

## Who is a journalist and why it matters – Hugh Tomlinson

**Fascinating post** by Hugh Tomlinson QC on journalist's privilege. This is not only a question of whether citizen journalists should access source protection and public interest defences if they break the law in the pursuit of public interest news. The issue is also at the heart of the Leveson Inquiry – how best to regulate the activities of news-gatherers at a time when they push the boundaries of propriety and traditional platform-based regulation is breaking down.

Tomlinson acknowledges that the law traditionally does not make a distinction between who is, and who is not, a journalist. Freedom of expression is for everyone, not just journalists. But he notes that increasingly and with the influence of European Court of Human Rights case law, journalist privilege is becoming more entrenched. He also acknowledges that there are a growing range of privileges of access to newsgathering for example in relation to access to the courts.

Law is only part of the system of journalistic privileges however. Parliament itself operates access control through the lobby system. Guardian journalist Andrew Sparrow wrote a **wonderful history** of how Parliament gradually devised a system of accreditation of journalists and developed a specific reporters gallery in the House. These are not a question of laws but Parliamentary procedures.

Legal privilege is part of a larger socio-legal question of whether journalism operates within a 'social compact' whereby its valuable social function is facilitated through a range of privileges. This notion has been the topic of a good deal of academic research of late. Put simply, this is the notion that privileges are granted in return for a series of obligations and that privileges are conditional upon them.

The **deontological** notion that journalism is part of a system of 'rights and responsibilities' or **droits ed devoirs** is much more familiar in continental Europe.

I have sought to apply the notion in my recent research on financial journalism. There, certain privileges and immunities have been claimed by journalists in relation to the Market Abuse Directive. I lay out the bare bones of the idea in this **short preliminary article**.

The Journal of Mass Media Ethics and in particular writers such as Steven Ward have taken the notion of news as a social compact further, and a fuller treatment of financial journalism will be published there in a few months.

Transgressions such as phone hacking throw into question not only the legal questions of how to define public interest, but as Tomlinson points out, the broader question of whether journalist accreditation might form part of a scheme for ensuring that privilege is not abused. If the PCC is breaking down, might journalist accreditation offer a means of enforcing responsible journalism?

In the UK, concern that the accreditation of journalists could lead to a chilling effect has led to decentralised schemes like the UK Press Card Authority. But these schemes should be seen in their entirety, in relation to how they may be embedded within a broader co-regulatory framework, and how they relate not only to law, but to administrative procedures relating to journalistic access.

It would be interesting to ask whether leading bloggers would be successful in applying to one of the accreditation authorities for a press pass. When one looks down the list of 'Gatekeepers' control access to press passes in the UK, it becomes clear that any attempt to increase the regulation of access of accredited journalists to physical spaces or public interest defences would lead immediately to a conflict of interest. This is because it would effectively amount to a delegation to these commercially interested parties the ability to exclude their commercial rivals –

including bloggers – from those defences. Unless the accreditation scheme is reformed and governed by a majority of lay members it's functions could not be extended.

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