

## **UK: Demystifying Leveson's Report and Recommendations**

**In this statement, ARTICLE 19 clarifies several issues surrounding the recent report of Lord Leveson on regulation of the print press in the UK. The debate around the recommendations in his report, particularly that for a new model of press regulation, has been intensely political and ideological. ARTICLE 19 believes that sound and considered analysis of the recommendations and subsequent proposals is needed which does not seek to trade on political capital. In particular, ARTICLE 19 calls for a sensible approach to discussions about legal provisions for regulation.**

**ARTICLE 19 believes that a comprehensive mechanism of self-regulation, which is both meaningful and ensures full accountability, is the preferred and best option because it is the least restrictive method of interference with press freedom. However, it is also our conclusion that the mechanism proposed by Lord Justice Leveson – self-regulation underpinned by a law - would not violate international freedom of expression standards.**

### **What prompted the Leveson inquiry and report**

The print press in the United Kingdom have come under close scrutiny following a series of revelations about the use of phone hacking by some journalists in the print media to obtain information illegally.

It was claimed that the mobile phone of a missing schoolgirl had been illegally hacked by journalists working for the Sunday tabloid, the news of the World. This sparked a series of similar allegations of intrusions by the newspaper from members of the public, celebrities and politicians.

Great concern grew that similar practices might be happening at other papers of the press.

Widespread public distrust and anger lead the UK Prime Minister, David Cameron, to launch a public inquiry into scandal in July 2011.

The Court of Appeal Judge, Lord Justice Leveson was appointed as Chairman of the Inquiry.

The first part of the inquiry was to examine the culture, practices and ethics of the media, with particular attention to be given to the relationship of between the press, the public, the police and politicians.

The Inquiry was established under the Inquiries Act 2005 and was granted power to summon witnesses. In total 337 witnesses gave evidence under oath in public and 297 written submissions were received from interested parties.

The report was published on 29 November 2012 and made a series of recommendations that were intended to suggest a future course of action for press regulation and

governance consistent with maintaining freedom of the press, whilst ensuring the highest ethical and professional standards.

Lord Justice Leveson recommended an independent self-regulatory body for the newspaper industry, backed up by legislation to ensure its independence and effectiveness. He set out 47 recommendations for what a new regulator should look like.

All the main political parties in the UK have agreed that the press needs to introduce a more robust form of self-regulation.

A debate about exactly how this body will be established and what it will look like continues.

### **International standards on freedom of the media**

International freedom of expression standards do not prescribe a specific model of press regulation. Instead, they require that any regulation meet a three-part test in order to be compatible with the right to freedom of expression, as regulatory measures for the media could interfere with press freedom.

The three-part test requires any mechanism of media regulation be:

- Prescribed by law
- In pursuit of a legitimate aim
- Necessary in a democratic society.

The requirement of necessity entails that the measure adopted must be proportionate to the aim pursued. If a less intrusive measure is capable of achieving the same purpose as a more restrictive one, the least restrictive measure must be applied. Part of the purpose of the necessity test is to prevent governments from following their 'legislative instinct', and to make sure that the amount of regulation concerning the media is kept to a minimum.

International law therefore allows that freedom of expression may be subject to certain restrictions for the sake of other legitimate interests including, among other things, the rights of others.

The case law of the European Court of Human Rights (European Court) has elaborated on these international standards. For instance, it found that states have a positive obligation to regulate the exercise of freedom of expression so as to ensure adequate protection by law of other rights, however, "they must not do so in a manner that unduly deters the media from fulfilling their role of altering the public to apparent or suspect misuse of public power."

**Self-regulation** has been favoured as it is the least restrictive method of interference with press freedom. However statutory regulation may be acceptable if it meets the three-part test and there are sufficient safeguards for media freedom.

## **The Leveson proposal and international standards**

The central disagreement and debate over the Leveson report has focused on his proposal to underpin the self-regulatory system in law, rather than leave it to the good will and contractual agreement amongst the media.

Lord Leveson has recommended a self-regulatory system set up by the press and underpinned by a new law. Lord Leveson recommended statutory underpinning in order to make the self-regulatory scheme effective, create incentives for all members of the Media to fully implement it, and ensure public trust and confidence into the self-regulation.

In addition, the Leveson report recommends that the new system should be approved and overseen either by Ofcom (the government appointed body that already regulates the broadcast media, postal service and phone companies), or by an independently appointed recognition commission, backed by a law.

ARTICLE 19 believes that the mechanism proposed by Lord Justice Leveson would not violate international freedom of expression standards for the following reasons:

1. Self-regulation of the print media will be retained: The Leveson report confirms the common European understanding that self-regulation is the best mechanism for the media to avoid restrictive state legislation that affects the dissemination of information and way in which the media operate. In the last 20 years self-regulation has been the mantra of all free speech campaigners. The Leveson report does not change this position. It means that the state will not regulate media.
2. The proposal for a legal underpinning does not seek to regulate the press but to underpin self-regulation
3. It does not concern the press standards code. The press standards code will not be established by the state. It will still be developed by the industry/journalists with public participation.
4. The proposed law will not establish the body to regulate the press. It is for the press itself. The law will “recognise” the body.
5. The underpinning will give rights to journalists, ensure protection of public interest, provide safeguards for the independence of the self-regulatory body and a duty for the government to protect press freedom.

In addition, the Leveson report makes specific recommendations regarding the independence of the press, the complaints mechanism and sanctions, and accountability.

1. The appointment of both the Chair and members of the board of the self-regulatory body should happen in a genuine, open, transparent and independent way. The board should be independent from both government and the industry. ARTICLE 19 finds that this is a much-needed departure from the PCC, which is unduly controlled and influenced by the industry. The appointment board will not be controlled by the industry as the members should be “demonstrably independent of the press” and only one editor will be allowed to sit in this board.
2. Even though the industry will fund the board, it will be on the basis of four or five year agreement, which is a guarantee that funding will not be used for control.

- Investigations will be funded from enforcement fund into which receipts from fines could be paid.
3. Third parties and representatives of groups should be able to make complaints.
  4. Financial sanctions will be imposed but they should be limited to up to 1% of turnover.
  5. The board will be able to examine issues on its own initiative and should have sufficient powers to carry out investigations.
  6. There should be a list of issues on which the board should report to the public.
  7. The regulator should provide a fair, fast and inexpensive arbitration service.
  8. Public interest protection will be one of the remits of the new body (at the moment it is only press freedom.)
  9. The new regulator should offer protection to journalists who are asked to act against the code.
  10. The system should include periodic plurality reviews and an extension of the public interest test to ensure media plurality.

With regard to the proposal that the underpinning law will specifically protect freedom of the press:

1. ARTICLE 19 notes that the right to freedom of expression is already protected in the UK in a number of ways – most notably by the Human Rights Act 1998, which incorporates the European Convention of Human Rights in to UK law. The European convention under Article 10 grants protection to freedom of expression, including freedom of the press.
2. ARTICLE 19 would support a guarantee for the protection of freedom of information and expression, taking the right in its fullest sense and not merely securing freedom for the press, and including on the Internet.
3. ARTICLE 19 reiterates our concerns that a number of existing bills unduly restrict freedom of expression, including freedom of the press, in the UK. We urge the Government, seemingly so intent in protecting freedom of the press, to adopt the defamation bill and reform the Crimes and Courts Bill, Justice and Security Bill, Communication Bill currently pending adoption.

### **Alternative proposals**

Since the launch of the Leveson report, a number of other proposals to ensure a new robust system for press regulation in the UK.

- The Prime Minister, David Cameron, has argued that it would be complex to write a new system into law and initially suggested a non-statutory solution should be found to provide a better system of press regulation. His office went on to suggest legal underpinning for self-regulation through a Royal Charter. A Royal Charter is theoretically granted by the monarch on the advice of the Privy Council. In practice this is a power which is exercised by the Prime Minister. A charter can set out the powers, rules and other legal responsibilities of a body. Royal Charters have been used to establish the BBC, the Bank of England and the Red Cross as well as a number of regulatory bodies.

- The Labour Party and the Liberal Democrats have both said that they support some form of legal basis for a system of self-regulation. Labour has proposed its own draft Press Freedom and Trust Bill.
- National newspaper editors have drawn up a plan for self-regulation that incorporates the broad proposals set out by Lord Justice Leveson but which stop short of statutory underpinning.
- An online petition in favour of statutory underpinning, launched by campaign group Hacked Off and supported by many victims of press intrusion, has now collected almost 150,000 signatures.
- Lord Lester, a Liberal Democrat peer and well-known human rights lawyer, has introduced an independent Press Council Bill in the House of Lords. Lester suggests that statutory underpinning is needed to compel ministers and others to uphold freedom of speech and of the press, and the independence of the new press council. His bill also proposes that the president of the UK Supreme Court (rather than OFCOM as per the Leveson report) certifies that the press council complies with the requirements of the act before it can come into force.

There will be further discussion no doubt and disagreement as to whether the new system of self regulation can be based on good will and contract alone or whether it should be underpinned through law.

## **CONCLUSION**

The Press Complaints Commission has been woefully inadequate and failed to ensure the accountability and responsibility of the press. To replace it, ARTICLE 19 favours a meaningful form of self-regulation. ARTICLE 19 does however notes that a system for self-regulation with statutory underpinning could comply with international and European standards on freedom of expression.

ARTICLE 19 calls for a sensible debate about any possible legal provision for a new system of press regulation.

ARTICLE 19 further notes that the lack of public trust in the media cannot be secured by laws alone. Public trust will be won through a responsible press that is truly free and truly accountable. The best mechanism for this is for a robust system of self-regulation.