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# The **Chartered** Institute of **Journalists**

## **Submission to the Department for Culture Media and Sport and the Home Office's consultation on Section 40 of the Crime and Courts Act 2013 and Leveson Part Two**

The Chartered Institute of Journalists (CioJ) is the world's oldest professional association of journalists and operates under a Charter granted in 1890 by HM Queen Victoria. Our aims are to protect and serve the best interests of journalists and journalism.

We represent staff and freelance journalists across all sectors of the media including local and national newspapers, periodicals, broadcasting and electronic publishing.

The Chartered Institute of Journalists is pleased to respond to the DCMS and Home Office consultation on implementation of Section 40 of the Crime and Courts Act 2013, and Part Two of the Leveson Inquiry.

Our response was produced in consultation with members of the Institute, the Institute's Council and Professional Practices Board. Members whose careers have spanned national and local journalism, in broadcast and traditional media. Many have been affected by the first part of the Leveson Inquiry and the effect it has had on the industry.

### **Introduction**

One of the principal suggestions Lord Justice Leveson made when he suggested changes to Press regulation was that it should be a 'genuinely independent and effective system of self-regulation'.

Section 40 makes it impossible for this to happen.

Any regulation which relies on law to bully participants into consent cannot be considered 'independent' or 'self' regulation on any level.

Effective regulation will only be achieved in a situation where the industry plays an interested and active role. It will not be achieved if the industry is forced to join a scheme of regulation that it does not agree with on basic points of principle.

Put simply, Section 40 says: 'if you don't do it our way then we will impose sanctions that could easily drive you out of business'.

It seems odd that at a time when a significant amount of effort is going into anti-bullying campaigns, the UK government has put in place a law that seeks to bully publishers into a particular course of action. A law that strikes at the very heart of journalism and free speech.

Free speech is the right of all men and women in a democracy. Journalism is the section of society that has the strength and power to hold those in positions of authority to account

where the ordinary person cannot. Section 40 threatens to weaken the position of journalism to such a point that it will not be able to act in this capacity.

## Consultation questions

### Question 1:

Which of the following statements do you agree with: (a) Government should not commence any of section 40 now, but keep it under review and on the statute book; (b) Government should fully commence section 40 now; (c) Government should ask Parliament to repeal all of section 40 now; (d) If Government does not fully commence section 40 now, Government should partially commence section 40, and keep under review those elements that apply to publishers outside a recognised regulator; (e) If Government does not fully commence section 40 now, Government should partially commence section 40, and ask Parliament to repeal those elements that apply to publishers outside a recognised regulator.

- 1. (c) The government should ask Parliament to repeal Section 40 in its entirety.**

### Question 2:

Do you have evidence in support of your view, particularly in terms of the impacts on the press industry and claimants? If so, please provide evidence. (We are particularly interested in hearing from legal professionals – using their experience of litigation – in respect of the financial impacts on publishers outside a recognised self-regulator should government fully commence section 40, and specifically on (a) the likely change in volume of cases brought; and (b) the extent of average legal costs associated with bringing or defending individual cases).

- 2. Firstly, we would urge Parliament to remember that, under this law, the actions of the few will have a dramatic effect on the many. Lord Justice Leveson was absolutely clear that the misbehaviour of the Press was carried out by only a few national newspapers. Leveson Part One was implemented to investigate actions which were already illegal under pre-existing legislation. Now, as a result, this proposed law will affect every newspaper (national, local or regional), magazine and periodical.**

**How is this reasonable or fair?**

- 3. There is considerable disparity in the media industry when it comes to the profitability of publications and, therefore, ability to cover costs of litigation. Section 40 seems to be aimed at national newspapers, who may or may not be able to defend themselves in this regard. However, many local and regional newspapers would not be able to survive in circumstances where they are forced to bear the burden of costs even if they win their case. This is an area of our industry already under severe financial pressure due to market forces. According to industry sources some 300 local newspapers were closed in the ten years between 2005 and 2015 (Press Gazette), which has impacted on the communities they served.**
- 4. In circumstances where litigation is free to the claimant it wouldn't be unreasonable to assume more cases will be brought forward by disgruntled members of the public. Any proliferation of complaints would form a strangle-hold on publications, especially local newspapers which are already understaffed and facing desperate financial futures. Even if many claims proved to be vexatious or unreasonable the administrative burden alone would cripple journalists and publications.**
- 5. The mere threat of the burden of costs, win or lose, will put many publications off taking risks where stories will inevitably be contentious.**

number of newspapers have already cited stories that would not have run if Section 40 were in place. These include the Rotherham child abuse scandal and the investigation into Lance Armstrong.

6. **Even if, for argument's sake, smaller publications consider joining the government's 'recognised regulator' there is little evidence that they could survive what that regulator considers a low-cost arbitration. No-cost (to the complainant) arbitration will inevitably lead to a proliferation of claims. Even at what the 'recognised regulator' considers a low cost - £3,500 as we understand it, although the system has not been tested – the costs would potentially mount up, even if the publication successfully defends its case.**

### **Question 3:**

To what extent will full commencement incentivise publishers to join a recognised self-regulator?

7. **It should be remembered that the negotiations on the future of Press regulation were agreed at a secret pizza party to which industry representatives were not invited. Most publishers will, we think, refuse to be intimidated by the threats contained in Section 40.**
8. **If there is any appeal at all it will be to smaller publishers, with turnovers of less than £100,000 (the limit set by the 'recognised regulator' for payment of costs) who fear the threat of Section 40.**
9. **Section 40 is nothing more, in our view, than a bully's stick; a blunt instrument to beat those who do not comply back into some form of conformity. Any form of regulation that relies on this law cannot ever be considered 'voluntary' or 'self' regulation on any level.**

### **Question 4:**

Do you believe that the terms of reference of Part 2 of the Leveson Inquiry have already been covered by Part 1 and the criminal investigations? If not which terms do you think still require further investigation?

10. **The criminal investigations that resulted from Leveson Part 1 were a disaster in every sense. Three investigations secured very few convictions. The cost is estimated to be in excess of £40million.**
11. **The net effect of those investigations has been to cause significant damage to the relationship between police officers, the Press and journalist sources. Where once it was a symbiotic and fluid relationship that bore fruit for all sides, it has now been clamped down in regulation and procedure which is of little help to journalism or the wider public. Whistle-blowers have been burnt and will be reluctant to come forward again.**
12. **This question is, therefore, largely irrelevant when considered next to question 6, which is the more significant question. Please take our answer here in context with Q6.**

### **Question 5:**

Do you have evidence in support of your view? If so, please provide your evidence.

13. **Our evidence is based on the prosecutions of the low-level officers and the implementation rules governing procedures for the police talking to members of the press.**



- 14. Examples of the police abusing the Regulation of Investigatory Powers Act in order to hack journalists' phones and secure details of their sources are many. Recent reports from the Information Commissioner give details of the number of times this has happened.**

**Question 6:**

Which of the two options set out below best represents your views? • Continue the Inquiry with either the original or amended terms of reference • Terminate the Inquiry If you think the government should take another course of action to those set out in the question above, please set out your views.

- 15. If it is abundantly clear that significant damage has arisen following Leveson Part One, then there seems little to be gained from further investigations. Leveson Part One was simply a political witch-hunt, costing the tax-payers – members of the public – many millions of pounds. The results of which have been disastrous for those same members of the public – stifled flow of information to journalists, resulting in a more secretive and closed society. Leveson Part Two will similarly become a witch-hunt and the likely outcome will be another significant expense and further damage.**
- 16. We see little point in Leveson Part Two for the above reasons and feel it should not be pursued.**

