

## Phonehacking and Press Reforms: Beware Dangerous Blogs

Charlie Beckett's [17th July blog](#) post linked the current debate about press reform to the old Whitehall fable about Dangerous Dogs. The essence of the fable –which has long been recounted by those attempting to spike regulatory reforms- is that the 1991 Dangerous Dogs Act was a perfect illustration of how media feeding frenzies lead to flawed, knee-jerk policy responses.

Unfortunately, evidence in support of this emblematic fable turns out to be rather thin. [A study](#) by Martin Lodge and Christopher Hood of the LSE suggested that the impact of the UK legislation might not be as pernicious as the fable suggests. More importantly, the same article points out that 'media feeding frenzies' do not necessarily lead to 'pavlovian policy responses'. In fact they can be extremely useful in 'removing conventional policy blockages' that tend to stand in the way of reforms, even where a consensus for change emerges. We should bear this in mind in relation to policy responses to the current phone hacking scandal.

When one reflects for a moment, the comparison with Dangerous Dogs doesn't stand up at all. Newspapers certainly look less scary in photographs than dogs, but they are much better equipped to protect themselves against policymakers. There does not seem to be a real danger of a knee-jerk response from the Government. Neither they, nor the other newspapers, nor the host of engaged civil society groups such as the Media Standards Trust have any interest in supporting a knee jerk policy fix that threatens media freedom or independence.

The danger in fact is that a moment of opportunity for beneficial reforms of the regulatory framework, reforms that a growing number of people have been calling for during the last decade, will be missed.

The tangle of interlocking inquiries that have been set up will ensure that policy will be reasoned and widely debated, but they may also add to the policy logjam. So these inquiries need to be careful to ensure a wide debate and genuine reform. The government for its part should be building a coalition for long term reforms, to ensure that the systematic corruption and abuse of power that has clearly taken place should not be allowed to take place again.

Six months ago [I was publicly against](#) the News International BSKYB deal. The reason for opposing the merger were many, but they all boiled down to one simple point: it is in the interests of the public to limit concentrations of media power. This is not about News International only, it is about the role of the Fourth Estate within our fragile constitutional settlement, and the lack of checks and balances on media power. Unless this is understood, the broader picture will not be clear and responses to individual policy decisions will be disjointed and incoherent. So it is important to engage with the claims that Charlie Beckett makes.

I. Phone-hacking itself is illegal and covered by criminal law: This is true, but it does not address the problem that someone, either a self regulatory body, an editor, or a court, has to advise journalists, and ultimately adjudicate, on how to deal with difficult calls when the legality of various forms of intrusion is difficult to assess, or where a public interest defence may come into play. What has clearly been a problem with the existing framework is the broad range of across the board 'public interest exceptions' within the PCC code. Of the 16 clauses of the [PCC code](#), 10 are subject to public interest exceptions.

This means that breach of those articles (which include those on privacy, children, subterfuge and payment to criminals) may be justified if the editor can demonstrate the breach is in the public interest. This provides, unfortunately for some News of the World Journalists not literally, a comprehensive 'get out of jail' card. The public interest exception is loosely and broadly defined and the PCC has had difficulties interpreting it.



And the problems with the current self regulatory framework are only going to get worse. Phone hacking is only one of a broader category of technology-enabled privacy intrusions. With technological innovation, increasing use of social media for a range of private relationships, and an increasing monetary value of secrets, the question of when various forms of intrusion may or may not be justified in relation to news gathering will return again and again. The current regulatory structure, when a damning Information Commissioner's report of 2006 was simply dropped, is clearly failing. Inquiries must consider how in a rapidly changing media environment is it possible to have a framework which enables complex public interest balancing but does not chill investigative journalism.

II. Phone-hacking was rife in News International and likely elsewhere: The reason this was the case, and the reason that there have been a number of allegations that it continued even after the prosecution of Mulcaire, and after the publication of the 2006 ICO report, is that a culture of impunity persisted, which was compounded by intentional vagueness about what constitutes public interest journalism, and a reluctance to take on powerful media companies. Those who argue that this can be dealt with by the law of the land are missing the point: It wasn't, and the reason this is the case is that too much power was concentrated in the hands of one media owner.

III. Press for Regulation: It is important that the public have a 'fast, free and fair' access to some form of remedy in the case of press intrusion and other ethical breaches. And it also needs to be effective, and instil positive feedback loops to ensure that mistakes are learned from and cultures change. New legislation on Privacy is not the answer, since we already have a privacy law, in the form of the Human Rights Act. Judges are likely to take their own view now on whether they should continue to defer to the PCC: they have raised a series of criticisms about the body in recent years. The public interest exception framework needs to be fully reformed, but changing the code is not enough. Government interference in the press can be prevented within a co-regulatory framework whereby Parliament approves clearer standards in law, but these are proposed, implemented and adjudicated by an industry body such as the PCC. Parliament, in an open and public process, should regularly audit the performance of the PCC against clear performance indicators. Rupert Murdoch's testimony to the CMS select Committee demonstrated that he does not even read their reports. The old system of 'name and shame' whereby Parliament expresses indignation and self regulatory bodies respond is not suited to globalised media companies.

But the fundamental aim of reform should be a self regulatory body that belongs to the journalistic profession rather than the owners of newspapers. We need a self regulatory body for journalism as a whole, not just the press. This should be part of a further professionalization of UK journalism, and a shift to a regulatory framework based on function and size rather than medium of delivery.

IV. Media Ownership, Politics and the Citizen: Phone-hacking has everything to do with media plurality. The reason that certain regulatory issues were political 'no go' areas was because it was the first rule of any sensible aspiring politician that they should avoid offending press interests at any cost. As a result, no one was prepared to put their head above the parapet. Those that did, such as David Mellor, paid the tabloid price. This is why the ICO report gathered dust in the Parliamentary Library, rather than spurring action half a decade ago.

Media plurality and the limitation of concentrations of media power have for decades been seen as a legitimate, indeed important objectives of government policy. We have ownership rules and a specific public interest test for media mergers in the Enterprise Act, but as I have set out [elsewhere](#) they are an inadequate fudge and should be replaced by a longer-term framework of market reviews and reviewed ownership limits.

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