

Leveson Report: Analysis

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The most radical proposal in the Leveson report is its response to the so-called 'Desmond Problem' – namely that media owners such as Richard Desmond can decide simply to leave a voluntary system of self-regulation. It is Leveson's proposal to solve this problem with legislation that has sent newspaper owners and the PCC into a tailspin, even though Leveson himself was absolutely clear that he was proposing independent regulation rather than a 'statutory regulator of the press'.


Leveson argues that reform of legislation is necessary to do two basic things. First, to incentivise newspapers to work within the system, and secondly to ensure that the regulator itself passes muster.

But legislation is not at the heart of the new system, at least not any more than it is now. The regulator will still be considered self-regulation, or perhaps more accurately co-regulation or 'audited self-regulation'. The beating heart of the proposal is not a new law, but a system of incentives (based on Hugh Tomlinson's 'Roundtable' proposals, as well as the Irish Press Council), to encourage newspapers to abide by self-regulation. It does so by establishing an arbitration (alternative dispute resolution) system within the regulator. This would need to be recognised legally because – and here's how it works – this system would be open only to members, and newspapers that did not join would run much higher legal risks. The system would funnel as many disputes as possible through this system rather than the courts, because this would make it cheaper and less risky for both newspapers and complainants.

"if a newspaper publisher who chose not to subscribe to the regulatory body was found to have infringed the civil law rights of a claimant, it could be considered to have shown wilful disregard of standards and thereby potentially lead to a claim for exemplary damages (which I claim should be extended to these types of case)." (Exec. Sum. para 68)

So the legal reform would be to establish a new set of defences in the case of privacy and defamation. These are regulated by law/statute now, and would continue to be regulated by law/statute. It would, theoretically be possible to operate – as the Spectator has promised to do – outside this system, but to do so would be to forego these defences and run huge risks including of punitive damages for defamation. Interestingly we won't know the detail of how this legal change would work until such a case arose: it could be the Achilles heel of the proposals if it was possible for a newspaper to live with the risk of such punitive damages, or argue that an internal system of ethical regulation was as effective.

But since the body – like the PCC – should be built and run mainly by journalists, it would need to be checked from time to time to ensure that it was working effectively, and that the arbitration system was delivering for both sides. This is the job of Ofcom. Some criteria for effective operation of the regulator would have to be set out in law, and the statutory regulator would oversee them. But – and this really is the clincher, *it is not newspapers, but the regulator that are being regulated by Ofcom, and by this new set of standards. This is not statutory regulation of the press.*

So far: so good. But the issue that has been largely dodged by Leveson and completely dropped in statements from the front benches was media ownership and pluralism. In the fullness of time they will have to respond to recommendations 138-143 but they will be in the position of having to do so at the same time as potentially pushing through controversial PCC reforms. Leveson wants ministers to remain involved in decisions, largely lets Jeremy Hunt off the hook, but has **not said** a great deal on what the new merger regime or limits should be. That is for Parliament. 

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