitutes publication “in the public interest”. Attached to this evidence is an article published in the June edition of the *British Journalism Review* with the results of an attitude survey commissioned from YouGov. A representative sample of the population was presented with eight different stories and asked in each case whether or not newspapers should publish the story. For the purposes of this submission, the most significant result was in response to the story of a married England footballer with young children having an affair. Well over half – 58% – felt this was a private matter which should NOT be published. Just under a third did not regard it as a public interest issue but still thought it should be published. Only one in 20 saw an England footballer’s affair as a clear public interest issue. Thus, the “role model” argument advanced by many apologists for celebrity exposés is not supported by a majority of the general public.<sup>3</sup>
7. In fact, the research suggests that the public makes a clear distinction between journalism which exposes wrongdoing by private companies or individuals with public responsibilities on the one hand, and inappropriate behaviour or misfortune relating to people in the public eye on the other. Moreover, five of the eight stories used in the research deliberately repeated identical scenarios from a detailed study on privacy conducted ten years ago at Leeds University, and found astonishingly similar results. It suggests that attitudes have remained stable over time.
8. These attitudinal data can underpin an approach to public interest journalism which will both protect journalism's legitimate watchdog function and - potentially - further enhance it by allowing defences in areas (including phone-hacking) which currently are not permitted beyond the discretion exercised by the CPS. In order to have both journalistic and popular legitimacy, however, such a definition needs to be enshrined in statute by Parliament. A statutory definition would ensure that journalistic codes are not left to the whims of individual editors or institutions and provides appropriate protection both for journalism's vital accountability

<sup>3</sup> “Public Interest: The Public Decides” in *British Journalism Review*, Vol 23 No 2, June 2012, pp15-23. The article can also be accessed online [here](#).

function and for those who might otherwise be victims of unethical practices. As I outlined in my first submission, such a definition would safeguard the right to publication in the case of:

- Exposure of wrongdoing, injustice or incompetence amongst private or public officials in positions of responsibility, including abuses of public office
  - Protecting the public from potential danger
  - Preventing the public from being misled either by erroneous statements or by the hypocrisy of those deliberately attempting to create a false image of themselves
  - Revealing information which fulfils a democratic role in advancing a better understanding of important issues or assists the public to come to electoral or other decisions of clear democratic importance.
9. Even those journalistic enterprises or technologies which are outside the scope of ethical guidelines - whether social media such as Twitter or blogs or small publications such as Private Eye - could benefit from a statutory definition of the public interest. For while these have fragmented audiences and are less potent than the mass audience newspapers and broadcasters which require greater regulatory scrutiny, a framework which encourages genuinely public interest investigative journalism might assist new platforms and enterprises as well as traditional ones.

### **Part Two: Concentration of media ownership**

10. The Inquiry has heard substantial evidence from serving and former government ministers bearing witness to the power wielded by unaccountable media proprietors and editors in Britain over the last 30 years. While some of the worst excesses of press behaviour can be ameliorated by an effective and independent regulatory system, this alone will not safeguard the public from a repetition of irresponsible journalism and abuse of power. A major reason why the culture and practices of the press were - particularly amongst the tabloids - neither properly investigated nor adequately penalised was because of a deep-seated fear within the political classes of the power wielded by media conglomerates whose expansion went unchecked. It is therefore essential that the Inquiry, while not necessarily making detailed recommendations for statutory intervention, both acknowledges the importance of tackling media ownership issues and lays down criteria for appropriate legislative action.
11. At the root of this intervention must be a recognition that the reasons for inhibiting unhealthy media concentration go well beyond guaranteeing a multiplicity of voices that are essential for a healthy democracy. I outlined in my evidence to module 3 a further four reasons for ensuring that one or two media enterprises do not become too dominant:
- Plurality goes beyond the narrowly political and must embrace the wider cultural environment. A corporate culture can determine cultural output across the board (including, for example, drama and comedy), thus helping to shape the ideas that circulate within the public sphere.
  - Professional values embraced by journalists will often be influenced - sometimes determined - by the world vision and editorial inclinations of the owner and editor.

- All media conglomerates will exploit their own media outlets to promote their own products and ignore or disparage those of their rivals, thus entrenching a competitive advantage and potentially further reducing the number of significant voices.
- Beyond their influence over editorial content, media conglomerates can further consolidate their power through undue pressure on regulators attempting to act in the public interest.

For all these reasons, it is imperative that adequate structural and legislative mechanisms are put in place to promote the maximum possible plurality of media enterprises.

12. The last minute amendment to the 2003 Communications Act – which introduced a new plurality clause into the 2002 Enterprise Act and is now known as the “Public Interest Plurality Test” - has proved to be a largely inadequate tool for preventing the inexorable rise of unchecked media power. It cannot be applied to organic growth of media enterprises, and is even of limited value when intervention is permitted through mergers and acquisitions. It proved to be wholly ineffectual in the case of BSkyB's purchase of a 17.9% stake in ITV<sup>4</sup>, and would not have prevented the full takeover of Sky by News Corp had the phone-hacking scandal not intervened. The nature of the "public interest" requirements which must be satisfied are vague and inchoate, and the whole process is much too vulnerable to corporate and political machination. I have therefore proposed six key changes to the current regime in order to strengthen current mechanisms and prevent the kinds of circumvention which the law currently permits:

- Discretion for initiating an inquiry should be shared by both the Secretary of State and by Ofcom rather than being vested solely in the Secretary of State. This was recommended by a House of Lords select committee in 2008 on the basis that it would “sit more comfortably with Ofcom’s duty to *promote* the interests of the citizen”.<sup>5</sup>
- Greater flexibility is required in the circumstances which might trigger such an investigation, including organic growth to a point which is deemed to threaten diversity of voice.
- Share of market and share of audience should be monitored on a regular basis by Ofcom (as recommended by Ofcom itself in its report to the Secretary of State in June), to provide the data for making any necessary public interest interventions. As part of this process, they should be given authority by Parliament to demand all relevant information from media enterprises.
- Regulatory overlap in investigating media plurality issues must be eliminated and Ofcom - again, by virtue of its obligation to promote the interests of citizens and consumers - given an ultimate authority to decide.
- Final decisions on divestments, conditions, and mitigations when contemplating greater media consolidation should not be left to government ministers. Authority should be delegated to Ofcom with appropriate accountability measures introduced - perhaps an obligation to report to a mandatory meeting of the Culture Media and Sport select committee.

<sup>4</sup> Although Sky was eventually forced to sell down its shareholding at a considerable capital loss, this was not before it had achieved its aim of preventing a Virgin-ITV merger by forcing up the price of ITV shares.

<sup>5</sup> House of Lords Select Committee on Communications, 2008, *The Ownership of the News*, Vol I: Report. London: The Stationery Office, HL Paper I22-I, paragraph 261.

- A more explicit recognition of why pluralism is integral to democracy - and in particular the impact on newsgathering and original journalism - is required, as recognised by both the OFT and the House of Lords select committee on Communications.<sup>6</sup>
13. There is legitimate concern about the "nuclear option" of forced divestment in the event of a media corporation exceeding appropriate measures of power and influence. Especially in a challenging economic environment, plurality may not be best served by requiring a "fire sale" or a closure of an otherwise sustainable news outlet. This problem can be mitigated through a range of public interest obligations that might be placed on media enterprises in return for continued ownership. These might include:
- clear evidence of increased investment in high quality journalism.
  - setting up new - or improving on existing - journalism training schemes.
  - subsidising non-profit media initiatives elsewhere.
  - agreeing to transparent auditing of editorial decision-making processes to prevent undue corporate pressure on editorial output.
  - appointment of an independent ombudsman, answerable to an independent editorial board and with authority to ask questions of any journalist about the provenance of their stories.
  - full participation in whatever regulatory system replaces the PCC.
14. At what point or threshold a media enterprise might be deemed to have an unhealthy share is a hugely complex area, which Ofcom itself has effectively returned to Parliament for consideration. I do not believe that the Inquiry needs to engage in detail with this issue, but I have outlined in my own evidence the three key objections to a "share of voice" approach: the difficulty of distinguishing between media in terms of their relative influence; the likely disproportionate (but unproveable) influence of newspapers because they can be opinionated and partisan; and the further influence of a partial press over broadcast news agendas. It therefore remains important to provide for a sufficient plurality of media organisations through structural measures, and I would endorse the proposals advanced in particular by Enders Analysis for limits on total revenue shares.<sup>7</sup>
15. Questions have been raised about whether and how the BBC might be included in any calculation of plurality. While, again, I do not believe that the Inquiry needs to come to detailed conclusions, I believe it should counsel caution in including the BBC on an equal footing with privately owned media enterprises: its public ownership, its statutory adherence to impartiality, its accountability to licence payers through transparent reporting and complaints mechanisms and through the BBC Trust, and its own commitment to a policy of "internal plurality"<sup>8</sup>, all militate against the BBC as a major determinant of ideas and opinions. Moreover, following the 16% cut in funding imposed in October 2010, the BBC's size and influence is likely to diminish over the next few years.

<sup>6</sup> Office of Fair Trading, "Review of the local and regional media merger regime", 2009, Final Report, OFT1091, p53; House of Lords Select Committee on Communications, 2008, op cit, paragraph 243

<sup>7</sup> Enders Analysis, Media Ownership Rules:

<http://www.ahrc.ac.uk/About/Policy/Documents/EnderspapermediaownershiprulesDec2011.pdf>

<sup>8</sup> BBC Response to Ofcom's Invitation to Comment on Measuring Media Plurality, March 2012.

16. Finally, when considering notions of media plurality and media power, it is important not to be distracted by arguments that new media opportunities – in particular, the proliferation of online, social networking and news aggregators – presuppose a move to greater plurality. There is now substantial evidence (in particular from the Goldsmiths media project) that the vast majority of investment in original newsgathering is still conducted by mainstream news organisations. Social media are welcome additions to the range of opinion and invective which can invigorate public life, but they do not command mass audiences or the authority of mainstream mass media organisations. Moreover, the direction of travel in difficult economic times is towards greater consolidation within the private sector, lending even more urgency to demands for a new legislative framework which will maximise the number of information gatekeepers and prevent accretion of unaccountable media power in the hands of a dominant media owner.

Prof Steven Barnett  
Professor of Communications  
University of Westminster  
Watford Road, Harrow  
Middlesex HA1 3TP

email:

**Statement of Truth**

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

**Signed ..**  .....

**Date .....5 July 2012.....**