



NUJ submission to the parliamentary bill committee on the data protection bill

March 2018

Introduction

The National Union of Journalists (NUJ) is the voice for journalism and journalists in the UK and Ireland. It was founded in 1907 and has more than 30,000 members. The NUJ represents people working across the media – as staff, casuals and freelancers at home and abroad. NUJ members work in broadcasting, newspapers, news agencies, magazines, books, public relations, photography, videography and new media.

The NUJ stands up for journalists and journalism and is committed to the protection of the right to freedom of expression. The union fights to defend the right of journalists to operate in the public interest, and to do so without interference from government or vested interests of any type. Members are required to uphold the NUJ code of conduct, which is a cornerstone of the union's rule book.

A key tenet of the union's ethical code is principle 1 which states that members shall: "at all times uphold and defend the principle of media freedom, the right of freedom of expression and the right of the public to be informed."

Journalistic codes

In part 5 of the data protection bill, clause 24, subsection 5 and 6, it states:

(5) In determining whether it is reasonable to believe that publication would be in the public interest, the controller must have regard to any of the codes of practice or guidelines listed in sub-paragraph (6) that is relevant to the publication in question.

(6) The codes of practice and guidelines are— (a) BBC Editorial Guidelines; (b) Ofcom Broadcasting Code; (c) Editors' Code of Practice.

The NUJ wants this clause to be amended - in one of two ways - so that media workers are able to rely upon the most appropriate codes in any given context. The first option would be to delete the references to all of the specific codes named above and replace the text with a much broader and comprehensive reference to the existing codes and this broader reference would also be able to incorporate any new, future codes developed. This would

be beneficial because it is not possible to list all the codes that are used at present or may be created in future.

It is not possible to generate a comprehensive list of all codes at present and insert all of these codes into the draft legislation.

The codes not listed at the moment in the draft legislation include the NUJ ethical code of conduct, the Impress code and some national newspaper in-house codes such as the one for The Guardian newspaper.

The alternative option to amend the draft legislation would be to simply insert a reference to the NUJ code into this clause of the bill. We would urge parliamentarians to insert the NUJ code into the bill – at the moment, none of the other codes listed cover freelance journalists.

The NUJ code of conduct is available in full online:

<https://www.nuj.org.uk/about/nuj-code/>

ICO powers

The NUJ is concerned about the current proposals contained in part 5 schedule 2 of the data protection bill that relates to exemptions for the purposes of journalism. We are concerned about the potential impact on investigative journalism.

The NUJ does not support these proposals, as they would enable individuals to use new data protection laws to subvert on-going journalistic investigations.

The law could be used by individuals to make requests and delve into information that is collected and/or processed by the media, and make related demands about the unpublished material.

These demands could potentially include compelling the journalist(s) or media organisation to erase the information.

This clause currently allows the Information Commissioner's Office (ICO) to step into editorial decisions at the pre-publication stage, this represents interference in editorial decisions and press freedom, and as a consequence, the NUJ is strongly opposed to this schedule.

Regulation

The NUJ believes regulation of the press must be genuinely independent - of the state and of media owners. We favour a regulatory framework that includes representation from journalists and civic society.

To that end, we proposed in our submissions to the Leveson Inquiry that a sensible model to look to was the Press Council of Ireland (PCI) and the Office of Ombudsman, a model the NUJ has direct experience of, given our membership in the Republic of Ireland. It is funded but not controlled by the newspaper industry. It enjoys legal privileges by virtue of being granted formal recognition in law but is not controlled by or amenable to either government or parliament.

The body has seven independent members, including the chair, and the remaining six members are drawn from the press industry, including the NUJ and News UK. There is also a press ombudsman. Under Irish defamation law the defence of fair and reasonable publication on a matter of public interest is available to member publications of the PCI, so long as they have adhered to the code and abided by determinations of the press ombudsman and PCI.

In the face of industry hostility to such a model in the UK, it is worth noting that UK publishers with Irish editions have signed up to the Irish model. It is widely recognised as being successful, without any negative impact on freedom of expression. The UK-owned titles include the Irish Daily Mail, Irish Daily Mirror, Irish Daily Star, Irish Sun, Sunday Times, Irish Mail on Sunday and Irish Sunday Mirror.

British-owned media organisations, including News International/News UK, Associated Newspapers and the Mirror Group Newspapers have not only signed up to the Irish system but continue to play a significant role, alongside the NUJ, in the operation of the model.

It is instructive to note that these media organisations have embraced the Irish model while opposing any similar framework in the UK.

The NUJ strongly believes that freedom of expression can be protected within an appropriate regulatory framework.

For many years the NUJ has called for a conscience clause for journalists, affording them contractual protection to safeguard them from being forced to act unethically by their employers. This concept was accepted by Lord Leveson, yet to date has still not been adopted by newspapers and IPSO, the industry-led regulator.

The Leveson inquiry into the culture, practices and ethics of the press followed the revelations of widespread unethical practices and the industrialised scale of phone hacking. The NUJ successfully argued that a culture of unethical behaviour had developed at the expense of professional standards. The union demonstrated that journalists had been bullied and were themselves victims of the culture which led to the establishment of the inquiry.

Many of those in the media who sought to blame a few rogue reporters or denied the existence of unethical and criminal behaviour remain in senior positions in publishers

exposed by the inquiry, choosing to scapegoat individual reporters rather than accepting corporate responsibility.

The response of News International, now News UK, was to hand over the emails of its staff to the police, putting them at risk of prosecution, doing a deal to deflect corporate proceedings in acts of cynical corporate self-interest and damage limitation. Trinity Mirror was also culpable, as recent legal proceedings have demonstrated – failing in their duty to protect journalistic sources, a sacrosanct tenet of journalism enshrined in the NUJ's code of conduct and traditionally upheld by all newspaper organisations.

Following the recommendations of the Leveson Inquiry, the Coalition government established a Press Recognition Panel (PRP) by Royal Charter which uses set criteria to appoint a "recognised regulator" (or regulators). Soon after, the discredited industry-led Press Complaints Commission reinvented itself as the Independent Press Standards Organisation (IPSO). This has rejected seeking recognition from the panel. Its members comprise most national newspapers, except The Guardian and Financial Times, and many local newspapers. More recently (October 2016) Impress was accepted by the PRP as an "approved regulator".

The Royal Charter solution was designed to foreclose discussion of a co-regulatory framework such as the Press Council of Ireland or other models of regulation outside the control of the newspaper proprietors.

The NUJ was excluded from the discussions that led to the deal and no regard was taken of the understandable public reaction to what had emerged from the inquiry.

Whilst continuing to engage constructively with IPSO (for example on the development of a whistleblowing scheme), the NUJ has maintained its criticism of a body that is controlled by the publishers.

The NUJ welcomed the PRP's decision to recognise Impress as a significant development, and would similarly welcome any future regulator that demonstrates its commitment to the principles we have campaigned on for many years.

A key priority for the NUJ has been that any regulator must provide cheap and easy access to justice. Those who have suffered unjustified intrusion by the press must have the right to seek fair redress without incurring high legal costs – access to justice should not be curtailed by cost and open only to those with deep pockets.

The NUJ believes any regulatory model should set out the framework for an ethical press. The right of individuals to hold prejudicial views does not grant an automatic right to have those views published. Nor does it place an obligation on newspapers to publish unacceptable language or absolve media organisations from the responsibility not to generate hateful or discriminatory material.

The NUJ's code of conduct states that journalists must not produce material likely to lead to hatred or discrimination on the grounds of a person's age, gender, race, colour, creed, legal status, disability, marital status, or sexual orientation.

The NUJ challenges the government's contention that much has changed since the publication of the Leveson report.

Leveson part 2

The NUJ has called for a cross party campaign against the government's decision to shelve the second stage of the Leveson inquiry.

NUJ general secretary, Michelle Stanistreet, said the decision not to allow Lord Leveson to complete his task is "bad for politics, bad for journalism and bad for the public."

She said trust in journalism and in the integrity of the political process would only be restored if politicians had the courage to stand up to vested interests who had learned nothing from the events which brought about the first Leveson report.

Stanistreet added:

"Leveson Part 2 is unfinished business. It is vital that the public learns the extent of the unlawful conduct within News International and other publications. Recent settlements made by Trinity Mirror with individuals whose phones had been hacked demonstrate the industrial scale of the problem. The corporate cover-ups of phone hacking has resulted in costly litigation, significant payoffs to hacking victims at the same time as ruining the careers of many journalists who have been shafted by their employers. This has all served to damage trust in journalism and completing this inquiry would play a crucial role in restoring that trust.

"At the same time, there needs to be a proper investigation into the relationship between the police and media companies. Was the Met's Clouseau-style investigation into telephone hacking, which backed the company's line that it was just a couple of 'rogue reporters', due to ineptitude or was it because of the cosy relationship between senior executives of both organisations, with high-ranking officers being rewarded with lucrative columns in Murdoch's newspapers? There needs to be an investigation into the mass amnesia and 'ignorance' of newspaper executives at the Leveson inquiry and at parliamentary committee hearings. There are still outstanding issues about key figures in the Murdoch Family Trust and fundamental questions remain unanswered as the Murdoch family continue to attempt to take over Sky."

Section 40

The NUJ is in favour of partial implementation of section 40 and the NUJ opposes the implementation of the potentially punitive elements of section 40. Enabling complainants to initiate court actions against publishers without fear of financial consequence if proven to be baseless, would have a seriously detrimental effect on journalists and journalism.

The notion that successfully defended cases brought in the wake of journalistic investigations and reporting, could still lead to a newspaper having to pay costs for the losing side is not tenable.

At a time when journalism is in crisis and the cost-cutting of many companies is impairing the ability of journalists to produce quality content, when the shockwaves caused by companies who have wilfully betrayed sources are still resonating, when many publishers are in an economically fragile state that is leading to countless rounds of redundancies and cuts – such a move could also prove catastrophic for some media companies.

By partially implementing section 40, however, the government could provide advantages to those publishers that do have arrangements for effective regulation in place, whilst leaving those outside these arrangements with the status quo.

The NUJ believes fair and speedy arbitration, and swift redress with due prominence, should be as broadly available as possible. To that end the government should continue to encourage all publishers to operate within a system of regulation that provides an adequate arbitration service. Doing this is critical to newspapers regaining the confidence of the public.

The NUJ has for decades argued that independent arbitration that enjoyed the confidence of both the public and journalists would significantly benefit journalism and the titles in which it appears. Against a backdrop of failing business models, fake news and public contempt for journalists, this has never been more true.

Newspaper archives

The union is also concerned about part 2, chapter 2, clause 19 of the draft bill. This part of the draft legislation relates to the processing of archive research and statistics.

In subsection 2 of clause 19 the data subject can request the archive is deleted on the basis of substantial damage or substantial distress.

Both the substantial damage and substantial distress lack clarity in their definition. Therefore we believe there is scope for this clause to be used by vexatious and/or wealthy individuals in an attempt to delete information in archives that is in the public interest.

This clause should be deleted or it should be balanced with the rights of individuals, freedom of expression and the rights of data controllers.

The bill should be amended to make it clear that the journalistic exemption is applicable for newspaper archives and that they are not subject to the requirement for additional safeguards.