

SUMMARY OF SEMINAR 2, 6 OCTOBER 2011 : THE RIGHTS AND RESPONSIBILITIES OF THE PRESS

Alan Rusbridger, editor of the Guardian, made a presentation on the importance of a free press. He noted that the phone hacking scandal leading to the establishment of the Leveson Inquiry had not been effectively uncovered by police, regulators or Parliament but by the press. He suggested that the concept of the press having power without responsibility was important because the lack of responsibility was what gave them their freedom. He argued that the English press is not entirely free, citing defamation laws as a barrier to freedom of expression. He noted that there was no longer clarity as to what constituted 'the press' as newspaper activities move online and blur with broadcasting on the one side and blogs on the other. The development of the internet had given everyone a platform from which to talk to millions. This brought jurisdictional enforcement problems as well as great freedoms. He described the difficulty of arriving at 'truth' and the concept of the newspaper as the best possible version of the truth in the time available. The investigatory work that a free press does is important and the position that the press holds provides support for journalists in both at home and abroad as they pursue investigations. The press also plays a vital role in sifting arguments and trying to present an accurate picture from conflicting accounts. He ended by reflecting on 300 years of press freedom in England and the implications of that.

Trevor Kavanagh, former editor of the Sun, made a presentation on the public interest and the interest of the public. He suggested that any distinction between the two was subjective and that all news, with certain exceptions, fell within the public's right to know. Any attempt to constrain what the press could cover was censorship. Freedom of expression was a vital part of democracy. The PCC code allowed for exceptions in relation to the identification of children and incitement to hatred, but the personal behaviour of public individuals was fairly of public interest. The balance between the right to a private life and the right to freedom of expression too often appeared to come down on the side of privacy. He argued that it was not acceptable for judges in Strasbourg to make decision on these issues in respect of the British press. There was a risk that the Inquiry, without any tabloid experience among the assessors, would further erode the freedom of the press. The tabloid press drives the news agenda and breaks major stories, with other parts of the media then picking up those stories once the tabloids have made them mainstream stories. The popular press is popular – they set the tone of national thought and debate and, because they are often not in tune with accepted political debate they are distrusted and disliked by the political establishment. The tabloids do a lot of good and are integral to holding power to account.

Brian Cathcart, also addressed the question of the difference between the public interest and the interest of the public. His starting point was that there is a difference – the first has the potential to affect us, the other is just curiosity. Frequently issues of public interest are not interesting to the public and vice versa. The distinction is unimportant until it is used as a defence for breach of standards or breaking the law. Many journalists say they are uncertain about the public interest but the confusion may be led by commercial interest. Regulatory definitions of the public interest exist and cover the exposing of wrongdoing and injustice and protecting the public from danger, preventing the public from being misled and revealing information that enables the public to make decisions. Recent cases where the press has failed to uphold standards have led to an erosion of public trust in the press. There is a need for more transparency and accountability.

In debate among the audience the following points were made:

- There are restrictions on the press in many countries, even in Europe. This results in a chill on freedom of expression.
- Common features in press regulatory codes include accuracy, defending press freedom, protecting sources, avoiding plagiarism, protecting privacy, avoiding discrimination and distinguishing between fact and comment.

- The Irish regulatory system provides incentives for working within the regulatory framework.
- There are already considerable constraints on the press in the UK. Defamation and libel law, as well as the Human Rights Act and pre-publication injunctions are already a significant constraint on what can be published, much more so than 10 years ago. Specific concerns were raised about the libel laws having a chilling effect not just on reporting but also on publication of scientific findings and books. Some argued it was important that the Libel Reform Bill should not be delayed as a result of the Leveson Inquiry. The Bribery Act makes it illegal to pay whistleblowers. Concerns were also raised about the confidentiality rules in relation to financial reporting.
- Some speakers felt that conditional fee arrangements pose huge risks to newspapers. Others argued that these arrangements were an important part of access to justice.
- It is difficult to find a way of compelling all parts of the industry to be part of a self regulatory system without some form of mandation.
- There was no support for the concept of licensing journalists, but a recognition that it was not long since the NUJ had operated a closed shop.
- The public have lost trust in the print media and there is a need for a regulator with teeth to restore that trust. A survey has shown that the public think there is too much invasion of privacy by the press and that editors can't be trusted to ensure that their journalists act in the public interest.
- Some elements of the press are too willing to accept information provided without question or checking. In the UK the press could be considered to be too weak, not too strong.
- Most things are not true or false but a subjective interpretation of facts. Freedom of expression is critical to democratic debate and whether something is in the public interest will always be a matter of judgment rather than fact.
- Publication of the MPs expenses story had not caused particular doubts at the Telegraph, even though other titles had allegedly turned the opportunity down. The lawyers were clear there was a sufficient public interest defence and subsequent events and prosecutions had made the point.
- With the internet reporting is not transitory as it was. A large proportion of complaints are about getting something changed online so the error is not being perpetuated.
- The approach to broadcasting regulation that requires impartiality in broadcast news because of the limits on broadcast spectrum availability is not axiomatic and does not apply in the US. Broadcasting regulation appears to work well, with all broadcasters complying and still a healthy level of investigative journalism on television. Those working in television understood the rules and found it possible to work within them – there is no pressure for deregulation in the television world. This does not mean that the Ofcom structures would be right for the press. It was argued that the impartiality requirements were not really relevant in the internet age.
- Would there be advantage in newspapers being transparent over who they have made payments to and for what?
- The sales of the popular press demonstrate how people really feel about tabloid journalism.
- There is no reason why the law is not a sufficient guardian of standards.
- It was argued that there is no difference in ethical approaches between different sections of the press. There are differences of style and position between different papers but there are not really different approaches to journalism or to ethics.

- The Editors' code is written by editors, agreed by all editors and complied with across the industry. The code was a good code and followed by the vast majority of journalists. A question was raised, though, about whether the code was being complied with in the spirit in all cases or whether boundaries were being pushed when there was no real public interest case being argued.
- The PCC work with newspapers to ensure ongoing training on the code throughout the industry. The code is regularly revised.
- It was suggested that there needs to be a broader industry dialogue on how to approach reporting on difficult and traumatic situations. Currently there is little training for journalists who e.g. have to interview people after disasters or deaths. These situations can be damaging for the journalists as well as the people concerned.
- There was broad agreement that when intruding into grief or shock journalists should be guided by whether people wanted to talk to them or not. Some argued that editors do consider the implications for the subjects of stories before publishing and that sometimes this might result in stories not being published where the damage to individuals would outweigh the public interest.
- It is important not to overlook the public interest in having a mass market newspaper industry – they do fulfill a broader democratic and information role that would not otherwise exist.
- Tabloids break a lot of stories that broadsheets and the BBC would not break but are very happy to follow once they can report on them as media stories.
- Lessons can be learned by looking at how other institutions have defined and applied the public interest. Various approaches were offered:
 - A simple rule of thumb was that if you would be happy to have your methods known then it was reasonable to go ahead and use them, but if not, not.
 - Apply two tests – one, can you justify the means of getting information and two, can you justify what was eventually broadcast/printed? Under broadcast rules you have to show that what you did was proportionate to the outcome you were aiming for or the public interest you were pursuing.
 - A five point test from GCHQ was offered as an example:
 - What is the harm that will be done?
 - What is the public good that will be done?
 - Are your actions proportionate (the minimum possible to achieve the objective)?
 - Does the action have the appropriate authority and oversight?
 - No fishing expeditions should be allowed.