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Only the guilty will cheer curbs on the press

Journalists have a duty to expose wrongdoing by the rich and powerful but a new law threatens to make it impossible

Tom Bower



Exposing the abuse of power by politicians, tycoons and public officials has been my lifetime's work. Ever since I chased an illegal sheep exporter across Europe to a Marseilles slaughterhouse with a BBC cameraman in 1972 I have appreciated the power of the media as a weapon of truth. The dealer issued a writ for libel, he lost his case and parliament reformed the law on the export of live animals. In that era media organisations robustly resisted libel writs. Defending the public interest to expose wrongdoing was the DNA of newspapers and TV. All those who successfully climbed the greasy pole and used their wealth to influence the course of our lives could justifiably expect to be subjected to honest inquiry.

Supported by that confidence, newspapers serialised my books exposing the misdeeds of many controversial characters including Robert Maxwell, Tiny Rowland, Richard Branson, Richard Desmond and Conrad Black. All of them sued

for libel (Maxwell six times) and either lost in the courts or did not pursue their complaint. Mr Desmond lost his case after a two week jury trial with costs estimated at £4.5 million, while Black's complaint was silenced by his conviction for dishonesty, followed by three years in jail.

Many others — including footballers, oil chiefs, politicians and unprosecuted Nazi war criminals such as Hermann Abs who created the modern Deutsche Bank, paid lawyers to issue threats but eventually backed down. Faced with the newspapers' resolution to prove the truth in open court, those who presented selective versions of their activities to conceal wrongdoing chose to back down.

Reliance on the truth as a defence against greed and chicanery is now endangered by the government's refusal to rule out implementing section 40 of the Crime and Courts Act. In a nutshell, if a newspaper refuses to register with Impress, the government's approved regulator bankrolled by Max Mosley and staffed by his anti-media sympathisers, then newspapers will be compelled to pay the costs of claimants even if their claim fails. Crooks like Robert Maxwell could sue, lose their case having been exposed in court as liars, and still

receive millions of pounds from the victorious newspaper. Not surprisingly, newspapers have urged the government to appreciate how section 40 will encourage the dishonest to pursue their groundless complaints knowing that the threat of ruinous costs will terminate investigative journalism. Karen Bradley, the culture secretary responsible for resurrecting Mr Mosley's opportunity to impose his regulator, says she will make her final

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decision after reviewing the results of a consultation exercise that ends next week.

Ms Bradley seems unimpressed by Ipsos, the newspapers' new independent regulator with an established track record, chaired by Sir Alan Moses, a former appeal court judge. Most national newspapers have joined Ipsos. None have joined Impress.

Libel cases are notoriously expensive to defend and costs escalated dramatically once lawyers were allowed to take cases on a contingency fee basis. Financed by an insurer who takes a loaded bet,

the aggrieved sue the media without incurring any financial risk.

Supported by the insurer, the claimants' lawyers take the risk, and pocket a huge bonus if "successful". Contingency fees have inflated the risk beyond newspapers' budgets. Instead of fighting even watertight cases, newspapers often succumb on commercial grounds because the price of losing is too high to risk. The prospect of relying on Impress's arbitrators aggravates those fears.

Those who doubt the reality of prejudice among judges should consider this: during the trial of Mr Desmond's case against me, the judge twice excluded evidence that was critical to my defence. And unprecedentedly, twice the trial was halted while three appeal judges considered my argument. And twice the trial judge was overruled in the interests of "a fair trial". Imagine the consequence for journalism of Impress's questionable arbitration without appeal. Newspaper readers will appreciate that no diligent journalist writing the truth should endure the risk of £4.5 million in costs despite winning his case as ordained by section 40.

The prejudice among some judges against press freedom was exposed by their attempts to undermine parliament's decision four years ago to limit frivolous claims backed by

contingency fee lawyers. The new law protected journalists by imposing on claimants the burden to show that the alleged libel actually caused them "serious harm". Some judges apparently intend to dilute that protection.

Unfortunately, all those details appeared to be irrelevant to Sir Brian Leveson, QC, when he said in his report on press ethics that a publisher might have to foot the bill even if it won a libel case. He refused to consider policing the internet where more than 70 per cent of Britons read their news, despite the web's broadcast of lies which damage reputations and influence elections. Nowhere in his report did he properly consider the danger he posed to investigative journalism.

Yet without newspapers most of the major exposés of recent years would not have been published: sexual grooming in Rotherham; MPs' expenses; Fifa's corruption; the waste of our foreign aid budget; and businessmen ripping off the NHS with overpriced drugs. Newspapers could not risk publishing all that and so much more if section 40 is invoked. Only the guilty will cheer that decision.

Tom Bower is author of *Broken Vows*

Hugo Rifkind is away