

The app that could be curtains for cinema

Kate Muir

Page 24



Comment

A law that loads the dice in favour of criminals

Section 40 of the Crime and Courts Act threatens the survival of journalism that exposed scandals such as Rotherham

Andrew Norfolk



In the sound and fury surrounding the debate over regulation of the press, it is easy to lose sight of the many hoops that journalists already have to jump through to break the biggest stories.

Theirs is a job that has never been as free of restraint as those urging a tighter rein on the supposed excesses of the press would have you believe. Those restraints were there long before Milly Dowler and the indefensible, criminal phone-hacking scandal.

In my case, with the help and patience of a large number of dedicated colleagues at *The Times*, journalism led to the exposure of the Rotherham scandal.

Theresa May publicly praised *The Times* for its work on that case yet in the near future her government may enact legislation that would choke all future investigations. Those who claim that they seek to punish newspaper wrongdoers may instead succeed in muzzling us all, permanently.

Lots of people hate journalists. To the far left we are the loathed lackeys of the capitalist MSM (mainstream media); to the alt-right, a hated symbol of the liberal elite. Both extremes agree that we are all "lying scum".

For the rich and powerful, accustomed to having their way, the press can be a particular irritant. Sometimes, investigative journalism leads to the publication of information that causes them displeasure. Criminals who escape

detection until they are exposed by a newspaper tend, likewise, to feel less than charitably inclined towards those who bring them to justice.

For all such folk, it may soon be time to break out the champagne. After the January 10 closure of a consultation process, the government must decide whether or not to take a step that would in all likelihood make me redundant.

There has already been much heated argument over state-approved press regulation, the choice of Impress as the officially recognised regulator and the questionable motivation of some of its cheerleaders.

I won't rehash those. My concern, should the government trigger section 40 of the Crime and Courts Act 2013, is its likely impact on investigative journalism. Under section 40, any newspaper that declines "voluntarily" to join Impress

Wrongdoers among the rich and powerful will pop champagne

would be forced to pay its opponent's legal costs in any claim brought for libel or breach of privacy, even if it won the case.

At a stroke, this would destroy the delicate balancing act that invariably surrounds the decision-making process at any responsible newspaper before publishing an article that could expose it to a civil claim in the courts.

Typically, we need to be sure not only that what we are saying is true but that we have the evidence to defend it. Ethics aside, the decision on whether or not to go to print is one that no newspaper can afford to get wrong more than once in a blue

moon. The financial costs and reputational damage of losing such a case are enormous.

For this reason, I spend far more time working with our in-house lawyers than I do with editorial colleagues before publishing an investigation. Had section 40 been on the statute book when I became a trainee journalist 27 years ago, countless articles published in this and other newspapers would never have seen the light of day. The risk would have been too great. In fact, it's barely even a risk. It's an almost inbuilt guarantee of punitive financial sanctions. Any chancer, multi-millionaire or two-bit criminal would be able to take you to court in the sure and certain knowledge that they and their lawyers would not lose a penny by doing so, even though every word of the published article was demonstrably true.

Since early 2011, *The Times* has published a series of articles about a hidden pattern of child sexual exploitation involving groups of men and young teenage girls in English towns and cities. We also addressed the repeated failure of child protection authorities in Rotherham to tackle the targeted grooming and pimping of children in the town.

For more than two years, the local council and South Yorkshire police remained in a state of almost complete denial. The dam was breached in August 2013 when, on our front page, we told the story of one Rotherham girl and named a man, Arshid Hussain. We accused him of being a serial abuser of children. He had not even been questioned by police about such offending let alone charged with any offence.

The story triggered such outrage that it forced the council to order the independent inquiry by Professor



Arshid Hussain: exposed by *The Times*

Alexis Jay which found that 1,400 Rotherham girls were subjected to grotesque abuse from 1997 to 2013. It also prompted a criminal inquiry that led in early 2016 to Hussain's conviction for multiple sex offences against under-age girls. He was jailed for 35 years but is seeking leave to appeal.

In the brave new world of section 40, the August 2013 article might never have been published. We might not have dared to name Hussain because when that decision was taken we had no expectation that any inquiries would result. We would have faced the prospect of being sued by a man who knew we would be ordered to pay his legal costs, even if we won the case. No story, no inquiries, no justice. Is that what the government really wants?

I wish I could take those who subscribe to the "lying scum" theory

of journalism back in time to the summer of 2013, to the endless discussions and boardroom meetings at *The Times* when we considered the contents of a small mountain of official files and documents about Hussain and his dealings with the girl. It was definitive proof that police and social services knew of his offending but did nothing to stop it. Still we agonised about whether to name him. We approached Hussain to give him an opportunity to comment before the article appeared. We also contacted the council and the police, who made one final attempt to block publication. To go ahead and publish was not a decision taken lightly.

Contrast such an approach, and the self-imposed controls that are already observed by Britain's self-regulating press, with the post-truth world of online news fakery. Social media, saturated with threats, lies,

Contrast self-regulating newspapers with the world of online fakery

and insults, is a 21st-century Wild West that swings elections but was declared by Sir Brian Leveson to exist in an "ethical vacuum" beyond regulation.

Be under no illusion. Section 40 ostensibly seeks to protect the weak and the poor, but it would kill investigative print journalism. It would render the rich and powerful unaccountable. To implement such a measure, in a nation that calls itself free and democratic, would be madness.

Andrew Norfolk is chief investigative reporter
David Aaronovitch is away

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