Leveson Inquiry into the Culture, Practices and Ethics of the Press

WITNESS STATEMENT

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1. I, David James Fletcher, Lord Hunt of Wirral, am a partner at DAC Beachcroft LLP, where I have been a partner since 1969, and have held a practising certificate as a solicitor since 1968. On 13 October 2011, I signed an agreement with the Press Standards Board of Finance Ltd (PressBof), under which I was appointed as Chairman of the Press Complaints Commission and to perform the duties and exercise the powers and discretions consistent with such appointment and such other duties and powers as shall from time to time be assigned or invested in me by PressBof. I took up this position on Monday, 17 October 2011.

2. Although I am new to this job, I have had a long involvement in issues relating to freedom of expression and self-regulation, both as a lawyer specialising in regulatory matters and as a Parliamentarian with a special interest in this subject. I was a member of the Cabinet when Sir David Calcutt produced his first and second reports and, in 2005 and 2006, I moved the amendment that successfully changed the Racial and Religious Hatred Bill to preserve freedom of expression.

3. I applied for the position of Chairman of the PCC – in response to an advertisement published in August 2011 – because I have a passionate

belief in the effective self-regulation of the press. I am instinctively opposed to the involvement of the state in the regulation of the press through statutory controls, because I believe that would be an unacceptable impingement on our freedoms. Both freedom of expression and a free press are integral to a free society. It is, however, a sad fact that these freedoms are enjoyed by only a minority of the citizens of the world. Press freedom is therefore, in my view, not an absolute "right"; it is a precious privilege that we are fortunate to enjoy in this country.

4. Such a freedom brings with it important responsibilities, the corollary of which is that the press must demonstrate its willingness to act responsibly, by organizing its self-regulation effectively, fully, independently, and transparently. The press must also show its support for the system by signing up to it.

5. As I have only been in post a little under three months, my views are still maturing and the observations contained in this witness statement are often general ones. I would like to divide my analysis into three sections: the strengths of the current system as I observe them; its weaknesses; and my initial thoughts about how self-regulation could be managed more effectively and rigorously in the future.

<u>The strengths of the current system</u>

6. During the pre-Inquiry seminars, the Chairman of this Inquiry issued an unequivocal call to arms to the press industry, to come forward with its own proposals for reform and regeneration of the regulatory system. I believe the industry has risen to the challenge and come together behind broad proposals that address the fundamental challenges we face. They

do so not in the interest of the press alone, but in the wider public interest.

7. I begin from the belief that the Press Complaints Commission was never intended to be, and is not, a regulator in the formal sense of the word, as it has no enforcement, compliance or monitoring powers. It was established, following the perceived failure of the Press Council in the late 1980s, to provide an effective system of redress to members of the public with a complaint about the press; to be a complaints conciliation and arbitration mechanism which could provide swift, cost-free and common-sense solutions to individuals in dispute with newspapers and magazines.

8. Its central features were those of a classic self-regulatory complaints mechanism: a Code written by the professionals themselves; senior industry involvement in the complaints process, though latterly in a minority; and funding of the system by the industry itself.

9. Within those parameters, the system has been largely successful in its limited but nonetheless important mission; and I would highlight a number of ways in which it has done so.

10. First of all, I have been impressed by the way in which the Commission's staff conciliate complaints. They deal with a significant number of complaints each year. These vary in seriousness and relate to every sector of the industry – national papers, the regional press and the magazine sector – and come overwhelmingly from ordinary members of the public who have some form of grievance about a publication. The Commission has become adept at dealing with these quickly – in an average of a little over thirty days, and often much more quickly – and to

the evident satisfaction of the overwhelming majority of those who have complained. Particularly when the costs of formal legal procedures are so high, it is important that this service has remained cost-free for the complainant. Although individuals sometimes choose to employ lawyers to supervise the process, there is no requirement to do so and the vast bulk of complaints are sorted out in a common-sense fashion that is easily accessible and free. This is an important public service, and one, it seems to me, that must be preserved in any future system of self-regulation.

11. Secondly, this effective service is largely attributable to the dedicated work of the Commission's full time staff. They are small in number but I have been struck by how versatile, skilled and imaginative they have become in their handling of complaints and the conciliation skills they bring. They have good relationships across most of the industry which help them to do this, but they operate in a clearly independent and even-handed fashion. The PCC has also done some good work in reaching out to vulnerable and excluded groups and causes, which have had particular problems with the press, assisting them in using the complaints process to raise standards in specific areas of reporting. I think, for instance, of work on mental health and the reporting of suicide.

12. Thirdly, I would point to the way the editors' Code of Practice has been formed and has worked. I start from the belief that it is important the rules are written by the professionals themselves, so long as they are responsive to public concerns, to changes in technology and to correcting any failures that occur in the Code. I think the Code is a very good one, which has grown substantially over time – for instance by bringing on-line and audio-visual material on newspaper websites within its remit - and covers all the main issues in a common-sense and easily

intelligible fashion. This is important because the Code is not just a set of responsibilities for the industry; it also codifies a set of perceived entitlements and reasonable expectations for the public and must therefore be accessible. I have been impressed by how seriously it is taken across the industry – something that is most striking in the regional press – and that is again something we must not lose. In many areas it has clearly raised standards of reporting since it was introduced in 1991: I think in particular of hospital reporting; the reporting of children and the behaviour of journalists at schools; the complex issue of jigsaw identification of children in sex cases; and above all of harassment. The PCC's rulings on Code issues have set certain benchmarks, and these have been contained in the Editors' Codebook as a set of developed standards.

13. That issue of harassment is the fourth point I would make. Although there will always be problems with the paparazzi – many of whom are foreign and not easily susceptible to domestic regulatory or legal controls – the Code has been increasingly successful at dealing with so-called "media scrums" as they arise, and in helping ordinary people who find themselves affected by extraordinary events in their lives. I understand the PCC submission sets out examples of this in detail. This is also an area where self-regulation appears to be stronger than statute, and I note that OFCOM and the BBC have taken their lead from the Commission and the Code in dealing with this problem.

14. Fifthly, I would mention the way in which the PCC's staff are increasingly becoming involved in assisting individuals who have a problem with a newspaper or magazine, with advice before publication. Although the PCC does not have formal powers in this area – I stress again the point about its origins that I made above – it has built on its relationships with

newspapers, with lobby groups and special interest organisations, as well as the fact that it is increasingly well known to the public, to forge a relatively useful pre-publication advice service. This works very well in the issues of harassment I have touched on, but also in some privacy areas. I have been struck, too, about how often the PCC's staff is approached for informal advice by editors and reporters about how to handle a difficult subject or for an off the record interpretation of the Code. This also works well, especially for the regional press, some of whose members do not have to deal with complex ethical issues as often as national newspapers do.

15. Finally, I would highlight the degree to which the industry – at least until relatively recently – has "bought into" and supported the existing system based upon the Editors' Code. Co-operation with the Commission has always been extremely high. No newspaper, as I understand it, has ever refused to publish a critical adjudication – which I therefore believe to be a powerful sanction – and increasingly the publication reaches agreement on where the adjudication should be printed. The location of adjudications now has to be agreed in advance by the PCC due to the change in the Code. Until Northern and Shell pulled out of the system, coverage had been remarkably high too, which has been a big "plus" for the Commission.

<u>The weaknesses</u>

16. Set against all that, there are three areas of weakness in the system: its lack of any formal power or legal underpinning; its coverage; and the failures, in some instances, of internal compliance or regulation.

17. As I made clear above, the PCC was never constituted to be a regulator and does not possess any formal legal powers. It is purely a voluntary system, and one which has aimed to deal with complaints and, where possible, to raise standards over time through a process of adjudication, exhortation and encouragement. That has worked satisfactorily in some areas, but it has obvious limitations, as the scandal of phone hacking laid bare. During that, the PCC sought – mistakenly in my view – to exercise a regulatory role in a complex area (in which the police had initially failed) and has paid the price for that. It had no way of checking basic facts, no method of holding the publisher accountable, no investigative powers and no sanction – all of which are required in a formal system of regulation. This episode shows to me that, in the case of serious breaches of the Code or of basic ethical standards, the system of self-regulation needs proper legal underpinning and compliance procedures. The same set of conclusions is likely to be true of the case of Madeleine McCann, although I am not expert on the detail of that.

18. Secondly, the voluntary nature of the system means it is possible for publishers to pull out of it either if they disagree with a particular position or decision of the Commission, or to save money. Although it is unfair to single out one particular publisher, the absence of Northern and Shell from the self-regulatory system for a period in 2008-9 and since the start of 2011 has been a significant drawback because it means that four national newspapers and their associated websites, plus a very large circulation magazine, are all outside the Code. There are no "tools" in place to bring an absent publisher back into the system, and no clear responsibility for doing so. The PCC has a role in this area – it is after all the custodian of the Code and the body to which the public looks for redress of grievance – but it is the industry which is responsible for

they seek to inculcate compliance with it throughout their companies. But it is very difficult to obtain firm and accurate data on that, to monitor how compliance levels vary, or to assess what action is taken either to deal with internal breaches or to respond to decisions of the Commission. This seems to me to be one of the most significant weaknesses of the system, and again the phone hacking scandal – which must have resulted in part from the breakdown of internal regulation and the lack of any accountability – showed this up starkly.

The future

21. Future systems of regulation for the industry are central to this Inquiry, and I am anxious to follow the evidence, and to engage with the Chairman and members of his team in discussion about the future. I passionately believe self-regulation must be maintained and made to work – and as a matter of considerable urgency. The PCC complaints function is busier than ever and continues to operate efficiently and effectively, but I believe there is a compelling case for the industry to come forward, sooner rather than later, with an agreed direction of change, towards the creation of a new system of self-regulation that will command the support of politicians, the judiciary, and the wider public. On that basis, I have already been working closely with the industry itself, which will have to make any new system work and also fund it, presenting an analysis of the situation and some very initial thoughts for the future to a meeting of editors, publishers and senior industry figures organised by the Press Standards Board of Finance on 15 December 2011.

22. I have reached a number of very broad, interim conclusions – with which I am confident the industry agrees - about the way forward based on my

analysis of the strengths of the complaints handling work and the Code, and failures of compliance, coverage and internal control. They lack detail and I am anxious to ensure that they remain sufficiently broad to act as a basis for thought and ongoing discussion, in no way seeking to pre-empt or "second guess" the likely conclusions of the Inquiry. They fall under six broad headings:

- the existing PCC structure is not viable and needs to be replaced; there can be no question of tinkering at the edges;
- its complaints handling functions need to be preserved within a new architecture that also includes a compliance and standards arm with tough investigative powers and the ability *in extremis* to impose sanctions for systemic breaches of the Code;
- there needs to be a formal legal underpinning of the system – in my view, this does not have to be through statute, although the gradual recognition of the existence of the Code within both statute and case law is likely to continue apace;
- there needs to be a clear guarantee of independence for the new system, whilst maintaining the input of the professionals which is the key to effective self-regulation and complaints handling;
- the system needs to be sufficiently flexible to ensure that it does not constitute an unnecessary barrier to entry for potential new entrants to the publishing market – whilst also being rigorous and durable enough to ensure publishers cannot simply walk away if they wish to do so; and
- there needs to be a wholesale rejuvenation of internal self-regulation by publishers, with named senior individuals – whether editorial or management – responsible and accountable for the maintenance of standards.

Let me look briefly in turn at each of the main possible components.

23. First, while the Commission has done some good work – as I have set out in my statement – it now clearly lacks public or Parliamentary confidence, and indeed support from some parts of the industry. A fresh start is needed, with a new body that can continue the public service aspects of its work, but which will also signal a much tougher, regulatory approach to serious ethical breakdowns. I think that – depending on the progress of this Inquiry – such a move needs to happen sooner rather than later, and my colleagues on the Commission have concurred unanimously with this.

24. One way to achieve this would be to create a new body, which for the purposes of this statement I shall call "the Authority". The model I have discussed with the industry would be very flexible. A management board would be responsible for administrative matters and under its aegis a number of functions could be carried out in separate self-contained units. As a minimum, there would have to be two distinct arms to the Authority. One would be basically an Ombudsman service for the conciliation, resolution and if necessary adjudication of complaints: this would maintain the best of the existing structure. It would have a lay majority of adjudicators, but still have professional input, which is vital for this service. The second arm would be a new standards and compliance body, which would conduct annual audits of the internal arrangements and Code observance within the press and promulgate best practice through training and publications. It would also have investigatory powers to look into scandals, serious and persistent breaches of the Code, or to act where there was any evidence of a breakdown of internal control mechanisms. It must have enforcement procedures against publishers and, in the most serious cases, powers of sanction. It would investigate and publish reports with clear and transparent

recommendations for action. If necessary, it could commit to follow-up investigations. If evidence is uncovered of possible illegal activities, it should step aside for the duration of any police investigation and possible court proceedings, then return to its business, uncovering and remedying any systemic failures. I believe that such a body would have been able to act robustly in most of the serious cases about which this Inquiry has heard.

25. Overseeing the Authority structures and administration, I would envisage a new Management Board – a small group of people whose main function would be to undertake the governance and financial role. This body would have no involvement in the handling of complaints or standards investigations, but it would have a corporate relationship with PressBof. This would therefore act as a "buffer", serving to ensure the operational independence of the Authority.

26. I believe this will succeed only if there is a legal framework underpinning the system through commercial contracts between the Authority and publishers. These contracts would specify a number of basic things such as funding and co-operation with the Authority over the handling of complaints. More importantly they would commit the publisher to co-operating fully with any standards investigation that takes place, including the provision of papers and witnesses, and to paying for the investigation if systemic failures are uncovered; and also providing annual returns on how internal regulation is operating across all its publications. This latter requirement need not be a heavy burden – especially for regional publishers – but would be expected to highlight levels of training, the inclusion of the Code in contracts of employment, the follow-up to the Authority's rulings and adjudications, numbers of direct complaints that have been dealt with and so on. It would allow the Authority to track

levels of internal regulation, monitor progress, make suggestions for improvements, and then to monitor those improvements against agreed targets. Such contracts would give the new Authority the "teeth" the PCC lacks. This is a substantial change to the current system and a complex one. I have commissioned detailed work on a model contract, which I hope will be completed swiftly. I will of course share this with the Inquiry when it becomes available.

27. The publishing business is changing at such a considerable pace that there are likely to be numerous new entrants to the market in the near future, many of them radically different in shape and size from traditional newspapers and, in many cases, exclusively on-line. Some, such as the [redacted] have already arrived as I shall be announcing shortly. They need to be encouraged into a system of self-regulation and I would therefore like to see a structure which is easy for people to join, but extremely difficult to leave. The key to this will be the contract. Once publishers have signed up to it, there would be serious commercial – and indeed reputational – implications, should they decide to exit. Membership would then become enforceable, yet at the same time open and transparent.

28. I would also like to see a thorough renewal of the system of internal control and regulation, which is essential to making a self-regulatory structure work. Each publisher should ensure there is a named senior individual within their business who is accountable to the Authority for compliance with the regulator and reports personally on an annual basis on the maintenance and improvement of internal standards, in line with the terms of the contract. Any reduction in standards, or evidence of a failure to improve on agreed targets, would trigger a full standards and compliance investigation. Newspapers and magazines will have different

ways of achieving this according to their own corporate structures (of which there are many variants) and it would be folly to seek to lay down any hard and fast rules. The key is responsibility, accountability and transparency.

29. I am all too aware that this process of change is not taking place in a vacuum. There are lively and contentious debates taking place about defamation reform and privacy, plus much else besides. It is a very significant advantage of the model proposed that additional functions - probably arbitral in nature – can easily be "bolted on" within an existing structure of management accountability. It would be a win not only for the industry but also for the public.

30. These are only broad concepts, and much work needs to be done on the detail, but for me they would deliver a number of different improvements: real regulatory powers for use when necessary; the renewal of internal self-regulation which should lead over time to a demonstrable raising of standards; clear independence from the industry; the maintenance of a swift and free complaints handling service for the public; certainty of funding and membership; minimizing unnecessary barriers to entry for potential new entrants to the news publishing sector; and above all else, flexibility, creating the possibility of introducing additional functions that could help to create a faster and more efficient method of resolving such matters as defamation and privacy.

31. As a parliamentarian, I am only too aware that the newspaper industry faces a significant number of challenges over the next few years in reform of the libel laws, and sorting out the extremely difficult issues of privacy and freedom of expression. I should like to ensure that any new self-regulatory structure is able to accommodate, and indeed help to

facilitate, any reforms to libel and privacy that are deemed desirable in the public interest, and I believe that these outline proposals – which I look forward to discussing with the Inquiry in due course – would achieve that.

32. Statement of Truth

I believe that the facts stated in this statement are true.

Lord Hunt of Wirral

12 January 2012