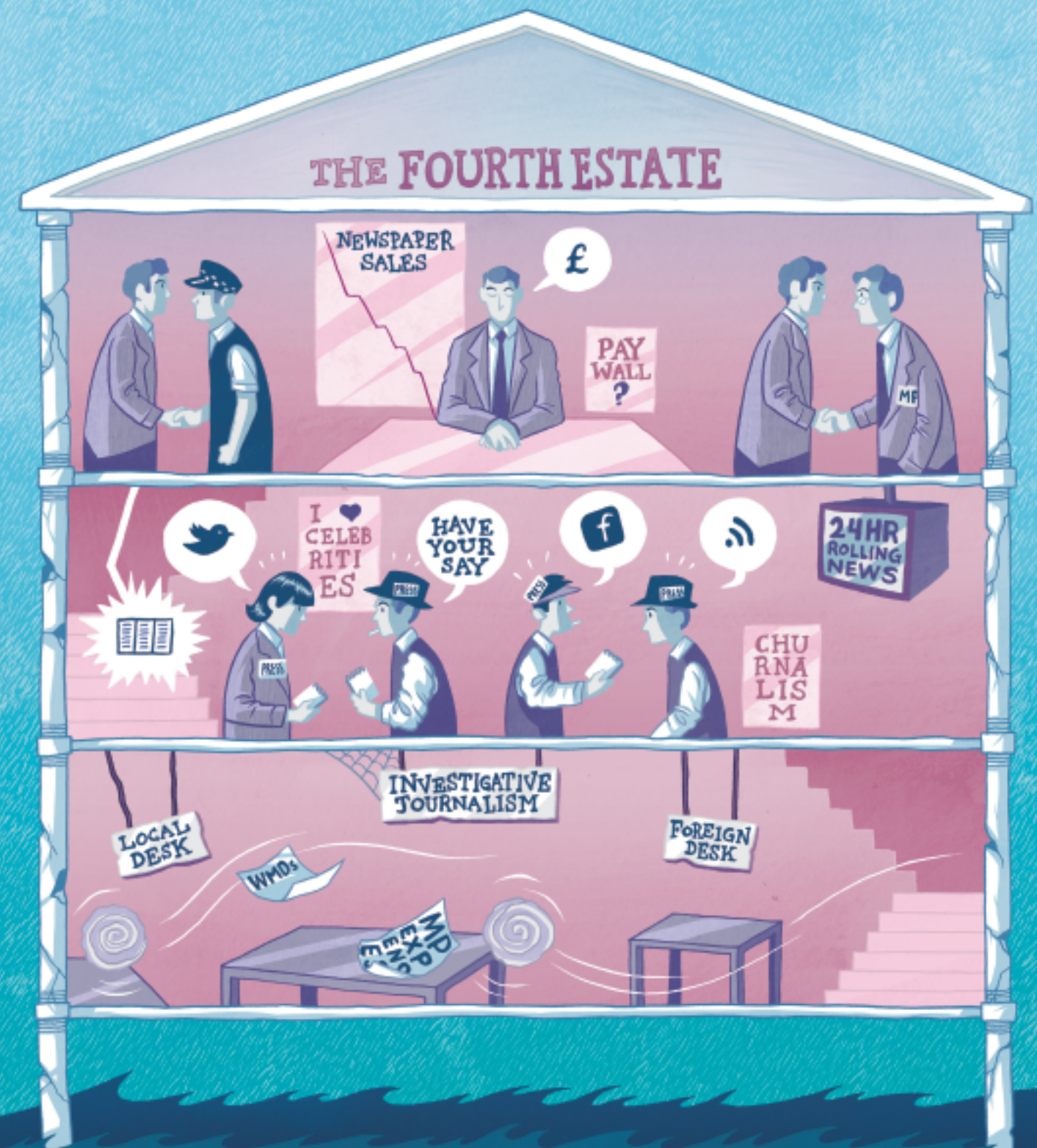




COORDINATING COMMITTEE FOR  
**MEDIA REFORM**

[www.mediareform.org.uk](http://www.mediareform.org.uk)

# Time for Media Reform



## Proposals for a free and accountable media



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artwork by Tom Humberstone ([www.tomhumberstone.com](http://www.tomhumberstone.com))



# The Coordinating Committee for Media Reform



## Who are we?

The Coordinating Committee for Media Reform was established in summer 2011 to organise a civil society response to the Leveson Inquiry and to influence impending communications legislation. We have produced a series of policy briefs and evidence for the Leveson Inquiry.

More on this at [mediareform.org.uk/levesonsubmission](http://mediareform.org.uk/levesonsubmission)

## What reforms do we want to see?

1. We must nurture diversity in the media by preventing harmful concentrations of ownership. No company should have excessive control of the audience in any major media market, or more than 15% of the media industry as a whole.  
More on this at [mediareform.org.uk/ownershipcap](http://mediareform.org.uk/ownershipcap)
2. With great power comes great responsibility. A company which has over 15% of a media audience must have obligations to provide and protect public interest journalism, and create governance structures which are accountable to the public.  
More on this at [mediareform.org.uk/publicinteresttest](http://mediareform.org.uk/publicinteresttest)
3. The replacement for Press Complaints Commission must learn both from its mistakes and from international press regulation. We propose a News Publishing Commission, which would administer a statutory right of reply and a complaints tribunal. It would also support journalists through representation on its board, a conscience clause to help them resist unethical working practices, and by establishing a public interest defence in legal proceedings.  
More on this at [mediareform.org.uk/newspublishing](http://mediareform.org.uk/newspublishing)
4. The economic model of the news is in crisis, which is partly why practices like hacking became widespread. New sources of funding should be generated through levies on the profits of dominant media companies – both traditional and digital.  
More on this at [mediareform.org.uk/levies](http://mediareform.org.uk/levies)
5. Good local media is a democratic right. We want to see real journalism rebuilt from the bottom up, using money raised by levies to fund jobs, local news hubs, and seed-funds for non-profit models such as co-operatives.  
More on this at [mediareform.org.uk/realjournalism](http://mediareform.org.uk/realjournalism)

## What can I do now?

1. Contribute to the debate on media reform by attending and participating in our public events over the autumn, including a major public rally – details to be announced on our website shortly.
2. Write a personal letter to Lord Leveson urging him to consider recommending thresholds on media ownership – email [info@mediareform.org.uk](mailto:info@mediareform.org.uk) for guidance and specific pointers.
3. Contact your MP demanding support for our Early Day Motion on media ownership thresholds.
4. Organise a meeting in your area with local journalists, students, academics, campaigners, MPs and councillors to highlight the need for media reform and an independent and robust local media. CCMR can help with materials and organisation.

## **INTRODUCTION: THE CASE FOR SYSTEMIC REFORM**

The Coordinating Committee for Media Reform was formed in 2011 as an umbrella organisation of advocacy groups, academics and individuals campaigning for meaningful reform of the UK media. In a debate largely dominated by vested interests, the aim of Media Reform is to engage with the discussions occurring in parliament and beyond, and to draw up policies designed to sustain the public interest and foster a more democratic media system.

We believe that the power of the ever smaller number of increasingly dominant, global media institutions has out-grown the regulatory infrastructure that ought to balance their rights with the rights of the individuals they report on. The phone hacking débâcle is merely the latest manifestation of a significant imbalance, and the time has come for the relationship between the media and the people to be re-evaluated.

Some editors have suggested that the problems are all related to one single maverick company. But as the Leveson hearings and concomitant investigations have demonstrated, institutional corruption within the media is not limited to the *News of the World* but is the result of more systemic factors concerning a profit-driven business model, media concentration and an exclusive and inaccessible political culture.

Any recommendations that come out of the Leveson Inquiry need to be aimed at tackling unaccountable forms of state or corporate power, and not restricting the ability of journalists to do precisely this. The more complex challenge facing society now is to set clear and realisable standards for the institutions and individuals that investigate, report and make sense of the world for the rest of us. By articulating such standards, and the principles upon which they are based, we can not only hope to prevent repetition of some of the more unacceptable practices that have been brought to light recently, but also to work towards a commonly meaningful language through which we can reflect upon, scrutinise and assess the relationship between the media and the public interest.

This necessitates attention to three interrelated areas of reform: media ownership, the funding of news, and journalism practice. Media Reform has produced a set of proposals in consultation with a range of civil society organisations over the past year, which is outlined in this document. Part 1 focusses on ownership and funding, and part 2 addresses journalism practice.

The recommendations are achievable and entirely appropriate to the current political and economic climate; they broadly reflect an emerging consensus among organisations committed to media reform; and they offer an overall approach that addresses both the symptoms and root causes of the problems addressed by the Leveson Inquiry. We conclude with some reflections on public interest journalism and argue the case for substantive change in the ways in which our media are structured, paid for and operated.

## **PART 1: REGENERATING PUBLIC INTEREST JOURNALISM**

### **A two-fold problem**

The traditional business models for delivering news are in crisis. Faced with a slow but steady decline in readers and viewers, the migration of advertising online, only limited success in 'monetising' new online audiences, and now a crisis of legitimacy caused by the phone hacking scandal, the economics of news are looking increasingly grim. At the same time, unchecked media concentration over several decades has allowed some media groups to accumulate vast amounts of influence with adverse consequences for ethical journalism and democracy. These two problems are intimately linked and any solution must take account of both the structure and funding of media that best serves their democratic and social purposes. This view has attracted broad consensual support and was underlined in the recent Lords Select Committee report into the Future of Investigative Journalism (House of Lords 2012).

Our proposals are designed to increase news plurality across the board, but we recognise that it is investigative and local journalism that have faced the sharp end of resource cuts across the sector for some time. The evidence to the House of Lords inquiry strongly suggested that the former needs additional financial support to survive, whether by cross-subsidy, philanthropy, or some form of state funding. The economic situation is especially acute in regional and local news, where the loss of classified advertising, combined with leveraged takeovers, have weakened local news provision in a number of well-documented ways (Media Trust 2010).

We are left with a growing democratic deficit because the areas of journalism most vulnerable to market trends—investigative and local journalism—are central to the ability of news to serve democracy: to hold power to account and to produce well resourced, innovative and relevant news stories. We need, therefore, a holistic approach that aims to regenerate public interest journalism at both national and local levels.

### **Solution 1: Obligations and ownership thresholds**

There is a long-established policy principle in the UK that public responsibilities should be attached to significant media power. To date, this principle has been invoked in respect of broadcasting but as media markets and services converge it is increasingly applicable to other platforms. There is a need to ensure that dominant media groups which are not subject to public service regulation are nevertheless committed to maintaining a degree of internal plurality and democracy, and offer positive support for greater diversity.

This does not mean that newspapers or websites should be subjected to forms of intervention that threaten their independence or free speech rights. Furthermore, the targets of intervention should be limited to those groups with an oligopolistic share of media markets, and remedies restricted to 1) bolstering the autonomy of journalists and editors within the organisation and 2) making a contribution to supporting public interest media outside of their organisation. The rationale behind the latter reflects the principle of cross-subsidy that has underpinned media policy, from the formation of Channel Four to the prospective plans for local television.

One of the historical stumbling blocks in media ownership regulation has been the inherent

difficulties in measuring media power. Our approach is based on the principle that concerns over media concentration are about the 'share of voice' commanded by a single or group of companies, rather than just significant market power defined in purely economic terms. By delineating markets along the lines of radio, television, press and the internet, it is possible to use a measure of audience share that is appropriately tailored to each medium.

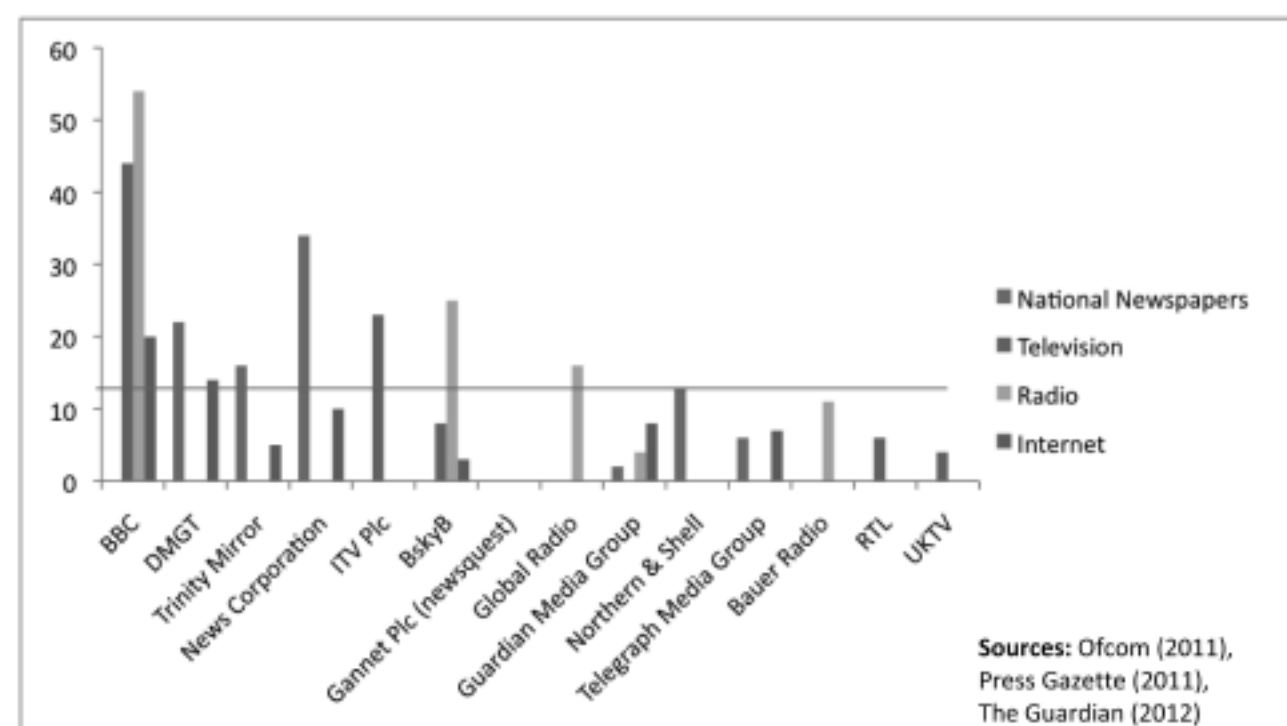
For the threshold triggering public media obligations, we therefore propose an adapted measure of audience shares within these markets based on the following sources:

- National newspaper circulation
- Multichannel television audience ratings
- Radio listening shares\*
- Traffic shares of top 20 UK-based news websites

(\*Where radio news services are outsourced, market share is attributed to news provider rather than station).

Whilst the first three are subject to regular industry audits (based on the surveys of ABC, BARB and RAJAR respectively), our data for the traffic shares of dominant news websites comes from research in 2011 by UKOM/Nielson, specifically on the reach of UK news websites within the UK. Taken as a whole, these metrics capture both the special significance attributed to news providers by plurality concerns, as well as the broader cultural power wielded by media conglomerates. Consequently, we believe that any entity whose combined outlets command 15 per cent or more of any of the above must ensure that public interest obligations are adhered to. Based on the latest market data available from Ofcom among others, the chart below illustrates the audience share of the dominant providers across these sectors.

**Figure 1. Audience share of dominant news providers**



The threshold line in the above chart reveals the groups who would be subject to public interest obligations under current market conditions. Excluding public service broadcasters - who are already subject to extensive public duties - the dominant media groups are as follows:

National Newspapers	Television	Radio	Internet
News Corporation ( <i>The Sun, Sun on Sunday, The Times, Sunday Times</i> )		Global Radio	
Trinity Mirror ( <i>The People, The Sunday Mirror, The Sunday Mail</i> )		BskyB ( <i>Sky News Radio</i> )	
DMGT ( <i>Daily Mail, Mail on Sunday</i> )			

Although no entity currently reaches the threshold for online news, many of the most popular news sites would be subject to public interest obligations by default given that they are controlled by groups that reach the threshold in national newspapers (e.g. TheSun.co.uk, DailyMail.co.uk etc.).

It should be stressed that the exclusion of public service broadcasters (PSBs) is not to confer favour on these providers over commercial groups. On the contrary, it reflects the principle that the latter should *not* be subject to the same onerous form of regulation as PSBs, and it is for this reason that we are advocating a distinct regime based on market share.

Another crucial area excluded from this measurement is local news. Although our overall proposals are designed to revitalise this sector via a Public Media Trust (as discussed further below), Ofcom should have powers to intervene on public interest issues at the local level. Given the added complexities in measuring local news concentration, intervention should be triggered by public concern via the Sustainable Communities Act which is uniquely fit for this purpose, based on 'the principle that local people know best what needs to be done to promote the sustainability of their area.' (Communities and Local Government 2008).

This may take the form of proposals, for instance, by a local co-operative to take over the brand of a newspaper title that has been closed down by its owners, or in support of an employee buy-out of a title that is vulnerable to closure and/or cutbacks. Ofcom should have the power to enforce such a sale at an affordable price, where there is a clear public interest justification and a viable business plan in place.

With regard to national media groups, let us now consider what public interest obligations might look like in line with the aforementioned objectives to bolster editorial autonomy and promote public interest media.



### *Protecting editorial autonomy*

One of the chief concerns emerging from the hacking scandal is the extent to which both the autonomy and integrity of journalists can be compromised by a chain of command and a top down imposed institutional culture. One way of addressing this issue is to introduce arrangements that limit the absolute prerogative power of proprietors and senior management. As a minimum requirement, this should ensure that qualifying news organisations set up an editorial panel, including a minimum of five staff journalists, which is empowered to oversee key decisions affecting editorial policy as follows:

- The appointment and dismissal of the editor-in-chief, or equivalent, by management or proprietors must be approved by the editorial panel on the basis of majority vote
- The panel must be consulted on decisions taken by management or proprietors which affect the definition or direction of editorial policy and content, including editorial codes and guidelines.
- The panel must have the ability to pass a motion of no confidence in an editor-in-chief, or equivalent, by majority vote
- The panel must have the capacity to both hear and air grievances of staff journalists in relation to particular assignments, and to consult the National Union of Journalists or the News Publishing Commission where applicable (see part 2 below for more details on the News Publishing Commission).

### *Promoting Public Interest Media*

Qualifying entities enjoy a significant public subsidy through VAT exemption. Across the board, this amounts to half a billion pounds of annual public subsidies for the news industry. The problem is that this is a blanket subsidy that has gone towards paying off corrupt police officers as much as funding in-depth professional journalism. Dominant profit-making news groups who benefit from this subsidy should make a contribution to support fledgling sectors of public interest media. This is entirely consistent with a range of media policies designed to cross-subsidise public interest media from the more profitable or financially stable sections of the media. We therefore advocate that companies with a 15 per cent share or more of a given market should allocate a percentage of annual net profits to a Public Media Trust, to be distributed along the lines set out later in this document.

It is important to stress at the outset that meaningful support for these fledgling sectors of the media will not necessarily require significant injections of public funds. Based on 2011 accounts returned to Companies House for the qualifying outlets identified above, a 10 per cent profit levy would have raised in the region of £30 million. The Bureau of Investigative Journalism was established in 2010 with a start-up grant of £2 million from the Potter Foundation. In the 21 months since its launch, the agency has secured over thirty-four front-page stories and produced a number of award-winning web, radio and TV reports.

These obligations will go some way to fostering internal plurality, protecting the integrity of professional journalism, and promoting the kind of media output that enhances rather than constrains democratic citizenship. But it will not solve the problem of on-going consolidation within the news media industry which has concentrated power in the hands of particular conglomerates, and in some cases, individuals. This concentration of power has fostered a

level of intimacy between media proprietors and senior politicians which has made for uncomfortable viewing during the Leveson hearings.

Our proposals thus far have focussed on behavioural remedies in the form of public interest obligations – the kind of intervention that has strong and growing precedent under current anti-trust regimes adopted in both the EU and US. But clearly the special role of the media industries in providing a forum for public debate and informing citizens warrants a structural remedy to ensure that individuals do not amass undue influence over their own editorial staff, or indeed politicians.

Structural remedies applied in post-merger interventions tend to take the form of forced divestiture, the objective of which is usually to create a new viable competitor, or strengthen the position of existing competitors through the break-up of a company's assets. In the case of the media, this might be feasible and sensible when a company has acquired a number of assets across sectors such that it commands a dominant share of cross media market revenues. To this end, we support proposals put forward by Enders Analysis which would prohibit any single company from commanding more than 15 per cent of core media industry revenues.

But this will not solve the problem of concentrated power *within* particular media markets and we recognise that monopoly control policies based on divestment can raise difficulties when applied to these cases. We are therefore proposing a different structural remedy based on equity carve out. Where a single outlet or group of outlets breach a given threshold within any market, this would entail the creation of a new company out of the relevant subsidiary and the selling of shares accordingly. Whilst this might not lead to the creation of a new viable competitor, it could ensure that no single entity or individual has a controlling interest in the outlet or group of outlets.

The particular advantage of this approach is that it is aimed specifically at limiting the influence of powerful interests. That is, after all, the primary concern attached to media plurality and is precisely the kind of intervention that is most needed - especially in the UK where individual proprietors are still dominant in the newspaper industry (in contrast to the US and much of western Europe). Moreover, a remedy based on equity carve out will not deter growth or interfere with consumer sovereignty within media markets; and it can be implemented relatively easily based on Ofcom's existing criteria for measuring controlling interests.

Recent examples of shareholder activism in many industries, including shareholder pressure at News International for Rupert Murdoch to stand down, demonstrate that there is a growing appetite to exert influence on large companies on the basis of shareholdings. This trend indicates that equity carve out could genuinely increase internal plurality, as civil society groups and socially-oriented investors (such as pension funds) may well take up the opportunity to buy released shares in order to hold media companies to account.

Of course, limiting equity share does not necessarily translate into an increase in plurality of titles or content. Crucially then, this kind of remedy should only be considered as effective when combined with our proposed public interest obligations. We have argued that public

interest obligations should be applied to any media group that commands more than 15 per cent share of a given audience, and we believe that no individual interest should control more than 20 per cent of the market. Though any such thresholds are to some extent arbitrary, we believe that the emergence of less than six 'voices' within a given medium is an appropriate trigger for intervention.

## **Solution 2: External Levies**

The burden of supporting public interest media should not fall exclusively on the shoulders of dominant commercial media groups. There are now larger and considerably more profitable companies operating in the online domain that have attracted revenue away from conventional media and public interest journalism.

There is established precedent in Europe for funding press subsidies through a tax on media advertising that acts as a cross-subsidy between the most profitable sections of the media and public interest journalism. Sweden and the Netherlands have been operating such a tax (10 per cent and 4 per cent respectively) on commercial television advertising, among other sectors, since the early 1970s. The proceeds have been used, directly or indirectly, to subsidise the press with a view to maximising plurality within the sector.

Internet advertising expenditure during the first six months of 2011 outstripped that of television, with a year-on-year growth of 13.5 per cent. A total of £2.26 billion was spent online, a large proportion of which went on targeted and dynamic pay-per-click models offered by Google and Facebook.

There is now a very compelling case for redistributing a small token of the vast profits generated by these providers in support of journalism. Whilst continuing to attract classified advertisers away from conventional platforms—draining the lifeblood of local news businesses—Google adds value to its services by aggregating news content from a wide range of sources without paying for it. What's more, Google and Facebook largely avoid paying corporation tax on their UK businesses.

A 1 per cent levy on search engine and social media advertising sales in the UK would not pose any threat to the viability of this rapidly growing industry, nor is it likely to deter investment in marketing services. Indeed Eric Schmidt, Chairman of Google, recently conceded that the company would be willing to contribute more to the UK purse (*Daily Telegraph* 2011). In 2011 alone, such a tax would have generated over £50 million of funds for reinvestment in public interest media. This levy would be distinct from the contribution proposed above in respect of dominant commercial media groups. The latter would be contingent on profits whilst the former will be akin to a gross sales tax along the lines of VAT.

## **The Public Media Trust**

The next question is what should be funded and how. Our proposals cover a broad range of public interest media from individual blogs to a system of public commissioning for investigative journalism. Key areas of investment include seed funding for co-operative local newspaper ventures; community radio stations and online blogs with a local or investigative

news focus; local and national news gathering hubs that operate along the lines of the Bureau for Investigative Journalism. This broad-brush approach acknowledges the blurred boundaries of news in the digital era and the contribution to democracy made by various branches of the media, both old and new. The aim is to build on a nascent third sector of media services that functions exclusively in the service of citizens and democracy.

The guiding rationale for creating the Trust is that neither markets nor existing legislation have delivered and sustained the media we need, and that new funds for public interest media should be raised and invested by an independent and publicly accountable body. Accordingly, the Trust must be properly transparent, open to effective challenge and operate in line with the EC state aid framework. In particular, the composition of the Trust's board should include individuals with different views and from diverse backgrounds, recruited through open tenders. Current bodies such as the Arts Council offer an appropriate model for how the Trust could be structured and operated and how grantee organisations could benefit from using the Trust's brand to indicate their status as a public media outlet.

Above all, the Trust should be charged with ensuring that it fosters diversity of expression and the production of news that operates without fear or favour. Its progeny should promote media diversity vital to the democratic health of society, and contribute to growth and employment within the industry, especially at a local level.

One specific way of achieving the latter objective is via a direct subsidy, administered by the Trust, that would fund a single 'on the beat' reporter for online and offline local news organisations. The subsidy would cover the salary of one journalist who would be dedicated to coverage of local issues. The jobs should be paid for at the entry level with the intention of providing job creation opportunities for young journalists at the same time as improving democratic accountability and debate inside local communities. This is similar to the direct subsidy scheme of young journalists in the Netherlands (Media Trend 2009).

Any organisation that could provide evidence of attracting a reasonable audience in the locality should be able to apply for this funding and would have to demonstrate that the person employed was wholly dedicated to writing stories about political and civic life in the community. The initiative is especially designed to help emerging hyper-local sites. As long as their visitor numbers reach an agreed level (for example, 10,000 hits a day), they would be able to apply to employ a full-time journalist, freeing up resources to focus on other activities to grow the organisation.



## **PART 2 - ETHICAL PRACTICE: A NEW SETTLEMENT FOR BRITISH NEWS PUBLISHING**

The cycle of ethical crises which regularly engulf the British press arises not from a deficiency in the law or ethical codes, which already cover most eventualities, but from a culture of risk-taking in a highly competitive news market. Journalism is sharply divided between those editors and journalists who have the freedom of action and conscience to operate ethically, and those who operate in a highly structured and competitive environment in which they are under heavy pressure to deliver stories by any means possible.

For too long the editors themselves have refused to acknowledge this difference and have allowed the ethical excess of the popular press to hide behind the more respectable countenance of serious journalism. Whereas the latter require protection from pressures that might prevent them from investigating abuses of power, the former require firmer rules to prevent them from using their power (and desperation to grab market share) to traduce innocent people. Those individuals working for highly competitive news organisations also need protection – of their right to exercise their conscience.

### **A News Publishing Commission**

We suggest that a new body should be established for news produced both on and off line. The News Publishing Commission (NPC) would remain voluntary and independent, but staying outside it would open publications to the risk of expensive court action against which they would have no special defence. Staying in, on the other hand, would require adherence to the ethical rules laid down in a Code of Conduct. It would finally be clear that the privileges of journalism require an equal and balancing responsibility on the part of editors.

The new organisation would represent the interests of ordinary working journalists as well as editors and members of the public. It would be established by statute but membership would be voluntary. It would replace the PCC but would also provide an alternative to the courts, offering a straightforward system of redress for ordinary people.

All publishers (on or off line), who consider themselves to be news publishers, would be eligible for membership. In joining they would acquire the right to use the defence of 'public interest' in respect of prosecution for a wide number of offences relating to investigative work. In return for the protection of this defence, members would agree to maintain certain ethical standards.

We now turn in more detail to the practical changes that would be required to foster a new ethical professional practice in British journalism. We have grouped our concerns into these main areas:

1. A public interest defence
2. A statutory right of reply
3. A new regulator combining a two-track approach to conciliation and arbitration via an Ombudsman and a Tribunal system
4. Fostering an ethical environment at work

## **1 The Public Interest**

We take the need for press freedom every bit as seriously as editors. This is why we welcome a new Defamation Act (proposed in the Queens Speech in May 2012). We would like to see the concept of 'the public interest' clearly defined and enshrined in law because there will always be a 'grey area' in journalism in which editors encourage journalists to 'dig a little deeper'. That may involve intrusion into places where those who wish to cover up wrongdoing would rather journalists didn't go.

Both the NUJ Code of Conduct and the Editors' Code allow the use of surreptitious means, if there is no alternative, to dig out stories in the public interest. The Libel Reform Campaign has been campaigning on this issue and we endorse their fight for:

- A public interest defence so people can defend themselves unless the claimant can show they have been malicious or reckless
- A strong test of harm that strikes out claims unless the claimant can demonstrate serious and substantial harm and they have a real prospect of vindication
- A restriction on corporations' ability to use the libel laws to silence criticism.

A clearly defined 'public interest' defence in law is vital to any attempt at reform because it helps us to deal with the central contradiction of journalism—the fact that ethical journalists may require defence for rule breaking if they are to do their job, whereas unethical journalists may attempt to use a 'public interest defence' to protect themselves against criticism. The Human Rights Act already embodies the concept as a reasonable defence for intrusion and if there is to be any extension of the defence then that concept needs to be clarified. The BBC (2011: 7.1) has framed guidance of its own which helps us in this respect:

- Promoting accountability and transparency: gathering and presenting information to enable public scrutiny of government and those with authority or influence over audiences' lives
- Informing public debate: gathering, providing and testing information on key issues to help the public understand and debate decisions made on their behalf
- Preventing deception, fraud and corruption - providing audiences with the means to avert being misled by some statement or action, especially when public money is involved
- Crime and anti-social behavior: exposing criminal or significant anti-social behaviour, particularly by public figures
- The world - reporting from parts of the world where there are conflicts, where issues of major significance (e.g. climate change, human rights) require understanding, or where the policies of the UK and its allies are having significant effects.

With a clear public interest defence in place to protect responsible journalism, it should be possible to ensure that codes of ethical conduct are upheld, and that those who choose willfully to ignore them will face some form of legal censure. We discuss this below in recommendations about enforcement.

## 2 The right of reply

When information is inaccurate, unfair, or just ‘made up’, real people are affected and they should have a right to correct misleading statements. The right of reply should be available to any person named, in print or online, wishing to correct a clear factual inaccuracy or wishing to complain about a breach of the ethical code that has personally affected them, for example a breach of privacy, racism, gender bias etc. Where organisations or groups of people are impugned by member organisations of the NPC, it should be possible for the complaint to be taken up on their behalf.

By insisting on a qualified, enforceable right of reply, the British news media would be immediately opened up to alternative points of view, with a minimum of disruption to existing practices. And we should not underestimate the size of this problem or the distress it causes. The PCC’s statistics show that in 2009, 87.2 per cent of the complaints it received concerned accuracy and opportunity to reply, and only 23.7 per cent were about privacy.

A right of reply has to be carefully drafted to ensure that it is not misused to prevent the press from doing its job. There are some precedents (for example in Slovenia) where such a right has been used by powerful organisations to prevent criticism (Milosavljevic 2012) but there are also exemplary models that could be used as a starting point.

Such a right has been ‘commended’ by the Council of Europe and is provided in France, Germany, Belgium, Norway, Sweden, Finland, Greece, Austria, Ireland and Switzerland (MediaWise 2010: 4) either by law or via some other mechanism that ensures the principle is both clear and enforceable. But a statutory underpinning has proved the most effective means of instituting the right of reply and the Finnish Freedom of Expression Act is a particularly apposite example. By enshrining the right of reply in a law that positively upholds freedom of expression, it demonstrates that the freedom of expression afforded to the press does not trump the freedom of expression afforded to the individual. The Irish Broadcasting Act also includes a right of reply with the following very simple explanation:

A Right of Reply is about the correction of incorrect facts or information; it **does not** provide for the broadcast of an alternative or contrary opinion. In other words, a person may not be satisfied with the manner in which a broadcaster has relayed information about him/her, but a Right of Reply will not be granted unless the facts or information are factually incorrect such that their honour or reputation have been impugned. (BAI, n.d.)

There have been a number of attempts to establish a right of reply in this country. All of them have been vehemently opposed by editors who think that offering such a right would take up too much space and introduce badly written and boring ‘legal-ese’ into their carefully planned publications.

Fortunately many of the concerns about space restrictions no longer apply. Online space is unlimited and most news publishers now provide some opportunity for people to respond. But few publishers distinguish between general comments by people with an interest in the article, and people or organisations referred to within the piece who may wish to correct a factual inaccuracy.

A more ethical practice would give a right of reply to those who have been misrepresented,

in a special designated slot immediately below the relevant article. This should become normal practice but it should also be legally enforced.

A mistakes and clarifications column should be provided in every newspaper and magazine and linked to every home page. It should point out what items have been corrected and where they can be viewed in full online.

This way, corrections can be made very fast, with minimal fuss and without damaging the look and feel of the publication. The advantage of using the web version for the full-length correction is that it can be done within hours of publication and be immediately available to those reading the offending article. At present it can take weeks or months to negotiate a right of reply and then it will read entirely out of context.

The hope is that this would become an automatic practice but, where there is a dispute, there should be a means of resolving that dispute and publishing an agreed statement online, and in serious cases in print too.

## 3 A new regulator: the News Publishing Commission

We recommend the establishment of a new organisation: The News Publishing Commission. The NPC would be a voluntary membership organisation, open to any publisher, on or off line, which would incorporate much of the better work and practice offered by the PCC, but have a wider remit and be capable of enforcing judgements.

Its board will be composed of members of the public, ordinary working journalists and editors, who must be nominated by their trade body, union, or by relevant civil society organisations. This composition would work along similar lines to that successfully established by the Irish Press Council. The board would be responsible for: establishing and updating the code of conduct, establishing standards for the re-use of material on line, establishing a whistle-blowers code, investigating abuse of ethical standards and for monitoring and championing Press Freedom.

By joining the NPC, members would agree to abide by its code of ethics, be bound by decisions of its arbitration tribunal and, in return, would enjoy its protection. All complaints against publications would be directed through a two-track conciliation or arbitration system (see below for details) but, in return, members would be protected against further (and more onerous) court action (Tomlinson 2011). This would be similar to the system available to the construction industry (Brett 2011) and to the protections offered by membership of the Irish Press Council, which may be used in mounting a public interest defence against prosecution.

It may also be useful to make VAT exemption for print publications contingent on signing up to the News Publishing Commission as this would provide an additional incentive to sign up to the Commission and the Code.

There are serious arguments for abandoning any form of voluntary organisation. Some suggest that, if the law were more rigorously enforced, there should be no need of any special organisation for journalists; others argue for compulsory membership of any new body; yet others recommend bringing all news under the control of Ofcom, which successfully regulates broadcast news.



Licensing of text-based sites and newspapers could potentially be used to silence dissent and would create artificial barriers to entry in what is currently a very fluid market, with small innovative websites emerging and disappearing fairly rapidly. It would be hard to administer and probably tend to make the market a lot less diverse.

While there are arguments for imposing public interest obligations on dominant commercial media groups operating outside of broadcasting (see part 1 of this document), the convergent media environment is such that arguments over the regulation of broadcast news would probably go the other way. In particular, there is every likelihood that we would see a relaxing of the current regulatory regime for broadcasting so that a strict interpretation of due impartiality would no longer be required.

The CCMR, as an umbrella body of different organisations, has come down in favour of co-regulation in which an independent body is established by statute in order that it can have enforceable powers. The advantage of the system we envisage is that it makes it worthwhile for the vast majority of publications (on or off line) to be directly involved with upholding press ethics.

In belonging to the commission they are offered its protection, but the protection requires them to abide by the code. This would immediately undermine the claim often made by the editors that the internet is unregulated and that it is unfair to force them to abide by even the most basic regulations because they will be undercut by the competition. The best rejoinder to this argument is to spread the rule of law, not to restrict it. An ethical news media and a statutory right of reply should be a basic right in a democracy, and it is fair that every publisher, rich or poor, small or large, should be required to play by the same rules.

#### How complaints would be handled

*A News Ombudsman.* The commission board would appoint an independent ombudsman who operates as a first port of call for members of the public. The Ombudsman would mediate on complaints from the public for all organisations affiliated to the NPC.

*A News Adjudication Tribunal,* constituted along similar lines to an employment tribunal, would be established (as suggested by Brett 2011 and Tomlinson 2012). The tribunal would be drawn from panels representing journalists and the public, and would sit with a legally trained chairperson. Complainants would have the right to ask for a full adjudication and sanctions would involve the removal of offending material, a statement that must be linked to the original article and published in a prominent position.

All cases relating to media law (including defamation and privacy cases) should, where the publication complained against is a member of the NPC, be taken before a tribunal in the first instance.

The tribunal would take any public interest defence into consideration in making a ruling. The rulings of the Tribunal would be taken into account in any further court cases just as they are currently taken into account in relation to Privacy under Section 12.4 of the Human Rights Act.

*Fines and compensation:* the Tribunal should have power to impose a graduated system of limited fines. The object would not be to price small organisations out of the marketplace,

so fines would be ruled out where clear and serious attempts have been made to correct erroneous or unfair statements. Where compensation was set, it would be limited to covering the reasonable cost of expenses incurred in pursuing a complaint.

*Courts:* would be obliged to take account of actions taken in tribunals in making a judgement. In the case of serious and persistent breaches, or in instances where the publication was not a member of the NPC, the courts should have the right to impose significant fines related to the turnover of the organisation involved.

#### Funding

The PCC is currently paid for via subscription and has a turnover of approximately £2 million, whereas Ofcom is funded to the tune of £100 million (of which approximately £5 million is devoted to regulation of broadcasting). As the tribunals would be relieving the courts of a considerable amount of media related work, it is right that they should be funded in the same way that other tribunals are funded, via the Courts and Tribunal Service. A mixed funding regime is commonplace in other countries, for example Finland and Germany.

## **4 A Conscience Clause and a Whistle Blowers Code**

The protection of freedom of expression should include a presumption of freedom of conscience. If journalists feel unable to make ethical decisions at work, this is a matter that needs to be considered by any organisation established to protect press freedom and journalistic ethics. All news organisations should spell out publicly their commitment to supporting ethical journalism and the ethical judgements of journalists working for them, and where journalists feel coerced into unethical behaviour they should be protected by the NPC.

The News Publishing Commission should include working journalists who would be appointed by their own trade body and not by their editors. As part of its remit, the body would have the job of establishing a whistle blowers code and interceding on behalf of journalists who are concerned about unethical practices. The new ethical code would include a 'conscience clause' supporting journalists who refuse to work in ways that breach the code of practice, an initiative proposed by the NUJ and backed by a wide range of senior news figures from Alan Rusbridger to Rupert Murdoch.

### **Conclusion: Public interest journalism**

The proposals outlined above rest on a premise that we cannot begin to tackle institutional corruption within the media without a holistic approach to reform that does not isolate the problem around particular issues or organisations. More specifically, we cannot address the problem of 'bad' news that is present, without also attending to the problem of 'good' news that is absent. In this sense, we have based our proposals on a conception of news in the public interest – a heavily contested term, but one which is nevertheless well understood by both the public and journalists alike (Morrison and Svennevig 2002).

At the heart of this shared understanding is an association between public interest journalism and a sense of public service. The problem for journalists is that owners (often public companies) are more concerned with serving their shareholders than with serving the

public. They transmit this view to the editors they appoint (Marr 2004: 235) who, in turn, increasingly, enforce a top-down editorial line that journalists are expected to obey (Phillips, Couldry and Freedman 2010: 57).

There is no intention here to suppress the exuberance of the British press. Many people read news for the fun of finding out what celebrities are up to or for moral tales derived from other lives. Storytelling is as much a part of journalism as reporting. But how well does contemporary British journalism serve the public interest? Journalistic approaches to the news tend to revolve around two perspectives. The first represents the political world as a game in which the attainment and retention of power is the principal goal. This account is dominated by reports of 'winners' and 'losers', strategies designed to 'sell' unpalatable policies to an unwitting electorate and accounts of an inner political world often laced with Machiavellian manipulation and deception. Faced with such a political world, citizens come to feel like spectators, observing the skills of an opaque sport, or cynics, withdrawing in frustration from a system of political communication that rarely takes them seriously.

The second journalistic perspective is to see the democratic polity as a civic forum in which issues and policy proposals are discussed on their merits. This approach is characterised by a canvassing and sifting of competing arguments; an acknowledgement that mature democracy entails trade-offs between different preferences and values; and an historical sense that stories and events have long term pre-histories and consequences that add up to more than a stream of isolated episodes. In this context, a clear relationship is envisaged between people as news consumers and people as reflective, monitoring, arguing, voting, active citizens.

In the real world of contemporary democracy, political communication entails a mixture of these two orientations, with politics depicted through the frames of both the competitive game and the civic forum. But the presentation and analysis of news is currently showing signs of radical imbalance, with game-oriented journalism rising and civic-oriented public-interest journalism in decline. While it cannot be denied that high-quality journalism based upon serious investigation and astute analysis can still find its way into print and broadcast news; that even some of the most populist newspapers manage to stimulate important public debates; and that a significant range of voices and perspectives can now be accessed online by those with the time to search for them; the news landscape as a whole is increasingly devoid of civically relevant content.

A media system dominated by a few, powerful voices and a news media increasingly run to secure financial reward or political influence has failed us when we needed it most: to alert us to the endemic insecurity of the financial system; and indeed, with a few honourable exceptions, to acknowledge institutional corruption at the highest levels between politicians, police and media executives. A system that monitors and challenges unaccountable formations of media power, encourages significant new news initiatives, fosters more public involvement and holds unacceptable journalistic practices to account is the least we deserve.

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