

Submission to the Leveson Inquiry from the Rt Hon the Lord Hunt of Wirral MBE

1. I, David James Fletcher, Lord Hunt of Wirral, have been a partner at DAC Beachcroft LLP since 1969, and have held a practising certificate as a solicitor since 1968. On Thursday 13 October 2011, I signed an agreement under which I was appointed as Chairman of the Press Complaints Commission (PCC) and to perform the duties and exercise the powers and discretions consistent with such an appointment. I took up this position on Monday 17 October 2011.
2. One of the great strengths of the PCC is its tradition of proceeding by consensus. When Commissioners consider individual cases, even when we begin with a wide range of views expressed, the target is always consensus and there are no votes. If a consensus cannot be reached, we seek further information and consider the matter afresh at our next meeting. Before preparing this statement, I have therefore engaged in a comprehensive process of internal consultation with the staff of the PCC and also with my fellow Commissioners, both editorial and independent. Not everything that follows bears their imprimatur or carries their hearty endorsement, but I cannot thank them enough for their help. Although they have been generously informed by the many discussions and consultations I have had with my colleagues at the PCC, the views expressed here are my own.
3. From the outset of this Inquiry, Lord Justice Leveson has made it plain that he would like the industry itself to come forward with credible proposals for tough and rigorously enforceable, independent regulation of the press, which can then be put to the Inquiry for serious and independent scrutiny, in the public interest. Let me therefore reaffirm at the outset, I am not the industry and I do not seek to represent the industry. As chairman of the PCC, I am the independent head of an organisation with an independent majority amongst its directors, which enjoys operational independence from the industry that funds it, as well as from Parliament and politicians. All 17 of the PCC Commissioners – both independent and editorial – seek to detach themselves from all outside interests in their work as Commissioners. Whatever our respective backgrounds and professions may be, in our PCC roles we seek always to work as a unified team, fully committed to furthering the wider public interest.

4. On 15 December 2011, at a meeting bringing together senior figures from right across the industry, I put forward a proposal for a new regulatory structure, drawing upon the work of the Commission's own reform committee, which consisted of six Commissioners (four independent and two editorial) and had already been discussing a package of reforms for the PCC before I joined the organisation. The proposal was based upon maintaining and further developing the existing complaints-led work of the PCC in one arm of a new regulator, whilst also adding a second, new arm, charged with enforcing standards and possessing the power to launch investigations and impose fines. I proposed that the structure should be underpinned by a system of commercial contracts. This was accepted unanimously by those present. The notion of commercial contracts was first raised by the Royal Commission on the Press that Hartley Shawcross headed in the early 1960s, but it has never before been implemented.

5. When I appeared before the Inquiry on 31 January, Lord Justice Leveson encouraged me to carry on developing my thoughts about the future of regulation:

'What I am very keen that you should do is to keep the Inquiry informed about the progress that you are making and where the sticking points are, if there are any, and to maintain the momentum that you feel you can maintain.'

6. I have endeavoured to match those words with deeds. Although the basic model from 15 December has received a great deal of publicity, and the other models put forward share many notable characteristics with it, it seems to me that there are three questions that must be answered before any regulatory model can or should be endorsed:

- How can the new regulator ensure that all the big players in the industry do, in fact, sign those contracts and honour them?
- How can the regulator ensure that they remain signed up, thus ensuring its effectiveness and credibility, guaranteeing its funding and demonstrating its independence?

- How would the new system help the public and how would it serve to prevent further instances of alleged harassment, victimisation and unjustifiable intrusions into the privacy of private individuals?
7. In this witness statement I shall address myself to all three of these crucially important questions, though arguably all three can ultimately be resolved only with the support of some combination of judicial and parliamentary authority. Since 15 December, the industry itself has responded to the call issued by this Inquiry, by engaging in a consultation process of its own, with in-house counsel from a good cross-section of leading publishers working together to produce a model contract and draft regulations that could define the relationship between publishers and the proposed new regulator. Although I have seen one or two early drafts and my advice has been sought informally from time to time, as that process has continued, I have sought to distance myself from it, in order to emphasise and protect my independence and that of the PCC, from the industry. This statement will, I hope, be seen to provide an informed, independent counterpoint to the industry's proposals.
8. Since becoming chairman of the PCC, I have been uncomfortably aware that the concept of self-regulation of the press has become tainted and discredited in the eyes of a great many people. One senior parliamentarian said to me recently that, in his view, most of his colleagues now believe self-regulation has failed. Such an assertion does confirm to me that self-regulation, if it is to continue, needs to be revived, but also redefined. I do not believe true self-regulation has ever really been attempted, at least so far as the press is concerned. The PCC has been damned for failing to exercise powers it never had in the first place. Although the PCC does possess some of the qualities of a regulator, it is primarily a complaints-led organisation that uses a process for the adjudication and/or determination of complaints and, if possible, informal negotiation and mediation to settle disputes between publications on the one hand and aggrieved citizens and organisations on the other. That is not comprehensive self-regulation; it is complaints handling.
9. Self-regulation can be effective only in an industry that possesses the necessary ethos, structures and systems to ensure that an agreed level of standards is maintained. Self-regulation means – must surely mean – that publications have internal checks and

balances in place to ensure the material they handle and promulgate has been obtained in line with the Editors' Code. It may not be possible to make unethical people ethical, but it certainly is possible to teach them how to behave ethically. As and when standards of journalistic conduct do fall below acceptable standards, publishers and publications must have responsive and efficient systems in place to provide suitable remedy. Self-regulation requires the industry to recognise that the still considerable freedoms it enjoys are a privilege, not an unassailable right, requiring journalists to behave responsibly, within certain, generally observed behavioural norms and precepts.

10. The Financial Ombudsman Service does not deal with a case until the internal complaints handling system of the financial institution in question has considered it. I do not advocate such a hard and fast rule for the new regulator, but I do believe far too many complaints currently come straight to the PCC. A serious regulator cannot become some kind of outside contractor, to which complaints handling is routinely delegated by publishers. The emphasis of the new regulator should be on prevention not cure and on the really effective policing of self-regulation, not merely on picking up the pieces when things have already gone wrong. It must be an independent body which polices the self-regulation of the industry.
11. As the Inquiry already knows, I approach these matters from the point of view of one who has sought to use the privileged platform offered by public life to champion the merits of free expression. As such, I naturally welcomed the clarion call last year from our senior Judge, the Lord Chief Justice, Lord Judge, in October last year:

'The independence of the press it is not only a constitutional necessity, it is a constitutional principle ... The independence of the judiciary and the independence of the media are both fundamental to the continued exercise, and indeed the survival of the liberties which we sometimes take for granted. These are critical independences which are linked, but separate. As far as I can discover, there has never been and there is no community in the world in which an independent press flourishes while the judiciary is subservient to the executive or government, or where an independent judiciary is allowed to perform its true constitutional function while, at the same time, the press is fettered by the executive.'

12. As a young man, I often had occasion to visit countries – some of them not at all far from our own shores – where democracy had been crushed and the media were controlled by the state; and I vividly remember the huge sense of relief and gratitude that invariably surged through me the moment I set foot once more in the free world. My presumption is therefore always instinctively in favour of the right to express oneself, the right to stir up debate, the right to offend and even the right to insult. I make no apology for my belief that free expression is one of the greatest treasures a people can possess; and one that must not be cynically or systematically curtailed by those who have an interest in restricting it, nor jeopardised by those who seek to abuse it. It is a fine line to walk.
13. The press in the UK is already, of course, subject to a formidable corpus of legal and regulatory structures and strictures. As many others have observed, to be effective in moderating behaviour, laws must be used. Much of the decline in press standards over recent years has resulted not only from the absence of effective press regulation, but also from the failure of law enforcement bodies to take action using laws and powers already available to them. An excellent illustration would be the laws on the contempt of court, which were effectively allowed to lie fallow for years. Some editors seemingly came to believe those laws were not important, because there were never any challenges to their conduct under them. Media law is extensive, sometimes Delphic and, for some lawyers, a highly lucrative field of activity. Aspects of the law, and its exploitation by skilful practitioners, have a chilling effect, not only upon those with ill intentions and few or no scruples, but also upon the best kind of journalism, which can uniquely expose ineptitude, wrongdoing and humbug in public life.
14. It would be hyperbolic to suggest that the slightest statutory involvement in press regulation here would inevitably set us on the slippery slope towards the kinds of tyranny that prevailed in so much of our continent in much of the last century. I do, however, have genuine and profound misgivings about directly involving the state – ministers, civil servants or even parliamentarians – in anything that might chill freedom of expression arbitrarily and unnecessarily. That could upset the delicate

checks and balances that make this country what it is. I do not merely believe that self-regulation can work; I believe it must be made to work.

15. At my last appearance I made those points and I know Lord Justice Leveson wants me to explain why I believe the spectre of state regulation is more than an imaginary boogeyman, concocted to spread fear based on ignorance. I do not argue that Westminster is awash with politicians with a malicious intent to constrict free speech, but I do know very well and from my own experience how both a Bill and an Act of Parliament can mutate and end up having damaging consequences. Arguably, the law of unintended consequences is the dominant law of political life. I also remember very well how the senior Labour MP Clive Soley (now Lord Soley) introduced a 'Freedom and Responsibility of the Press Bill' in the 1992/93 session of Parliament. The original Bill purported to protect the freedom of the press, while seeking to establish an Independent Press Authority whose main role would be to ensure accuracy and promote standards. If the Bill is examined in detail, however, it is clear it would have done much more than that.

16. Its long title ran as follows:

"Freedom and responsibility of the press. A Bill to require newspapers to present news with due accuracy and impartiality; to secure the free dissemination of news and information in the public interest; to prescribe certain professional and ethical standards; to make provision with respect to enforcement, complaints and adjudication; and for connected purposes."

17. The original Bill therefore opened up the possibility of a statutory requirement for press impartiality. If such a measure had been implemented, the freedom of the press, which the Bill nominally sought to protect, could have been critically undermined. The papers might have been reduced to reporting news totally neutrally, in line with broadcasting practice. This would have firmly tied the hands of editors and commentators; and some of the country's best journalism and most engaging, provocative and insightful commentary could have been lost. Under clause 2 of the Bill the Independent Press Authority would have had to report annually to Parliament and consider any matter referred to it by either House of Parliament. Furthermore

appointments to the “Independent” Press Authority would have been made by the Secretary of State under Schedule 1 of the Bill.

18. The proposed model would have seen people who had been appointed by government ministers deciding what was acceptable and what was not. Those appointees would also have been obliged to consider investigating any practice with which Parliament was unhappy. Despite one MP describing the Bill as placing ‘a little bit of barbed wire around the pen’, on 29 January 1993 it received its Second Reading by 119 votes to 15. Although it had been made clear by this stage that the impartiality requirement would be dropped, had it not been quashed this Bill might have become an extremely useful vehicle for those who wished to curb freedom of expression in this country.
19. As this Inquiry has developed, it has cast a bright and largely unflattering light upon the relationship between politicians and the press. That relationship is – and always should be – characterised by a certain tension. At best, that can be a highly creative tension, so long as the two sides maintain a safe distance from one another. In recent times, however, it has often gone beyond that and turned into something far less positive. If those regrettable and ill-advised actions are allowed to culminate in too violent a reaction, the public will be the ultimate losers. Even in these stressful times, parliamentarians must do more than pay lip service, through gritted teeth, to the essential role that free media play in holding them to account.
20. Since my appearance before the Inquiry on 31 January, I have spent a great deal of time meeting victims who have suffered at the hands of the press, many of whom have also appeared in front of this Inquiry. I have been saddened and sometimes appalled by some of the stories I have heard. The treatment that some of these individuals have received from the press has been truly horrifying. I am sorry to say that, in some of the most high-profile cases, the treatment they received from the PCC also fell short of what a genuine regulator could, should and would have done in a similar situation. I have taken the opportunity to offer my sympathies to these victims and, where possible, I have apologised in person for any past lapses and shortcomings, sharing with them my vision of a new, tougher, system of self-regulation. By and large, I find that the victims have not lost faith in the press, despite having more reason than most to have done so. I have found widespread agreement

that a system of self-regulation, including a new standards arm with significant enforcement powers, would be desirable and could improve matters significantly.

21. I have also held meetings with a wide range of other interested parties. I have taken all their input into account and it has been reflected in my recommendations. I should like to thank publicly all those who have engaged with me to discuss ideas for press regulation. Their help and contributions have been invaluable.
22. On 3-4 May I travelled with a colleague to Dublin to visit those involved with the creation and running of the Press Council there. I learnt some valuable lessons about a number of aspects of regulation, including incentives, how to deal with appeals and how to give a regulator a really positive and effective national profile as a champion of the public interest. This will be reflected in the testimony that follows.
23. When I arrived at the PCC in October, it had already become abundantly clear that the status quo was not an option. The PCC had lost the confidence of the Government, the opposition parties and much of the industry itself; and, most importantly, some of the general public had begun to question its credibility too. Therefore it either had to evolve into a new, tougher, regulator, or it had to step aside in deference to an entirely different model. At the top of the organisation the principal focus has been on institutional reform, but I have also done everything in my power to ensure the PCC has continued to provide its "fast, free and fair" service to the public, so PCC staff have continued to mediate many hundreds of complaints, to develop the increasingly extensive pre-publication services they offer and also to undertake extensive preparatory work on those cases that go to full adjudication. I pay tribute to them, for their diligence and their loyalty, at what has been a very difficult and unsettling time.
24. There has, of course, never been any question of seeking to pre-empt the conclusions of this Inquiry. It has, however, been possible to commence some aspects of the process of reform and transition, as we have sought to ensure the PCC makes it as simple as possible for any new body to take up the reins. On 21 February 2011, three weeks after I gave oral evidence to this Inquiry, a special meeting of the Commission was held, at which Commissioners agreed unanimously that the PCC was entering the

final phase of its existence and they were willing in principle to transfer its functions, assets and liabilities to a new regulatory body once its structure had been agreed.

25. Shortly afterwards this was misreported as, variously, the “closing down” of the PCC and the services it offers, and also as an attempt to pre-empt the conclusions of this Inquiry. It was neither. Our intention was to demonstrate that we fully understand the overwhelming mood for change and wish to respond to it in a constructive and positive fashion, by creating a simpler structure that will maintain the services we provide, whilst also facilitating a more agile response to whatever new regulatory structures are proposed in due course. In effect, this decision marked the beginning of an on-going process to streamline the PCC, preparing it for an inevitable handover of responsibilities, whilst also retaining its funding, its staff and the complaints handling and pre-publication services it offers to the public.

26. It may be helpful for me to provide a brief overview of my recommendations. My starting point is that the relationship between the industry and the regulator should be formalised through enforceable commercial contracts. The current system is non-contractual or, rather, operates on the basis of implicit contracts. For an informal system, it has endured surprisingly well. Newspaper groups have consistently accepted rulings, even when they have been extremely unfavourable, paying their dues and remaining within the regime. Going forward, however, I do not believe an informal system of this kind can continue. It will just not be strong enough to support the much tougher regime we all want to see, nor will it inspire public confidence. Commercial contracts would underpin the stability and powers of enforcement the PCC has lacked. Just as importantly, they would provide considerable reassurance to the public and give firm foundations to the “teeth” of the new system.

27. When I presented my proposals to the industry I set out some minimum requirements that the contracts had to fulfil and I have always argued that the contracts need to be simple. In my view, they need to include the following commitments:

- To support a new, independent, self-regulatory structure
- To fund the regulator according to an agreed formula

- To undertake to abide by the Code and relevant laws
- To respond positively to individual complaints that have been handled by the complaints arm
- To support clearly defined compliance and standards mechanisms which can be audited by the regulator
- To accept proportionate financial sanctions via the funding formula, should serious or systemic standards breaches be found

28. The basic structure I have proposed is straightforward. I recommend that authority in the new regulator should be vested in a small board, which would have an independent chairman and an independent majority. I should also like to see one or two industry representatives on it. Such industry representatives would not be serving editors. The board would act as a buffer between the regulator and the press funding body. It would conduct the administrative functions and oversee the finances of the regulator. Its members would be the directors of the company and it could delegate an audit function to a small committee, ensuring effective governance and efficient husbandry of resources. The board would also produce an annual review. It would be chaired by a public figure, who would be appointed by means of a thoroughgoing process, modelled upon best practice, in which the industry would be represented, but not as a majority. I believe that independent chairman should also be the chief ombudsman on complaints and the principal arbiter of standards.

29. The concept of an ombudsman does not, perhaps, enjoy the same currency in the UK that it does in many other democratic nations (notably Scandinavia and, more recently, the Republic of Ireland), but I think it could have a decisive place in the future of press regulation. An ombudsman could become a known and well-respected public face, a trusted and independent intermediary between the “fourth estate” – the press – and the rest of civil society. The ombudsman could take responsibility for actively leading and then explaining the decisions of the new regulator, embodying both its integrity and its developing role in the public life of the nation. I believe an individual with the title and status of an ombudsman – rather than just chairman of an organisation – could play a crucial role in rebuilding public confidence in self-regulation of the press.

30. The model I propose would have under its aegis two executive arms, though it would be possible to add others. A complaints arm would function in a very similar way to the PCC. It would mediate on complaints and, where necessary, issue adjudications. It would further develop its pre-publication services. I confess I do not like the term “case law” when applied to a complaints handling body. No two cases are identical and each one should be judged on its particular merits. There is, however, a volume of precedents, many of them still relevant, that I would like to see carried forward into a new regulatory body. It would be a great waste to squander the considerable intellectual capital and effort that have gone into crafting those judgements.
31. I propose there would be a slimmed down panel of adjudicators which would consist of either thirteen members, of whom eight would be independent and five would be industry representatives; or else eleven, with a ratio of seven to four. The minority representing the industry should ideally encompass as much as possible of the spectrum of the industry – nationals, regionals, “red tops”, broad-sheets, magazines and digital-only. In the past it has been customary for constituent parts of the UK other than England to be represented and, given that I am proposing a UK regulator, I believe that tradition has enormous value and must be maintained.
32. I recommend that this complaints arm should be complemented by a new standards arm which will deal not only with material that has been published, but more generally with promoting and enforcing standards across the industry. I develop this argument in the section below on Powers and Remedies.
33. The new regulator is also going to require a communications function. I believe the new regulator should focus its communications strategy overwhelmingly on public engagement, increasing awareness of the work it does and improving accessibility to the services it offers. Communication must also be a two-way street. We must listen and learn if we are to earn and retain the confidence of the British people. This will require a revamped range of publications and a state of the art web-site. If this is to be effective in terms of public engagement and access, there will be budgetary implications. We cannot create a “champagne service” on a “beer budget”.

34. I now move on to consider the draft criteria set out in the letter from the Inquiry dated 24 April 2012. I hope that the thoughts that follow will help the Inquiry to formulate a considered view of how best to ensure that any new regulatory structure does everything possible to protect the public interest.

Effectiveness

35. My starting point has been that any proposal for reform of the independent self-regulation of the press in the UK requires a new body and a fresh start. That new body should satisfy the well-established five principles (the “Hampton principles”) of good regulation, namely proportionality, accountability, consistency, transparency and targeting. I would add a sixth principle, namely independence. What must unify all the activities of the regulator is the public interest. Very properly, the Inquiry has thoroughly explored the concept of the public interest. The PCC has always taken a broad approach to the public interest. It is not possible to define exhaustively what constitutes the public interest; every case involving privacy or intrusion will engage questions of the public interest and often a difficult balance must be struck. The PCC approach to the public interest has provided it with the necessary flexibility to consider each case individually, taking into account all relevant factors.

36. The notion of the public interest must continue to run through every element of the new regulator, but it will self-evidently have to work harder to ensure that both the public and the industry understand current thinking and developments surrounding the public interest. The new regulator should clearly publicise, very actively, any adjudications which would create a new precedent so far as the public interest is concerned. The regulator should also periodically inform the industry on the evolving corpus of precedents, through regular guidance notes and training courses.

37. Not only should the regulator be thoroughly imbued with the public interest, but the idea must also be inculcated over time within the individual and collective psyches of each publisher and each publication. Publications need to be able to show they had the public interest in mind when they originally made decisions to publish; and be able to demonstrate how these decisions were arrived at. This has been reflected in a recent

change to the Editors' Code of Practice which added the underlined section to an existing clause:

'Whenever the public interest is invoked, the PCC will require editors to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest and how, and with whom, that was established at the time.'

38. As and when commercial contracts are signed between the new regulator and publishers, those publishers will thenceforth bear the ultimate responsibility for ensuring that the terms of the contracts, including a commitment to standards, are met within each and every one of their publications. I should like to see a very senior executive being accountable to the regulator (and to the general public) for the overall observance of standards. I go into this in greater detail in paragraph 77.
39. One of the greatest strengths of the PCC has been its flexibility; that very flexibility which has allowed it to develop new functions and services. This is highlighted by the evolution of the pre-publication function. For the new regulator to be effective it must retain much of that flexibility. The industry is changing almost by the day. Technological advances have made it possible to have genuine "24/7" news coverage not only within the broadcast media, but also under the editorial aegis of the traditional print media. The volume of news articles appearing is increasing exponentially. With the challenges these developments bring, and no certainty about where the industry will go next, it is crucial that the new regulator is adaptable.
40. This explains why I have argued so fervently in favour of principles – above all the public interest – and not a prescriptive approach that would be archaic from the outset. As a crucial corollary, it is essential that the contracts between publishers and the regulator are short, simple and clear. It will be a difficult business to renegotiate the contracts, so they must stand the test of time, even in an age of incessant and unpredictable flux. We must ensure the new regulator does not contain a connate time-bomb of obsolescence. The regulations of the new company must also be sufficiently flexible to allow for continuing evolution. The Editors' Code of Practice

too must become a more flexible document. I return to the subject of the Code, and the Code Committee, under the heading of Fairness and Objectivity of Standards.

41. I believe a great leap of imagination is required. The very concept of a Press Complaints Commission is now archaic. Since 1990, the “press” has changed beyond recognition. It will go on changing, driven by shifting public tastes, commercial pressures and relentless technological change. Many newspapers face an existential threat. Some may become digital only; others may go out of business altogether. Some may go off-shore. An already unrecognisable industry will go on changing. We will have failed, if we discuss yesterday’s problems and consequently produce a “solution” that is still-born, redundant and antiquated before it is off the launch pad. The new regulator will look fundamentally different from the PCC. It must be a genuinely twenty-first century regulator. Its role will not – must not, cannot – be confined to the printed press, newspapers and magazines. On that basis, the vision of its founders must also reach far beyond those traditional sectors. All kinds of organisations must want to be part of this system, so it must go with the grain of the modern market and also with that of technological change.
42. Universal application is an admirable aspiration, but it is impractical and unrealistic to judge any system, perhaps even a fully statutory one, by so Utopian a criterion. There certainly never can be universal regulation of the Internet. There are always going to be those who insist on remaining outside, but the credibility of the new system could be fatally undermined if any genuinely “big fish” seek to escape from the net. There must therefore be appreciable negative consequences for those who do seek to opt out. In many instances, these will be publications whose readerships are well aware that accuracy is not their primary concern. My aim is to ensure all the significant national, regional and local publications are inside the system and for the model to be flexible enough to incorporate any publication that would like to become part of the system.
43. Although certain matters remain to be resolved, all the major publishers continue to play a full part in negotiations over reform and I remain optimistic they would all sign up to the system I am recommending. I have met with representatives from every major publisher and they have all demonstrated a genuine appetite for reform. They are keen to restore the reputation and image of the industry and they have been

broadly supportive of the model I have been recommending. There must, however, be sufficient incentives to ensure that all the major publications opt into, and then stay within, the proposed new system of self-regulation.

44. The first and most obvious incentive would be to guarantee that the regulator provides a really good, effective and worthwhile complaints handling service to the industry. The regulator must continue to handle complaints quickly and strive to reach a satisfactory conclusion in as many cases as possible. Over time, this will help to rehabilitate an industry that has, ironically, had more than its fair share of negative headlines in recent times.
45. The regulator must also continue to develop its increasingly valuable pre-publication and anti-harassment services. I have been very struck by the praise these services have received from all sides, in correspondence and face-to-face meetings and also in front of this Inquiry. Furthermore, a number of broadcasters have voluntarily “opted in” to the service the PCC now offers. These services have developed organically within the PCC and they continue to be available, 24 hours a day, 7 days a week. I hope and believe that this process of gradual, natural development can and should continue within the new regulator. It is hugely in the public interest. These “dogs that do not bark in the night” inevitably receive less profile than adjudications, but that scarcely reflects their true value. Pre-publication and anti-harassment services and informal “desist” notices help to prevent a great deal of unnecessary human misery. Certain of those who have condemned aspects of the work of the PCC before the Inquiry have been courteous enough to thank it privately for its pre-publication support
46. Additionally I believe the new regulator must invest significantly in improving the mediation service it offers, with formal mediation training for existing staff and the use of professionally trained mediation experts in face-to-face mediations. I envisage that improving this service could help publications to reach a full and final settlement with complainants, avoiding some cases from going to court. This would need to mesh neatly with any formal new “arbitral” function, whether that is within the regulator itself or outside it. I discuss this in paragraphs 119-127.

47. There is another, additional incentive which could be extremely useful in encouraging publishers into the new regime. On my recent visit to the Press Council in the Republic of Ireland I had the opportunity of discussing their system of regulation in some detail. As I mentioned in passing during my oral evidence in January, the Irish Defamation Bill 2009 contains a provision (in Section 26) that, in defamation cases, ‘the court shall, in determining whether it was fair and reasonable to publish the statement concerned, take into account such matters as the court considers relevant’. There follows a list of considerations, ‘any or all’ of which may be taken into account by the court. The sixth of those is that ‘in the case of a statement published in a periodical by a person who, at the time of publication, was a member of the Press Council’, the court may take into account, ‘the extent to which the person adhered to the code of standards of the Press Council and abided by determinations of the Press Ombudsman and determinations of the Press Council’.
48. Although this is yet to be cited in court in the Republic, it has proved strong enough to encourage all the major publications there to join the system. “The Press Council” is a term of art, defined in Schedule 2 of the Act, which sets out minimum requirements for any recognised Press Council, requiring it to be independent in the performance of its functions and also to seek to: ensure the protection of freedom of expression of the press; protect the public interest by ensuring ethical, accurate and truthful reporting by the press; maintain certain minimum ethical and professional standards among the press; and ensure that the privacy and dignity of the individual is protected.
49. Lord Lester's draft Defamation Bill included a similar provision, but there is currently no such provision in the defamation legislation that is now before Parliament here in the United Kingdom. It could prove extremely valuable to the UK system of self-regulation if such a provision could be inserted as an amendment to the current government Bill. I do not believe this in any way crosses a “red line” for those of us who have serious qualms about a statutory regulator: the Press Council in the Republic of Ireland may be recognised in a statute, but it is not created by it. That distinction matters. In any case, the PCC and the Editors’ Code effectively appear in legislation already, such as the Data Protection Act 1998 and the Human Rights Act 1998.

50. The question of whether or not a publication has signed up to the regulatory structure might also be taken into account by the courts when making awards. This could be achieved by means of secondary legislation or, possibly, by means of relatively simple changes to court rules.
51. Newspapers currently enjoy a VAT exemption and I know a number of people have suggested that this exemption should be confined to those who sign up to the regulator and the Code. I am not at all sure that this would be permissible under European law and, even if it is, this would be a crude tool. It would be helpful for ministers to seek definitive legal advice on this point, but I suspect this may prove to be a “non-runner”.
52. I am confident, however, that sufficient incentives could be offered to convince all major publications to sign up to the system; I am also extremely hopeful that a number of smaller publications, including on-line only, would volunteer to subscribe. The new regulator must adapt itself readily and rapidly to a multi-platform world.
53. I recommend that those who join the new regime should carry its badge and they should carry it with pride. It will mark them out, in print and on-line, as media and organisations that subscribe to the professional standards set out in the Editors’ Code. They will demonstrate their commitment to decent, public-interest journalism and to accuracy in their reporting – all founded upon ethical behaviour and a commitment to the public interest, as distinct from the often engaging but all too often unreliable rough and tumble of rumour, speculation and gossip. If they lapse, there will be remedies. If they choose to leave the system entirely, readers and advertisers alike will be able to draw their own conclusions and, in all probability, overwhelmingly look elsewhere for reliable information. This is not “PCC2”; it is an entirely new, modern structure, fit for purpose not only in 2012 or 2013, but able to adapt constantly to the shifting demands of a fast-moving media environment.
54. Any publication, no matter what its format, should be able to sign up for full membership. This raises the question of how to entice smaller on-line outfits, many of which are run by just one person or on a non-profit basis, into the system. To fail to

do so would severely curtail the potential reach of the new regime. This is where a genuine system of self-regulation could offer considerable potential to reach the parts that other regulatory systems cannot hope to reach. For such organisations, a normal membership fee might be prohibitive, but if they are to pay a lesser fee, they should not be entitled to receive the full benefits of membership. This, to my mind, creates an argument for a system of associate membership.

55. Associate members could satisfy a criterion of size (below a certain level of readership and/or employees and/or turnover). They could pay a reduced (perhaps flat) fee and they would undertake to abide by the Code. They would correct mistakes within an agreed (and very short) timeframe and remedy other breaches to the satisfaction of anyone making a valid complaint. In return they would be entitled to display a distinctive badge to demonstrate their commitment to observing the Code and behaving responsibly. It might be impractical to require them to submit a complicated annual report, or to launch an investigation against them, so the ultimate sanction against an associate member would probably have to be removal of that badge and expulsion from the system, if they failed to self-regulate adequately.
56. This is not an attempt to tie the hands of the bloggers nor is it a policy to curtail free speech: it would simply offer to smaller on-line publications an affordable means of demonstrating their commitment to the Code, in the spirit of responsible, public-interest journalism and self-regulation, should they wish to do so. If the Inquiry is attracted by this broad proposition, it may wish to take a view on how the benefits and requirements of associate membership should differ from those of full membership.

Fairness and objectivity of standards

57. For a new system of independent self-regulation to be credible it must be seen to be setting and enforcing fair, reasonable and generally acceptable standards. It has been very striking, throughout the course of this Inquiry, that, whereas numerous witnesses have criticised the apparent failure of the PCC, there has also been a broad consensus that the Editors' Code of Practice is fundamentally fit for purpose – an appropriate and well-honed document that sets very fair standards. The problems and criticisms have focused upon the way in which the rules have been enforced, not the way in

which they have been set. I therefore believe that the agreed minimum standard should continue to be set through the Editors' Code, the first words of which state: *'All members of the press have a duty to maintain the highest professional standards'*. The pre-amble to the Code goes on to assert that:

'It is essential that an agreed code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest.'

58. This emphasises the strength of the Code and its firm grounding in principles whose practical application is well understood but flexible in practice. I think it is important editors should retain a majority on the Code Committee. On a philosophical level, this is an integral part of any meaningful concept of self-regulation; and on a much more practical level, it is editors who have the greatest understanding of how the contemporary industry operates and know what standards are reasonable to expect. To increase confidence in the system, however, I do believe it is important that an independent element should be introduced onto the Code Committee.
59. There has been considerable debate about whether the Code should “belong” to the new regulator and whether or not the Editors' Code Committee responsible for the Code should stay outside the umbrella of the regulator. There is certainly no consensus within the Commission itself on this point. Despite the on-going (but invariably good-natured) disagreements, I do not believe this is a fundamental and doctrinal matter. On balance my personal view remains that the Committee should stay outside the regulator, but a significant independent element should be introduced. What there certainly should be, is considerably enhanced communication between the Code Committee and the regulator.
60. There is already a limited form of co-decision in place, and changes to the Code are submitted to the PCC, to be agreed by Commissioners. I believe this relatively informal arrangement should be codified and strengthened considerably. It should be

explicitly written into the regulations of the future system that the Code Committee must agree all Code changes with the regulator.

61. If either the complaints arm or the standards arm of the new regulator detects any negative trends or practices developing, it should be able to put a proposal, via the board of the regulator, for the Code Committee to consider changing the Code to deal with them. I believe the Committee must be required to consider such proposals seriously. Indeed, I believe its default policy should be to accede to them. Giving the regulator the power to initiate changes would shift the balance within the system, without undermining the fundamental principles of self-regulation. The Code Committee should, of course, retain its power to make changes of its own volition, plus considering changes suggested by the general public and other bodies. Such amendments to the system should ensure that any decisions made by the Editors' Code Committee would be transparent, objective and accountable.

62. While the Editors' Code has been broadly effective in providing an acceptable minimum standard, much of the language in it is negative, detailing what journalists must not do. The work of the PCC in promoting a proportionate, humane and considerate approach to grief and shock, inquests, suicides, mental health and the like is conspicuous and something of which Commissioners and staff are rightly proud. I believe the new regulator must do yet more, positively to promote recommended practice across the industry, doing so more in terms that are likely to address themselves eloquently and persuasively to the citizen, as well as to the press itself. The Code is applied overwhelmingly to what is published – and not to the broader question of what makes a “good” journalist, or a “good” publication. A positive definition of what might constitute ethical, professional standards is required. Citizens must also understand more readily what they are entitled to expect. I therefore believe we must further develop and proliferate clear regulatory guidance, which clearly sets out ethical and professional standards for the press.

63. Currently the Editors' Code Committee produces an Editors' Codebook which brings together the Code and summaries of regulatory precedents and guidance, to help editors and journalists to understand the current thinking of the regulator and stay up

to date with any developments. While the Codebook is a good document, it is not being utilised to its full potential. There have been two printed editions published, one in 2005 and one in 2009, but excellent work has been done to update it on-line. The Codebook should go on becoming more and more a living document, kept constantly up to date on-line. In an ideal world, the Codebook of the future might also outline not only developments in regulatory precedents, but also significant examples of best practice promulgated by the regulator.

64. Although I expect that the Code Committee, or some successor body allied to the industry and outside the regulator, will carry on publishing the Codebook, the regulator should also produce many more complementary guidance notes of its own on a much more systematic and predictable basis. The PCC does already issue guidance notes, but the regulator needs to increase the frequency with which these are published and increase the publicity they receive. The guidance notes should inform the industry of changes in case law and outline recommended best practice. There should also be guidance notes aimed at the public, which would inform the public of the treatment they are entitled to expect and the speedy and proportionate redress that must be available if standards are breached. Guidance notes should become a major tool in promoting the accessibility of the new system.
65. As I have already mentioned, the Code begins with a clarion call for professional standards, but journalism is more often thought of as a trade rather than as a profession. If the industry is to embrace self-regulation and regain its pride, however, I firmly believe it does need to become much more professional in all its behaviour. In many professions, such as the legal and medical professions, the concept of Continuous Professional Development (CPD) is part and parcel of daily life. There is a strong case for extending that principle into the world of regulated journalism.
66. I believe the new regulator should have a responsibility to promote training and guidance. The National Council for the Training of Journalists (NCTJ) already sets something of a “gold standard” in the training of journalists and I believe the new regulator must do more to encourage that sort of excellence, within publishers and publications of all shapes and sizes. For over a decade, the PCC has directly provided a wide variety of training to sections of the media. This has taken the form of lectures

to journalism students at university or on specific post-graduate courses; seminars in newspapers and magazines; and bespoke training in national and regional newspapers. Generally the training has updated journalists on any changes to the Code, and the implications of those; concentrated on cases which are relevant to their work; and debated issues which are concerning them with regard to news-gathering. The PCC has also worked specifically with titles to offer bespoke training on issues of interest/concern to them. So far in 2012, the PCC training regime has carried on as normal and, encouragingly, there have been signals that the interest in this service is increasing. The new regulator should build on this as part of its offering to members.

Independence and Transparency of Enforcement and Compliance

67. If the new system of regulation is to command public confidence, it must be operationally independent both of politicians and of the newspaper industry. The chairman of the organisation – whom I would also designate in my ideal scenario as an ombudsman – should therefore be wholly unconnected with the industry and independently appointed. There should also be an independent majority on the board and on any panels that are appointed to bring additional expertise, gravitas and authority to the work of the full-time employees of the various arms of the new regulator. In other words, every constituent part of the regulator should be independent-dominated.
68. I have already argued publicly for the retention of serving editors as a minority presence, because of the up-to-date, lively and credible insight into the practices of the industry that they bring to the table. I have observed them at first-hand and I have seen for myself that they are more than capable of working with their independent colleagues in pursuit of the public interest. I must acknowledge, however, that their presence within the inner counsels of the PCC has given rise to considerable disquiet amongst the critics of the system, many of whom seemingly have not realised that the editors are now in a minority. I may disagree with that perception, but I fully accept the need to address it directly. The entire organisation must work – and, crucially, also be seen to work – in the public interest, so I believe everyone connected with it – including serving editors and other nominees of the industry – must undertake to divest themselves of all sectional and/or special interests and considerations in their

work for the regulator. They must undertake, in terms, to “leave all that baggage at the door” as they seek to present a balanced, consensual view for the greater public good.

69. To support and sustain that level of robust independence, it is essential that an appointments process should be designed, which is demonstrably transparent and accountable from start to finish. On the assumption that this will not be a statutory body, I understand it would not be possible for the Public Appointments Commissioner to assume a formal role, but I would certainly see much wisdom in seeking his advice, guidance and, possibly, limited validation, without in any way compromising the regulator’s independence from government. In order to command public confidence, I believe the adjudications panel should ideally be much more representative of the country. I do not endorse the concept of “positive discrimination”, but I do believe those making the appointments should have the opportunity to select (on merit) from a range of people from a full diversity of backgrounds. The regulator must be for everyone.
70. I believe the chairman of the organisation should continue to be appointed separately. I know the industry will wish to continue to play a role in that appointment and I think it should. The question is, how great should or could that role be? The challenge is, how to maintain the concept of self-regulation, whilst also removing any perception that the chairman of the regulator could be subject to any form of improper influence by the industry. The system of appointment, as well as the individual appointed, must command public confidence and respect.
71. I suggest that the position should be widely and publicly advertised and a short list should be produced independently by head hunters. Then a panel of four should make the final decision. This panel should consist of two independent members and two people nominated by the industry. The appointment must be unanimous, but I am personally very open-minded about whether the chair of the panel should be taken by an independent member, or by someone nominated by the industry.
72. There should also continue to be a thoroughgoing process for selecting independent Commissioners or their equivalents throughout the organisation, but it would not have

to be as arduous as the process for selecting the chairman. Considerable progress has already been made in the appointments process. The vacancy for a chairman was widely advertised last year and my own appointment was scrutinised by an independent assessor. Half of the current independent Commissioners have also, over the last year, been appointed through a robust public appointments-style process involving an external assessor.

73. Another question that must be resolved is that of who should have the power to remove the chairman, or other members of the board, should that extreme measure ever be necessary. A range of possibilities exists. My personal preference is for that power to reside with the board itself, which might be required to act either by a simple majority or by unanimity. What I am convinced of is that it must not be within the exclusive power of the industry itself to remove any independent members of the board, including its chairman.

Powers and Remedies

74. The main principle behind my proposals is that each publisher should take more responsibility both for maintaining internal ethical standards and also for handling complaints. That system must be policed by a regulator with real “teeth”. A critical failing of the PCC has been its lack of any serious sanction or enforcement powers. The PCC has dealt principally with material that has been published, with one obvious and very important exception being its application of clause 4 of the Editors’ Code (harassment). Going forward the new regulator will have to move beyond that and become involved with systems and practices within the industry.
75. The proposed new standards arm would be the principal, wholly new feature of the new regulator. It would complete the armoury of regulatory functions, acting preventatively and monitoring and enforcing effective self-regulation. I believe it should consist of a small team led by a Head of Standards, who would be able to draw upon an external pool of experts, as needed and paid pro rata. The standards arm will need a sliding scale of responses and sanctions.

76. These could include, but not be confined to:

- Requesting internal documents and/or emails;
- writing formally to express concerns;
- arranging formal, minuted meetings with editors or publishers;
- formal requirements for changes in operational practice;
- most seriously, full-scale investigations with the prospect of fines.

77. As I have already adumbrated, all regulated publishers will be expected to put in place effective internal compliance procedures and there should be a named, senior member of staff responsible for overseeing standards within each publisher. My strong preference is for accountability to rest with either the chairman or the chief executive of each publisher. On the “front line”, however, it will inevitably have to be the editor of each publication who must be responsible for ensuring compliance within the publication. Good editors do this anyway. Making the editor accountable for compliance within each publication will help to guarantee that the public interest is constantly being considered and valued appropriately.

78. I propose that the standards arm should receive and study in detail an annual report from each regulated publisher, in which the publisher would set out what measures are being taken to ensure compliance with the Editors’ Code at its titles, and how well these measures are working. The state of affairs at each publisher would be measured against a set of agreed targets, making this a system of audited self-regulation. The internal compliance officer would certify compliance with the Code and submit an annual report as part of the certification. The standards arm would then have the right to audit such certification. I would expect certain practices to be the norm, for instance requiring compliance with the Editors’ Code in the contracts of individual employees, checking Code compliance when obtaining stories or images from freelance sources and keeping employees fully informed of changes to the Code.

79. One of the most common concerns raised through feedback to me has been that the system of annual reports might place a disproportionate burden on smaller publications, such as the regional and local press. It has been argued that, as regional

publications tend to have fewer complaints referred to the PCC, it is unfair for each of them to have to go through the same annual report process as a national. I agree. The system must be proportionate.

80. The first observation to make is that I believe there should be one annual report from each publisher, not a separate one from each publication. If the same criteria are applied by a publisher to all its titles, the report will be far simpler to compile. Where there are differences – for instance if some publications have the Code written into contracts but others do not – then that will have to be set out in detail.
81. If a publication has behaved responsibly and had very few (or no) complaints referred to the regulator, its annual report process will be relatively swift and straightforward. It would just fill in the basic annual report which would contain a set of generic standards-related questions, such as whether all staff have the Code written into their contracts; what is being done to ensure each journalist is aware of the Code; whether the publisher has a mechanism in place to deal with public interest decisions; whether staff have received training or attended any training courses; what internal procedures exist for dealing with complaints and how many of those have resulted in a published correction or apology; and whether there is a policy on the placement of corrections. This basic annual report should serve to reassure the regulator that a publication is behaving responsibly and has systems in place to safeguard a high level of ethical standards – or else to provide early warning signs if a problem is developing.
82. When a publication has breached the Code during a given year, however, the annual report will necessarily become much more complicated and detailed. A publication will have to set out, case by case, how it has responded to any Code breaches it has committed, but in promulgating high standards of ethical and responsible journalism, the standards arm of the new regulator will inevitably wish to look beyond strict Code issues. For instance, if a publication has been found in a court of law to have defamed someone or inappropriately breached their privacy, perhaps that too should be covered in the annual reports. In each instance, the regulator will have a legitimate interest in what steps have been taken to prevent a recurrence and might pose certain, carefully tailored additional questions accordingly. This will require on-going monitoring.

83. Such in-depth questions would be rigorous, time consuming and at times embarrassing. They would also be highly targeted and wholly proportionate. This creates an added disincentive for allowing standards to slip. This system would also provide publishers with a formal opportunity to explain how mistakes happened, and what has been done to rectify them and prevent any recurrences.
84. The new regulator should have powers to investigate and issue fines. In the paper submitted to the industry on 15 December, those powers were linked to ‘a serious or systemic breakdown in standards’, so it is only fair that some description should be given of what the regulator might judge to be “systemic”. Some Code breaches happen purely because of the incompetence (or malign intent) of an individual journalist, but a systemic breach would be of a different order entirely.
85. My own view is that, as in the case of the public interest, it is essential not to be excessively prescriptive. Factors that might play into the concept of “systemic” would include, for instance, a pattern of behaviour, policies or practices (or absence of practices) that are part of the structure of a publisher or individual publication and which result in a failure to maintain an acceptable level of internal standards. Repeated failure to handle complaints internally, or failure to cooperate helpfully with the process of negotiation and/or mediation, would also point to a failing in the internal standards process. There might be a systemic breach if a publisher appeared to have made no improvements in standards after being punished or warned by the regulator about previous lapses.
86. A broad and basic definition might be as follows: “Systemic failure occurs when breaches of the Code have happened, within a regulated publication, either because there is an internal system in place which encourages or enables them to happen, or there is a lack of a system in place to prevent them”.
87. Alternatively, it might make sense to take language from a recent and relevant piece of legislation, such as the Corporate Manslaughter and Corporate Homicide Act 2007, which refers to an organisation being guilty of an offence ‘only if the way in which its activities are managed or organised by its senior management is a substantial element

in the breach'. In the same Act, a "gross" breach of the relevant duty of care is judged to have occurred when standards have fallen 'far below what can reasonably be expected of the organisation in the circumstances'.

88. The Head of Standards could recommend a full-scale standards investigation based on a number of factors. The first would be evidence emerging through annual reports appearing to indicate a serious breakdown of internal standards within a publisher or publication. If an annual report from any publisher showed that publications had failed to take appropriate action in response to complaints throughout the year, this could trigger an investigation. I believe the complaints arm should be entitled to refer a case to the standards arm, if a pattern of serious and well-founded complaints has emerged against a publication, which could indicate a systemic breakdown of internal standards. A complaint might also be referred to the standards arm if a publication was not responding adequately to the rulings of the complaints arm, for example if it failed to give agreed prominence to apologies or refused to publish adjudications.

89. A single, high-profile case might also directly and automatically trigger a standards investigation, as several of the most serious cases that have come before this Inquiry certainly would have done. Where there is *prima facie* (and often highly visible) evidence of serious and harmful breaches of standards, it is important for public confidence that the standards arm should become immediately active, without having to wait for the complaints process to run its course. The new regulator should refer truly grievous cases directly to the standards arm to investigate how they happened. If such an investigation revealed instances of serious or systemic breakdowns in standards, then the publications involved might well have to pay substantial fines. In time, I hope that such a tougher, more pro-active new system would not only deal robustly with extremely egregious cases once they had occurred; it would also serve to prevent them ever happening, by changing attitudes and newsroom cultures.

90. In the case of telephone hacking and the ill-fated PCC report of 2009, which has now been withdrawn, what was lacking at the time was the power to investigate and seek the facts. The PCC made a mistake. It ventured into an area where it had no real power or remit. We must always remember, of course, that there are laws to deal with

phone hacking. There is, however, a discernible, slippery slope from relatively minor breaches of good practice and perhaps, the Editors' Code, to the kind of illegality that phone hacking represented. A strong regulator could nip these practices in the bud. The annual reports would help to provide insight into internal standards. The standards arm could also investigate the practices of an offending newspaper once any criminal proceedings had run their course, finding the root causes and preventing a recurrence.

91. If a publication breaches a term of the contract, for instance by refusing to submit an annual compliance report to the standards arm, this too could be treated as a serious breach of standards, though it would be for the board to decide whether to commence legal proceedings for contractual breach.

92. The Public Interest Disclosure Act (PIDA) 1998 provides a safe alternative to silence for employees who are concerned about ethical, legal or regulatory lapses at an employer. I believe each regulated publisher should be required by the new regulator to provide an externally-run whistle-blowing service to all employees, including journalists, free-lancers and unpaid interns. The number for that line should be prominently displayed. Employees should feel able to have complete confidence in those services, though the new standards arm could also serve as the “whistle-blowing” line of last resort. I should therefore like to see the new regulator designated as a prescribed regulator under the terms of the PIDA (though the terms of the PIDA are currently being re-examined by Parliament and I understand the precise system of prescribing regulators may be amended). Where a whistle-blowing call appears to indicate a substantial problem, a pre-investigation could be activated.

93. Confidentiality must be respected so far as possible by all these services, and other reasonable protections should be afforded to the individuals concerned. I am well aware that there will always be those seek to use allegations of unethical behaviour to pursue personal grievances. Of course the system must guard against that kind of vexatious activity, but reprisals against anyone raising a genuine concern should not be tolerated.

94. The sources of referrals might therefore look like this:

- Referral by the complaints team;
- Own-volition investigation (which could be for a variety of reasons – a scandal, legal proceedings that have concluded but seem to have standards implications, etc.);
- Breach of contract;
- An instance of “whistle-blowing” by a journalist.

95. If there is *prima facie* evidence of a serious or systemic breach of standards, the Head of Standards and his or her team would undertake a thorough preliminary investigation. They would need adequate authority and powers to ensure the preliminary investigation was robust and meaningful. If sufficient grounds for concern emerged during this preliminary investigation then the Head of Standards would seek authority from the board for a full investigation. The decision to launch a full-scale standards investigation would be a serious decision that should never be undertaken lightly. It would involve significant costs and, whilst the principle of “polluter pays” seems sensible, those costs would have to be absorbed by the regulator if a publication is found not to be “guilty”. The standards arm will require a substantial contingency fund to guarantee its investigatory capacity.

96. The new regulator would require a pool of professional people, consisting of individuals with high-level experience of investigations, from which to draw the necessary panels to undertake any investigations instigated by the standards arm. I suggest any investigation should be undertaken by a panel of three drawn from that pool, supported by the standards team and consisting either of three individuals wholly unconnected with the industry, or (possibly – in exceptional cases only) of two such independent experts, plus one person with useful expertise who has been connected with the industry in the past, such as a retired editor, newspaper executive or broadcaster. The report from the panel would make recommendations for consideration by the board (the question of recusing industry members might arise).

97. If an investigation panel came to the conclusion that a publication had not complied with the standards of internal self-regulation expected, and the board agreed, then the publisher would be compelled to pay the cost of the investigation and it would be issued with sanctions. These could include a strict requirement of urgent remedial action to improve internal systems and/or a proportionate fine if the breach was sufficiently serious. A publication could be put on “special measures”, subject to a second inspection and a suspended fine. Fines should be genuinely proportionate – proportionate both to the seriousness of the lapse or breach that has been uncovered, but also to the ability to pay of the publication concerned.
98. If a publication was issued with a fine, there would be various possible methods of collecting it. The fine could be added to the relevant publisher’s membership fee for the next year. This would have the advantage of punishing those who do not uphold the expected standards while effectively rewarding those that do, through proportionately lower funding demands. There is an alternative view, however, that a publication that has been fined should – at least once any appeal has been exhausted – be expected to “get the cheque book out there and then”. The fine might then be put into a pool, possibly topping up the contingency fund of the standards arm. Personally I would be uncomfortable with any system of fines that had the effect of adding to the annual budget of the regulator or prejudicing discussions about the future budget, effectively creating an incentive to fine. It would not be acceptable for the viability of the regulator to be linked with the level of fines levied.
99. There is debate over whether the ruling of the investigation panel should be final or whether there should be an appeals process. It is arguable that it could be final, as publishers would have agreed through the contract to accept any rulings of the new regulator. The advantage of this would be that, if an appeal were to be allowed, then publications would be likely to involve lawyers at this stage, which could mean the regulator would have to do likewise, leading to increased costs. On the other hand it could be seen as more fair and just to allow a publication the right to appeal, perhaps to a panel drawn from other members of the pool of experts. Alternatively, if appeals were permitted, the appeal could be made to the same independent assessor who reviews adjudications in the complaints arm (see paragraph 118).

100. It is important to note that, although the ability to fine would provide a serious tool for punishment, it is also intended to be a significant deterrent. The success or failure of the new regulator should not be judged on the number of fines it imposes. The fines should serve to recalibrate incentives across the industry, ensuring that compliance would be seen as an investment not a burden; and making it commercially sensible to promote training courses, follow correct procedures and maintain ethical standards. The new regulator should be judged over time on the effect it has on standards across the industry and the service it provides to the public.
101. I have argued from the outset that the existing complaints function of the PCC is very effective and I adhere to that view. Nonetheless, this Inquiry does provide an excellent opportunity to go back to first principles and consider any aspects that do not work as well as they might. In any case, we are in a different world now and, rather than just continuing “as is”, the complaints function will have to adapt to the new regulatory structure.
102. A principal, distinguishing feature of the new system of independent self-regulation that I am recommending is for publications to take much more responsibility for dealing with any complaints and also to be the first port of call for pre-publication requests. It should become the norm that a complainant will first approach the publication with any complaint and that publication should try to resolve that complaint initially. Publications already do this to differing degrees. Each publication should commit to publicise clearly how to complain ; and the introduction of standardised corrections columns would also be beneficial.
103. In order to frame a discussion on the complaints arm generally and on remedies in particular, I think I must first outline how the existing complaints process functions. Currently, every time the complaints team receives a complaint, that complaint is recorded and added to the database. The staff will first assess whether the complaint falls within the jurisdiction of the PCC. The complaints team will not pursue a complaint that falls outside that jurisdiction, but it will endeavour to redirect the complainant or help in any other way possible. If a complaint does fall within the remit of the PCC, it will either be investigated by a complaints officer or, if there is no *prima facie* evidence of a breach, it may be sent straight to the Commission. The

Commission will then either rule that there is no breach, or send it back to the complaints office for further investigation.

104. The complaints officers investigate a complaint through a transparent and open series of correspondence between themselves, the complainant and the publication. The complaints officer will initially write to the publication enclosing a full copy of the complaint; the publication is given seven days to respond. The complaints officer will go back and forth between the complainant and the publication to try to resolve the complaint by getting the publication to agree to a remedy that is satisfactory to the complainant. This is a process of brokered or proxy negotiation, not mediation. This might include, amongst other things: the publication of a clarification; a correction; an apology; the publication of a letter from the complainant or a representative; or the removal of on-line material. If a complaint is resolved in this manner, under the current system, no ruling is made on whether or not the publication has breached the Code.

105. In seeking to resolve a complaint, the PCC can also, in appropriate cases, help to facilitate face-to-face mediation between the complainant and the publication. This has been used successfully in the past, but in practice it is done relatively rarely. I believe the system needs to be strengthened considerably. In a number of cases, face-to-face mediation, organised by a trained mediator, could well succeed where negotiation by letter, email or telephone call has failed. It might even, with the agreement of both parties, lead to a full and final settlement of a complaint against a publication. The PCC is not adequately resourced to provide that service on a significant scale, so such a suggestion inevitably has budgetary implications.

106. If a complaint cannot be resolved, then it is sent to the Commission who will adjudicate on the case. Commissioners receive a substantial sheaf of papers every week and are expected to sign off on those papers within seven days. As a rule, Commissioners are highly assiduous in doing their "homework". The Commission has three options: to rule there has been no breach of the Code; to rule there has been a breach of the Code, but the publication has already offered sufficient remedial action (SRA); or to rule that there has been a breach which has not been satisfactorily

remedied (critical adjudication). Only SRAs and critical adjudications are recorded as breaches of the Code.

107. Illustrative figures for 2011 are as follows:

The PCC received 7,341 complaints. That total includes over 1,400 multiple complaints; almost 850 complaints that were outwith the remit of the PCC (for instance they related to broadcasting media) or on matters of taste; and 2,125 that were not pursued by the complainant after initial contact had been made. The number of investigations undertaken, cases resolved and rulings made was therefore considerably lower than the initial total of complaints. The Commission undertook 1,287 investigations into complaints that raised a possible breach of the Code and issued 1,713 rulings, including those on complaints where the PCC was able to determine without investigation that there was no breach of the Editors' Code of Practice.

A total of 986 complaints were given a ruling of "no breach" after the PCC complaints team submitted a written recommendation to that effect to Commissioners and that recommendation was accepted without the need for a discussion at a Commission meeting. A total of 597 complaints were resolved after the PCC complaints team negotiated for the publication to take remedial action with which the complainant was satisfied. In 88 cases, the Commission ruled on the basis of written evidence that there had been a breach, and the publication had taken or offered sufficient action to remedy the breach. A total of 42 complaints, which were not resolved or otherwise concluded, proceeded to full, formal adjudication at a meeting of the Commission itself. Of these 20 were upheld, 8 not upheld and 14 were judged to have been sufficiently remedied.

108. What is striking, as one digs into those figures, is the relatively small number of Code breaches that are recorded; and also the relatively small number of complaints that are discussed in person by Commissioners. Those are the tip of a far larger "iceberg" and many of the complaints that are resolved by the complaints team are brought to that satisfactory outcome only as the consequence of many long hours of hard work. I do think there should ideally be a much faster track from the

beginning of the negotiation period to consideration by Commissioners – and any obdurate, truculent or unreasonable behaviour on either side (or both sides) should be taken into account by the adjudicators.

109. The mantra of the PCC is 'Fast, Free and Fair', which neatly encompasses what most complainants value. Most complainants who feel they have been wronged are after a swift resolution to their complaint with either a clarification or an apology. That having being said, there are aspects of the complaints side that could usefully become significantly tougher.
110. Many critics of the PCC system refer to inadequate prominence of corrections as a significant failing. In practice, however, the reality is that prominence is almost always agreed and honoured. It is also increasingly rare for a publication to “jump the gun” and publish before prominence has been agreed. My preference is therefore for the contract to allow for the right of the regulator to dictate prominence of any correction if (and only if) there is a failure to agree, or a publication reneges on such an agreement. This puts the editors in control of what appears in their papers, unless they fail to agree. Given the relatively small number of adverse adjudications, I think there may be a case for all of them to be “flagged up” on the front page or home page of the publication concerned. This would increase the effectiveness of the adjudications and also awareness of the new regulatory system. It would also make it even less desirable to receive an adverse adjudication. I believe a critical adjudication should remain the strongest sanction on the complaints side of the new regulator.
111. So far as prior notification is concerned, sometimes a publication has good reasons for not wishing to inform an individual or organisation in advance about a piece it intends to publish – for instance because crucial evidence may be destroyed or an “exclusive” may be lost. There is much to be said for creating an incentive for publications to share their thoughts with the regulator in such cases, on a confidential basis, to put onto the record the fact that the editor has given full and serious consideration before taking any decision not to notify . It should also be borne in mind that sometimes individuals who are the subject of a negative story believe they can prevent its publication by “going to ground” and refusing to pick up the telephone.

Consulting the regulator in such complicated instances should be positively encouraged, not least because it helps to establish a clear and certifiable “audit trail” of decision-making – and publications should certainly not run the risk of being punished for acting responsibly. This could never be purely a listening exercise, but I do not believe the regulator should ever provide binding advice, nor should we confer upon the regulator executive power to prevent publication. Such discussions – or the lack of them – could subsequently be taken into account by the regulator or a court, but a conversation with the regulator in this regard must never amount to a “can I get away with this” service.

112. There has been a great deal of lively debate on whether the new regulator should add an element of financial remedy to the existing complaints function. The current system is based on bringing complainants and publications together to try and reach a conclusion that satisfies both parties. The PCC complaints officers have expressed strong reservations about changing this fundamentally and members of the Commission have agreed that the cooperative way in which the PCC seeks to resolve complaints would be undermined by the introduction of financial redress.
113. If formal compensation was made available it is extremely likely many more complainants would refuse to participate meaningfully in mediation and would simply refuse to resolve any issue without an adjudication. This would raise serious issues of resourcing and, arguably, act against the public interest: for every complainant who received compensation there would be dozens who received a much slower service as the regulator became buried under applications (many of which would be purely speculative) for compensation. It would also run counter to my proposal that there should be true self-regulation, including more effective internal handling of complaints. That is not to say, however, that there must never, ever, in any circumstances be any financial element to a settlement negotiated by the regulator. In fact, there already can be a relatively small element of financial remedy in a limited number of mediated cases, often in the form of an agreed donation to a charity.
114. Some complaints are of a highly abstruse and technical nature and it is simply not plausible that a relatively small regulator will be able to acquire the necessary in-

house expertise to deal satisfactorily with the most complicated of these cases. This is a growing problem particularly, but not exclusively, where scientific controversies are concerned. There will be resource implications, but the regulator will need a greater capacity than the PCC currently has, to draw occasionally upon authoritative and respected, external advice. Sometimes a judgement on factual accuracy is impossible.

115. The PCC's policies on third-party and group complaints have evolved over the years and the position is often misunderstood, both within the industry and by the public. Our first-party rule is, in fact, not substantively different from the rules on standing promulgated by all tribunals. The PCC generally takes forward complaints about matters of fact for which there is no "first party", or for which the information needed to reach a determination is already in the public domain. In circumstances where there is an individual involved (who has not complained) and where pursuing an investigation or negotiating a remedy could be potentially intrusive or pose other difficulties, complainants are now offered the opportunity to argue that there is an exceptional public interest that means the Commission should take forward an independent, own-volition investigation. In practice, the PCC rarely chooses to proceed in such cases. In my opinion, the current position is sensible. The new regulator should, however, clarify the policy and make an increased effort to communicate it effectively.

116. Since taking up the reins at the PCC I have held face-to-face meetings with the representatives of a wide range of minority groups. Many of them have expressed concern that clause 12 of the Code relates only to individuals. The Code in Ireland proscribes the publication of 'material intended or likely to cause grave offence or stir up hatred against an individual or group' and I know many campaigners would like to see a similar provision introduced here. There is a delicate balance to be achieved here, because it would not be in the public interest to open up the possibility of allowing the Code to be systematically abused by those whose principal or sole aim is to restrict freedom of expression. Nonetheless, there is sometimes a genuine sense of grievance when members of a group feel that unfair or inaccurate comment or distorted news coverage has put them into an unjustly unfavourable light.

117. Much of the problem can already be addressed by means of clause 1 of the Code, where a “first party” is not necessary, but I believe that, when a body of evidence has mounted, suggesting that any publication has been engaged in repeated or systematic vilification of any vulnerable group, the new standards arm might have a role in publishing clear guidance on such matters. Although it would be impractical for the complaints team to follow up and investigate each third-party or group complaint, a clear pattern of complaints might be taken as possible evidence of a systemic breakdown and the regulator could regard this as a sufficiently serious issue of public interest to justify a pre-investigation by the standards arm. This area provides another example of how important the communication and cooperation between the complaints and standards arms will be.
118. The current PCC practice is that an independent reviewer may revisit the handling of a case, but consider only the processes, not the substance. In the presentation to the industry on 15 December, I proposed that the new regulator should instead have an independent assessor, who would also be empowered to consider the facts of the case, in line with the recommendation of the Independent Governance Review commissioned by the PCC in 2009, which duly reported in 2010. If the assessor has cause for concern, a case could be referred back to the adjudications panel for further consideration. I believe that would be a positive development.
119. As the Inquiry has pointed out repeatedly, there is a real and serious problem surrounding defamation and privacy. Ordinary members of the public often cannot afford to pursue legal redress, because the costs involved in a defamation or privacy case are extortionately high. On the other end of the scale, wealthy individuals are able to bully publications into submission with the threat of potentially ruinous costs. This system does not provide sufficient access to justice. So far as defamation is concerned, Her Majesty’s Government is attempting to address this problem, by means of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 and, now, the Defamation Bill it has introduced into the House of Commons.
120. Having studied the Joint Committee's Report on the Draft Defamation Bill (HL Paper 203 – HC 930-1), and having consulted widely on the topic, I have come to

appreciate the potential value of introducing a new system of formal and potentially binding arbitration between parties designed to take place in advance of defamation proceedings on privacy and/or defamation.

121. The report from the Joint Committee states:

"Arbitration represents a cost-effective alternative to the courts, and helps to reduce the impact of any financial inequalities between the parties. The financial and other incentives to use arbitration must be strengthened as far as possible" (paragraph 85).

122. I wholeheartedly agree that we urgently need a more effective system of redress for members of the public who cannot afford to take a case through the courts and I would fully endorse a much tougher, even compulsory, system of bringing parties together in the hope of reaching a full and final settlement on claims. Lord Justice Leveson has expressed interest in "bolting on" to a new regulator what he has described as an "arbitral arm". Certainly, it is one of the great advantages of the architecture I am propounding that this addition of a third "arm" would be a relatively straightforward proposition in terms of the overall structure of the organisation.

123. I do not, however, believe personally that a formal arbitration system should be incorporated within the structure of the new press regulator. This is also overwhelmingly the view of my fellow Commissioners. If such arbitration is set up, surely it should be available to every citizen who legitimately and genuinely believes he or she has been defamed, so it seems to me counter-intuitive to provide that opportunity only to those who have been libelled – either on-line or in print – by publications that happen to fall under this particular regulator. For example, it would be nonsensical for someone who felt they had been defamed by the BBC either to have no access to arbitration, or to have to bring the BBC into an arbitration system run by the new press regulator, to which the BBC would not subscribe.

124. Secondly, and equally importantly, I do not believe that a system of formal arbitration provided by this new regulator could match up to the very important criterion of "fast, free and fair". A system of arbitration would inevitably require trained lawyers, additional staff and extra facilities. The Article 6 implications of

establishing an arbitral arm would inevitably lead to much greater cost and expense. A system of self-regulation, funded by the industry, would simply not command the necessary resources to incorporate this additional function.

125. I also have a third concern, which is by no means insuperable, but which would apply to an “arbitral” function wherever it is. We must ask why the industry would freely agree to go through arbitration in cases brought by members of the public who could not otherwise afford to pursue legal redress, opening up the prospect of an increased number of pay-outs; and also why any relatively wealthy individuals would submit to arbitration when their lawyers are assuring them they could successfully intimidate any publication with the threat of a fully-fledged court hearing? In my view the system would need statutory backing to operate meaningfully.

126. If the process was legally required and/or heavily incentivised, the industry might well engage very constructively indeed with the notion of remedying many smaller cases, but only if they could be genuinely confident they would also be spared the disproportionately high costs of a small number of potentially very expensive cases over the same period of time. Such a change would offer balance, as well as improved access to justice. This could potentially be achieved by means either of primary legislation or of some authoritative amendment to the civil procedure rules, creating a statutory pre-action protocol.

127. In the absence of a fully-fledged arbitration function within the structure of the proposed new regulator itself, the strengthened capacity for mediation within the regulator that I proposed in paragraph 105 would be critically important.

Cost

128. I do not believe a system of redress will be seen as fair unless it is free to complainants, so I am opposed to requiring them to make a financial contribution. I also believe speed is of the essence. The PCC provides excellent value for money. It is often spoken of in the same breath as regulators such as OFCOM and the Advertising Standards Authority, but it has only a fraction of their budgets. It has

adapted to the considerable additional demands of recent times within an agreed budget line. There are great advantages in the current arrangement, which sees the industry itself as the sole source of income and it would be my preference, if at all possible, for that situation to be maintained.

129. We must, however, face the fact that all of the proposals before the Inquiry do have resource implications, including my own and those of the industry itself. There will be considerable one-off, transitional costs if the existing functions and staff of the PCC are carried forward into a new regulatory body. Setting up an entirely new system from scratch would, in all probability, involve far more substantial one-off costs. There are also new, on-going functions being proposed, all of which would come at a cost. I hope and believe that, in the longer term, an effective standards regime and strengthened internal complaints handling within publications will lead to a reduction in the number of complaints to the regulator and, therefore, the cost of running its complaints function. I also hope membership will increase, creating new revenue streams, but both of those processes will inevitably take time to work through. This therefore raises the question of funding in the immediate future.

130. The industry is in a period of decline. It has nonetheless maintained levels of funding for the PCC in cash terms. Certain tentative and very hypothetical discussions have taken place about future funding, but I do not know for sure whether the industry is financially capable of meeting the full cost of a really effective new regulatory regime. If the burden becomes too great, it will not necessarily be the “worst” newspapers that cannot cope; it will more likely be the most vulnerable. It would be hugely damaging to our democracy and civil society if we were to drive our regional and local media out of business

131. I do not believe there is any point at all in parading grand plans for future regulation unless a secure and adequate, on-going funding stream has been fully secured in advance of any transition. The regulator must be adequately funded, so either the industry must come forward with that funding in its entirety, or, if it is unable to do that, then either the services will have to be scaled back, or alternative funding must be found elsewhere.

Conclusion

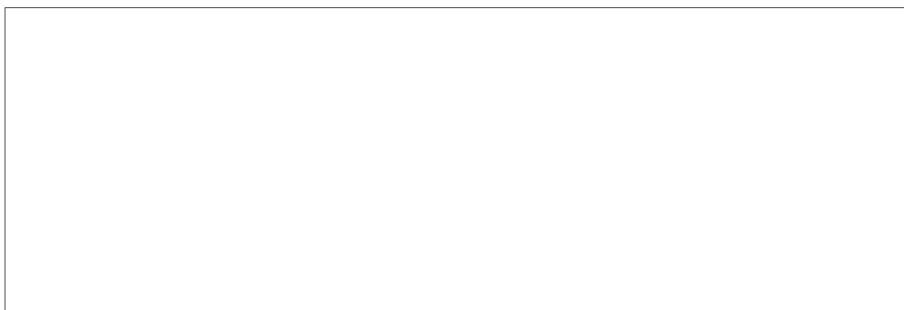
132. I believe the proposals I am recommending represent a genuine, fundamental and meaningful change to press regulation in this country. This would not be a case of self-regulation being granted one grudging, last chance; it is independent self-regulation being given its first chance. The public interest, for me, is embodied by a free and responsible press – a press that recognises and cherishes the considerable privileges it enjoys, and conducts itself accordingly. Only then can the press genuinely claim to protect freedom of expression, rather than recklessly jeopardising it by exercising power without any sense of responsibility and confusing license with freedom – the ‘prerogative of the harlot throughout the ages’. The answer to this conundrum is true self-regulation – the embodiment and self-imposition of standards – policed by an independent regulator with real “teeth”. This requires not only goodwill, but also effective systems, so the concept of seeking out, remedying and, if necessary, punishing systemic failures is intrinsic to policing self-regulation.
133. Effective self-regulation should be seen not as an unnecessary annoyance, a distraction or a waste of scant resources, but as an essential and indispensable part of the business plan of every publisher. It can also buttress the rough and tumble of really good, effective investigative journalism. The new regulator must be the scourge of the bad, the irresponsible and the downright cruel, but it should also be the stout friend and unrepentant defender of good, decent, hard-working journalists who act in the public interest, contributing enormously to our civil society.
134. Under the structure I propose, the fundamental freedom of the press would remain intact and the industry would retain a substantial input into the standards required, but the rules would be robustly enforced, for the first time ever, by a tough regulator with a clear mission to protect the public whenever the press oversteps the line. The future body would be a genuine regulator, with the power to investigate, the power to fine and the power to scrutinise annual reports; and it would have a legally enforceable way to guarantee compliance with its procedures. The system would also work for the public by striving to raise standards across the industry – promoting best practice, offering an improved complaints service with an enhanced mediation function and becoming ever more accessible to the public.

135. Earlier in this statement I sought to enumerate what I think a system of independent self-regulation might offer on a “menu” of incentives to usher errant sheep in through its portals: substantial new benefits and defences in law; a badging scheme; training and compliance support. There is another incentive, however, an external one that I dubbed the “Sword of Damocles” in my oral evidence in January. It is the threat that legislators may finally run out of patience and create a statutory regulator of the press. The industry should and must have no illusions about this. The siren voices calling for state regulation are as alluring as ever. A recent survey by the Institute of Public Policy Research revealed that public opinion is now overwhelmingly in favour of curbs on the press, with 62 per cent supporting ‘a legally established body set up by Parliament, with legal powers to regulate newspapers’.
136. Politicians can scarcely be oblivious to public opinion, and some have their own motives too. In 2009, revelations in the newspapers about abuse of the MPs’ expenses system caused one of the biggest political convulsions of the modern era, literally changing the face of the House of Commons, as numerous careers were cut short and reputations destroyed, across party boundaries. Although the recent Joint Committee on Privacy and Injunctions came down in favour of a reformed regulator that is ‘demonstrably independent of the industry and of government’, there was a significant minority voting in favour of diluting independence from the state and the final report recommended that, ‘should the industry fail to establish an independent regulator which commands public confidence, the Government should seriously consider establishing some form of statutory oversight’.
137. The threat of statutory regulation is therefore not a rhetorical bluff; these warnings are not quixotic. There is a real and present danger. Any visceral desire for retribution against the press on the part of certain aggrieved individuals can (and should) never be totally satisfied, but I do believe it is possible to achieve a broad political consensus for reform, so long as all parties are convinced the desired outcome – a responsible industry – will be achieved. A statutory regulator would not only inevitably meddle with the precious concept of editorial freedom; it would also cost a great deal of money. For all its faults, the PCC is a very lean organisation and

represents remarkable value. The same could be true of a successor body policing self-regulation. All history warns us that a statutory body would be a very different beast indeed. It would burgeon, as such bureaucracies invariably do; and in all likelihood every penny it spent would come not from the taxpayer, but from the industry itself. That is the true scale of the threat the industry faces.

138. These proposals are simply my recommendations. I stand by them and believe in them, but I do of course appreciate that others may not feel the same way. All, some or none of my recommendations may be endorsed by this Inquiry and ultimately by Parliament; whatever the case may be I must argue strongly that the new system should build on the foundations of the PCC. The PCC has talented and trained staff, who handle complaints tirelessly, courteously and highly effectively. They are the engine room of the organisation and an asset to the Commission. I sincerely hope the valuable inheritance of the PCC is recognised and cherished.

139. The gradual accretion of judgements over two decades – especially with regard to the public interest – and the institutional memory of the staff – should not be squandered. This experience of complaints has fed directly into the Code itself and the corpus of PCC judgements continues to play a fundamental role in setting standards and practices. For all its limitations, the PCC has become a model of how to harmonise principles with practice. The new regulator might also become a model of the mutual reinforcement of standards and compliance. I sincerely hope all of this invaluable experience can be carried forward directly into a genuinely new regulatory system.



8 June 2012

Annexe – examples of PCC precedents with regard to the public interest

Proportionality

In **Liberal Democrat Party v The Daily Telegraph (2010)** the Commission upheld a complaint about the undercover recording of journalists posing as constituents in conversation with Liberal Democrat ministers, making clear its particular concern about the possible effect on the democratic process of journalists using hidden devices to record MPs' views, expressed in constituency surgeries, "in order to test broad claims about policy matters". It was not persuaded that the public interest in exposing policy differences among Coalition members was sufficient to justify such a level of subterfuge.

In **Foster v The Sun (2000)** the newspaper decided to investigate public reports that Cherie Booth had used Peter Foster as a go-between to buy property in Bristol. As part of its investigations, it obtained and published details of phone conversations between the complainant and his mother, claiming they clarified events surrounding "Cheriegate". The PCC said no significant new information had been provided and upheld the complaint, noting that not to have done so would have been to expose all those involved in high profile news stories to unjustified intrusion.

In **Bretherick v County Times (2007)**, the complainant was a serving police officer who had been charged with possessing indecent images of children. The newspaper had signed up to a role-play website (under a false name) of which the complainant was a member, engaged several members in conversation about him, and published a photograph of him taken from the site. The Commission noted that the photograph had not been physically removed from any location, but rather obtained from the website, which could be joined by any member of the public. While it was not in dispute that the reporter had concealed his identity while joining the website, this was not a particularly serious order of subterfuge. The public interest in the identification of individuals who have been charged with criminal offences was sufficient to justify the level of subterfuge employed. The complaint was not upheld.

Editorial Responsibility

In **Munro and Bancroft v Evening Standard (2000)**, the newspaper sent a report to pose as a teaching assistant at a school selected at random. There were no prima facie grounds to investigate the particular school, and the Commission found that the newspaper's "retrospective justification – that the journalist had found some shortcomings once he was there which he was unaware about before – was not acceptable".

Freedom of Expression and the Free Circulation of Information

In **A woman v News of the World (2007)**, the Commission judged that, while one partner in a sexual liaison had a right to talk about his experience, it did not extend to private and intimate detail. The level of intrusion was disproportionate and the complaint was upheld. The Daily Mail ran a story, based on an interview with the same person, without the intrusive detail, and the complaint was not upheld. The Commission ruled: "The amount of information in the article was sufficient to enable the man's girlfriend to tell her story – as she was entitled to do – without including humiliating and gratuitously intrusive detail about the complainant's daughter."

In **Cornwall County Council v The Packet, Falmouth (2007)**, council officers using a 15-year-old boy in an undercover 'sting' operation to curb alcohol sales to underage customers complained when an angry shopkeeper's CCTV image of him appeared in a local paper. They claimed this infringed his privacy and rights as a child under the Code. But the shopkeeper, whose staff sold the boy alcohol, wanted to demonstrate publicly that he looked at least 18. The PCC concluded that the boy's welfare wasn't involved, and that the story of possible entrapment rested entirely on his physical appearance. To have found that the picture breached the Code would have interfered with the shopkeeper's ability to conduct his arguments freely in public — and could have been incompatible with his rights to free expression.

Public Domain

In **Ms Mullan, Mr Weir & Ms Campbell v Scottish Sunday Express (2009)**, the Commission criticised the newspaper for using material taken from freely-accessible social networking accounts, saying “the images appeared to have been taken out of context and presented in a way that was designed to humiliate or embarrass them”.

In **Minogue v Daily Mirror and Daily Record (2010)**, two newspapers reported that Dannii Minogue was pregnant with her first child just before her 12-week scan. The newspapers argued that publication could be justified on the grounds that the information about the pregnancy was already in the public domain, having appeared on the Sydney Morning Herald website the day before, as well as on a blog. As such, they argued, it had ceased to be private. The Commission did not accept the public domain argument: these references to the pregnancy were speculative rather than confirmed and did not mean that the information was so extensively in the public domain that it would have been perverse not to refer to it. This was no more than common sense; otherwise, any reference online would justify the publication of intrusive material. The Commission upheld the complaints.

In **A man v Northwich Guardian (2007)**, the father of a 15-year-old boy who had posted on YouTube images of himself and other teenagers firebombing a freight train, complained when the video was uploaded onto a local newspaper website. He said the interests of the youths outweighed any public interest in showing their faces. The PCC disagreed. It ruled that material showing anti-social or criminal acts committed in a public place by individuals over the age of criminal responsibility could not be considered private. The Code should not shield the perpetrators from public scrutiny. Also, the complainant’s son had put the material into the public domain voluntarily. The complaint was rejected.

Children

In **Carmarthenshire County Council v South Wales Guardian (2011)**, an article about the intention of a convicted murderer to launch an appeal discussed her young daughter's removal from her care by the local authority and subsequent adoption. It was accompanied by a photograph of the child, taken almost a year before. The local authority complained on behalf of the child's adoptive parents about the publication of the photograph, which had been provided by the child's biological family. The Commission accepted that the newspaper had been entitled to present the views of the child's grandmother on the subject of her removal from the family's care and that there was a general public interest in debating the actions of public authorities in the case, to which the article contributed. Following the adoption, however, the child's biological mother was no longer in a position to provide consent for the publication of the child's photograph. The Commission decided that it had clearly related to her welfare, and found that there were no exceptional public interest grounds specifically to justify the publication of the picture.