Fair Game? Sport and the right to privacy at the Leveson Inquiry

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**Abstract**

This paper attempts to define the situations in which the media is justified in breaching the privacy of sportsmen and women, sports managers or administrators and their close friends or family. It examines evidence presented at the Leveson Inquiry into the culture, practice and ethics of the press by witnesses closely connected to sport and draws on other sources including the Press Complaints Commission’s Editors’ Code of Conduct, the BBC’s Producer Guidelines and guidance issued by the Crown Prosecution Service.

**Introduction**

Sport featured prominently in the testimony delivered to Lord Leveson’s inquiry into the culture, practice and ethics of the press.

The private investigator employed by News Group Newspapers, Glenn Muclaire, was a former professional footballer and two of the first named victims of phone-hacking – Gordon Taylor and Sky Andrew both work in the game (Leveson Inquiry Day Six Part One, 2011).

In the first fortnight of the Inquiry alone, his lordship heard from a professional footballer, the ex-wife of a professional footballer, two lawyers who had represented current or past professional footballers and the former head of world motorsport.

The questioning of each of these witnesses had a common theme, namely to what extent does being good at a sport turn someone into a public figure and, thus, open their private lives up to the gaze of the media? What sets sportsmen and women apart from many other celebrities is that they have to dedicate themselves to their chosen career at a much earlier age. For example, Gary Flitcroft told the inquiry that he had started playing football aged seven and had signed schoolboy forms with Manchester City when he was 12 (Leveson Inquiry Day Five Part One, 2011). By contrast, someone might not choose to devote themselves to acting or making music until they reached their teens by which time they would have some awareness of the celebrity status that is associated with those careers – indeed that status may be one of the attractions of them.

In a Guardian article published in February 2011, the Labour MP and phone-hacking victim Tom Watson highlighted the role of News Corporation companies in bringing fame to young sportsmen and then inflicting shame or notoriety on them. “BSkyB turns young athletes into stars. In turn, those stars help BSkyB sell lucrative satellite packages to fans. And at the same time, BSkyB's sister agency, the NoW [News of the World], tramples over the private lives of the players, destroying reputations in order to sell newspapers.” (Watson, 2011)

As an example, he cites Paul Gascoigne “a vulnerable man whose weakness has been exploited”. Yet Paul Gascoigne clearly enjoyed many aspects of the fame that resulted from his rare talent and, as we have seen, sold the rights to photograph his wedding to Hello magazine. Under the circumstances should the press be responsible for protecting the footballer from himself?

All of us have a right to a private life, free from the scrutiny of newspapers, and indeed of the state or our employers. This right is guaranteed in article 8 of the European Convention on Human Rights (ECHR, 2010). But – it is argued – there are situations in which individuals may at least partly surrender these rights. One such example was cited by several witnesses – namely the David Mellor case. Even proponents of strict privacy rights conceded that it was in the public interest to reveal Mr Mellor’s affair as he was an elected member of a government that was proclaiming family values (Leveson Inquiry Day Four Part One, 2011; Leveson Inquiry Day Six Part One, 2011)

But there are other situations that are not so cut and dried. The junior counsel for Lord Leveson, Catrine Patry-Hoskins gave a sense of what these circumstances might include when she questioned Mr Flitcroft (Leveson Inquiry Day Five Part One, 2011). Had he ever won the Premiership, she asked, had his team qualified for Champions League football or had he played for the full England team. She went on to ask whether he had ever sold stories to newspapers “by appearing in a publication such as Hello or OK magazine”, written for publication or made public announcements about his family life. How often had he appeared at “non-football public events, premieres of films, for example”? Did he obtain corporate sponsorship in his own name or make television adverts? Finally, slightly mischievously, she asked whether he’d ever endorsed an aftershave.

At his 2001 trial, it emerged that the Leeds United player Jonathan Woodgate “had been known, during a night’s drinking, to take £20 notes from his pocket and set fire to them”. The following year, accused of assaulting door staff at a London nightclub, Chelsea’s Jody Morris reportedly shouted “Do you know how much I earn? I earn more in a day than you earn in a week? Do you know who we are? We could get you sacked.” (Wagg, 2004, p9)

It should be pointed out that Morris was acquitted unlike Woodgate who was convicted of affray. What these stories (and other similar ones) suggest is that some sportsmen believe themselves to be entitled to privileges and special respect by dint of their success and – as we shall see – many journalists believe that the flipside of this is that their lives are open to scrutiny.

There is an echo of this in the Press Complaints Commission’s editors’ code of conduct which – in its discussion of privacy says: “Account will be taken of the complainant's own public disclosures of information”. (PCC, 2011)

If we do accept that some, or all, of these actions might lead to someone being regarded as a role model and that, as a result, their right to privacy is compromised, then a further question arises which is ‘for how long?’ Lord Leveson himself raised this when he put it to Sheryl Gascoigne that, while 20 years ago when she was in a relationship with the best-known footballer in Britain, Paul Gascoigne, she might have expected some intrusion. Today, he continued, with the couple separated and Paul retired, she might reasonably assume that the media’s interest in her would have abated (Leveson Inquiry Day Five Part One, 2011).

We may also ask how far *back* in a celebrity’s life the press are entitled to delve. Media lawyer Charlotte Harris asked whether we should all be concerned about what we do “in case we become role models in five years’ time” (Leveson Inquiry Day 12, 2011).

Finally, if a celebrity’s life is deemed, at least in part, public property then does this also extend to that person’s family, friends and casual acquaintances? How much concern should the media display for ‘civilians’ who might be affected by a story?

**Methodology**

In preparing this paper, I have studied the testimonies of every witness at the Leveson Inquiry who owes their public profile wholly or in part to sport. This ranges from former Premier League footballer Gary Flitcroft and former motorsport boss Max Mosley through to lawyers who have represented well-known footballers and journalists who have exposed, or attempted to expose wrong-doing on the part of sportsmen – most notably the fake sheikh Mazour Mahmoud. In doing so, I’ve tried to focus on their views of press intrusion and the right to privacy and excluded comments on other issues.

I haven’t addressed the testimony of those newspaper editors and executives who responded to the views of some of these victims of intrusion, as most of these people don’t owe their public profile to sport. This is an area that warrants further investigation.

**Graham Shear**

Graham Shear gave evidence on the first day of witness hearings at the inquiry but he was rather overshadowed by the witnesses who appears before and after him that day – the Dowler family and Hugh Grant. Mr Shear is a solicitor, a partner in a city law firm specialising in sport and media. He first rose to prominence in the mid-1990s when he represented Robbie Williams at the time of the break-up of Take That and became better known still when, in 2003, he represented three Premier League footballers who were linked by some papers to an alleged rape at the Grosvenor Park hotel in London. He told the inquiry that he had presented “more pre-publicity injunctions than probably any other lawyer in the area” (Leveson Inquiry Day Four Part One, 2011).

It is perhaps a pity that Mr Shear’s testimony didn’t get more of an airing because he not only set out reasons why he believes sportsmen and women should not be regarded as role models but also gave an insight into what he calls “a self-generating process in which people want to see or hear of the next event [in a particular celebrity’s life]”.

He explained that he had many dealings with newspapers who were planning to, or had, run stories on his clients and said “over and over again from senior journalists” he heard the same “mantra”, namely “your client is a role model, they’ve acted as a hypocrite”. This “mantra”, he said, “had percolated through the decision-making process” at many newspapers.

Clearly the concept of role models is an important part of the media argument that there is a public interest in the private lives of professional footballers. It’s an idea that is regularly expressed, including recently by the Prime Minister who told, being interviewed on BBC Radio Five Live about Luis Suarez, a Liverpool player who bit an opponent, said: “When we’re trying to bring up our children properly, when they love football, they DO look at footballers as role models, we have to recognise that” (BBC, 2013).

But this view concedes that the footballers have not chosen to become role models – they are role models because our children choose to admire them.

“It is hard to understand,” Graham Shear told Leveson, “how the suggestion that all professional footballers – or even those who play for the national team should be considered to be role models to all who read the newspapers or all who watch them play. The main reason why they’ve achieved success is because of their own on-the-pitch or on-the-field ability and excellence, largely for having decided from an early age that they wanted to be a professional sportsman. They hadn’t decided that what they wanted to be was a professional sportsman who appears in the newspapers or on the media because the vast majority of our professional footballers earn very, very, very little money from off-pitch activity. It’s only a handful who have earned any significant sums and only one or two of those where there’s a cross-over between sports and general media profile” (Leveson Inquiry Day Four Part One, 2011).

It isn’t clear from this whether Mr Shear accepts that those who do make that crossover, as Paul Gascoigne did, can legitimately be regarded as role models. But, based on his earlier testimony about the Grosvenor Hotel rape case, it would appear he does not regard the winning of international caps as sufficient justification for invasions of privacy.

This incident occurred in 2003 when a woman alleged that she had been raped at a prestigious London hotel where three Premier League footballers were staying. Mr Shear explained that one of the players had a significantly higher profile than the other two – he had been picked to play for the full England side, for example.

“There was, I think, a clear focus by the newspapers to identify him as being the likely potential accused and to bring his name into the public domain by inference and suggestion by the placing of stories and pictures in close proximity to the articles as they were published.”

The suggestion is that there would be a greater public interest in the publishing the story if this recognised role model were a perpetrator than if it simply involved two less well-known players. In fact, while the other two were questioned by police who did not press charges, the England international was not involved at all. He had booked a hotel room that night but didn’t actually go there. He went on to sue The Sun and won £100,000 in damages.

**Gary Flitcroft**

Two years earlier press intrusion had been tested in a dispute involving a player who probably had a lesser public profile than any of the men who had become caught up in the Grosvenor House case. Gary Flitcroft, as we’ve heard, had not won league titles, played for England or earned money from endorsements. His only public roles had been “hospital visits and charity events”. He was the captain of Blackburn Rovers, described by the counsel as an “unfashionable north-west club” and married with three children. The Daily Telegraph headlined its coverage of the player’s legal battle “Gary Who?” (Leveson Inquiry, Day Five Part One).

Mr Flitcroft told the inquiry that a team mate had been tipped off by a sports reporter that the Sunday People was planning to run a story about his affair with a nursery assistant. Mr Flitcroft did not deny the truth of the allegations – nor that he’d also conducted another affair at around the same time – but, on 27th April 2001, succeeded in getting an injunction to prevent them being published.

The effect of this was to turn a fairly run-of-the-mill story, probably only of interest to The People, into a national issue. So, when in March 2002, the injunction was lifted, the first reporter he encountered on his doorstep was not from The People but from The Daily Mail – a paper with a far larger readership. Within a few hours, there were, he said, “20 reporters and photographers at my gates and a helicopter taking pictures above my house”. While the initial right of The People to publish a story about Gary Flitcroft’s affairs might have been debatable, because he had tried to fight the case, the likes of the Guardian, the Daily Telegraph and the BBC now felt entitled to report the player’s efforts to protect his privacy.

What happened next bears out Graham Shear’s idea of “a self-generating process in which people want to see or hear of the next event”. Gary Flitcroft had now joined the cast of tabloids’ national soap opera – cast in the Max Branning ‘love rat’ role. He told Leveson that, in 2005 three years after the injunction was lifted, a newspaper followed home a woman who had been delivering exercise bikes to Blackburn’s training ground and attempted to access her mobile phone records. Mr Flitcroft said he had never even met the woman. However, the paper (which he did not name) knocked on her door just after she’d returned home from a holiday with her husband claiming that she’d been having an affair with the player. She denied the story and nothing was ever published, but, Mr Flitcroft said, it very nearly wrecked her marriage.

He was then asked why he had spent “about £190,000” to try to avoid his affairs being publicised. “There’s no reason why my private life should be in the public interest,” he said. “If I’d been done for match-fixing or taking cocaine that would have been in the public interest.” Later, he added: “Who says we are role models? It’s the papers that say we are role models.”

As in the case of the England international footballer described by Graham Shear, it could be argued that Gary Flitcroft’s decision to take legal action elevated him into a more public person than he had been before. It might be suggested that both players were now taking a public stance on an issue of national debate and could, therefore, be expected to encounter more rigorous investigation. Clearly, their lawyers would argue that they had only launched legal proceedings in order to protect themselves and their families and not out of a desire to enter politics.

**Mark Lewis**

Mark Lewis worked for a Manchester-based firm of solicitors employed by the Professional Footballers’ Association (PFA), the players’ union. He represented the Association’s secretary Gordon Taylor in a dispute with News International. Following this, when the publicist Max Clifford learnt that his phone had been hacked, he, according to Mr Lewis, asked for ‘Gordon Taylor’s lawyer’ to represent him – the start of a process which saw him become one of the leading representatives of phone-hacking victims.

Mr Taylor is in a different category to Gary Flitcroft – or even the England international player referred to earlier. He clearly was a political figure, the highest-paid union boss in the country – something that for many sits uncomfortably with football’s image as the working man’s game – and a figure who had come close to leading a players’ strike. We now appear to be entering a more complicated area. Going back to Ms Patry-Hoskins’ list, Gordon Taylor *had* written for publication and *had* made public announcements, albeit not about his private life.

However, the public interest test was not applied in Mr Taylor’s case because the story that the News of the World thought it had uncovered was, according to Mr Lewis’s testimony, based on tragic-comic misunderstanding. Investigators had listened to Mr Taylor’s voicemail and heard a message from the PFA’s solicitor in which she said “thank you for yesterday, you were wonderful”. The paper leapt to the conclusion that the pair were having an affair; in fact, she was thanking him for delivering an address at her father’s funeral (Leveson Inquiry Day Six Part One, 2011).

A photographer was sent to capture the two of them at lunch together which was how Gordon Taylor discovered that the News of the World was investigating him. The matter was eventually resolved with a £700,000 settlement in Mr Taylor’s favour and the story was not published.

For a moment, let us, hypothetically, imagine that the paper had come by its supposed story by legitimate means. Would it have then been justified in sending a photographer to produce evidence to support what it believed was a good story?

Most newspapers are likely to have their own guidelines for dealing with this sort of situation. The BBC’s producer guidelines are publicly available and so provide a useful insight into how media houses behave in relation to surveillance of this kind – even if this isn’t the sort of story the BBC would be likely to cover.

First of all, their guidelines say that any secret recording (which might include audio or video recording or photography) requires “approval by the relevant senior editorial figure in the division or, for independents, by the commissioning editor”. So, a set of rules isn’t enough here – some kind of human assessment is required – a point we’ll return to later.

They go on to recognise that “the gathering and broadcast of secretly recorded material is always a two-stage process, requiring a justification for any intrusion at each stage. So, the decision to gather is always taken separately from the decision to transmit”. They also specifically prohibit “fishing expeditions”, i.e. some initial evidence must be found before hidden surveillance may be launched. The supposed story about Gary Flitcroft and the women delivering exercise bikes might come into this category.

Perhaps most importantly, however, they say: “The intrusion in the gathering and transmission of secret recording must be proportionate to the public interest it serves”. This suggests that public interest is not a black and white concept – but rather that there is a sliding scale. Even if we believe that reporting Gary Flitcroft’s affairs *is* in the public interest, they are not of *as much public interest* as David Mellor’s.

Mr Lewis’s testimony was lengthy and he was called back to address claims that his own daughter and ex-wife were secretly photographed. But, for someone with possibly more insight into the methods and effects of intrusion, he didn’t appear to have developed any kind of philosophy regarding a public interest defence. “If you apply metaphoric curtains,” he said, “those things that happen behind curtains shouldn’t be pried into unless there’s a very good reason to do so.”

**Sheryl Gascoigne**

Sheryl Gascoigne’s testimony was among the most graphic heard by Leveson. The ex-wife of England international Paul Gascoigne described crawling around on her hands and knees in her own home to avoid being photographed through the windows (Leveson Inquiry Day Six Part One, 2011). She said she was pursued while driving – on occasion trying to lose her followers on intricate housing estates and once even driving into a police station while she was pregnant. She even said that her children felt unable to go outside the house to ride their bicycles.

But Sheryl Gascoigne was no Gary Flitcroft. She was a grown woman and, indeed, a mother when she met Paul Gascoigne in 1990, the year in which he attained superstar status through his performances for England in the World Cup finals and by crying when he received a yellow card in the semi-final. In other words, while she might not have expected the level of intrusion she experienced, she could reasonably have expected the press to take an interest.

Furthermore, as she admitted to Lord Leveson, she and Paul sold the pictures of their wedding to Hello! Magazine and she later accepted a “large amount” to appear on the television programme ‘I’m a Celebrity… Get Me Out of Here!’ – both acts that could be regarded as the ultimate gesture of surrendering of any kind of right to privacy. In her defence she said that, by the time of the wedding, “my life was already in the public eye”.

She also published a book ‘Stronger’, which at one point in her testimony she says was “for other victims [of domestic violence]” and later describes as her “right to reply [to three books written by Paul]” and worked with the charity Refuge on a campaign it was running in the Sun.

The thrust of her evidence was not concerned with privacy as much with the expectation that newspapers got their facts right and she was particularly concerned with the lack of prominence given to apologies or corrections. But her evidence gave rise to several issues relating to privacy. Is there a time period after which a former celebrity’s right to be investigated by the press becomes, to use a legal term, spent? Is a victim of domestic abuse entitled to talk about that abuse – or indeed some other kind of crime, or a serious illness – without opening up other areas of other private lives to public gaze? Is someone who has been publicly criticised entitled to defend themselves, again without wider repercussions for their privacy?

Sheryl Gascoigne appeared to take the view that she was part of the “process” referred to by Graham Shear, which I have likened to a soap opera. In her case, she was the manipulative older woman trying to lead a young hero astray: “The press latched onto the idea that I was a money-grabber who was at the heart of Paul’s problems… maybe because I was a single mother with two children, I was an easy target.”

**Max Mosley**

Max Mosley was, from 1993 to 2009, the President of the Federation Internationale d’Automobiles (FIA), the governing body of world motorsport and also, he told Leveson, a body which did much to promote road safety. He said that he believed it was for his work in this field that he was awarded France’s highest honour, the Legion d’Honeur (Max Mosley at Leveson Inquiry, 2011). The presentation of this award was the only occasion that his wife had attended a public function: a point that was made near the start of his testimony, presumably to establish a defence against suggestions of hypocrisy. To reinforce this, he was asked whether he had ever “courted publicity”, to which he replied: “No, never. The people who were the stars were the drivers.”

He is also the son of the founder of the British Union of Fascists Sir Oswald Mosley. Max Mosley told the inquiry that one of the reasons he had become attracted to motorsport was that it was an environment where people didn’t know anything about his background. He said that, early in his career, he secured a good position on the starting grid for a race and overheard someone remarking “Max Mosley - he must be some relation of Alf Mosley, the coachbuilder from Leicester”.

On March 30, 2008, the News of the World published a front page story entitled “F1 boss in sick Nazi orgy with 5 hookers”. The story instantly caught the attention of other media, in Britain and abroad. Mosley said there were 790 articles written in British newspapers or on websites over the next three months, while his lawyers had had the story removed from 193 sites in Germany. He was pursuing litigation, he said, in “22 or 23 different countries”.

Mr Mosley identified two issues: “a straightforward breach of privacy” and the Nazi element which was “untrue and enormously damaging”. Of these, he made it clear that the latter was the more concerning to him.

He did not however pursue a libel action but instead launched an action based on breach of privacy, which was dealt with in an expedited trial in July that year. The reason for this was that he had been warned that it would take 18 months for defamation action to be heard “and that for me would have been academic because what I needed to do very quickly was establish that the Nazi allegation was completely untrue”. He won £60,000 which was the highest award of damages to date in a privacy case.

The Leveson Inquiry heard a summary of Mr Justice Eady’s ruling regarding the public interest in the case. He confirmed that the Nazi allegation was untrue [something later confirmed by ‘Woman E’ who appeared on Sky News supporting Max Mosley’s version of events] and that there was “no underlying criminality”. He also said: “Given that there was a human right in play here, namely a right to privacy, it’s not for journalists to undermine human rights or for judges to refuse to enforce them merely on grounds of taste or moral disapproval.”

Mosley himself picked up on this at the Inquiry. “If you could breach privacy merely because you disapproved of what someone was doing or it was not to your taste then we’d be all over the place because sexual behaviour covers a huge variety of things and when you start analysing it what I might like someone else might hate and vice versa so where would it stop? The rational thing is to say that provided it is adults and it is in private and everyone consents, genuinely consents, then it is nobody else’s business.”

This leaves one question though - namely what if the Nazi allegations *had* been true? Would the News of the World have then been entitled to publish? Lead Counsel Robert Jay QC, reviewing Mr Justice Eady’s ruling says: “He considers ‘if I had come to the conclusion that there was a Nazi theme, what then?’ Maybe his conclusion was somewhat equivocal, he didn’t have to decide the point, the case may or may not have followed a certain path if he had made a finding of fact which he didn’t.”

So, in the absence of a clear ruling in the case, it would appear that this line of investigation is, at least, not closed to journalists. Where someone is, in private, appearing to espouse political beliefs which are inappropriate for a public figure, there may be a legitimate public interest.

**Richard Peppiatt**

Richard Peppiatt is a journalist who worked shifts at the Daily Star and who later turned whistle-blower, exposing practices he alleged went on at that paper. His evidence must be qualified by the fact that the Star alleges that he was motivated by frustration after not receiving a staff post which he thought he was entitled to.

Most of Mr Peppiatt’s evidence did not concern sport. However, there was one interesting reference to it. When he was asked whether the Star employed private detectives, he said that there was only one occasion he could recall.

“There was a rumour that Steven Gerrard [Liverpool captain and England international footballer] had got a 16-year-old girl pregnant which completely turned out to be untrue… but I was sent up to Liverpool to find out if there was any veracity in this. I needed some help finding addresses of names floating around on message boards.” (Leveson Inquiry Day Nine Part One, 2011)

Once again we are in hypothetical territory. The alleged story was untrue. If it had been, no criminality would have been involved – 16 is the age of consent. But, in this case, we have an example of a story involving a sports star who, going back to Graham Shear’s evidence *had* earned significant sums from off-pitch activity and arguably belonged to the small group “where there’s a cross-over between sports and general media profile.” Furthermore, Gerrard and his wife had sold the pictures of their wedding to OK Magazine. It would be interesting to know whether Mr Shear would have acknowledged that this was a legitimate story to investigate.

It is also an instance of a supposed story gathering steam on the internet and, in turn, prompting a national newspaper to investigate.

**Mazher Mahmoud**

Mazher Mahmoud worked for 20 years at the News of the World, in his own words, “exposing criminal and moral wrongdoing” (Leveson Inquiry Day 15 Part One, 2011). He is included in this paper because some of his best-known investigations involved sport – his revelations about the then England football coach Sven-Goran Ericksson, his expose of Pakistan cricketers who were involved in spot-fixing, allegations of a plot to kidnap Victoria Beckham and claims that snooker star John Higgins was prepared to throw frames. Several of these were discussed in detail in his evidence to Leveson.

Mr Mahmoud was asked directly what made a celebrity’s actions a matter of public interest. “Were they involved in criminality,” he replied. “Were they involved in moral wrong-doing? Were they involved in hypocrisy?”

He was then asked about a section in his autobiography in which he discussed an investigation into the behaviour of model Sophie Anderton, whom he’d exposed selling sex and cocaine. He explained that the investigation had been prompted by evidence of “illegality… dealing drugs to clients”.

He was then asked whether the allegations of “prostitution” (which is not illegal) would be sufficient justification for the investigation.

“Then it would have been a close call… let’s not forget these people are sadly role models for our kids. A lot of children aspire to be models to have the fame and fortune and have the privileges afforded by that fame. So in a sense they are abusing that position.”

Lord Leveson himself then took up the questioning. “If they are famous, anything goes?”

After some misunderstanding, Mr Mahmoud said: “If they present themselves as wholesome characters and trade on that status then privately betray that, then it [i.e. a public expose] is perfectly justified.”

His lordship didn’t seem to be satisfied because he returned to the topic at the end of the reporter’s evidence and attempted to explore the boundaries of public interest. This time Mr Mahmoud said that an MP being involved in an extramarital affair was “justifiably the subject of investigation and exposure”.

“Same for an actor, an author? Anyone who’s made money from the public?” Lord Leveson asked.

“MPs are elected, they hold public office. There’d have to be grounds. If they are appearing in Hello magazine as happy families and cashing in on their status as happy family men.”

“The mere fact of celebrity would not be sufficient?”

“No, not in my opinion.”

**Conclusion**

Two months before Leveson reported, the Crown Prosecution Service issued ‘Guidelines for prosecutors on assessing the public interest in cases affecting the media’. The document points out that “the public interest served by freedom of expression and the right to receive and impart information has never been defined in law” (CPS, 2012). It goes on, however, to cite five examples of possible public interest – including exposing criminality or miscarriages of justice and “Conduct which is capable of raising or contributing to an important matter of public debate. There is no exhaustive definition of an important matter of public debate, but examples include public debate about serious impropriety, significant unethical conduct and significant incompetence, which affects the public”. This appears at first a charter for press freedom but then the last four words suddenly change the emphasis: do the misdemeanours of the Gascoignes and Giggses *affect the public*?

As we have seen, Ms Patry-Hoskins did give a list of actions which might open someone’s private life to public scrutiny when she questioned Gary Flitcroft. But already, in 2011, the list seemed dated. Does, for example, the decision to reveal details of one’s private life on twitter entitle journalists to repeat those details? I’ve noticed that one athlete whom I follow frequently refers to pets on the site but not any partner (Soni R, 2013). Could it be argued that an athlete who is in receipt of lottery money is in some way open to public scrutiny? New developments over the next decade may give rise to other questions of this nature.

The Press Complaints Commission’s Editor’s Code of Practice lists five points under the heading ‘The Public Interest’. Point two is “There is a public interest in freedom of expression itself” – an observation most of us may agree with, but which could be regarded as a cover-all justification for any invasion of privacy. Point 4 reads “The PCC will consider the extent to which material is already in the public domain, *or will become so*”, which could be interpreted to mean ‘if we don’t publish this, someone we know will tweet it so you’d better let us run the story’. (PCC, 2011)

It was also notable that journalists and lawyers – professionals who have to address these questions on a daily basis – seemed very hesitant about trying to define where the boundaries of the public interest lie. While there seemed to be general agreement about the David Mellor’s affair being a legitimate story, there seemed, in spite of Lord Leveson’s own questioning, to be very little ethical thought given to when it was acceptable to expose the private affairs of a sportsman, a musician or an actor (Leveson Inquiry Day Six Part One, 2011; Leveson Inquiry Day 15 Part One, 2011).

The evidence cited in this paper suggests it is difficult, perhaps impossible, to devise a set of rules which would define when an individual’s celebrity or actions constitute a surrender of privacy. Max Mosley, appears to have given the issue more thought than any other witness; he was invited back to make a further submission to Leveson and has addressed MPs on the Culture, Media and Sport Select Committee. His solution was that decisions on the public interest should be made by a judge – with a presumption *against* publication.

Lord Leveson himself seemed to side more with Mr Mosley and Graham Shear than with Mahzer Mahmoud. In his executive summary, he wrote: “… there is ample evidence that parts of the press have taken the view that actors, footballers, writers, pop stars – anyone in whom the public might take an interest – are fair game, public property with little, if any, entitlement to any sort of private life or respect for dignity, whether or not there is a true public interest in knowing how they spend their lives. Their families, including their children, are pursued and important personal moments are destroyed. Where there is a genuine public interest in what they are doing, that is one thing; too often, there is not.” (Leveson, 2012)

But his Lordship steered clear of attempting to fashion his own definition of the public interest, instead suggesting that it was a job for his new regulatory body: “…bearing in mind the concerns that have been raised about the different interpretations of the public interest that different editors have, I encourage the new independent self-regulatory body to issue guidance on interpretation of the public interest in the context of the code and to be clear that it would expect to see an assessment of the public interest, where relevant, being recorded as decisions are made”.

This scheme would introduce a level of transparency that hasn’t existed up until now. If a case involving breach of privacy came before adjudicators, the public would, presumably, have the right to witness the editorial process – to see how the decision to publish came to be taken. Of course, the public would not get to see the reasoning in cases where papers decided *not* to publish. But this degree of transparency should be welcomed by public figures and journalists as it would help provide a better public understanding of the way media houses operate.

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