

FOURTH WITNESS STATEMENT OF LORD BLACK OF BRENTWOOD

1. I submit this witness statement in response to a Section 21 notice from the Inquiry dated 26th June 2012 and further to my submission to Module 4 of the Inquiry dated 7th June 2012. I do so in my capacity as Chairman of the Press Standards Board of Finance (PressBof).

2. I regret that this statement is not fuller. The Section 21 notice allowed only seven full working days to collate this information and I have done my best to provide the information in this timescale.

Background

3. In the proposal accompanying my third witness statement I made the following statement at paragraph 29:

"In any self regulatory regime there will always be a need for the industry to be involved in some way. In this case, the publishing industry's chief involvement will be through the operation of the Code Committee .... and some form of industry co-ordination body to be responsible for funding. This is currently provided through the Press Standards Board of Finance. Its structure and role may change so for the purposes of this note this entity is referred to as the Industry Funding Body ("IFB")."

4. The IFB will be very different from PressBof. As I set out in this statement its role would be strictly limited, it would have an administrative link only with the Regulator's Trust Board and no link whatever to the complaints and investigations arms. It would have no regulatory functions. While we have been able to establish some general principles about its operation, the details are still in progress, and will need to be subject to a further round of industry consultation. I would be

pleased to update the Inquiry when we have had the opportunity to take this further.

Current funding system

5. I am asked to provide "full details of the contributions from each publisher or title under the current system." In my witness statement dated 16th September 2011 I set out in full the basis of the current funding regime. Appendix D records that national newspapers (through the NPA) normally pay 54% of the costs, regional and Scottish newspapers 39% and magazines 7%. The method of the collection of these levies is set out in Appendix D to that statement. I amplified this in oral evidence.

6. However, for the financial year 2012, NPA members have agreed to bear a larger share of the funding requirements, resulting in the sectors contributing to PressBof as follows:

- \* national newspapers - £ 1,300,000 (59.1%)
- \* regional and Scottish newspapers - £756,000 (34.4%)
- \* magazines - £143,000 (6.5%).

7. With regard to the breakdown of these figures, it is impossible under the current system for me to provide individual figures at this stage, for these reasons. As regards the national press, PressBof – both its Chairman, Board and Treasurer - is unaware how much each national publisher pays<sup>1</sup>. As Appendix D makes clear, "the Newspaper Publishers Association, representing national newspapers, pays its share in a half yearly lump sum according to an internal formula agreed by its

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<sup>1</sup> I am obviously aware of how much Telegraph Media Group contributes

member companies." That formula uses commercially sensitive information to calculate the publishers' levy, and is not known either to PressBof or to other NPA members. However, all NPA members - comprising News International, Trinity Mirror, Associated Newspapers, Guardian News and Media, Telegraph Media Group, FT and Independent News - pay their proportionate share of the global figure in paragraph 6.

8. The agreed regional and Scottish press contribution is shared between each publisher on the basis of circulation as a proportion of the aggregate industry circulation figure calculated in the following manner:

- paid daily newspaper – actual circulation;
- free daily newspaper – half of actual circulation;
- paid weekly newspaper – one quarter of actual circulation; and
- free weekly newspapers – one eighth of actual circulation.

9. Magazine fees are based on circulation bandings and frequency of publications.

10. PressBof levies these sums in confidence and will need to seek permission from the publishers concerned to produce them in more detail. There are a significant number of publishers involved, but if the Inquiry believes this to be of importance to Module 4 we will begin that process.

#### Changes to the system

11. Under the current self regulatory arrangements, PressBof is involved in the system in a number of ways. It provides the funding directly to the complaints handling body. It has sole responsibility for

appointing the Chairman. It has a direct relationship with the PCC Director, who is in effect the Commission's accounting officer. It is responsible for seeking to enforce publishers' commitments to the system where an issue of non-compliance occurs. All of this is conducted through entirely voluntary agreement, the limits of which - as I recognise in the proposal document with my third witness statement - were made clear by the withdrawal of Northern and Shell from the system<sup>2</sup>.

12. I also made clear in that document that this set of powers for PressBof produced "a perceived lack of independence, a consequence mainly of the clear and direct relationship between the industry's trade associations, as represented on [PressBof] ... and the PCC"<sup>3</sup>.

13. That will now change in order to ensure the Regulator is structurally and operationally independent of the industry, *and seen to be independent of the industry*, and to introduce greater transparency into the system.

#### Powers of the IFB

14. Unlike PressBof, the IFB will have very limited powers. It will continue to fund the Regulator on the basis of a fair and proportionate funding formula but it will have no direct relationship with the regulatory parts of the system or its Chief Executive. Such co-ordination as is necessary on funding and budgets will be through the Regulator's independent Trust Board. This will guarantee the complete operational independence of both the complaints and compliance arms of the regulator.

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<sup>2</sup> Proposal document, 7th June 2012, para 7

<sup>3</sup> *ibid*, para 6.

15. Unlike PressBof, the IFB will not have the power to appoint the Chairman. The proposed new system of appointment will ensure that the interests of the public are fully protected because lay or public members of an appointments panel will have an effective power of veto over any proposed appointment<sup>4</sup>.

16. It is proposed that there will be majorities of independent members throughout the regulatory structure - the Trust Board, the Complaints Committee and the Investigations Panel. The IFB will have no involvement in the appointment of these public members<sup>5</sup>.

17. The IFB's *only* power of appointment will relate to the minority of three members on the independent Trust Board<sup>6</sup>. The minority press members on the Complaints Committee will be nominated not by the IFB but by the relevant industry trade associations<sup>7</sup>. The single newspaper figure - who will not be a serving editor - on any Investigation Panel will be appointed from a pool by the independent Trust Board<sup>8</sup>.

18. Crucially, the establishment of contracts between publishers and the Regulator will fundamentally change the nature of the existing PressBof role. In future, the contract will codify publishers' responsibilities, guarantee funding and introduce significantly greater transparency into the system. The IFB's only role will be to enforce the contract where a publisher seeks to renege on it in respect of payment of fees.

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<sup>4</sup> *ibid*, paras 75-6  
<sup>5</sup> *ibid*, para 72 for a summary  
<sup>6</sup> *ibid*, para 37  
<sup>7</sup> *ibid*, para 46  
<sup>8</sup> *ibid*, para 52

19. The central role of the IFB - in sharp contrast to PressBof's role - will be to provide funding for the system in accordance with the new contract and appoint a minority of publishing representatives to the Trust Board. It will also provide greater transparency than it does now, as I shall deal with below.

#### Composition of the IFB

20. I dealt with the composition of PressBof in para 15 of my first witness statement. It comprises individuals nominated by their relevant trade associations, as these bodies are the only competent organisations to co-ordinate activity within a very diverse and competitive industry, including handling commercially sensitive information on a confidential basis.

21. No decisions have been made about how the IFB will be structured, with the caveat that it is likely that membership will continue to be based on the industry's trade associations. This is important because of the IFB's role in funding at a time of hugely serious commercial pressures within the industry. However - and this is an important difference - I recognise that the IFB will need to include publishers (mainly, but not exclusively, from the digital sector) who are not part of a traditional industry trade association. The membership of the IFB will need to be flexible enough to include these companies, and arrangements to ensure their proportionate involvement will need to be organised.

22. As with most similar bodies, I would expect the Directors of the IFB to elect their own Chairman from among their number.

23. Given that it is envisaged that the trade associations themselves will make appointments to the IFB, it is impossible to predict whether current members of PressBof will be members of the new funding body.

#### Governance arrangements

24. No work has yet been undertaken on the likely Articles of Association of the IFB. However, it is important to note that PressBof's current Memorandum and Articles allow it to collect a levy for the "purpose of financing any self regulatory control system for press standards in the United Kingdom." PressBof therefore has the legal authority to be able to establish a new system and be the agent of change.

25. In terms of greater transparency, I envisage that the IFB will for the first time publish a register of the entities which have signed a contract. This contract may allow for the level of funding to be made public. This will be a significant change as a result of the new contractual arrangements and does, I believe, provide an appropriate degree of transparency within the system.

26. I would envisage that the IFB would develop a website with information about subscribers to the system, about the terms of the contract and about how its members are appointed.

#### Funding requirements

27. The funding of the PCC through the PressBof levy has been a major success of the existing system, because publishers understand the

levy to be fair and proportionate. Between 1990 and 2011 publishers provided just under £33 million<sup>9</sup> *under a voluntary system*.

28. This funding will now be guaranteed as a result of the contract. Until the costs of the new system are clear, however, it is impossible to predict how they might be fairly and proportionately divided within the industry. It will depend also, of course, on how many publishers - including digital publishers - sign up to the system. The industry is committed to a review of the funding formula once the costs are agreed<sup>10</sup>.

29. Historically, contributions to the levy - just as with trade association subscriptions - have relied heavily on information relating to the circulation of printed products. With the significant growth of digital, those criteria will need to adapt. The national newspaper publishers - who are most heavily impacted in the first instance - are currently looking at funding formulae across the board better to reflect the realities of new business models. This work is unlikely to be complete before the autumn.



Lord Black of Brentwood  
5<sup>th</sup> July 2012

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<sup>9</sup> Witness Statement, 16th September 2011, para 20  
<sup>10</sup> Proposal document, 7th June 2012, para 89