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Culture, Media and Sport
Committee

Self-regulation of the press

Seventh Report of Session 2006–07

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written evidence*

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The Culture, Media and Sport Committee

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Summary

This country values the ability of the press to comment freely on politics, people and events, to criticise or support public figures and institutions for their actions, and to serve as a platform for others to declare radical or dissenting views. Such freedoms do not exist worldwide. In return, the public expects the press to uphold certain standards, be mindful of the rights of those who figure in the news, and to remain, as far as possible, accurate in its reporting.

Certain recent events, however, have again led the public and politicians to question the integrity of methods used by reporters and photographers to gather material for publication by the press. Chief among these events were the conviction of Mr Clive Goodman, the royal editor of the *News of the World*, for interception of communications without lawful authority, and the hounding of Ms Kate Middleton, the then girlfriend of HRH Prince William, in the expectation that the two might shortly announce their engagement.

The system of self-regulation of the press constructed in 1991 in the wake of the Calcutt Inquiry in 1990 failed to prevent these lapses, and the image of the press was again damaged as a result. These failures to uphold standards should not, however, be seen as signifying that self-regulation cannot work. To dispense with the current form of self-regulation and to rely exclusively on the law would afford less protection rather than more, and any move towards a statutory regulator for the press would represent a very dangerous interference with the freedom of the press.

Our recommendations therefore seek to draw lessons from recent events to strengthen the existing regime. The events leading to the conviction of Mr Goodman amounted to one of the most serious breaches of the Editors' Code of Practice uncovered in recent times, and his actions have been rightly condemned. Some efforts have been made by the press itself and by the Press Complaints Commission to draw lessons from the conviction of Mr Goodman, although we find it extraordinary that the Commission failed to question Mr Coulson, the Editor of the *News of the World* at the time that the offences were committed, during the course of its investigation. We welcome the steps taken to exercise more rigorous controls over the actions and expenditure of reporters.

We are, however, concerned at the complacency of the industry's reaction to evidence presented by the Information Commissioner showing that large numbers of journalists had had dealings with a private investigator known to have obtained personal data by illegal means. Although no malpractice by journalists has been proved, that does not mean that no malpractice occurred, and we are severely critical of the journalists' employers for making little or no real effort to investigate the detail of their employees' transactions. If the industry is not prepared to act unless a breach of the law is already shown to have occurred, then the whole justification for self-regulation is seriously undermined.

We also find that the press did not observe its own Code of Practice in relation to Ms Middleton. Editors failed to take care not to use pictures obtained through harassment and persistent pursuit. The response of the Press Complaints Commission was less than impressive: it waited for a complaint to be made on Ms Middleton's behalf but could have intervened sooner by issuing a desist notice to editors.

The Press Complaints Commission has evolved and has become a more open body which provides a better service to complainants. It is proud of its record in increasing the proportion of complaints resolved through conciliation between the complainant and the publication concerned. We support the principle of seeking to resolve complaints through conciliation, and we believe that it would be helpful to publish details of such resolutions, if the complainant so wishes, in order to enhance the public's view of the effectiveness of the Commission and strengthen the understanding by the press and by the public of the principles underlying the Commission's work.

The system for regulation of the press raises serious and complex issues which may merit a broader investigation than we have been able to undertake here. We believe that this is a subject which, particularly in the light of the recent speech by Tony Blair about the behaviour of the press and the regulatory framework for the industry, deserves careful examination in the future.

1 Introduction

1. From time to time an event occurs which causes the public and politicians to question the integrity of the methods used by reporters and photographers to gather material for publication by the press. In January 2007, two such events occurred, casting a shadow over print journalism. The first, in early January 2007, was the persistent harassment by photographers of Kate Middleton, the then girlfriend of HRH Prince William, amidst speculation that an engagement was about to be announced. The second, later that month, was the sentencing of Mr Clive Goodman, a reporter employed by the *News of the World*, following his conviction for conspiracy to intercept communications without lawful authority. These two events were preceded by a third, which attracted much less public attention even though its implications were potentially even more significant. This was the release by the Information Commissioner, in December 2006, of a list of publications employing journalists who had had dealings with a particular private investigator known to have had obtained personal data by illegal means.

2. The conjunction of these events was certainly co-incidental, but they have given rise to renewed doubts about whether the press is overstepping the mark in the methods which are used to obtain information. The resurfacing of those doubts provoked this inquiry.

3. The timetable was a brisk one: we announced terms of reference on 6 February 2007. They were:

- Whether self-regulation by the press continues to offer sufficient protection against unwarranted invasions of privacy;
- If the public and Parliament are to continue to rely upon self-regulation, whether the Press Complaints Commission Code of Practice needs to be amended;
- Whether existing law on unauthorised disclosure of personal information should be strengthened; and
- What form of regulation, if any, should apply to online news provision by newspapers and others.

We held a single morning of oral evidence on 6 March: a list of witnesses appears on page 38.

4. This inquiry set out to draw lessons from particular events and has, in general, confined itself to harassment and the use of sharp (but sometimes justified) practices in newsgathering. We have not attempted to hold an inquiry on the scale of that held by our predecessor Committee in 2002 and 2003, which was based on submissions from across the national and regional press and on written and oral evidence from people who claimed to have suffered injustices at the hands of the press. This Report is not a broad look at whether the system of self-regulation as currently operated by the industry is the best way to curb unjustified practices and punish those who publish material obtained in such ways. To reach a properly informed view on such a complex subject would require more time and more evidence. We note in this respect the recent speech given by the Rt Hon Tony

Blair MP, then Prime Minister, in which he reflected upon the role and behaviour of the media, commenting that “the regulatory framework at some point will need revision”.¹

5. This is the third inquiry by a Parliamentary select committee into regulation of the press since the establishment of the present system of self-regulation in 1991. The then National Heritage Committee published its report on *Privacy and Media Intrusion* in March 1993,² and our immediate predecessor Committee published a similarly substantial report, with the same title, in June 2003.³ The recurrence of the subject as a matter for Parliamentary inquiry indicates the sensitivity of the issues.

2 How self-regulation operates

6. In essence, the model for self-regulation of the press is straightforward: the industry has drawn up a Code of Practice and updates it from time to time, and possible breaches of the Code are considered by the Press Complaints Commission (PCC) which makes rulings and enables resolution of complaints, imposing sanctions if necessary. The Commission came into being in January 1991 following an inquiry into “Privacy and Related Matters” established by the Home Secretary in 1989 and chaired by Mr (later Sir) David Calcutt QC. The course of the Calcutt Inquiry and its recommendations have been charted elsewhere.⁴ The PCC consists of a Board of 17 members supported by a secretariat of thirteen full-time staff. Currently, seven of the Board members are senior editors of national and regional newspapers and magazines drawn from across the country. The remaining ten members are, in the words of the PCC, “not professionally associated with the newspaper or magazine industry”⁵ and so form a lay majority. The PCC is funded by the Press Standards Board of Finance (PressBoF), a body formed in 1990 specifically to co-ordinate the industry’s actions on self-regulation following the Government’s acceptance of relevant parts of the report of the Calcutt Inquiry.⁶

7. In considering complaints, the Commission and its secretariat apply a Code of Practice drawn up by editors and maintained by the Editors’ Code Committee, composed of fourteen editors of national and regional newspapers and magazines.⁷ Revisions proposed by the Code Committee are submitted for consultation with the industry through trade associations before being ratified by the PCC.⁸ The Code has sixteen Clauses setting out the standards to which editors and their staff should work. The provisions of certain Clauses

1 Speech by Rt Hon Tony Blair MP to the Reuters news agency, 12 June 2007.

2 *Privacy and media intrusion*, Fourth Report of the National Heritage Committee, Session 1992–93, HC 294

3 *Privacy and media intrusion*, Fifth Report of the Culture, Media and Sport Committee, Session 2002–03, HC 458–I

4 See for instance paragraphs 21–28 of the Fourth Report of the National Heritage Committee, Session 1992–93, HC 294

5 Ev 48

6 PressBoF submission, Ev 84

7 See Ev 23 for current membership

8 Ev 84

may be overridden if it can be demonstrated that there is a public interest in doing so.⁹ The Code's statement on public interest includes the following:

"1. The public interest includes, but is not confined to:

- i) Detecting or exposing crime or serious impropriety.
- ii) Protecting public health and safety.
- iii) Preventing the public from being misled by an action or statement of an individual or organisation.

2. There is a public interest in freedom of expression itself.

3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully how the public interest was served."

8. The terms of the Code itself and the manner of its application are strengthened by a preamble which states that "it is essential that an agreed code be honoured not only to the letter but in the full spirit" and that the Code "should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual". The Editors' Code Committee told us that this requirement to abide by the spirit of the Code "excludes wriggling through loopholes as an option".¹⁰ The preamble also requires editors and publishers to "take care to ensure [that the Code] is observed rigorously by all editorial staff and external contributors, including non-journalists, in printed and online versions of publications". The Code's provisions therefore extend more widely than might at first appear, to cover freelancers, photographers and eye-witness reporters.¹¹

9. Operating in parallel to the Editors' Code of Practice is the code of ethics drawn up by the National Union of Journalists, which currently has approximately 40,000 members working as journalists or on editorial content. Union members may be disciplined or even expelled for breaches.¹²

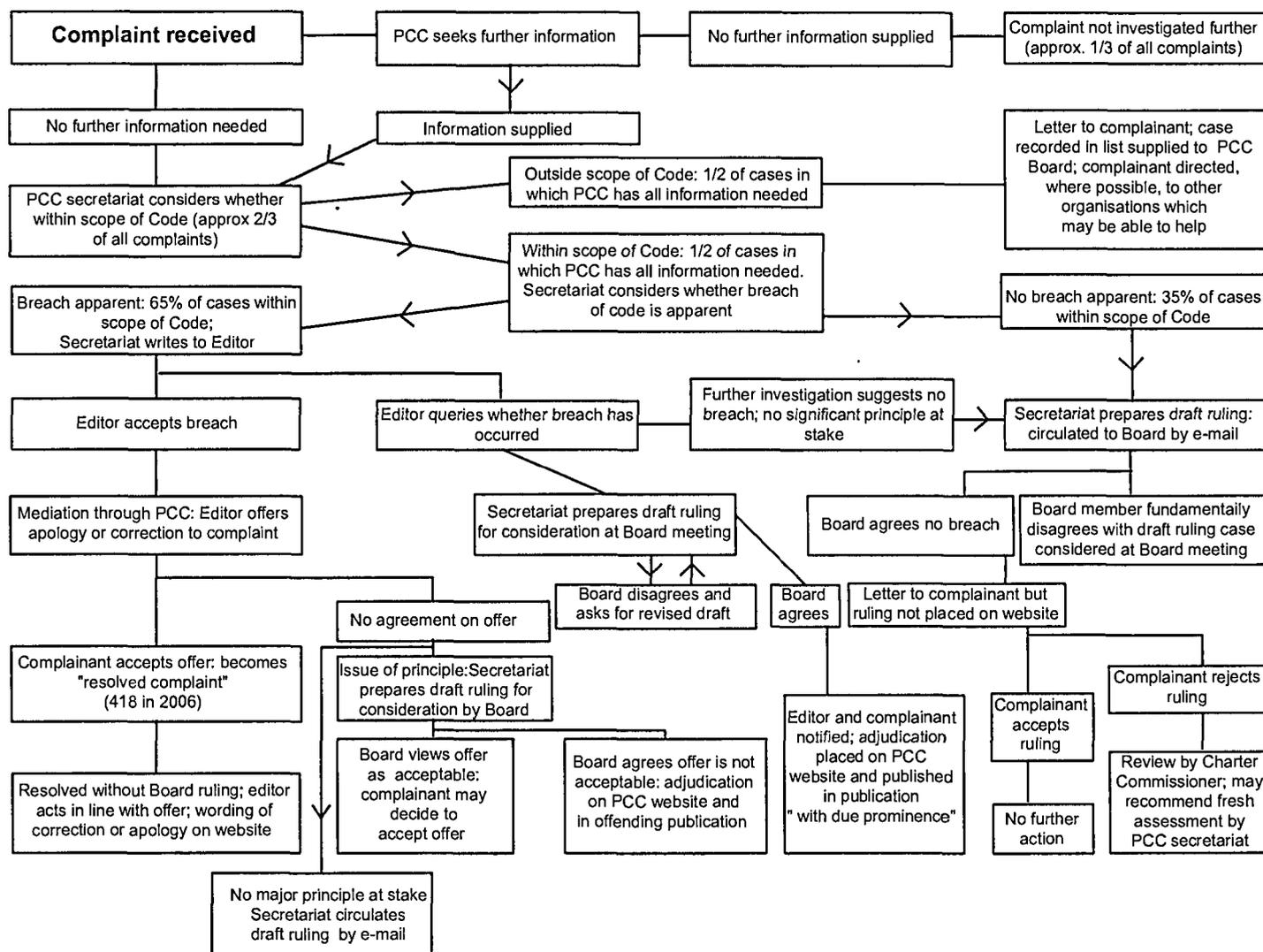
10. The Commission is informed of all complaints submitted, although only a comparatively small number are discussed in detail at monthly Board meetings. The course of a complaint handled by the PCC will depend on whether it is deemed to fall within the scope of the Code, whether a breach is apparent, and whether the complainant and the editor of the publication concerned reach an informal settlement brokered by the PCC. The various possible outcomes are set out in the chart overleaf.

9 Clause 3—Privacy; Clause 4—Harassment; Clause 6—Children; Clause 7—Children in sex cases; Clause 8—Hospitals; Clause 9—Reporting of Crime; Clause 10—Clandestine devices and subterfuge; elements of Clause 15—Witness payments in criminal trials; and Clause 16—Payments to criminals

10 Ev 25

11 Editors' Code Committee Ev 25

12 Ev 9



11. Points to note are that:

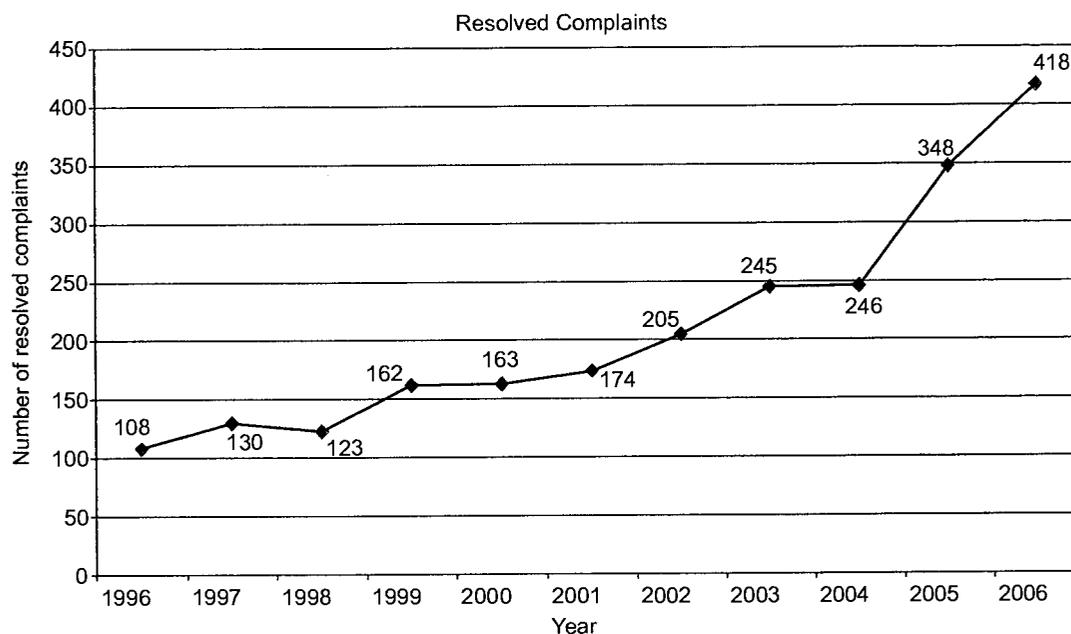
- Approximately one half of complaints for which the Press Complaints Commission has sufficient information to form a view are found to fall outside the scope of the Code, in which case a letter is sent to the complainant and the case is merely recorded in a list supplied to the Board;
- Of those cases which are deemed to fall within the scope of the Code, the Commission secretariat finds an apparent breach in about 65%. In such cases, the secretariat contacts the editor of the publication concerned; if the editor accepts that a breach has occurred, he or she may offer to resolve the complaint by a process of mediation through the PCC. Remedies secured through conciliation may include a published or a private apology, undertakings about future conduct, confirmation of internal disciplinary action, *ex gratia* payments or donations to charity;¹³
- Of those cases in which the Commission secretariat finds an apparent breach of the Code (possibly 20%–25% of all complaints received), a substantial number—a third or more—are neither resolved through conciliation nor adjudicated formally by the Board of the Commission. Such cases include complaints in which the PCC secretariat, after further investigation, concludes that no breach has in fact occurred, as well as cases in which an editor accepts that a breach has occurred and conciliation is not achieved, but the PCC deems that no major principle is at stake and that a ruling can be issued without a formal adjudication by the PCC Board; and
- There are occasions on which, even when a case is resolved between the publication and the complainant, the PCC will judge that an important matter of principle is involved and that it should issue a formal ruling to amplify and publicise the issue.¹⁴

12. In recent years, the number of complaints has remained fairly constant at about 3,600 each year, although the number of complaints resolved through conciliation is on an upward trend, reaching 418 in 2006.

¹³ Ev 49

¹⁴ Ev 50

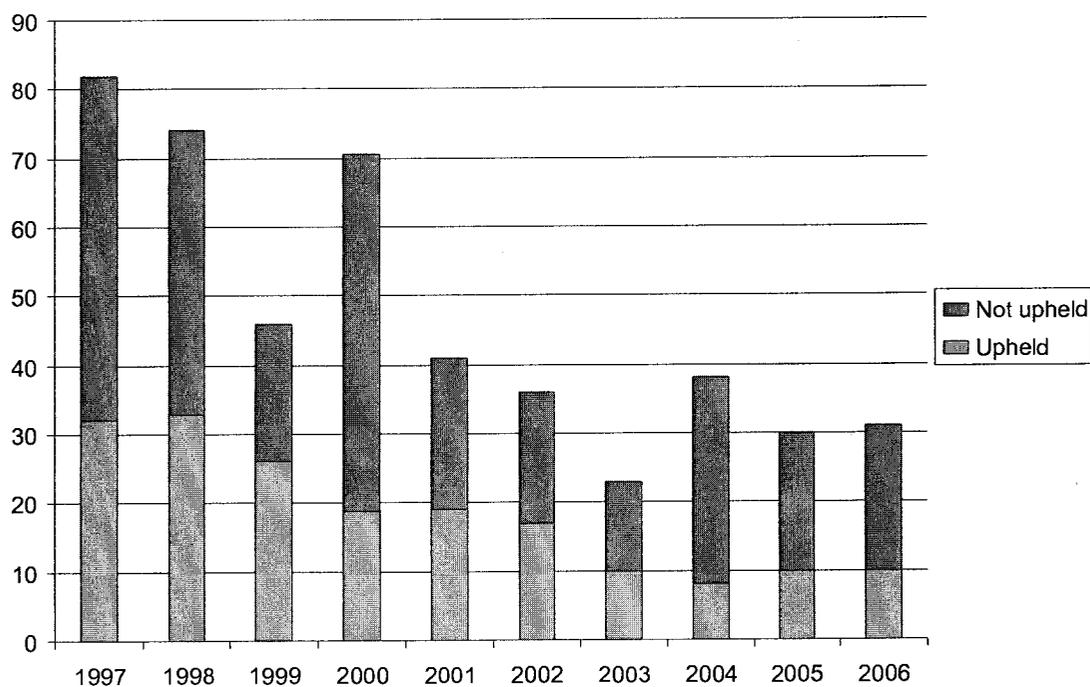
10



Source: Press Complaints Commission memorandum, Ev 50

Approximately one per cent of all cases at present are formally adjudicated by the PCC Board at its monthly meetings. The chart below shows numbers of cases adjudicated in each of the last ten years, broken down between complaints upheld and not upheld.

Adjudications by the Press Complaints Commission 1997-2006



Source: Press Complaints Commission

Note: 23 of the 53 adjudications not upheld in 2000 related to only two distinct issues.

13. If a complaint in which a breach of the Code is disputed by the publication concerned but is nonetheless upheld in an adjudication by the PCC, the PCC has one sanction which it can impose: a requirement upon the publication to publish the Commission's criticisms in full and with due prominence. All adjudications, whether or not they uphold a complaint, are published by the PCC on its website, as are summaries of cases resolved through conciliation. In 2005, a summary of "case law" established through the PCC's adjudications was gathered together into an official handbook—the Editors' Codebook.¹⁵ The Code Committee plans to place the Codebook online once its website has been constructed.¹⁶

3 Newsgathering

14. The work of the investigative reporter in uncovering malpractice relies upon the ability to gather information from a wide variety of sources. Under certain circumstances, recognised in the Editors' Code of Practice and indeed under the law, it may be deemed to be in the public interest to use procedures which go beyond what is normally acceptable. This section of the report examines two cases where the validity of certain newsgathering methods has been called into question.

Controls under the law and the Code of Practice

15. Obtaining information by subterfuge, clandestine devices or interception of communications is a breach of Clause 10(i) of the Code of Practice except when carried out in the public interest.¹⁷ Such activities are, however, likely to be in breach of the Regulation and Investigatory Powers Act 2000 unless carried out with lawful authority. No public interest defence is available under the 2000 Act, although it is possible that the public interest value of information obtained illegally could be weighed in any decision by the Crown Prosecution Service on whether or not to proceed with a prosecution against a journalist.

16. Further controls exist under section 55 of the Data Protection Act 1998, under which "a person must not knowingly or recklessly, without the consent of the data controller (a) obtain or disclose personal data or the information contained in personal data, or (b) procure the disclosure to another person of the information contained in personal data". The penalty for breach of section 55 is a fine of up to £5,000 in a magistrates' Court or an unlimited fine in the Crown Court. The Act does, however, provide a number of defences, including that "the obtaining, disclosing or procuring was necessary for the purpose of preventing or detecting crime", or "that in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest". The Information Commissioner told us that the public interest defence under the Data Protection Act was robust and that his Office "would not dream of prosecuting, let alone a court convicting" if

15 Editors' Code Committee, Ev 25

16 Ev 25

17 See paragraph 7 of this Report

a journalist could show that information had been gathered without consent but that doing so was in the public interest.¹⁸

The Goodman case

17. Clive Goodman was the former royal editor of the *News of the World* and a full-time member of staff at the paper. Together with a private investigator, Glenn Mulcaire, Mr Goodman illegally accessed voicemail messages left for members of the Royal Family and other high-profile figures, and used the information gathered to construct news stories. In January 2007, both Mr Goodman and Mr Mulcaire were convicted of conspiracy to intercept communications without lawful authority. Both received custodial sentences, four months' imprisonment in the case of Clive Goodman, six months in the case of Glenn Mulcaire. The Editor of the *News of the World*, Andy Coulson, accepted that he took ultimate responsibility for Mr Goodman's actions and resigned. The press world claimed to be shocked at the offences, and no witness attempted to defend Mr Goodman's actions. The Editors' Code Committee described his case as "a clear breach of both the law and Code" and noted that the strength and validity of the Code in that area was not at issue.¹⁹

18. Witnesses representing the press maintained that such practices were not, however, widespread, and that one bad apple did not mean that the whole barrel was rotten.²⁰ Mr Horrocks, Editor of the *Manchester Evening News*, said that in his four years as a member of the Press Complaints Commission, he could recall only one complaint under the heading of privacy involving the publication of private e-mails.²¹ The PCC said that it was very rare for journalists or editors to flout the rules deliberately.²²

19. Bearing in mind editors' responsibility to take care that the Code of Practice is observed by their staff and external contributors,²³ the PCC wrote to Mr Colin Myler, the new editor of the *News of the World*, in February 2007, seeking information about the nature of Mr Mulcaire's employment and asking what steps had been taken to ensure that such practices could not recur. In reply, Mr Myler acknowledged that Mr Mulcaire had been paid a retainer of nearly £105,000 a year for his work for the paper, much of which involved searches through records and databases in the public domain. Mr Hinton, Executive Chairman of News International, confirmed to us that both the prosecutor and the judge at the trial had accepted that these activities were "legitimate investigative work". He added, however, that there had been "a second situation" in which Mr Goodman "had been allowed a pool of cash to pay to a contact in relation to investigations into Royal stories".²⁴ Indeed, Mr Myler told the Commission that Mr Mulcaire had received cash payments amounting to £12,300 between November 2005 and August 2006. These payments were made by Mr Goodman, who claimed to the paper that they were "for a confidential source on royal stories" whom he identified only as "Alexander". The Commission was told that

18 Qq 36 and 38

19 Ev 24 and 28

20 Q 56

21 Ev 32 and Q 85

22 Ev 49

23 Ev 63

24 Q 91

“the identity of that source and the fact that the arrangement involved illegally accessing telephone voice mails was completely unknown and, indeed, deliberately concealed from all at the *News of the World*”.²⁵

20. The *News of the World* also stated that it had taken steps to emphasise to external contributors (as opposed to core employed staff) that they were required to comply with the Code of Practice. Contracts with external contributors would henceforth include a clause specifying that it was the contributor’s responsibility to review the Code of Practice and to ensure that he or she was conversant with any changes to the Code and to observe them fully. The editor had also written to all staff journalists to inform them that their contracts of employment would now include a clause requiring the employee to “comply in full” with rules and policies including the Press Complaints Commission Code of Practice. Mr Hinton told us that employees at News International were being required to attend seminars at which the limits of the law were spelt out, as was the fact that any judgment that the public interest “might warrant some stepping over the line [had to] be authorised by the editor at the very least”.²⁶ In addition, tighter protocols have been introduced at the *News of the World* to govern cash payments, including a requirement for a “compelling and detailed justification” to accompany each request for cash payment, and a further requirement to supply the Managing Editor’s office with a memorandum detailing the reason for making any payment to a confidential source.²⁷

21. We note the assurances of the Chairman of News International that Mr Goodman was acting wholly without authorisation and that Mr Coulson had no knowledge of what was going on. We find it extraordinary, however, that the *News of the World* was prepared to apply one standard of accountability to the £105,000 retainer paid to Mr Mulcaire and another, far weaker, standard to the substantial cash payments paid to Mr Mulcaire by Mr Goodman. The existence of a “slush fund” effectively can only further the belief that editors condone such payments—on a “no need to know” basis—as long as they provide good copy. Self-regulation must require vigilance by editors, otherwise the impression may be given that editors will turn a blind eye as long as good stories are the result, a practice of which at least some editors are guilty, according to the General Secretary of the NUJ. We also find it extraordinary that in their investigation into the case the PCC did not feel it necessary to question Mr Coulson on these points.

22. The events leading to the conviction of Clive Goodman amounted to one of the most serious breaches of the Code uncovered in recent times. We are in no doubt that the Editor of the *News of the World* was right that he had no choice but to resign. By doing so, a clear message has been sent that breaches of this kind cannot be tolerated and that editors must accept final responsibility for what happens on their watch.

23. We explored with witnesses representing the *Daily Mail* and the Mirror Group editorial controls over expenditure by investigative reporters. Mr Esser, Executive Managing Director at the *Daily Mail*, said that it was not standard procedure at the *Daily*

25 See *New Guidelines on subterfuge and news-gathering* on the Press Complaints Commission website: <http://www.pcc.org.uk>

26 Q 90

27 See *New Guidelines on subterfuge and news-gathering* on the Press Complaints Commission website: <http://www.pcc.org.uk>

Mail for journalists to have access to such funds without having to account for them.²⁸ Mr Duffy, Group Managing Editor at MGN Ltd, assured us that invoices for payment to agencies would “not just get paid blindly” but would, if they looked “unusual”, be challenged.²⁹

24. Paul Horrocks, Editor of the *Manchester Evening News*, told us that if, when preparing a story, “a grey area” emerged (for instance about newsgathering methods), “a journalist of at least assistant editor level contacts the PCC before publication to discuss the issue with an officer and seeks guidance on how to proceed”. He said that decisions on whether or not to invoke a public interest exception under the Code of Practice would be taken by the Editor alone, and only in exceptional circumstances.³⁰

25. The Press Complaints Commission endorsed the subsequent actions taken by the *News of the World* and welcomed the seriousness with which the new editor had approached the matter. It has drawn up a series of recommendations as part of fresh guidance on the use of subterfuge and newsgathering, including the following:

- Contracts between newspapers and magazines and external contributors should contain an explicit requirement to abide by the Code of Practice;
- A similar reference to abide by the Data Protection Act should be included in contracts of employment for staff members and external contributors;
- Although contractual compliance with the Code for staff journalists is widespread, it should without delay become universal across the industry;
- Publications should review internal practice to ensure that they have an effective and fully understood “subterfuge protocol” for staff journalists. This should include who should be consulted for advice about whether the public interest is sufficient to justify subterfuge;
- There should be regular internal training and briefing on developments on privacy cases and compliance with the law; and
- There should be rigorous audit controls for cash payments, where these are unavoidable.

26. We welcome the steps that have now been taken by the *News of the World* to introduce more stringent controls over cash payments by its staff. The recommendations on newsgathering methods issued in May 2007 by the Press Complaints Commission should be adopted as a matter of course by all newspaper and magazine publishers.

28 Q 106

29 Q 145

30 Ev 32

Operation Motorman

27. We turn now to *Operation Motorman*, an investigation undertaken by the Information Commissioner's Office into apparent offences under data protection legislation. The operation centred upon the activities of a particular private investigator, Stephen Whittamore, at whose home were discovered numerous records of transactions involving data illegally obtained from British Telecom, DVLA and the Police National Computer. The Information Commissioner published a report in May 2006—*What price privacy?*—which noted that the primary documentation seized at the premises included correspondence (such as invoices) between the private investigator and “many of the better-known national newspapers [...] and magazines”. In almost every case, the individual journalist seeking the information was named in the correspondence.³¹ A follow-up report (*What price privacy now?*), published in December 2006, included a table showing the publications concerned and the number of transactions linked to journalists working for each publication. The table includes weekday and Sunday tabloids, Sunday broadsheets and high-circulation weekly magazines and is reproduced overleaf.³²

31 *What price privacy?*, House of Commons Paper 1056, Session 2005–06, paragraph 5.6

32 *What price privacy now?*, House of Commons Paper 36, Session 2006–07, page 9.

Operation Motorman: publications and journalists/clients identified

Publication	Number of transactions positively identified	Number of journalists/clients using services
Daily Mail	952	58
Sunday People	802	50
Daily Mirror	681	45
Mail on Sunday	266	33
News of the World	228	23
Sunday Mirror	143	25
Best Magazine	134	20
Evening Standard	130	1
The Observer	103	4
Daily Sport	62	4
The People	37	19
Daily Express	36	7
Weekend Magazine (Daily Mail)	30	4
Sunday Express	29	8
The Sun	24	4
Closer Magazine	22	5
Sunday Sport	15	1
Night and Day (Mail on Sunday)	9	2
Sunday Business News	8	1
Daily Record	7	2
Saturday (Express)	7	1
Sunday Mirror Magazine	6	1
Real Magazine	4	1
Woman's Own	4	2
The Sunday Times	4	1
Daily Mirror Magazine	3	2
Mail in Ireland	3	1
Daily Star	2	4
The Times	2	1
Marie Claire	2	1
Personal Magazine	1	1
Sunday World	1	1

Source: *What price privacy now?* Information Commissioner's Office, December 2006, HC 36, page 9.

28. *Operation Motorman* did not, however, lead to high-profile convictions. Parallel investigations by the police led to charges of corruption against four people: these took precedence over the *Operation Motorman* cases. Some convictions were secured, both for corruption and for data protection offences, but the court was able to impose nothing stronger than a conditional discharge "because of sentencing in a connected but separate case". The Information Commissioner's Office described this as "a great disappointment", especially as it "seemed to underplay the seriousness of the offences under section 55" of

the Data Protection Act.³³ Because of the seriousness of this case, we asked the Information Commissioner for supplementary evidence about the prosecutions, which is printed with the written evidence in this volume. As a consequence of the light sentence, counsel advised the Information Commissioner that it would not be in the public interest to proceed with further prosecutions, for instance against journalists named in the correspondence discovered at the investigator's house, and that to do so would "attract severe criticism within the court system".³⁴ The Information Commissioner's Office, despite having in its possession what the Commissioner called "hard *prima facie* evidence" of invoices to newspaper proprietors, accepted counsel's advice.

29. Whereas the actions of Clive Goodman and Glenn Mulcaire resulted in custodial sentences and were widely denounced throughout the industry, there has been rather less sign of concern from within the industry at the possibility that journalists might have systematically obtained information illegally through the transactions uncovered by *Operation Motorman*. The Newspaper Publishers' Association, the Scottish Newspaper Publishers' Association, the Newspaper Society, the Scottish Daily Newspaper Society, the Periodical Publishers Association and the Society of Editors made a combined response to the Information Commissioner's recommendations in *What price privacy?*, stressing that they took the issues reported in the report very seriously and agreeing to disseminate the report's findings and the Commissioner's guidance on the terms of the Data Protection Act to their members.³⁵ The Press Complaints Commission published a guidance note and agreed to reiterate the message that journalists had to act within the law (such as the Data Protection Act).³⁶

30. The Information Commissioner said, however, that he was "a little disappointed that there was not a more strident denunciation of the activity" by the Press Complaints Commission.³⁷ He had proposed to the Editors' Code Committee that the Code should be amended so that it would specify that it was unacceptable either to obtain information about an individual's private life without their consent by payment to a third party or by impersonation or subterfuge, or to pay an intermediary to supply any information which was, or which must have been, obtained by such means. In its submission to this inquiry, which predated the consideration of the Information Commissioner's proposal, the Code Committee suggested that the proposed wording seemed to go beyond the law by treating the obtaining of any private information, not just protected data (as defined under the Data Protection Act 1998) as a breach of the Code. The Code Committee also noted the implication that payment should be a determining factor, and it questioned whether an intrusion of privacy would be any the less had payment not been made.³⁸ The Code Committee has since considered and rejected the Information Commissioner's proposal, but it drafted an alternative wording which has since been ratified by the PCC and which will come into effect from 1 August 2007. While the Code Committee was in no doubt that

33 *What price privacy?*, paragraphs 6.7 and 6.8

34 Q 41

35 *What price privacy now?*, page 22

36 Qq 44 and 159; Ev 61

37 Q 44

38 Ev 28-9

illegal trading in confidential information and engaging in misrepresentation or subterfuge via agents or intermediaries was already covered by the Code, the new wording of Clause 10 makes it explicit.³⁹

31. We raised the issue of the transactions listed in the table in *What price privacy now?* with representatives of some of the publications identified. Mr Esser, Executive Managing Editor of the *Daily Mail*, claimed that “very vigorous moves” had been made by the paper since the Information Commissioner had published his findings “to make sure that our daily practice conforms with the Data Protection Act”.⁴⁰ Mr Duffy, speaking on behalf of the Mirror Group, also stressed the efforts which had been made to reinforce their journalists’ understanding of the gravity of breaches of data protection legislation and of the Code of Practice.⁴¹ But there was little or no sign of any real effort being made to investigate the detail of individual transactions between journalists and the private investigator concerned. Mr Esser told us that all journalists at the *Daily Mail* had been asked whether or not they had employed the services of the investigator at the centre of *Operation Motorman*, and if so, for what reason.⁴² According to Mr Esser, many of the journalists were no longer working for the paper and there was “no way in which they can remember what happened five years ago”; he said that all 400 of the *Daily Mail*’s journalists had been asked if they employed the services of this agency and that those that could remember had given assurances that they were seeking information which was in the public domain.⁴³ Both Mr Esser and Mr Duffy maintained that they would be able to pursue more rigorous inquiries if the Information Commissioner were to provide them with details of the names of the journalists involved and the invoices or details of transactions.⁴⁴ While this may be the case, we find Mr Esser’s evidence difficult to believe.

32. The press in general, and evidence from the representatives of the *Daily Mirror* and the *Daily Mail* in particular, pointed out that the evidence collected by *Operation Motorman* did not necessarily establish any breach of the law or of the Code of Practice by journalists and that the transactions involved might have been specifically to obtain information in the public interest.⁴⁵ The Press Complaints Commission also cast doubt upon the value of the evidence presented, describing the list of publications and journalists in *What price privacy now?* as “impressive-sounding but superficial”.⁴⁶ The Commission Chairman told us that he had invited the Information Commissioner to provide more details about the 305 cases listed in the report but that the Information Commissioner was not willing to do so.⁴⁷ When we raised this issue with the Information Commissioner, he told us that he and his staff “do not feel able to identify the individual journalists in fairness to those journalists” as they had not been prosecuted, and that “to bandy their names around in public or to

39 See Editors’ Code of Practice Committee Press Notice 27 June 2007

40 Q 114; see also Q 129

41 Q 122

42 Qq 126, 128 and 130

43 Qq 119 and 129

44 Qq 123–4

45 See for example Editors’ Code Committee Ev 28; Society of Editors Ev 30; Mr Esser Q 120

46 Ev 62

47 Q 159

their employers” would not be acceptable. He also acknowledged that the focus of the prosecutions had been upon the middlemen rather than the journalists.⁴⁸

33. We are not convinced that the Information Commissioner should feel debarred from releasing to their own employers the names of individual journalists identified in invoices obtained under Operation Motorman. In any case, we do not see the Information Commissioner’s decision as a valid defence for newspaper editors, some of whom seem to have made minimal effort to establish whether their employees had obtained information illegally (or whether they had done so ostensibly in the public interest but without having secured the necessary authority). The fact that an agency which was regularly accessing databases illegally was being used by journalists throughout the industry, without any apparent questioning from editors, is very worrying. We find claims that all of the transactions involving journalists were for the obtaining of information through legal means to be incredible and it is a matter of great concern that the industry has not taken this more seriously. The lack of any prosecutions or convictions of journalists is no defence. One of the principal arguments for self regulation is that it is more effective than statutory controls. If the industry is not prepared to act unless a breach of the law is shown to have occurred already then the whole justification for self-regulation is seriously undermined. If self-regulation is to continue to command confidence and support, editors will need to be seen to be pro-active in investigating any potential breach of the Code of Practice.

The law as a deterrent

34. The Information Commissioner recommended in *What price privacy?* that a custodial penalty should be available for offences of obtaining, disclosing or procuring information unlawfully under section 55 of the Data Protection Act 1998. His rationale for doing so was that the seriousness of the offence needed to be underlined by a sentence which carried a greater deterrent effect, and he noted that a similar offence of unlawful disclosure of confidential information under the Identity Cards Act 2006 attracted a potential custodial sentence.⁴⁹

35. The Department for Constitutional Affairs took up the Commissioner’s proposal and launched a consultation in July 2006, inviting views on whether a custodial sentence should be introduced. This resulted in 63 submissions, the majority of which were in favour,⁵⁰ although the print media industry in general was opposed (as was the Press Complaints Commission), citing fears that a custodial sentence would “chill investigative journalism” and that journalists would not be able to rely upon a public interest defence as it was not always possible to prove that a public interest had existed at the outset of an inquiry.⁵¹ The Information Commissioner, however, told us that “any serious investigation which can be remotely justified as being in the public interest will not be deterred or chilled by this law”, and he suggested that any responsible journalist who was contemplating paying for or

48 Q 169

49 *What price privacy?*, paragraphs 7.6–7.8

50 *Increasing penalties for deliberate and wilful misuse of personal data*, consultation paper issued by the Department for Constitutional Affairs, CP 9/06. The DCA issued its response on 7 February 2007.

51 Editors’ Code Committee Ev 28; Press Complaints Commission Ev 62. See also NUJ, Ev 12

obtaining information could simply make a file note stating that he or she was obtaining the information for specified public interest reasons and that “that would be a very strong piece of paper to wave in the face of any commissioner investigating and possibly prosecuting later”.⁵² When the DCA published the conclusions of its consultation in February 2007, it announced that it intended to go ahead with the reform and bring forward the necessary legislation when an opportunity arose in Parliament.⁵³ We note that the Ministry of Justice has taken that opportunity, by including relevant provisions in the Criminal Justice and Immigration Bill presented to Parliament on 26 June 2007.

36. We believe that sufficient safeguards exist to protect legitimate investigative journalism and do not believe that the introduction of custodial sentences for offences under section 55 of the Data Protection Act 1998 would have the chilling effect claimed by the press. Given the evidence that breaches of the Act have not been treated with the seriousness which they warrant, we therefore support the decision of the DCA, and subsequently the Ministry of Justice, to introduce the necessary legislation.

4 The case of Ms Middleton

The events

37. On 10 January 2007, MediaGuardian reported that “Ms Middleton, Prince William’s girlfriend of four years, yesterday ran a gauntlet of more than 20 press photographers and five television crews as she emerged from her London flat on her 25th birthday. Some chased her down the street while others attempted to take pictures through the windows of her car as it sped away”.⁵⁴ This followed an escalation of press interest, fuelled by speculation that Kate Middleton and HRH Prince William would announce their engagement on her birthday.

38. A person who believes that they are being subjected to harassment by the press or by photographers may approach the PCC and invite it to issue a “desist notice”, under which editors are asked to call off their staff and are made aware of their responsibilities under the Code not to use photographs supplied by external contributors (such as freelance photographers) but obtained in the course of practices which contravened the Code (such as harassment). Such notices, which are generally heeded by editors,⁵⁵ have existed informally since at least 1997. The present, more formal system evolved from a 24-hour anti-harassment line established by the PCC in early 2003, which enabled callers to report their concerns; these were in turn relayed to press contacts. The PCC has only kept individualised records of desist notices since 2006, when 17 notices were issued. So far during 2007, up until mid-June, 21 such notices have been issued.⁵⁶

52 Q 49

53 Ev 89

54 <http://media.guardian.co.uk>

55 Mr Satchwell Q 67; Editors’ Code Committee para 4.8, Ev 27

56 See further memorandum by the PCC, Ev 106–7

39. In the case of Kate Middleton in January 2007, it was reported in some quarters that solicitors acting for Ms Middleton were considering submitting a formal complaint to the PCC or asking it to issue a desist notice. They did not in fact do so at this point.⁵⁷ News International, however, took the decision on 9 January 2007 to announce that its titles would not buy photographs of Kate Middleton taken by paparazzi. Some other publishers followed News International's lead, and the pack began to disperse.⁵⁸ Although the PCC did not issue a desist notice, it did circulate to editors (on 12 January) a letter from solicitors acting on Ms Middleton's behalf pointing out that their client was suffering from harassment and warning that a formal complaint would be made if editors continued to use material obtained from paparazzi.⁵⁹

40. The PCC held up the rapid dispersal of the pack as a demonstration that, despite the concerns expressed about the case, it was actually "instructive of how these things can be resolved using existing procedures without the need for legislation". It also maintained that its efforts to signal to editors how seriously it viewed harassment, and its indication that it would be quick to condemn unwarranted intrusion through harassment, had helped to make it unnecessary for Ms Middleton to make any formal complaint.⁶⁰ There are nonetheless serious questions about whether the media circus should have gone on for as long as it did (and indeed about whether it should have been allowed to occur in the first place).

Could the scrum have been prevented?

41. Prevention of a gathering of interested journalists and photographers is clearly not practical. Mr Hinton, Executive Chairman of News International, said, with or without irony, that "it is very difficult to make rules about what is the proper size of the assembly of the press at a particular event or a particular occasion",⁶¹ and Mr Horrocks, Editor of the *Manchester Evening News*, made the same, perfectly obvious point.⁶²

Application of the Code of Practice

42. Clauses 3 and 4 of the Code of Conduct read as follows:

57 A formal complaint was made in March 2007 against the Daily Mirror in relation to harassment on a later occasion. The complaint was resolved and the paper issued a public statement and agreed to publish an apology.

58 Q 80

59 Excerpts reported in the *Daily Telegraph* 15 January 2007

60 Ev 59

61 Q 66

62 Q 81

3. *Privacy*

i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications. Editors will be expected to justify intrusions into any individual's private life without consent.

ii) It is unacceptable to photograph individuals in private places without their consent.

Note - Private places are public or private property where there is a reasonable expectation of privacy.

4. *Harassment*

i) Journalists must not engage in intimidation, harassment or persistent pursuit.

ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them.

iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

In each case, the public interest defence applies. The Code states that the public interest includes, but is not confined to:

i) Detecting or exposing crime or serious impropriety.

ii) Protecting public health and safety.

iii) Preventing the public from being misled by an action or statement of an individual or organisation.

There was no suggestion in evidence that the wording of Clauses 3 or 4 of the Code needed to be amended in order to prevent a repetition of the behaviour of the press or of photographers in the case of Ms Middleton. It is not clear that there was an invasion of privacy under the terms of the Code: the photographs were generally taken in public places where there would not necessarily be an expectation of privacy. There was, however, clearly harassment, as the persistence with which Ms Middleton was pursued caused distress.⁶³

43. As we observed earlier, the PCC issued no desist notice. Normally such notices would be issued by the PCC in response to a request from an individual (or their representative)⁶⁴—indeed, Harbottle and Lewis, the solicitors acting for Ms Middleton told us that “the

⁶³ The Concise Oxford Dictionary defines “harass” as “to vex with repeated attacks, trouble or worry”. Section 7 of the Protection from Harassment Act 1997 states that references in the Act to harassing a person include alarming the person or causing the person distress.

⁶⁴ PCC memorandum, Ev 60

PCC do not of their own volition take action regarding the behaviour of the paparazzi” and that “they wait until a complaint is made”.⁶⁵ This was confirmed by the PCC, which maintains that it relies on the information provided by the parties concerned when issuing notices.⁶⁶

44. While the PCC was correct in bringing editors’ attention to the letter from the solicitors acting for Ms Middleton, it did so long after the worst abuses had occurred. News International had already announced that it would not use photographs taken by the paparazzi. Whatever the motives behind News International’s announcement—Les Hinton, the organisation’s Executive Chairman, acknowledged that the decision had been “pragmatic”⁶⁷ and the NUJ described the move as “claiming the moral high ground”⁶⁸—it was an example of self-regulation in the strict sense, in that a newspaper publisher took pro-active steps to uphold the letter and spirit of the Code.

45. Nonetheless, the press allowed the scrum to continue for too long when it was clearly causing distress. It is not clear whether the press believed that there was a public interest involved: but such an argument would not in any case be convincing. Mr Horrocks, Editor of the *Manchester Evening News*, listed investigations into corruption, wrongdoing and misdemeanours as the sorts of public interest tests he would want to see applied to journalism, and not lifestyle and the private lives of celebrities.⁶⁹ His distinction illustrated neatly the principle that the public interest is not the same as what interests the public, a point articulated by the NUJ amongst others.⁷⁰ The circumstances of Kate Middleton also found no place in other interpretations of the public interest suggested to us, for instance by the Information Commissioner⁷¹ and by the NUJ.⁷² However, Mr Eugene Duffy, the Group Managing Editor of Mirror Group Newspapers sought to justify the decision not to follow News International in stating that no paparazzi photographs of Ms Middleton would be used by giving the hypothetical example of a photograph of Ms Middleton using a mobile phone while driving and thus breaking the law, publication of which “would clearly be in the public interest”.⁷³ This in itself we regard as highly debatable.

46. In the case of Ms Middleton, harassment was evident, yet photographs taken by the paparazzi continued to appear in national and regional papers. We see no plausible public interest defence. **We conclude that editors, in failing to take care not to use pictures of Kate Middleton obtained through harassment and persistent pursuit, breached Clause 4(iii) of the Code of Practice.** The PCC appears to have waited for a complaint to materialise: it could and should have intervened sooner. There may be valid reasons why a

65 Ev 104. Harbottle and Lewis accepted that PCC had no direct right of action against the paparazzi.

66 See further memorandum by the PCC Ev 107

67 Q 80

68 Ev 12

69 Q 57

70 Ev 10

71 “Promoting accountability and transparency for decisions in public spending; tackling fraud corruption and other crime; promoting probity, competition and value for money; clarifying incomplete or misleading information; and promoting health and safety”: Q 37.

72 See Ev 10

73 Q 104

person who is suffering from media intrusion is reluctant to make a formal complaint. The Press Complaints Commission took too long to act to protect Kate Middleton from clear and persistent harassment. We note that the public sympathy enjoyed by Kate Middleton may have been a factor behind News International's decision to stop using paparazzi photographs. Others who may not have the same public support nevertheless are entitled also to protection, and the PCC needs to be even more vigilant on their behalf. The Commission should be readier to depart from its usual practice of issuing a desist notice only in response to a request. However, we recognise the force of the argument that an individual who seeks the protection of the PCC should make a formal complaint.

The law on harassment

47. We note that freelance photographers (and indeed members of the public taking pictures on mobile telephones) are not covered by Code and their activities cannot be curbed except to the extent that they rely on sales to UK titles.⁷⁴ Desist notices may not therefore have universal effect. The NUJ claimed that “the majority” of pictures such as those taken by photographers following Kate Middleton are sold abroad.⁷⁵ If the Code of Practice does not bite, then the only recourse open to someone being subjected to harassment is a civil action under section 2 of the Protection from Harassment Act 1997. For a public figure, this would be a high-profile and high-risk route, and for all those who bring such actions there is a financial risk. There is however no obvious workable alternative, and we note that the NUJ was satisfied that the Act was sufficient to deal with the relatively rare cases, noting that it had been applied successfully in the past.⁷⁶

5 Should self-regulation be retained?

48. This is not a report which examines in detail all aspects of self-regulation of the press, as we noted earlier. In the remaining paragraphs, however, we consider the merits of self-regulation in principle, and we identify some of the issues about the existing system raised in evidence and which may deserve further consideration at a later date.

The principle of self-regulation

49. There are two elements of self-regulation. On the one hand, individual editors themselves have responsibility for regulating the conduct of their staff and the standards applied in obtaining news stories and photographic material; on the other hand, there is the watchdog, in the shape of the Press Complaints Commission, charged with codifying standards across the industry, examining possible breaches and imposing sanctions when necessary. The PCC is, or should be, merely a backstop—the system depends ultimately on the standards applied by editors. As we have concluded above, these standards are not always as high as they should be. Newspapers failed to observe the Code's provisions on

74 Qq 104–5

75 Ev 12

76 Ev 12

harassment when publishing photographs of Ms Middleton obtained in circumstances which caused distress; controls over the activities of staff reporters have been shown to be alarmingly lax in some cases; and an atmosphere of complacency surrounds the industry's approach to the lead offered by the Information Commissioner in encouraging editors to investigate the past behaviour of their staff.

50. It would be wrong, however, to infer from these failings that there has been a decline in standards across the board. Mr Hinton said that he thought that the press industry was "far better at measuring its conduct than it was 20 years ago",⁷⁷ and the establishment of the PCC is perceived to have had a significant effect in improving standards.⁷⁸ Events too have played their part: Mr Satchwell, Director of the Society of Editors, suggested that the circumstances of the death of Princess Diana had brought about a "sea change" which had led to a rewriting of the Code, not least in stating that it should be followed in its spirit as well as to the letter.⁷⁹ Mr Edwards, royal photographer for *The Sun*, confirmed that Princess Diana's death had caused him to look every day at what he did and to consider how he approached photographing members of the Royal Family.⁸⁰ The conviction of Clive Goodman may have damaged the standing of the press in one respect but it has jolted at least one editor into adopting higher standards as a result, and the Press Complaints Commission has reinforced the message for all newspaper and magazine publishers. The prominence given in the media to Mr Goodman's conviction and sentencing was huge, and the MediaWise Trust observed that his imprisonment, followed by the resignation of the editor of the *News of the World*, is likely to have had a more lasting effect on press behaviour than sanctions imposed by the PCC.⁸¹

Self-regulation or exclusive reliance upon the law?

51. One alternative to self-regulation is to rely exclusively upon the law to maintain standards amongst journalists and photographers, deter them from intrusive behaviour and punish those that overstep the mark. In some areas, however, the protection afforded by the law as it currently stands is less than that offered under the Code of Practice, for instance in the identification of children in cases involving sex offences or in regulating payments to people who might reasonably be expected to be called as witnesses in criminal trials even though proceedings had yet to become active.⁸² In certain areas, such as data protection, interception of communications and harassment, the law is clear and well-developed; but the same cannot yet be said for the law relating to respect for privacy. A right to respect for private life is enshrined in Article 8 of the European Convention on Human Rights and incorporated into UK legislation under the Human Rights Act 1998. At present this has not developed into a right to privacy in UK law. Instead, a series of cases have begun to develop a right to protection using as a starting point the existing law relating to breach of confidence. The previous Culture, Media and Sport Committee

77 Q 74

78 See for instance Mr Satchwell Q 58 and the Press Board of Finance Ev 84;

79 Q 72

80 Q 68

81 Ev 2

82 Code of Practice, Clauses 7(1) and 15(ii)

recommended that the Government should “bring forward legislative proposals to clarify the protection that individuals can expect” in relation to privacy.⁸³ The Government rejected the recommendation, saying that the interests of freedom of expression and of privacy could weigh differently in different cases, and that it was the job of the courts to strike the balance on a case by case basis. It believed that there were no signs that courts were systematically striking the wrong balance.

52. The arguments against a privacy law have been well rehearsed over the years, and there was little support in evidence to our inquiry for a “privacy law” setting out the boundaries for an individual’s right to privacy specifically from media intrusion. The Press Complaints Commission was opposed, citing the need for flexibility to recognise the differing circumstances of each case;⁸⁴ and so was the NUJ.⁸⁵ The MediaWise Trust stated that it had “always taken the view that a privacy law directed specifically against the media is inimical to press freedom”, and it was confident that the protection afforded by the Human Rights Act and by the powers of the Information Commissioner should suffice as a safeguard against unwarranted intrusion.⁸⁶ The PCC also argued that a privacy law would make redress available only through the courts, and that redress would cease to be free or fast, in contrast to the PCC complaints procedure.⁸⁷ In the absence of a “privacy law”, however, we note that judgements in a number of recent cases have established case law which extends individuals’ rights of privacy. This trend looks set to continue and, it has been claimed, may result in the introduction of a privacy law through the back door.

53. While we accept that a complainant who brings an action to uphold their right to privacy under the Human Rights Act is entering very uncertain territory, and that a codification of what is private and what is in the public interest would be of value, we doubt that it could be achieved successfully and we agree with the Government in its reasons for opposing such a law. **To draft a law defining a right to privacy which is both specific in its guidance but also flexible enough to apply fairly to each case which would be tested against it could be almost impossible. Many people would not want to seek redress through the law, for reasons of cost and risk. In any case, we are not persuaded that there is significant public support for a privacy law.**

54. **We do not believe that there is a case for a statutory regulator for the press, which would represent a very dangerous interference with the freedom of the press. We continue to believe that statutory regulation of the press is a hallmark of authoritarianism and risks undermining democracy. We recommend that self-regulation should be retained for the press, while recognising that it must be seen to be effective if calls for statutory intervention are to be resisted.**

83 Paragraph 111, *Privacy and media intrusion*, Fifth Report of the Culture, Media and Sport Committee, Session 2002–03, HC 458–I

84 Ev 51

85 Q 23

86 Ev 8

87 Ev 51

Issues for future consideration

The Code of Practice

55. The Code of Practice is central to self-regulation: it is the instrument on which editors should rely to guide them in decisions on whether a practice is acceptable or not, and it provides the yardstick by which the Press Complaints Commission assesses complaints. Significantly, we received no representations in favour of large-scale changes to the Code. The NUJ was largely content with the existing text, observing that it covered the key elements of journalistic ethics and was neither so long that journalists could not remember its key points nor so short that important areas were missed out.⁸⁸ Professor Chris Frost, Chair of the NUJ Ethics Council, also told us that the public interest defence was “reasonably sound”.⁸⁹ We note that the Code Committee instituted in 2004 an annual review of the Code, inviting suggestions for amendments from “civil society”.⁹⁰

56. Importantly, the Code commands support amongst editors and the industry at large.⁹¹ The Editors’ Code Committee told us that “the guiding principle, since 1991, has been that only a Code drafted by editors would command the necessary authority to deliver universal compliance”.⁹² Mr Esser, Executive Managing Editor of the *Daily Mail*, argued that “the huge strength of self-regulation is that the Editors’ Code has been produced by the editors and they have signed up to it: so there is no real pressure upon editors to break it”.⁹³ The Code can also require higher standards from journalists than are required by law.⁹⁴ It may have failed to prevent Clive Goodman from actions which were unethical and indefensible, but so did the law, as the Editors’ Code Committee pointed out.⁹⁵

57. The NUJ proposed that a conscience clause should be inserted into the Code of Practice, formally establishing a right for journalists to refuse to carry out editors’ instructions if they believe it would be unethical to do so. The NUJ told us that it received complaints from “lots of members” who had been put under pressure by their editors to breach both the Code of Practice and the NUJ’s ethics code in pursuing a story.⁹⁶ The MediaWise Trust hinted at similar concerns, noting “a fault-line of tawdry and slipshod journalism driven by competitive pressures”.⁹⁷

58. Mr Horrocks, Editor of the *Manchester Evening News*, cast doubt upon the NUJ’s suggestion, saying that it was “just not my experience”.⁹⁸ Witnesses representing the *Daily*

88 Ev 11. The NUJ had reservations about the wording of the clause on discrimination, which it described as “seriously flawed”.

89 Q 17

90 Ev 24. The Code Committee invites suggestions from subscribers to the PCC website, trade bodies and related interest groups.

91 See for instance the Newspaper Society, Ev 80; Society of Editors Ev 30

92 Ev 24

93 Q 97

94 Editors’ Code Committee Ev 25, para 3.1

95 Ev 28

96 Qq 7–10

97 Ev 2

98 Q 56

Mail and the Mirror Group titles agreed.⁹⁹ The PCC was similarly unconvinced and told us that this was more properly a matter for an employment contract between an editor and a journalist, and it was content that standards would be upheld through the inclusion in contracts of a clause on respect for the Code of Practice.¹⁰⁰ In the limited time available, we have not been able to resolve what appear to be conflicting statements on whether journalists come under pressure from editors to breach the Code. **We nonetheless support the inclusion in staff contracts of a clause requiring adherence to the Code of Practice as a condition of employment, which we believe would safeguard journalists who believed that they were being asked to use unethical newsgathering practices.**

The application of the Code to online content

59. When announcing our inquiry, we invited comment on what regulation, if any, should be applied to online news provision by newspapers and others. The Code already applies to online versions of publications; the real issue at the time that we announced our inquiry was whether the Code's provisions should be extended to cover material which was not a parallel online version of printed matter (such as video reports from correspondents or user-generated content hosted on newspaper websites). We noted in our recent inquiry into new media and the creative industries plans by one major regional newspaper group to convert 70 newsrooms to allow reporters to file video reports.¹⁰¹

60. Not for the first time, the announcement by the Committee of an intention to investigate a particular area has co-incided with (or shortly preceded) an announcement by the Press Complaints Commission of action to be taken. In this case, the PCC announced on 8 February 2007 that it would extend its remit to cover audiovisual material on newspaper and magazine titles' websites where two key requirements were met:

- That the editor of the newspaper or magazine is responsible for it and could reasonably have been expected both to exercise editorial control over it and apply the terms of the Code; and
- That it was not pre-edited to conform to the on-line or off-line standards of another media regulatory body.¹⁰²

The PCC indicated that the Code would not be applied to material streamed or disseminated live, nor would it apply to user-generated material posted via blogs or chatrooms. We note Ofcom's observation that, even though an editor might not have control over the content of a live broadcast, he or she would have control over the decision to provide the live feed in the first place, and that an editorial judgment would need to be made before such a broadcast about the risk that content might intrude upon privacy.¹⁰³

61. We believe that it was right for the PCC to extend its remit to cover editorial audio and visual content on newspaper websites. Questions remain, however, about whether

99 Qq 98 and 99

100 Q 181

101 *New media and the creative industries*, Fifth Report of the Committee, Session 2006–07, HC 509–I, paragraph 44

102 See Press release of 8 February 2007, PCC website

103 Ev 96

it should have gone further. Editors bear a measure of responsibility for all content on their publications' websites, whether or not they have editorial control over it. We did not explore this issue fully in evidence, although we have no doubt that it will be in editors' interests for their publications not to host any user-generated content which is in breach of the law or of the Code of Practice.

The Press Complaints Commission

62. Although we express our support in this report for the principle of self-regulation, we are not in a position—on the basis of limited oral evidence—to give a comprehensive view of the extent to which the system operated by the PCC is achieving its objectives from the standpoint of both the public and the press as a whole. We note that the PCC has strengths, for instance, it has:

- Gained the trust and respect of the industry;¹⁰⁴
- Improved its website, which is now more helpful to users;¹⁰⁵
- Introduced a Charter Commissioner, who may on application review whether or not a case was handled fairly by the PCC, and the Charter Compliance Panel, which publishes an annual review of the quality of the Commission's service and which has the power to examine retrospectively any Commission complaints file;¹⁰⁶ and
- Introduced a hotline for complainants.¹⁰⁷

We also note evidence of high levels of satisfaction amongst complainants with the Commission's handling of their complaints during 2006.¹⁰⁸

63. The PCC now undertakes more preventative work than previously, contacting individuals or organisations at the centre of high-profile stories to offer assistance, before the point where they have to make a complaint; liaising before publication between newspapers and those in the news, with the result that stories may be altered for publication or even not appear;¹⁰⁹ approaching individuals to ask whether they wished the PCC to pursue a matter which had been raised as a complaint by a third party; and targeting information towards people who might need the help of the PCC, for instance by providing information in witness rooms or in coroners' courts on how to complain through the PCC.¹¹⁰ The PCC provided recent examples of such efforts.¹¹¹ Although not widely appreciated, this is some of the most valuable work undertaken by the Commission.

104 Newspaper Society Ev 80; Periodical Publishers Association Ev 83; Newspaper Publishers Association Ev 83.

105 Professor Jempson Q 14

106 Ev 48

107 MediaWise, Ev 2

108 Ev 57

109 The Managing Editor of the *Sunday Times* told us that he had often called the PCC for advice prior to publication on such issues as privacy: Ev 103

110 Ev 48–9. See also Q 193

111 Ev 54

64. On the other hand, we note that:

- The PCC does not command absolute confidence that it is fair;¹¹²
- There is debate about whether the PCC should be more willing to accept third-party complaints;¹¹³
- There remains scope for the PCC to increase awareness of what it can do, as its Director acknowledged to us;¹¹⁴ and
- There are criticisms that the PCC applies the Code of Practice with far too light a touch and that it should do more to enforce the Code and take editors to task for breaches.¹¹⁵

Adjudications and resolved complaints

65. The chief complaint made about the PCC in evidence was that it had a very limited repertoire of sanctions. There is in fact only one—the requirement upon an offending publication to publish in full and with due prominence an adjudication by the PCC upholding a complaint. Witnesses representing the press were adamant that the publication of adjudications was a “harsh penalty” and that “no editor wants to have in their newspaper an adjudication against them that their own community then sees”.¹¹⁶ The Code Committee added that a complaint to the Commission was taken very seriously and that there was “a genuine sense of failure and shame at being found in breach of the Code”.¹¹⁷ The PCC likewise noted that losing a ruling was “professionally embarrassing” and was regarded as “a black mark against an editor’s judgment”.¹¹⁸

66. The number of cases adjudicated each year has fallen from somewhere between 60–80 in each of the first ten years of the PCC’s existence to an average of about 33 in each of the last six years. One third of complaints adjudicated in 2006 were upheld. Meanwhile, the number of cases resolved through conciliation is increasing, as we noted in paragraph 12. On the face of it, the increase in numbers of cases resolved through conciliation seems positive (and the PCC certainly sees this as an encouraging trend),¹¹⁹ but editors may have an interest in seeking conciliation in order to avoid publicity, particularly if the ignominy of an adjudication upholding a complaint is as great as is suggested by industry witnesses. Summaries of such cases resolved through conciliation are listed on the Commission’s website unless the complainant wishes otherwise, but there is no requirement upon the publication to publish the terms of the complaint or its resolution. Even though such cases

112 Q 17 and Ev 78

113 Q 19

114 Q 194

115 See for instance, submission from Mr Graham Mather, para 13, Ev 105, also Mr Dear Q 14, and Ev 4 and 10

116 Mr Horrocks Q 76

117 Ev 24

118 Ev 50

119 Q 189

will almost invariably have involved a breach of the Code, the fact that a breach has occurred will never be very visible to readers of the publication at fault.

67. While editors do reasonably frequently exercise self-regulation through printing apologies or corrections (both in cases raised directly with the publication and in those resolved through the PCC), there is a common perception that the prominence given to an apology or a correction does not match that given to the story itself.¹²⁰ This perception is not always justified: Paul Horrocks, Editor of the *Manchester Evening News*, said that “we do not publish corrections on page 68 under the greyhound results—we print them in a page earlier in the paper than the offending article had appeared”.¹²¹ We doubt, however, that such a practice is universal. When we asked a representative of the *Daily Mirror* what approach the paper would take if a person were to complain about a false story in a front-page splash, the reply was revealing: “It would become a difficult issue and we would arrive at an amicable solution”.¹²² The witness acknowledged that there had been examples of front-page apologies. We note that the PCC now monitors the prominence of published corrections and apologies in cases which it has negotiated. In 2006, 74% of such corrections appeared either on the same page as the original item under complaint, or further forward in the paper, or in a dedicated corrections column.¹²³

68. Rulings signal to editors the PCC’s interpretation of the Code, and the NUJ argued that adjudicating and publishing rulings on more complaints would give stronger guidance to editors.¹²⁴ We are aware of suggestions that the low number of adjudications published by the PCC has contributed to the courts’ readiness to develop common law on the right to privacy, but the PCC described this as “extremely unfair”.¹²⁵ It maintained that there had been many adjudications in the early years of the Code’s existence to set the boundaries, and that the need for adjudications had declined as the culture within the industry had changed.¹²⁶ It added that the Editors’ Code Book was an accumulation of “jurisprudence” around each clause of the Code, providing editors with the necessary guidance.

69. The PCC marshalled a number of other arguments against issuing more rulings, suggesting that people who felt that they had suffered an intrusion into their privacy “usually want their complaint sorted out with a minimum of fuss” and that they “do not want the information under complaint repeated”,¹²⁷ and it cited a number of examples in support of its case. It was suggested to us that complainants were anxious to see a resolution to their complaint but not necessarily to pursue it to an adjudication¹²⁸ or even a correction or an apology.¹²⁹ However, we note one case, cited by the Press Complaints Commission as an example of a benchmark privacy ruling, in which the complainant

120 Professor Frost, Q 15

121 Ev 32

122 Q 102

123 Ev 658

124 Ev 11

125 Q 191

126 Q 189

127 Ev 56

128 Q 189

129 See Mr Horrocks, Q 74

rejected the newspaper's offer of a public apology and stated that she wanted the matter adjudicated.¹³⁰ We also note that, for whatever reason, no complaint was made about harassment of Ms Middleton until March 2007, in response to publication of a photograph by the *Daily Mirror*. As that complaint was settled through conciliation, the Press Complaints Commission published no adjudication and the fact that there was a breach has not, therefore, received the exposure which we believe it deserves.

70. We support the principle of seeking a resolution of a complaint through conciliation and without going to formal adjudication, although we believe that it would be helpful to publish details of the resolution if the complainant so wishes. We believe that such a practice would enhance the public's view of the effectiveness of the Commission and would strengthen the understanding by the press and by the public of the principles which underlie the Commission's work.

Financial penalties

71. Some witnesses who argued that sanctions imposed by the PCC were feeble and had minimal deterrent value favoured the introduction of financial penalties. The MediaWise Trust, for instance, believed that these should be imposed for breaches of the Code of Conduct, graded according to the severity of the breach. The scale suggested was £10,000 for an "extreme violation", £5,000 for a "serious breach", and £1,000 for a "significant intrusion". The NUJ, acknowledging that the impact of fixed sums would vary according to the size of the newspaper penalised, suggested as an alternative a scale based upon seriousness of the breach factored by circulation figures or by advertising rates.¹³¹ It did not envisage that financial penalties would often be applied.¹³² The MediaWise Trust also argued for compensation to be paid by editors to those had been wronged, in recognition of the effort, stress and possibly lost work time in pursuing a complaint.¹³³

72. The PCC resists calls for the introduction of fines as penalties for breaches of the Code. It points out that there are no legal powers enabling the Commission to demand payment, with the risk that a publication could refuse to pay and the Commission's authority would be undermined. The PCC also pointed to a survey by MORI suggesting that other forms of redress—such as published apologies—were seen by the public as better forms of resolution of complaints.¹³⁴ The PCC Chairman said that "We do not do money. If we did money we would have lawyers, if we had lawyers the whole blinking thing would come to a grinding halt", and the Commission's memorandum warned of the danger of a compensation culture.¹³⁵ The PCC's memorandum also suggested that fines would hinder dispute resolution and perhaps be too small to deter editors from publishing "interesting but intrusive information".¹³⁶ **We do not find all the PCC's arguments against the introduction of fines convincing. While there is little evidence that the industry would**

130 Ev 58: see also <http://www.pcc.org.uk> for adjudication relating to Ms Joanna Riding, 31 July 2006

131 Ev 12

132 Q 26

133 Ev 7

134 Ev 51(footnote)

135 Q 183 and Ev 51

136 Ev 51

support financial penalties, if that was the price of maintaining a self-regulatory system the likelihood is that they would accept them. However, we accept that giving the PCC powers to impose fines would risk changing the nature of the organisation and might need statutory backing to make the power enforceable. This would be a major step which we would not recommend without a broader examination of the subject.

Conclusions and recommendations

1. We note the assurances of the Chairman of News International that Mr Goodman was acting wholly without authorisation and that Mr Coulson had no knowledge of what was going on. We find it extraordinary, however, that the News of the World was prepared to apply one standard of accountability to the £105,000 retainer paid to Mr Mulcaire and another, far weaker, standard to the substantial cash payments paid to Mr Mulcaire by Mr Goodman. The existence of a “slush fund” effectively can only further the belief that editors condone such payments—on a “no need to know” basis—as long as they provide good copy. Self-regulation must require vigilance by editors, otherwise the impression may be given that editors will turn a blind eye as long as good stories are the result, a practice of which at least some editors are guilty, according to the General Secretary of the NUJ. We also find it extraordinary that in their investigation into the case the PCC did not feel it necessary to question Mr Coulson on these points. (Paragraph 21)
2. The events leading to the conviction of Clive Goodman amounted to one of the most serious breaches of the Code uncovered in recent times. We are in no doubt that the Editor of the News of the World was right that he had no choice but to resign. By doing so, a clear message has been sent that breaches of this kind cannot be tolerated and that editors must accept final responsibility for what happens on their watch. (Paragraph 22)
3. We welcome the steps that have now been taken by the News of the World to introduce more stringent controls over cash payments by its staff. The recommendations on newsgathering methods issued in May 2007 by the Press Complaints Commission should be adopted as a matter of course by all newspaper and magazine publishers. (Paragraph 26)
4. We are not convinced that the Information Commissioner should feel debarred from releasing to their own employers the names of individual journalists identified in invoices obtained under Operation Motorman. In any case, we do not see the Information Commissioner’s decision as a valid defence for newspaper editors, some of whom seem to have made minimal effort to establish whether their employees had obtained information illegally (or whether they had done so ostensibly in the public interest but without having secured the necessary authority). The fact that an agency which was regularly accessing databases illegally was being used by journalists throughout the industry, without any apparent questioning from editors, is very worrying. We find claims that all of the transactions involving journalists were for the obtaining of information through legal means to be incredible and it is a matter of great concern that the industry has not taken this more seriously. The lack of any prosecutions or convictions of journalists is no defence. One of the principal arguments for self regulation is that it is more effective than statutory controls. If the industry is not prepared to act unless a breach of the law is shown to have occurred already then the whole justification for self-regulation is seriously undermined. If self-regulation is to continue to command confidence and support, editors will need

- to be seen to be pro-active in investigating any potential breach of the Code of Practice. (Paragraph 33)
5. We believe that sufficient safeguards exist to protect legitimate investigative journalism and do not believe that the introduction of custodial sentences for offences under section 55 of the Data Protection Act 1998 would have the chilling effect claimed by the press. Given the evidence that breaches of the Act have not been treated with the seriousness which they warrant, we therefore support the decision of the DCA, and subsequently the Ministry of Justice, to introduce the necessary legislation. (Paragraph 36)
 6. We conclude that editors, in failing to take care not to use pictures of Kate Middleton obtained through harassment and persistent pursuit, breached Clause 4(iii) of the Code of Practice. [...] The Press Complaints Commission took too long to act to protect Kate Middleton from clear and persistent harassment. We note that the public sympathy enjoyed by Kate Middleton may have been a factor behind News International's decision to stop using paparazzi photographs. Others who may not have the same public support nevertheless are entitled also to protection, and the PCC needs to be even more vigilant on their behalf. The Commission should be readier to depart from its usual practice of issuing a desist notice only in response to a request. However, we recognise the force of the argument that an individual who seeks the protection of the PCC should make a formal complaint. (Paragraph 46)
 7. To draft a law defining a right to privacy which is both specific in its guidance but also flexible enough to apply fairly to each case which would be tested against it could be almost impossible. Many people would not want to seek redress through the law, for reasons of cost and risk. In any case, we are not persuaded that there is significant public support for a privacy law. (Paragraph 53)
 8. We do not believe that there is a case for a statutory regulator for the press, which would represent a very dangerous interference with the freedom of the press. We continue to believe that statutory regulation of the press is a hallmark of authoritarianism and risks undermining democracy. We recommend that self-regulation should be retained for the press, while recognising that it must be seen to be effective if calls for statutory intervention are to be resisted. (Paragraph 54)
 9. We nonetheless support the inclusion in staff contracts of a clause requiring adherence to the Code of Practice as a condition of employment, which we believe would safeguard journalists who believed that they were being asked to use unethical newsgathering practices. (Paragraph 58)
 10. We believe that it was right for the PCC to extend its remit to cover editorial audio and visual content on newspaper websites. Questions remain, however, about whether it should have gone further. Editors bear a measure of responsibility for all content on their publications' websites, whether or not they have editorial control over it. (Paragraph 61)
 11. We support the principle of seeking a resolution of a complaint through conciliation and without going to formal adjudication, although we believe that it would be helpful to publish details of the resolution if the complainant so wishes. We believe

that such a practice would enhance the public's view of the effectiveness of the Commission and would strengthen the understanding by the press and by the public of the principles which underlie the Commission's work. (Paragraph 70)

12. We do not find all the PCC's arguments against the introduction of fines convincing. While there is little evidence that the industry would support financial penalties, if that was the price of maintaining a self-regulatory system the likelihood is that they would accept them. However, we accept that giving the PCC powers to impose fines would risk changing the nature of the organisation and might need statutory backing to make the power enforceable. This would be a major step which we would not recommend without a broader examination of the subject. (Paragraph 72)

Formal minutes

Tuesday 3 July 2007

Members present:

Mr John Whittingdale, in the Chair

Janet Anderson
Philip Davies
Mr Nigel Evans
Paul Farrelly
Mr Mike Hall

Alan Keen
Rosemary McKenna
Adam Price
Mr Adrian Sanders

Draft Report (*Self-regulation of the press*), proposed by the Chairman, brought up and read.

Ordered, That the Chairman's draft Report be read a second time, paragraph by paragraph.

Paragraphs 1 to 72 read and agreed to.

Summary read and agreed to.

Resolved, That the Report be the Seventh Report of the Committee to the House.

Ordered, That the Chairman make the report to the House.

Several Memoranda were ordered to be reported to the House for printing with the Report.

Several Memoranda were ordered to be reported to the House for placing in the Library and Parliamentary Archives.

Ordered, That embargoed copies of the Report be made available, in accordance with the provisions of Standing Order No. 134.

[Adjourned till Tuesday 10 July at 10.15 am

Witnesses

Tuesday 6 March 2007	<i>Page</i>
Professor Mike Jempson , Director, The MediaWise Trust, Jeremy Dear , General Secretary, and Professor Chris Frost , Chair, Ethics Council, National Union of Journalists	Ev 13
Richard Thomas , Information Commissioner, and Mick Gorrill , Head of Regulatory Action Division	Ev 19
Les Hinton , Executive Chairman, News International, Chairman, Editors' Code of Practice Committee, Arthur Edwards MBE , Royal photographer, <i>The Sun</i> , Paul Horrocks , Editor, <i>Manchester Evening News</i> , President, Society of Editors, and Bob Satchwell , Director, Society of Editors	Ev 32
Robin Esser , Executive Managing Editor, the <i>Daily Mail</i> , and Eugene Duffy , Group Managing Editor, MGN Ltd	Ev 40
Sir Christopher Meyer KCMG , Chairman and Tim Toulmin , Director, Press Complaints Commission, and Richard Thomas , Information Commissioner	Ev 65

List of written evidence

1	The MediaWise Trust	Ev 1
2	National Union of Journalists (NUJ)	Ev 9
3	The Editors' Code Committee	Ev 23
4	Society of Editors	Ev 29
5	Press Complaints Commission (PCC)	Ev 46, 106
6	Robert Henderson	Ev 72, 73
7	The Campaign for Press and Broadcasting Freedom (CPBF)	Ev 74
8	Paul Vaughan	Ev 78
9	Professor Julian Petley	Ev 79
10	Newspaper Society	Ev 79
11	Periodical Publishers Association (PPA)	Ev 82
12	Newspaper Publishers Association (NPA)	Ev 83
13	The Press Standards Board of Finance (PressBoF)	Ev 84
14	Broadcast Journalism Training Council (BJTC)	Ev 86
15	Department for Culture, Media and Sport (DCMS)	Ev 87
16	Ofcom, Office of Communications	Ev 90
17	The Sunday Times	Ev 101
18	Harbottle and Lewis LLP	Ev 102
19	Graham Mather, President of the European Policy Forum	Ev 103
20	John Toner, Freelance Organiser, National Union of Journalists	Ev 105
21	Letter from the Director of the Press Complaints Commission to the Clerk of the Committee	Ev 106
22	Letter from News International Limited to the Clerk of the Committee	Ev 107
23	Information Commissioner's Office	Ev 108

List of unprinted written evidence

Additional papers have been received from the following and have been reported to the House but to save printing costs they have not been printed and copies have been placed in the House of Commons Library where they may be inspected by Members. Other copies are in the Parliamentary Archives, House of Lords and are available to the public for inspection. Requests for inspection should be addressed to the Parliamentary Archives, House of Lords, London SW1. (Tel 020 7219 3074). Hours of inspection are from 9:30am to 5:00pm on Mondays to Fridays.

Richard Price MBE

Antony Croghan

Peter Crawford

NUJ Parliamentary Group

Philip J Mitchell

The POW Trust

Matthew Cain, Newscounter

Reports from the Committee since 2005

Session 2005–06

First Special Report	Maritime Heritage and Historic Ships: Replies to the Committee's Fourth Report of Session 2004-05	HC 358
First Report	Broadcasting Rights for Cricket	HC 720
Second Report	Analogue Switch-off	HC 650 I, II
Third Report	Preserving and Protecting our Heritage	HC 912 I, II, III
Fourth Report	Women's Football	HC 1357

Session 2006–07

First Report	Work of the Committee in 2006	HC 234
Second Report	London 2012 Olympic Games and Paralympic Games: funding and legacy	HC 69 I, II
Third Report	Call TV quiz shows	HC 72
Fourth Report	Call TV quiz shows: Joint response from Ofcom and ICSTIS to the Committee's Third Report of Session 2006-07	HC 428
Fifth Report	New Media and the creative industries	HC 509 I, II
Sixth Report	Caring for our collections	HC 176 I, II

Oral evidence

Taken before the Culture, Media and Sport Committee

on Tuesday 6 March 2007

Members present:

Mr John Whittingdale, in the chair

Janet Anderson
Philip Davies
Mr Nigel Evans
Paul Farrelly

Mr Mike Hall
Alan Keen
Rosemary McKenna
Helen Southworth

Memorandum submitted by the MediaWise Trust

1. THE MEDIAWISE TRUST

1.01 MediaWise exists to

- provide free, confidential advice and assistance for members of the public affected by inaccurate, intrusive, or sensational media coverage;
- deliver use-of-the-media training for the voluntary sector and members of the public;
- devise and deliver training on ethical issues for media professionals;
- conduct research and publish material about media law, policy and practice;
- contribute to public debate about the role and impact of the mass media.

1.02 Originally called PressWise, the Trust was set up as a voluntary organisation in 1993 by “victims of media abuse”, supported by concerned journalists, media lawyers and MPs. The Trust registered as a charity in 1999, and is funded by donations, grants and commissions. Our aims, objectives and the full range of our activities can be viewed at www.mediawise.org.uk

1.03 MediaWise is concerned with ethical issues in all forms of mass media. On average the Trust now receives at least three enquiries from potential complainants each week, and a similar number of approaches from journalists, students and academics.

1.04 The Trust operates on the principle that press freedom is a responsibility exercised by journalists and editors on behalf of the public. We consider that the most important role of journalists in a democracy is to inform the public about events, issues and opinions which might influence the decisions people take about their lives and the society in which they live. For that reason the Trust asserts the public's right to know when inaccurate information has been delivered by the mass media.

1.05 The Trust's president is Sir Louis Blom-Cooper QC, the last Chairman of the Press Council before it was replaced by the Press Complaints Commission (PCC) in 1991. Its current Trustees are:

Charles Fletcher MBE (Chair, Director of Caledonia Media)
Fareena Alam (Managing Editor, *QNews*)
Bob Borzello (former journalist & publisher)
Glenn Del Medico (former legal advisor to BBC)
Prof Roy Greenslade (columnist & former editor)
Jocelyn Hay CBE (founder, Voice of the Listener & Viewer)
Pat Healy (former Chair, NUJ Ethics Council)
Nicholas Jones (author, journalist & former BBC political correspondent)
Stephen Jukes (former head of Reuters Global News, now head of Bournemouth School of Journalism)
Jim Latham (Secretary Broadcast Journalism Training Council)
Desiree Ntolo (Rabbi & co-founder of PressWise)
Amanda Williams (Treasurer)

1.06 Based in Bristol, MediaWise recently moved onto the campus of the University of the West of England. Currently it has two part-time staff. The Trust's Director and voluntary Associate Directors are experienced journalists and trainers who have worked in all sectors of the media. The Trust employs a network of working journalists to devise and deliver a wide range of training packages for media professionals and non-governmental organizations in the UK and internationally.

1.07 MediaWise regularly contributes to public debate via the media and events concerned with media ethics and regulation, and distributes an electronic bulletin commenting on topical issues to over 2,000 media correspondents and journalism organisations worldwide.

1.08 The Trust also runs projects to help improve understanding of the media and coverage of problematic issues, and organises opportunities for dialogue between media professionals and the public in the UK. These have included:

- Children’s Rights vs. Press Freedom: Who wins? (with Quarriers, Bath 2005)
- Journalism & Public Trust (with the NUJ, London, 2004)
- Reporting Suicide (with Befrienders International, London, 2001)
- Refugees, Asylum-seekers and the Media (London, 2001)
- Access to the Information Society (with EC Information Society Forum, Bristol, 1998)
- Ethnic Minorities and the Media (London, 1997)
- Child Exploitation and the Media (with Action on Child Exploitation, London, 1997)

2. BACKGROUND TO THIS SUBMISSION

2.01 As this document was being prepared MediaWise received a call from an anxious young man whose father had just received a jail sentence. There were “at least five” reporters and photographers’ outside the family home. He and his brother were completely unprepared for such attention. They felt frightened and powerless. The journalists kept knocking on the door—it happened twice during the telephone conversation—and would not go away. We explained that while it is a journalist’s job to ask questions, no-one is obliged to answer them. These teenagers had nothing to say to them and didn’t know how to get rid of them. We warned them that if they expressed their fear or anger to the waiting journalists they were likely to provide a “new angle” on the story. They were effectively imprisoned in their own home. We suggested they close the curtains and not answer the ’phone. They could call the police and cite the Protection Against Harassment Act as a way of clearing the immediate area so that they could go shopping or to relatives. Even so they might be followed or photographed against their wishes. We gave them the PCC Helpline number, but since they didn’t know where the journalists were from this might not achieve the relief they were seeking. Evidently the industry’s guidelines on “media scrums” has yet to penetrate throughout the industry.

2.02 Over the last 14 years MediaWise has made submissions and/or given evidence to a number of parliamentary inquiries about aspects of media regulation, including most recently the Culture, Media & Sport Select Committee Inquiry into Privacy and Media Intrusion in 2003 (our detailed submission was entitled *Stop the Rot!*), and the All Party Parliamentary Group on Corporate Responsibility (*Social responsibility and the media*) in 2006. All have been based on our experience of dealing with consequences to individual citizens and social groups of inaccurate, intrusive or sensational press coverage.

2.03 Our efforts to strengthen the PressBof Editor’s Code of Practice and encourage reform of Press Complaints Commission procedures have met with some success. In 2004 we published *Satisfaction Guaranteed? Press complaints systems under scrutiny* (ISBN 0-9547620-1-0) a detailed analysis of the shortcomings of the PCC with proposals for reform, many of which have since been adopted—notably a hotline for complainants, regular public consultation on the Code of Practice, and a system of internal audit—though regrettably this does not include the opportunity to appeal decisions with which either party to a complaint might be dissatisfied.

2.04 MediaWise also deals with complaints about inaccuracy and unfairness in the broadcast media. As a result we have been able to contribute useful suggestions in the development of Ofcom’s codes and procedures for handling complaints about privacy and fairness.

2.05 There is a rich seam of excellent journalism in Britain’s newspapers and magazines, but there is also a fault-line of tawdry and slipshod journalism driven by competitive pressures. As newsrooms and investment in “frontline” journalism shrinks, journalists become more desk-based and reliant on tips and material originated by the myriad forms of public relations that seek to influence public tastes and opinions.

2.06 The competitive approach to news-gathering is inevitable in the “free market”, but making money out of others’ misfortune cannot be justified by calling in aid “press freedom”. MediaWise regards press freedom as a responsibility exercised by journalists on behalf of the public—to research and disseminate information of direct relevance to people’s lives that might otherwise remain hidden from the public domain and to provide citizens with information that they can rely upon in making decisions about their personal and political decisions. It should not be abused as “a licence to print money”.

3. THE GOODMAN CASE AND ITS REPERCUSSIONS

3.01 The recent jailing of *News of the World* royal editor Clive Goodman and his associate Glenn Mulcaire, followed by the resignation of *NoW* editor Andy Coulson, is likely to have a more lasting effect on press behaviour than the half-hearted slap on the wrist issued by the PCC when it occasionally finds a newspaper at fault. Giving judgement Mr Justice Gross described the men’s behaviour as “sustained criminal conduct”. As he said: “This case was not about press freedom; it was about a grave, inexcusable and illegal invasion of privacy.”

3.02 After the two men pled guilty in 2006 *NoW* editor Andy Coulson announced that he had “put in place measures to ensure that (Clive Goodman’s actions) will not be repeated by any member of my staff.” Such measures should already have been in place. Clause 3 and Clause 10 (i) of the Editors’ Code to which Coulson had signed up, is unequivocal on the matter. Any reasonable person might have expected the editor of a newspaper whose investigative techniques are often criticised to have been taking more than a passing interest in his staff’s methods.

3.03 Coulson did not explain how his new measures would apply to non-staff members. Goodman’s accomplice Glenn Mulcaire, who had been supplying information to the *NoW* since 1997, was an external contractor. The police investigation uncovered a contract apparently signed by the paper’s managing editor Stuart Kuttner, guaranteeing Mulcaire’s company The Nine Consultancy, over £100,000 for one year’s work.

3.04 The case has shone a light on long-known but often-denied techniques used by many newspapers to obtain personal information. In the 15 years since the industry launched the PCC, supposedly to demonstrate a willingness to clean up its own act, thousands of ordinary people, as well as “celebrities” have had personal details splattered over intrusive and often inaccurate stories.

3.05 MediaWise has dealt with hundreds of citizens over the years who do not have the benefit of expensive lawyers when complaining. They express fear, anger and confusion when details of the phone calls, phone bills, bank accounts and even health records have found their way into the public domain. Often their only direct contact with a journalist has been the fateful call (if indeed it comes) asking for a comment on the revelations that are about to be published. The PCC has rarely commented on the methods used to obtain such information, and no prosecutions have followed.

3.06 Many of those “caught” by the press have lost relationships, jobs and even homes after publication of prurient stories sometimes based on illicitly obtained information. Some have contemplated suicide, or felt the need to seek psychiatric or psychotherapeutic care. Few ever received compensation from erring newspapers, yet Glenn Mulcaire pocketed four times the national average wage under an exclusive contract to collect such data for just one newspaper. Tragically one man who was compensated, for being wrongly identified by the *Daily Mail* in December 2006 as the suspect in the Suffolk serial killings, died shortly afterwards. Gareth Roberts, a waiter from North Wales, had had to convince his children, his ex-wife and others that he never been near the murder scene. Apparently he then went on a drinking binge and was found dead early in February 2007.

3.07 Although newspapers may be peppered with brief admissions of error for which substantial payments or donations to charity have been made, the public is never informed about how many millions are spent each year discreetly satisfying claims for damages out of court. At the time the Human Rights Bill was first introduced the industry argued against newspapers being covered, for fear that they might be required to compensate their “victims”. Their argument was massaged into concern for ordinary members of the public who might incur heavy legal fees for asserting their rights. Adjustments were made to allow the PCC—which advertises itself as being “Fast, Free and Fair” (sic)—to become the first port of call for claims that a person’s privacy had been breached.

3.08 The industry wilfully ignores the fact that inaccuracy and intrusion can cost people immense and unjustifiable suffering and ensure, while literally profiting by titillating the public at others’ expense. The PCC provides the industry with a cheap alternative—because it offers no compensation.

3.09 Trading in improperly obtained personal material with newspapers is commonplace. For years newspapers have published “snatched” pictures of prisoners and patients in special hospitals (Myra Hindley, Ian Brady, Peter Sutcliffe, Maxine Carr and Ian Huntley, etc) with apparent impunity. More worrying still was the claim by Information Commissioner Richard Thomas in his May 2006 report *What price privacy?* that 305 journalists had obtained details of criminal records, telephone accounts and other personal data from a single private detective (not Mulcaire).

3.10 Referring to the report at the time Goodman was arrested in August 2006, an editorial in the *Guardian* newspaper commented: “(T)he PCC has until now remained remarkably incurious and unwilling to instigate an inquiry of its own, despite the prima facie evidence against hundreds of journalists.”

3.11 In his follow-up report *What price privacy now?* (Dec 2006) Richard Thomas announced that between them 305 journalists had improperly obtained well over 3,000 separate pieces of personal data. Topping the list was the *Daily Mail* with 952 items obtained by 58 of its staff, followed by *The People* (80 items for 50 journalists), the *Daily Mirror* (681 for 45 journalists), and the *Mail on Sunday* (266 for 19 staff). Nineteen *News of the World* staffers purchased 182 items between them, and four journalists from *The Observer* received 103 items. None has yet been prosecuted.

(a) *The failings of the Press Complaints Commission*

3.12 Apart from reminding editors that such behaviour is a breach of the industry Code, the PCC kept its powder dry until Goodman was locked away and his editor had fallen on his sword. On 1 Feb 2007, the PCC Chairman Sir Christopher Meyer, announced that he would be writing to editors about the “reprehensible” practices revealed by the Goodman case and seeking their views about what lessons have

been learned. “The Commission will consider these industry responses with a view to publishing a review of the current situation, with recommendations for best practice if necessary, in order to prevent a similar situation arising in the future,” he announced. Note the “if necessary”.

3.13 The PCC has always tended to give the benefit of the doubt to newspapers when Joe and Mary Public complain about the underhand methods used to manufacture sensational stories. It has been criticised by journalists, media commentators and politicians for waiting for complaints to be made rather than contacting editors at the first sign that they are in breach of their own Code of Practice.

3.14 The proliferation of miniature digital recording devices (sound, stills and moving images) and the rise of so-called “citizen journalism” has heightened the likelihood that unwarranted intrusions into privacy will occur. MediaWise recently received a call for advice from a distraught young Muslim woman who discovered that images of her with a non-Muslim boyfriend had been posted on the Internet, laying her open to all manner of potentially harmful consequences. She was concerned that they might also end up in a newspaper.

3.15 The growing trend among newspapers to rely on the supply of personal information from distinctly dubious sources, has been recorded by MediaWise Trustee and former BBC political correspondent Nicholas Jones, in his most recent book *Trading Information: Leaks, Lies and Tip-offs*. People with access to private information know that some newspapers are willing to pay for it. As he later wrote in a piece for a MediaWise event last year (“Journeys into Journalism on the SS Robin”, September 06), “*The News of the World* is encouraging readers to engage in a degree of intrusion which would have been unheard of a few years ago. Every Sunday they offer ‘big money for stories and pictures’. The offer couldn’t be more enticing: ‘Send us your camera phone photos of celebs and we’ll flash you the cash [. . .] sizzling shots of showbiz love-cheats doing what they shouldn’t ought to.’”

3.16 He pointed out that the industry award for Scoop of the Year went to a *Daily Mirror* “exclusive” of “Cocaine Kate (Moss)” pictured “snorting line after line”, and that *The Sun* won Front Page of the Year for its picture of “(Prince) Harry the Nazi” at a fancy dress party. Both pictures were taken by “insiders” and sold to the press. It was left to the rival *Sunday Mirror* to unmask the “student who sold the Nazi picture” for a five figure sum.

3.17 MediaWise has always urged people not to sell their stories to a newspaper, in the belief that if information is genuinely in the public interest it should not have a price tag. Our advice is also based on concern for the wellbeing of anyone who is tempted by the large sums on offer for “exclusives”. They quickly learn that they have lain themselves open to attack from rival newspapers who will dredge up anything they can use as a “spoiler” to put them in a poor light just because they had the temerity to take cash from a competitor.

3.18 Nick Jones worries that in their “desperation to get exclusives [. . .] some of the newspapers (are) beginning to rely too much on cheque-book journalism rather than proper investigative reporting’ and asked “Are we all being forced to stand up stories which don’t quite make it but which are helped along through the use of anonymous quotes?” He believes that “we now seeing the emergence of a generation of journalists who think there is nothing wrong in ‘manufacturing anonymous quotes: an onlooker said this, an insider hinted at that, a friend revealed this, another anonymous source disclosed that.’”

3.19 Over the last 14 years MediaWise has grown accustomed to hearing this charge, and has had to deal with any number of distressing cases where manufactured quotes and circumstances masquerading as actuality has added insult to injury to the protagonists. The PCC seems reluctant to investigate such charges on the grounds that it is a mere citizen’s word against that of a journalist. This attitude does little to enhance the credibility of self-regulation, just as malpractices like Goodman’s undermines the role and respect that journalists should have among the public.

3.20 Some of our own investigations have demonstrated that partially or wholly fabricated stories still make it onto the newsstands. For example we were able to debunk *The Sun*’s “Swan Bake” front page splash (4 July 03)—but it took six months for the paper to bury its “clarification” on page 41 of a Saturday edition (6 Dec 03), despite the PCC’s intervention. Our deconstruction of the *Daily Express*’ “Britain here we come” claim (20 Jan 04) that a Slovakian Roma family was planning to come and live off benefits in the UK was never allowed to reach a wider public following a threat to sue *The Guardian*. And our revelation that its “Plot to Kill Blair” front page (*Daily Express*, 16 Aug 04) was indeed “rubbish”—as the police who had briefed reporters made clear—was dismissed by the paper as publicity seeking. However when we investigated the truth behind a *Sunday Mirror* allegation (“For sale age 3”, 25 Jan 04) that a young Christian charity worker in Montenegro was a child trafficker, the newspaper had to apologise and pay him substantial damages (although the uncorrected story can still be accessed on the Internet).

3.21 Recently the public were given access to the private notes of Heather Mills McCartney, regarding to her impending divorce. While enterprising journalists may claim that she carried the notes in clear view of photographers as she walked towards Victoria railway station, does she not have the benefit of an assumption of privacy in such matters? This as one of a series of breaches of the couples’ private business which show how little regard is not given to the privacy of the adults in the public eye, and the three-year-old child involved.

3.22 Meanwhile more details of flawed and sensational *News of the World* “investigations” continue to emerge. Columnist and MediaWise Trustee Prof Roy Greenslade recently revealed (*Evening Standard*, 14 Feb 07) that the paper’s unreliable informant in the “Beckham kidnap case” had not only set up the protagonists, whose arrest after a “tip off” was captured on camera, but supplied them with a gun (a starter pistol). These sorts of incident give the lie to claims that all such stories are genuinely in the public interest. Too often they are “got up” stories designed to sell papers and enhance reputations; often they involve what most reasonable people would regard as “entrapment”—a concept that the PCC refuses to countenance.

3.23 The public would be better served if journalists used their ingenuity to shine a light on more important matters than the personal foibles of the rich and famous.

(b) *The media and citizens’ rights*

3.24 An unspoken and uncodified “compact of trust” exists between readers/audiences and the purveyors of information, but editors and the PCC operate on a self-serving assumption that readers can decipher which information they are supposed to believe and which to take with a pinch of salt. Clearly that is not good enough.

3.25 Collecting and presenting information that is of civic value to the public is not an easy job; it requires skill, patience, curiosity and a willingness to persevere when obstacles are placed in the way. If information cannot be elicited through the “normal channels” of discreet enquiries and the willingness of individuals to supply information freely, few would object to skilled cajoling and a reasonable level of persistence conducted in a professional manner. There may be occasions when unacceptable levels of subterfuge may have to be employed by those who seek to expose corruption and venality, but for trust to be maintained between journalists and the public these should be acknowledged as exceptions rather than the rule.

3.26 It cannot be acceptable that media executives alone are free to determine the extent to which any person might be considered to enjoy privacy. Genuinely independent scrutiny needs to be applied to the “public interest defence” when it is called in aid to justify placing a person’s private life in the public gaze.

3.27 The “Fourth Estate” won its status by championing the public interest in the constant struggle between individual rights and the power of the state and commercial organisations yet, perversely, almost as a body it took umbrage against the incorporation of the European Convention on Human Rights into UK law. Some newspapers continue to clamour for repeal of the Human Rights Act, regarding it as a “villain’s charter”, simply because it might occasionally challenge a newspaper’s commercial interest in boosting sales and profits by publishing intrusive and often inaccurate stories which are unlikely to pass the “public interest” test. The rich, powerful and corrupt did not need a Human Rights Act to protect themselves against publication of their misdemeanours—witness the antics of media baron Robert Maxwell.

3.28 Journalists should be in the vanguard of those who value the Human Rights Act. They like to see themselves as autonomous individuals and the first to insist that they should have the right to live without let or hindrance from anyone. Case law at the European Court on Human Rights has tended to value freedom of expression (Article 10) over the right to privacy (Article 8) and upheld journalist Bill Goodwin’s right to protect his source after he had been fined £5,000 under the Contempt of Court Act 1981 for refusing to identify his informant about a company’s financial affairs for a story he was never allowed to publish.

3.29 Normal rules do not appear to apply, however, when the chase is on for stories, the news desk is breathing down your neck, and little thought is given to whether a journalist’s behaviour might impinge upon the rights of others. That is when a reasonable person might expect an editor, or the PCC to step in. But the PCC will not move unless prompted by the individual most directly affected—witness its inertia over the hounding of Kate Middleton (Jan 2007), or its refusal to act on some complaints about publication of photographs of the suicide of lawyer Katherine Ward (Jan 2006).

3.30 The press never satisfactorily explains why the arguments marshalled against others do not apply to the Fourth Estate. It wants to be the sole arbiter of what is in the public interest and what is a breach of privacy. In the PCC it pays for a system of public “justice” in which it is judge and jury, but would not tolerate a similar system for any other sector of society.

3.31 The PCC’s role in all this should be to strike a balance between the individual’s right to privacy and the newspapers’ right to freedom of expression once complaints are made. If it were even-handed and suitably robust in condemning any breaches of the law or the industry’s own Code, the current form of self-regulation might be regarded as a sufficient buttress against abuse of power by the press.

3.32 However, the PCC has sat back and allowed the press to push the boundaries of coverage of crime far beyond what is supposed to be acceptable under the principle of innocent until proved guilty. It failed to intervene during the coverage of the Soham murder inquiry, the Suffolk murders and the police anti-terror raids in London (2006) and Birmingham (2007) when even journalists themselves have questioned the extent to which names and police allegations were made public in a way that could prejudice future trials.

3.33 The inevitable consequence of its failures will be pressure for statutory controls, yet MPs themselves know that to take too strong a stand against media power is to court disaster. The press have no compunction about revealing the weaknesses of elected representatives, especially if they have the temerity to take on the Fourth Estate. There is an unhealthy imbalance of power.

3.34 In effect the industry rejects any notion that elected representatives or the legislature should curtail its right to define for itself whether it has trampled on the rights of others—laying itself open to the charge of arrogance and abuse of power against which the Human Rights Act is designed to protect the public.

4. REMEDIAL ACTION

4.01 This Select Committee inquiry, set up because a senior journalist has now been jailed for breaking the law, provides an ideal opportunity to launch a wide ranging debate about the role and function of journalism and media regulation, without the threat of legislation but with the intention of moving towards a regulatory system more befitting social attitudes and the changing nature of mass communications.

4.02 As the inquiry was announced the newspaper industry declared that it had extended the remit of the PCC to include all content published by online versions of newspapers and magazines, in effect seeking to pre-empt any recommendations that might emerge from the inquiry. This is par for the course.

4.03 The PCC was set up in 1991 to forestall statutory regulation at the time of the Calcutt inquiry into press invasions of privacy. In 1996, on the morning the PCC and its industry paymaster PressBof were to face a National Heritage Select Committee inquiry into payments to witnesses, they announced a tightening of the editors' Code to silence critics.

4.04 We have spelled out our views on how the PCC might be reformed in *Satisfaction Guaranteed?* (see above). Below we examine some other ideas about how the regulatory framework could be adjusted to suit the times.

(a) *A unified system of media regulation*

4.05 There are some who believe that the time has come to make a reluctant Ofcom, the broadcasting regulator, take responsibility for podcasts and streamed video. Others believe that regulation should be abandoned altogether. In a recent report commissioned by the Department of Culture, Media and Sport (Future Broadcasting Regulation, DCMS, Jan 2007), Robin Forster envisages “a reduction in regulation and its associated costs—for example with greater reliance on self-regulation, and the exercise of individual consumer responsibility to address concerns about undesirable content”. No doubt that would please those publishers who straddle both print and broadcasting.

4.06 MediaWise has always argued for a genuinely independent regulatory system which protects everyone's rights—including the freedom of the press—with power residing neither with Government nor the industry. The Trust, after all owes its origins to MP Clive Soley's efforts to create such a body with his Freedom and Responsibility of the Press Bill in 1992.

4.07 Digitisation has put paid to the old arguments for separate regulation of broadcasting. Digital compression means that sound, vision, telephony and print are merely data—and so “caught” by data protection legislation, for example. Furthermore, cross-media ownership has now reached a level where it is difficult for the public to measure the extent to which a company's involvement in one medium ends and its involvement in another begins. The web of ownership has become so complex that many people working in the media are unsure about who is their ultimate employer.

4.08 The frequent takeovers, mergers and brand changes that confuse consumers of other products (from food to the supply of what were once public utilities) also occur in the communications industries, so that most citizens are unlikely to know who owns or controls the production of print and broadcast material, let alone the platforms through which they are communicated, or the corporate vested interests at work behind the scenes. The link up between Virgin, NTL and Telewest with their all-in-one telecommunications, broadband and entertainments packages is just the latest sign that cross-media ownership and technological convergence require a complete rethink of media regulation.

4.09 Today's journalists are expected to be “multi-skilled” producing material compatible with the various communication platforms controlled by their employers. Some are required to carry notebooks, video-cams and other recording devices so their material can appear in print and online. The online *News of the World* incorporates video into its news stories; the online *Sun's* video section re-broadcasts bulletins from Reuters; *The Times* website has a section called “*Times* online TV”. Elsewhere the *Telegraph* online re-broadcasts news clips from ITN among others; the *Daily Mail* runs its own online showbiz news mini-programmes alongside trailers for the latest movies; and visitors to the *Daily Mirror* site can access its showbiz and sports video newscasts.

4.10 One nonsense of the current regulatory regime is that journalists are expected to abide by different standards as they switch between media. These changes strengthen the argument for a single basic code of conduct across all media, including a “conscience clause” so that journalists can opt out without fear of reprisals if they believe the assignment they are given breaches the code.

4.11 Broadcasters retain public confidence because they are obliged to function under extensive but tried, tested and perfectly reasonable regulations. Print publishers believe that “press freedom” exempts them from all but the limitations they are prepared to place on themselves. Small wonder the public has grown increasingly sceptical about how much trust they can place in print publications.

4.12 A single “content regulator” with a clear and accessible system for adjudication on complaints and the awarding of redress across all media, could restore public confidence about the quality of the journalism they receive. Free independent professional advice and support should be available to members of the public who need assistance with complaints about any aspect of abuse of power by the mass communications industries. (It has proved almost impossible to fund the core complaints work undertaken by MediaWise, which now has to operate on a largely voluntary basis).

4.13 Perhaps it is time that a reformed, “rights-based” system of media content regulation were considered. It would serve the best interests of all concerned. Press freedom would be upheld through defence of freedom of expression, and the right to personal privacy would be upheld unless a clear and valid public interest defence could be demonstrated.

4.14 Financing of content regulation could follow the model currently used in broadcasting, with a mix of public funds to protect the democratic agenda, and levies upon the communications companies.

4.15 Supervision of content regulation should be as independent of government and the industry as possible with a strong element of public involvement at all levels, reflecting the diversity of society. Of course the media industries should be represented, as should media workers, nominated by representative bodies. The role of the Culture, Media and Sport Select Committee in the first instance might be to propose a lay appointments panel, and then provide occasional public scrutiny of the regulator’s activities.

4.16 The public interest is best protected if there are regular opportunities to review the performance and practices of the mass media. An all-party Standing Committee on the Mass Media, with no powers to intervene directly, could use its parliamentary platform to generate debate about abuses of media power, including ownership issues, offering a mirror in which to reflect changing attitudes towards media content and regulation.

(b) *Compensation*

4.17 The PCC and the industry insist that proprietors and editors should determine what punishment should fit which media “crime”. Yet it is proprietors and editors who cry loudest about the shortcomings of self-regulation among other professions—from the police to politicians. If it is inappropriate for the police to police the police, it is surely inappropriate for the newspaper industry to be its own judge and jury.

4.18 Significant awards in damages have been won through industrial tribunals for abuse of power by employers in the public sector. Surgeons and solicitors have been struck off, and police officers disciplined by their internal regulatory systems. Even parliamentarians have been forced out of office or suspended for unethical behaviour.

4.19 MediaWise would not suggest that such direct punitive measures should be applied as a matter of course to an individual editor for breaches of the industry code. Press freedom would indeed be at risk if editors were not free to make mistakes, and personal liability of this type could become the thin end of a wedge leading to licensing of journalists. Nonetheless the public must find it disquieting that some editors wear their breaches with pride rather than humility. The credibility of the Code of Practice and the PCC might rise were proprietors to make clear that editors whose publications repeatedly in breach cannot expect advancement.

4.20 Even so, they would no doubt still be compensated generously for their service to journalism, yet innocent victims of media abuse are expected to cover the cost of pursuing a complaint (it can take a lot of time, lost work and effort and stress) and defend their reputation. Where genuine hardship, including the need to relocate even temporarily, results from inaccurate or sensational coverage, a successful complainant should be compensated by the offending publication.

4.21 The public are aware of the enormous harm that unethical behaviour can do, and is more likely to place its trust in a body that has powers to hit commercial concerns where it hurts most if their agents breach professional or ethical standards. Those editors who breach the industry’s Codes of Conduct should be required to compensate their victims, and such “fines” would be a very effective way of reminding editors and proprietors of their responsibilities.

4.22 Before publishing personal information, editors have a duty of care to be satisfied that they have a strong public interest defence and that the information they intend to publish is accurate. After all they are the first to reach for their lawyers when complaints are made; journalists are instructed never to admit to mistakes over the phone for fear of incurring a later penalty.

4.23 Breaches of the Code should be dealt with like any other violation of human rights with appropriate sanctions. A graduated system of financial sanctions—say £10,000 for an extreme violation; £5,000 for a serious breach, £1,000 for a significant intrusion. The Regulator could seek to obtain consensus as to which should apply, to avoid the necessity for costly legal action.

4.24 The newspaper industry is reluctant to give PCC the power to impose fines (whether based on an arbitrary sliding scale, on circulation figures or a tax on advertising revenue) for serious breaches of the Code, yet advertisers expect to be compensated when errors appear in their copy, or print or broadcast publishers fail to honour their obligations under contract.

4.25 There is no reason why all publications should be expected to contribute equally to a general compensation fund. To avoid the anomaly of responsible publications being required to subsidise the offences of more cavalier editors, the system of “quality bonds” first envisaged by the Broadcasting Act 1990 could be introduced. Editors would avoid having to draw upon this “set-aside” by adhering to the Editors’ Code, but at least its existence would demonstrate their commitment, and a willingness to take the medicine if they fell short of their own standards or failed to meet the “public interest” test. This could help to rebuild trust in journalism and the role of the media, by assuring the public that media owners recognise their responsibilities.

(c) *A Media Ombudsman*

4.26 MediaWise has always encouraged publications to appoint their own in-house Readers’ Editor, to deal with complaints, act as an internal auditor reviewing the publication’s journalism, and publish a well sign-posted Corrections’ Column. As *The Guardian* has demonstrated this system can perform a dual function, providing accountability and enhancing media literacy.

4.27 MediaWise also believes that there is still room for a variant on the idea promulgated in the (National Heritage) Select Committee’s 1993 Report on Privacy and Media Intrusion—the appointment of a Media Ombudsman.

4.28 This too would bolster public confidence in the accountability of the print and broadcasting industries. A Media Ombudsman could be to act as a back-stop—dealing with appeals by either party over the decisions of the regulator, acting as a bulwark against erosions of press freedom, and initiating public debate about the role and responsibilities of the media.

4.29 The Media Ombudsman might also play a useful role in ensuring that those entering the media industries are aware of their responsibilities and receive a thorough grounding in media regulation and codes of conduct, whether through vocational training courses or in-service and mid-career training.

4.30 The Media Ombudsman might also act as a conduit through which the views of “consumers” of mass communications are fed into the media producers, conducting research and encouraging dialogue between producers and consumers, particularly around ethical issues and reviews of Codes of Practice. This could include supplying opportunities for the regulators, editors and journalists to learn about the human damage done by inaccurate or intrusive coverage.

(d) *A privacy law?*

4.31 MediaWise has always taken the view that a privacy law directed specifically against the media is inimical to press freedom, although print and broadcast journalists and executives may find it helpful if there were a precise definition as to what protection the individual can expect from unwarranted intrusion by any public authority or commercial institution.

4.32 The Human Rights Act, existing laws covering confidentiality, and the powers vested in the Information Commissioner should suffice as a safeguard against unwarranted intrusion. However it has become clear that penalties are not severe enough to dissuade the unscrupulous from abusing personal information.

4.33 The media industries have indicated their intention to resist any attempt to impose custodial sentences (of up to two years) for misuse of personal information, according to a Department of Constitutional Affairs report (7 Feb 2007) of its 2006 consultation about reform of the Data Protection Act (*Increasing penalties for deliberate and wilful misuse of personal data*, CP 9/06). It also records that the Information Commissioner got nowhere with his efforts to effect a voluntary understanding with PressBof and the PCC for a strengthening of the Code of Practice.

4.34 The ostensible reason given for their opposition is the risk that a threat of imprisonment would have a “chilling” effect on investigative journalism. The evidence of the Privacy Commissioner’s 2006 reports (cited above) about misuse of personal information by the media highlights the disingenuousness of this line of argument.

4.35 There may be occasions when the publication of personal information is genuinely justifiable in the public interest—exposing criminal behaviour or protecting public health, safety and security, for example. The opportunity to mount a “public interest defence” must always be available. However commercial exploitation of personal information in whatever form—including blazing headlines—is a gross breach of the citizen’s right to privacy. It should be a criminal offence whether committed by a public authority, a private company or an individual.

4.36 It is both sad and strange that an industry which prides itself on protecting the individual from oppressive behaviour by others should set such store by going through people’s rubbish bins, buying illegally obtained data, and hanging out anybody’s dirty washing if it will sell more papers. Worse still is that having exploited a market for salacious and intrusive stories and pictures, media executives then “blame” the public

appetite for gossip as if that in some way justifies unethical behaviour by the media. As more people begin to rely on the Internet, and broadcasting for news, the agenda of newspapers and human interest magazines now extends to anything which might prove financially beneficial to the publisher.

4.37 The right to freedom of expression ends when it begins to intrude upon another's human and civil rights. That is also where a person's privacy could be said to end. Just because a private life might excite prurient interest does not make it automatically newsworthy. All citizens, including celebrities and public figures, are entitled to a private life free from intrusion—unless they specifically invite media attention to their private life or can be shown to be engaged in corruption, law-breaking, abuse of power, or significant hypocrisy, or if their behaviour might be considered a risk in some way to the health and safety of others.

4.38 Abuse of power by the media is equally as intolerable as abuse by agencies of the state. Some sections of the media appropriate people's lives as if they were merely bit part players in a soap opera. They operate on the assumption that "dishing the dirt" to strangers is acceptable behaviour if "the price is right". This pecuniary attitude may be distasteful, but it does not justify introducing a restrictive privacy law directed specifically at the press. That would be a retrograde step especially since, as we have seen, a raft of other remedies are available, and the impact of the proposed tougher penalties for abuses of the Data Protection Act have yet to be tested.

(e) *A "Third Way"?*

4.39 Rather than tinkering with current systems of media regulation, perhaps the answer would be to create a Human Rights Commission (HRC) able to offer guidance or assistance to members of the public with complaints about the media, and with the power to initiate legal challenges where important issues of principle are at stake.

4.40 Like Ofcom, it could develop systems of co-regulation in which individual or corporate complainants can call upon the HRC to intervene if all else fails. The "first line" of complaint should, as now, be to the editor of a print or broadcast publication, although not obligatory. The second, obligatory, line should be to Ofcom or the PCC for arbitration. The HRC could then perform the function of the Media Ombudsman (as outlined above) should either party believe that justice has not been done. Its rulings would then firmly establish "case law" as a guide to the balance that needs to exist between the power of the mass media and the rights of the citizen.

February 2007

Memorandum submitted by the National Union Journalists (NUJ)

INTRODUCTION

1. The National Union of Journalists is the TUC-affiliated union representing journalists working in the UK, Ireland and internationally. The union was formed in 1907 and currently has approximately 40,000 members working as journalists or on editorial content in newspapers, broadcasting, web-sites, news agencies and public relations.

2. The NUJ has always seen the relationship between democracy and journalism as important and has had a code of ethics since 1936. This code helped to inform the current Press Complaints Commission code.

3. The union's rules allow it to discipline members who breach its code and even expel them from membership for serious breaches. The code contains a clause on privacy:

6. A journalist shall do nothing which entails intrusion into anybody's private life, grief or distress, subject to justification by overriding considerations of the public interest.

4. This has been strengthened recently and the code is presently undergoing a major review by the union's Ethics Council which is charged, under the union's rules, with:

the responsibility for the promotion and enforcement of the professional and ethical standards of the union, with particular reference to the enforcement of the union's code of conduct and with researching and debating ethical issues in media freedom and regulation.

5. A motion is before the union's Annual Delegate Meeting, to be held in April, outlining a new code that, it is proposed, would have the following privacy clause.

A journalist:

5. Does nothing to intrude into anybody's private life, grief or distress unless justified by overriding consideration of the public interest.

6. The Ethics Council is made up of members of the union directly elected by the members from the various industrial sectors of the union as well as representatives from the union's Black Members Council, Equality Council and Disabled Members Council.

7. The Union's Annual Delegate Meeting discussed privacy as recently as 2001 agreeing the following motion:

ADM recognises that it is a mark of a free and democratic society that all people have a right to respect for their private and family life, their home and their correspondence. ADM also believes that people have both a right to know what is being done in their name and a right to information on which to base their choices and that this might legitimise the revelation of information that by the earlier definition should remain private.

ADM believes the only way to determine which information should be revealed and which remain private is for a journalist to test whether the information is in the public interest—which is not the same as information that will interest or titillate the public.

ADM declares that information revealed in the public interest is that which is required for members of the public to use to determine their intentions and opinions to seek to ensure probity and honest dealings amongst the civil and military authorities, the judiciary, politicians and all those holding positions of public authority or who have courted prominence in all walks of life.

THE RIGHT TO PRIVACY

8. The NUJ supports the right to privacy, although we would like to stress that this is a general right and not one limited solely to media invasions. Invasions of privacy by CCTV, the police, the intelligence services or commercial operations without the authority of the law, and therefore democratic accountability, are just as damaging to a free society as invasions of privacy by the media.

9. All citizens should have the right to respect for their private and family life, their home and their correspondence. Their privacy should only be invaded if there is good reason to believe it is in the public interest so to do, whether this is because they are believed to be committing a crime or social misdemeanour, misleading the public in some way or endangering the health and safety of themselves or others.

THE RIGHT TO FREEDOM OF EXPRESSION

10. The NUJ believes strongly in the right to freedom of expression and sees it as a vital freedom that underpins all other public freedoms. Without the right to publish a wide range of views, investigate and publish the activities of the powerful and what they are claiming to do in the name of the public, there can be no democracy.

11. However, the union is also acutely aware that the right to publish in the public interest is very different to having the right to publish what will interest the public and therefore sell newspapers. The public may want to know about the private lives of celebrities but that does not mean that they need to know in order to protect their democratic rights.

12. That said, there are those who seek to improve their status in society as well as their earning power by courting publicity and presenting themselves to the public as a certain kind of person and it is certainly in the public interest to present a true picture of these people to the public who have supported them on the basis of the image presented. When a person has entered public life and attempted to capitalise on their image or popularity, the public has a right to know the truth about them.

13. There is also an argument that there is a public interest in the freedom of expression itself; whilst agreeing it is better to know than have unnecessary secrets, the union finds this an unacceptable position when people are hurt for no good reason by such exposures. Whilst freedom of expression is a human right that requires public support, the random destruction of people's reputations for no good reason other than to boost a newspaper's circulation or a TV show's ratings is not in the public interest and is the point at which freedom of expression has to bow to the right of individual privacy.

The Select Committee's questions:

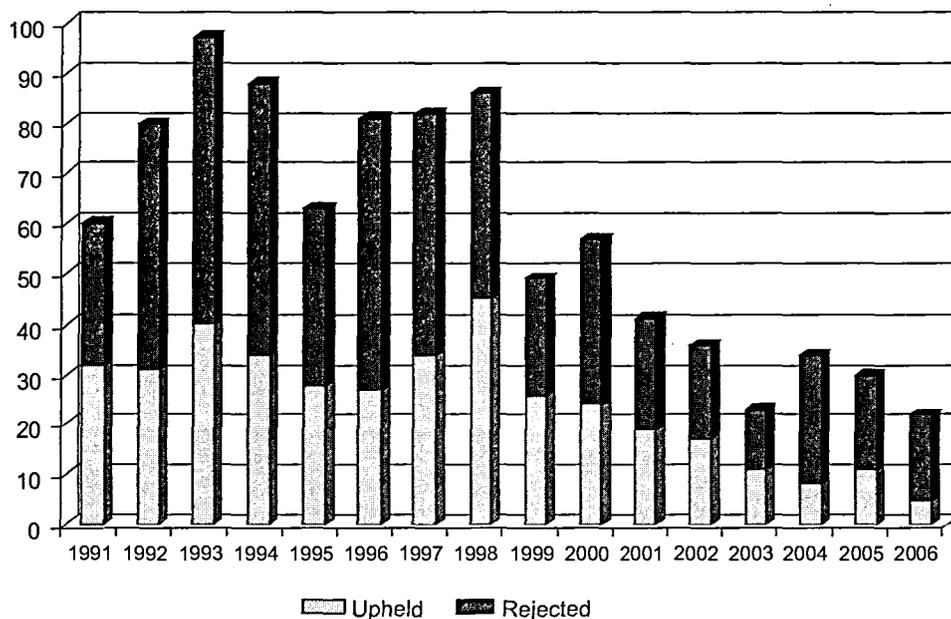
14. The Select Committee asks if self-regulation offers sufficient protection against unwarranted invasions of privacy. There is little evidence that it does. This is not because self-regulation cannot be made to work, simply that the PCC chooses to keep levels of protection to an absolute minimum in order not to interfere unnecessarily with the activities of the organisations funding it.

15. The number of complaints made to the PCC has risen steadily over its 16 years of operations from 1,963 complaints in 1991 to 3,654 in 2005. The figure is anticipated to go up again in 2006. Privacy complaints average 12.73% of the total. This is a fairly consistent figure with a low of 11.4% in 2003 and 2004 and a high of 14.7% in 1999. Intrusion is dealt with as a separate category and this represents an average of 3.66% of all complaints made. (PCC annual reports 1991–2005). Of course in many cases, the complainant is complaining of both invasion of privacy and intrusion.

16. Despite the number of complaints made almost doubling in 15 years, the number of complaints adjudicated by the PCC has fallen consistently year on year. An average of 58 complaints were adjudicated each year in the first 10 years but an average of only 31 were adjudicated in each of the last six years. 2006

saw a new all-time low with only 22 complaints being adjudicated. Of these, only five were upheld. Although only 12.73% of complaints made concern privacy, an average of 21.69% of complaints adjudicated concern privacy and 32% of these are upheld.

COMPLAINTS ADJUDICATED BY THE PCC



17. Self-regulation as operated by the PCC means the absolute minimum of interference. The PCC sets much store by its claim to resolve most complaints to the satisfaction of all parties—a claim it must make if it is to justify adjudicating so few complaints. Yet most resolutions could and should have been made by editors without the interference of the PCC. Publishing an apology, correction or reply should be standard practice and should not need direction by the PCC. The PCC should be adjudicating more complaints and applying penalties. Adjudicating more complaints would give stronger guidance to editors and journalists; applying penalties would mean regulation would be taken seriously.

18. The PCC itself is flawed as a structure. Its members are a mix of editors and the public, but it has no real power to do anything except adjudicate the complaints that are identified for it by the secretariat. Whilst the Charter Compliance Committee was a welcome step forward, it is only a small step. Without penalties, more involvement from other sectors of the industry including working journalists, and more power for the Commissioners to decide on complaints before resolution, the PCC risks being merely a façade of protection to allow proprietors to continue to make money out of intrusive and sensationalist copy.

19. The Committee asks whether the PCC’s code requires amending. The PCC’s code is typical of its type and covers the key elements of journalistic ethics. It is not so long that journalists cannot remember its key points, nor is it so short as to miss out important areas. With the exception of the discrimination clause, which is seriously flawed, the code is entirely appropriate. However, what is missing is any real power to apply it. What has been noteworthy over the past two years is that the number of adjudications has fallen dramatically, and that several of those complaints that have been adjudicated and upheld have involved such serious errors on the part of the newspapers in question that to do otherwise would risk sparking public outrage. It is important to note that those newspapers making serious mistakes have accepted their error and made moves to minimise the chances of a repeat. In one instance a newspaper sent information from a confidential source to the subject of a story asking for comment on points made with the source’s name still attached. In another a newspaper used the name of a victim of sexual assault in a tribunal case. Both were appalling breaches of the code and were dealt with as such.

20. However, many cases that might benefit the industry by offering the guidance that comes from an adjudication were not adjudicated. There is little pressure to adjudicate, especially in privacy cases, because little is achieved whilst there are no penalties applied other than the publication of the adjudication. In practice, the present system works against the person complaining of invasion of privacy—the only penalty is to have their situation thrust again into the public eye, even if it is done anonymously.

21. The union is surprised that more than 5,000 people would complain over 16 years about invasion of privacy to an organisation whose only form of redress is to instruct the offending newspaper to publish their adjudication “in full and with due prominence” since this can only risk them having their privacy invaded a second time. The union believes there must be many people whose privacy is invaded who feel helpless and forced, in the end, just to put up with it or to accept a largely meaningless resolution.

22. The question should not be whether the code needs to be amended, but how the PCC should be applying it more often and more rigorously by adjudicating more cases and how significant penalties for breaching it should be applied. For instance, should the complainant have the right to insist on adjudication even if offered a resolution, a right they might take if there were the possibility of serious penalties being levied against the publication?

23. The PCC and the industry has long said that penalties would be inappropriate; there is the problem of equity and the problem of turning such cases into extended legal battles.

24. The problem of equity of fines (the obvious penalty) is easily dealt with. Fines could be levied as a sum, varied by the seriousness of the complaint, factored by circulation, advertising rates or some other factor defined by category of publication. For instance, a 50p levy factored by a circulation of 24,000 would mean a £12,000 fine for a small weekly. This might be a stinging blow for a small newspaper, but would not be critical. The same levy for *The Sun* would mean a fine of almost £2 million. Such a large fine for a national newspaper might well mean that it was worth its while to seek judicial review in order to overturn the result. However, it would prove to people that the system had teeth and would certainly make newspapers more careful about breaching the code. It might also of course lead to the breakdown of self-regulation, but if self-regulation means there can be no way to apply penalties to enforce the code, then maybe it should not continue. Perhaps the industry should be asked if it would prefer self-regulation with fines, or statutory regulation.

25. The NUJ also firmly believes that journalists should have individual legal protection to refuse assignments that they believe are in breach of the PCC's code of practice. The Clive Goodman case throws into sharp relief the kind of pressures that journalists feel themselves to be under in order to get stories. We are not suggesting that the Editor of the *New of the World* pressured Goodman into doing what he did, but had Goodman known that he could have refused an assignment if he had felt pressured to do it, things might have been different. The balance needs to be swung back to the professional journalists to make a decision about the story on which they are working rather than the editor whose loyalties must be influenced by the importance of raising circulation and profits. The editor should decide what goes into the paper applying the PCC code, whilst the journalist must have some say about the ethics of collecting and sourcing the story, also applying the code.

26. The Committee clearly had the ordeal of Kate Middleton in mind when launching this inquiry. TV coverage of paparazzi packs following the prince's girlfriend around town have upset the public and encouraged some newspaper proprietors to claim the moral high ground by announcing they would not use such paparazzi pictures. The NUJ remains unconvinced of such promises, but also understands the difficulties facing the PCC and editors over such issues. No-one controls the photographers following Kate Middleton and in any case, a majority of the pictures are sold abroad. Even if no newspaper or magazine covered by the PCC ever used a picture of her again, photographers would still find lucrative markets abroad. However, we believe that the Protection from Harassment Act 1997 is sufficient to deal with such relatively rare cases and these laws have been successfully applied before.

27. The Committee wants to know if existing law on disclosure of personal information should be strengthened. The right to privacy is developing on several fronts at the moment. The courts are building the tort of breach of confidentiality to cover invasion of privacy when it is needed protect personal information that is revealed in a confidential relationship, or a relationship that those involved should have known was confidential.

28. The Department of Constitutional Affairs is seeking to increase penalties for revealing information that should be protected by the Data Protection Act to custodial sentences and the PCC's code on privacy and intrusion is perfectly clear. Ofcom's and the BBC's codes on privacy are even more detailed. Any further attempt to strengthen the existing law on disclosure of personal information is likely, in the NUJ's view, to put at considerable risk any serious journalistic investigation. Far from reducing invasions of privacy, all that this increasing level of law has done so far is to reduce serious investigation of the sort that is in the public interest and for the purposes of improved democracy and public protection and to increase the soft, frothy "revelations" of the private life of this celebrity or that or even of many private individuals with no claim to celebrity. Since much of the celebrity material is really public relations, done with the consent of the subject, any further legislation in this area is only likely to increase the trend of only publicising information for which there is permission and not that which is in the public interest. The jailing of Clive Goodman has shown that the law can apply strong penalties to journalists when dealing with private information.

29. The Committee asks what regulation there should be for online news provision by newspapers and others. Ofcom regulates broadcast company news websites, the BBC regulates its own news website and the PCC regulates news and magazine news websites, recently announcing an extension of this to video and audio from those sites. There are also a large number of relatively new news and opinion websites unregulated by any organisation.

30. Tempting though it is to suggest that the newspaper websites should be regulated by Ofcom, there are problems. First it is admitting that the self-regulatory PCC is not working and that a regulator with teeth is required to match standards with broadcast linked websites. Secondly, if Ofcom regulated the website

while the host newspaper was still being regulated by the PCC, it would require two different sets of regulation to be applied to what is often the same news merely cut and paste from the newspaper to the website.

31. The NUJ believes that all UK based news websites should be regulated by Ofcom, with the exception of newspapers and magazines. They should be regulated by the PCC which should be obliged to operate a similar scheme of penalties to those available to Ofcom. They should work closely with Ofcom to develop a partnership system that would mean similar treatment for news websites of all sorts, whether regulated by Ofcom or the PCC. This would allow both bodies to apply similar protections and penalties whilst understanding the different approaches required. It is likely that this will require further development in the near future but would be sufficient for the next five years.

Should the PCC be unwilling to accept this responsibility of ensuring matched standards, regulation and penalties with sites linked to broadcast companies and controlled by Ofcom, then all news websites should be regulated statutorily by Ofcom.

February 2007

Witnesses: Professor Mike Jempson, Director, The MediaWise Trust, Mr Jeremy Dear, General Secretary, and Professor Chris Frost, Chair, Ethics Council, National Union of Journalists, gave evidence.

Chairman: Good morning, everybody. This is a special one-off session of the Culture, Media and Sport Select Committee, to examine the self-regulation of the Press and the efficacy of the Press Complaints Commission Code of Practice. We have decided to hold this session in the light of a number of incidents which have occurred in the last few months which have raised question marks over the extent to which the PCC Code is being kept to by the Press. We have a number of witnesses and we need to get through relatively swiftly, so could I ask all witnesses to keep their answers as brief as possible. In our first session, we have the Director of the MediaWise Trust, Mike Jempson, Professor Chris Frost, the Chair of the Ethics Council, and Jeremy Dear, the General Secretary of the National Union of Journalists. I will invite Nigel Evans to begin.

Q1 Mr Evans: Thank you, Chairman. MediaWise Trust states that “there is a rich seam of excellent journalism in Britain’s newspapers and magazines, but there is also a faultline of tawdry and slipshod journalism driven by competitive pressures.” Is that where we are, that we are seeing this once great institution descending into the murky waters? Or is it that generally standards are very high but with just a few exceptions?

Professor Jempson: No. I think the feet have always been dabbling in the gutter, because that sells papers. You are always going to get that cross-section which we have tried to describe there. I am saying that you don’t throw the baby out with the bathwater but it would be nice if they cleaned up their act occasionally. One of the difficulties, of course, is that it is all about making money and so people will do what is necessary, especially if the conditions for journalists are such that they are fighting, like the newspapers are, competing with each other for jobs and reputation.

Q2 Mr Evans: Are some newspapers worse than other?

Professor Jempson: Some are bound to be worse than others, yes.

Q3 Mr Evans: Do any come to mind?

Professor Jempson: Whatever you say you are going to get shot but—

Q4 Mr Evans: So go on then!

Professor Jempson:—on occasions, the *News of the World* scrapes the bottom of the barrel, but then you also get other newspapers indulging in practices which we are somewhat suspicious of. In the last couple of weeks, for instance, we have been approached by a number of complainants. One of them was somebody just out of prison, who had been approached by a newspaper—I am not going to name it for the minute—offering to buy his story. As we know, there is an inquiry about whether or not this should be made a criminal act. When the matter of money was raised, they said, “It would be a bit off for us to pay you direct but we could pay you into an offshore account or pay you through a friend.” It is quite clear what the rules are about this, but this was a respectable newspaper. Another client we were dealing with was dealing with a terrible tragedy in a family and was persuaded by a number of separate journalists to give information which was very private—and persuaded to do this for money. Once having done it for money, they were persuaded that the only way to protect themselves was to sell the story again, which of course made them very vulnerable, and then, once there was interest in the story, you had a journalist insisting that they sign up as an exclusive deal with a journalist as an agent. These sorts of things when people are in extremely vulnerable positions do not strike me as sticking to the spirit and the word of the Code.

Q5 Mr Evans: Chris or Jeremy, would you like to comment on that?

Professor Frost: Certainly some newspapers are worse than others, without a doubt. We need to remember that all newspapers are businesses. Part of that business is journalism. Some newspapers carry out their journalism better than others, but they are there to sell, to entertain and to attract audiences, and that inevitably is going to lead to problems on

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occasions. That is why we need a code of ethics and some kind of regulatory mechanism. If they were not those kinds of businesses, we would not need that.

Mr Dear: Also, we put forward the idea that individual journalists should have an individual right to refuse assignments that breach PCC codes because there are these pressures on individual journalists because of the commercial interests of the papers and companies for which they work. That individual right for the journalist is an added bonus to that ethical code of practice.

Q6 Mr Evans: The sort of antics that we see happening which you have mentioned, Mike, does it only happen in the United Kingdom or is this a world phenomenon? Clearly the media in a lot of countries, including the United States, are very competitive but the reputation in the United States does not seem to be the same. People talk about the paparazzi and antics of journalists here in a different vein. Is it a British phenomenon?

Professor Jempson: I do a lot of training all over the world and people are really shocked at what they learn about the British media. Everybody looks up to British journalism but they are also horrified by some of the ways in which stories are covered in the newspapers here. The phenomenon is beginning to appear, particularly, for instance, in Eastern European countries, where western commercial publishers are beginning to move in. The yellow Press is really spreading there and you are getting similar sorts of stories. But I do not think anything quite as—my words—“sophisticated and debased” as some of the things we have seen happen in the papers here. The problem is that journalists have always been curiously inquisitive folk and their managers, being desperately keen to make money for their employers, are always going to push the envelope and very often it is going to break. For me, it is not about demanding that everybody act as angels but first of all recognising the human consequences of some of these stories, which can be appalling, and also being willing to admit that mistakes have been made. If we look at the Goodman case, you had to wait until somebody was jailed before people held their hands up and said, “This was out of order.”

Professor Frost: I think it would be wrong to assume the UK is particularly worse than anywhere else, but the approach is different. We have a very different newspaper industry in this country, say, from America, where there is not the range of national papers all chasing the same level of market. We are more applicable to some other countries, such as Australia, for instance, where they often do have fairly similar problems. Mike is right about Eastern Europe, but, again, if you look at the Eastern Europe newspapers, the kind of ethical problems they are having there are just as bad from our perspective but different and the expectations of their publics are different. Where you are selling a product, part of which includes journalism, you are always going to get these kinds of problems. The

only way to prevent it is not to make a commercial product, but clearly that is not an option here—and quite right, as many would say.

Mr Dear: You also have in the US a better and more robust Freedom of Information Act, which allows investigative journalism to happen in different ways sometimes than it does in the UK. But clearly we are also concerned about proposals from other quarters to restrict the Freedom of Information Act here by increasing charges or by aggregating the demands from individual news organisations. You also have in some other places stronger public interest defences and therefore we may be seeing less in terms of numbers of complaints but not that much difference in terms of journalism.

Q7 Chairman: It was suggested that Clive Goodman was a senior reporter who had previously achieved some very good stories but was now struggling to do so. There were young Turks snapping at his heels and therefore the pressure was on for him to get exclusives and that as a result, perhaps, he went beyond the terms of the Code and, indeed, the terms of the law. Does that sound familiar to you? Is that something which your members might commonly experience?

Mr Dear: Certainly we receive complaints from lots of members who are put under pressure to breach PCC and NUJ codes of practice and codes of ethics in pursuit of a story.

Q8 Chairman: Put under pressure by their editors?

Mr Dear: Yes.

Q9 Chairman: In breach of the Code?

Mr Dear: Absolutely. In an intensely competitive newspaper industry, in which single photographs can be sold for £250,000, when that is the case you are going to get a photographer who thinks: “This time I’m going to breach the Code because this may well be my making.” You are also going to get that in terms of journalists investigating stories. I think that is at the heart of it. It is not, as I think the PCC’s own evidence to your Committee suggests, that these are individual mistakes. I am sorry, I do not accept that they are individual mistakes; they are the result of pressure applied on journalists to deliver more and more exclusive stories in order to boost circulation levels.

Q10 Chairman: You are telling us that the editors who have the job of enforcing the PCC Code are saying to their journalists, “We’ll turn a blind eye if you can produce good stories.”

Mr Dear: Some of them certainly are.

Professor Frost: There is also a culture of expectation amongst journalists, of trying to pursue stories where, because there is no specific direction to say “We will not do these kinds of things,” the temptation is to do them, because they feel they are obliged to provide the stories that their editors want. That is the reason why we want this conscience clause, so that journalists feel much more prepared to say, “I’m not doing that. That is not acceptable,” and we can move the debate on a stage. We do not

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anticipate that there will be a large number of people somehow going to law or going to the PCC saying that they have been instructed to do something that breached the Code of Practice but it would give journalists the courage, if you like, to be able to say to their office that they do not feel that is the right way to behave, without fear of being dismissed or of damaging their career potential.

Professor Jempson: The other point about the Goodman case is that this was not something which just happened recently. Mulcaire had been supplying information on a contract to the *News of the World* since 1997. The methodology for collecting information which may or may not be useful for a story has been used for a long time. We know that a contract signed by Stuart Kuttner of the *News of the World* was found as part of this investigation just for one year's dealings—but he had been doing it since 1997. That indicates that this is not something that has suddenly come out of a bit of a mid-life crisis in one journalist's career.

Q11 Paul Farrelly: I am possibly the only member of the panel here who has been an investigative journalist in my time. I think the Goodman case is just a sideshow really because he was doing stuff that was just about gossip and nonsense. When Government routinely taps, sometimes legally, journalists pursuing serious stories, when is it justified to use the same tactics back?

Professor Frost: We are talking about the public interest and the level at which we are providing stories which the public needs to know about. On occasion that might be true. The line we take as the NUJ and as the Ethics Council is that journalists should only use unstraightforward means of that sort if it is the only way of getting the story. There may be occasions when that is the only way.

Q12 Paul Farrelly: Even if it is illegal?

Professor Frost: Then it becomes much more difficult. If it is illegal, we would certainly advise them not to do it.

Q13 Paul Farrelly: Have you ever been an investigative journalist, Professor Frost?

Professor Frost: Not at that level, no. I am not saying that people do not do it and should not, but we would advise against it.

Q14 Philip Davies: It seems from what you have all said that you think self-regulation is a busted flush, in that there needs to be some kind of statutory control, whether it is an Ombudsman or some kind of privacy law. Do you think there are any dangers in going down that line, that people, perhaps some unscrupulous people, might be protected by that kind of regime?

Mr Dear: I certainly do not think that self-regulation as a concept is a busted flush. Self-regulation, as it is currently operated, is failing journalism. Public distrust of journalism shows that is the case. Someone who is prepared to pay £1,000 for information is not going to be put off by a speech made by Sir Christopher Meyer—no matter how

great that speech is—admonishing them for doing it. There has to be a system of penalties and greater adjudication and greater guidance that goes alongside the self-regulation—and it is 15 years now that the PCC has been in charge of self-regulation—rather than just the kind of warm words that we hear every time there is the kind of scandal you are talking about. We think very much that there needs to be a system of penalties that penalises those who breach these codes—which they all voluntarily sign up to and, yet, when there is a significant commercial interest to them, whether that is adding to circulation or adding to profit levels of their companies, they are prepared to breach.

Professor Jempson: It is also true and worth pointing out that, during the history of the PCC, each time there has been a crisis, apart from the early days, there have been quite significant changes and it is now a much more comprehensive organisation. Its website is a much healthier and more helpful document, they have become more aware of the way in which they need to relate to their public, but at the same time it is quite clear that for that part, if you like, of the public relations role of self-regulation, it is the only real industry in which they expect to be judge and jury. They are always coming up with arguments against penalties, for instance, or compensation, because they say it might get the lawyers involved, but in fact just getting a rap on the knuckles does not really make any difference to anybody, especially if you can bury a complaint or a correction deep in the newspaper and get away with it. It is really a toughening up of both the way in which adjudications or investigations are embarked upon and the sorts of sanctions that can be imposed. But I think the other point we need to be thinking about right now is this business of the fact that all the media are merging. Newspapers are now running TV stations on their websites and you can get audio podcasts or whatever off the websites of newspapers. You have the PCC gaily saying, "We're now going to be adjudicating and regulating those items" whereas in fact broadcast items are supposed to be caught by a completely different system of regulation which is a statutory system. Where does that leave the journalists? By which code of conduct are they now supposed to be operating when they are carrying a webcam, for instance, for a newspaper?

Q15 Philip Davies: Some members of the public think that newspapers give a big splash on a false story and then bury a correction on page 35, underneath the classified adverts. Is that a fair criticism, that public perception?

Professor Frost: The PCC's figure suggests that apologies and corrections are run further up but I think the perception is there because there is some evidence to support it. The difficulty is around issues of privacy. The Committee is very concerned—and quite rightly—about privacy. The way self-regulation is working at the moment means that privacy is not handled extremely well. The number of complaints that are sent into the PCC has remained consistent as a percentage overall for its 15 years of existence and yet the number of complaints

on privacy on which the PCC adjudicates is tiny. I also wonder how many of us, if our privacy were to be invaded, would choose to go to the PCC, when the only penalty—the only penalty—they are able to give is to publish an adjudication in the paper which merely reminds everybody that it has happened. Even if your name is anonymised, clearly the only penalty is to remind people of this breach of your privacy. There has to be another way to deal with that. I think it is possible to do that through self-regulation but it is not in the present system.

Q16 Philip Davies: We are having a picture painted here of the holier than thou journalists who are being bullied into submission by these horrible, unscrupulous editors, and that if these horrible editors were not about we would just have nice stories, fluffy stories about knitting and all the rest of it. Would you not say that the people who are chiefly to blame for what is going on in the papers are your members? Because your members are the ones trotting out all of these stories.

Professor Frost: Certainly a lot of our members write those stories. We would also claim there are some journalists who are not our members—and it would be nice to think they are the ones who are trotting out this kind of story, but I am not really that naïve. I am saying that by having the conscience clause we are able to shift the balance a little bit, we are able to move the debate a bit more, we are able to talk to our members about what would be appropriate and what is not without them feeling scared of losing their jobs. Certainly some will continue to produce those kinds of stories because there is money in it. Just as newspapers make money out of those stories, yes, so do some of our members. We have to understand that. That is why we need a self-regulatory system. If all our members were perfect and all editors were perfect there would be no need for the PCC, because nothing would ever go wrong. We need a self-regulatory system and we have to look at one which deals properly with invasions to people's privacy. It is no good just having a PCC that really just insists that editors print corrections of small, factual errors. Frankly, that is all we have at the moment.

Q17 Philip Davies: In your submission you made a differential between what was in the public interest and what would interest the public. Do you not think the Code of Practice in its present form already makes that distinction? Do you blame the general public, who on the one hand complain about the invasion of people's privacy but on the other hand rush out to buy the paper that has just invaded people's privacy?

Professor Frost: I think the Code of Practice of the PCC, by and large, is pretty good. I have made reference to the one exception to that. Its public interest defence is also a reasonably sound one. Defining the public interest is quite difficult and the way the PCC does it is as good as any other. It would be foolish to blame the public for wanting to read the kinds of things that the public want to read. I am not even suggesting that we should not provide that on

occasions, but if it means invading someone's privacy, damaging their personal right to privacy in a way that is unacceptable, then we should not be doing that and the PCC should be making it easier for the media to understand where that divide comes. That means they need to adjudicate much more often than they do. There were 22 cases adjudicated last year and only five of them were upheld. Admittedly they print the resolutions, but it is quite difficult for the Press to get the lessons that come from these adjudications if there are only five of them. We need more guidance, we need to make it clear where that divide is, and there need to be appropriate penalties.

Mr Dear: It is not that there should not be the kinds of stories you refer to; it is about the methods for getting those stories. If the methods that are used are outside the standards normally expected then there has to be an overriding public interest, and in our paper we define that public interest. It is the kind of information that allows citizens to make decisions about political issues, about the exercise of power and so on. It is more about the methods than about what the stories are.

Professor Jempson: The problem is that when the methods are raised by complainants the PCC almost always refuses to deal with that. They look to the editors on their panel for advice. They almost always take their side over and against an ordinary member of the public who is saying, "The way they got the story was unpleasant. They did this and they did that." The PCC's line always tends to be, "It's your word against a reputable journalist" and they will go with the journalist, thank you very much, and yet it is the methodology that is often the problem.

Q18 Paul Farrelly: Sadly, in my life, I have always worked for organisations which would not (Reuters) or could not (*The Independent* or *The Observer*) pay to get stories. But if you asked me who I would trust to bag a criminal on the Costa del Crime with a bag of cash, a *Sun* reporter or someone from *The Sunday Times*, like David Leppard, or a team from the Met Police, I would back the reporter any time. Sometimes you have to pay a criminal to catch a criminal. The police do it all the time. If that happened, Professor Frost, on your Ethics Council, and Mr Big from Costa Del Crime came and said, "This is really unethical. You've paid a small-time crook to finger me," how would you adjudicate that?

Professor Frost: Quite clearly I am going to say I would need to see the case itself and go through the evidence. We are talking about extremely difficult areas, where the public interest has to be measured against the invasion of someone's privacy and their human right to privacy and the newspaper/reporter's right to freedom of expression. The balance then has to be made, looking at both the methods of doing that and the final result. It may be that the final result is so much in the public interest that the method used—

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Q19 Paul Farrelly: That the end justifies the means.

Professor Frost: It may well do and I would not want to rule that out. That is why it is important that the PCC should adjudicate more, to give us more guidance on where that divide actually falls. We simply do not get that at the moment because a lot of cases do not come to the PCC, particularly in relation to privacy. The other thing to remember about the PCC is they are very limited in the number of third-party complaints that they make. If, for instance, you want to complain about *Jerry Springer the Opera* appearing on BBC Two, people wrote to the BBC in their droves—56,000 springs to memory. If you want to complain about the way the *News of the World* use their false sheikh, for instance, in stories, then you cannot complain to the PCC. They will not accept it. It is a third-party complaint. Again, that limits complaints. We have not mentioned that in here but it is something the Committee should remember, that it is quite difficult for members of the public to complain about the way newspapers behave unless they are involved as the subject of the story.

Q20 Helen Southworth: With reference to webcasts and television, what is the impact of the globalisation of the information trade on self-regulation, if you have journalists coming from all over who are working for people all over or freelancing?

Professor Frost: It is clearly going to make it much more difficult. As more and more newspapers expand and as media converge it becomes much more difficult to tell which is doing which. But I still think we are talking about 10 or 15 years as a minimum, before that becomes a serious problem for us, to reconsider how regulation operates in this country.

Professor Jempson: I do not agree. It is quite clear already that a story that gets published, say, in a British newspaper and is then put out on the Internet, takes off in all sorts of bizarre ways. In a case we dealt with where *The Sunday Mirror* had accused a Christian worker in Montenegro of being a child trafficker, that story appeared on the Internet, was picked up as gospel and then reappeared in all sorts of new forms: on websites attacking the UN; on right-wing organisations in America which were trying to make a point about Roma selling their children. Stories which are thought to be valid because they have been published in a British newspaper then get picked up and used as evidence. We found in one case that a story about gun-running ended up as evidence in an intelligence report which was also available on the Internet. I think there are lots of complicated problems about how you use the law to correct things which have begun as a simple story, have been put on to the online version and then picked up and turned around by other organisations all around the world. I think there are some really complicated legal issues there.

Q21 Helen Southworth: If something has gone into the public arena on the Internet, what impact would that have on print journalism, for example? Does it have one?

Professor Jempson: Of course. We have had lots of examples where there is an injunction preventing something being published but then it appears—in whatever form it is out there—on the Internet and, once it is there, everybody can see it, so what is the point of stopping it being published here? The whole opening up of the Internet changes the nature of regulation completely and nobody has really thought it through yet.

Q22 Alan Keen: You mentioned that journalists are pressurised, that they need to make money for their paper. First of all, we think of the editors and journalists who get well paid and get bonuses, but what about the people who make their money through their shareholdings. Rupert Murdoch identifies himself very clearly with his newspapers: the public understand he is *The Sun* and *The Times*. With some of the other newspapers, we do not really know who is making the money from the shareholdings. Do you think it would help if they were identified more closely with newspapers, if in fact they had to appear in them or on them as identified people who presumably would have some moral code for what their newspapers produce?

Professor Jempson: Some of them might think their privacy was being invaded if you told people that they had shares in a particular newspaper, for instance—which would be ironic. I think it would be quite a good idea if the public knew more about the ownership pattern, especially since, increasingly, people are not aware, for instance, at a local level that the same people may be pumping out the news on radio, on television, in their local newspapers, as well as in the national newspapers. People really do not know the sources of news. I do not think most people are that interested in the minutiae but I think the information needs to be there and then we can begin to ask questions about the implications of some of these cross-ownership schemes. What difference does it make if the control of your local newspaper, your local radio station, your local TV station and commercial TV stations are all in the same hands? What does it tell us about the limits of the amount of news we get and what things are not being told to us?

Q23 Alan Keen: You have mentioned a number of points this morning on the PCC. Could you summarise what changes you would like to see.

Professor Frost: We would want the conscience clause for journalists. That would, as I say, move the debate on and give them a chance to feel slightly more secure. We accept that would not change absolutely everything but it would change the picture a bit. We would like to see self-regulation continue with the PCC but for the PCC to take complaints from third parties and, more importantly to have penalties. So: to adjudicate far more often and, if necessary, to have penalties. As I have said, 22 cases were adjudicated last year; five were upheld. That means that on that kind of figure only five would risk any penalty. My own personal view on at least two of those cases is that it would only require a token penalty. We are not talking about fining large numbers of papers but if that penalty was available, if there were far more

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adjudications which were looking at what was happening, there would be a real debate about ethics within the industry and a real feeling that there are limits which should be adhered to at appropriate times.

Mr Dear: Let us make it clear, we are against any privacy law, any statutory intrusion in privacy. I do not think that question was answered properly before. We want self-regulation but we want more effective self-regulation. That requires a system of penalties to be in place—not that you would use penalties all the time but so that they are there as a backstop for those who are persistent offenders in breaching the PCC Code and so on. We want a balance drawn on individual rights, for journalists to be able to refuse those assignments that clearly breach PCC codes of practice. Alongside that—and I know it is not the remit of this Committee—improved Freedom of Information legislation would allow journalists to be able to carry out the kind of investigations that are vitally important in a more open and transparent way.

Professor Jempson: One of the things which is mentioned in our paper is the idea of an Ombudsman, somebody who can act as both a backstop for print and broadcast regulation but also who could be intervening if, for instance, Parliament decided to try to limit the freedom of the Press. I agree that there needs to be thought about compensation as part of the penalty system. And, perhaps most importantly of all, we need a much bigger public debate about the nature of the regulation now and possibly the need, if there is going to be any statutory legislation for a right of reply. If we do not need privacy legislation, we might need a right of reply.

Q24 Mr Hall: The National Union of Journalists has submitted suggestions that the newspaper industry and magazine web pages that are news-related should still be regulated by the Press Complaints Commission and that all web pages should be regulated by Ofcom. Does that not add another wave of confusion to all of this if we go down that route?

Professor Frost: I do not think it does. The way that quite a lot of these newspaper websites work at the moment is that they are getting video clips and audio clips from other sources. *The Sun*, very famously, recently had the flight video in the Iraq case—very, very useful to support what they ran in their own report and entirely appropriate in my view. But most of what is going on on their site and most of what goes on on other newspaper sites is coming from the standard news service and to try to consider two different types of regulation, two different types of rules that would apply, makes things unnecessarily complicated in our view. Certainly in the next 10 years of development, to leave it with the PCC, a properly run PCC of the sort we are recommending, would mean that the control is with them. But whether that was in partnership with Ofcom and

whether Ofcom had some oversight, as it does in other ways [. . .]. For instance, Ofcom subcontracts out regulation of advertising to the Advertising Standards Authority, and it may be possible to do something more akin to that. There clearly need to be links but there are difficulties involved, we think, in having two types of regulation. Many journalists and editors find it quite difficult enough to cope with one set of regulation, never mind two or more at the same time, and so there are difficulties with that.

Mr Dear: The problem you would have for the individual journalist is that very often they will write a story and the same story will be used in two different formats and will therefore be subject to two different sets of standards, codes, regulatory frameworks. It is a huge problem going forward, as this happens more and more, as to how we deal with it. For now, we think the case is not there for a single regulatory body to cover the whole lot because of those particular difficulties for individual journalists and editors putting together a story.

Q25 Mr Hall: In part of your evidence you said there should be this concept of penalties. We have had figures mentioned today of £100,000 for a news story and £250,000 for a photograph. What kind of penalties would make a difference?

Professor Frost: I do not think they need to be huge.

Q26 Mr Hall: What would be the point if they were not huge?

Professor Frost: I was going on to say that it depends on the paper. The PCC has always said about penalties—quite rightly—that a penalty that would be suitable for a newspaper like *The Sun* would wipe out a small paper like the *Accrington Observer* for instance. We need to find some way of ensuring that a reasonable penalty for a small weekly paper is also capable of being a reasonable penalty for a big national paper that has multimillion pound budgets. We believe there are numbers of ways of doing that. We have suggested one in our evidence. We are not particularly wedded to that particular way of doing it; it is just an example of a way of doing it to ensure there are penalties that would be sufficiently severe for the individual newspaper or magazine involved for them to take that adjudication seriously. We do not anticipate that hundreds of newspapers or magazines would have that kind of penalty brought against them each year. As I said before, I would expect it would be two, three, four, five newspapers, but the fact that that penalty is there, that it could be reasonably severe—the PCC would be able to look at the methods used, the consequences and decide what is an appropriate penalty—would seem to me to raise the ante a bit and make people take things a little more seriously.

Chairman: Thank you very much. We now need to move on to our next session. I would like to thank you very much for coming.

Witnesses: Mr Richard Thomas, Information Commissioner, and Mr Mick Gorrill, Head of Regulatory Action Division, gave evidence.

Q27 Chairman: I would like to welcome Richard Thomas, the Information Commissioner and Mick Gorrill, the Head of the Regulatory Action Division. It was Mr Thomas's report *What price privacy now?* which, at least in part, sparked this inquiry. I would also like to thank you, since I gather you are also giving evidence to another committee this afternoon.

Mr Thomas: It has been postponed for two weeks, Chairman.

Chairman: Good. I will ask Rosemary McKenna to start.

Q28 Rosemary McKenna: Good morning, gentlemen. According to your report, you found evidence of systematic breaches of personal privacy that amount to an unlawful trade in confidential personal information. Would you say that practice is widespread?

Mr Thomas: Yes, I would. It has been the law since 1994 that it is a criminal offence to obtain confidential personal information without consent. This is not part of the European directive on data protection; it is a self-contained part of the data protection legislation. Over the years we have investigated allegations where this has taken place and we have in place now memoranda of understanding with such organisations as the Department of Work and Pensions, British Telecom and others which hold large volumes of personal data. Over the years we have investigated and we have brought prosecutions. Many of these have resulted in very low penalties. One reason we wrote the report in May of last year was to bring public attention to the nature and the extent of this trade. A particular case which has attracted a great deal of attention, not least in relation to the media, is what we called the Motorman Operation. That was a very extensive investigation which was so big that it was handed over to the Crown Prosecution Service because there were corruption aspects there. The information is obtained in two main ways. One is "blagging", where private investigators either impersonate the individual or they impersonate an employee of the organisation (DWP, British Telecom or whatever); the other is old fashioned payment: payment to junior staff for the disclosure of personal information. Those cases came to the Crown Court in 2005. I do not disguise from anybody my severe frustration that the result was no more than a conditional discharge for the private investigators concerned. It has been the law since 1994 but I came to the view that this was not being taken seriously enough and needed to have a higher profile. I am arguing for a range of measures, including increasing the penalties, and arguing—which the Government has now accepted in principle—that there should be a prison sentence there as a deterrent. I am also bringing to the attention of a wide range of organisations, not just in the media world but in the financial services industry, the legal world and even local authorities, who are the ultimate customers of this sort of trade, that this is a very extensive trade and that measures

needed to be taken, both legal and, if you like, self-regulatory, to put a stop to it. I find it wholly unacceptable. I think the view I have is shared by very many people, not least over 60 organisations that have now responded to the Department of Constitutional Affairs' consultation paper, and the vast majority are supportive of taking a tougher line against this activity.

Q29 Rosemary McKenna: Do you think there is evidence to give real grounds for thinking that much of the illegal trade in data never comes to light?

Mr Thomas: It is always difficult. We can only really investigate where we have some sort of tip-off or where a complaint is made. I mentioned the protocols we have for the various organisations. They would invite us in when they had suspicions. Although the Motorman Inquiry was the one which attracted most attention, we have carried out a number of other investigations since that report was published which brought other cases to court. They are documented in our December report. We have three or four cases now in the pipeline, another case coming to court next month, and others coming later this year. It is a pernicious trade; so extensive that we were able in our first report to publish the tariff for virtually any person in this room today. It would cost between £150 to £200 to find out the owner of the car parked outside your house last night. It would cost between £65 and £75 to get hold of your ex-directory phone number. It would cost £750 to get hold of your call records, the mobile phone or the fixed line record of whom you have called over a fixed period of time. It would cost £500 to get details of your criminal records. I found this quite outrageous. That is why I have put this into this report, bringing it to public attention.

Q30 Rosemary McKenna: There is a widespread belief among people in the public eye that there are journalists and detectives out there trawling through the backgrounds of families and family members. Is that illegal?

Mr Thomas: It is illegal if you obtain the personal data from a so-called data controller (an organisation which holds the information) without their consent, unless one of the defences applies. We will come on later to talk about the public interest defence. It is also a defence if you are doing it for the purpose of detecting or preventing crime. So there are a number of defences but it is a clear illegal, criminal matter—and it has been for many years now—to do this where you are obtaining information from a data controller (an organisation holding information). Of course, many organisations now, on databases and otherwise, hold vast amounts of personal information about all of us.

Q31 Rosemary McKenna: But it is not illegal to get information from private individuals.

Mr Thomas: It would not be an offence under the Data Protection Act to go into your dustbin, as it were, and go through your personal dustbin.

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Q32 Rosemary McKenna: But public interest in that is—

Mr Thomas: I can only speak in my role as Information Commissioner responsible for the Data Protection Act and the Freedom of Information Act. My personal view is that trawling through dustbins is equally unacceptable but it does not form part of the existing law.

Q33 Paul Farrelly: I read some of the names who were involved in paying this private detective and thought, “Some of them have never broken a decent investigative story in their lives.” They got caught with their fingers in the cookie jar; they just realised that it was possible to get this sort of information. I have never paid for a story but I have traded information. I will do a favour for a favour and I do not ask where I got the telephone number from or the bank records from and neither does my libel lawyer. I have one of my old libel lawyers, Louise Hayman, in the audience here. They do not ask either; they want to know whether it is true or not. We have some of the fiercest libel laws in the country. If I did not ask the question where you got that number or that bank account and those details, when pursuing people who are money laundering or serious crooks, and you said to me, “You shouldn’t do that,” I would say you were being prissy.

Mr Thomas: With respect, Mr Farrelly, I am not sure it is prissy to break very clear criminal law. If you had got hold of my bank records, I would say, “How did you get those? You must have known they were confidential.”

Q34 Paul Farrelly: But I would not go for yours.

Mr Thomas: It could be anybody.

Q35 Paul Farrelly: I might go for Mr Ivanovich, who might have a Chelsea estate from money laundering into London.

Mr Thomas: If I could give an indication of the sorts of victims who were uncovered in our various investigations. A lot has been said, not least to this Committee in evidence, about public interest. I am frankly very sceptical about why that is being put forward. We are talking about fishing for tittle-tattle. We are talking about footballers and football managers, broadcasters, politicians, members of the royal household. You might argue possibly that some of these raise public interest issues.

Q36 Paul Farrelly: No, I am not. I am talking about investigating serious crooks.

Mr Thomas: If it is for the prevention or detection of crime, you have a cast-iron defence. That is part of the existing Act already. No one is suggesting any change to that. But where we come on to the sister of the partner of a local politician, the secretary of a Member of Parliament, the mother of a man linked to a *Big Brother* contestant, the mother of an aspiring star in the show-business world, these are the sort of people who are sucked into this web of illegal gathering of activity and then it is completely ordinary members of the public. The painter and decorator whose white van was checked out: we

discovered that the private investigator had gone to DVLA illegally and from a corrupt official there had obtained the ownership of that white van. Why was he investigated? Because he was painting the house of a recent lottery winner.

Q37 Paul Farrelly: Suppose Mr Iliich Ivanovich, to invent a name—and I am subject to privilege here but I hope there is no one like that out there wearing a hoodie who is going to shoot me—came to you when I published a story, the story went through the libel lawyers and he was “bang-to-rights” for money laundering out of Russia. If he came to you and said, “This journalist got my number and my bank record unethically” how would you adjudicate that?

Mr Thomas: We would investigate. Mick, I am sure, will say a few words in a moment about the process of investigation. Mick is a former senior officer in the Greater Manchester Police and essentially we use police methods to investigate. We have search warrant powers. We gather the evidence. We would raise this with the perpetrators. In the example you are postulating, they might start saying “public interest”. I want to make absolutely clear I am a very strong champion of the public interest. Wearing my freedom of information hat, it is fundamental to the success of the freedom of information law that there should be very clear activity in the name of the public interest. Perhaps I could refer you to the source material which we have published on what is in the public interest. Under the FOI legislation we have published seven pages of guidance defining the public interest but, if I could summarise it, in terms of informing public debate on key issues—promoting accountability and transparency for decisions in public spending; tackling fraud corruption and other crime; promoting probity, competition and value for money; clarifying incomplete or misleading information; promoting health and safety. We can recognise public interest when we see it but I have to tell you that in the cases we are dealing with under this legislation, where we have gone in and we have investigated the private detectives, I have not seen a whiff of public interest.

Q38 Paul Farrelly: So it is acceptable for people like me to break the law to bring someone to book.

Mr Thomas: If you are gathering information without the consent of your organisation and you can show that was justified in the public interest, you are not breaking the law, you have a good defence, and we would not dream of prosecuting, let alone a court convicting, in a case like that.

Q39 Chairman: Mr Thomas, in your subsequent report, your follow-up, as a result of a Freedom of Information request you published a table listing all the various newspapers and a number of their journalists whose names were found, I think, in the client list of the people arrested under Operation Motorman. The press would respond by saying that there is no evidence that just because they appeared in a client list they were involved in anything illegal and nothing has been produced to suggest that. How would you respond?

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Mr Thomas: The first thing I would need to share with this Committee is that the 3,000 or 4,000 transactions identified in this table came from a total of 13,000 transactions in this one operation alone. We were careful only to put forward those where there was some sort of hard evidence of the transaction being positively identified as involving a journalist for a newspaper. We put this table together, as you say, in response to an FOI request and we then published it in our December report, but we were also at pains to spell out and the paragraph which precedes the table does say very clearly, that “The Commissioner recognises that some of these cases may have raised public interest or similar issues but also notes that no such defences were raised by any of those interviewed and prosecuted in Operation Motorman.” I would remind you that, although they have ended up only with a conditional discharge, there were convictions. The detectives concerned were found guilty of the section 55 offence. They could have raised a public interest defence; they did not do so. They were convicted.

Q40 Chairman: I understand that it is a breach of the law not just for the person who illegally accesses the database, it is also a breach of the law by the person who commissions them to do so. If there was evidence that journalists had paid these people to access databases illegally, they themselves would be breaking the law. Did you investigate that?

Mr Thomas: Yes. The offence is cast in terms of obtaining, disclosing and procuring, and I think it is the procuring element at which your question is directed. I think your question implies: why did we go for the investigators and not the journalists? We prosecuted the investigators in the first instance because they were the obvious culprits. We had hard documentary evidence of what they had done, and, indeed, that led to a guilty finding. We were going to wait to see what the outcome of that case had been before taking any further action. When the conditional discharges were imposed by the courts, we had advice from counsel that it would not be in the public interest for us to proceed with further prosecutions. We had some other prosecutions of our own against those same private detectives and then there was a possibility of taking action against journalists, but we had clear advice from counsel that we could not and should not proceed any further. I should also make the wider point that the evidence was very strong against the private detectives. If we had gone down the road of prosecuting any journalists, I fully recognise that we would have had to produce the evidence for a court of the nature and the extent of their involvement. We did have, and we do have still, the statements, the bank statements, the invoices—some of these well-known proprietors were including information such as “payment for confidential information”, payment for “blagging” in some cases—so there was what I might call hard *prima facie* evidence. But, equally, to bring a prosecution for the offence of procuring is never going to be that easy. I would not disguise that

from anybody. In that particular case, we were unable to proceed any further with legal action. But, as I said at the beginning of my session this morning, the disappointment and frustration we had at the courts not taking this seriously enough we thought argued the case for a much stronger penalty to be there as a deterrent. I am very keen to stress that it is the deterrent effect which is important.

Q41 Chairman: Could I press you on that, because you are suggesting to us that you did have evidence which might well have been of sufficient quality to enable a prosecution but you did not proceed because you were advised it might be against the public interest. Why should it be against the public interest?

Mr Thomas: Because it would be essentially a waste of time and effort for my organisation. But, also, if we were to go to the courts—it would be back to the magistrates’ court—and bring prosecutions, we would have to decide which of the journalists to prosecute—would we go for the whole lot or some?—and the strong advice from our counsel was that we should not and could not proceed with such prosecutions. It would be attracting severe criticism within the court system if we were to go any further.

Q42 Chairman: Do you not accept that in your case that there is a widespread industry of illegally buying and selling information, and that journalists are one of the main perpetrators of this, is undermined if, when you come across all this evidence, no prosecutions follow?

Mr Thomas: With respect, prosecution did follow.

Q43 Chairman: But not of journalists.

Mr Thomas: We have also documented in the back of our report many other cases where over the last five or six years we have taken cases to court, all of which ended up with very, very low penalties indeed, and I think we really felt that this is a serious matter but it is not recognised with sufficient seriousness on the face of the law and the courts themselves cannot take it more seriously. Even since we have published our report, there are now signs that the courts are beginning to impose higher fines, and in one case a community service order against the private detective concerned, so already the penalties are beginning to get more serious.

Q44 Chairman: Although you did not prosecute, did you go to any of the editors of the journalists concerned and say, “We are not in the public interest going to proceed with a criminal prosecution but you should know we have come across evidence that your journalist appears to be breaking the law and under the self-regulatory system I would expect you to do something about it”?

Mr Thomas: Chairman, I went to the Press Complaints Commission in November 2003. I had the first of a number of meetings with Sir

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Christopher Meyer in November 2003 and I said, "These cases are in the pipeline at the moment" and I outlined broadly what was involved. I wanted him to understand what the implications of this might be and I wanted the Press Complaints Commission to have the opportunity to decide what would be an appropriate response. That did lead to a guidance note being published by the Press Complaints Commission. That was a useful step but I also have to say that I was a little disappointed that there was not a more strident denunciation of the activity by the Press Complaints Commission.

Q45 Chairman: As far as you know, no action was taken to follow up any of the specific cases which you had uncovered.

Mr Thomas: Not as far as I know.

Q46 Paul Farrelly: If I were to name four different types of person: a policeman, someone working for a statutory agency, a private detective or a journalist, where, in your experience, would you rank those four people in terms of misuse of the law on personal information? Who would be the worst culprit?

Mr Thomas: I think you are drawing me a bit beyond my statutory functions but I would have to say, on the evidence we have seen and the reason why we have targeted them, the middle men, the private investigators, are the ones who we see at the heart of this illegal trade. This is an illegal market. Any market of this nature depends on supply and demand but the market also, if you like, comes together because these people are in the full-time business. I am not by any means condemning all private investigators but I am saying that most of our inquiries—and Mick may want to say a few words about this—focus upon the activities of private investigators.

Mr Gorrill: We have 23 live investigations at the moment all based on private investigators. They have come to our notice for unlawfully obtaining personal data. It normally starts with a phone call to the DWP, BT or someone else who holds a big database of information. We are also getting more concerned now that medical records are being attacked. To give an example, a few weeks ago we executed a search warrant, and while the investigators were executing the search warrant the fax machine started to work and there was a fax there from a company we are now investigating asking to find out if a particular woman had ever had cancer and if she has cancer at the moment. In a second one very similar to that, we found a task sheet which asked someone to ring some clinics in London that did abortions, to find out if a named woman had ever had an abortion at any of the clinics, with a warning to: "Be careful when you speak to the receptionist. If you do not get the information, hang up immediately, because we do not want to be compromised in this endeavour." These are the kinds of things we are doing.

Q47 Paul Farrelly: Do you think you might be looking in the wrong direction?

Mr Gorrill: In what way?

Q48 Paul Farrelly: On these private eyes. Do you think you might be focusing on not the main culprits of misuse of personal connection.

Mr Thomas: We are an investigating and prosecuting authority. We can go where the evidence leads us. The hardest and most blatant evidence which we have come across has been on the files and the records of the private investigators. But I think it is very important to make clear to this Committee—and I think it is implied in your question—that it is not just the representatives of the media. It is a fairly small minority, frankly, of the media who are the ultimate customers. We also identified the fact that banks, insurance companies, local authorities, even law firms are also involved in this market. That is one reason why the DCA has decided that the penalty should be increased generally. I am bound to say, however, that these other players, if you like, people like the British Bankers' Association, the Finance and Leasing Association, have all come along, in effect, and said, "This is unacceptable. There may be a few bad apples" and they are broadly supportive of increasing the effectiveness of the law to deal with the problem. That has not, sadly, been the general response of the media. The media has been rather more hostile to the proposals we have been putting forward.

Q49 Alan Keen: Both the newspaper industry and the NUJ are opposed to custodial sentences under section 55 of the Act on the grounds that it would deter investigative journalism. Where do you place the balance?

Mr Thomas: I hear the chilling argument, Mr Keen, which I think is what they are saying. To a certain extent, I want to deter illegal activity, but I do not think this in any way will chill or deter genuine investigative journalism. There are a number of defences, which I have mentioned this morning already, for the prevention or detection of crime and where it is in the public interest. It seems to me that any serious investigation which can be remotely justified as being in the public interest will not be deterred or chilled by this law. It is already the law. In theory there has already been the possibility of unlimited fines. That has not been effective in deterring the unacceptable activity but nor has it inhibited the acceptable investigatory journalism. As I said earlier, in the cases we have investigated there has not really been any suggestion of what I would call genuine public interest. We can recognise it when we see it but none of the cases we have come across, I think, could easily have been justified as being in the public interest. It seems to me that any responsible journalist who is contemplating paying for or obtaining this sort of information only has to make a file note saying, "I'm obtaining this information for the following public interest reasons" and that would be a very strong piece of paper to wave in

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the face of any commissioner investigating and possibly prosecuting later. I do not think really it is going to have any serious effect on chilling genuine investigative journalism. There was a very recent and very important judgment in the House of Lords, the *Wall Street Journal* case related to what I would call “responsible journalism”. Perhaps I might just read to the Committee the passage in Baroness Hale’s judgment, because it puts it very clearly indeed: “The public only have a right to be told if two conditions are fulfilled. First, there must be a real public interest in communicating and receiving the information. This is, as we all know, very different from saying that it is information which interests the public—the most vapid tittle-tattle about the activities of footballers’ wives and girlfriends interests large sections of the public but no-one could claim any real public interest in our being told all about it. It is also different from the test suggested by Mr Robertson QC, on behalf of the *Wall Street Journal Europe*, of whether the information is “newsworthy”. That is too subjective a test, based on the target audience, inclinations and interests of the particular publication. There must be some real public interest in having this information in the public domain. But this is less than a test that the public “need to know”, which would be far too limited. I entirely endorse that sort of approach. I think it very clearly distinguishes between the genuine public interest and some cases where the public may be interested but it is not in the public interest.

Q50 Alan Keen: You have made the point a couple of times that you have been disappointed with the penalties when you have been successful on prosecutions—presumably because it is not a sufficient deterrent. Who is at fault? Who is making sure these are not sufficient as a deterrent?

Mr Thomas: The law itself has a relatively low level of maximum penalty. That is why I have argued the case forcefully and the Government have now accepted that the penalty should be increased on the face of the law itself.

Q51 Alan Keen: The Government have accepted.

Mr Thomas: Yes, the Government had a consultation exercise in the autumn and about a month ago published their response to the consultation exercise. It proposed increasing the penalty. It had about 65 responses in total and the vast majority supported the idea of increasing the penalty and the Lord Chancellor announced about a month ago the intention to increase the penalty when Parliamentary time allows.

Q52 Alan Keen: Will that put it right?

Mr Thomas: Yes, indeed. I think that would be exactly what I have been looking for. I am delighted with that response on this point from the Government. We have had a success already, frankly, in raising awareness of the problem. It was interesting that for the first couple of months after we published our report in May, it received virtually no press coverage at all. It was just ignored by the press. Then, for a range of reasons, perhaps not least the *News of the World* case, it became rather more prominent. I do not think there are many journalists now who can say, “We didn’t know that it is an offence under the law” because I think there has now been sufficient controversy about this matter. So we have had already success in raising awareness but, equally, that means for the future no one can say they did not know it was against the law.

Chairman: That is all we have. Thank you very much

Memorandum submitted by the The Editors’ Code Committee

THE EDITORS’ CODE COMMITTEE

The Editors’ Code of Practice Committee, comprising representative senior editors from Britain’s national and regional newspapers and magazines, writes, reviews and revises the Code that sets the benchmark for the system of press self-regulation administered by the Press Complaints Commission.

Its current membership is: Chairman: Leslie Hinton, News International; Neil Benson, Trinity Mirror Regional Newspapers; Adrian Faber, Express and Star, Wolverhampton; Mike Gilson, The Scotsman; Jonathan Grun, Press Association; Douglas Melloy, Rotherham and South Yorkshire Advertiser; Ian Murray, Southern Evening Echo; Lindsay Nicholson, The National Magazine Company; David Pollington, The Sunday Post; Alan Rusbridger, The Guardian; Neil Wallis, News of the World; Harriet Wilson, Conde-Nast Publications; John Witherow, Sunday Times; and Peter Wright, The Mail On Sunday.

EXECUTIVE SUMMARY

- The Code can be seen to be comprehensive and robust in all the areas raised by the Select Committee. The protection of privacy is covered in 11 clauses of the Code, which is constantly evolving and often innovative in scope and approach. These strengths, inherent in a voluntary system, are not often available in a statutory matrix. However, the self-regulatory system is predicated on adherence to the law and expects that those who cross the line will pay the appropriate price in the courts.

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- Just as the law cannot eradicate crime, the Code cannot prevent all journalistic excess. But self-regulation reduces lapses, improves standards and hastens remedies.
 - Of the issues cited by the Select Committee, the Goodman case was a clear breach of both the law and Code and the law took the lead role. The journalist is in jail. His editor has resigned. The strength and validity of the Code in this area is not at issue.
 - The Code already addresses the areas raised by the Information Commissioner. While some of the assertions of *What Price Privacy?* should be treated with caution, and the case for custodial penalties has not been made, the Code Committee will assist in providing better guidance and consider the ICO's proposed amendment.
 - The case of Ms Kate Middleton demonstrated that where media interest becomes intrusive, there are well-trying self-regulatory contingencies to cope with it within the Code. They are effective and have been pioneered by the PCC.
 - The self-regulatory system has led on the issue of regulating online activity, an area that has proved beyond normal statutory controls. It will bring an ethical dimension lacking elsewhere on the Internet: another first for voluntary self-regulation.
 - The importance of the voluntary element cannot be overstated. It allows constraints to be put in place that would be inappropriate in law, and yet works alongside the law. But the distinction between the two must be clear and maintained.
 - While the Code supports the law, it is not the law. The Code's role is as a powerful force in providing an ethical framework for the British press. There are dangers that, if it attempts to become a surrogate of the law, that will threaten not only the basis of self-regulation but also be inimical to the normal notion of a free press, both of which the Government is pledged to protect.

1. Introduction

1.1 The committee welcomes the opportunity to set out its views on the issues raised in the Select Committee's current inquiry. The protection of the proper balance of respect for privacy and of the maintenance of freedom of expression is at the heart of the self-regulatory system. The Code is central to that: a non-legalistic framework of commonsense rules by which disputes may be resolved speedily, and effectively, without recourse to slow, expensive and sometimes oppressive legal processes.

1.2 This does not put the press above the law. The Code of Practice demands high journalistic standards, and normal adherence to the penal code is implicit in that.

1.3 Current laws apply, to a greater or lesser extent, in most of the areas identified by the Select Committee's inquiry, including phone tapping, data protection and harassment. Of course, the law in these areas is not 100% effective; it does not totally eradicate crime. Similarly, the Code does not eradicate all journalistic excess. But lapses are both reduced and remedied more effectively by the existence of the Code and the self-regulatory system, and legal incursions into this process could seriously undermine that.

2. History and role of the Code

2.1 The self-regulation system is voluntary, but relies on unchallenged compliance from within the industry. So, while the Press Complaints Commission has a majority lay membership to guarantee its independence, the Code is written and revised by editors and then endorsed by the industry. The guiding principle, since 1991, has been that only a Code drafted by editors would command the necessary authority to deliver universal compliance.

2.2 The fact that editors also serve—albeit as a minority—on the PCC increases respect for its judgments across the industry. A complaint to the Commission is taken very seriously and there is a genuine sense of failure and shame at being found in breach of the Code. Steps are almost invariably taken to minimise the risk of a recurrence. A measure of the industry's commitment to the system is that no editor found to have breached the Code has ever defaulted on the voluntary obligation to publish a critical PCC adjudication. It is a record rarely, if ever, matched internationally.

2.3 The Code cannot stand still and has evolved over 16 years through constant revision, most notably in 1997, following the death of Diana, Princess of Wales. In 2004, the Code Committee introduced an annual review, inviting suggestions for amendments to the Code from civil society.

2.4 As a result, the Code has been substantially rewritten to improve clarity and to take account of changing circumstances and public attitudes. For example, the zones of privacy have been extended to embrace digital communications and the discrimination rules expanded to cover individuals suffering prejudicial or pejorative references about their gender.

2.5 The spirit of the Code: The existence of a standing Editors' Committee within a voluntary system allows the Code to require of editors obligations inappropriate in a legal, or imposed, regime. Principal among them is that the Code should be followed "not only to the letter but in the full spirit." It also requires

editors and publishers to implement the Code and “to take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists, in printed and online versions of publications.”¹

2.6 These requirements give the PCC greater latitude and extend the remit not only to freelancers and photographers, but also to non-journalists, effectively embracing developments in citizen journalism. Online versions of publications are included, which—as will be seen—takes the process further than have most other, parallel regulators.

2.7 Balancing rights: At the same time, the Code protects publication that is genuinely in the public interest, thus managing the balance between the rights of the individual—such as to privacy—and the rights of the public, including freedom of expression and the right to know.

2.8 While the Code, written by editors, outlines the balance to be struck, interpretations are entirely for the independent PCC to decide on a case-by-case basis, thus determining much of the Code’s effect by creating a body of case law. The lay membership’s influence in helping to shape journalism is profound and ongoing, adding authority to the process.

2.9 The Editors’ Codebook: In 2005, much of this case law was gathered together in *The Editors’ Codebook*, an official handbook, which showed, through PCC adjudications, how the Code worked in practice. It was sanctioned by the Code Committee following the Select Committee inquiry into *Privacy and Media Intrusion*, and published by the trade associations—The Newspaper Publishers Association, the Newspaper Society, Periodical Publishers Association, the Scottish Daily Newspaper Society and Scottish Newspaper Publishers Association.

2.10 The book was a pioneering development for self-regulation, both in Britain and abroad, and was praised by the European Union Commissioner for Culture, Ms Vivien Reding. Later this year, it is intended to put the Codebook online as part of a new Editors’ Code Committee website, where it will be regularly updated with case law, Code changes and answers to frequently asked questions. Both the book and the proposed website are a testament to the British press industry’s commitment to the process of self-regulation, which in scale and scope is probably unparalleled internationally.

2.11 Indeed, the UK Code of Practice is widely used as a template by self-regulatory press regimes in the Commonwealth and around the world. It is recognised as providing breadth, depth and simplicity in a practical, achievable format, rather than by setting Olympian standards unlikely to be observed, and which are a familiar flaw in some overseas regimes.

Note: A hard copy of *The Editors’ Codebook* is supplied for each member of the Culture, Media and Sport Select Committee as an appendix to this submission.²

3. The Code and the law

3.1 The Code of Practice does not set out to replace or replicate criminal or civil law. That is not its role, nor should it be. The Code will often ask more of journalists than the law demands, but never less. However, their cultures are distinct and their roles should not be blurred. The self-regulatory system is a voluntary regime, which—while conducting itself according to sound principles of natural justice—is by necessity, as well as choice, essentially non-legalistic in approach. There are sound reasons for this.

3.2 First, the Press Complaints Commission has no vested legal standing or empowerment. It has no powers of discovery, cannot summon witnesses, and relies on industry adherence to voluntary obligations of co-operation rather than on legal instruments of coercion. It also avoids the major disadvantages of the legal system: legendary expense, complexity and slowness, which often make it inaccessible to ordinary people.

3.3 Second, the non-legalistic and voluntary approach permits greater latitude than is allowed in the penal code. The spirit of the Code, for example, excludes wriggling through loopholes as an option. The fact that the system is voluntary means it is not subject to constant challenge, and an editor’s co-operation in trying to resolve the dispute is virtually guaranteed (non-co-operation with the PCC is itself a breach of the Code). These factors make the PCC an attractive route for dispute-resolution, compared with recourse to civil law. However, the courts remain an option, should complainants wish.

3.4 The criminal law is also available. While neither the Code nor the PCC attempts to replicate the law, adherence to the criminal code is both implicit and explicit within the system. The preamble to the Code states at the outset: “All members of the press have a duty to maintain the highest professional standards.” It is unthinkable that this should not include normal adherence to the law, or that unlawful activity would be condoned.

3.5 But if the case needed stating further, it is made categorically in *The Editors’ Codebook* three times.³ Most specifically, it sets out the position unequivocally on page 9: “Journalists must remember that they remain, as ever, subject to the same legal constraints as every other citizen—such as the laws of defamation, contempt, trespass, harassment and a hundred others. The Code will often require more of journalists than that demanded by law, but it will never require less.” This could hardly be clearer.

¹ Preamble to the Code, *The Editors’ Codebook* p 93.

² Not printed.

³ *Codebook*, p 7; p 9; pp 14–15.

3.6 So the Code and the law are complementary. The systems work while the two cultures remain distinct. Problems arise if they become enmeshed. It is sometimes suggested that the Code would be strengthened if it were amended to reflect the law. That would be dangerous because the voluntary ethos would be threatened and its benefits lost.

3.7 If the language of the law were incorporated into it, a breach of the Code would automatically be a breach of the law. Journalists committed to co-operating with the voluntary system would be put at risk of subsequent prosecution in the criminal court, a form of double jeopardy. The dangers of self-incrimination would often be such that on strong legal advice they would not be likely to co-operate. In the face of such advice, the PCC would usually have to stand back. Its ability to act speedily, cheaply and efficiently in an important area of its remit would be diminished.

3.8 The Code and self-regulatory system are complementary to the law, creating an ethical penumbra around it. But they are not agents of the law. They perform different and separate roles. It is vital to a free press that the distinction is maintained.

4. *The Code and privacy*

4.1 The protection of reasonable expectations of privacy is central to the Code's purpose and to reflect that privacy issues are covered to a greater or lesser extent in 11 of the 16 clauses. These are: Clauses 3, Privacy; 4, Harassment; 5, Intrusion into grief or shock; 6, Children; 7, Children in sex cases; 8, Hospitals; 9, Reporting of crime; 10, Clandestine devices and subterfuge; 11, Victims of sexual assault; 12, Discrimination; and 14, Confidential sources.

4.2 The Select Committee has raised the question of the efficacy of Code of Practice with particular reference to the Clive Goodman case; the access to personal data highlighted by the Information Commissioner; and the treatment of public figures by photographers, clearly with Ms Kate Middleton in mind. These issues are covered principally by Clauses 3, 4 and 10, and before looking at their specific application to the cases mentioned, we should examine the breadth and depth of protection those clauses currently provide.

4.3 Clause 3, Privacy was last revised in 2004.⁴ The asterisk indicates that it is subject to a possible exception if the action was in the public interest. The clause now states:

3. *Privacy

(i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications. Editors will be expected to justify intrusions into any individual's private life without consent.

(ii) It is unacceptable to photograph individuals in private places without their consent.

Note—Private places are public or private property where there is a reasonable expectation of privacy.

4.4 The clause was substantially revised in 1997, when zones of privacy were first included. The note defining private places introduced the novel concept of a reasonable expectation of privacy. It meant the PCC, with its lay majority, would decide what was reasonable in the circumstances. In 2004, digital communications were added to the zones of privacy and sub-clause ii was widened to include all photographs of individuals taken in private places without consent, unless there was a public interest.

4.5 The clause is comprehensive. It covers newsgathering activity and breaches are not reliant on material having been published. It embraces the spread of modern zones of privacy, including digital information, which might also be covered by data protection law. The issue of what is intrusive is decided on the grounds of reasonable expectation, and the burden is on the editor to justify intrusions. This gives the PCC wide discretion to decide what constitutes an intrusion in any given circumstances.

4.6 Clause 4, Harassment is equally unequivocal and comprehensive,⁵ having been revised in 1997, following Princess Diana's death. It states:

4 *Harassment

(i) Journalists must not engage in intimidation, harassment or persistent pursuit.

(ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them.

(iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources

4.7 Again, the Code targets newsgathering practices, and specifies activities that might be unacceptable, if persisted with. These include pursuing or photographing individuals once asked to desist. Finally, editors are required not only to control their own staff but also take care not to use material from other sources that does not comply with the rules.

⁴ *Codebook*, p 33.

⁵ *Codebook*, p 41.

4.8 This is one of the tightest clauses in the Code. It makes clear that otherwise legitimate journalistic activity could become unacceptable if persisted with, once asked to desist. This introduces an actual moment when the journalists might be in breach, even without any publication. That element allows the PCC to be pro-active in passing on “desist” messages to editors from complainants. Once told that a complaint has been received, or a “desist” message issued, editors usually respond positively. The system has been very successful in reducing complaints of harassment, by stopping the problem at source.

4.9 Media scrums: Similarly, where large numbers of journalists and broadcasters congregate—a media scrum—otherwise valid media attention could become intrusive. After the Select Committee raised this in 2003, the PCC and the Code Committee led in setting up a cross-media system in which the PCC acted as a clearing house for “desist” messages, passing them on not only to press editors, but to broadcasters, whose regulatory bodies were not pro-active pre-publication. It has been successful in dissipating the media pack and the problem.

4.10 Clause 10, Clandestine devices and subterfuge⁶ Britain has an honourable tradition of investigative journalism which, by its nature, often necessitates resort to practices that would normally be off-limits. The two clauses covering activities such as the use of listening devices and subterfuge were combined in 2004, to delineate the ethical boundaries and embrace a spectrum of surveillance methods. Clause 10 states:

10 *Clandestine devices and subterfuge

(i) The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs.

(ii) Engaging in misrepresentation or subterfuge, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.

4.11 The Clause now covers explicitly or implicitly the range of clandestine techniques, from hidden cameras to bugging devices and telephone taps, or text or email intercepts, thus reinforcing Clause 3’s protection of digital communications. Even to seek to obtain such information by such means would breach the Code unless there was a public interest to justify it. That is a major barrier to their use, or abuse.

4.12 The public interest in publishing or obtaining information is a key factor in many areas of the Code, and never more than when the right to privacy has to be judged against the right of freedom of expression or the right to know. The public interest exception is available in nine of the Code’s 16 clauses, signified by an asterisk in the title.

4.13 The Code includes a non-exhaustive list of areas that might justify the public interest exception.⁷ It states: “1. These include, but are not confined to: (i) Detecting or exposing crime or serious impropriety. (ii) Protecting public health and safety. (iii) Preventing the public from being misled by an action or statement of an individual or organization. 2. There is a public interest in freedom of expression itself. 3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully how the public interest was served. 4. The PCC will consider the extent to which material is already in the public domain, or will become so. 5. In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.”

4.14 The list demonstrates that the balance will be struck in solid areas of the public’s right to know, rather than in the margins of public prurience. The burden of proof rests on the editor. In cases involving children, it invokes a higher threshold—requiring editors to demonstrate an exceptional public interest to over-ride the paramount interest of the child. These are substantial hurdles, reflecting the high thresholds throughout the Code, especially those concerning privacy. The Code is no pushover for errant journalists to exploit. It is comprehensive, tough—and it works.

5. *The Code and the Goodman case*

5.1 As with the other privacy issues raised by the Select Committee, the Clive Goodman prosecution was for a practice proscribed by both the law and the Code. Although the seriousness of the offence made it appropriate to be dealt with by the courts, under the terms of the Code it would have been just as much an open and shut case had it come before the PCC.

5.2 So in deciding whether the Code of Practice in some way failed, it is necessary first to define success. If the test is the deterrent value in preventing breaches, then arguably there has been a failure of the Code. But equally there has been a similar failure of the law, with its much greater range of vested powers.

5.3 However, the law is not judged solely by its deterrent effect. If it were, prisons would not be overflowing. And if deterrent value is not a suitable test for the law, should it be so for the Code? Goodman broke the law, pleaded guilty and he is serving a four-month sentence. His action was indefensible and no one has attempted to defend it. He paid a very high price, as did his editor, who resigned as a result of the case. The clearest message has gone out that such action will not be tolerated.

⁶ *Codebook*, p 65.

⁷ *Codebook*, p 88.

5.4 It would be for the independent PCC alone to decide on any wider action to ensure compliance with the Code in this or future cases. The Commission has initiated its own inquiry and has sought assurances from editors that their working practices conform with the Code in this area.

5.5 Could the Code have done more? The Code's privacy clause refers specifically to respect for digital communications".⁸ There is a further provision in Clause Ten, covering clandestine devices and subterfuge, which includes: "The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails [. . .]"⁹

5.6 Undeniably, the Goodman breach was doubly damned by the Code, which could not have been clearer. No Code change appears necessary. Therefore, most debate on providing greater deterrence might normally centre on whether the Code's range of sanctions would have been sufficient. However, that is academic, given the existence of the law with a maximum two-year jail sentence. That was the ultimate deterrent. It did not work.

5.7 The Goodman case was shocking. But it demonstrates that however clear the language of the law, and however strong the sanction, a determined individual will always be tempted to ignore them. The low number of prosecutions of journalists, and close experience of the way in which they generally operate according to the Code, suggests at the very least that members of the press are no more likely than others to cross the line. They will not be totally immune. That is not a failure of the Code, any more than it is of the law.

5.8 The Editors' Committee is always open to constructive suggestions on how it might improve the Code and will consider any current options in its annual review in March.

6. *The Code and the Information Commissioner*

6.1 The Code Committee has engaged directly with the Information Commissioner since the publication of *What Price Privacy?* During the discussions, the Commissioner accepted that the evidence collected by police in Operation Motorman in 2002 did not necessarily establish any breach of either the law or the Code.

6.2 It established only that newspapers had paid for information that was covered by the Data Protection Act. Such activity would be permissible—under the law, as well as the Code—if the information obtained was in the public interest. No attempt has been made to establish whether such a defence existed in any of the cases cited. The working assumption was that the scale of press payment and the nature of the information sought suggested a large illegal trade. That may or may not be the case. We do not know.

6.3 However, a working assumption based on circumstantial evidence would be insufficient to secure a conviction and should be treated with due caution. This is particularly the case where the legality of the activity hinges on the presence or absence of a public interest defence.

6.4 Experience in investigative journalism has shown that, while there may be reasonable grounds to believe there is a public interest in an inquiry, by its nature it is often not possible to prove that interest at the outset; if it were, there would often not be any need for the investigation. The case for introducing jail sentences for journalists in this area has not been made. The current law allows for unlimited fines, but has been rarely used. Custodial sentences would have a chilling effect on investigative journalism and would be likely to seriously limit the PCC's scope in this area.

6.5 What is beyond doubt is that if such an illegal trade in personal information existed, it would clearly breach the Code, and the Editors' Committee would condemn it. The committee has therefore indicated to the Commissioner its willingness to assist in industry-wide initiatives to raise awareness of the issues raised in his report, notably the drafting—in close consultation with the ICO if he wishes it—of simple guidance for journalists. We intend to include such guidance in an online version of *The Editors' Codebook* to be launched this year.

6.6 However, the Commissioner seemingly wishes the committee to amend the Code to bring it more in line with the Data Protection Act. As shown, (paras 3.7–3.8) there are problems with the Code appearing to echo the law and these would need to be resolved.

6.7 The Commissioner suggests there should be a third sub-clause to Clause 3, Privacy, which would state, subject to a public interest exception:

(iii) It is unacceptable, without their consent, to obtain information about any individual's private life by payment to a third party or by impersonation or subterfuge. It is unacceptable to pay any intermediary for such information which was, or must have been, obtained by such means.

6.8 Although the Code Committee has yet to formally consider the suggestion—and will do so in March—a possible issue is that the Information Commissioner's wording appears to go beyond the remit of either the current Code or the law. First, it makes the obtaining of any private information—not just protected data—an automatic breach, thus widening the remit. Second, it makes the act of payment to a

⁸ *Codebook*, p 33.

⁹ *Codebook*, p 65.

third party a critical test. This would bring a new dimension to the Code, where the current test is whether a failure to respect digital communications constitutes an intrusion into privacy. If it does, it is unacceptable, whether or not payment is involved.

6.9 It seems curious that an activity that is acceptable without payment becomes unacceptable if money is involved. Is information automatically tainted by payment? Would a genuine intrusion of privacy be any less so, if payment had not been made?

6.10 However, the Code Committee will consider the proposal as part of the annual Code Review and decide on any amendment. Any alternative wording would normally be discussed with the Commissioner before a final decision was taken.

7. The Code and the treatment of public figures by photographers

7.1 The media attention surrounding Ms Kate Middleton might appear to raise similar issues of privacy as in the Goodman case, because of the royal connection. But, Prince William apart, the issues were very different. Goodman's activity was calculated and illegal. In Ms Middleton's case there was, for valid reasons, a spontaneous explosion of international media interest whose effects needed to be dissipated.

7.2 An outburst of media interest is not against the law or the Code, and could be legitimate in many circumstances. Those would include responding to intense speculation that the subject of the attention might soon be named as a future Queen, a matter greatly in the public interest.

7.3 But the presence of large numbers of press and broadcasting personnel could itself be intrusive, and so while the media interest might not itself breach the Code, a failure to manage it could do so. As previously mentioned (paras 4.8–4.9), the self-regulation system has pioneered arrangements to cover this after a "desist" message has been issued. In Ms Middleton's case—as with many others—a "desist" request was made and acted upon, via the PCC. The media scrum quickly dispersed.

7.4 Whether this was sufficient remedy in all the circumstances, might yet have to be decided by the PCC, and it would be improper to anticipate that. But what is clear is that a voluntary, workable mechanism exists to manage the problem; it is used regularly with success; and it is effective in a way legal constraints could rarely be.

7.5 Properly used, and recognising the balance of legitimate media interest and the right of privacy, this system is not a flaw of self-regulation, but one of its many quiet triumphs.

8. The Code and the regulation of online news

8.1 Regulation of the online press is another innovative area. Although control of the Internet has long been seen as unsuited to statutory regulatory processes, online versions of newspapers and magazines have been within the voluntary Code's remit since 1997. To keep pace with developments of digital publishing, such as the increasing use of audio-visual material, PressBof and the industry have co-operated to produce clear, simple guidance on which areas of online publishing should fall under the Code.

8.2 The guiding principle has been the extent to which the material appearing on the newspaper and magazine websites can be judged to have been properly the responsibility of the editor. This would rule out, for example, user-generated material, such as chat rooms and blogs, and streamed or syndicated material that was live—and therefore not subject to editing—or pre-edited to confirm to the standards of another media regulator.

8.3 These guidelines fit with the Code's general approach, which is to have rules that are pragmatic, flexible and achievable. The test of editors' responsibility meets with users' expectations and it means the relevant online material will match the ethical standards of the press generally. Thus, issues of taste and decency, and the right to editorialise for example, will be matters for the editors' discretion, but obligations of accuracy, privacy, and so on will be covered by the Code.

8.4 The strength of this is that it will provide users of newspaper and magazine websites with a clearly stated ethical benchmark, backed up by a system of remedying breaches, neither of which will be matched in most other areas of cyberspace.

February 2007

Memorandum submitted by the Society of Editors

The Society of Editors has more than 400 members in national, regional and local newspapers, magazines, broadcasting and new media, journalism education and media law.

We have members in all sectors of the media and we are independent of all other media companies or organisations. We do not have formal relationships with Pressbof, the Press Complaints Commission or the Editors' Code Committee, although we support their existence and work, and our members are members of those organisations as individuals.

The society produces a pocket-sized version of the Newspaper and Magazine Industry's Code of Practice in order that every journalist can carry a copy with them rather than merely keep them on file in their offices. Examples of this are included for Committee members.

I will address the Committee's questions in order.

1. Whether self-regulation by the press continues to offer sufficient protection against unwarranted invasions of privacy.

It is a voluntary system rather than a self-regulatory system in that it has enhanced lay membership and independent and transparent appointment and review procedures.

It is important that the Code of Practice is written by editors and that editors sit on the PCC. They provide invaluable insights into day to day media operations that are of immense value to lay commissioners. Editors are often the greatest critics of their peers, but their membership creates credibility for the code, the organisation and the process among other editors. The strength of the code and indeed the system of which it is a part is that editors voluntarily sign up to its provisions. They are more likely to live up to that code and system than one that is forced upon them. Why join the club if you do not intend to live by its rules? We have laws against speeding but it does not stop it, it merely attempts to deal with the consequences.

While privacy issues make up only a minority of complaints to newspapers the code is clear and forceful and has been substantially strengthened over the years. The PCC has been robust in this area.

Regulation should be about providing protection and redress for ordinary people rather than the celebrities of various kinds who figure in a small number of cases that have a disproportionate influence that fuels the debate about privacy. Generally, the media has little interest in intruding into the privacy of ordinary people unless they come to attention for reasons that lead to legitimate investigations in the public interest.

There is no reason to suggest that the system is failing. It also supplements, and in some regards, goes further than a range of existing legal protections such as the laws of confidence and libel, the Data Protection and the Protection from Harassment Acts.

The PCC has a pro-active role in helping to prevent harrassment by the media, and has been able to help both the public and the media in this regard during the course of major and minor events.

2. If the public and Parliament are to continue to rely upon self-regulation, whether the Press Complaints Commission Code of Practice needs to be amended.

It is not the PCC's Code of Practice. It is the industry's code, drawn up by editors acting independently on behalf of their colleagues to produce, review and amend it to the satisfaction of the whole industry and the PCC itself. The PCC then uses the code as a basis for considering complaints. We believe this is an important distinction. It gives ownership and responsibility to editors to implement the code and uphold the system.

The code is under continuous review and suggestions for changes are debated widely before members of the Code Committee make final judgements on the need for any amendments.

The society encourages and engages in that debate but would not seek to usurp the important role of committee members acting individually with a wealth of experience, a wide range of backgrounds and their knowledge and understanding of their readers.

Clauses on privacy have been strengthened over time and we are confident that if a clear need for further change is identified the Code Committee will act appropriately.

3. Whether existing law on unauthorised disclosure of personal information should be strengthened.

Existing law is already powerful and we have not seen any persuasive case for change. We have responded with other industry bodies to consultation on the Department of Constitutional Affairs proposals to increase sentences under the Data Protection Act and to the Information Commissioner. I understand the Committee has already received copies of this.

While the Information Commissioner says that 300 journalists have been involved in illegal exchanges of personal information, as far as we are aware, no journalists have been prosecuted and his investigations did not include consideration of whether the journalistic inquiries were legitimate and could be justified by the public interest. Simply having dealings with inquiry agencies need not constitute an offence and may indeed be perfectly lawful and legitimate. The 300 total is an extremely small proportion of the number of journalists active in the UK.

Furthermore, cases that have been before the courts have not attracted existing maximum sentences and the majority of offences have been dealt with in lower courts. That does not suggest that the courts believe they are lacking adequate sanctions.

On the other hand the possibility of prison sentences could have a dramatic limiting affect on legitimate journalistic investigation. That in itself would not be in the public interest.

The Society and other industry organisations are keen to work with the Information Commissioner in publishing data protection rules and principles. So far this offer has not been taken up.

4. *What form of regulation, if any, should apply to online news provision by newspapers and others.*

The PCC's remit has already been extended in this regard. Government and indeed society should be reluctant to regulate any part of the media. Where a need is proven, this industry's voluntary system should be a model.

CONCLUSION

When Clive Goodman of the *News of the World* was imprisoned, the society commented through its president Paul Horrocks of the *Manchester Evening News*.

He said: "Editors and the whole of the media have taken this very seriously. We condemn this offence and it is not representative of the media. We do not believe that it is a widespread practice and the rules were tightened considerably in 2004 when the law and the Editors' Code of Practice were strengthened.

"Editors do not condone law breaking and they have responsibility for upholding the Code of Practice that is clear and strict on these issues. Journalists will always try to get as close to the law as possible, but there is a line you cannot cross. The public should remember that one bad apple does not mean the whole barrel is rotten.

"The problem with privacy issues is that politicians can easily whip up a storm among the public, but the public should be concerned about how the Government is making our private information available to all its agencies, how the Government is trying to water down the Freedom of Information Act and how the courts are trying to bring in draconian privacy laws by the back door.

"Everyone has a right to privacy and the media is not interested in invading the privacy of ordinary people. There are occasions, however, when the media can justify using unconventional methods and subterfuge in order to expose wrongdoing in the public interest. That is recognised by the Code of Practice and by the law.

"The problem is that cases of this kind can have a chilling effect on serious investigative journalism that makes the media reluctant to reveal wrongdoing, hypocrisy or activities that threaten public health and safety. Threats to media freedom are also threats to everyone's freedom of expression."

In the UK there is no constitutional protection for the freedom of the press to compare with the USA's First Amendment. However, it should be recognised that editors voluntarily accept the code and the PCC that inevitably intrude into the freedom of the press and the wider human right to freedom of expression in ways that would not be acceptable in the USA, for example. It is rare for the limited protection for freedom of expression offered by the Human Rights Act to be properly balanced in this regard by the courts.

Against that background, editors have a range of individual views about the code and the PCC. Some believe the system is already too restrictive. Others advocate further development. Nevertheless, the system has the respect of editors who take the code and the work of the PCC very seriously. There is certainly no complacency.

Those who sit in judgment over newspapers, the PCC and the media should take care not to allow personal views about the content of some parts of the media to colour their judgement. Passing comment on or attempting to restrict some kinds of journalistic endeavour can have unavoidable consequences for journalistic activity that no one should question.

We urge the Committee to recognise the importance of a free media in a democratic society and the industry's positive achievements. In particular, there is a need to support publicly the work of the Code Committee and the PCC. Inappropriate new legislation or the misuse of existing law can undermine both the media's role in informing the public and its efforts to set and maintain journalistic standards.

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Annex 1

Letter from Paul Horrocks

I have been editor of the *Manchester Evening News* for almost 10 years. I was a member of the Press Complaints Commission for four years. I am currently president of the Society of Editors.

I cannot stress enough how seriously this newspaper views self-regulation and the work of the PCC.

All journalists are issued with a wallet-sized copy of the code to carry with them at all times—and are constantly reminded to adhere to it by senior editorial staff.

The code determines how we operate, and it is referred to by us on a day-to-day basis as stories are prepared.

Any alerts from the PCC about changes to the code, or details of significant adjudications, are loaded into our electronic legal check file which is read by all staff. All staff then get a personal e-mail alerting them that something new has been added to the file, and the e-mail contains a link taking them straight to the new information.

If, when preparing a story, a “grey area” emerges, a journalist of at least assistant editor level contacts the PCC before publication to discuss the issue with an officer, and seek guidance on how to proceed.

If we feel that the need is so great that public interest exceptions to the code need to be invoked, that decision is taken by me as the Editor alone—and only in exceptional circumstances.

On any occasion that a reader complains to the PCC about what we have published, we treat any approach from the PCC very seriously.

The PCC usually invites us to contact the complainant within seven days—here we would contact them that day to see if the issue can be resolved.

My position is that if it becomes evident we have got an inaccuracy—or inadvertently broken the code—we will print a correction or apology immediately and prominently.

We do not publish corrections on P68 under the greyhound results—we print them on a page earlier in the paper than the offending article had appeared, and usually on page two.

Most complaints from readers have been speedily resolved in this way—through a published correction, a letter to Postbag giving their viewpoint or sometimes a follow-up article sympathetic to their position.

On the very few occasions when we have not been able to resolve the issue in this way, we have reluctantly had to let the matter go to full adjudication by the PCC, accepting that if the adjudication went against us we would have to publish that prominently.

We have decided against publishing the adjudications in our favour out of consideration for the complainants.

Self-regulation is clearly working because it is voluntary, and because editors such as myself appreciate the ethical and moral need to follow the code.

I see no need for a change in either the code or the law. Both are crystal clear and any infringement either results in a PCC adjudication, which no editor likes, or a criminal conviction, which can and does lead to terms of imprisonment (Clive Goodman).

In my four years as a PCC commissioner, I can only recall one complaint under the heading of privacy involving the publication of private e-mails, and that resulted in an adjudication in favour of the complainant. This does not suggest to me that interception of private texts or telephone messages is a widespread issue.

Incidentally, in the MEN legal check file, there is a strong warning to all staff about phone-tapping (see attached note).¹⁰

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¹⁰ Not printed.

Witnesses: Mr Les Hinton, Executive Chairman, News International, Chairman, Editors’ Code of Practice Committee, *Mr Arthur Edwards MBE*, Royal photographer, *The Sun*, *Mr Paul Horrocks*, Editor, *Manchester Evening News*, President, Society of Editors, and *Mr Bob Satchwell*, Director, Society of Editors, gave evidence.

Chairman: For our next session, I welcome Les Hinton, who appears wearing two hats: that of Chairman of the Editors’ Code of Practice Committee and as Chairman of News International; Arthur Edwards, the Royal photographer of *The Sun*; Paul Horrocks, who is President of the Society of Editors and Editor of the *Manchester Evening News*; and Bob Satchwell, the Executive Director of the Society of Editors.

Q53 Janet Anderson: I wonder if I could put this question to each of the four of you, please. The press notice announcing the Committee’s inquiry linked it quite clearly to the Clive Goodman case and the

trade in personal data identified by the Information Commissioner, and the treatment of public figures by photographers working on behalf of the press. Would you accept that the events that triggered this inquiry raise serious issues and that there is a valid role for politicians—such as those of us on this Committee—to consider whether the present system of self-regulation is the right one?

Mr Hinton: Unarguably you are right to participate in a debate about whether the self-regulation is sufficient, is proper.

Q54 Janet Anderson: Do you think that the recent events—

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Mr Hinton: The recent events relating to [. . .]?

Q55 Janet Anderson: The Goodman case in particular.

Mr Hinton: Any event that involves the conduct of the press and our present system of self-regulation is open—in whatever circumstances, frankly, politicians judge—to be open for discussion with us and for debate.

Mr Edwards: Yes, I think so too. Self-regulation, if it is going wrong, then someone has to come down and make sure it works. Coming here today and sorting it out—I think that is the way to do it, yes.

Q56 Janet Anderson: Mr Horrocks, you said in your evidence, “The problem with privacy issues is that politicians can easily whip up a storm among the public”. Do you think that we are doing that today?

Mr Horrocks: I think there is a danger of that. I see nothing wrong with the debate, but the fact is that it is all too easy to focus in on one case. As I think I said in my statement, one bad apple does not mean that the whole barrel is rotten. I do not believe that there is widespread bad practice, and I do believe that self-regulation, the role of the PCC and the Editors’ Code, by and large, is strictly adhered to. I know that in my own newspaper we regularly discuss adjudications and we regularly go back and back-check our information, to see whether or not there is a potential breach. So the PCC and the Code are highly regarded and it would be wrong to suggest otherwise. I was a little disappointed, when I heard some of the earlier evidence from Mike and Chris that people are coerced into breaking the Code. That is just not my experience. I have been a journalist for over 30 years; I have been the Editor of the *Manchester Evening News* for 10 years; and I was on the PCC as a commissioner for four years. It is not a common problem, in my experience, that people are being forced into breaking the Code or are pushing beyond the boundaries of what the Code and what the law say you can do. Sure, it is perfectly acceptable to go close, but there must be an overriding public interest were you to consider breaking the Code, and that would then be down to the editor to determine whether those circumstances were correct.

Q57 Janet Anderson: You specifically mention that in your e-mail to your staff about the use of phone tapping and so on, where you say, “The only exception to this would be in the case of a story which had exceptional public interest and even then such action would have to be sanctioned personally by the Editor”. Are you able to give us an example of where that was the case?

Mr Horrocks: If you were carrying out an investigation into corruption, if you were doing an investigation into wrongdoing, into misdemeanours in public life, misleading the public, those are the sorts of public interest tests that I would want to see applied to our journalism, to make sure that the bar had been set at the highest standard. We are not talking here about tittle-tattle; we are not talking about the lifestyle and the private lives of celebrities.

We are talking about serious wrongdoing, corruption, misleading and crime. If we are investigating those subjects and that subject matter, then I think that there will be and can be occasions where a justifiable breach of the Code could take place.

Q58 Janet Anderson: You have never had a case, for example, where you have thought that to break the Code was in the public interest, but the journalist or the reporter you were asking to do this disagreed with you?

Mr Horrocks: That can be debated. I do not recall in my experience ever having to have that discussion. When we embark on those types of investigation, it is as a result of debate and everybody being content with the route that we are following. We do not say to journalists, “You must do this because I say so”. What we do say is, “We believe that this investigation will be in the public interest. Therefore [. . .]”. Maybe if you were buying drugs—for argument’s sake—for a particular reason for an investigation, you would not go along and say, “I’m a reporter from the *Manchester Evening News* and I want to buy some drugs from you”, because clearly that will not work. So you may have to masquerade as somebody else. That potentially is a breach of the Code.

Mr Satchwell: This inquiry by this Committee not only is quite reasonable and correct, but is welcome. The point I would make is that too often there is an emphasis on the misdemeanours and the things which go wrong with the media and within the PCC system and self-regulation as a whole. The danger is that, because you get a spectacular case involving a big celebrity, a film star, a pop star, a politician or a footballer, there is a level of interest and concern raised which does not reflect the reality. Surely the protection which needs to be there about privacy is about ordinary people? By and large, the media does not have any interest in ordinary people, unless they are doing something which deserves to be enquired into. The point I would make is that I would hope that this Committee, particularly given your remit, would also look at the achievements of the media. It is not all bad. It does things which are good and very rarely gets a pat on the back. In Les Hinton’s case, the *News of the World* had a problem with a reporter on a Royal story and yet, a couple of weeks later, *The Sun* goes and exposes a case to do with friendly fire in Iraq, which everybody thinks was well done. That is done by a paper from the same stable, but very little praise comes out; very quick to criticise but not very quick to praise. Similarly with the effects of the system that has been brought in for the last 15 years, and the work of the PCC. I do not think that there is any real argument that the behaviour of the press has improved, and that has been to do with the fact that the PCC has been there. I am not saying that it is perfect, and of course it could be developed and improved, but no one seems to recognise the achievements of the system.

Q59 Janet Anderson: Could you give us an

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indication on what is an editor's dream story or dream headline? Do they have a kind of list of priorities? What sells more papers than anything else?

Mr Satchwell: It used to be a Royal story, with a nice cuddly Labrador dog, and a diet thrown in! There are all sorts of stories which are dream stories. With any story it depends on the publication and the nature of that story. Obviously, a story which is soft and about celebrities will sell but, similarly, so will a very serious story about the misdemeanours of government or the police or whatever. I think that it is impossible to say what is the best story.

Mr Hinton: For the public, there is probably a rule of thumb that the biggest stories are the stories the subjects of which want least to be revealed, in the case of the policy of the Government. The best story I can think of, if you could keep it exclusive, would be the Second Coming.

Q60 Philip Davies: It is in 10 Downing Street!

Mr Horrocks: For us, it would be winning a campaign that has been initiated by the concerns of our readers, when we went up against maybe authority or government to say, "This is wrong" and we would win that campaign. That would be a strong and compelling story for us.

Q61 Paul Farrelly: Can I throw a question at Les, who wears so many hats that his wardrobe must be full of them! Recently, in the *Sunday Times*, three of the finest investigative journalists that I have worked with—Mike Gillard, Jonathan Calvert and David Connett—teamed up to write the story about the Adams family finally being brought to book. If Mr Adams came to you and said, "These people got me bang to rights. They hacked into my text messages"; then maybe you had Prince Charles coming to you saying, "Clive Goodman has hacked into my text messages"; and you said, "Actually, Mr Adams, you're a crook"; but Clive Goodman says to you, "Mohamed El Fayed says that Prince Charles is a crook, and I'm trying to back up a story that actually he murdered Princess Di", who would you find in favour of?

Mr Hinton: That is the whole point of the debate we are having now, when it is proper or not proper to go over the line in enquiring into stories. Usually, when you begin making an investigation—if one of our reporters was told, for instance, by a colleague of Mr Whittingdale that he had been receiving daily millions of pounds from the Republic of Congo, and we listened to his plausible story and decided that we were only going to be able to find out by getting access to his bank account through subterfuge—and we did so, and it turned out to be true—we are fine. But if it turned out that this chap had an incredible vendetta against Mr Whittingdale and we were tumbled, trying to find out, would that person be subject, as Mr Thomas would like him to be, to being imprisoned? If Andy Coulson, when he was Editor of the *News of the World*, had called up the Metropolitan Police Commissioner and said, "I have to tell you, Mr Blair, that one of my reporters was accessing a phone message, a voicemail, and we

have reason to believe that, two days from now, bombs will go off on the London Underground", I doubt that Mr Blair's first words would have been, "Mr Coulson, you're under arrest". We operate in this area all the time. It is not to say that we do not make mistakes or that we will continue to, but placing too great an inhibition on people who are setting out to explore what they consider to be genuine issues of public concern is a dangerous thing to do. Mr Thomas himself has just said in his evidence to you that journalists, in so far as he knows, who are breaching the use of these tracing agencies are a very small minority. I think that is the most telling part of his testimony, if I might say.

Q62 Chairman: You would presumably accept that in the example Mr Thomas gave, which was the mother of the man once linked romantically to a *Big Brother* contestant, it is difficult to see a public interest in invading her privacy.

Mr Hinton: I cannot imagine it.

Q63 Mr Evans: Public perception out there seems to think that a lot of journalism is squalid; that they are ferreting around in areas of so-called mini-celebrities' lives where perhaps they ought to be left alone. Do you think that a lot of it is perhaps the fault of celebrities themselves; that in fact there is collusion out there and members of the public have not the faintest idea that that goes on?

Mr Edwards: I think that mini-celebrities probably want publicity. They are probably getting people ringing you up and telling you these things, so that they can get publicity and they become major celebrities. I think that is a lot of it. When celebrities appear in newspapers, I just think that most of it is brought on themselves. They have courted the press getting there and, by and large, I think they enjoy it. It helps them. I think that it helps them to sell their films and their records.

Mr Hinton: It is true as a broad rule, I think—and, again, this is not to say there is not excess by certain members of the press at certain times—that the people who depend upon a public profile are inclined to change the rules. When they want the public profile, they will very cleverly court it; sometimes more subtly than lay people may appreciate. When that publicity and that spotlight which they have invited suddenly discover things that they find less agreeable, then of course they cry foul. Again, it is tricky, but you have to remember that people who make the currency of their livelihood as a public profile have to be ready sometimes to accept publicity they do not particularly want.

Q64 Mr Evans: Would you include Chris Tarrant in what you have just said? The Chris Tarrant divorce?

Mr Hinton: I do not know. It would depend upon the case. I cannot remember the details.

Q65 Mr Evans: We have been written to by the manager here. What he is saying is that clearly Chris Tarrant likes a lot of publicity but then, when something in his private life goes a bit "squiff", they are not really keen. Looking at the submission put in

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by his manager about the way that his wife at that stage and the child were followed, time and time again, by the media, there is one bit here which says, "This meant that they were forced to conduct their daily lives behind closed curtains, the press pointing cameras and specialised microphones at the house, which is close to the public highway. Furthermore, when Ingrid was obliged to go out to the shops or to take Toby to school, she was subjected to an onslaught of flashlights before being pursued in her car. On a number of occasions, in trying to get away from the pursuers, perilous situations occurred, where she and those with her in the car were put in danger. I understand that there was one occasion where the car actually left the road and damage was done to its suspension".

Mr Hinton: That is all new to me but I have to say that, on the face of what you have just said, if it were all as described, Mr Tarrant would have had a very good cause for making contact with the PCC to claim some action be taken.

Q66 Mr Evans: Which is what he did in this case. Are these freelancers that are doing this then? Who is doing this?

Mr Hinton: I do not know in that particular case. We can talk about other cases. I am a little more familiar with the Kate Middleton case, which I know is one that you have specified. It is very difficult, again. To treat and harass someone in the way that that happened would seem to me to be excessive. The PCC—and in their testimony they will tell you later on, I know because I have seen their submission—act frequently and very effectively when things get out of hand. In the case of the Kate Middleton episode of a few weeks ago, when things were clearly getting out of hand, I would guess that the vast majority of those people outside were in fact not acting upon assignment from big media. That did not matter; we were all part of it. That stopped, because it was clearly wrong. However, it is very difficult to make rules about what is the proper size of the assembly of the press at a particular event or on a particular occasion. It is very hard to do that.

Mr Horrocks: In general terms, harassment is not acceptable. We have a policy at my newspaper that, if people do not want us to be present, if we have knocked on the door once and they say, "Go away", we go away. All my staff are aware of that. In terms of celebrity images, I will give you a recent example where we were supplied with an agency photo of a celebrity footballer, out with his girlfriend, shopping in Manchester, inside a department store. The photo had been photographed through the window. We considered using that photograph. We tried to contact that person's agent to see whether they would give permission. They would not. We did not use the photograph. On a different issue, we took photographs recently of people on their mobile phones in their cars because, such is the public interest in that. We did consider whether or not people did have an expectation of privacy when they were at the wheel of their car. We determined that, as they could be seen from the road, they did not and that the public interest motivation in exposing

wrongdoing by driving whilst phoning justified, potentially, a breach of their privacy. Those are the sorts of discussions that go on, day in and day out, in newspapers—not so much the Chris Tarrant issue.

Mr Satchwell: But you do not mention what happened after the Tarrant family contacted the PCC. There is all of that evidence, which I am sure that the PCC can talk about in terms of their proactive work. Look at some of the biggest stories that have happened over the years: Dunblane, Soham—huge great cases—where the world's media were there. Then somebody gets together and says, "Look, we need some peace. Can the media leave us alone?" and the media just withdraws. The PCC plays a big part in that. Bear in mind, with the media scrum argument, a lot of the size of the scrum is down to the fact that TV has to have cameras, sound people and so on, so they make up the numbers; but the PCC is the first point of call. The PCC will go to the broadcasters and say, "Look, we have been asked to leave these people alone". I do not know of any instances where, after that request has gone in, there has been a continued problem.

Q67 Mr Evans: How much of this do you think has come out after the death of Diana? You talk about a media scrum and everybody being interested. A lot of people out there, whenever they saw her—and, Arthur, you are probably one of the Royals' favourites here—the public perception was that they were harassing her, persecuting her wherever she went.

Mr Edwards: We are talking about Diana?

Q68 Mr Evans: Diana in this case. Do you think that a lot of change has happened since because of that?

Mr Edwards: I think they pursued Diana towards the end. In 1997 when she was going to the gym and everything, I did think that was outrageous, yes. I think that was uncalled for. Princess Di used to wear the same shirt every day, so that perhaps it would deter photographers from taking that same picture; but it did not. They just kept going and going and going. It was a feeding frenzy on it. After her death, where photographers pursuing the car had something to do with it—and I believe that—I certainly looked at what I did every day and how I approached photographing the Royals. In the early 1980s, when Kelvin was the Editor of *The Sun*, the Royals were open season; it is no secret. I used to go to do private things, private holidays. I do not do that any more. It is all finished; it has changed. The whole idea of covering the Royal family, for me, is very different now. The recent thing with Kate Middleton, when I saw the video footage outside her house on her birthday, I felt really sorry for that girl. I just did not want anything to do with that. When I saw the pictures the next day of the girl with a camera right up to her face, I was horrified—because I knew that girl and she is a very good photographer, works for Associated Press and, for a long while, she covered the Royals with me. It was a kind of freak frame that the photographer took of the girl, where she was walking past her and it did look worse than

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it actually was. When I saw the pack break and they all surrounded her, I felt awful about that. It does remind me of what happened to Princess Diana, and I hope that we do not make that same mistake again. I think that we should pull back a bit and start to look at this girl's life. She is a private citizen; she needs a bit of space. She is in love with Prince William. I am sure of that and I am sure that one day they will get married. I have talked to William about this. *(Laughter)*

Mr Satchwell: You have heard it here first!

Q69 Mr Evans: I can see Sky News now—"Breaking News: We're going live to the Select Committee!"

Mr Edwards: I have talked to him about it and he has made it clear that he wants to get married, and I believe what he says. So I think this girl should be left alone.

Mr Hinton: It is also true in the case of Kate Middleton—and I think a sign of the times, and the others have made references to some events—that, very quickly, when it became clear that it was out of hand, that pack dissipated within 24 hours. One morning it was very bad; the next morning I think there were two people there, and one of them, I think, was an ITN camera crew.

Q70 Mr Evans: Can I ask you, Arthur, a further question on this? You say that you have shown great restraint and you have looked at your procedures since the death of Diana. However, there are a lot of freelancers out there and there are a lot of other people who must be under pressure from editors who say, "How come they got that photograph there, and you didn't get it?". Are you under any pressure ever from that?

Mr Edwards: No, not at all. In fact, I do not feel under pressure. If Kate Middleton had won the Lottery or was playing a piano in a pub somewhere, I think that it would be fair to go along and photograph that—if she was doing something of interest, not just going to work every day and driving a car. Some of the things she has been subjected to, Nigel, I have to tell you, are pretty bad. She has been stopped at traffic lights, where they climb off their motorbikes and start photographing her. She has been out shopping in stores and they run into the stores after her. She uses public transport a lot—or she did—but they climb on the buses and the bus driver is having to throw them off. That is what is happening, and that is not how I was taught. When I worked on local papers and came through to work on *The Sun* and other national newspapers, I did not do it that way. I normally approach the person and ask them. The first picture I took of Princess Diana I said, "Are you Lady Diana Spencer?". She said, "Yes". I said, "Can I take your photograph, please?". She said "Yes", and she posed for me. That is how I was brought up. Today, it is not like that. It is young people who buy a digital camera and think they are a photographer. They go into the scene; they do not care; they just rush in; they have no idea the suffering that person is undergoing. I think that when Les made that rule on our papers, "No more paparazzi pictures of this lady", that was it.

Suddenly everybody came to their senses. This girl was going through hell—for what? For a picture. It just was not worth it. Very easily, we could be responsible for her having another accident, like Diana did, by pursuing her in traffic; bothering her at work; climbing over the wall at work, where security guards have to throw the paparazzi out. It is not the way—

Q71 Mr Evans: Have the Royals told you personally about their feeling about the intrusion into their private lives?

Mr Edwards: No, they have not; but I have spoken to people close to them and I know that it really is distressing this girl. You get the argument, "Well, she's smiling"; but she is a really decent, nice person. She is not going to walk out scowling and looking miserable. She just tries to look her best every day. It is a big pressure on her every morning, when she walks out and sees young men out there with cameras, and who have no respect for her.

Q72 Mr Evans: Arthur, can I ask this one question then? Do you believe that the procedures in place now are therefore sufficient to protect the privacy, the rightful privacy under the Code that is currently there, of those like the members of the Royal family?

Mr Edwards: Yes. I think the birthday just went hopelessly wrong. What our company did by immediately stopping that, as Les said, immediately the next day it was nothing. In fact, one TV crew went down there to photograph paparazzi and there was no one there. So it did stop it. I checked yesterday, and I am told that it is maybe one, maybe two, now and again. So it has stopped it.

Mr Hinton: I have to say, Nigel, that 20 years ago or longer, when I was on the road, it would have been impossible to do that.

Mr Satchwell: Going back to your original question about Princess Diana and 1997, there was a sea change that happened then. The Code was rewritten quite importantly but, more than that, I think the spirit behind the Code was changed. In fact, the Code began to say that it should be followed in its spirit as well as to its letter. That was a very important change. That change happened at that time. Big events tend to make people think again, and I think what happened was that the press was beginning to say, "Okay, we can do this, that and the other, but we should ask ourselves who are we hurting, who are we damaging, before we do it". I think that helped at that time, and that is where the change has happened over the 20 years. As Arthur bears out, you get another event which just serves as a reminder recently, which makes everyone think again. With these sorts of things, we have to be reminded from time to time where the Code takes us; but it certainly has had a huge effect over that 15-year period.

Q73 Mr Evans: Foreign photographers—there is no Code over them though, is there?

Mr Horrocks: No, but we still have a responsibility to look at the source of those photographs. The fact is that photographs now come from all over the

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world and they come from members of the public. It is back to the Code and back to the editor's responsibility to establish, if possible, where that picture was taken, who took it, and what were the circumstances. That is why the Code is so important, and that is why it is discussed and has been raised up the agenda of every newsroom that I am aware of.

Q74 Chairman: Les, you were active regarding Kate Middleton. Kate Middleton is a very popular figure; the public like her; she may be Queen one day. It was probably in the interests of your newspaper to take the stand that, "We're not going to be a part of this". What about people who are not popular with the public? Somebody like Jade Goody or like Jo O'Meara, who were pursued when they came out of the *Big Brother* house and certainly did not have the kind of public support that Kate Middleton did—should they not also have some degree of protection?

Mr Hinton: It is not an entirely answerable question, but it is also fair to say that people leaving the *Big Brother* house are often making sure that they do not travel too quickly, so that the press can keep up with them. So I would be a little cynical about the particular example that you have employed. However, I do recognise that when ordinary people suddenly find themselves in a very special situation and are subject to intense attention, it may or may not be warranted but I do think that it is beholden on the industry and individual newspapers to make sure that they are behaving in a proper manner. Judging what the proper manner should be, in relation to the particular reason that they have attracted attention, is a very tricky thing to do; but I think that the industry is far better at measuring its conduct than it was 20 years ago.

Mr Horrocks: What the vast majority of complainants want—and I know this from my own experience as editor and being involved in the PCC—is a resolution to their complaint. They may not want a correction; they may not want an apology. They either want something to stop or they want the newspaper to say either "Sorry" or "We'll amend our records". What the PCC is very good at doing is brokering those arrangements; and the vast majority of complaints are resolved in that way: amicably, properly and—the point is—very quickly.

Q75 Alan Keen: Could I ask Les this question? I have asked this question before. Should the owners of newspapers be more prominent and would that make a difference? The fact that Rupert Murdoch identifies himself very clearly with his newspapers—does that mean that you are more careful than an editor of a newspaper whose ownership is unknown? Would it be better if people were forced to identify with the newspaper that is making their money for them?

Mr Hinton: For me, of course, that is a pretty academic question, since we are not actually under the ownership of a retiring proprietor. However, I think that there is often a balance between proprietorial control over what a newspaper does and editorial control over what a newspaper does. The *Guardian* is famously run by a trust that allows

total independence to its editor. I think that it is perfectly reasonable for readers to know who owns their newspapers; but it is not a particular secret. The vast majority of newspapers in this country are owned by big public companies, such as ours is, and there are shareholders. There are insurance companies and pension groups that own News Corporation—the company I work for—and I am sure it is the same with Paul. So breaking down the actual ownership of a newspaper, when you start to dissect it, is tricky but, in the end, it is a question of how a newspaper has conducted itself; how an editor is behaving; how its readers are reacting to what those newspapers are doing—and that reaction is buying them or not.

Q76 Alan Keen: I understand that Rupert Murdoch does not own all the shares, of course, but he is high profile. If the shares are owned ultimately by a public company, should that chairman and that group of companies be identified with the newspaper? Would it make the newspaper more responsible? You have a very direct line through to Rupert Murdoch, obviously.

Mr Hinton: I am not quite sure what the merit would be. If you take, for example, regional newspapers, and Johnston Press is an example—I am a non-executive director of it—it places great pride and importance on allowing its editors to make individual policy decisions based upon the editor's view of the community. There is never an editorial discussion of board meetings; that is the way it works. I think that, for community newspapers, is actually a good thing. In the end, the relationship is between a community and its newspaper and the editor of that newspaper. I think that is the visibility that matters most of all. The broader ownership issue is of course important, but I think that is the most important connection.

Mr Horrocks: And that is where self-regulation works, I think, because at the end of the day no editor wants to have in their newspaper an adjudication against them that their own community then sees. That is a harsh penalty.

Q77 Mr Hall: Can we just go back to the Kate Middleton case? You have said that self-regulation works, but it did not work in this case. We had the media scrum outside her house; we had a complete intrusion into her personal space and her privacy. It was only a reaction to that which got the scrum outside her house removed. Do you not think that editors have some kind of responsibility to make sure that that thing does not actually take place in the first place?

Mr Horrocks: You can be responsible for your own staff and give your own staff instructions as to how behave. You cannot legislate for freelance activity or for members of the public also acting as photographers. The main thing is that, when a scrum situation like that occurs, there was a mechanism to stop it.

Q78 Mr Hall: But there is not a mechanism to stop it happening in the first place.

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Mr Hinton: It does happen spontaneously—

Q79 Mr Hall: Come on! Everybody knew it was her birthday.

Mr Edwards: But there was a lead-up to it.

Mr Hinton: It was going on before the birthday.

Mr Edwards: There was a lead-up to it, and a lot of people thought that, because it was her birthday, there might be an announcement of an engagement.

Q80 Mr Hall: You have already done that for them! *(Laughter)*

Mr Edwards: But they did not listen to me! I did not go down there, you see, so I knew—

Mr Hinton: What had happened was that there were a couple of plausible stories—and Arthur has added, with his great credibility, to the plausibility of them—that they were about to announce their engagement. That is what started it. It led up to her 25th birthday. So there was genuine interest at that point. Going to her home in order to take a photograph of her, in isolation, would be a perfectly reasonable thing to do. But when you see a crowd that will clearly create problems, that you cannot control and the only way we could control it—when I looked at it, it was “This is going to lead to trouble” and, I confess, it was a pragmatic decision too, “This is going to lead to trouble. Something is going to go wrong here”—the only way you can really do it is by saying, “We will not buy photographs from paparazzi”. At that point, thankfully others followed and they immediately had no reason to be there. However, it is difficult, in advance, to anticipate every occasion when that might happen.

Q81 Mr Hall: The real difficulty, of course, is—this is something else that was mentioned, I think by you, Paul—you said, “Self-regulation works, but big events help to change our thinking on various things”. Clearly, we have an example here of where the protection of the privacy of Kate Middleton did not work. What you are saying is, “When it happens again, we will call them off”. Should there not be something more proactive, to stop that happening again in the future?

Mr Horrocks: What would you suggest? I think that at the moment what we have is a situation where, with an event like that, you cannot legislate for the number of people who may appear at a particular news event. You cannot do that. However, what you can do is, if things are getting out of control, have a mechanism to try and make sure that it does not happen the following day.

Q82 Mr Hall: One of the mechanisms you suggested is making sure that the complaint is resolved. Again, that is reactive, is it not?

Mr Satchwell: This is not a complaint that is resolved; it is the fact that she was put into that position. She was put in that position not just because the media is there, but the members of the public will be there. That is how the scrum develops. As soon as the issue was raised, I think that the industry acted very quickly indeed. Bear in mind that the papers do not have any interest in her being

caused problems, certainly not her life being endangered, because here is a great story. We have had everyone laughing this morning, but it is about a royal prince and a fairytale story about a possible marriage. That is a wonderful story for all the papers. They do not want to do anything which will disturb that story. So the intention is always to try and make sure that the story is covered very responsibly.

Q83 Mr Hall: So what you are saying is that news editors were not responsible for all of the scrum outside Kate Middleton’s house. I think that is absolutely right, because you do not control every aspect of the media. Yet, on the strength of a complaint to the Press Complaints Commission, that scrum disappeared the day after, completely.

Mr Satchwell: Once a situation is raised by the person concerned, the PCC would then talk to all the papers and the broadcasters. That is the part of the system which again goes unsung: the fact that the industry is taking this on board itself and involving everyone who might be involved, to try and get away from that problem—and it was a very quick reaction.

Q84 Mr Hall: That suggests to me that the vast majority of people there were under some obligation to the Press Complaints Commission, because they actually moved.

Mr Satchwell: It was also reported, was it not?

Mr Horrocks: The fact is that the editors take notice of the PCC’s request or passing on of information. That is the point: that the editors take notice. Years ago, that may not have happened; it does now, because editors do take notice. We can focus a lot on the high-profile cases, and inevitably that is what happens, but there are many, many cases going on throughout the country—regional, weekly, and local papers—where self-regulation and responsible reporting, photographers, et cetera, is regulated by the Code and it is taken notice of.

Q85 Rosemary McKenna: In the Goodman case it was dealt with by the law and obviously would have been caught under the Code as well. The Society of Editors has said that the editors and the whole of the media have taken this very seriously and have said, “We condemn this offence and it is not representative of the media”. We will accept that. However, journalists continue to use methods that are very dubious. There is no doubt about that. They are paying for information; they are trawling through people’s backgrounds; and using other methods, like trawling through dustbins, refuse collection, and all that kind of thing. Can you justify that, when there is no public interest whatsoever in some of the kind of information that they bring up?

Mr Horrocks: If there is no public interest, no, we cannot justify it; but the fact is that the Goodman case, in my opinion—and that is why I gave that statement—was a one-off. I do not believe that this is widespread activity. In my career, I have not come across this in a widespread way. Of course, there will always be people who go beyond what is acceptable,

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but in this case the law dealt with Goodman. The Code would have dealt with Goodman. The fact is, the law worked; and, if this was so widespread, why are there not more prosecutions? Why are not more people coming forward to make those sorts of complaints? In my four years on the PCC I can only recall one adjudication in favour of the complainant, where somebody had intercepted telephone messages. One case in four years. It is not widespread. We are not saying that it does not go on, but it is not widespread.

Q86 Rosemary McKenna: So you would not accept, as was said earlier, that one of the reasons people do not go to the Press Complaints Commission is because the redress of publishing the story again is not worth it, because all you are doing is reminding people of the original story?

Mr Horrocks: People will go to the PCC to make a complaint if they feel that there is a problem with accuracy, harassment, intrusion, and the PCC will look at that complaint; but then will, in conjunction with the complainant, agree the form of resolution. It may be that somebody does not want to have their name published again in the newspaper; they may simply want a letter of apology.

Q87 Rosemary McKenna: That is fine, but the story has already been out there. The story is there. One of the problems is, once the story is out there, every single time that person's name is mentioned in connection with anything else, that is rehearsed. I have spent a lot of time over the last couple of weeks, speaking to colleagues about why they have not made complaints or, if they have been involved, what their attitude is, and very many of them say, "Simply because it rehearses it again and again".

Mr Satchwell: But if there is an inaccuracy and a complaint is made, part of the procedure will be that cuttings files and library files are changed suitably, if there has been an inaccuracy. That is why it is important for people to complain: so that things are put right for the future.

Mr Horrocks: We have an electronic log at the *Manchester Evening News* of complaints that are against the paper, or legal adjudications or PCC rulings. Any member of staff, any journalist, can look at that log and find that if person X complained or said there was an inaccuracy in that story, "Do not repeat that particular suggestion".

Q88 Rosemary McKenna: That message is not out there. One other point—the growing practice of editors contacting people late on a Saturday, when a story will appear on the Sunday and it is too late to do anything.

Mr Horrocks: That is a hard one. I think that people should be given the time to properly consider a reply. I do not believe it is acceptable to leave it right to the last minute.

Q89 Mr Evans: Can I ask one final question of Arthur? You know your colleagues really well. Do you think that now, because of what has happened

in the past—we have mentioned Diana—that Kate Middleton is unlikely to suffer the same sort of intrusion that Diana did during her lifetime?

Mr Edwards: I would like to think that she would not. I really would. We are talking about self-regulation here. Mainly, the Fleet Street photographers—I mean the photographers employed by newspapers—do act properly. They do try to be organised. They do try to work it so that there is no stress. But there is this gathering band of paparazzi now and they are just ruthless; they do not care; they are just going to do anything for a picture. If we can control those, and I think that not buying the pictures will help, Kate Middleton will probably have a much better time of it. Since that scrum on her birthday, I think it has got a lot better for her and I just hope that continues.

Q90 Chairman: Les, can I come back to the Goodman case? The official version of events appears to be that Clive Goodman broke the law and has paid the penalty for doing so; that his editor was unaware that he broke the law but nevertheless took responsibility, because he was the editor, and resigned; and that is the end of it. Can you tell us what investigations you carried out to determine whether or not anybody else was aware of what Clive Goodman was doing?

Mr Hinton: First of all, the police obviously carried out pretty thorough investigations, and the result of their investigation was the charge against Clive and against the private detective. Clive went to prison; the *News of the World* paid a substantial amount to charities nominated by Prince Harry, Prince William and the editor, who told me he had no knowledge of this activity but felt that, since it had happened on his watch, he should take his share of the responsibility, and he resigned. The new editor has been given a very clear remit to make certain that everything is done in the form of seminars and meetings. We were already doing this kind of thing in the past with all our newspapers. It has been re-emphasised. They are all attending. There is mandatory attendance at seminars, understanding the law and understanding the limits; understanding that, in the event that there is a judgment that the public interest might warrant some stepping over the line, it has to be authorised by the editor at the very least. That is all being done now. I believe absolutely that Andy did not have knowledge of what was going on. However, he is no longer the editor and what matters now is that we have to start somewhere. What we are doing now is a very rigorous programme to make sure that the conduct of the journalists there is as impeccable as it reasonably can be expected to be.

Q91 Chairman: I commend what you are doing now, but Clive Goodman was paying for some of this information. Those cheques presumably required approval, did they not, from somebody else?

Mr Hinton: There were actually two issues involved in the Goodman case. There had been a contract with Glenn Mulcaire, during which he was carrying out activities which the prosecutor and the judge

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accepted were legitimate investigative work. There was a second situation where Clive had been allowed a pool of cash to pay to a contact in relation to investigations into Royal stories. That, the Court was told, was where the money came from and the detail of how he was using that money was not known to the editor. That is not unusual for a contact, when you have a trusted reporter—which Clive was—to be allowed to have a relationship which can lead to information and which involves the exchange of money. That is what happened in that case.

Q92 Chairman: If self-regulation is to work, if a reporter suddenly comes back with some pretty exclusive stories, is there not a procedure where somebody says, “You can give me an assurance that this hasn’t been obtained illegally or in breach of the Press Complaints Commission Code”?

Mr Hinton: In the case of Clive Goodman, the stories he apparently obtained were small items in gossip columns, and therefore there would be no particular need to. In other areas—when Trevor Kavanagh came into the office and said, “I’ve got a copy of the Hutton Report”, I know Trevor and I know he had a copy of the Hutton Report, and I was not about to ask him where he had got it from—because it was clearly a matter of public interest. Those lines exist all the time and editors, when they are running aggressive, investigative newspapers, are forever having to judge the wisdom or not of stepping over the line. And—do you know what?—they do not always get it right.

Q93 Chairman: I think that we can probably make a guess where Trevor got the Hutton Report too!

Mr Hinton: I know your guess, Chairman, and you are wrong!

Q94 Chairman: You can assure us, therefore, that in future there will be checks in place that senior reporters, however experienced, who suddenly produce stories, will be required to give undertakings that there have been no breaches of the Code?

Mr Hinton: Anything that can make the new regime more rigorous, we will do; but we are running aggressive newspapers. Their job most of the time, as I said earlier, is to find out information that other people do not want them to find out.

Q95 Chairman: You carried out a full, rigorous internal inquiry, and you are absolutely convinced that Clive Goodman was the only person who knew what was going on?

Mr Hinton: Yes, we have and I believe he was the only person, but that investigation, under the new editor, continues.

Q96 Chairman: And presumably with the Press Complaints Commission?

Mr Hinton: The Press Complaints Commission have in fact been in pretty detailed communication with the new editor.

Chairman: Thank you. I think that is all we have for you.

Witnesses: Mr Robin Esser, Executive Managing Editor, the *Daily Mail*, and Mr Eugene Duffy, Group Managing Editor, MGN Ltd, gave evidence.

Chairman: For our next session, can I welcome Robin Esser, who is the Executive Managing Editor of the *Daily Mail*, and Eugene Duffy, the Group Managing Editor of MGN Ltd.

Q97 Philip Davies: Can you tell us what you consider constitutes self-regulation? Who should do the self-regulation? The editors or the PCC?

Mr Esser: Obviously, the PCC oversees self-regulation but it depends very heavily on the willingness of the editors to make sure that the Codes are followed. The huge strength of self-regulation is that the Editors’ Code has been produced by the editors and they have signed up to it; so there is no real pressure upon editors to break it. In my opinion, this works extremely well. It is not perfect; it is always being looked at and, as circumstances change, the Code is being refined. By and large, however, I think that the PCC does a very good job and editors throughout the country, local, regional and national, strive to keep to the strictures of the Code.

Q98 Philip Davies: You say that the editors have signed the Code. They have signed the Code

because, presumably, they have to sign the Code. The issue is do they follow the Code? The NUJ was telling us earlier that they get a number of complaints from their members, who are blatantly encouraged by editors to break the Code. I do not think that anyone is arguing that editors are not signing the Code; the contention is whether or not the Code is actually being followed and whether journalists are being encouraged to breach it.

Mr Esser: I have been in Fleet Street for 50 years and at no point during that time have I seen an editor request a journalist to break the Code. Of course, it has not been in operation all that time and, in the wild days of yore, there was no such self-restraint. However, the PCC Code has been working very well for the last decade or more, and I believe that it is effective.

Q99 Philip Davies: The thing the public may say is, “He would say that, wouldn’t he?”. If I asked the Prime Minister, “Have you ever said anything that you knew not to be true?” he is not going to say, “Oh, yes, I said about four times ‘I did this’ when I shouldn’t have done”. Of course he will say, “No, never”; and every newspaper editor is going to say,

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“Of course this never happens on my paper”. If it never happens, why is the National Union of Journalists saying that this happens?

Mr Esser: You will have to ask the National Union of Journalists that. In my opinion, the Code is faithfully followed by every editor I have ever known. I think that it works very effectively and continues to do so.

Mr Duffy: Perhaps I could add that I did not recognise the newsroom that the NUJ was talking about this morning. It is certainly not one that I have worked in, in 30 years in newspapers. Self-regulation is carried out from the editor, right the way down to the individual journalist. I did some numbers in preparation for this Committee and, looking back over the last five years, the *Daily Mirror* has had 35 actions taken to the PCC by subjects of stories unhappy with how we had handled our stories. In only one of those cases was the complaint upheld.¹ During that period, *Daily Mirror* journalists were probably involved in news or features in about 30,000 stories over a five-year period, and we have had one complaint upheld against us. So, from where I sit—and I think this is shared across Fleet Street—self-regulation certainly does work.

Q100 Philip Davies: Do you think that lots of people think, “It’s not worth taking on the might of these big newspaper groups. They’ve got limitless resources. I couldn’t possibly take these people on”, and so they just sort of accept it—and you take advantage of that?

Mr Esser: The whole strength of the PCC is that it is there for ordinary citizens; it is free and it is fair. Up to the point that self-regulation was adopted, you either had to have the resources to go to court or, as you say, you gave up. Ordinary people now have the ability to complain.

Q101 Philip Davies: Can you tell us briefly about apologies and corrections, where you do accept that something was not true? Lots of the public think that papers are quite happy to make a big splash about something and, when it is found not to be true, print the correction hidden away somewhere, deep into the paper. Is that perception justified? What is your approach? Do you give the same prominence to the apology that you did to the story in the first place?

Mr Duffy: This is clearly a difficult area for every newspaper. Certainly in the case of the *Daily Mirror* we were the first newspaper² to introduce a correction column; it is For the Record and, each day, we will put in there any factual errors that we have made in the paper. Clearly there is an issue if there has been a front-of-paper story which has led to a retraction or a correction, but what you also have to bear in mind now is that, when we do print a correction, there is often some form of compensation to the aggrieved party involved.

¹ *Footnote by Witness:* To clarify: 35 of the complaints made against the *Daily Mirror* over the last five years were resolved by the PCC. Only one was upheld.

² *Footnote by Witness:* first tabloid newspaper.

Certainly³ any corrections we put in the papers are agreed. Their placement, the wording and the terms of the settlement are agreed with the aggrieved parties.

Q102 Philip Davies: What if you made a false story about somebody a front-page splash and they said, “I want the front-page splash saying that the *Daily Mirror* got this wrong”? What would you say to that?

Mr Duffy: It would become a difficult issue and we would arrive at an amicable solution.

Q103 Philip Davies: The point is you would not do it, would you?

Mr Duffy: There have been front-page apologies. Certainly one in my time, and I think in other newspapers, we have had to carry front-page apologies.

Q104 Philip Davies: We have talked a lot about Kate Middleton earlier today. Hopefully, to finish off that particular part, why was it that your papers were seemingly happy to allow the media scrum to take place in relation to Kate Middleton? Why was it that you had to wait for the *Sun* newspaper to do something about it before your newspapers followed?

Mr Duffy: I think that the News International position in relation to Kate Middleton cannot be presented as black and white as they are painting it. If Kate Middleton were to drive down the road, using her mobile phone at the wheel, and a paparazzo were to take a photograph of it, that would clearly be in the public interest because she is breaking the law. Would the Editor of the *Daily Mirror* publish that picture? Probably yes, because she was breaking the law; but he would certainly question the photographer providing the picture on the circumstances he was in when he actually took it.

Mr Esser: Obviously, you cannot prevent a media scrum, because you are talking about a large number of photographers these days who are freelancers, who are working for foreign publications and, very often, are not even nationals of this country. This has arisen over the years, as the large banks of staff photographers have largely vanished from Fleet Street. The scrum was not only made up of paparazzi but also of freelance photographers and television crews. However, the difficulty really is in defining what is a paparazzo. He is a photographer who is employed by the Press Association to go and take a picture of an event in your constituency—okay today—and then, when sent tomorrow to take a picture of Kate Middleton is classed as a paparazzo. The definition is extremely difficult to come by. It is also true that the foreign markets for such pictures are very considerable. I think that it is a tribute to the influence of the PCC that they are able to control and to disperse these scums when they arise.

³ *Footnote by Witness:* To clarify: corrections are agreed more often than not.

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Q105 Philip Davies: Do you think that British national newspaper editors have no responsibility at all for what happened? It was all freelance photographers supplying foreign newspapers, and that the British media has absolutely no blood on its hands when it comes to paying huge amounts of money for photographs like that?

Mr Esser: That is not what I said. I did mention that there were at least three television crews, all from British-based stations, all controlled by Ofcom and not by the PCC. There were several members of the public taking pictures on their mobile telephones, who are not controlled by anybody. Without doubt, if you entirely banned all pictures from the paparazzi, the paparazzi would be free to behave in any way they wished. As it is at the moment, every editor will make very careful checks on how a picture is taken, where a picture is taken, and it must conform with the strictures of the PCC Code. That gives the PCC an influence over the paparazzi which otherwise they would not have.

Q106 Mr Hall: In earlier evidence we were told that in the Goodman case the journalist had access to liquid funds, which he did not have to account for when he used those funds to pay for stories. Is that standard procedure in the print media?

Mr Esser: Not in the *Daily Mail*.

Mr Duffy: I do not have as much money as him, and we definitely do not have pots of cash lying around.

Q107 Mr Hall: Under the Code of self-regulation, what regulations are there about paying for stories then?

Mr Duffy: The Mirror Group titles would pay for stories, firstly if there is a public interest justification there. Somebody who has an exclusive human interest story to put in the paper—we would be there, bidding for it. There is no problem, I think, in most of the stories that we publish in actually paying cash for those stories.

Q108 Mr Hall: Does that apply to the *Mail* as well?

Mr Esser: Obviously, each case you judge on its merit. For instance, there are many books that are written that contain very good information and we pay for the serialisation of the book—at one end of the scale.

Q109 Mr Hall: That is not what we are talking about though, is it?

Mr Esser: At the other end of the scale, if somebody rings up and has a jolly good tale then we would pay him a fiver.

Q110 Mr Hall: Is there any sort of transparency in the amount that newspapers pay to their sources?

Mr Esser: Transparency?

Q111 Mr Hall: Yes.

Mr Esser: It is all returnable to the Inland Revenue. We do not pay cash sums to people anonymously. What is paid is declared to the Inland Revenue.

Q112 Mr Hall: The actual individual amounts of money that are paid to informants and people that provide information—I would think that is confidential to the newspaper, is it not?

Mr Esser: Yes.

Q113 Mr Hall: Should that be covered by the Code of Practice?

Mr Esser: I cannot quite see how it would be, or should be. I think that the commercial operations of any firm should remain confidential to it.

Q114 Rosemary McKenna: Do you accept the figures given for individual publications' transactions with a private detective given by the Information Commissioner in his report, *What price privacy now?*

Mr Esser: I cannot possibly comment, because we have not seen them. I could not comment, therefore, on either the figures or the individual transactions. They have not been shown to us. What I can say, however, is that, following that report, we made very vigorous moves to make sure that our daily practice conforms with the Data Protection Act. We not only issued verbal reminders to all our staff—

Q115 Rosemary McKenna: Can I check that you are saying you have not seen this report?

Mr Esser: I have seen the report, but I have not seen the invoices.

Q116 Rosemary McKenna: The figures in the report?

Mr Esser: I have seen the figures, but I have not seen the invoices. So I am saying that I cannot comment on the individual ones.

Q117 Rosemary McKenna: No, I am just asking you about the report. Do you accept the figures in the report, not the invoices?

Mr Esser: I imagine that the Information Commissioner is correct in his mathematics.

Q118 Chairman: Why have you not seen the invoices? Ninety-one journalists employed by the *Mail* were employing those services. Surely you could ask the 91 journalists to show you the invoices?

Mr Esser: They occurred five years ago. Many of the journalists are no longer working for us. We have millions of invoices and we process over 100 news stories a day; that is a third of a million stories a year at the *Daily Mail*. The figures? I do not dispute the figures.

Q119 Chairman: But 91 of your journalists are listed as employing the services of somebody who has been convicted of breaking the law for illegally authorising databases. Have you said to those 91 journalists, "What were you employing this man to do for you?"

Mr Esser: As I said, many of those journalists, or some of those journalists, are no longer working for us and there is no way in which they can remember what happened five years ago. However, I would

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point out, as the Information Commissioner has said, that not one of them has been accused or charged or found guilty of any offence.

Q120 Chairman: This is self-regulation. It is not sufficient to say that they have not been prosecuted. You are supposed to be administering a self-regulatory system. You say that they may not remember what they paid for, but I would imagine that they would probably remember if they were paying somebody and, by doing so, were breaking the law.

Mr Esser: As far as we are concerned and as far as we know, they did not break the law. As I say again, none have been accused, none have been charged, and none have been brought before the courts for breaking the law. We use agencies for all sorts of reasons, for finding information quickly—legitimate information which is in the public domain.

Q121 Chairman: The whole purpose of self-regulation is that it is supposed to sit on top of the law. It is supposed to enforce higher standards than those which are required by law. Surely it requires the editorial management team of a newspaper to enforce it? Then, when you have 91 journalists who apparently were employing somebody who has since been convicted of breaking the law, surely self-regulation requires you to go and ask the journalists why those names appear in this man's client book?

Mr Duffy: One of the points on Mr Thomas's report is that he has listed hundreds of transactions, involving journalists on the *Mail* and every other newspaper, my own included, and the implication—

Q122 Chairman: You actually come out top. There are 95 from the *Sunday People* and the *Daily Mirror* combined.

Mr Duffy: The implication from Mr Thomas is that every single enquiry that those journalists made was illegal and was in breach of the Data Protection Act. What he does not make clear is that he has forwarded none of the transactions to my newspapers; no names of journalists have been provided to my newspapers by him; so I have not examined, nor can I examine, individual journalists or individual transactions. What we are doing, through self-regulation and trying to improve it, is reinforcing with our journalists that—as Mr Thomas says in his own report—any journalist he suspects of committing breaches of the DPA in future will be subject to prosecution. We will deal with those people in the future, should they breach the DPA. What we are doing now at the *Mirror* titles, very vociferously, is that each individual journalist has the Code of Practice contained within their employment contract. This summer we are introducing meetings of each individual journalist with their head of department, where the requirements of the Code of Practice and the Data

Protection Act will be reinforced with them. It has come down from the highest levels of management within the company that we now have a zero tolerance policy on any breach of the Data Protection Act or the Code of Practice, where enquiries of the sort referred to by Mr Thomas have been carried out where there is no public interest justification on that investigation.

Q123 Chairman: It is all very worthy, your setting out these rules, but are you saying to us that Mr Thomas told you that 95 journalists from either the *Sunday People* or the *Daily Mirror* featured in the book of this man who was convicted of an offence, and you did not do anything about it?

Mr Duffy: No, we have done something about it. Because we do not have the details of those transactions nor do we have the names of those journalists from Mr Thomas, we have taken a forward-looking view and we will endeavour to prevent any future breach of the DPA or the PCC.

Q124 Rosemary McKenna: So that practice can continue? As long as they do not get caught, that is okay?

Mr Esser: If Mr Thomas would kindly forward the names of the journalists and copies of the invoices to us, we will ask each one of them what they were doing at the time; but he has not.

Q125 Chairman: It is very simple. Why did not both of you say to your journalists, "Did you ever employ this man who has been convicted of an offence? If you did, what did you employ him to do?"?

Mr Esser: Yes, and all say that they were asking for information which was in the public domain.

Q126 Chairman: So you could ask them whether or not they employed and, if they said yes—

Mr Esser: We have asked all our journalists this.

Q127 Chairman: So you know who the people are?

Mr Esser: No, we have asked all our journalists, all 400 of the journalists who work for us.

Q128 Chairman: Whether or not they employed—

Mr Esser: Whether or not they used this particular agency and for what reason. We have been assured by them all—most of them, of course, say they did not—

Q129 Rosemary McKenna: They would say that, would they not?

Mr Esser: We have been assured, by those who do remember from five years ago, that they were asking for information which is in the public domain. Also, we have reinforced to them the need to be extra vigilant from now onwards; to try to understand the Data Protection Act; to obey the laws of the Data Protection Act; to examine and be familiar with the PCC guidance on the Data Protection Act. Compliance with the Data Protection Act and the PCC Code is part of the employment contract of the *Daily Mail*.

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Q130 Chairman: Can I just be clear? The *Daily Mail*, on receipt of the information about the number of your journalists who employed the people responsible in Operation Motorman, went to all of your journalists, you found out which ones did pay this person, and you satisfied yourself that in each case there had not been a breach of the Code.

Mr Esser: As far as memory from five years ago is concerned and can be relied upon, yes.

Q131 Chairman: You got this information quite recently, because it was only published a few months ago.

Mr Esser: We took this action right away; but, as I say, we have not actually had a list of the names and the invoices from the Information Commissioner, and that would enable us to make an even more rigorous examination of what happened some five years ago.

Q132 Chairman: Mr Duffy, have you done exactly the same with the Mirror Group?

Mr Duffy: No, I have not been to each individual journalist employed on the three papers. Bear in mind that the Crown Prosecution Service has decided, on the evidence given to them by Mr Thomas, that there is no public interest in prosecutions against any of the journalists he has identified. Bearing in mind that, as Mr Thomas has spelt out, he will take action against any of those journalists he believed committed an offence under Motorman who, in his eyes, re-offend in the future, my job is to ensure that they do not re-offend and that is what we are doing in my company.

Mr Esser: As we are at the *Daily Mail*.

Q133 Rosemary McKenna: Can we move to the things that are not covered by the Data Protection Act and the other methods that are used by journalists? For example, you seem to think that all public figures are fair game and that it is okay to rifle through the refuse outside people's homes, and to employ people to trawl through their backgrounds going back 20 or 30 years, paying for information which is of no public interest at all.

Mr Esser: We do not go on fishing expeditions like that. All our staff are forbidden to tap phones and are forbidden to indulge in any of the so-called "blagging" activities—specifically forbidden.

Q134 Rosemary McKenna: But to go and speak to people and ask them, offer to pay them for information?

Mr Esser: We are too busy with news stories that break on the day to go wandering around the place on speculative stories. We do not go on fishing expeditions.

Q135 Rosemary McKenna: Mr Duffy?

Mr Duffy: First, we do not go through people's bins.⁴ We have never found much material there worth publishing!

Philip Davies: So you do go through!

Q136 Rosemary McKenna: I am sure that shredding machines have made a difference to a lot of your activities, but never mind.

Mr Duffy: As Robin said, when we send our journalists on investigative stories it is with a purpose. It comes to mind with Ian Huntley, where we threw a lot of journalists at the Ian Huntley story and many of the enquiries we carried out led to women who had made complaints to Humberside police about Huntley, many years prior to the two murders that he carried out. It was only through the journalistic work of papers like myself, the *Mail* and others that the true background of Ian Huntley came out, and Humberside police had to put their hands up and admit they had not done their job properly.

Q137 Rosemary McKenna: I am sure you are to be congratulated on that, but I have one other point. Can I ask you about the growing practice of notification late on a Saturday night, about a story you are going to publish on Sunday?

Mr Esser: On the *Daily Mail*, I am glad to say, we are at home on Saturday night.

Q138 Chairman: And the *Mail on Sunday*?

Mr Esser: I cannot answer for the *Mail on Sunday*, I am afraid.

Q139 Rosemary McKenna: Perhaps Mr Dacre could come along. Will he answer for the *Mail on Sunday*.

Mr Esser: No, the Editor of the *Mail on Sunday* will answer for the *Mail on Sunday*—Mr Peter Wright.

Mr Duffy: I can answer for the Sunday papers at Trinity Mirror. I am interested that you say a "growing practice", because I worked on the *Sunday Mirror* 20 years ago and the practices carried out then are the same as are carried out now. We go to people in good time on a Saturday, and you also have to accept that papers, particularly in the Sunday market, want to protect their stories. You can go too early to the subject of an exclusive on a Saturday afternoon and, if he does not like your paper, he can feed it to the opposition. Our editors work under fair practices, and that is normally to give people sufficient time to prepare their answers.

Q140 Janet Anderson: I wonder if I can take you back? I think that you both said earlier that none of your journalists or reporters has pots of cash with which they could pay people. The reporters who were identified by the Information Commissioner as having been in touch with this agency—how would the agency have been paid?

Mr Esser: The agency would have presented an invoice, which are the invoices that the Information Commissioner has.

Q141 Janet Anderson: That would have been paid by your newspapers?

Mr Duffy: Yes.

Q142 Janet Anderson: But at no time when paying those invoices would you have checked at the time whether this was an above-board enquiry by your reporter—whether it was within the Code?

⁴ Footnote by Witness:[unless there is a public interest justification.]

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Mr Esser: When the invoice comes in, obviously the detail is on the invoice. It is unlikely in any circumstance that it would say, "For blagging". However, I think the Information Commissioner did suggest that one or two of them did.

Q143 Janet Anderson: What would it say? If it does not say "For blagging", what would it say?

Mr Esser: It would say, "Enquiries", "Electoral roll", "Birth certificates"—things of that nature—and a name.

Q144 Janet Anderson: And cheques would just be issued without any further checks being made?

Mr Esser: If the agency had been employed to find out this information, we would pay for that service. Many of these agencies, I might point out to you, are registered with the Information Commissioner and only those registered with the Information Commissioner are used by us. They have registration fees which they pay to the Information Commissioner's Office. I assume that the Information Commissioner therefore is satisfied that they are conducting a proper business.

Q145 Janet Anderson: What happens at Trinity Mirror?

Mr Duffy: The invoices are challenged; they do not just get paid blindly, with nobody asking what are they for. The invoice will come straight to my department and, as Robin said, most of them are fairly self-explanatory. If I see a bill that looks unusual, I will challenge the head of department and get an explanation why that invoice has been incurred.

Q146 Janet Anderson: What sorts of sums would these invoices be for?

Mr Duffy: Broadly in line with the figures given in Mr Thomas's report.

Q147 Alan Keen: I think that one of you said a short while ago that you reported everything to the Inland Revenue. Is that right?

Mr Esser: Yes.

Mr Duffy: Yes.

Q148 Alan Keen: So if you pay an individual, you disclose that amount of money and who the person is to the Inland Revenue?

Mr Esser: Yes.

Mr Duffy: Yes.

Q149 Alan Keen: I think I recall from the last inquiry we did that a well-known editor said that her paper paid the police for information. Do you ever do that?

Mr Duffy: I have been at Trinity Mirror—the *Mirror*, *Sunday Mirror*, and the *People*—for 21 years, and there is no instance when I can remember any of those titles paying a policeman.

Mr Esser: Nor can I recall any payments.

Q150 Alan Keen: You have never paid the police?

Mr Esser: No.

Q151 Alan Keen: And if you did, you would report it to the Inland Revenue that "PC Smith [. . .]?"

Mr Esser: Unlikely, I would say; but, as it has not happened, we have not had to report it.

Q152 Alan Keen: Were you surprised when that well-known editor admitted that her paper paid the police for information? Do you not recall it at all?

Mr Esser: I do recall that.

Q153 Alan Keen: Were you surprised?

Mr Esser: I think the suggestion was that it had happened in the past but it certainly has not happened in my experience in Fleet Street. Of course, there are friendships between policemen and reporters but famous crime reporters like Percy Hoskins in the past, of the *Daily Express*, was extremely close to many leading people in the police but there was a friendship and I am sure it was of mutual benefit.

Q154 Alan Keen: You both said you definitely do not do it now.

Mr Duffy: We do not do it now.

Q155 Alan Keen: If you were suspicious that it was going on, you would stamp it out.

Mr Duffy: Long, long before Mr Thomas was on the scene you knew you did not pay policemen for stories or any information or try and access the PNC or the DVLC, it was not tolerated.

Q156 Chairman: Finally, can I come back to Motorman. My colleague Paul Farrelly, who has now left us, was full of praise, for instance, for *The Sunday Times* as an investigative newspaper. *The Sunday Times* has only one journalist who employed the services of the agency on four occasions whereas the *Daily Mail* have 58 who employed the services on 952 occasions. Were you shocked by that figure?

Mr Esser: No, I expect *The Sunday Times* had many, many more invoices to separate agencies. There are at least 10 or 12 agencies which are used by the newspapers in Fleet Street and the picture of one agency does not tell us the full picture and the full story, but we certainly have moved vigorously since the Information Commissioner's report came out to restrict our business to agencies which do and have given us written assurances to obey the law and not that agency concerned.

Q157 Chairman: Essentially, it was bad luck that the agency used by the *Daily Mail* happened to be the one that was regularly breaking the law.

Mr Esser: I do not know if it was bad luck, but it is a fact.

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Q158 Chairman: That was something that you and your paper were completely unaware of. **Mr Esser:** We were unaware of it until this happened and we have not continued to use that agency. **Chairman:** I think that is all we have. Thank you.

Memorandum submitted by the Press Complaints Commission (PCC)

- The PCC welcomes this inquiry as a chance to demonstrate the range of its work in protecting the privacy of individuals (para 1);
- Since the last Select Committee inquiry in 2003 there have been major reforms at the Commission, bringing much greater accountability and transparency (paras 3 and 8–12);
- The PCC is independently-run and has a clear majority of lay members on the board. It is the most independent self-regulatory press council in the world (paras 5–6);
- The Commission undertakes a large amount of pro-active work aimed at preventing intrusion—including contacting people or organisations in the news; liaising between parties before publication; issuing Guidance; and training journalists (paras 13–14);
- Breaches of the Code will, however, occur—because individual men and women make mistakes. Only very rarely are they deliberate. But when things do go wrong there is a large range of remedies available which enables the Commission successfully to conciliate most breaches of the Code (paras 16–18);
- The Commission also makes formal rulings, which help set industry-wide standards regarding what is acceptable. Hostile rulings are a powerful sanction against an editor for a host of reasons (paras 23–24);
- A system of fines would be arbitrary, counter-productive and undermine the Commission’s ability to resolve complaints. There is no sign that complainants or the general public support their introduction, with published and private apologies being more popular (paras 27–28);
- A privacy law aimed at the press would give comfort only to the rich, would be fraught with risk and would not be attractive for most PCC complainants. In any case, in the digital age many now believe such a law to be unworkable and anti-competitive (para 29);
- Despite developments in the courts, the Commission continues to deal with an increasingly large range and volume of privacy issues, from complaints about published material to pre-publication work (paras 40–43);
- The Commission regularly intervenes before publication to help ensure that individuals’ privacy is respected by encouraging restraint on the part of newspapers (paras 47–50);
- Examples of other types of pro-active work behind the scenes include at the times of the Suffolk murders and the London bombings (paras 54–57);
- In 2006, the PCC made 231 privacy rulings with 96 complaints being resolved amicably and 19 going to formal adjudication, with the average amount of time taken being just 34 days (paras 61–62);
- Privacy concerns the whole of the British press, with more complaints being made about regional papers than nationals (paras 63–64);
- In considering privacy complaints, the Commission must not only balance a number of competing rights such as those to free expression and privacy, but also take into account numerous different factors arising from the particular circumstances of the case (paras 66–68);
- There are plenty of specific examples of how the Commission’s rulings help set the boundaries of reporting, from medical issues to sex and relationships, privacy at times of grief, and what constitutes a “reasonable expectation of privacy” (paras 70–81);
- There are also real examples of the Commission achieving meaningful settlements in conciliated cases (para 83);
- While there is room for improvement, corrections and apologies appear more prominently than before and can be negotiated following the involvement of the Commission (paras 91–92);
- The Commission has an excellent record at dealing informally and quickly with complaints about harassment by journalists and photographers. This is one of the invisible success stories of the Commission (para 93);
- The service is available to everyone, but a high profile example of how this worked involved Kate Middleton (paras 99–100);
- It works because it controls the demand for the pictures—through editors—rather than the supply by photographers (paras 104–107);

- The Commission operates a 24 hour helpline which people contact to ask the Commission to intervene in cases of harassment to ensure that their rights and requests are respected (para 110);
- The Commission proactively raises awareness of this service and takes steps to help minimise the chances of harassment occurring in the first place, although one frustration is that the Commission's ability to act in this area is still not as well known as it could be (paras 116–120);
- The Data Protection Act is one of a number of pieces of legislation to which the press is subject (para 121);
- The Commission condemns breaches of the law and has offered to work with the Information Commissioner to raise awareness of the DPA and journalists' obligations under it, but it cannot be responsible for policing the terms of the DPA (paras 124–128);
- The Commission does not believe that the case has been made for increasing penalties for breaching the Act for journalists, and indeed thinks that doing so would inhibit legitimate journalistic inquiries (paras 129–131);
- Complaints about subterfuge are rare, but the Commission has clearly delineated when it is acceptable in the public interest and when it should be condemned (paras 132–133);
- The Clive Goodman case highlights the fact that, unfortunately, no Code or law can prevent a determined individual from breaching their terms. But the Commission has taken action—publicly condemning what happened; announcing an inquiry into the editor's application of the Code (which was adapted following his resignation); challenging the new editor to explain how he will ensure that there is no repetition; and launching an industry-wide review to ensure that best practice standards apply. This is the Commission and the law working to complement each other (paras 134–139);
- The Internet and swift dissemination of information across the world pose new challenges. Imposed rules regarding editorial content have never been desirable but are probably no longer even viable in the digital age (paras 141–145);
- The PCC model of self-imposed regulation works well for an environment like the Internet. Its flexibility means that problems can be resolved very quickly, and publishers' subscribing to an agreed set of standards helps consumers distinguish the quality of different information available online (para 146);
- To this end, the industry has just announced—with no external political or legal pressure—that the PCC's jurisdiction will extend to audio-visual information on its websites (para 147);
- Other legislators, including those in Europe, have concluded that old fashioned regulation is problematic in this new area and that self-regulation is a good alternative (para 149);
- In a global market, legal restrictions on speech in one jurisdiction would simply expatriate the location of the website rather than keep the information from being published (para 150).

1. The PCC welcomes this opportunity to explain its record in relation to the protection of individuals' privacy and to discuss the implications for media regulation of the Internet. It is a fascinating and complicated subject.

2. The PCC was of course the subject of a penetrating Select Committee inquiry in 2003, and we understand that the Committee's current inquiry is to be more focused on privacy (including harassment), undercover newsgathering methods and content regulation in the digital age. We do not therefore propose on this occasion to explain in detail the Commission's history; its record in dealing with non-privacy matters under the Code (which amount to about 75% of its work); its work internationally; or list all the work that the Commission does to raise the profile of the Commission and educate third parties about how to use the Code and the Commission to minimise the chances of anything going wrong in the first place. There is plenty of detail about these subjects on the Commission's website—www.pcc.org.uk—and we are of course happy to provide the Select Committee with more information should that be necessary. A list of individuals on the Commission, Charter Compliance Panel and Appointments Commission is attached in Appendix 1.

3. Since 2003, there have been major reforms to the structure of the Commission with the aim of making it more transparent and accountable. There have also of course been developments in its approach, in particular with regard to a renewed emphasis on pro-activity and pre-publication work. This submission will deal with some of these important points first.

PUBLIC CONFIDENCE AND PCC INDEPENDENCE

4. The PCC is often referred to as a "self-regulatory" body. It does of course have some clear hallmarks of such an organisation—it administers a set of rules (the Code of Practice) written by the regulated industry, and it is funded at arm's length by the industry too. These arrangements ensure that freedom of the press from government interference is maintained while at the same time providing the public with a set of rules under which they can complain and the industry with a clear set of standards to which they agree to abide.

This element of “buy-in” from the regulated industry—they have effectively volunteered for regulation—also helps towards the speedy resolution of complaints and the promotion of awareness of the rules by individual journalists, rather than simply sub-contracting compliance to dedicated compliance officers. It is a set up which is the norm for the press throughout Europe, and which is increasingly popular as a model throughout the world. It is also very well suited for content regulation in the digital age, for reasons highlighted below.

5. Unlike the situation in most of the rest of Europe, however, and unlike pure self-regulatory bodies, members of the public clearly outweigh industry representatives in the PCC itself. Just seven of the 17 members of the board have a connection with the industry. Presently they are senior editors of national and regional newspapers and magazines drawn from across the country. Their presence is vital for two reasons. First, the professional input into the Commission’s decision-making ensures that our rulings are relevant to the practicalities of journalism at the same time as being immune to illegitimate excuses from editors for breaching the Code. Second, and as a result, the presence of editorial members means that the Commission’s approach is credible within the regulated industry. And they add bite to negative rulings against other editors.

6. But apart from these seven editors, every other person associated with the administration of the PCC—the ten lay members of the Commission and all the permanent staff—are members of the public who are not professionally associated with the newspaper or magazine industry. This amounts to a degree of structural independence that is unsurpassed in any press self-regulatory body throughout the world. The result is that the public at large should be reassured that, when breaches of the Code do occur, the PCC’s only mission is to help members of the public.

STRUCTURAL STRENGTH

7. There are other structural reasons why the public should have confidence in the system. There have been major reforms since 2003 to bolster the Commission’s transparency and accountability and to improve its public service. These checks and balances now include:

8. *External scrutiny*

An independent body—known as the Charter Compliance Panel—has the power retrospectively to examine any Commission complaints file and look at other aspects of the Commission’s public service. It makes reports to the board of the Commission and publishes an annual review about the quality of the Commission’s service, including criticisms and recommendations for improvement where necessary. This has led, for instance, to greater publicity for conciliated complaints, an independent review of customer feedback, and new guidance on mental health reporting and how editors should deal with complaints. There are currently two people on this panel—Sir Brian Cubbon and Harry Rich—neither of whom is connected to the newspaper and magazine industry;

9. *Independent review of handling*

Complainants who feel that their case has been inadequately handled may appeal to an independent external individual known as the Charter Commissioner, who reviews whether the case was fairly handled. It is akin to an internal system of judicial review. Again, he makes recommendations to the board and publishes an annual report. In some cases, an investigation has been reopened and further action taken as a result of his intervention. The Charter Commissioner is currently Sir Brian Cubbon;

10. *Transparency*

There is a published register of interests for members of the Commission and the Commission’s Director. There is also a clear and public procedure about what members should do in the event of a conflict of interest, which is available on the Commission’s website;

11. *Open recruitment procedures*

Lay members of the Commission are appointed—following public advertising and interview—for fixed terms by an independent Appointments Commission, membership of which is not remunerated and on which only one (out of five) of the members has any connection with the press. The Appointments Commission may also veto editorial members of the Commission and the Code of Practice Committee (which is responsible for writing and reviewing the Code) which are nominated by the industry trade bodies.

12. *Accountability*

The Commission is further accountable to the public on occasions such as this through the scrutiny of Select Committees, and to the courts in the event of an action for judicial review. It also takes care to get feedback on its service from those who use it; to survey public opinion; and to review on an anonymous basis the views of interested parties in Westminster, Whitehall and beyond.

PRO-ACTIVITY AND PRE-PUBLICATION WORK

13. The Commission does not just react to complaints—although settling individual disputes is at the heart of its work. It has worked hard to raise the profile of the work it does proactively to prevent problems and to help people who are caught up in the news. Such work includes:

- contacting specific individuals or organisations at the centre of high profile stories to offer assistance—before they have to make a complaint;
- pre-publication liaison between newspapers and those in the news—resulting in stories not appearing or being altered for publication;
- approaching individuals to see whether they wish the Commission to pursue a matter when third parties have complained to the PCC on their behalf but without their consent;
- anticipating circumstances when people may need the PCC’s help, and targeting information carefully. This includes ensuring that coroners’ courts and witness rooms at criminal courts are well stocked with Codes of Practice and How to Complain leaflets;
- travelling round the country educating different groups of people about their rights under the Code;
- issuing Guidance Notes on specific issues such as the reporting of mental health issues and asylum seekers. Further details of this work are contained later in this submission.

TRAINING

14. The Commission also sees that it has a general duty to help maintain or raise standards across the industry. It therefore provides lecturers and trainers for existing and trainee journalists who are on courses across the UK. The Director of the PCC hosts an ongoing series of training seminars for existing journalists by their type of work—so journalists from news, features, and picture desks, for instance, attend different events. This helps prevent the same mistake or type of intrusion from happening twice and contributes to the continuous professional training of journalists.

15. The industry itself has helped in promoting awareness of the PCC by producing an “Editors’ Codebook” which illustrates, using real cases, how the PCC has interpreted all clauses of the Code. Copies of the Codebook, which is referenced at points in this submission, have been sent separately to the Committee.

PUTTING THINGS RIGHT—CONCILIATION AND SANCTIONS

16. There is therefore a robust system of checks and balances, a clear commitment to raise journalistic standards on the part of the Commission, and a programme of pro-activity that is as extensive as possible. But none of the above means that breaches of the Code will ever disappear. They occur because decisions made by individual men and women turn out to be wrong. Just as one cannot legislate for good manners, so no form of regulation can deliver perfection when regulating human behaviour in the field of journalism. But the overwhelming majority of breaches of the Code are either the result of an oversight or mistake, or a professional decision made in good faith that falls on the wrong side of the line.

17. It is very rare in the Commission’s experience for journalists or editors deliberately to flout the rules. However, as of course the Committee will be aware, this has regrettably been a feature recently in the high-profile case involving Clive Goodman. That shall be dealt with in more detail later, but it should not be regarded as in any way indicative of the general approach by journalists to the Code and to the law. There are, after all, tens of thousands of journalists working for thousands of publications and websites.

18. The question for the Commission is not to how to achieve perfection but how to raise standards and how to deal with the breaches of the Code that will inevitably arise. Over the years, it has developed a wide range of remedies. In the context of privacy intrusion, these include:

- The removal of offending material from websites to prevent swift and widespread dissemination;
- The publication of apologies;
- Undertakings about future conduct;
- Positive agreed follow up pieces;
- The destruction or removal from internal publications’ databases of offending material;
- Private letters of apology;
- Confirmation of internal disciplinary action and retraining;

- Organisation of a face-to-face meeting between the parties;
- Calling off photographers or journalists from questioning individuals once they have asked to be left alone;
- Along with any combination of the above, a full record of the complaint details to be recorded on the PCC’s website—including for a time on its homepage—as a permanent and correct record of the complaint.

In addition, following negotiation the Commission also sometimes secures:

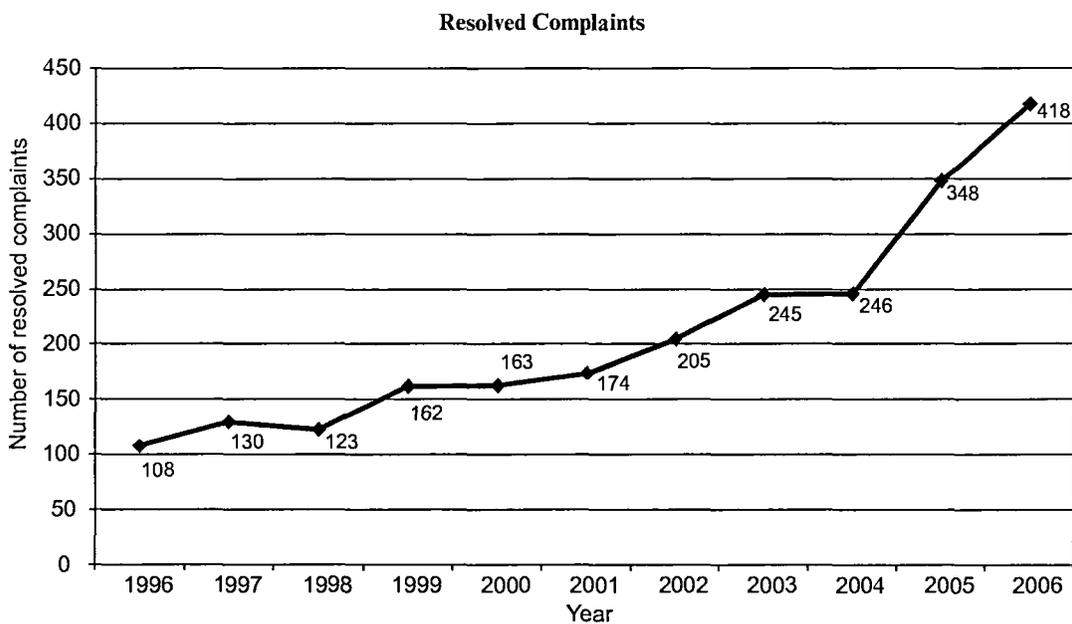
- *Ex gratia* payments;
- Donations to charity;
- The purchase of specific items in order to make amends.

19. Some actual examples appear in a later section.

20. Conciliated settlements such as these are popular because, in addition to them being meaningful:

- They are quicker to achieve either than formal rulings or certainly action through the courts—taking only a matter of a few weeks or sometimes days;
- They are discreet and do not involve public argument;
- There is limited risk—there is not a “winner takes all” outcome where the complainant may end up with nothing;
- The process is designed to be harmonious and to take the heat out of a situation.

21. The flexibility of the Commission’s approach and attractiveness of the range of remedies on offer has led to the total number of resolutions increasing substantially in recent years, as indicated by the chart below.



22. The process of conciliation is now also sensibly a feature of court cases where offers of amends may be made and taken into account by the court.

ADJUDICATED COMPLAINTS: “FORMAL RULINGS”

23. There will be times when conciliation is not appropriate. These will either be when the publication refuses to make an offer—perhaps believing the story or picture not to break the Code—or when, in the Commission’s discretion, a complaint involves an important matter of principle that requires amplification and publicity throughout the industry. On these occasions, the Commission will make a formal ruling. If the complaint is upheld, the Commission requires that its criticisms are published in full and with due prominence in the publication concerned. This sanction is therefore in effect one of “name and shame”.

24. Some people question whether this is sufficiently robust. There are several reasons to believe that it is a powerful sanction:

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- Losing a PCC ruling is professionally embarrassing, frequently leads to adverse publicity elsewhere in the media, and is regarded as a black mark against an editor's judgement;
 - If editors were not bothered about the impact of a hostile ruling they would not take care to minimise the risk of one by making so many offers to resolve complaints, as outlined above;
 - Compliance with the Code is written into the contracts of employment of many editors and journalists. In particularly serious cases, the Commission may enhance the power of a negative ruling by bringing the editor's conduct to the attention of the publication's management, which may trigger disciplinary action.

TOUGHER SANCTIONS?

25. It would be complacent and wrong to suggest that the current system is without critics or critical friends who recommend improvements. Over the years, the Commission has accepted many ideas from third parties—including those emanating from Select Committees—which have enhanced the PCC's effectiveness. One suggestion that recurs in some quarters is to give the Commission the power to fine publications for breaches of the Code. The Commission has traditionally resisted such calls.

26. People are led to advocate fines because they believe that the Commission would look "tougher", would be better able to command powerful negative publicity against the publication concerned, and that editors and newspaper managements are only concerned about money.

27. The Commission understands these arguments but believes that they are superficial, and that introducing the power to fine would in fact be significantly counter-productive. There are several reasons for opposing the introduction of fines for specific breaches of the Code:

- it would seriously undermine the Commission's main work as a dispute resolution service. Editors would be less likely to offer remedies if they thought that by doing so they would be incriminating themselves or their publication in terms of a fine further down the line. At the moment, there are many borderline cases that are resolved to the complainant's satisfaction thanks to the goodwill of the editor because of the conciliatory nature of the system. Such cases would fall by the wayside;
- although the amount of the fines would inevitably have to be relatively low (see below), the worst features of a compensation culture would inevitably be imported, with lawyers coming between the complainant and the newspaper to prevent a speedy and common sense resolution to a complaint in search of more money. This would hardly be in the interests of the complainant;
- in any case, regardless of whether lawyers were involved in a particular case, negotiating the amount of the fine would delay the settlement, and be arbitrary;
- the Commission would have to have regard, when fining the newspaper, to the legal framework. To take a celebrated example, Naomi Campbell was eventually awarded £3,500 after her action against the Daily Mirror (the case took three years and cost upwards of a million pounds as it progressed through various courts). Fines would therefore probably be in the region of a few hundred pounds to a few thousand pounds in order not to amount to a disproportionate interference with the publication's right to freedom of expression. Would this really be a deterrent to publishing interesting but intrusive information, when the publication, rather than the editor, would have to foot the bill?;
- The Commission's authority would be seriously undermined if a publication refused to pay a fine. Without legal powers to demand payment, the Commission would be powerless to act in such circumstances. With legal powers, the system would no longer be self-regulatory. The current structure would have to be dismantled;
- There is no evidence that complainants want such a system, and in a recent opinion poll members of the public did not think it particularly important either¹¹.

28. Proponents of fines also ignore the fact that the industry has already in effect been "pre-fined" to the extent of about £1.75 million per annum, through the levy that participating companies must pay. This ensures that the system is free and devoid of financial risk for everyone—whether they are successful or not.

What's wrong with a privacy law?

29. Successive governments have shied away from introducing a privacy law aimed specifically at the press for a number of obvious reasons:

- Notions of what is private and what is in the public interest are impossible to codify, because they will vary from case to case depending on the behaviour of the individuals concerned and the particular circumstances involved. Each case will inevitably involve different subtleties and competing rights which could not conceivably be anticipated in a law;
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¹¹ A 2006 MORI survey found that, of the options listed, the most popular form of resolution for a possible breach of the Code would be a published apology, followed by a private apology. Less than a third of respondents thought that a fine would be a good idea.

- Cultural expectations of where the private sphere begins and ends change over time, and because of their evolving nature are not suited to being captured in law at any given time;
- A privacy law would mean that redress would only be available through the courts. This would give comfort to the wealthy and powerful of course—some of whom might exploit such a law by trying to suppress the legitimate publication of true but embarrassing information—but be beyond the reach of ordinary members of the public, who approach the PCC in their thousands each year for informal advice and support or to make formal complaints;
- Taking a publication to court for redress under a privacy law for something that had been published is usually costly and risky (despite the introduction of conditional fee arrangements which have not been taken up widely by ordinary members of the public), always time consuming and drawn out, and—ironically—involve a large amount of publicity for the very information that the claimant wished to keep secret. This is clearly a feature in the small number of “celebrity” cases that have gone to court which have used a conjunction of the Human Rights Act and the law of confidence. It would not be an attractive option for most PCC complainants, who appreciate the discretion of the service, the fact that meaningful resolutions are achieved without public fuss and the fact that, in many cases, rulings can be anonymised if the complainant wishes.

30. There are further points to add.

31. First, where specific behaviour can be identified—such as eavesdropping or paying for private data—there are already laws which protect personal privacy and which extend to everyone. In these cases, it has been possible to spell out the nature of an offence because it concerns identifiable and specific behaviour rather than trying to capture more nebulous notions of general privacy rights. It is therefore not true to argue that the press is a “special case” because it is not subject to legal regulation. There are numerous laws that govern what can be published and how journalists can research stories. What there is not—and should not be—is a law aimed specifically at the press, or a government-run press council.

32. The requirements of the Code are over and above the press’s legal obligations, and capture more general rights to privacy which are interpreted, in the Commission, by an expert body which can take into account the particular circumstances of the case.

33. Even if a general privacy law were philosophically desirable and capable of codification, many people now think it would be anachronistic. Media convergence and the rapid developments in digital technology have revolutionised the manner in which people communicate. The implications of this seem to be something that the courts, for instance, are slow to grasp. Such changes have effectively made the case against old-fashioned, top down content controls of the media. Such a law would not only be totally unworkable, it would be anti-competitive for UK media companies. This argument is developed further in the submission on online regulation.

34. This Select Committee therefore has an unprecedented opportunity to take account of the particular challenges for media content regulation and to the protection of privacy posed by the extraordinary recent technological developments.

THE SCOPE OF THE COMMISSION’S PRIVACY WORK

35. The scope of the Commission’s work on privacy is sometimes not well understood. Because it is discreet—necessarily so, given that those affected are motivated to complain by a desire to keep something private—some commentators wonder whether the main action is being undertaken in the courts.

36. It is correct that there has been a handful of high profile court cases that have stretched the current law of confidence, using the Human Rights Act, to give some redress for information published in newspapers. These rulings are taken seriously within the industry and the Commission naturally has regard to them. Indeed, section 12 of the Human Rights Act itself contains a reference to relevant privacy Codes—in this case the PCC Code—which judges must take account of when considering privacy applications (this in turn gives further authority to the Code and the Commission’s application of it).

37. But while the Commission does not see itself in competition for business with the courts, it would be wrong to deny the existence of some concern within the industry about the courts’ approach to privacy. Legal rulings have the power to create a climate of uncertainty—especially if they overcomplicate matters—and, if unnecessarily restrictive, they can have a major chilling effect on the freedom of the press to ask questions and publish true information. Unlike with the PCC—where decisions are taken by a large committee with input from the full time staff and professional advisers—the law concentrates power in a very small number of individuals. Appealing their decisions is crippling expensive.

38. That said, it is to fall into an obvious trap to conclude from this that there has been a major shift away from the PCC to the courts. The figures alone (below) speak for themselves. And the very thing that leads some to conclude that most privacy cases are dealt with in court—the extremely high profile of the individual cases themselves—is one of the reasons why people will continue to use the Commission, with its emphasis on swift and fair settlements and rulings, and private inquiries which do not further intrude into the individual’s privacy by hearing the arguments and evidence in public. Our rulings themselves are frequently made anonymous on the request of the complainant.

39. It is of course in the interests of some lawyers to make the case that only the courts—through them—can offer protection, just as it is in their interests to recommend the passage of new laws. Perhaps the Committee will have this case put to it.

40. The scope of what the Commission can offer in any case goes beyond what the courts can consider under the HRA and law of confidence. Of course it deals with the publication of information and adjudicates on where the private and public spheres meet. But the Code's 9 separate clauses relating to privacy also cover newsgathering, and the Commission undertakes a lot of invisible extra work: pre-publication support for editors, free pre-publication advice for potential complainants about how to use the Code to their advantage, and 24 hour protection from harassment.

THE CODE

41. Clause 3 of the Code sets out broad privacy rights to which everyone is entitled. It says:

“Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications. Editors will be expected to justify intrusions into any individual's private life without consent

It is unacceptable to photograph individuals in a private place without their consent.

Note: Private places are public or private property where there is a reasonable expectation of privacy”.

42. There are 10 further clauses setting out more specific protection for people, including: those harassed by reporters (Clause 4); those suffering from grief or shock (Clause 5); children (Clauses 6 and 7); patients in hospitals (Clause 8); relatives of those accused of crime (Clause 9); and victims of sexual assault (Clause 11). There are also rules on undercover newsgathering methods (Clause 10), on discrimination (Clause 12) and on the protection of confidential sources of information (Clause 14).

43. It is important to remember that the Code recognises that the behaviour of journalists in gathering news may be intrusive as well as the publication of private details. The Commission can take complaints about intrusive newsgathering methods—regardless of whether anything is published—under a number of different clauses.

44. The Code—which is reviewed annually and has been changed over 30 times since 1991—is therefore comprehensive in setting out the areas where personal privacy will be protected.

PRE-PUBLICATION WORK: PREVENTING INTRUSION

45. Preventing intrusions is as important—if not more so—than remedying them. Much of the PCC's work in the area of privacy therefore falls outside the formal adjudication or conciliation process. The fact that such work goes on is public knowledge—but the individual details of each case are not of course ever published.

46. The PCC has no powers of prior restraint. As a body with no legal powers it cannot order publications not to publish information, nor would a body with such powers be easily reconcilable with the principle of freedom of expression.

47. However, this is not to say that the PCC is an entirely reactive body that has to sit on its hands until a complaint arrives after publication. Several hundred times a year, the PCC is approached for pre-publication help by potential complainants and by editors themselves. This can happen at any time as the Commission operates a 24 hour helpline, with Commission officials being in frequent demand at weekends. As a result, some stories or pictures are not pursued while the detail in others is altered.

48. By way of example and with no identifying features, the Commission has recently been involved with numerous examples of self-restraint on the part of editors, including the non-publication of:

- photographs of a member of the public who was a victim of a high-profile crime;
- news of an operation on someone whose health had already been discussed publicly;
- photographs of an actress;
- stories involving family members of high profile people.

49. It is of course difficult to give details, and these are only examples of wider work which goes on every week which is undertaken to help everyone from those in the public eye to ordinary members of the public experiencing a brief encounter with publicity.

50. To take one example of the latter, in 2006 the PCC was approached by a distraught man (who was not in the public eye) whose adult daughter, a public sector worker, had just tried to commit suicide because of an apparently true story that was to be published in the next edition of a national newspaper. This was

passed immediately (outside of office hours) to the newspaper, which after investigation decided not to publish the story in any form. When the PCC e-mailed this news to the man, whose daughter was by this stage in a distressed state in hospital, he replied:

“I cannot thank you enough for all the help you have given my family and Sarah, you cannot know how much your e-mail has meant to us. As soon as Sarah was told she fell asleep and has remained that way”.

51. The story has never been published. This background information is illustrative of what can be achieved by working quickly and discreetly with the newspaper and the person affected. In 2006, there was similar pre-publication communication with newspapers on 40 different occasions. In none of these cases was it then necessary for the individual to make a formal complaint.

52. The section on harassment, below, explains how the PCC’s pre-publication assistance can also help people who object to the physical presence of journalists and photographers.

PRO-ACTIVITY: HELPING THE VULNERABLE

53. The Commission does not need to wait for complaints or pre-publication approaches to spot that a developing story involves vulnerable people who may need the Commission’s help at some stage. Sometimes the concern might be that they are unable to cope with questions or harassment (see the section on harassment). At other times, the Commission might act to tell them what can be done in the event of published information.

54. Recent examples of this include the Suffolk murders (see section below) and contact with the British embassy in Athens and the Consulate in Corfu following the death of two young children abroad on holiday.

55. Perhaps the largest scale news story over which the Commission took such proactive steps was the terrorist attack on London transport on 7 July 2005. By Saturday 9 July, the PCC had been in contact with key people involved in the establishment of the initial response centre, and couriered to the centre a bundle of information packs for distribution there. This included details of how to make a complaint, and how to contact the PCC at any time. Similar packs were also sent to the London hospitals that bore the brunt of the aftermath of the event. The PCC attended a meeting in August to discuss the media response to 7/7, with a view to improving communications still further; ongoing dialogue now occurs between government and the PCC in this area.

56. It also offered to help on the anniversary of the tragedy, liaising with the DCMS and communicating to the press the families’ wishes for the occasion.

57. However, as a complaints body the PCC does not “monitor” the press for possible breaches of the Code. The Commission does on occasion make discreet enquiries about particular items. But it is not actually possible to tell from just looking at a newspaper or magazine whether a story or picture breaks the Code. It will be unclear about the extent to which the subject of the piece has co-operated. In 2006, for instance, the Commission was unfairly publicly criticised for its “failure” to prevent pictures of someone apparently in a distressed state in a Sunday newspaper.

58. The Commission was told shortly afterwards that the person’s publicist had arranged publication, in order to garner public sympathy.

PRIVACY—THE FACTS AND FIGURES

59. The central question posed by the Select Committee is whether the PCC is an adequate mechanism for protecting individuals’ privacy. The analysis below shows that the Commission is the preferred forum for resolving disputes about privacy, and that it delivers meaningful resolutions.

60. Since the last Select Committee inquiry in 2003, the PCC has:

- Handled **970** privacy cases that fell under the Code;
- Successfully resolved **339** privacy cases to the satisfaction of the complainant.
- Published **72** formal privacy adjudications;

61. In 2006 alone, the PCC made 231 privacy rulings—including 132 on cases under the privacy clauses outside Clause 3 (Privacy)—with 96 complaints being resolved to the complainant’s satisfaction and 19 formal adjudications being issued. The remaining cases had private rulings which the Commission did not publish.

62. It took, on average, just 34 days for a privacy case to be concluded by the PCC, which offers another stark contrast with the legal process.

63. Privacy concerns the whole of the British press, and it is overwhelmingly ordinary members of the public for whom the service exists and who complain. More privacy complaints concern the regional and local press than any other sector.

64. The percentage of privacy rulings by sector in 2006 was as follows:

- (a) National: 38.4%
- (b) Regional: 46%
- (c) Scottish: 8.9%
- (d) Irish: 1.3%
- (e) Magazine: 5.4%

PRIVACY—THE COMMISSION’S APPROACH

65. Ideas of privacy change according to events and evolving social and cultural expectations. This is one reason why a privacy law would quickly become out of date. The PCC’s approach can reflect such developments. While the majority of possible breaches of the Code are resolved to the satisfaction of complainants, its adjudications on difficult or borderline issues help set the boundaries of what is acceptable and what is not. They expand on the broad principles of the Code of Practice and set out precedents that editors will be expected to follow.

66. The Commission is usually faced with a number of competing rights which have to be considered. There are those of the complainant to a private life. There are those of other parties to freedom of expression, and to speak to newspapers about their own experiences which may involve other people. There are those of the newspaper or magazine to publish information.

67. The Commission also has to take into account different factors, such as whether the complainant has sold their privacy or otherwise indicated a disregard for their own private life before complaining about the same thing; whether the person had any public position which could justify publication in the public interest; whether the information was genuinely private or just concerned unwanted publicity; the extent to which the information was in the public domain, or was otherwise about to be published; the level of detail in an article, and whether privacy could have been protected by omitting certain non-essential facts; and so on.

68. These can be subtle considerations, and the facts of two cases are rarely if ever the same. While people may occasionally criticise the Commission for a variety of reasons, it is very unusual to see criticism on the grounds that its privacy adjudications are simply wrong. Whoever was responsible for the decisions would be faced with exactly the same balancing act.

SETTING THE BOUNDARIES ON PRIVACY

69. In a wide range of areas, the Commission has set benchmarks in the last few years that make clear where the boundaries of privacy and freedom of expression actually lie. Much of this case law is found in the Editors’ Codebook. But the following cases since 2003 (the last occasion on which the Commission gave an account of itself to the Select Committee) give a flavour of how the Commission’s thinking has developed and where it draws the line on privacy matters:

PRIVACY AND MEDICAL ISSUES

70. In 2005 the Commission adjudicated on a complaint from a cabinet minister’s wife against the Mail on Sunday about a story that contained private medical details about her in a story that followed publicity about another aspect of her family life. The Commission was fiercely critical of the newspaper’s justification for publishing the article, describing it at one point as “feeble”.

71. In 2006 the Commission published a landmark ruling in relation to pregnancy. The actress Joanna Riding complained that the Independent had invaded her privacy by revealing that she was pregnant—without checking whether the information was well-known. The Commission agreed with her, criticised the paper, and set out circumstances in which the press can break the news of someone’s pregnancy.

PRIVACY OF E-MAILS AND TELEPHONE CALLS

72. The Commission criticised the *News of the World* in 2004 for publishing material that had appeared in an e-mail exchange between two members of the public (one of them had passed it to the paper). It made clear that the restrictions on publishing material in private correspondence can also extend to e-mails.

73. Upholding a complaint from Peter Foster against the Sun in 2003, the PCC made clear that even those at the centre of political controversy could expect to conduct private conversations without being eavesdropped on. It concluded that “eavesdropping into private telephone conversations—and then publishing transcripts of them—is one of the most serious forms of physical intrusion into privacy” and that “the Commission must set the public interest hurdle at a demonstrably high level”.

SENSITIVITY AT MOMENTS OF GRIEF

74. Much reporting concerning ordinary members of the public follows unusual deaths or accidents. Newspapers have a right to report such events, but Clause 5 (Intrusion into grief or shock) outlines the public's rights at such times, and makes clear that in cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively.

75. The Commission found that a report of a man whose dead body had partially been eaten by his dog overstepped the line of sensitivity in reporting. Upholding the complaint from a member of the public against the Rhondda Leader in 2004, it said that “the protection of the vulnerable is at the heart of the Code of Practice . . . [and] that close relatives of deceased people are particularly vulnerable in the immediate aftermath of a death”.

PRIVACY ON HOLIDAY, AT HOME AND AT WORK

76. Much of the discussion surrounding privacy concerns where individuals may be photographed, and where they can reasonably expect privacy. The Commission's approach is more subtle than simply to ask whether the ground on which the person was photographed was privately owned.

77. For instance, there are numerous examples where the Commission has found that outdoor publicly-accessible places confer an expectation of privacy. In 2007, model Elle Macpherson complained about publication in Hello! magazine of photographs of her on a beach in Mustique. The Commission upheld her complaint, noting that she had made a particular effort to choose a private holiday location, staying at a private villa on a secluded island.

78. People in the public eye also have the right to be protected from the unwanted attention of obsessive fans. Upholding a 2005 complaint from JK Rowling against the *Daily Mirror*, the Commission found that—although the author's full address had not been published in the paper—there were sufficient details to enable someone to find her London home. As she may have had problems with stalkers as a result—something she had suffered from in the past—the Commission upheld her complaint.

79. People have a right to privacy at work too. This principle was set down by the Commission in its ruling last year on a complaint from a member of the public against *Loaded* magazine. The publication had, in the course of a feature on somebody else, published a picture of the complainant behind a cashier's desk in the bank he worked in. This was held by the Commission to be a breach of Clause 3 of the Code. This ruling further clarifies the areas where individuals have an expectation of privacy—even when they are in publicly-accessible buildings and not doing anything intrinsically private.

A BALANCE OF RIGHTS—SEX AND RELATIONSHIPS

80. The central task for the Commission in considering where to draw the boundaries on privacy complaints is to balance the conflicting rights of privacy and freedom of expression. The complex nature of this balancing act was demonstrated plainly by two complaints adjudicated in January 2007 about articles that appeared in the *Daily Mail* and the *News of the World*. The articles reported an affair between a man and woman. The Commission found that one was intrusive in breach of the Code while the other was held to balance the conflicting rights properly. The article that breached the Code—in the *News of the World*—contained more private details, particularly concerning sexual activity. Intrusive details were omitted in the other piece, which managed to write the story, and give the person wishing to talk about the matter the chance to express her opinion, without breaking the Code.

81. The cases referred to above are just a fraction of those that have been made by the Commission in the last four years. Each ruling adds to the significant body of case law that has been built up since the PCC was established in 1991. Editors and journalists must keep up to date with the latest rulings, something with which the Commission assists with its regular news releases and training seminars.

CONCILIATION: MEANINGFUL AND DISCREET REMEDIES FOR PRIVACY INTRUSION

82. People who feel that their privacy has been intruded into usually want their complaint sorted out with the minimum of fuss. They dislike the attention and do not want the information under complaint repeated. This is why the Commission's emphasis on conciliation is popular. It brings the parties together towards a resolution. The process is not adversarial and the arguments—which would often be about the complainant's private behaviour—are not ventilated in public. It therefore spares the complainant further scrutiny and possible embarrassment.

83. Below is a small number of examples of the variety of privacy cases that are successfully resolved. It will be noted that the interesting-sounding subject matter of some of them would have attracted great but unwelcome interest had they been discussed publicly in a court.

— *Published apology*

Ms Rose Nelson of London complained in 2007 that an article had disclosed a detail which intruded into her privacy. The complaint was resolved when the newspaper published the following apology to the complainant: “In an article about a recent trial we mentioned a personal detail relating to Ms Rose Nelson. We apologise to Ms Nelson for any distress that may have been caused to her by the publication of this detail. It was certainly not our intention to cause any upset to Ms Nelson and we regret such an outcome”.

— *Destruction of material*

Mr Ron McMurray complained in 2006 that a photograph had been taken of him at his previous workplace where he believed he had a reasonable expectation of privacy. The complaint was resolved when the newspaper destroyed all the photographs it held of the complainant taken in the circumstances and gave an assurance that they would not be republished or passed on to any third parties.

— *Alteration to website*

Mr AJ Kilker of Gloucester complained in 2006 that the newspaper had published a letter from him which included his full address. The complaint was resolved when the newspaper removed the details from the text of the letter on its website.

— *Private apology and donation to charity*

Sir Mick Jagger complained in 2006, through Smyth Barkham solicitors, that a magazine had clearly identified the exact location of his new property in West London, including its house number and the name on its blue plaque. The complaint was resolved when the magazine, which accepted that the publication of the address was a mistake, apologised and made a donation to a charity of the complainant’s choice.

Mrs Carol Dickinson of Devon complained in 2006 that a newspaper had published a photograph—without her consent—of her grieving at the scene of the accident where her sister had been killed in an incident with a train. The newspaper first apologised to the complainant for exacerbating her distress following such a tragic accident. The editor sought to explain that the photograph came to be published because of a misunderstanding and accepted that in doing so the newspaper had breached Clause 5 (Intrusion into grief or shock) of the Code. The complainant appreciated the newspaper’s admission but declined its offer to publish an apology as she felt that this would exacerbate the situation further. The complaint was resolved when the newspaper wrote privately to the complainant to apologise and emphasise that she in no way courted the publicity and had not welcomed it. The newspaper also made a donation to the complainant’s charities.

— *Published apology and private undertakings*

Ms Allegra Versace Beck complained in 2004 about an article that speculated about her health and well-being, and was illustrated by photographs taken of her while shopping in London. The published apology accepted that the magazine should not have speculated about the complainant’s health and well-being and apologised for the intrusion into her private life. The magazine also undertook not to repeat the article under complaint or republish the photographs complained about and not to publish in any format any further material concerning Ms Versace Beck’s private life, health or general well being (including photographs of her taken without her consent while engaged in private life activities and not at any public event) except where those matters have been put into the public domain by Ms Versace Beck or her representatives authorised by her to do so.

84. Many further examples appear on the Commission’s website—www.pcc.org.uk.

CUSTOMER SATISFACTION

85. The picture that emerges is one of a range of options where the outcome is proportionate to the original problem and reflective of what the complainant wants. It is notable that complainants hardly ever ask for financial compensation. But are they content with the service that the Commission offers?

86. The Commission anonymously surveys those who use it. The responses can be audited by the independent Charter Compliance Panel. There are numerous questions—and the Committee may see the full results if they are of interest—but of relevance here is that of those whose complaints had been resolved who returned the form in 2006 (143 people):

- 96% said that their complaints had been handled satisfactorily or very satisfactorily;
- 98% thought it had been dealt with thoroughly or very thoroughly;
- 81% were satisfied with the decision, with a further 13% expressing some disappointment but understanding the outcome;
- 91% thought that the time taken to deal with the matter was about right—with 2% thinking it was too quick!

87. Customers may also make anonymous comments about their experience, and to offer criticism or praise. Such remarks include:

- I had not expected a good response. I had expected a lack of support, interest or efficiency. I was bowled over by the amazing efficiency and support I received—quite wonderful. I have been praising [the] PCC ever since.”
- We have been impressed by the PCC’s due process [and] are relieved that our complaint against X was upheld. We are . . . disappointed that our complaint against Y was not also upheld, although it is obviously difficult to achieve the right balance between the right to freedom of expression and the right to a private life—so many rights!”
- I have been absolutely delighted with the work done on my behalf by the PCC and with the way in which my complaint has been resolved.”
- The PCC brought an independent view on the issue and the result was the best possible.”
- Please could I extend my grateful thanks to you and your staff for all the help, support and obvious hard work that you have undertaken on my behalf to bring this whole sorry and tragic event to a conclusion.”
- An excellent outcome and assistance from the PCC and much better than I anticipated with such a protracted issue.”

QUALITY OF RESOLUTIONS: PROMINENCE OF CORRECTIONS/APOLOGIES

88. One issue guaranteed to excite people is the thorny one of where corrections and apologies appear. An old myth has it that they appear on “page 94” or with the racing results. But the Code says that corrections must be made with “due prominence”. This in turn occasionally provokes further debate. Due prominence does not—and cannot—necessarily mean the same size and location as the whole of the original article for a number of obvious reasons:

- What is appropriate will vary depending on how much of the original article was wrong or intrusive;
- The size of it depends on how much space the wording of the correction or apology will take up;
- Sometimes it will be appropriate for it to appear further forward in the newspaper;
- What the complainant actually wants needs to be considered;
- The location may depend on how serious the original breach of the Code was;
- Stretching a correction or apology to cover the size of an original article may look ridiculous given that the difference in the respective number of words in the article and in the apology.

89. These common sense points have not prevented one determined lawyer from regularly writing to the Commission with numerous complicated mathematical calculations to prove that there must be a formula!

90. The fact is that there is no standard answer. There will always be a fierce debate about this subject. Much has been achieved, and there is clearly more to do. But the PCC does take positive steps in helping to negotiate the location of the correction/apology as part of the conciliation process.

91. Since the last Select Committee hearing the Commission has started to monitor the prominence of the published corrections and apologies that it negotiates. The 2006 figures show that 74% appeared on the same page or further forward than the original item under complaint, or in a dedicated corrections column. When apologies alone were examined, this proportion rose to 80%.

92. The appearance of a correction further back in the publication than the original does not necessarily mean that it has been given too little prominence. Nonetheless, the Commission always retains the option of upholding a complaint on the basis that a correction has not received due prominence as this requirement is part of the Code.

Prominence of corrections/apologies/clarifications 2006

Corrections appearing further forward in the paper:	34%
Corrections appearing on the same page:	26%
Corrections appearing up to five pages further back:	10%
Corrections appearing more than five pages further back:	16%
Corrections appearing in a dedicated column:	14%

PRIVACY, NEWSGATHERING AND HARASSMENT

93. The protection of individuals from harassment is one of the “invisible” achievements of the PCC. It is invisible because success is measured by something that is not, or is no longer, happening.

94. This section concerns how the PCC deals with complaints of harassment and how its approach can help people who are subject to cross-media attention, not just that of the print media.

95. The Commission recognises that being at the centre of a media scrum can be frightening. Nobody suggests that there should be a law banning photographers or broadcasters from taking pictures of individuals who are in the news when they are in public places. The question is how to balance their right

to do so—which is effectively the right of the public at large to see images of people who are in the news—with the rights of the individual concerned not to be intimidated or pursued when they have asked the photographers to desist. It also has to be recognised that there may be a public interest in pursuing an individual for answers even when they are uncomfortable with such scrutiny, and that individuals may be at the centre of a fast-developing news story when attention on them may be unrelenting for a few days at a time.

THE COMMISSION'S APPROACH

96. The starting point for the Commission in the Code of Practice is Clause 4, which says:

- “(i) Journalists must not engage in intimidation, harassment or persistent pursuit.
- (ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them.
- (iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources”.

97. These rules were devised during the review of the Code following the death of Diana, Princess of Wales. There was obvious concern at that time about the behaviour of photographers and how it might be dealt with.

98. In early 2007, there was comment about an incident involving Kate Middleton. It has been correctly reported that her lawyers were in touch with the Commission for help in dealing with the matter. Some of the information about her specific case must remain confidential. Some of it is in the public domain however. Some cuttings relating to it are attached in Appendix 2.

99. Some people have remarked that the Middleton case reveals a cause for concern. But it is actually instructive of how these things can be resolved using existing procedures without the need for legislation. For it must be noted that, since the incident which provoked the most concern—attention on her 25th birthday, which followed speculation about an imminent engagement—no British magazine or newspaper has published a photograph of her taken when she has been going about her daily business without Prince William. This is no coincidence. The PCC has been active in signalling to editors that it regards harassment of individuals as one of the most serious forms of intrusive behaviour, and that in this case it stands ready to investigate a complaint of harassment. It has passed messages from her lawyers to editors (see the procedural points below). And attention has also been drawn to a passage in a 2006 speech by Sir Christopher Meyer in which he said:

“On the whole British publications are pretty careful to ensure that the photographs they print have been taken in accordance with the Code. People would be surprised at the amount of material that is not published because editors cannot be certain of the manner in which a photograph had been taken. I cannot, of course, speak for foreign publications. The London paparazzi feed a global, not just a British, appetite for celebrity photos.

But it is right to warn that it will probably be only a matter of time before the Commission is asked to investigate, on the back of a photo published in Britain, a serious complaint of paparazzi harassment that is backed up by video or other evidence. If it is, and there is no public interest justification, the industry can be assured that our condemnation will be swift and harsh. It is not right that the physical safety of individuals should be compromised in the pursuit of a photo.”¹²

100. Publications covered by the Code took heed of these warnings, and it has not in fact even been necessary for a complaint from Miss Middleton to be formalised. The Commission hopes that this will remain the case.

CONTROLLING THE MARKET

101. Of course, an individual does not have to be going out with a senior member of the Royal Family to be on the receiving end of publicity or the attention of photographers. Ordinary members of the public can be temporarily thrust into the public eye for a whole variety of reasons. The PCC's service is as much for them as for anyone—but the important thing is that it can work no matter what the scale of the attention.

102. The starting point in the Code is that people who are in the public eye—even if only briefly—may be photographed if they are in a public place. Once they feel the attention has crossed the line, however, they are entitled to ask the photographers to leave them alone. At this point their rights under the Code are engaged. If their wishes are ignored, and there is no public interest in continuing to photograph them, editors who use the photographs will probably have breached the Code.

103. The obligation is on the editor to stay within the terms of the Code. There will be many photographers of varying degrees of professionalism who work as paparazzi. Individual freelance photographers do not directly sign up to the Code—although it is notable that some agencies, eager to be seen as reputable, have publicly stated that they follow the Code's guidelines voluntarily.

¹² Speech to launch PCC 2005 Annual Report, 25 June 2006.

104. There are two ways of trying to manage the behaviour of photographers. The first is to deal with the demand for their product—ie editors who buy photographs. The second is to try to deal with the supply—ie individual photographers. It is widely regarded that the second option would be fraught with difficulty. Legislating for the behaviour of individual men and women who have a right to use a camera and to walk down a street would be a minefield. Who would be caught? How would you define “paparazzo”? What about “citizen journalists” taking pictures with their mobile phones and cameras of celebrities? Would there be a general law applicable to all members of the public about taking photographs in public? Such a restrictive law would have few supporters in a free society.

105. Dealing with the demand side is easier, and this is how the Commission approaches the problem. For a start, those buying the pictures are by and large a homogenous professional group. They have collectively signed up to a professional Code of standards and submitted themselves to an external adjudicating body, which may also give advice about the application of different parts of the Code.

106. If they jointly stop using photographs from freelancers when the circumstances suggest that the Code is being breached, they close the market to the photographers. There is then no incentive for the photographers to continue taking pictures, so they disappear. The problem is therefore dealt with from the top down, rather than the bottom up. It is effective, and it has been used to the satisfaction of many people over the last ten years.

107. Sometimes the journalists or photographers work directly for the publication concerned, in which case they are called off directly.

108. So how does it work?

DESIST MESSAGES

109. For those individuals whose objection is to the presence and behaviour of other people, their concern is to deal with the “real time” problem as soon as possible and not wait for legal wrangling to begin and be resolved. This is where the PCC’s structure and procedures—aimed at working with the industry to resolve problems as they arise—is again an advantage over more formal regulation.

110. Most of the Commission’s work in this area is aimed at quick informal remedies to problems, which will remove the need to make a formal complaint. These are the steps that take place:

- An individual, or their representative, will contact the Commission with details of the problem. This will usually amount to a request to send those contacting the individual a message to desist from their attentions. Such approaches can take place 24 hours a day as the Commission operates a round the clock helpline, details of which are available on its website;
- The PCC will then disseminate this request, normally via e-mail, to relevant publications. If it can be established which publications’ representatives are present, the message will be sent only to them. If there is uncertainty, or if the story is high profile and likely to involve a large number of people, it is sent to a general list of editors, managing editors, and lawyers. An example is attached in Appendix 3;
- The recipient of the message, acting for the publication, will then either call off their staff photographer or journalist, or take a decision not to use information supplied by third parties. They sometimes call for the PCC for further advice.

111. The Commission has intervened in this way in over 100 cases since 2003. In each case, the process has been successful and removed the need for a formalised complaint of harassment.

BROADCASTERS

112. The 2003 Select Committee noted that there was no similar system for broadcasters as a result of the regulatory boundaries outlined in the Communications Act. It recommended that the PCC, Ofcom and the broadcasters co-operate to establish procedures to deal with the worst aspects of the “media scrum” when this involved different media. This recommendation was accepted and, following discussions, it was agreed that the easiest way to approach this would be for the PCC to act as the initial point of call, passing desist messages directly to the broadcasters where necessary. This has been a feature in a handful of cases since 2003 (including Kate Middleton).

PRO-ACTIVITY

113. As well as helping people who feel they are being harassed, the PCC also works to minimise the chances of such circumstances arising in the first place.

114. The PCC has produced a leaflet entitled “What to do if you are being harassed by a journalist”. It has been in circulation for some years and is now in an easy-to-use pocket-sized format. Some copies are enclosed with this submission. They are despatched in a number of different circumstances:

- When someone who feels they may be about to be the subject of press attention—those who are about to be involved in a court case, for instance—request help in advance;

- When the Commission itself identifies organisations or individuals who generally represent people who may end up in the media: lawyers, Citizens' Advice Bureaux and so on;
- Along with other PCC literature, they are sent to criminal and coroners' courts so that witnesses are aware of what they can do if they are unhappy with media attention;

115. At times of major incidents, the PCC seeks out suitable third parties who might be in touch with people unknown to the Commission but who may be being approached by the media. A good recent example followed the Suffolk murders, when the PCC realised that there may have been relatives and friends of the deceased unaware of what to do if they felt overwhelmed by the press attention. The Commission therefore approached Suffolk Constabulary liaison officers. In fact, on that occasion, the feedback was that the press was behaving well.

HARASSMENT—A CONTROLLABLE SITUATION

116. In relation to harassment, the Commission is confident that the current arrangements work well in calling off journalists and photographers when their attentions are unwanted and there is no public interest in their being there. They have been finely-tuned over the years, and not only deliver results for the complainant, but do so in a discreet, quick way which does not involve lengthy arguments or even, in some cases, any written submissions.

117. However, that conclusion is not to indicate complacency. There is always more to do to make the fact that this service exists better known. There was a reminder of this at the PCC City Open Day in Liverpool in 2006, where the Chairman and Director of the Commission were upset to hear from one couple who outlined what could only be described as harassment. Unfortunately they had not known that the Commission would have been in a position to help them.

PRIVACY, NEWSGATHERING AND THE DATA PROTECTION ACT

118. It is a misconception in some quarters that the PCC is the only form of regulation for the press. The press is subject to plenty of different pieces of legislation as well. There is a complex mesh of criminal and civil law which restrains newspapers' investigation, newsgathering and publication, in print or online. It grows ever wider and denser as Parliament adds new offences while the courts develop the common law and interpret the latest statutory additions. Meanwhile, Parliament is already considering additional restrictions, the government proposes yet more and others are wending their way through the EU institutions. To this extent, there is already statutory regulation for the press. The regulatory arrangements overseen by the PCC are self-imposed and over and above legal obligations. What this means is that there is a division of responsibilities between the self-regulatory authority—the PCC—and law enforcement authorities. Sometimes the rules may meet in the middle. On the rare occasions that they overlap the Commission must—as a body without legal powers—give way to any police or other investigation.

119. One of the pieces of legislation with which journalists need to comply is the Data Protection Act, overseen by the Information Commissioner, to which a public interest exemption is available for journalists.

120. The Information Commissioner has published two reports entitled *What price privacy?* and *What price privacy now?*, which the Committee will have seen. These reports include sections devoted to apparent disregard by sections of the press to the DPA. There are now moves to increase the penalties for breaching the Act to two years imprisonment, because the Information Commissioner is not satisfied that the current penalties are a sufficient deterrent.

121. The PCC of course condemns breaches of the law, including the DPA when there is no public interest. Sir Christopher Meyer has made this clear publicly on a number of occasions. Last year, in response to *What price privacy?*, he reiterated the PCC's position that offering money for confidential information, either directly or through third parties, may be illegal and that journalists must have regard to the terms of the DPA.

122. It is no secret that the Information Commissioner remains disappointed with how the PCC has reacted to his reports and the challenges that he set the industry and the PCC. But the Commission has always made clear that it is willing to work with him—as has the industry, which has put a number of proposals to him. In addition, the Commission has repeatedly made clear publicly, and through a Guidance Note on Best Practice in relation to the DPA, that journalists must follow the terms of the Act.

123. There is a problem, however, in doing anything that would blur the responsibilities of the Information Commissioner and the PCC. This would certainly be the case if the Code was amended in a way that effectively incorporated the Data Protection Act rules on paying for confidential information.

124. There is a further difficulty in that the Information Commissioner has proposed increasing penalties to two years in prison for breaking the Act, including for journalists.

125. The PCC's constitution makes clear the difficulties of acting when there is an alternative legal forum, and it is almost certain that publications would not volunteer information if there was a danger of a further investigation by a legal authority which might put one of their journalists in prison. In these circumstances,

there is little chance of the Commission being able to investigate overlapping matters satisfactorily. If the Information Commissioner was proposing the amending the terms of the Act to exempt journalists and leave sole responsibility for them to the PCC then that would be a different matter, but he is not.

126. The Commission does not, in any case, believe that the case for greater penalties has been made out. While there may be practices to condemn, there seem to be several problems with the reports. They are:

- The evidence appears to have been gathered after a raid on premises in November 2002. The behaviour criticised must therefore be some years old, but there is no evidence about the extent to which such activity reflects current practice. It is therefore not possible to test whether the current penalties are acting as a deterrent. The Information Commissioner has done a lot of work to raise the profile of the Act in this area, as is his job. But there has been no assessment of what the recent impact of this has been before ploughing ahead with tougher penalties;
- Despite this, the Information Commissioner's findings have curiously been cited as contemporaneous following the more recent Clive Goodman conviction;
- There is an impressive-sounding but superficial list of 305 journalists who were alleged to have been involved in this trade. But there is no indication of whether the behaviour was illegal or whether, if it was known to be, it would have qualified for a public interest exemption;
- There is little to no evidence about whether and when information sought actually led to anything being published. It seems in some cases that the requests were for contact details. In another case relating to a decorator, it seems that his identity was being confirmed in order to discount him from further inquiries, as nothing was (apparently) published about him.

127. It is the job of journalists to ask people questions and find things out that are in the public interest. Perhaps obtaining contact details in a way that breaches the Data Protection Act in order to ask such questions is something to be condemned, although that will be a matter for debate. But either way it is hardly worthy of a jail sentence, particularly when a range of other penalties is available.

128. There are two further points to make about the proposals to increase penalties for breaches of the Act, including journalists. Even though the government regrettably appears to be moving forward with the idea, it is worth saying that:

- Whatever protection the Information Commissioner believes is inherent in the Act for journalists acting in the public interest, the truth is that there will inevitably be a chilling effect whereby journalists simply do not bother to initiate investigations if they think they may end up in prison. A public interest defence is not something that is always neatly apparent. There may be suspicions or rumours that lead to something. But unless the journalist has total proof that there will definitely be tangible new information as a result of obtaining data, they will be unlikely to pursue it. The result will inevitably be that stories in the public interest do not get investigated;
- The Commission's work internationally has brought it into contact with many people and organisations from countries which used to, or still do, have repressive regimes which jail journalists for asking uncomfortable questions. What is repeatedly made clear is the extent to which the British system of law and self-regulation is used as an example of good practice. This should be a matter of some pride. But sending out a signal that it is acceptable in Britain to jail journalists in the pursuit of information will be noted, and undoubtedly bring comfort to those it is not intended to.

THE COMMISSION AND SUBTERFUGE

129. While it may be difficult for the Commission to investigate complaints where the subject matter clearly also falls under the terms of the law, the issue of subterfuge generally is something on which the Commission has a long and consistent record in dealing with, even though complaints about it are rare (amounting to just 0.5% of all complaints in 2006).

130. In particular, the Commission has set out that journalists must have legitimate grounds for using subterfuge, and been harshly critical when this has turned out not to be the case. More detail on the case law in this area is set out in the Editors' Codebook in the section on Clause 10. The Commission has been absolutely clear that journalists cannot use undercover means for speculative "fishing expeditions" to look for information when there are no grounds to do so. These standards now guide the industry at large.

NEWSGATHERING AND PHONE MESSAGE TAPPING

131. The recent convictions of Clive Goodman and Glenn Mulcaire have drawn attention to the unsavoury, unethical and illegal practice of phone message tapping.

132. The Code of Practice was amended in 2004 to make such snooping explicitly contrary to the Code (although it would probably have been contrary to the general rules in the previous Code). Clause 10 (Clandestine devices and subterfuge) now says that:

- “(i) The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or e-mails; or by the unauthorised removal of documents or photographs.
- (ii) Engaging in misrepresentation or subterfuge can generally be justified only in the public interest and then only when the material cannot be obtained by other means”.

133. What the Goodman case highlights is that unfortunately neither the law nor the Code can guarantee that a determined individual will never breach their terms. The question is whether there are suitable structures in place to deal with things when they go wrong, which hopefully will be rarely. In this case, while the police and the CPS were concerned with the offences under the Regulation of Investigatory Powers Act, the Commission had taken care to put its position on the record at all times. Because of the police investigation, it was under no obligation to act (it has not even received a complaint about the matter), but it publicly deplored the breach of the Code and the law, and made clear that it would be launching its own investigation into the editor’s conduct after sentencing. The law took its course and the men were convicted and imprisoned.

134. This is in fact a good example of the Commission and the law working together to deliver different things, and indicative of the added value—rather than duplication of others’ responsibilities—that the Commission can offer. The PCC announced that it would—regardless of what the judge had to say—launch its own investigation, based on the editor’s responsibility under the Code to take care that it is observed by their staff and external contributors. It seemed to the Commission that the case may have revealed some deficiencies in this regard that merited investigation.

135. The editor resigned before the Commission could begin its investigation into his application of Clause 10 on the newspaper. However, it takes the matter seriously and promptly announced a wider-ranging review aimed at preventing a repetition of the affair. This is now underway. That will look at, among other things, how the lessons that have been learned from the incident will translate into different practice at the newspaper, and what the rest of the industry does to ensure that journalists do not behave in a similar way.

136. The outcome of the Commission’s inquiries will be published in a report, in the Spring/early Summer of 2007.

ONLINE REGULATION

137. The Committee has called for evidence regarding what, if any, regulation should apply to information online. It is a sensible time to consider this question given recent rapid developments in online news services.

138. The Commission has always believed that imposed legal regulation for press content is wrong in principle. It is not for governments in a democracy to draw up and enforce rules about how people may communicate with one another through the press. But the internet probably means that it would now also be unworkable. The internet has revolutionised the way in which news is spread because:

- anyone can be a publisher—they do not need the resources to own a newspaper or television channel;
- information travels at great speed to an international audience, swiftly diluting the effect of any legal rules applicable in one jurisdiction;
- any attempt to introduce restrictive rules on what may be published would easily be circumvented by basing the website in a more liberal jurisdiction.

139. Some people might argue that in these circumstances the only chance of keeping things private would be to obtain an injunction from a judge. This is a false hope, but again one that only the wealthy could even try. Successfully obtaining an injunction may bring with it huge attention and speculation about the identity of the recipient. Perhaps not in every case, but there have been one or two recent cases about which the Committee will be familiar which illustrate the risk. The injunction cannot suppress the public knowing the broad thrust of the claims that are being restrained, only the identity of the person concerned. Gossip websites, private e-mails and chat rooms can—even while strictly complying with the injunction by not directly naming the person—swiftly identify the person to tens and hundreds of thousands of people, at least, through jigsaw identification or otherwise.

140. This is because, in a system which imposed rules about what can be published and discussed, individuals who know something but disagree with the order to suppress it will find other ways of getting it into the public domain. At the same time, commercial media companies would be disadvantaged by being barred from using the information.

141. It seems paradoxical, but a legal injunction may simply be too blunt an instrument to be effective if the claimant wishes matters to remain private. The opposite is true of a system of voluntary regulation, where the editor or journalist who has some information voluntarily agrees not to publish it—perhaps after discussion with the PCC—and therefore has no reason to see it elsewhere in the public domain. In fact, to do so might harm their own product.

142. This being the case, there is a further point the Committee might wish to consider. It is the danger of a two tier information society, with the computer illiterate divided from the growing army of people who can share information that hitherto would have been confined only to a few lawyers and journalists. The effect would be unfairly to deprive people of information on the grounds that, for whatever reason—perhaps age or poverty—they did not have access to the internet.

143. The internet poses further challenges. A lot of poor quality information is circulated, with the presentation of rumours, conspiracy theories or propaganda as fact, and many sites devoted to gossip and innuendo. Such material cannot be directly regulated in a free society. It has been said that you might as well try to regulate conversation in a pub. The challenge here is not to require such sites or blogs to abide by a set of agreed rules, but to help the consumer distinguish between the different sources of information so that they are aware of their relative reliability.

144. One way to do this, for commercial information providers who wish to enhance user trust in their products, is to agree to subscribe to a set of rules covering accuracy, intrusion and so on—policed by an independent external body—which reassures the user that certain standards apply. The PCC fulfils this function for newspaper and magazine websites in the UK. Its non-statutory nature means that it can adapt very quickly to changes in technology. For instance, with no external pressure, the industry in the UK has recently announced that the Commission's remit will also apply to editorial audio and visual material on their websites. An agreed guidance note which sketches the new boundaries of the Commission's responsibilities was agreed in January 2007. It is attached in Appendix 4.

145. This voluntary step means that information on publishers' websites is in fact currently more regulated than that on UK broadcasters' websites, because broadcasters—through Ofcom—are obviously reliant on legislation keeping up to date with developments. It has to be said that there will of course be grey areas about where the regulatory boundaries are. The Commission is pleased to report that it has had a fruitful dialogue with Ofcom on this subject, something that it intends to continue.

146. Other legislators and officials who have reviewed how online content can be regulated have concluded that self-regulation is an attractive alternative to formal regulation, precisely because of its flexibility and the fact that its lightness of touch is proportionate to the regulated activity. Endorsing self-regulation of online content as a viable option, a European Union study has recently explained:

“Particularly in the digital economy, driven by rapid technological change and enhanced user control, traditional regulations are finding it difficult to keep up with the speed of technological, economical and social changes, and the problem of decentralised information. Traditional regulatory approaches also may suffer from enforcement problems.”¹³

147. There are three further problems with old fashioned “top down’ regulation for media content in the digital age:

- the difficulty of defining to whom the regulations applied. Would they be aimed at everyone from the bedroom blogger to Times Online? Would they be restricted only to those whose activity was commercial? If so, how would this be defined? Would there be exemptions for non-profit activity?;
- If these problems were surmountable, there would be a high likelihood that forcing compliance on a defined group of companies would be anti-competitive and therefore unfair on media companies. They might well ask why legal regulations should apply to their activities but not to others disseminating information either in the UK or abroad;
- Restrictive rules which suppressed information about, say, politicians, would only prevent the information from circulating on the sites to which the restrictions applied. Even if they applied to every website in Britain, a blogger whose site was hosted in another jurisdiction such as the USA—with its constitutional safeguards on free speech—could still publish to the British public. In all likelihood their sites would only become more popular for being able to break news that other media could not. With such popularity would come advertising, and with advertising financial reward. There are already examples of this—French bloggers have recently been dismantling that country's taboo about discussing the private lives of politicians, for instance.

148. Pursuing state regulation of online content would therefore probably be totally counter-productive to the aim of protecting privacy, and would likely lead to the withering away of effective regulation as people found easy ways to avoid it.

¹³ European Commission statement on release of Hans-Bredow Institut's study into self- and co-regulation in the EU, 6 February 2007.

149. That is why a self-regulatory model, with the crucial element of “buy-in” from the regulated industry, is such a suitable one for media in the digital age. It should also be said that it is a model commonly pursued by other European countries. All European press councils and press complaints commissions are responsible for the regulation of online newspaper and magazine content, with all except one (Germany) also extending their remit to online audio-visual material.

SUITABILITY OF LIGHT-TOUCH REGULATION

150. The Commission has found that, when complaining about online information, complainants’ wishes are slightly different from those complaining about the print product. With printed newspapers and magazines, the complainant is often principally after an admission by the editor that he or she had erred, perhaps by way of a correction or apology. But when the complaint is about information online, the main requirement is for the information under complaint to be removed—and quickly. This applies as much to inaccurate as intrusive material. Requests for the publication of follow up material such as apologies—while not unheard of—are less popular. There are obvious reasons for this relating to how swiftly information can be disseminated and cannibalised once it is published online.

151. The PCC’s ability to achieve this type of speedy resolution is thanks to its structural advantages. It works with the industry to look for common sense, proportionate and quick resolutions to people’s problems. It is not looking to punish mistakes in every case, but to rectify them. Nor does it see the advantage of engaging in lengthy inquiries in such cases, during which time the status of the information under complaint would be uncertain until there was a formal ruling. Because editors know that the priority is to get a speedy settlement to the dispute, they are comfortable with making quick offers.

152. A legal system could not hope to be so effective. It would inevitably involve lawyers on each side talking to one another, and lose this degree of editorial co-operation that is so vital to achieve the results that complainants desire.

February 2007

Witnesses: **Sir Christopher Meyer KCMG**, Chairman and **Mr Tim Toulmin**, Director, Press Complaints Commission, gave evidence; **Mr Richard Thomas**, Information Commissioner, gave further evidence.

Chairman: For our final session can I welcome the Chairman of the Press Complaints Commission, Sir Christopher Meyer, and the Director, Tim Toulmin. Helen Southworth will start.

Q159 Helen Southworth: We had some very extensive information from the Information Commissioner about the unlawful trade in private information involving very specific journalists and newspapers. Could you perhaps explain to the Committee what your role was in that process and what you have done as a result of prosecutions of private detectives?

Sir Christopher Meyer: The Information Commissioner came to see us at the PCC at the end of 2003 to draw to our attention the ongoing investigation which now goes by the name of Motorman. He said that he had a very substantial dossier of journalists who were using inquiry agents—using inquiry agents, in and of themselves, is not of course an illegal act—and that he fully expected there to be prosecutions early in 2004 which would involve possibly both inquiry agents and journalists. This came as news to me and we were suitably taken aback by what he seemed to be alleging. We agreed at that meeting that one of the first things that the Press Complaints Commission had to do was to issue a guidance note to journalists on section 55 of the Data Protection Act and that, indeed, is what we did. You may well have it in your dossier before you. Subsequent to that, there was a prosecution but not of a journalist, of the inquiry agent himself, and I believe he was found guilty and, parallel with preparing the guidance note, which I

hope sets out pretty clearly what this actually means for journalists—as I was travelling around the country in my early days as Chairman I came across journalists and editors who were very fairly confused about how the DPA applied to them for all kinds of reasons—I publicly and privately—I am on the record—said that it was absolutely essential that journalists understood section 55 and obeyed its requirements. Then the Information Commissioner, if I have got this right, published two reports, *What price privacy?* and then a follow-up *What price privacy now?* and it was the second report that had the table of contacts with this particular inquiry agent by a number of journalists. I think he had to issue corrections as far as *The Sunday Times* was concerned but that was basically it. Last year, 2006, Mr Thomas came to see Tim and me at the PCC to talk further about what to do about this situation. I said to him last year, I think with more emphasis than I said to him at the end of 2003, “Show us the money. Let us see some of these cases, let us see some of this dossier because I do not have investigative powers, I am not an agent of the state, I police the Code of Practice, I do not want to see journalists breaking both the law and the Code of Practice, but short of issuing guidance exhorting conformity with the law I need a bit more to work on if we are going to start ourselves looking into individual cases”. The Information Commissioner was not willing to share any of the detail of the 305 cases. I was not able to take that further forward and I believe we will now be considering one of his other requests, which is to amend the Code of Practice to take account of the Data Protection Act, at the next meeting of the Code

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Committee, which I think is next week. I have no idea whether members of the committee will agree to make changes or not.

Q160 Helen Southworth: From that, do you mean that you believe if the Information Commissioner has a complaint as a public body of a serious nature about the regulation of the press, he should share the information with you so you can take that up?

Sir Christopher Meyer: It might have been easier to pursue some lines of inquiry had some of the evidence been made available to us. Of course, now we are half a decade on since the Motorman inquiry and, of course, there have not been prosecutions of journalists. We have these 305 cases and reading the detail, particularly of his second report, you can draw the inference that he thinks that a good deal of this activity was indeed illegal but the case has not been prosecuted by the authorities and no journalist has been brought to court.

Q161 Helen Southworth: You can take the legal aspect to be separate looking at your role.

Sir Christopher Meyer: My question to him was, "What exactly is it that you want me to do? The Act is policed by the authorities, by you, and you have had one prosecution. Is there more to be done on our side of the line?" You, Chairman, said earlier on commenting on an answer that we, if you like, complement the law, we add to the law or something like that. What I was looking for was this precise added value that the Press Complaints Commission could do in addition to what was provided for in the law.

Q162 Helen Southworth: What answer did you get as to what he was asking you to do?

Sir Christopher Meyer: I think in the end the practical conclusion we came to was to see whether we could refine the guidance note.

Q163 Helen Southworth: Did he not give you an answer to that question?

Sir Christopher Meyer: No, he did not give me the dossier.

Q164 Helen Southworth: Did he give an answer to what he expected of you?

Sir Christopher Meyer: If I remember rightly, and he took a record of our conversation and I am relying on my memory now, in 2006 I think the burden of his remarks were we are after the middlemen and not the journalists.

Q165 Helen Southworth: He was not asking you to do anything, in fact?

Sir Christopher Meyer: I think he wanted the Code Committee to take a tougher line in the Code on these practices. He has made a textual proposal to the Code Committee which I think the editors will be considering next week.

Q166 Helen Southworth: Perhaps it would be helpful if you could come back to us on what he was expecting you to do and what you did.

Sir Christopher Meyer: A further guidance note was one idea and he did go and see the secretary of the Code Committee and some of the newspapers themselves. A further guidance note and perhaps an amendment to the Code, that would be my short answer to your question.

Q167 Helen Southworth: What you are saying to us now is that, sorry I am trying to work it out, you said he was really proceeding against the middlemen and not the journalists?

Sir Christopher Meyer: That is what he said to me at the time.

Q168 Helen Southworth: That would mean that there would be no real role for you there.

Sir Christopher Meyer: Well, you will have to ask him to come back again to explain.

Q169 Chairman: If Mr Thomas would like to come and rejoin us we would be very happy for him to do so; rather than you recounting what he said to you, perhaps you could tell us.

Sir Christopher Meyer: His response might contradict me.

Mr Thomas: I have a note of the meeting and I will not go through it in detail. My recollection is not far apart from Sir Christopher's which was I was looking for some plain English guidance which the PCC could give out as to what is unacceptable in these terms. I was looking for an amendment to the Code which I first put forward in September and, although the Code says it can be changed within weeks, nothing has yet happened on that particular front. I also explained to Sir Christopher that the focus of our prosecutions had been the middlemen and I explained, as I have done to this Committee this morning, why we did not take any further action against the journalists concerned. I think I should also put on the record that we do not feel able to identify the individual journalists in fairness to those journalists, they have not been prosecuted and for me to bandy their names around in public or to their employers I do not think would be acceptable.

Sir Christopher Meyer: I think our memories tally pretty well. As I say, I think the Code Committee is meeting next week.

Q170 Chairman: Your expectation is that the Code will be—

Sir Christopher Meyer: I do not know. I will not anticipate, wisely I think, the outcome of this meeting. There is something to be discussed and it will be discussed.

Q171 Chairman: It has taken an awful long time for the Code Committee to consider the recommendation of the Information Commissioner.

Sir Christopher Meyer: One of the reforms, if I may toot my trumpet a little bit, that we did bring in back in 2003 was to insist that we recommend to the Code Committee that they should meet regularly once a year to look in the round at the number of proposals that come in from members of the public and from

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elsewhere for changes to the Code and that is now a regular occurrence, so you need to see that in this context.

Q172 Helen Southworth: Could I ask what steps you would hope that newspapers or publications would take to ensure that they were using proper agencies which were operating within the law?

Sir Christopher Meyer: Mr Esser talked, before we came on the stand, about inquiry agencies being properly registered. I have never dealt with an inquiry agent so I have got no first hand experience of this. Newspapers, if they are to respect the requirements of the Data Protection Act, subject always, of course, to the public interest consideration, know perfectly well who are the good agencies and who are not. Regulating the newspapers is quite enough, thank you, but to give me inquiry agencies as well would be probably more than I can handle.

Q173 Helen Southworth: Would you expect them to have some good practice steps to be taken before they are in their employment and the information being used in the industry?

Sir Christopher Meyer: Would I expect the newspapers?

Q174 Helen Southworth: Yes.

Sir Christopher Meyer: I think what we have heard from the previous two witnesses is precisely that. I would expect best practice, indeed.

Q175 Alan Keen: One of the issues that I have been struggling with this morning, and other people have, is that I tend to feel that as long as it is in the public interest almost anything is justified to investigate, is it not in the public interest that we know the names of the journalists? Does Mr Thomas not think that is a parallel with the things we have been talking about this morning? Is it not in the public interest to know who the journalists are?

Sir Christopher Meyer: I know you have done this, but you will notice in our Code of Practice that a number of clauses has an asterisk against it and that denotes that the requirements of the clause can be overwritten by a public interest argument and at the bottom of the Code of Practice we set out not an exclusive list, not a comprehensive list, but some illustrations of how that would apply. I think here is the nub of the matter in many, many ways because one person's public interest is not necessarily in another person's public interest. The animated debates that we have every month when the board of commissioners meets at the PCC to adjudicate on cases very often rotate around an issue of where is the line between what is properly private and what is genuinely in the public interest and this can be very contentious and very difficult. At the end of the day we have to make a judgment and we say either it was not in the public interest or it was in the public interest, and once the adjudication becomes public it usually becomes very contentious and controversial, indeed it pops up all over the place, sometimes in the House of Commons and sometimes in other

newspapers saying "How on earth did the PCC come to that conclusion". What I am really saying is that we, any of us, will never come to an absolutely objective standard for the public interest but that does not mean we must not introduce it in consideration of these matters.

Q176 Alan Keen: If I was on the list as a politician, do you think it would be in the public interest to declare my name, or is it different for journalists than for politicians?

Sir Christopher Meyer: If you hired an inquiry agent to do some inquiring for you?

Q177 Alan Keen: It would be in the public interest—

Sir Christopher Meyer: I cannot really see that happening. When I was a press secretary, one of the rules to survive, particularly in John Major's Downing Street, was never to answer a hypothetical, so I think I will keep away from that, if I may.

Q178 Mr Hall: Can I give you a non-hypothetical question. We have heard in evidence this morning that the Code of Practice does not appear to be working because it does not have a conscience clause to allow journalists to refuse to undertake activities their editors ask them to do, it does not involve complaints by third party referrals, there are no penalties for infringements, there is no compensation for people who have had their privacy infringed, there has been a call for an ombudsman, there is not any transparency in the payment for stories or the use of employment agencies. Are you going to take any of that on board when you look at the review of the Code of Practice?

Sir Christopher Meyer: I think you are being a tad unfair there. I think there is a whole bunch of stuff in there which we have already taken on board.

Q179 Mr Hall: Which one of those is in the Code of Practice?

Sir Christopher Meyer: Can I start with the conscience clause?

Q180 Mr Hall: Is it in the Code of Practice?

Sir Christopher Meyer: No, of course it is not in the Code of Practice.

Q181 Mr Hall: Do you think it should be?

Sir Christopher Meyer: No, I do not and I will tell you why. I thought I had solved this with the NUJ but clearly I have not from reading their submission. On 7 February 2006 I attended a meeting of the NUJ Parliamentary Committee, I think that is its title, Austin Mitchell is the Chairman, John McDonnell is a member and Jeremy Dear, the General Secretary of the NUJ, was present. True enough, they said to me, "Why do you not have a conscience clause in the Code of Practice?" and I said, "We have to draw a line between what is basically an employment practice between a newspaper editor and a journalist and what rightly belongs to our Code" and what we said—and Tim was there as well at this meeting—was "So, we are not going to interpose ourselves at the PCC on employment matters and become an

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employment tribunal, but what we do insist on . . .”, and this is spreading, I hope, pretty widely around the UK, “[. . .] is that all journalists including editors should have as a matter of course written into their contracts respect for the Code of Practice”. I said that is the main campaign of the PCC in this respect. Mr Dear, General Secretary of the NUJ, was there saying, “That is great”.

Mr Toulmin: That is correct.

Sir Christopher Meyer: We thought we had resolved that matter with the NUJ but it has come back again like a Jack-in-the-box.

Q182 Mr Hall: What about third party referrals?

Sir Christopher Meyer: In principle, we look at third party complaints with a great deal of care. We do not rule them out absolutely. There is a feeling in the land that we will never look at them, we might look at them. What we are more concerned about is a first party complaint rather than a third party complaint, so that if a third party complains about something which has happened to somebody else, the direct subject of the story, we would go back and check with the first party to find out whether they wish to pursue the complaint and if the first party says, “No, I do not want to do that”, then we will turn down the third party. I can give you an example of this.

Q183 Mr Hall: No, I think that is perfectly okay. Compensation?

Sir Christopher Meyer: We do not do money. If we did money we would have lawyers, if we had lawyers the whole blinking thing would come to a grinding halt. Every now and again as part of a conciliation process and we resolve a complaint the editor will make an *ex gratia* payment for whatever reason, but that is not the same thing as compensation.

Q184 Mr Hall: Ombudsman?

Sir Christopher Meyer: We are the ombudsman.

Q185 Mr Hall: You are?

Sir Christopher Meyer: We are the ombudsman and another one of the reforms that we introduced—

Q186 Mr Hall: Part of the make-up of the Press Complaints Commission is that you have got editors on the board itself so that is taking self-regulation right until the end if you are not independent, is it not?

Sir Christopher Meyer: Mr Hall, I am not quite sure where to start.

Q187 Mr Hall: Well, you have not got a lot of time.

Sir Christopher Meyer: Very quickly, on the matter of independence, yes, we have editors on the board of commissioners because one of the bases of our operation is that the buck stops with the editor and it is right that editors drawn from all over the land, not just national newspapers, should be there to provide their viewpoint when we come to discuss matters. A key thing, the moral heart of this, is that they are in the minority and the majority of the board of commissioners comprises publicly appointed lay commissioners who have no

connection whatsoever with the newspaper industry, plus the fact that the permanent staff at the PCC, a dozen of us give or take, have never been employed in journalism and I do not want anybody to be working on our staff who is any way previously beholden to the newspaper industry. That is why we are independent.

Q188 Chairman: Can I move on to the number of complaints that you receive and what happens to them. It has been suggested that the fact that the number of complaints upheld has steadily fallen is a mark of your success. On the other hand, the number of complaints that you receive has been rising steadily and the vast majority are resolved without any formal adjudication. You will have heard the comments from witnesses earlier that whilst it may be obviously in the interests of the complainant to resolve a complaint, there is a wider public interest that the PCC should lay down markers, they should publish adjudications, they should produce case law which other newspapers can then see and be guided by in future and that is simply not happening now.

Sir Christopher Meyer: It is happening, Chairman, and I beg to differ, if you allow me to do so. On the matter of setting down standards publicly and very visibly, all our adjudications are published on our website. The website has a full compendium of all adjudications made and people can refer to that very easily.

Q189 Chairman: The adjudications have fallen to a trickle.

Sir Christopher Meyer: May I go through my critical path as quickly as I can. Again, as a result of changes introduced in 2003 we now have a booklet called *The Editor's Handbook*.

Mr Toulmin: The Code book.

Sir Christopher Meyer: Sorry, the Code book, which effectively in summary form brings together the jurisprudence around each clause of the Code so that journalists, but not only journalists, can see how we have implemented the Code over the last 16 years. I would like Tim to speak on the point about the arithmetic of this. There is one very important point, there is almost a direct arithmetic correlation between the decline in the number of adjudications and the rise in the number of resolved complaints. I would simply point out to you that in 2006, last year, we resolved, to the complainants' satisfaction, more complaints than we had ever done in our entire history.

Mr Toulmin: May I say a point or two about the charge that we adjudicate too few complaints. It ignores two things, firstly the subject matter of the complaint and, secondly, what the complainant actually wants. I did not hear in that criticism of the PCC anything about the complainant's wishes. A lot of the time what they want is very quick, discreet resolutions, sometimes in the paper, prominent apologies and so on. They do not want to pursue it to full adjudication. Secondly, some of the types of things we are dealing with, the subject matter is not sufficiently grave to merit a whole adjudication, it is

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more suited to the type of internal resolution that you were hearing about earlier. There is a third point which is that every press council or press complaints commission in the world which starts out and then gets to the maturity that we have has exactly the same experience. There are a lot of adjudications in the early years setting the boundaries, then they become less necessary as the culture changes within the industry and also editors make increasingly good offers. If the offer that the editor makes to the PCC is inadequate we will proceed and adjudicate and uphold the complaint. In virtually every adjudication we make which criticises the editor it has involved at some stage an offer made by the editor, we do not simply accept everything to be resolved just because some form of offer is made.

Q190 Chairman: You say that you have set boundaries as a result of experience, in actual fact the number of complaints has been steadily rising so it is not the case that those boundaries cause the newspapers now to know what is acceptable and what is not, the difference is that you are not adjudicating, you are resolving. Those resolutions are actually all breaches of the Code, are they not?

Mr Toulmin: They may well be, yes, they probably are breaches of the Code, but in any system of conciliation you do get editors going the extra mile and actually sorting out something to the satisfaction of the complainant where it may not necessarily be a breach of the Code if it has ended up being considered around the table with the full board. That is one of the other advantages of having a system of conciliation where there is not a winner-takes-all outcome and you can bring two parties together.

Q191 Chairman: Are you concerned that there appears to be a creeping privacy law coming in through the courts operating the Human Rights Act and the European Convention? Certainly one of the explanations which has been given for this is the fact that the courts have felt that they have to intervene more and more because the Press Complaints Commission has not been establishing a clear body of its own rulings.

Mr Toulmin: I think that is extremely unfair and Chris will no doubt expand on that. The volume of privacy cases that we deal with is enormous compared with the courts. The range of what we do on privacy is much greater than what the courts consider, it runs right through from early stage inquiries through to publication, decent remedies for people that does not invite the type of scrutiny that the courts would inevitably bring. As to concerns, it is no secret that there are people within the industry who are concerned about the power vested in a very small number of judges to prevent information from coming out. If you look at the totality of what is going on in privacy complaints and resolution, the overwhelming majority of things are still going on through the PCC despite the fact that the Human Rights Act has now been around for quite a large number of years.

Sir Christopher Meyer: I think the only thing I would add to that is that if you look at recent privacy decisions, they are often interpretations of the law of confidence or confidentiality, I never quite know which term is right. If you are sitting in the editor's chair, and I sometimes try and put myself in that position, and you look at the totality of these decisions in the last two or three years, I think one of the things that does strike you is their incoherence, it is very hard to link them all together and have a clear sense of what they are trying to say, whereas I think if you look at the hundreds of privacy decision rulings that we make every year—we did several hundred last year—there is a clear corpus of “jurisprudence”. Whatever may be going on in the legal world, there may be genuine cause for concern here, there is a role for the law and there is a role for us and we should not see it as a zero sum game.

Q192 Chairman: Would you accept that certainly recent rulings by a small number of judges do mean that the role of the law seems to be getting bigger and bigger and it is beginning to intrude on to your area?

Sir Christopher Meyer: It may do and one should not be complacent about this. Some of these cases to which you refer are, at the moment, subject to appeal so we do not know what is going to pop out at the other end. I think there are intrinsic advantages on the privacy front to encourage people to come to us which they are in increasing numbers. It goes back to something I heard when you were interrogating witnesses previously. One of the great advantages of coming to us if you are a complainant is, unlike in the courts, you are not turned over in public time after time after time so that the original sin, if you like, is not endlessly compounded by adversarial public conflict between the prosecuting attorney and the defending attorney. As long as we can do that and it is free and you do not need a lawyer, I believe people will keep on coming to us in very big numbers.

Q193 Rosemary McKenna: Can you tell us a bit more about the work that you do to proactively prevent publication? Can you prevent publication? If someone comes to you to say, “Look, this is going to be published, I do not think it is in the public interest”, can you do anything to help in those areas?

Sir Christopher Meyer: Tim will develop this. What I would say is that one of the lessons that we drew, and you were there, from the last hearing of this Committee in early 2003 was that although it was always a bum rap that we were just reacting and did not act proactively, nonetheless, one of the lessons that we drew from the previous hearing four years ago was that we needed to do more proactively and I think we really have done that. A lot of the work involves, for example, at times of great tragedy like 7/7, before anybody gets harassed by a journalist making sure that we are using the Cabinet Office as a disseminating unit, going to hospitals, going to centres for victim support, making sure that they are liberally supplied with the literature and the instructions on how to complain and how to deal with harassment. We do this time and time again to

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anticipate events where indeed vulnerable people may feel themselves under threat. We have the ability through the so-called desist order to stop harassment. You have had an extensive discussion about Kate Middleton and one of the things that we did immediately after her birthday scrum was to make sure that the desist notice went around all the newspapers and I think there was direct cause and effect there. Most of the time we do this for people who lay no claim to celebrity at all, I think we had about 30 which we did last year. We issue guidance notes, we are on the road all the time evangelising, teaching and explaining what it is we do. The other thing we do is we almost go to the seed corn if you like, go to universities and colleges, and hold seminars that teach how the system works, so we are out there.

Q194 Rosemary McKenna: You will be surprised to know, therefore, that I did a trawl of members of both the Parliamentary Labour Party and the Opposition and very many of them, including Government Ministers, had no idea that they could come to you prior to a story being published, which I think is certainly an area of concern for me and which we can deal with. If that is the case, are you having fewer cases brought to you because people do not know and do you need to do more?

Mr Toulmin: It is important to say that I think the PCC has no powers of prior restraint, we cannot simply order a newspaper not to run something just because somebody phones us up but to answer your question, do things change, are they altered, do stories or pictures not appear after the PCC's intervention, I think it is fair to say that does happen, and that is the editor taking a decision under the Code not to proceed. We are available 24 hours a day, we give advice both to people who phone directly to us who may be in the papers about how they can talk to editors and journalists and also we have calls from editors themselves saying, "Give us some advice here, what are the boundaries likely to be?" Things either get changed or do not appear as a result of that sometimes. We are equally concerned to hear if people are genuinely encountering problems that they do not know how to get hold of us. Christopher and I met a couple in Liverpool at our open day last year where they had clearly encountered press harassment and I think we were upset to hear that they had not known about us because we would have been able to deal with it in an instant. Clearly, there is more to do there.

Q195 Mr Evans: I want to finish up on the Goodman case if I can. In light of everything that has gone on, are you yourselves happy that the practices that were utilised there are not widespread?

Sir Christopher Meyer: One can never know but what one can do is introduce better procedures, tighter guidelines, higher standards, and that is the purpose of the investigation which we are now actually in the middle of. I suppose after Goodman and Mulcaire were sent to jail and Coulson resigned we could have sat back and said, "Well, the law has taken its course, that is it", but we initiated an

investigation and it is going to have three stages. First of all, with the new editor of the *News of the World*, which Mr Hinton referred to, we are in part trying to establish what went wrong, what are the lessons to be learned and what is now in the light of all that best practice. When we are finished our dialogue with Mr Myler we will then, if you like, use that as a platform to address the entire industry of the United Kingdom—the newspaper and magazine industry of the United Kingdom—to establish what is their practice, what have they got in place to ensure that none of their journalists do the same thing. When we finish that, we will draw some conclusions, discuss them on the board of commissioners, we will then publish a report which will set out our findings, make our recommendations. I cannot quite see the shape of it at the moment but we will probably embrace a set of guidelines drawing from this case to try to ensure that it will not happen again. If I could abolish sin I would but I cannot, so I cannot put my hand on my heart and say it is not happening anywhere, I pray to God it is not happening anywhere. They should learn their lessons from this.

Q196 Mr Evans: You heard perhaps what I said earlier on about the Chris Tarrant case as well. The manager for Chris Tarrant gave a submission about the way that the family were being harassed following revelations of Chris Tarrant's private life and he says how remarkably effective the PCC were in ensuring that the family were left alone.

Sir Christopher Meyer: Good.

Q197 Mr Evans: Have there been instances whereby people have approached you because of harassment where you think that it has not really worked, that even with your guidance still people are being harassed?

Mr Toulmin: In theory, editors could say when we pass on one of these desist messages we should try to make ourselves available as well to give advice on the back of them. In theory, they could say there is a public interest under the Code for carrying on, there is an urgent need to get answers from this person. In practice that has never arisen. When we have forwarded these messages and talked to editors about their journalists and photographers being there there has not been the case of people continuing. No formal complaint of harassment has then had to materialise. Of course, there may be circumstances where it is necessary for journalists in the public interest to remain asking questions.

Q198 Mr Evans: Kate Middleton has been mentioned time and time again this morning and clearly the "paparazzi scrum" that occurred outside her house on her birthday. Whereas you have clear influence over what happens with journalists and photographers within this country, you have none from outside of this area other than if newspapers domestically decide not to buy photographs or stories because they feel that somebody has breached the Code. Do you want to comment on that, Sir Christopher?

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Sir Christopher Meyer: It is an issue. I think one of the things that we observed with the Kate Middleton case was having sent round the desist order and shut off the demand, if you like, for pictures from the domestic industry, this seemed to have a calming effect on everybody else as well. We know that there are paparazzi out there who are supplying the Spanish market, or the Russian market, or the American market, and we do not have the powers to stop that; I am not quite sure who has the powers to stop that. There is no doubt at all, and I noticed this in early incarnations in my life, that foreign journalists and photographers do tend to feed off what is of interest to the domestic industry. If British newspapers and magazines say, "We are not going to buy these pictures anymore, we are not going to do this", it does tend to shut down a lot of other people. It is not foolproof, it is not failsafe, but it does help.

Q199 Rosemary McKenna: After the scrum all went away there are still photographs being published of the young woman in question out with friends and I think that is such an intrusion on a young person's life.

Sir Christopher Meyer: This is another one of the areas where we have the most animated debate in the PCC on what is legitimate, what is not, what is a public space, what are the expectations of privacy? It was clear as a bell to me, although we never had a formal discussion in the board of commissioners, that making it almost impossible for Kate Middleton to get out of her flat, get into her car and drive safely out of a difficult parking space, there is no justifiable public interest for making that hard for her. Going to a very public nightclub where you know the paps are there in their packs and waiting outside and you know what you are going into, it is the place where celebs go to be photographed, that is a different order of things. What I want to say is that when you issue a desist order you are not saying "no photographs ever anywhere", you cannot say that.

Q200 Rosemary McKenna: It is about the industry being more responsible. Do you think it would help the industry if the PCC would get more support from the industry in terms of dealing with some of the excesses without necessarily having to have a complaint brought to you but by simply the other editors or members of the Commission saying, "Look, there really are some problems here that we have to address"?

Sir Christopher Meyer: I think the editors are quite good at that and I would simply cite what Tim has just said. If you are talking specifically about desist orders and laying off and being able to intervene in a pre-publication way, it is very rare to come across an editor who has blankly said to us—and I cannot think of an editor who has blankly said to us—"We will not do it". You get grumbling and moaning, lots of moaning, I think it is a sign of very good health

when they start moaning about us, I do not want them cuddling us because we are not here to speak for the newspaper and magazine industry of the United Kingdom. If we make them moan and gripe, that is good.

Q201 Rosemary McKenna: But is it effective?

Sir Christopher Meyer: Yes, I think it is effective. The proof of the pudding is in the extraordinary public demand for our services. It is not just about complaints, but all kinds of general inquiries. I think last year we had something around 8,000 general inquiries, people wanting to talk about the media, we have become a kind of citizen's advice bureau. Multi-tasking is what they say nowadays.

Q202 Chairman: Finally, can I turn to a new area for you which may generate even more inquiries. You have recently announced your intention to extend your remit to take in material supplied by newspaper or magazine websites. Is there not a danger that you are going to create a very curious position where the PCC is regulating a small number of websites that happen to be attached to newspapers, Ofcom is regulating some material that is provided by broadcasters and then there is a complete wild west beyond that which is not being regulated by anybody at all?

Sir Christopher Meyer: I think Tim, who is our audio-visual guru and expert, who had the foresight two years ago to start discussing this because we were going to have a regulatory vacuum, if I may pass to him.

Mr Toulmin: I think at its heart this is about public confidence both in the PCC and in the industry. If the industry is supplying these services online and it is getting into audio visual material then I think that consumers, and the industry also agrees, need to know that the material that happens to be transmitted in a slightly different way from the written word on the website is also subject to its same standard. Also, if you are the person concerned, if you have got some sort of video that concerns you or the spoken word or whatever it is, it is only fair that you are able to complain in the same way and that the same standards and the same restraints apply on the part of the industry. Actually, there should be a commercial benefit to the industry as well because they are effectively saying that their information is rather purer than as you referred to it, the wild west, there are all sorts of extraordinary things out there which are broadly known to be unreliable which cannot be regulated and neither should they be so we think it is in everybody's interest. With regard to Ofcom, there may be grey areas as we go forward. This is early days, we are in dialogue with Ofcom and have been for some time. They have no ambition as far as I know to regulate newspaper websites. If those grey areas at any point give rise to a problem then we have sufficient good relations to be able to talk to them about it.

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Q203 Chairman: The likely implementation of some form of the Audio-visual Media Services Directive, which is talking about establishing rights to reply is going to complicate this further presumably?

Mr Toulmin: Maybe, but that has got some way to go. I think that the industry is in a strong position having made clear without any direct immediate threat to it that it is going to extend the remit of the

PCC, to be able to argue that it has taken responsibility already and there is no need for any legal controls, but we will see how that Directive progresses.

Q204 Chairman: I think that is all we have. Thank you very much.

Sir Christopher Meyer: Thank you, Chairman.

Written evidence

Memorandum submitted by Robert Henderson

I make a submission regarding the Committee's investigation into the self-regulation of the press. I would also welcome an opportunity to appear before the Committee and give evidence orally.

I made four separate complaints to the PCC between 1995 and 2003. The first three complaints directly concerned me, the fourth related to the editor of *The Sun*, Rebekah Wade who admitted before your Committee that while employed as an editor by News International she had paid policemen for illicit information.

In the case of the three complaints which directly affected me, I made considerable efforts to get a right of reply from the editors before approaching the PCC. This was always refused. Consequently, I have never had any opportunity to refute the innumerable libels I have suffered nor reveal to the public the generally immoral behaviour of the journalists I have dealt with or who have written about me.

The details of the cases, all of which involved very serious breaches of the PCC code of practice, are contained in my email of 11 July 2006 to Professor Robert Pinker CBE, once acting chairman of the PCC and now described on his business card as "International Consultant—Press Complaints Commission", and the accompanying documents sent in that email—copies of these documents are below this submission.¹ As you will see from the documents, Professor Pinker publicly promised at a meeting of the Campaign for Press and Broadcasting Freedom in June 2006 to look into my dissatisfaction with the way the PCC had handled my complaints then failed utterly to honour his promise—he refused even to reply to my submissions to him.

Professor Pinker's behaviour is symptomatic of the PCC's general behaviour, which in my extensive experience is dishonest in the extreme. In all four cases which I submitted they refused to send the complaints to the full Commission for adjudication—this is a common PCC practice which the Committee needs to bear in mind when considering the statistics for cases dealt with, statistics which only cover those which get to the full Commission. Any case which does not get to the full Commission is consequently censored out of the public fold.

A favourite trick of the PCC's when refusing to send a case for adjudication is to rely on article 53.5 of the PCC's Memorandum and Articles of Association which runs "The Commission shall not consider a complaint which it believes to be frivolous or which it believes to be inappropriate to entertain or proceed with for any other reason." In short, they can dismiss any case without giving any meaningful reason. They used this get out over my complaint against the *Mirror*.

The director of what is now MediaWise, Mike Jempson, a normally cautious man who deals in restrained language (and one who has appeared before your Committee), was so enraged by the PCC's behaviour in this case that he wrote to the PCC on my behalf thus:

"The *Mirror* accused Mr Henderson of being a dangerous racist who had committed a criminal offence. He has been charged with nothing, and now he is being prevented from having his version of events weighed against the allegations published in one of the largest circulation newspapers in the country [. .].

"We may be dealing here with an extremely and embarrassing case, but that should be no reason for deciding it would be inappropriate to proceed to adjudication [. .]. It is small wonder that there is public distrust of the PCC if what claims to be an 'independent' adjudicating body insists that the Commission itself has the ultimate discretion as to how complaints should proceed. It would be interesting to see how that line would go down at judicial review." (Mike Jempson Letter 14 January 1998 to the PCC).

The other favourite tricks the PCC pulls are claiming that they cannot take a case because it is potentially the subject of legal action (even if a complainant offers to give them written assurance that they will not be taking action they use this) or is the potentially the subject of a police investigation (they continue to plug this line even after the police have said they will be taking no action).

The PCC is simply a fig leaf for the press. It is worse than useless because it provides a specious appearance of a means of redress for the individual. I am consequently strongly in favour of seeing it abolished. However, I do not favour an official body adjudicating because I am one of those rare people who actually believe in free expression. What is needed is a statutory right of reply. That would balance the equation by allowing both sides to put their case, whilst maintaining freedom of expression.

A statutory right of reply (RoR) is the thing of journalistic nightmares. That tells you it is the best remedy for those who cannot afford to sue for libel. But the media is looking a gift horse in the mouth for a RoR would provide the strongest guard against any government desire to formally regulate newspapers and to

¹ Not printed.

further interfere with broadcasters, because an effective cheap means of rapid redress available to everyone, including politicians incidentally, capsizes the prime argument for state regulation. A RoR is the perfect non-political remedy for media abuse because it is a self-sustaining and self-regulating mechanism.

Costs could easily be kept low. First, by making libel the only reason for refusing a RoR and then only for that part of a proposed reply which was libellous. Second, by empowering Small Claims Courts to decide whether a claimed libel exists and, if the court does not agree that it does, to order the newspaper or broadcaster to publish the disputed reply. There should be no higher court appeal against the Small Claims Court's decision unless the appellant pays both sides' costs. This would allow justice while preventing those seeking a RoR from being intimidated out of their right by the threat of heavy costs.

How would it work?

The qualification for a RoR would be simple and objective: a media outlet has printed or broadcast material about an individual.

In the case of newspapers I would give a respondent 300 words as an automatic right and another 500 words for every 1,000 words published about him or her over 1,500 words. The respondent's reply should be printed on the same page as the story to which they are responding. If the newspaper responds to a reply then the person responded to would get another RoR.

Broadcasting is more problematic but a written reply by the person criticised could be read out on air. Where the person has the confidence to speak for themselves, they should be allowed to broadcast their reply.

Practical fears

The media will say that this is completely impractical, that their papers and broadcasts would be full of nothing but replies. In fact, the general experience of the introduction of new opportunities offered to the public is that there is an initial burst of activity which soon settles down to a hard core of those willing to make the effort. If the introduction of a right to reply proved the sociological odd man out and the media was overwhelmed, the system could be reviewed.

A narrow RoR would be worthless. A RoR should not be limited to inaccuracy. There is often no easy way of proving the truth or otherwise of ostensible "facts". If a RoR was restricted to inaccuracy, the media would assuredly undermine it by arguing interminably.

Then there is opinion. This is often more damaging than inaccuracy. Moreover, there is no clear distinction between fact and opinion. Suppose I write of an actress that "she is a whore" that is a statement of fact which, in principle, can be tested objectively. But what if I write "she has the morals of a whore"? Is that fact or opinion?

The present non-legal remedies

These are both cumbersome and unfair. For example, the Press Complaints Commission (PCC) is comprised entirely of people drawn from the media or from those associated in some way with the media, and the organisation is funded by the press. Unsurprisingly, a non-celebrity complainant to the PCC rarely succeeds.

But this misses a larger point. No matter how formally honest any media regulating body was, it could no more serve the public generally than the legal profession can serve the general public in actions for libel where there is no legal aid.

The numbers of complaints actually considered formally by the PCC and the broadcasting authorities is minute, running into a few hundred a year—most complaints never get a full hearing or investigation. If the public began to use these bodies enthusiastically they would be overwhelmed.

The effect on the media

Faced with an immediate published response to any inaccuracy or abusive opinion and the possibility of having to submit themselves to public examination in a small claims court, journalists and broadcasters would cease to be cavalier about what they write.

The present relationship between the media and anyone they choose to criticise is analogous to someone who binds a man and then punches him. It is not a contest but an act of cowardice.

February 2007

Supplementary memorandum submitted by Robert Henderson

As promised after the Select Committee hearing of 6 March, I enclose below the correspondence relating to Rebekah Wade and Piers Morgan receiving information from the police.² Wade admitted paying for it and Morgan can only plausibly have obtained it by payment.

The first set of correspondence relates to my complaint to the PCC who refused to act. The second set consists of letters to the police who refused to respond. The third set contains Piers Morgan's letter to the PCC.³ The PCC refused to meaningfully act on his admission, as did the police—I made a complaint to the police and their "investigation" did not include interviewing either Morgan or anyone else at the *Mirror*.

There are a couple of other points arising from the hearing. The first is the question of the number of complaints to the PCC which are settled. What the PCC figures do not reveal is the number of cases which are neither resolved without a PCC adjudication nor with an adjudication. A large proportion of the cases are simply thrown out by the PCC without meaningful reason. A favourite PCC trick is to use article 53.5 of the PCC's Memorandum and Articles of Association which runs "The Commission shall not consider a complaint which it believes to be frivolous or which it believes to be inappropriate to entertain or proceed with for any other reason." In short, they can dismiss any case without giving any meaningful reason.

The nature of the cases adjudicated and even more those few which find for the complainant tell their own story: most concern local and regional papers not national papers and no finding against a national newspaper is ever made which in effect says that serious libel has occurred.

The second point relates to the Information Commissioner. I have had substantial experience over the past ten years of both the various Information Commissioners and their predecessors the Data Protection Registrars. All holders of these offices have behaved in exactly the same way: they have gone after the small fry and avoided like the plague disputes involving those with power, wealth and influence. You had an example of that with Richard Thomas on 6 March, who happily admitted that he did try to prosecute the journalists associated with Operation Motorman. His explanation, that counsel's opinion said it would not be in the public interest, is simply a fudge. Public bodies commonly use a tamer QC to get them out of a hole by providing such advice. (I write as a retired civil servant).

March 2007

Memorandum submitted by The Campaign For Press and Broadcasting Freedom (CPBF)

The CPBF was established in 1979. It is the leading independent membership organisation dealing with questions of freedom, diversity and accountability in the UK media. It is membership-based, drawing its support from individuals, trade unions and community based organisations. Since it was established, it has consistently developed policies designed to encourage a more pluralistic media in the UK and has regularly intervened in the public and political debate over the future of press regulation in the United Kingdom.

Does self-regulation by the press continue to offer sufficient protection against unwarranted invasions of privacy?

1. The CPBF supports the right to privacy as laid down in Article 8 of the European Convention on Human Rights: "Everyone has the right to respect for his private and family life, his home and his correspondence". This right is not, of course, absolute, and has to be balanced against other rights, not least the right to freedom of expression as enshrined in Article 10 of the ECHR. It is vitally important that the media possess the right to publish material which is in the public interest, and there are certainly occasions when this right trumps the right to privacy. However, in far too many cases the right to privacy, whether of a public figure or of an ordinary member of society, has been trampled upon not in the public interest but simply on the grounds that it is of interest to certain sections of the public (which is another matter entirely) and will thus sell newspapers.

2. In point of fact, complaints regarding privacy account, on average, for just over 12% of the total complaints made to the PCC in any one year, with complaints about intrusion accounting for an average of 3.66% of the total. This does not necessarily mean, of course, that people do not care about press invasions of privacy; it may well be the case that they see no point in complaining to the PCC and/or have more faith in other means of redress. Ever since the courts found themselves unable to restrain the *Sunday Sport* from perpetrating a grotesque invasion of the actor Gordon Kaye's privacy, judges have been gradually but determinedly developing a privacy tort out of a combination of confidentiality legislation and the ECHR. (It is, of course, this which lies behind newspapers' strident and ill-informed campaigns against the Convention, although they lack the honesty to say so, hiding instead behind the ludicrous and threadbare pretence that they are protecting Britain from "foreign" interference). In the Campaign's view, the British press has only

² Not printed.

³ Not printed.

itself to blame for this state of affairs, one which the PCC could have largely prevented were it an effective regulator. We thus do not regard self-regulation by the press as offering sufficient protection against unwarranted invasions of privacy.

If the public and Parliament are to continue to rely upon self-regulation, does the Press Complaints Commission Code of Practice need to be amended?

3. In the Campaign's view, the Code itself is an unobjectionable document which needs not amending but enforcing. In order to realise how little relationship it bears to what appears in the national daily and Sunday press one has only to read it, and then read the papers themselves. The first thing that one will rapidly realise is that whilst Clause 1(iii) worthily intones that: "The Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact", across the press the distinction between editorial and comment has largely collapsed, with front page stories in papers such as the *Sun*, *Express*, *Mail* and others frequently reading as strident opinion pieces. Indeed, Britain's papers are far better described as viewpapers rather than newspapers—and ones which offer an extremely narrow range of views at that.

4. If the Code is honoured far more in the breach than in the observance, then the situation regarding how the Commission deals with actual complaints is even more seriously flawed. First of all, a large number of complaints are rejected as falling outside the scope of the Code. That this has not led the PCC to change the Code so as to be able to address matters which are obviously of wide public concern suggests that it actually regards the Code as a useful filtering system.

5. Second, despite the number of complaints received almost doubling in 15 years, the number adjudicated by the PCC has fallen consistently year on year. An average of 58 complaints were adjudicated each year in the Commission's first 10 years but an average of only 31 were adjudicated in each of the last six years. 2006 saw a new all-time low, with only 22 complaints being adjudicated. Of these, a mere five were upheld. The Commission, of course, argues that this is a mark of its success, as it exists primarily to effect a process of conciliation between newspapers and complainants. However, we regard such an argument as largely specious, since it ignores the crucial fact that the power relationship between a complainant and a newspaper editor is a massively unequal one, let alone the awkward matter of the "conciliator" being part-financed by the paper which is the subject of the complaint! In short, the PCC's relationship to the industry which it is supposed to regulate is exactly like that of a customer relations department to the company of which it is a part. No-one would call the latter "independent" of the company, and nor can the PCC be considered so.

6. Third, the Code's clause on discrimination seems almost explicitly designed to filter out complaints about the kind of racist and inflammatory reporting which most concerns many people, and which is so besmirching the reputation of the British press on a global level. However, as we note below that the Committee has itself already addressed this question in an earlier report, we will not elaborate further. Instead, we would like to put before the Committee a complaint which the Campaign made to the PCC about what we consider to be racist and inflammatory reporting. We deliberately avoided making this complaint under the clause on discrimination, with all its attendant difficulties, choosing instead the one on accuracy. We tell this story not out of pique, but simply as the best way of illustrating why we have not the slightest faith in the PCC as a self-regulatory body.

7. On 2 August 2005 we complained to the PCC about the front page story of the *Express*, 27 July 2005. Specifically, we complained that the headline "Bombers are all spongeing [sic] asylum seekers" was inaccurate as, at the time that this was written, the identity of two of the suspected bombers was unknown. Furthermore, the headline was inaccurate even if it was taken to apply only to the two alleged bombers (Muktar Said Ibrahim and Yasin Hassan Omar) who had been identified at the time of writing, since neither was an asylum seeker. Ibrahim arrived at fourteen in 1992 as a child of refugees fleeing Eritrea and was given exceptional leave to remain; he applied to become a British citizen in November 2003 and was granted a passport in September 2004. Omar, meanwhile, arrived at eleven as an unaccompanied minor from Somalia; he was also granted exceptional leave to remain, and, in May 2000, indefinite leave to remain. The inaccuracy about their being "asylum seekers" was also repeated in the first line of the article, which stated that: "The suicide bombers who tried to murder scores of Britons were asylum seekers who raked in more than £40,000 in state handouts, it emerged yesterday".

8. A further inaccuracy concerned the repeated failure to put the words "alleged" or "suspected" before each and every use of the words "bomber" and "killer" throughout the text—the *Express*, like nearly every other newspaper in Britain, committed a serious inaccuracy by simply ignoring the plain, if to them inconvenient, fact that, under British law, suspects are innocent until proven guilty.

9. We could also have added, but did not do so, believing that the charge sheet was already quite long and serious enough, that the inclusion of the highly pejorative adjective "spongeing" [sic] in the headline was a clear breach of Clause 1(iii) of the PCC Code which states that: "The Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact".

10. On 4 August we received an acknowledgement which stated, *inter alia*, that: “The editor of the *Daily Express* is currently a member of the Press Complaints Commission. However, as his newspaper is the subject of your complaint he will of course not take part in any discussion or consideration of the complaint by the Commission”.

11. By 30 September, having heard nothing from the PCC, we wrote again, to be told on 4 October that: “The Commission is currently considering this matter and we hope to be able to send you its decision in the very near future”. This turned out to be 15 November, when we discovered that our complaint had been rejected.

12. The Commission pointed out, as it usually does when faced with complaints such as this, that the article’s subjects had not themselves objected to it. The fact that they were in absolutely no position to do so is so obvious as barely to need stating. More important, in our view, is to draw attention to the Culture, Media and Sport Committee’s fifth report of Session 2002–03, *Privacy and Media Intrusion*, whose section devoted to “Proactivity and Third Party Complaints” argued, *inter alia*, that the acceptance of third party complaints “is as important in issues of prejudicial and pejorative references to minority groups as it is on privacy matters”. The *Express* headline about which we complained is a textbook example of just such a reference.

13. The PCC, however, produced a second excuse for inaction on our complaint. This concerned the relationship of the offending headline to the article itself. The PCC pointed out that: “While the Commission had previously censured newspapers for front-page headlines that have been insufficiently clarified or qualified by the following article—particularly by text that appeared within the body of the newspaper—it did not consider that that this example raised a similar breach of the code. The terms of the headline were clarified in the body of the article on the front page—that the two men had previously been “given sanctuary” by Britain and had therefore been involved in seeking asylum—and the Commission considered that readers would not have been misled as a result”. However, as noted above, the article itself, as well as the headline, claimed that the men were asylum seekers. Furthermore, the PCC’s suggestion that being “given sanctuary” and seeking asylum are synonymous is both specious and, in itself, highly inaccurate. It is also remarkably hypocritical, coming as it does from a body which, in October 2003, issued a statement on refugees and asylum seekers which warned that: “The Commission is concerned that editors should ensure that journalists covering these issues are mindful of the problems that can occur and take care to avoid misleading or distorted terminology”. It is, however, extremely significant that this is precisely the view of the editor of the *Express*, Peter Hill, who, when he appeared before the Joint Committee on Human Rights on 22 January 2007, stated that: “The word ‘asylum seeker’ is a bit of an odd one because what we are really talking about is the system of sanctuary—people who come to this country and are fleeing persecution and genuine threats are effectively seeking sanctuary, in the way that people once sought the sanctuary of the church”.

14. The PCC also defended the *Express* on the ground that it was “expressing a view about particular people connected with a recent news incident”, which, since the item purported to be a news story, and a front page one at that, would appear to be completely at variance with the Commission’s own Code of Practice which, as noted above, states that: “Newspapers, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact”.

15. That it took the PCC more than three months to come up with such sophistry is surely quite remarkable, and most certainly gives the lie to two of the components of its claim to be “fast, free and fair”. We reproduce without comment Roy Greenslade’s observation in the *Telegraph* that: “This is a shoddy decision and I hope reports that it follows a threat by the editor of the *Daily Express*, Peter Hill, to resign his membership of the PCC if its ruling went against him are untrue”. But whatever the shenanigans inside the PCC which led up to this tardy, threadbare and intellectually bankrupt judgment, the lessons for editors from this exercise in excusing the inexcusable are clear for all to see: as far as the PCC is concerned, inaccurate headlines are fine as long as the inaccuracies are repeated—not to say embroidered—in the main body of the text. And editorials masquerading as front page news get the green light too. In this context we draw attention to a headline in the *Express*, 3 January 2007, “How the liberal elite is trying to gag us on asylum racket”, which was occasioned by the above-mentioned Joint Committee having the temerity to request Hill to appear before it to discuss press coverage of asylum seekers, and which was the subject of specific criticism by committee member Lord Lester of Herne Hill.

16. In the Campaign’s view, then, the main problems with the PCC Code are that it contains too many self-denying ordinances such as the discrimination clause, that its procedures are opaque and thus open to abuse by editors, that it is not a neutral umpire between two sides, and that it adjudicates far too few complaints. We would argue, firstly, that measures need to be taken to make self-regulation work effectively, so that the PCC becomes a self-regulatory body which is taken as seriously by the press as is the Advertising Standards Authority by the advertising industry. Such a body would need to possess the power to impose meaningful and substantial penalties, and to involve at senior level working journalists with a genuinely reflexive, self-critical attitude to the industry. Any re-vivified PCC would also have to stipulate that journalists must have individual legal protection to enable them to refuse assignments that they believe are in breach of the PCC Code. Many journalists (including some on the *Express*, who have actually complained—unsuccessfully, inevitably—to the PCC about material in their own paper) are as unhappy as members of the public at the kinds of stories which routinely appear in British newspapers, sometimes, indeed, under

their own by-line. However, in the hyper-competitive environment of the British press it is frequently virtually impossible for journalists to withstand pressures from editors to run certain kinds of stories, editors whose first loyalty is to circulation, profit and the proprietor.

17. However, if the industry fails to make effective self-regulation work, then steps should be taken to establish a body, independent of both industry and government, which has the responsibility for overseeing press standards and protecting journalistic independence, and which has powers, under statute, to enforce its decisions where negotiation and conciliation fail.

Should existing law on unauthorised disclosure of personal information be strengthened?

18. As noted earlier, the right to privacy is being developed on several fronts at the moment, the current case involving Niema Ash's book on Loreena McKennitt providing a good example of one such development. In this context we noted with particular interest the remark by media lawyer Mark Stephens in *Press Gazette*, 5 February, to the effect that: "Tabloids are going to have to reinvent the staple of the Sunday morning, and I think we are going to be down to vicars and choirboys again. Celebrities who can afford expensive lawyers and QCs are going to be shielded from rigorous examination, whereas Joe Public, who can't afford lawyers, is going to be the new victim of the Sunday morning media". The idea that papers might simply desist from publishing all such stories and concentrate on serious news is, presumably, quite unthinkable.

19. It is our view, as stated above, that the press and the Press Complaints Commission have only themselves to blame for this state of affairs. The irony is, of course, that laws developed in response to circulation-boosting, profit-driven sensationalism and prurience will undoubtedly make more difficult and put at risk serious journalistic investigation and reporting which is in the public interest.

20. Meanwhile the Department of Constitutional Affairs is seeking to increase penalties for revealing information protected by the Data Protection Act, and we have just seen *News of the World* associate editor Clive Goodman jailed for interception of voicemail messages, along with the resignation of his editor Andy Coulson over the same offence. At the same time, *Press Gazette*, *The Times* and the Information Commissioner have all revealed what many have suspected all along, namely that this practice is endemic within the newspaper industry. In these circumstances we find it absolutely staggering that the PCC views the jailing of Goodman and the resignation of Coulson as effectively drawing a line under the matter. Thus there is to be no enquiry into the prevalence of these sorts of journalistic practices at the *News of the World* in particular, nor any investigation into how widespread is phone tapping in, or on behalf of, the industry in general. All, in fact, that the PCC has done is to issue a fatuously anodyne letter asking newspaper and magazine editors to explain the 'extent of internal controls aimed at preventing intrusive fishing expeditions'. This is an utterly futile and completely inadequate response, and we very much hope that the Committee will subject the PCC to rigorous questioning on this subject.

What form of regulation, if any, should apply to online news provision by newspapers and others?

21. Newspapers have of course, from the very birth of Ofcom, hotly insisted that it should not have the slightest power over online newspaper content. However, Ofcom should be severely criticised for its decision last year simply to forego any control over online versions of newspapers, and the Press Complaints Commission should surely be formally censured by this Select Committee for pre-empting its deliberations by baldly announcing on 8 February that: "Following industry-wide consultation it [PressBof] has agreed to extend the remit of the Press Complaints Commission (PCC) to include editorial audio-visual material on newspaper and magazine websites". Apparently MPs and members of the public were not thought important enough to consult, and few, we think, will be encouraged by Sir Christopher Meyer's bland assurance that, as regulated by the PCC, "editorial information in the digital age—regardless of the format in which it is delivered—will be subject to high professional standards overseen by the Commission".

22. If there is a free for all in the area of online newspaper content, established broadcasters like the BBC will risk having their own standards driven ever lower in order to compete with the online versions of newspapers like the *Sun* and *News of the World*. The standards of public service broadcasting, and in particular the all-important requirements for impartiality and balance, could be seriously jeopardised by the effects of politically partisan broadcasting creeping in through the back door. As Marc Webber, assistant editor of *The Sun Online*, put it in *Press Gazette*, 9 February: "We have the ability to provide video which accompanies the agenda of the paper". Precisely—and online content driven by newspaper agendas will, if not properly regulated, increasingly force the public service broadcasters to compete with such content on its own terms. Furthermore, Murdoch has made no secret of the fact that he would like Sky News to become like Fox News, and his newspapers' demands for the present impartiality regulations to be relaxed (thus making this possible) will only increase with the advent of politically partisan online broadcasting by newspapers. And again, a Fox-ified Sky News would almost certainly put considerable pressure on the public service broadcasters to become more opinion-driven and politically biased.

23. Up until now, many newspaper websites have been little more than cut and paste jobs from the hard copy of the newspaper. However, many of these sites are increasingly providing video journalism as well, and it is this innovation on their part which should be of particular concern to regulators. In recent weeks

video coverage obtained by the *Sun* and the *News of the World* (featuring Jade Goody, a 67-year-old woman having twins thanks to IVF, and cockpit footage of the “friendly fire” incident in Iraq) has actually led the established bulletins on television. In future, the video-buying power of the newspapers is going to have a tremendous impact on established broadcasters, and newspaper websites increasingly make full video coverage one of their strong selling points.

24. Nor is this development confined to the national level. For example the *Hull Daily Mail* has daily video news bulletins and employs thirty video journalists. On the one hand this may indeed be a real innovation, but it simply cannot be right that that site works under a totally different set of rules to a BBC local tv or radio station. What kind of fair competition can there be between a regulated and an unregulated news provider? Furthermore, if local newspapers, many of which are parts of powerful and well-resourced national and even international newspaper conglomerates, are going to be allowed to enter the local television arena in this unregulated fashion, this will without a shadow of doubt discourage and endanger the kind of local initiatives envisaged by Ofcom in its 2004 *Review of Public Service Television and Broadcasting*, in which it stated that: “Emerging digital technologies offer rich potential for the future to develop local, regional and national services that meet consumer-citizen needs considerably more effectively than the current model of provision by the main networks”.

25. In our view, online versions of newspapers should therefore come within the regulatory scope of Ofcom, but with a lighter regime than for conventional broadcasters. There may be a case for suggesting three tiers of regulation. Should this come about, however, there would need to be very clear signposting, so that members of the public could know which kind of website they were visiting, and which kind of regulatory regime was governing it. The tiers could be as follows:

- Broadcasters using public airwaves, and especially those funded by a licence fee, such as the BBC. These would need to meet the highest standards, which are already enshrined in their own guidelines. These guidelines should also apply to their websites too.
- Online versions of newspapers. These would need a greater degree of freedom than the above but cannot expect to be entirely exempt from some of the basic regulations which already apply to broadcasters, for example forbidding output which is racist, sexist or encourages religious intolerance. There should also be a requirement that online versions of newspapers should offer balanced coverage during national and local elections.
- Free standing websites and weblogs. These would be subjected to a lighter touch than online versions of newspapers. Campaigning websites, whether for pressure groups or political organisations, do need the freedom to express themselves adequately.

February 2007

Memorandum submitted by Paul Vaughan

My name is Paul Vaughan. I am the Managing Director of PVA Management Limited, a long established agency and management company which looks after the interests of a number of high profile individuals who work not only in front of the camera and microphone, but also in senior production capacities behind them.

In this context, I am the manager of Chris Tarrant, currently best known perhaps as the presenter of the television programme “Who Wants to be a Millionaire”. Unfortunately Chris is also well known in the context of the divorce proceedings that are currently being brought against him. I have represented Chris for nearly thirty years. I also know his wife Ingrid well, and I am the godfather of their 15-year-old son, Toby who attends a local school on a daily basis.

Chris and I are very well aware of the maxim regarding heat and kitchens and while we would all wish otherwise, we do realise and to some extent accept that one of the prices that has to be paid for a high profile is the incessant and amazingly intensive interest shown by the press in every move, literal and figurative, made by any public figure “in the news”.

However, this highly intrusive laser-like spotlight tends to fall, quite unjustly, on those close to the subject; in this case on Ingrid Tarrant and her children. Remaining in the family home following the break-up which saw Chris remove elsewhere, Ingrid found herself for weeks on end under siege by at least thirty individuals; reporters, television and stills cameramen, stringers and other individuals.

This meant that they were forced to conduct their daily lives behind closed curtains; the press pointing cameras and specialised microphones at the house which is close to the public highway. Furthermore, when Ingrid was obliged to go out to the shops or to take Toby to school, she was subjected to an onslaught of flashlights before being pursued in her car. On a number of occasions, in trying to get away from the pursuers, perilous situations occurred and both she and those with her in the car—notably Toby—were put in danger. I understand that there was one occasion on which her car actually left the road and damage was done to its suspension.

Believe me that the circumstance I relate above were but the tip of a most considerable iceberg occasioning considerable concern to all, particularly to Chris who wanted to do all that he could to reduce the press pressure which was telling most seriously on Ingrid and his family in terms of health.

Despite our having explained all of this to individual editors and courteously requested them to “call off the hounds”, the press presence and concomitant pressure actually increased, with a posse of increasing size literally camped day and night outside the family home in Esher. It was at this stage, having also approached the police that, as a matter of last resort we decided to approach the Press Complaints Commission. I say last resort as we did not wish to be seen to be bleating and to bring down even more pressure from those who might have felt that they had been reported to the Headmaster!!

I was surprised though much relieved that I was able to speak at once on the telephone with the PCC Director, Tim Toulmin and the Assistant Director, Stephen Abell. I was able to give the facts verbally before being asked to follow these up in written form. I was given both gentlemen’s direct telephone numbers for office hours and also for out of office hours. It was to the great relief of all that within a matter of hours, the caravan at Esher began to pack up and disperse. Ingrid was no longer tailed in her car; the dangers of that being removed at a stroke.

I hardly need to add in conclusion that Chris and I, and indeed Ingrid and her family, have good reason to be inordinately grateful to the PCC. We could not have asked for a more proactive or more urgent response to our problems.

February 2007

Memorandum submitted by Professor Julian Petley

I note from the current issue of *Press Gazette* that the Select Committee of which you are Chairman is thinking of holding an inquiry into whether press self-regulation is currently working successfully.

I’m writing to you in a number of capacities—as co-chair of the Campaign for Press and Broadcasting Freedom, a member of the board of *Index on Censorship*, a former journalist and trustee of MediaWise, and also as the convenor of an MA in journalism here at Brunel—to encourage you most strongly to hold such an inquiry.

Over recent years, I have carried out a fair amount of work on the Press Complaints Commission; I am enclosing some of it and I hope that you will find it of interest.⁴ As you will see, it is all extremely critical of the Commission. The conclusion to which I have come, regretfully, is that the Commission is so far from being independent of the medium which it is supposed to be regulating that its only real function is as a PR device for the press industry. It produces a great deal of rhetoric about the importance of preserving press freedom, which is indeed vital to any democracy, but what it appears to mean by this, in the last analysis, is simply the freedom of press owners do with their newspapers exactly what they will. It also appears to be a freedom (and a power) quite devoid of any concomitant sense of responsibility. Furthermore, by repeatedly failing to criticise what most people regard as the excesses of the press, it actually weakens the case for press freedom (in the proper sense of the term) in the eyes of the majority. This is hardly a healthy state of affairs in a democracy.

I should stress that in no way am I advocating greater censorship of the press—either via statute or by the PCC. Indeed, I am a particularly firm supporter of the “publish and be damned” principle. However, the problem is that the PCC is quite incapable of damning anything remotely effectively—unlike, for example, the Advertising Standards Authority, which is a successful, respected, self-regulatory body with its own teeth, and ought to serve as a model for the PCC.

February 2007

Memorandum submitted by the Newspaper Society

1. The Newspaper Society represents the regional newspaper industry. Its members publish around 1,300 regional and local newspapers throughout the United Kingdom.

2. British people are among the most avid newspaper readers in the world. 83.7% of all British adults (40 million people) read a regional newspaper, compared with 66% who read a national newspaper. Since 2000, total readership has increased by 1,087,000 readers. Regional press has a high solus readership; 26.7% of those who read a regional newspaper do not read a national daily. Readership of weekly paid-for titles alone have grown by 17% since 1994.

3. The UK regional press is developing its services for its local readership and local audiences across a burgeoning portfolio of print titles, websites, niche magazines and broadcast platforms.

⁴ Not printed.

4. Websites, podcasts, mobile phones and e-editions allow people to access news and entertainment on the move, whilst blogging enables readers to get directly involved with their newspaper. Video streaming is used by an increasing number of publishers, to provide news, sport and local information. These platforms are proving increasingly popular with the communities served by the regional press.

5. The past year has seen the launch of at least 16 new regional press titles. As well as 1,303 regional and local, daily and weekly titles, the regional press now has over 600 stand-alone magazines and niche publications, over 800 websites, at least 28 radio stations and two television stations.

6. Whatever the manner or media of delivery, the focus of the regional press remains on editorial coverage of the issues that matter to their titles' readers, investigating, reporting, analysing, commenting and campaigning on life in their localities. The regional press is trusted by its readers. Its publishers and editors work hard to maintain that trusted relationship with their readers—and know that their titles' integrity can only be maintained by real commitment to professional and ethical standards in each and every issue published.

7. Regional press journalism, print and online, is carried out within the constraints of ever growing law and an adaptable system of self-regulation, responsive to new developments.

8. The regional newspaper industry strongly supports the system of press self-regulation. Regional press publishers and editors have always played a full part in the institutional structure, contributing to the system's funding, determining rules over and above the law that govern investigation, newsgathering and reporting and contribute to the industry expertise upon the independent complaints body which determines complaints under the Code. Most importantly, the regional newspaper industry is committed to the effective operation of the system, through adherence to the Code of Practice with publishers ensuring its implementation in their titles, print and online, by their editors, journalists and external contributors, swift attention to complaints and full co-operation with the Press Complaints Commission if the matter proceeds to investigation and adjudication.

9. The Press Standards Board of Finance (PressBof), modelled on the self-regulatory system established by the advertising industry in 1974, is charged with raising a levy on the newspaper and periodical industries to finance the Press Complaints Commission. This ensures that the system operates without charge to the complainant. PressBof therefore oversees the funding system in a manner which ensures that individual regional newspaper publishers contribute to, and are part of, the self-regulatory process. The regional press has three representatives upon the PressBof board, the NS director and two publishers, one of whom is the current PressBof chairman.

10. The Press Complaints Commission, the independent authority which adjudicates upon complaints, is completely separate from and independent of the funding mechanism. The majority of the members are lay members and have no connection with the industry. Two members of the Commission are drawn from the regional press but of course discharge their responsibilities independently of their industry background.

11. The Editors Code Committee draws up the Code of Practice by which the newspaper and magazine industries voluntarily agree to be bound. The Committee includes four editors from the regional press to ensure that it draws upon the experience and expertise of all sectors of the newspaper industry.

12. Any evaluation of self-regulation involves appreciation of all levels of operation, not just the adjudicatory process of the Press Complaints Commission—and an understanding of the broader legal context within which it exists.

13. Well over half of the provisions of the Code of Practice deal with some aspect of privacy and protection of the vulnerable. This is endemic in clauses governing privacy in respect of private and family life, home, health, correspondence; harassment; intrusion into grief or shock; protection of children, (including stricter rules than those imposed by law upon the identification of children in cases involving sexual offences), protection of those in hospitals and similar institutions against intrusions into their privacy, reporting of crime (including protection of relatives and friends of the accused, child witnesses and victims); restrictions on the use of clandestine devices and subterfuge; protection of victims of sexual assault; discrimination and the avoidance of publication of irrelevant material and prejudicial or pejorative references; and the protection of confidential sources. In order to help editors apply the clause in practice, the PCC has published guidance notes, the Editors Code Book and case adjudications.

14. The self-regulatory system requires editors' and journalists' day to day compliance with the Code and its application to the way in which they investigate, report and publish any story in every issue. The regional press publishes thousands of stories every week in accordance with those standards.

15. Regrettably, as in any legal or self-regulatory system, breaches of the Code do occur, but the system is designed to address and deal with complaints quickly and fairly. Regional newspaper editors and journalists are part of the communities which they report: if mistakes are made, their readers are swift to inform them and regional newspaper editors will investigate and resolve matters swiftly. This may be done by publication of an apology, correction, follow up story or letter—or private correspondence and meeting where appropriate. If the matter cannot be so resolved, the complainant is free to complain to the Press Complaints Commission, without waiving their right to take legal action. The self-regulatory system is easily accessible to the public and all complainants benefit from a fast, straightforward and free system, in contrast to the complexity and cost of civil or criminal proceedings. The PCC conciliates the vast majority of

complaints to the satisfaction of the complainant. If the matter proceeds to formal investigation, regional newspaper editors fully comply with the PCC in resolution of complaints and publication of any adverse adjudications.

16. The system of self-regulation is much more flexible and adaptable than the law. It is tailored to journalism and the realities of the newsroom and so can quickly accommodate new factual situations and new media developments. Editorial behaviour can be quickly informed, adapted and changed by adjudication and guidance. The courts have already endorsed this role of the PCC. Support for any changes to the Code or the PCC's remit is effective because new restrictions are not externally imposed, but understood, voluntarily agreed and then implemented by the entire industry. For example, the industry agreed a decade ago that the Code should apply to online versions of newspaper titles. As a result of recent technological developments, newspapers' titles have now begun to feature audiovisual material. PressBof has therefore recently announced the industry's agreement to extension of the Code to editorial audiovisual material published upon titles' websites.

17. The inquiry is also seeking views on the regulation of online news provisions and whether the unauthorised disclosure of personal information should be strengthened.

18. The Newspaper Society supported the Communications Act 2003 and the Government's and Parliament's acceptance that there is no need for special controls over internet content, including online news provision, in addition to the numerous laws that already govern publication. The Society also welcomes the robust criticism of the European Commission's proposals for revision the Television Without Frontiers directive by the House of Lords European Union Committee, and the UK Government's continuing attempts to ameliorate the measure. There is also a plethora of legislation and other legal restrictions that already govern disclosure of personal information, in some circumstances irrespective of its previous public availability, triviality, prior publication or the public interest in its release. The restrictions upon freedom of expression and the right to receive and impart information are growing rather than decreasing. There is no need for further regulation or harsher sanctions to control the media.

19. There is already a complex mesh of criminal and civil law which restrains newspapers' investigation, newsgathering and publication, in print or online. It grows ever greater as the Government and legislature devise new statutory restrictions and new offences, while the courts develop the common law. At the moment, Parliament is already considering Bills that could impose new restrictions upon publication, the Government proposes yet more bans on investigation and reporting, while other potentially restrictive measures are wending their way through the EU institutions.

20. Online and print newspapers are already subject to defamation laws which lay the burden of proof upon the defendant and which were considered so harsh on defendants that London became the libel capital of the world and US courts once refused to enforce judgements. There are laws specific to election libel and reporting. The libel laws impose very stringent restrictions upon publishers and editors of online material and expose them to continuous global liability, because the legal regime has yet to be reformed or to adapt to the realities of 21st information technology.

21. Online and print newspapers' role as the public's watchdog in the courts is already restricted, because it is subject to numerous exceptions to the principle of open justice: there are the statutory and common law constraints of the contempt laws, bolstered by automatic and discretionary reporting restrictions, backed by assorted sanctions of fine and even imprisonment. These govern all levels of criminal and civil proceedings including family matters. Numerous laws allow both press and public to be banned from the court room. There are already a myriad of laws under which courts can postpone or prevent media publication of the whole or part of proceedings, ban media publication of claims made in mitigation, prevent the identification by the media of anyone involved in the court proceedings—accused, victims, witnesses, children and young persons, vulnerable adults, parties to the proceedings. Any alleged victim of a sexual offence has lifelong anonymity from the moment the allegation is made. There are other access and reporting restrictions applicable to inquiries and tribunals. Misconduct short of breach of the existing laws, and which neither amounts to contempt nor breach of reporting restrictions can now result in crippling third party costs awards against the media or anyone else. Such laws have a wider effect upon the local press than simply withholding a name or other detail—it can render a trial un-reportable, or essentially permit the courts to convict and imprison an anonymous defendant, contrary to the presumption and rationale of open justice.

22. There are already tough laws to protect unauthorised disclosure of state information to and by the print and online media—the Official Secrets Acts 1911–89; plus the still vast apparatus that supports a culture of official secrecy—an array of statutory bans on access or disclosure, exceptions to public rights of access to hearings, meetings and documents—and the Government is planning to restrict the use of the Freedom of Information in a way that will particularly impact upon the press, MPs, researchers and campaigners. Regional newspaper editors can describe how data protection legislation has been all too commonly cited as a reason for refusal of information, sometimes with dubious justification.

23. The print and online media is already subject to a vast array of laws which prevent unauthorised disclosures of information—contrary to government assurances at the time that they were not aimed at the media nor intended to restrict reporting or investigative journalism. Such laws and the threats of legal action are already deployed to prevent inconvenient media inquiries and impose prior restraint on publication, irrespective of truth, triviality or real public interest. There are now very fast developing laws to protect the

private life and correspondence of individuals—bolstered by Article 8 of the European Convention on Human Rights, ECHR case law and the Human Rights Act 1998—the laws of confidence, developing law on misuse of private information, EU inspired legislation protecting personal data such as the Data Protection Act 1998, the Regulation of Investigatory Powers Act 2000; offences to prevent unauthorised official disclosures. There are criminal and civil laws against a wide category of behaviour that might fall under very wide definitions of “harassment”, including the Protection From Harassment Act 1997 as amended and strengthened, new offences of criminal trespass, civil trespass, nuisance and public order offences. There are specific laws governing presence and indeed taking photographs in particular locations, with more on the way. There are the intellectual property laws. Yet the police, the security services, local authorities a range of other officials and concerns have a wide range of powers to require disclosure or obtain information from media organisations, without adequate regard to protection of confidential sources or journalistic material and the ultimate effect of such demands upon the media’s ability to investigate, newsgather and report. Most recently, the Newspaper Society and other media organisations submitted detailed evidence to the Information Commissioner and to the Department of Constitutional Affairs on their consultation on increasing the penalties for breach of the Data Protection Act. The Newspaper Society is disappointed by the Government’s apparent failure to address properly the legal problems relating to freedom of expression raised by its proposals.

24. The print and online media is also already subject to laws against terrorism, including against the glorification of terrorism, against incitement of religious or racial hatred or violent disorder or other criminal acts. There are already laws against the publication of obscene material, including violent material, with more planned that the Government recognised could affect war atrocity reporting and documentaries. These govern both print and online publication and affect newspapers’ ability to report third party material.

25. This is not even an exhaustive list, but simply examples of the legal restrictions with which journalists and publishers of regional newspapers titles and their online publications have already to comply. The self-regulatory system imposes additional restrictions by way of the Code of Practice and complaints procedure.

26. The Newspaper Society and other media organisations have long advocated both more rigorous pre-legislative scrutiny of proposals to avoid further incremental reduction of freedom of expression and reforms intended to restore freedom of expression.

27. The Newspaper Society submits that self-regulation is effective and provides sufficient protection against unwarranted invasions of privacy, there is no justification or need for further statutory controls, harsher sanctions or strengthening of the laws relating to personal information and there is certainly no need for additional forms of regulation for online news provision by newspapers or others.

28. The Newspaper Society would be happy to comment further or provide further information.

February 2007

Memorandum submitted by the Periodical Publishers Association (PPA)

1. THE PERIODICAL PUBLISHERS ASSOCIATION (PPA)

(a) PPA is the trade body for UK magazine and business and professional media publishers, and in this role welcomes the opportunity to respond to the Culture Media and Sport inquiry into self-regulation of the press.

(b) The association’s membership consists of some 500 members who publish or organise over 4,400 products or services. These include over 2,500 consumer, business and professional, and customer magazines and nearly 1,000 online products.

(c) Many PPA members offer online services, including websites and online versions of print publications. Online publications also encompass consumer, business to business and contract magazines.

2. INTRODUCTION

(a) Magazines are a vast, diverse and inclusive media—more than 28 million people read one of the 170 magazines measured by the National Readership Survey (there are over 3,000 consumer magazines plus more than 5,000 business magazines). In a typical week, 26 million copies of magazines are sold, which equals 40 magazines a second.

(b) PPA is represented on the regulatory body of the press, the Press Standards Board of Finance (PRESSBOF) along with newspapers. PPA members contribute to PRESSBOF via a levy, which combined with the funding from newspapers, ensures secure financial support for the Press Complaints Commission (PCC). The PCC is then mandated to enforce the Code of Practice. The complete independence of PRESSBOF is guaranteed by the inclusion of a majority of lay members.

(c) PPA members play their part in supporting the work of the PCC and it is a stipulation of their membership that they pay toward the funding of the PCC and agree to abide by the Code. Many publishing companies have the PCC Code written in to the contracts of employment of their journalists.

3. COMMUNICATION

(a) PPA ensures that the profile of the PCC remains high by maintaining up to date news and information about the PCC. PPA nominates a senior editor to serve on the PCC and regularly updates members on recent adjudications and any changes to the Code—such as the welcome PRESSBOF announcement that it has agreed to extend the remit of the PCC to include editorial audio-visual material on newspaper and magazine websites.

(b) The magazine sector is also represented on the Editors' Code of Practice Committee and also invites members to make suggestions to the Committee when they undertake the annual review of the Code, about how the Code might be revised to improve the system of self-regulation of the press.

(c) The PCC updates are sent out via a number of channels. PPA has a weekly news update that is sent out to all members and appears on the PPA website. PPA also publishes *Member Briefing*, a magazine that is sent out eight times per year to all members. Further, PPA has a monthly legal update that is sent to senior management and heads of legal and includes a section on the PCC.

(d) The magazine representative on the PCC also attends at least one meeting of the Editorial and Public Affairs Committee of the PPA, to update the editors on any changes and also give details of adjudications.

4. A FREE PRESS

(a) A free press is one of the bastions of democracy and although the magazine industry does not always agree with the PCC's adjudications, it is prepared to accept them over state regulation. Indeed, legislation in this area would be unthinkable.

(b) The importance of the PCC cannot be underestimated. Having an independent content regulator that actually has an understanding of the industry is crucial. The structure of the PCC means that it is independent and balanced. There are lay, magazine and newspaper representatives—but most importantly for the effectiveness of the system is that the PCC is respected by those it regulates.

5. CIRCUMSTANCES OF THE REVIEW

(a) A lot has been made of the recent Clive Goodman case, which has led to questions being asked about the role of the PCC. PPA, however, would submit that the Clive Goodman case was a matter for criminal law—Goodman was jailed under the Regulation of Investigatory Powers Act (RIPA). Laws exist against telephone tapping as well as other offences. The Clive Goodman case has been dealt with at law, satisfactorily and justice has been done.

(b) Instances where an individual, such as Goodman, consciously engages in activities which not only breach the Code but contravene the law are unequivocally wrong. However, it would be unreasonable to suggest that where the criminal law has failed to deter such misconduct a voluntary code of practice should be criticised in such circumstances.

(c) There was also much made of the intense media interest and harassment of Kate Middleton in January 2007. This is an area where the PCC is particularly effective. The Code already has rules against harassment. Once it was made clear that there was no public interest in following and photographing Miss Middleton, the furore died down. Further, News International, the Guardian Group and Hello magazine banned the use of paparazzi photographs.

(d) The PCC Code exists in addition to the law to add value. At the same time, it is over and above the law as the Code covers moral behaviour. The law exists to prevent or deter against crime. The Code exists to ensure responsible journalism and to protect individuals.

February 2007

Memorandum submitted by the Newspaper Publishers Association (NPA)

1. The Newspaper Publishers Association (NPA) represents the national newspaper industry. Its member companies support the independent Press Complaints Commission, which is funded in full by the newspaper and magazine industry through the Press Standards Board of Finance Ltd (PressBOF). NPA members are represented on PressBOF, and their editors serve alongside regional and magazine editors on the Editors' Code Committee which draws up the Code of Practice which is adjudicated upon by the Press Complaints Commission. The Press Complaints Commission is an independent body with a majority of public members who are appointed by an independent Appointments Commission.

2. The Press Complaints Commission and the Code have evolved over the years in response to public concerns, individual adjudications, and the development of online news provision. This is reflected in the guidance notes, Editors Code Book, and the revisions which have been made to the Code, including the recent decision to extend further the PCC's remit to include editorial audio-visual material on newspaper and magazine websites.

3. The Newspaper Publishers Association's members support the adjudicatory role of the Press Complaints Commission and its authority to resolve complaints against newspaper titles by applying and interpreting the Code of Practice. The Code of Practice has at its centre provisions relating to privacy and the PCC has, in a series of adjudications, upheld complaints against newspapers and magazines where complainants' privacy has been breached in an unjustified manner.

4. The Press Complaints Commission's Annual Reports and adjudications demonstrate that the current system provides a no-cost, speedy and practical route for the public to seek redress where there has been an unwarranted invasion to their privacy. The system must be set within its wider legislative and legal context.

5. The Goodman case demonstrates that newspapers, magazines and their employees are subject to the general law of the land. The Press Complaints Commission provides an independent complaints mechanism for newspaper and magazines which is additional to the legal system, and is not in direct substitution for it. Recent developments show that the courts, the Government and the European Union are by accident, or design, adding significantly to the growing body of criminal and civil law which restrains everyone's freedom of expression. Their regressive impact on the news media and their ability to report, to inform, and to hold authority to account has not received sufficient attention from Parliament with the Government failing to follow through on its commitment to establish a freedom of expression audit of legislation.

6. The NPA submitted evidence to the Information Commissioner and the Department for Constitutional Affairs in response to their recent consultations. The Government response, which was made prior to it meeting industry representatives to discuss their concerns, indicates a failure, or an unwillingness, to understand the way in which extensions to the criminal law, without adequate safeguards, have an undermining impact on freedom of expression. The case has not been made for an extension of the law in this or any other area.

7. The Press Complaints Commission has demonstrated its effectiveness in handling privacy complaints, and in evolving its jurisdiction to cover online newspapers' and magazines' editorial content. Recent events do not indicate that there is a need to introduce still further measures which erode freedom of expression. Rather there is a need to assess and understand the cumulative impact of recent UK and EU legislation, and judge made law on the media so as to ensure that the legal regime is not weighted against press freedom and the citizen's right to be informed.

February 2007

Memorandum submitted by The Press Standards Board of Finance Ltd (PressBoF)

PRESSBoF

1.1 PressBoF was established by the newspaper and magazine publishing industry in 1990 to co-ordinate the industry's actions on self-regulation following the Government's acceptance of the report of the Committee on Privacy and Related Matters.

1.2 It is responsible for funding the Press Complaints Commission, appointing its Chairman and providing a ready means of liaison between the PCC and the industry.

1.3 The PressBoF directors, of whom there are ten, are nominated by the industry's trade associations—the Newspaper Publishers Association, the Newspaper Society, the Periodical Publishers Association, the Scottish Daily Newspaper Society and the Scottish Newspaper Publishers Association.

INDEPENDENCE OF THE PCC

2.1 It is important to underline that although the industry funds self-regulation (over £24 million since 1991), mainly through a system of circulation based registration fees, the PCC operates independent of industry influence and at arm's length.

2.2 The PCC has 17 members, with a clear majority of lay members (10) over press members (7). With the exception of the Chairman, its members are appointed by the Appointments Commission which comprises the PCC Chairman, three independent members and the PressBoF Chairman. The latter is the only member connected with the industry.

CODE OF PRACTICE

3.1 The foundation of self-regulation is based on industry support at all levels for the Code of Practice. It is drawn up and maintained by editors serving on the Code Committee and is then approved by PressBoF following consultation with the industry through the trade associations before being ratified by the PCC. It is therefore accepted as the industry's own Code enforced by an independent PCC. A PressBoF recommendation that the Code should be written into contracts of employment for editors and their staff is believed to have been widely implemented.

3.2 The commitment of the industry to the Code and the efficiency and effectiveness of the PCC in dealing with reader complaints are generally recognised as having been major contributors to raising journalistic standards.

3.3 PressBoF and the industry readily understand that if the public and Parliament are to retain confidence in self-regulation the Code must be perceived as being effective. The Code has in fact been updated and clarified on many occasions since its introduction 16 years ago. It is now reviewed annually by the Code Committee who invite suggested amendments from the public and other interested parties. The Code therefore is seen as a live document constantly evolving in light of circumstances.

PRIVACY

4.1 The Code is explicit on such matters as privacy and harassment subject only to where a public interest defence can be demonstrated.

4.2 Instances where an individual, such as Goodman, consciously engages in activities which not only breach the Code but contravene the law are unequivocally wrong. However, it would be unreasonable to suggest that where the criminal law has failed to deter such misconduct a voluntary code of practice should be criticised in such circumstances.

4.3 PressBoF fully supports Sir Christopher Meyer's critical comments regarding the case and the various steps being taken by the PCC to reassure the public that lessons have been learned from this episode.

UNAUTHORISED DISCLOSURE OF PERSONAL INFORMATION

5.1 While PressBoF readily accepts that journalists must comply with the Data Protection Act, it would seriously question the case for greater penalties for breach of the legislation based on the Information Commissioner's reports "What price privacy?" and "What price privacy now?" The circumstantial evidence gathered in 2002 did not necessarily establish any breach of either the law or the Code, or indeed consider whether there may have been a public interest defence. The fear is that custodial sentences would have a chilling effect on investigative journalism.

5.2 Both the Code Committee and the PCC have indicated to the Information Commissioner their willingness to assist in industry wide initiatives—a separate submission about which you have already received—to raise awareness of the issues raised in his reports.

REGULATION OF ONLINE NEWS

6.1 In January PressBoF announced that following industry-wide consultation it had agreed to extend the remit of the PCC to include editorial audio-visual material on newspaper and magazine websites.

The extension was agreed recognising that "on-line versions" of newspapers and magazines have moved on from the internet replication of material that already existed in a printed version of the publication to routinely carrying material not available in print form.

An accompanying Guidance Note explained that the PCC's remit should be seen as covering editorial material on newspaper and magazine titles websites where it meets two key requirements:

1. that the editor of the newspaper or magazine is responsible for it and could reasonably have been expected both to exercise editorial control over it and apply the terms of the Code; and
2. that it was not pre-edited to conform to the on-line or off-line standards of another media regulatory body.

At the time of the announcement, Tim Bowdler, Chairman of PressBoF, commented "It is extremely important that self-regulation should evolve in a carefully considered manner to take account of the developing ways in which our publications, in print and on-line, communicate with readers".

Sir Christopher Meyer added: "The range and quality of digital editorial material offered by newspapers and magazines have expanded at a dizzying pace over the last couple of years. These developments will only accelerate. What the industry has done in announcing this extension of the PCC's remit is to underline its confidence in the system of common-sense regulation that we operate, and to demonstrate to the public that editorial information in the digital age—regardless of the format in which it is delivered—will be subject to high professional standards overseen by the Commission".

GENERAL COMMENT

7.1 PressBoF recognises that the independence and effectiveness of the PCC in addressing the complaints and concerns of the public are paramount in maintaining confidence in self-regulation. It is a measure of its success that through raising awareness of its role and actively seeking more public involvement with and scrutiny of its work, the Commission is widely seen to be achieving its objectives. While it is PressBoF's belief that self-regulation is a successful model enjoying wide support, it fully realizes that there is no room for complacency and that we need to work ever harder to maintain and improve the public's confidence in self-regulation.

February 2007

Memorandum submitted by the Broadcast Journalism Training Council (BJTC)

This submission to the Culture Media and Sport Committee Inquiry into self-regulation of the press, responds to only one question addressed by the Inquiry—"What form of regulation, if any, should apply to online news provision by newspapers and others?"

THE BJTC

1. The Broadcast Journalism Training Council is a partnership of nearly all the broadcasting organisations in the UK together with the main providers of broadcast journalism training—mainly HE based but also including some FE and commercial provision.

2. Our industry funding partners are the BBC, ITV News Group, ITN, IRN, Sky News, C4, Reuters, RadioCentre, NUJ and Skillset, the Sector Skills Council for the audio visual industries.

3. Our role is to discuss and agree standards of training—including content—with the broadcasting industry and with their active participation, then visit, inspect the courses and—if they meet the required standards—accredit them.

4. We have 32 accredited courses with another 40 or so at various stages of application and development, a student cohort of about 1,000—about 800 graduate annually. The BBC for instance recruits about 300 from BJTC accredited courses every year.

5. All the courses are practice and knowledge based, the latter including intensive training in broadcast-based media law, ethics, industry regulation and editorial policy.

6. The BJTC is connected, through Skillset, with Ofcom, DCMS, DEL, QCA and QAA, and has been closely involved in developing policies in areas like education, qualifications, Sector Skills Strategies, training development in Northern Ireland. At the moment we form the working party developing new National Occupational Standards in broadcast journalism via SSDA contracts.

LAW, ETHICS, REGULATION—TWO MEDIA, TWO TRAINING APPROACHES

7. The broadcasting industry requires a heavy emphasis on training in law, ethics and regulation because of the regulatory powers of Ofcom. The imposition of six figure fines, withdrawal of broadcasting licences, unprecedented public criticism of individuals and companies and requirements for peak-time broadcasting of complaints adjudications and apologies, make for a very different culture of operation, reporting, newsgathering, production and publication in broadcasting journalism from that in print-based journalism.

8. Most importantly the regulatory requirement for balance, fairness, due impartiality and accuracy is a major difference in approach between the two media.

9. Areas of required media law knowledge also differ significantly between broadcast and print journalists—visual libel, election law, treatment of children, privacy and human rights, copyright, amongst others.

10. Ethical approaches to journalism also differ significantly—public service broadcasting requirements, discrimination and representation, taste and decency, sensationalism, sourcing news, amongst others. Documents such as the BBC Production Guidelines and C4 Compliance Manual are basic tools in broadcast journalism training and have no real parallel in print media.

11. The BJTC is mainly involved in training for entry level and its standards, developed over 28 years, are now generally accepted as the basic entry level requirements for journalism in the industry. The employers place a high value on the ability to originate news and to tell a story well and safely. Most graduates from BJTC accredited courses are more up-to-date and better trained in areas of law, ethics and regulation than many journalists who entered the industry 10 years ago. This has resulted in the emphasis now being placed on career development training by such as the BBC.

ONLINE NEWS

12. The Communications Act 2003 contains no legislation to enable Ofcom to regulate online news bulletins, but broadcasters operate as though it does. Their approach is exactly the same as if they were broadcasting via their traditional, mainstream platforms.

13. Newspapers, in response to the collapse of classified advertising markets, have rushed headlong into the internet, and even some of the smallest circulation papers round the country, now carry structured tv bulletins on their websites. These bulletins are produced and presented by newspaper journalists with a bare minimum of conversion training, usually no more than framing, focussing, shooting and editing video footage. They have no basis in any of the specialist knowledge at the core of broadcast journalism training referred to above.

14. Some of the results have been appalling. Two examples—in NW England last November, an ill-advised youth inserted a giant Guy Fawkes rocket into his own rectum and lit the blue touch paper. The results were video-recorded on mobile phones by his friends and within hours appeared on the local newspaper website. Late last year a youth fell, apparently drunk, into Grimsby fish dock and drowned, while his friends again video-recorded the event on their mobile phones. The footage duly appeared on the local paper website where the dead man was clearly identifiable.

15. There may well be a case for protecting freedom of expression for individuals on the Internet. Privately produced websites, blogs, vlogs, podcasts, even those devoted to showing Saddam Hussain being hanged, or terrorist hostages being executed in gruesome detail, are impossible to regulate. However, the BJTC believes that commercially owned UK sites and the point at which self-expression crosses over into journalism must be regulated. A line must be drawn.

16. The BJTC also believes that the standards required to regulate these sites must be those which at present apply to current UK mainstream broadcasters.

17. While understanding that the PCC Code of Conduct has its merits, the BJTC does not believe it matches Ofcom requirements.

18. Neither does it believe the PCC, nor its constituent newspaper members, have the competence or the will to deliver effective responses or sanctions to members in breach of the Code. History amply demonstrates the cynicism with which constituent members and the PCC itself treat the Code, the lack of fairness with which they treat readers with legitimate complaints and the unwillingness to impose meaningful sanctions.

19. Their defence—that to do otherwise threatens the freedom of the press—simply does not stand up to close examination. It is our belief that effective regulation encourages best practice in journalism. Balanced, fair, impartial and accurate reporting should be the aim of all journalists and this principle forms the basis of what the BJTC and broadcast journalism stands for. To permit self-regulation of online journalism by the PCC would perpetuate the double standards by which the quality of UK journalism is judged.

20. In our view the Communications Act 2003 should be updated to permit Ofcom to extend its role to online news provision.

February 2007

Memorandum submitted by Department for Culture, Media and Sport (DCMS)

INTRODUCTION

1. The Committee last considered these and other issues during the 2002–03 Session with their inquiry on Privacy and Media Intrusion.

2. This paper will be considering what improvements and clarifications there have been in the legislation, in the self-regulatory system and in voluntary action since then. One thing that has not changed is Government support for self-regulation. We stated that support in our memorandum for the 2003 inquiry, reiterated it in evidence to the Committee and again in our response to the Committee's recommendations. We believe that a press free from state intervention is fundamental to UK democracy. We would not therefore seek to interfere with what a newspaper or magazine chooses to publish. Nor do we believe that the press should be subject to controls on their freedom of expression that are any stricter than those that apply to the rest of the population.

3. This does not mean that we believe that there should be no restrictions on what may be published, as we, as a society, recognise that restrictions have to be placed on our freedom of expression in some circumstances. We will be discussing some of these restrictions and considering their effectiveness in this memorandum.

4. Context is important and we should note the enormous numbers of newspapers we still read in the UK. Around 12 million national papers are sold every day with sales rising to 13 million for Sunday papers. And these figures do not take into account our thriving local and regional newspapers, and magazines. Considering the enormous number of articles, words, journalists and readers, it is perhaps surprising that there are so few complaints.

5. In 2005 (the last year for which full statistics are publicly available) the Press Complaints Commission (PCC) received 3,654 complaints. 12.5% of those cited concerns about privacy. This makes it the second highest category of complaints, although it is a long way behind the front runner, “accuracy”, which attracted 67.4% of complaints. Nonetheless, almost 500 complaints on the matter is a substantial number, even though not all of these were actually matters for the PCC to investigate.

6. We do not wish to diminish the experience of those that have had cause to make complaints, or to diminish the seriousness of the occasions where the Editors’ Code of Practice or the law has been breached. And we do not believe that anyone would suggest that there is no room for improvement. However, the mechanism for securing that improvement must in our view be consistent with the maintenance of an appropriate balance between the need to protect individual privacy and freedom of expression.

7. The Committee has indicated that it will be looking at four areas during the inquiry:

- whether self-regulation by the press continues to offer sufficient protection against unwarranted invasions of privacy;
- if the public and Parliament are to continue to rely upon self-regulation, whether the Press Complaints Commission Code of Practice needs to be amended;
- whether existing law on unauthorised disclosure of personal information should be strengthened; and
- what form of regulation, if any, should apply to online news provision by newspapers and others.

We will look at each of these.

Whether self-regulation by the press continues to offer sufficient protection against unwarranted invasions of privacy

8. It is vital to note that while the Editors’ Code of Practice offers a layer of protection, it is not the only protection. The Code is complementary to the Law. There are various laws protecting different aspects of privacy. For example, the Data Protection Act 1998, the Human Rights Act 1998, and the Regulation of Investigatory Powers Act 2000. Indeed, it was under the powers of this last Act that Clive Goodman of the *News of the World* was jailed for his part in plotting to intercept private telephone messages. It so happens that the Code overseen by the PCC also covers this issue. Its Chairman, Sir Christopher Meyer has made it clear that the PCC deplores this breach of the Code as well as the law. As a general rule, the PCC does not investigate matters if they are sub-judice. This must be right as there is the danger that they could prejudice the outcome of a trial otherwise and find themselves in contempt of court. The Commission had announced that it would conduct an inquiry with the editor of the *News of the World*, but he resigned in the aftermath of the trial. However, the PCC is following up the matter with the newspaper’s new editor, and more widely with other editors of other national and regional newspapers to see what can be done to ensure that this does not recur. It will be publishing a review with recommendations for best practice, if necessary, once its investigation is complete.

9. There have of course been other changes since the Committee’s 2003 inquiry, including changes to the legal structure. The 2004 *von Hanover* judgement in the European Court of Human Rights, for instance, changed the understanding of the circumstances in which one might have a reasonable expectation of privacy. The Court ruled that the public does not have a legitimate interest in knowing where a public figure is (in this instance Princess Caroline of Monaco) and how she behaves generally in her private life, even if she appears in places that cannot always be described as secluded, and despite the fact that she is well known to the public.

10. But the PCC had also been moving in this direction and developing its own “case law” which concluded that, sometimes, one might have a reasonable expectation of privacy even in public places.

11. Newspapers have taken this change on board, and have revised their ways of working so that now, for instance, photographs of celebrities in a public place where they happen to be with their children will usually have the faces of the children pixelated. Indeed, in a recent adjudication, the PCC found against *Hello* magazine after it took and published photographs of a celebrity and her children which were taken on a beach. The magazine undertook not to publish unpixelated photographs of the children again. This is an increasingly common—and welcome—practice across newspapers.

12. Even more recently, *News International* and *Hello* magazine have taken responsible action to announce that they would not be using paparazzi photographs of Kate Middleton in their publications when she was being followed around by photographers while going about her daily life. These actions effectively “killed” the market for these freelance photographers, and meant that Ms Middleton was left alone.

13. Since 2003, when last the Committee considered these matters, the PCC has made 970 rulings that relate to privacy, thereby building up a considerable body of expertise. It has had to consider a formal adjudication in 72 of these cases. In 2006, the average time taken to reach a ruling in a privacy case was 34 days; thus, it offers a speedy alternative to legal options. We look forward to the PCC review and recommendations on how editors should ensure that journalists adhere to the Code.

If the public and Parliament are to continue to rely upon self-regulation, whether the Press Complaints Commission Code of Practice needs to be amended; and whether existing law on unauthorised disclosure of personal information should be strengthened

14. Again, we must point out that self-regulation is not the only protection available; there are other routes, and sometimes it is appropriate for people to take one of the legal options. However, in matters of privacy, for example, they often prefer to use the PCC as it is much quicker than a legal option, much more discreet, and of course, much cheaper.

15. Journalists are not exempt from the law. They must abide by it just as we all do. And from time to time, we consider changes in areas which have an impact on journalism.

16. For example, we have recently completed a consultation exercise on proposals to increase penalties for the deliberate and wilful misuse of personal data under sections 55 and 60 of the Data Protection Act 1998. The proposal to introduce custodial penalties as an option available to the courts was generally welcomed. We will be introducing legislation as soon as Parliamentary time allows, with the intention of creating the availability of a sentence of up to six months' imprisonment on summary conviction, and up to two years on indictment. We believe that the introduction of custodial penalties will be an effective deterrent to all those who seek to procure or wilfully abuse personal data. We also believe that the current financial penalties do not sufficiently deter potential offenders from engaging in the illegal trade in personal information. Nonetheless, in recognition that there are circumstances where the obtaining, disclosing or procuring of personal data can be justified, we will be retaining the current defences including the public interest defence, which may be available in cases of legitimate investigative journalism.

17. Similar beliefs are reflected in the public interest exemption available for many clauses of the PCC Code. If required to do so, an editor must be able to demonstrate that his action or one he has sanctioned is in the public interest. The PCC uses the following definitions of public interest, although it acknowledges that this is not exhaustive:

The Public Interest

1. The public interest includes, but is not confined to:
 - (i) Detecting or exposing crime or serious impropriety.
 - (ii) Protecting public health and safety.
 - (iii) Preventing the public from being misled by an action or statement of an individual or organisation.
2. There is a public interest in freedom of expression itself.
3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully how the public interest was served.
4. The PCC will consider the extent to which material is already in the public domain, or will become so.
5. In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.

18. The wording of the Code is entirely a matter for the Press Complaints Commission, and the Code Committee. It is important to state that the press choose to restrict the freedom of expression available to other people in recognition of the responsibility that comes with that right. We applaud the fact that they do this, and think that it is right for the industry to continue to review the Code and update it, as they have shown that they are ready to do, should that be necessary. Of course, such changes can come into effect much more quickly than changes to legislation would require.

What sort of regulation, if any, should apply to online news provision by newspapers and others

19. The general law applies to online material, just as it would to newspapers and broadcast material.

20. Online versions of newspapers are also covered by the Editors' Code of Practice. Additionally, the Press Standards Board of Finance, responsible for the funding of the PCC, has recently announced that the PCC's remit should be extended to include audio-visual material on newspaper and magazine websites. We welcome this extension. This is in recognition of the fact that online versions of newspapers and magazines are no longer just a simple replication of their printed form. The PCC will oversee material provided that

the editor of the newspaper or magazine is responsible for it (rather than something found by clicking on a link, for example), and that it has not already been edited to conform to the standards of another regulatory body.

21. The websites of broadcasters play an important role in providing online news that is trusted by the public. We believe that the news standards of broadcasters are becoming even more important in an increasingly crowded media landscape.

22. Simultaneous broadcast streams using the Internet fall to be regulated as broadcasting (eg ITV1 over Homechoice), but broadcasters also offer on-demand news services (eg the news websites of the BBC, ITN or Sky). Broadcasters' on-demand provision is not regulated the same way as that which is broadcast.

23. The BBC Agreement specifies that the BBC must do all it can to ensure that controversial subjects are treated with due accuracy and impartiality in all "relevant output", which includes online content. Licences for other broadcasters issued by the independent telecommunications regulator, Ofcom, contain similar provisions for their news and current affairs broadcasts to be accurate, impartial and authoritative but this is not extended to their on-line content. Nonetheless, broadcasters have a strong incentive to maintain their brand quality by maintaining similar standards on-line.

24. We are not aware of any significant complaints that the on-line content of broadcasters is any less accurate or impartial than the news they transmit over the airwaves, so we do not at present propose any changes to the regulation governing on-line news provision by broadcasters.

25. Other "news" provision can extend from international news services which, like broadcasters, will have a strong incentive to maintain or develop widespread trust (an example is Reuters' website) to amateur provision of news or comment. Where there is no business incentive to establish or maintain widespread trust, websites have tended to find their own levels of trust, through self-correcting feedback mechanisms (the most notable example being Wikipedia's "You can edit this page right now" principle). There is no role for Government intervention in such sites, many of which will fall outside UK jurisdiction, but there is a role for Government and industry to promote media literacy so that users approach the web with both confidence and a healthy scepticism.

EUROPEAN REGULATION

26. In December 2005, the European Commission published draft amendments to the Television without Frontiers Directive (TVWF). These would have extended EU content controls to a wide variety of online and new media services with moving pictures. The Commission's proposals specifically excluded "electronic versions of newspapers and magazines", but it was not clear whether they would have covered news sites which operate online only and do not have a corresponding print version, or newspaper and magazine websites which materially differed from their print versions.

27. Following discussions between Member States, in November 2006 the Council of Ministers agreed a General Approach to revising TVWF which covers television broadcasting and "TV-like" services only, ie video-on-demand: the latter would be subject only to basic content standards. The European Parliament has adopted a similar approach. Negotiation of the Directive is continuing and we expect it to last for most of the rest of 2007.

CONCLUSION

28. In the Government's view, the combination of relevant legislation and the Editors' Code of Practice, provides a workable framework to secure an appropriate balance between freedom of speech and the need to protect privacy. That's not to say that newspapers never get it wrong. But we believe that the safeguards in place are the right ones; they are appropriate and proportionate, and they are generally effective.

Memorandum submitted by Ofcom, Office of Communications

INTRODUCTION: THE ISSUES RAISED AND OFCOM'S EVIDENCE

1. The Committee identified four issues on which it seeks evidence:
 - (i) Whether self-regulation by the press continues to offer sufficient protection against unwarranted invasions of privacy.
 - (ii) If the public and Parliament are to continue to rely upon self-regulation, whether the Press Complaints Commission Code of Practice needs to be amended.
 - (iii) Whether existing law on unauthorised disclosure of personal information should be strengthened.
 - (iv) What form of regulation, if any, should apply to on-line news provision by newspapers and others.

2. The questions posed in this inquiry are largely outside Ofcom's regulatory remit. However, as the statutory regulator responsible for protection of audiences against infringement of privacy by television and radio broadcasters, Ofcom is closely concerned with the topics raised. The questions are lent further significance by the current debate in Europe over the revision of the Television without Frontiers Directive (renamed the "Audiovisual Media Services" Directive), which proposes to extend regulation to on-demand television services, regardless of the means of delivery. This Directive will have a significant impact on UK media regulation when it is implemented in the UK. In particular, it is almost certain to require that Video-on-Demand services (VoD), currently self-regulated in the UK, be brought into a statutory or a co-regulatory framework.

3. The Directive does not include any requirements for protection of privacy in relation to the newly regulated class of VoD services. However, it is at least possible that the UK implementation of the Directive will include regulatory protection of privacy in relation to VoD. Such an inclusion would follow the structure of privacy protection in relation to linear services, which Ofcom regulates in the UK, but is the subject of general law in most EU countries. In that case, clarity over the respective domains of statutory regulation, and of the PCC, will be essential. We examine this issue below in section 4.

4. Ofcom is reviewing the efficacy of co- and self-regulatory institutions as a part of its overall programme of work on the future of regulation, and to support the process of implementing the AVMS Directive. The co/self-regulation study will seek to establish a set of criteria by which Ofcom can judge when and how it might be appropriate to delegate particular duties and functions to industry-led bodies. Specifically in relation to the first question posed by the inquiry, we have not undertaken any research into the current self-regulatory model for privacy protection in relation to the Press, and do not have a view as to its sufficiency.

5. However, we do note that the media industry is in a period of particularly rapid evolution at present, with innovative new services, platforms, content and new players emerging. Co- or self-regulatory institutions may be particularly well suited to such dynamic environments, because these types of arrangement involve industry and consumers taking on a central role in the delivery of public policy goals and consumer protection.

6. An innovative new service may both create new risks to consumers and new means through which those risks may be mitigated. Under a co/self-regulatory arrangement, the same industry players who create new services will be able to develop an appropriate regulatory framework to secure consumer protection. Typically, a statutory framework will be less flexible, and offer more limited opportunities for innovation.

7. The recent announcement by the PCC that it is extending its regulatory remit to cover the online services offered by the newspaper and magazine providers is an example of this. The PCC's member organisations have all committed to this new, extended regulatory framework. We comment on aspects of the PCC's proposal below; in this context, the point is that it is to be welcomed that the PCC has been able to act quickly to co-opt industry into the adoption of a new expanded framework, without the need for new legislation.

8. In our evidence below, we respond to the inquiry with:

- an analysis of the current legal position in relation to privacy;
- an account on the role Ofcom plays in relation invasion of privacy; and
- comments on the boundaries of Ofcom's responsibilities and that of the PCC, before and after the implementation of the AVMS Directive.

PROTECTION OF PRIVACY IN UK LAW

9. The European Convention on Human Rights was incorporated into domestic law under the Human Rights Act 1998. Under Article 8 of the European Convention on Human Rights, the UK has an obligation to respect the individual's right to a private life. Although the Convention creates obligations that are owed only by the state and public bodies, judges have concluded that they must also be articulated and enforced in actions between private individuals. This follows from section 6(1) and 6(3) of the Human Rights Act 1998 under which the court, as a public authority, is required not to act "in a way which is incompatible with a Convention right".

10. The effect of this is that citizens can only invoke Article 8 directly in actions against public bodies but not in actions between private parties in private law. In the absence of a domestic law tort of privacy, judges have had to enforce the Article 8 right in private civil actions by adopting the long-established action for "breach of confidence" as a vehicle. Whilst this is still not a fully-fledged "right to privacy" in the sense recognised in many other legal systems, it is spreading to cover a substantial proportion of the "privacy" field. To this end, the four elements of breach of confidence have each undergone some modification and as a result,⁵ the concept of a right to protection from the misuse of private information has developed. This has now become clearly established in English law. This new cause of action involves the following elements:

- (i) The information must be "private"—in other words, there must be a "reasonable expectation of privacy" in relation to the information concerned.

⁵ As set out in *Coco v AN Clark (Engineers)* [1969] RPC 41 at p 47.

- (ii) The defendant knows or ought to have known that the information is private.
- (iii) There is an actual or threatened misuse of the information.
- (iv) The Article 8 “right to respect for private and family life” of the claimant must outweigh the Article 10 “right to freedom of expression” of the defendant. This is determined by carrying out a “parallel analysis” of the position under each Article on the facts of a particular case and then looking at the balance between them (the “balancing exercise”).

11. This right to protection from the “misuse of private information” was first formally established in the case of *Campbell v MGN Ltd* [2004] 2 AC 457 which went to the House of Lords in May 2004 and is spreading to cover an increasing scope of the individual’s personal life and continues to be a rapidly developing area of law. Under this new action, a claimant is able to apply for both interim and final injunctions pre-publication as well as damages for distress, anxiety and inconvenience at full trial.

A “reasonable expectation of privacy”

12. In *Campbell*, Lord Nicholls stated that “Essentially, the touchstone of private life is whether in respect of the disclosed facts the person in question had a reasonable expectation of privacy” (§21).

13. There are three important points to note about this test. Firstly, Lord Hope in *Campbell* stressed that the mind that must be examined is not that of the reader in general, but of the person who is affected by the publicity (§99). Secondly, in considering what falls within the scope of a “reasonable expectation of privacy”, the courts will not only look upon the nature of the information itself but also at the personal circumstances of the claimant and his or her past conduct. In *Douglas v Hello* 2006 QB 125, the Court of Appeal added that “private information is information that is personal to the person who possesses it, and that he does not intend shall be imparted to the general public. The nature of the information or the form in which it is kept may suffice to make it plain that the information satisfies these criteria”. Thirdly, the courts have now made clear that a reasonable expectation of privacy may arise not only in private places but also in public spaces (such as a park, beach or restaurant).

14. The main principle surfacing from case law however is that “private life” is context-dependent and that its nature may differ between individuals and their particular circumstances (“It is a broad term not susceptible to exhaustive definition” (*Peck v UK* (2003) 36 EHRR 41 at 57)). Nonetheless particular categories of information have been recognised by the courts as attracting protection by Article 8, such as: gender identification, name, sexual orientation, sexual life, a person’s psychological experiences, address, health and diet, personal relationships, finances, weddings and other private occasions.

“The defendant knows or ought to have known that the information is private”

15. Unlike an action for breach of confidence, which requires a “pre-existing relationship of confidence” between the parties, an action for the misuse of private information relies on the actual or imputed knowledge of the defendant that the information is private. An obvious example of this is where the defendant has acquired by unlawful or surreptitious means information that he should have known he was not free to use. This means that the primary focus will again be on the nature of the information because it is the defendant’s perception of its private nature that imposes the obligation on him (*McKennitt v Ash* [2006] EWCA Civ 1714 at §15).

The balancing exercise

16. In *Campbell*, it was clearly established that neither Article 8 nor 10 has as such precedence over the other. The test for balancing these two articles in specific cases was refined in the House of Lords in *In Re S (A Child)* 2005 1 AC 593:

“First, neither Article has, as such, precedence over the other. Secondly, where the values under the two articles are in conflict, an intense focus on the comparative importance of the specific rights being claimed in the individual case is necessary. Thirdly, the justifications for interfering with or restricting each right must be taken into account. Finally, the proportionality test must be applied to each. For convenience, I call this the ultimate balancing test.”

17. There is no limit on the type of factors that may be considered in carrying out the balancing exercise and therefore the outcome of this stage will depend entirely on the particular facts of each case. This could involve considerations such as the public interest in the dissemination of the information, public domain arguments, the triviality of the information and the status and conduct of the claimant. In the recent case of *CC v AB* [2006] EWHC 3083 Eady J emphasised that the considerations under the balancing exercise could extend to matters such as the defendant’s motives for publication and even the feelings of individuals who are not parties to the action.

18. The broad concept of “public interest” has been considered a suitable justification for media intrusion of privacy under appropriate circumstances. However, there is no single definition of public interest. Article 8(2) of the Convention identifies some considerations itself, including:

“[. . .] the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder and crime, for the protection of health and morals, or for the protection of the rights and freedoms of others.”

This list is not exhaustive and the courts will be careful to have regard to the media’s duty to inform the public on matters of legitimate public interest, and the public’s right to receive such information. The media plays an important role in putting matters of public interest onto the political agenda and in bringing about necessary changes.

19. The court will consider whether the reasons adduced to justify the disclosure were relevant and sufficient and whether the measures were proportionate to the legitimate aims pursued. In assessing the issue of proportionality, the courts may limit the extent of disclosure by removing parts of the publication to which no public interest attaches. The publication may be narrowed down to include only aspects of the claimant’s private life which it is in the public interest to know (see for example, *McKennitt v Ash* in which injunctions were granted in relation to specific passages of the defendant’s book that were particularly intrusive).

THE PROTECTION OF PRIVACY ON TV AND RADIO

20. In addition to the developing law of misuse of private information, there are two sector-specific regulatory institutions responsible for considering and adjudicating on complaints relating to unwarranted infringement of privacy: Ofcom, and the PCC. This section describes the scope of Ofcom’s responsibilities and powers, and identifies the key differences between Ofcom and the PCC.

21. From the 1960s concerns over media invasions into privacy resulted in a number of draft privacy bills being promoted; since the early 1970s, a number of committees have published reports which have recommended greater regulation of the media. Following this pressure, the Broadcasting Complaints Commission was created, which was replaced by the Broadcasting Standards Commission and whose functions were subsumed into Ofcom.

22. Under section 3(2) of the Communications Act 2003, Ofcom has a duty to apply standards that ensure an adequate protection from unwarranted infringements of privacy resulting from activities carried on for the purposes of television and radio services. Among the considerations to which Ofcom is required to have regard in applying such standards are the vulnerability of children and others whose circumstances put them in need of special protection. Ofcom must also have regard to the need to apply these standards in a manner that guarantees an appropriate level of freedom of expression.

23. Ofcom’s remit covers all UK television and radio broadcasters including all commercial services, S4C and the BBC (in certain areas including privacy). These broadcasters are subject to a broad range of commitments relating to issues such as potentially harmful or offensive content, due impartiality in news, and the need to ensure that any infringement of privacy is warranted,⁶ whether in programmes, or in connection with obtaining material to be included in programmes. The conditions of the licence relating to privacy are laid out in section 8 of Ofcom’s Broadcasting Code and related guidance notes. The relevant sections of the Code are appended to this evidence (Appendices 1, 2).

24. When considering and adjudicating on a complaint of unwarranted infringement of privacy Ofcom’s starting point is always whether a complainant has a “reasonable expectation of privacy”. Ofcom then determines whether in its view (and on the evidence available) that person’s privacy has been infringed. Finally, Ofcom determines whether any infringement was warranted. The greater the public interest in the disclosure of the information the more the scales tilt against protecting the person’s right to privacy.

25. Ofcom’s adjudications are normally published fortnightly in a bulletin on its website. If a complaint is upheld or partly upheld, then Ofcom may also direct the broadcaster to broadcast a summary of its adjudication. Ofcom will normally make such a direction where there has been an unwarranted infringement of privacy in breach of the privacy section of the Ofcom Broadcasting Code and where a complainant’s legitimate interests have been seriously damaged and Ofcom determines a remedy over and above publication in the Ofcom broadcast bulletin to be appropriate.

26. For the most serious cases, Ofcom may consider imposing a sanction on the broadcaster. This might include a direction not to repeat a programme, imposing a financial penalty and ultimately, in the case of commercial broadcasters, Ofcom may consider revoking the broadcaster’s licence.

⁶ In fact, under the Television Without Frontiers Directive (Directive 89/552/EEC, as amended by 97/36/EC) television services available in the UK will either be licensed by Ofcom (or in the case of the BBC and S4C operate in accordance with Ofcom’s regulatory oversight) or be regulated by the originating EU member state’s national regulatory authority (NRA). In practice, all but around 20 of the 500+ channels on Sky, in the largest UK TV platform, are OFCOM licensees or covered by the BBC Trust. Furthermore, channels operating from EU states will typically be covered by legislative rights to privacy, as exist in Germany, France, Italy etc; or where such protection is not in place, as in Ireland, through a specific duty of the regulatory authority.

27. It should be noted that Ofcom also provides complainants and broadcasters with the opportunity to resolve the complaint without the need for adjudication by Ofcom provided the complainant is willing to consider an immediate proposal for redress. Examples of such redress might include, but are not restricted to, the editing of a programme for future broadcasts, an undertaking not to repeat the programme or an apology or correction in writing and/or broadcast.

28. Another important point to note is that Ofcom does not have jurisdiction to deal with privacy complaints prior to a programme being broadcast. The complainant would use the courts for an injunction if they are seeking prior restraint.

Broadcasting regulation and press regulation

29. The role that Ofcom plays in relation to broadcasters is very different to that played by the PCC. As noted above, Ofcom oversees a very broad range of content guidelines, through which it seeks to hold broadcasters to a different type of editorial standards than applies for the press. Most important among the differences is the requirement that news is presented with “due impartiality”. This is in contrast to the press—where, for example, a newspaper may actively campaign on a matter of political controversy.

30. The PCC is therefore considering complaints, whether of accuracy or invasion of privacy etc., in a wholly different context to that which Ofcom’s Fairness and Privacy review process operates.

On-demand TV Services

31. The Communications Act 2003 excluded video-on-demand services from Ofcom’s statutory control, in the expectation that industry would take responsibility for oversight of such services. The VoD industry subsequently created a self-regulatory institution, the Association for TV on Demand (ATVOD), which oversees consumer protection issues in relation to VoD services. The Association’s code does not refer explicitly to invasion of privacy, but does require that content be provided “[. . .] in accordance with the Broadcasting Regulatory Codes prevailing [. . .]” ATVOD might, in principle, therefore consider complaints about invasion of privacy.

32. In practice, because virtually all of the programming provided on VoD services today will also have featured on a broadcast channel, the issue may not arise: complainants would be able to seek redress from Ofcom, in relation to the broadcast of the relevant programme. In the event that a complaint was upheld by Ofcom, ATVOD members would be required by the ATVOD code not to offer on-demand access to the offending programme. ATVOD has not to date received any complaint relating to invasion of privacy, to Ofcom’s knowledge.

AVMS Implementation and on-demand TV

33. The AVMS Directive is a modernisation of 1989’s EU Television without Frontiers Directive, developing and extending the same basic framework. The goal of the 1989 Directive was to protect some minimum standards for all TV services across Europe, in areas including the protection of minors, and the requirement of clear separation between advertising and programming. These common standards were to apply all across Europe hence fostering the development of a pan-European content market.

34. The new AVMS Directive will clarify some of these basic objectives and, critically, extend the Directive’s scope to include Video-on-Demand services. Under the current proposals for the new Directive VoD services must in future be subject either to statutory control—for example by Ofcom—or to a co-regulatory model. The UK’s self-regulatory approach to VoD services is not consistent with the likely requirements of the Directive.

35. There are two aspects to the co-regulatory models allowed under the Directive, which distinguish them from the current UK approach:

- (i) The state must have a formal role in relation to the regulated services. The details of this can vary. One model is illustrated by the regulation of broadcast advertising today. Ofcom has formal powers in relation to advertising, but has contracted out the management of its day-to-day regulatory responsibility to the Advertising Standards Authority. In the main, the ASA handles all broadcast advertising complaints and directions to remove such advertising, however, Ofcom retains backstop powers, for instance in areas of more serious sanctions (eg fines) and approval of broadcast codes. Alternatively, the state’s role can be more limited—for example, defining the duties of the relevant co-regulatory body, and granting accreditation to a satisfactory institution.
- (ii) The co-regulatory system must be comprehensive. ATVOD is a voluntary body—a UK on-demand service-provider is under no legal obligation to join, and may simply decide not to do so. A co-regulatory architecture must capture all relevant services, either through some direct legal requirement that operators join an accredited co-regulatory body, or through a backstop requirement—for example that operators who do not join an accredited body will be subject to direct statutory regulation.

36. We anticipate that the debate over how the Directive will be implemented in the UK will start early in 2007, and run through into 2008. Implementation must be completed by late 2009, assuming that the Directive is in place in early 2008, as seems most likely.

37. One of the issues which must be resolved during the implementation debate is over the approach taken over content regulation in relation to VOD services and in particular relating to complaints of unwarranted infringement of privacy. The AVMS Directive does not cover privacy infringement, possibly because most EU states protect privacy through general law rather than sector-specific regulation. This means that the new regulatory arrangements need not cover privacy for the Directive to be appropriately implemented.

38. However, it will be necessary to choose what privacy protections should exist in relation to on-demand services. There are three options:

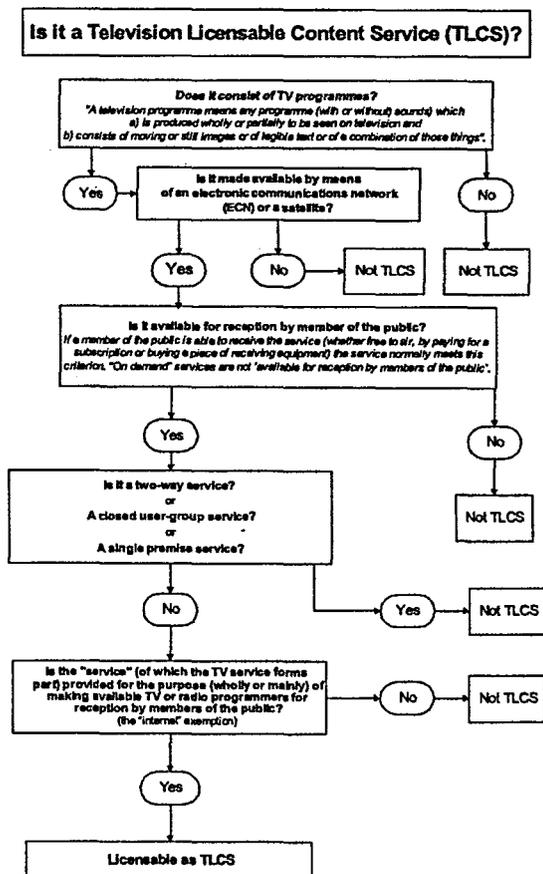
- (i) Privacy protections could be limited to those arising from case law findings (possible whatever approach is taken to AVMS implementation generally).
- (ii) Privacy issues could be included among the responsibilities of an on-demand co-regulatory body, if one is created.
- (iii) Privacy issues could sit with Ofcom, even if other aspects of the regulation of on-demand services were the responsibility of a co-regulatory body.

39. This is one of the many difficult issues which must be addressed during the Government's examination of AVMS implementation options, over the next year.

THE PROTECTION OF PRIVACY IN RELATION TO ONLINE NEWS

40. Ofcom's privacy remit is defined in the Communications Act 2003 to include only television and radio services, however they are delivered. It does not therefore include non-broadcast services like online news. The Act defines Television Licensable Content Services (TLCS) and Radio Licensable Content Services (RLCS), as the subject of Ofcom's oversight. For the purposes of this analysis, we will focus on TLCS, although the same broad framework applies in respect of radio.

41. The definition of TLCS is set out in sections 232 and 233 of the Act (below in Appendix 3). The table below lays out the criteria as a decision tree.



42. The account of these sections most relevant to the current debate comes in the Explanatory Notes, section 526:

“The aim of these provisions is, broadly, to maintain licensing obligations in respect of services which are or equate to broadcasting while excluding Internet services, such as websites or web-casting, from Ofcom’s regulatory powers.”

43. It is possible that there could be a service offered exclusively on the internet which is captured by the TLCS criteria, and which therefore does require licensing. In practice Ofcom has not yet identified such a service (even though there are many online services which market themselves as “television”). Generally, it is clear that the Government’s intention is that online services should not be subject to statutory oversight unless they are actually television channels as defined by the TLCS criteria. Of course, it is possible that an existing television channel is also distributed on-line—but in that circumstance the service is already under an Ofcom licence and subject to Ofcom’s code.

The PCC and on-line news

44. In this context, we welcome the PCC’s recent announcement to extend its self-regulatory oversight to include on-line news services provided by newspaper and magazine operators, as it provides an additional layer of privacy protection in a domain which is currently covered only by the provisions of case law discussed above.

45. We also support much of the detail of the PCC’s proposal, particularly the points made in relation to regulatory overlaps. The PCC states that “[. . .] content pre-edited to conform to the on-line or off-line standards of another regulatory body [. . .]” will remain outside its oversight. For example, it is possible that a newspaper publisher creates and distributes a TLCS, as defined in the Communications Act—as stated above, this would clearly be subject to Ofcom’s statutory control whether it were distributed online or on a traditional television platform.

46. The position is slightly different in relation to a video-on-demand service developed by a newspaper publisher. At present, both ATVOD and the PCC are voluntary schemes, and the publisher could in principle choose whether to operate under the PCC code or that developed by ATVOD.

47. In practice, these issues may not arise, because the services presently offered by newspaper publishers are clearly neither TV channels nor on-demand services.

48. In the future, however, this situation will change as a result of the implementation of the AVMS Directive discussed above. All video-on-demand services, including any offered by a newspaper publisher, would necessarily fall under statutory regulation or under a co-regulatory body, but not the PCC in its current form. This would, of course, have no other impact on the reach of the PCC, which could continue to cover all services from newspaper and magazine publishers other than those singled out for specific oversight by the Directive.

The PCC Code and Live Video

49. Finally, Ofcom has identified a particular issue in the framework proposed by the PCC, relating to live services. The current draft of the PCC framework states that it excludes from their oversight, and therefore from their privacy rules, services which may be “streamed or broadcast or otherwise disseminated live, and incapable of the sort of controls editors normally apply”.

50. It is clear that a live camera feed on television or on the Internet presents particular risks to a broadcaster or publisher—the video distributed is not easily subject to editorial review, and may therefore include material which infringes an individual’s privacy or is otherwise inappropriate. Nonetheless, under Ofcom’s guidelines for broadcasters, live coverage of an event does not create a blanket exemption from compliance with the Broadcasting Code. In considering a complaint, the fact that the issue arose as part of live coverage of an event can be a mitigating factor, but is not an excuse for a breach of the Code. It must be the case that an editorial decision has been taken to redistribute a live camera feed; in doing so, an editor is making some form of editorial judgement, and should take into account the risk that privacy-infringing content be distributed.

51. The issue is that the same live camera feed might be treated differently if offered on a newspaper website, under PCC oversight, and on a TV service under Ofcom control. We have raised this issue with the PCC, who were sympathetic to our concerns. Ofcom have agreed with the PCC that further work will be required to ensure that there is appropriate consistency on relevant boundary issues such as this.

APPENDIX 1

OFCOM BROADCASTING CODE: PRIVACY

FOREWORD

This section and the preceding section on fairness are different from other sections of the Code. They apply to how broadcasters treat the individuals or organisations directly affected by programmes, rather than to what the general public sees and/or hears as viewers and listeners.

As well as containing a principle and a rule this section contains “practices to be followed” by broadcasters when dealing with individuals or organisations participating or otherwise directly affected by programmes, or in the making of programmes. Following these practices will not necessarily avoid a breach of this section. However, failure to follow these practices will only constitute a breach of this section of the Code (Rule 8.1) where it results in an unwarranted infringement of privacy. Importantly, the Code does not and cannot seek to set out all the “practices to be followed” in order to avoid an unwarranted infringement of privacy.

The Broadcasting Act 1996 (as amended) requires Ofcom to consider complaints about unwarranted infringements of privacy in a programme or in connection with the obtaining of material included in a programme. This may call for some difficult on-the-spot judgments about whether privacy is unwarrantably infringed by filming or recording, especially when reporting on emergency situations (“practices to be followed” 8.5 to 8.8 and 8.16 to 8.19). We recognise there may be a strong public interest in reporting on an emergency situation as it occurs and we understand there may be pressures on broadcasters at the scene of a disaster or emergency that may make it difficult to judge at the time whether filming or recording is an unwarrantable infringement of privacy. These are factors Ofcom will take into account when adjudicating on complaints.

Where consent is referred to in Section Eight it refers to informed consent. Please see “practice to be followed” 7.3 in Section Seven: Fairness.

PRINCIPLE

To ensure that broadcasters avoid any unwarranted infringement of privacy in programmes and in connection with obtaining material included in programmes

Rule

8.1 Any infringement of privacy in programmes, or in connection with obtaining material included in programmes, must be warranted.

Meaning of “warranted”

In this section “warranted” has a particular meaning. It means that where broadcasters wish to justify an infringement of privacy as warranted, they should be able to demonstrate why in the particular circumstances of the case, it is warranted. If the reason is that it is in the public interest, then the broadcaster should be able to demonstrate that the public interest outweighs the right to privacy. Examples of public interest would include revealing or detecting crime, protecting public health or safety, exposing misleading claims made by individuals or organisations or disclosing incompetence that affects the public.

PRACTICES TO BE FOLLOWED (8.2 TO 8.22)

Private lives, public places and legitimate expectation of privacy

Meaning of “legitimate expectation of privacy”

Legitimate expectations of privacy will vary according to the place and nature of the information, activity or condition in question, the extent to which it is in the public domain (if at all) and whether the individual concerned is already in the public eye. There may be circumstances where people can reasonably expect privacy even in a public place. Some activities and conditions may be of such a private nature that filming or recording, even in a public place, could involve an infringement of privacy. People under investigation or in the public eye, and their immediate family and friends, retain the right to a private life, although private behaviour can raise issues of legitimate public interest.

8.2 Information which discloses the location of a person’s home or family should not be revealed without permission, unless it is warranted.

8.3 When people are caught up in events which are covered by the news they still have a right to privacy in both the making and the broadcast of a programme, unless it is warranted to infringe it. This applies both to the time when these events are taking place and to any later programmes that revisit those events.

8.4 Broadcasters should ensure that words, images or actions filmed or recorded in, or broadcast from, a public place, are not so private that prior consent is required before broadcast from the individual or organisation concerned, unless broadcasting without their consent is warranted.

Consent

8.5 Any infringement of privacy in the making of a programme should be with the person's and/or organisation's consent or be otherwise warranted.

8.6 If the broadcast of a programme would infringe the privacy of a person or organisation, consent should be obtained before the relevant material is broadcast, unless the infringement of privacy is warranted. (Callers to phone-in shows are deemed to have given consent to the broadcast of their contribution.)

8.7 If an individual or organisation's privacy is being infringed, and they ask that the filming, recording or live broadcast be stopped, the broadcaster should do so, unless it is warranted to continue.

8.8 When filming or recording in institutions, organisations or other agencies, permission should be obtained from the relevant authority or management, unless it is warranted to film or record without permission. Individual consent of employees or others whose appearance is incidental or where they are essentially anonymous members of the general public will not normally be required:

- However, in potentially sensitive places such as ambulances, hospitals, schools, prisons or police stations, separate consent should normally be obtained before filming or recording and for broadcast from those in sensitive situations (unless not obtaining consent is warranted). If the individual will not be identifiable in the programme then separate consent for broadcast will not be required.

Gathering information, sound or images and the re-use of material

8.9 The means of obtaining material must be proportionate in all the circumstances and in particular to the subject matter of the programme.

8.10 Broadcasters should ensure that the re-use of material, ie use of material originally filmed or recorded for one purpose and then used in a programme for another purpose or used in a later or different programme, does not create an unwarranted infringement of privacy. This applies both to material obtained from others and the broadcaster's own material.

8.11 Doorstepping for factual programmes should not take place unless a request for an interview has been refused or it has not been possible to request an interview, or there is good reason to believe that an investigation will be frustrated if the subject is approached openly, and it is warranted to doorstep. However, normally broadcasters may, without prior warning interview, film or record people in the news when in public places.

(See "practice to be followed" 8.15.)

Meaning of "doorstepping"

Doorstepping is the filming or recording of an interview or attempted interview with someone, or announcing that a call is being filmed or recorded for broadcast purposes, without any prior warning. It does not, however, include vox-pops (sampling the views of random members of the public).

8.12 Broadcasters can record telephone calls between the broadcaster and the other party if they have, from the outset of the call, identified themselves, explained the purpose of the call and that the call is being recorded for possible broadcast (if that is the case) unless it is warranted not to do one or more of these practices. If at a later stage it becomes clear that a call that has been recorded will be broadcast (but this was not explained to the other party at the time of the call) then the broadcaster must obtain consent before broadcast from the other party, unless it is warranted not to do so.

(See "practices to be followed" 7.14 and 8.13 to 8.15.)

8.13 Surreptitious filming or recording should only be used where it is warranted. Normally, it will only be warranted if:

- there is prima facie evidence of a story in the public interest; and
- there are reasonable grounds to suspect that further material evidence could be obtained; and
- it is necessary to the credibility and authenticity of the programme.

(See "practices to be followed" 7.14, 8.12, 8.14 and 8.15.)

Meaning of “surreptitious filming or recording”

Surreptitious filming or recording includes the use of long lenses or recording devices, as well as leaving an unattended camera or recording device on private property without the full and informed consent of the occupiers or their agent. It may also include recording telephone conversations without the knowledge of the other party, or deliberately continuing a recording when the other party thinks that it has come to an end.

8.14 Material gained by surreptitious filming and recording should only be broadcast when it is warranted

(See also “practices to be followed” 7.14 and 8.12 to 8.13 and 8.15.)

8.15 Surreptitious filming or recording, doorstepping or recorded “wind-up” calls to obtain material for entertainment purposes may be warranted if it is intrinsic to the entertainment and does not amount to a significant infringement of privacy such as to cause significant annoyance, distress or embarrassment. The resulting material should not be broadcast without the consent of those involved. However if the individual and/or organisation is not identifiable in the programme then consent for broadcast will not be required.

(See “practices to be followed” 7.14 and 8.11 to 8.14.)

Suffering and distress

8.16 Broadcasters should not take or broadcast footage or audio of people caught up in emergencies, victims of accidents or those suffering a personal tragedy, even in a public place, where that results in an infringement of privacy, unless it is warranted or the people concerned have given consent.

8.17 People in a state of distress should not be put under pressure to take part in a programme or provide interviews, unless it is warranted.

8.18 Broadcasters should take care not to reveal the identity of a person who has died or of victims of accidents or violent crimes, unless and until it is clear that the next of kin have been informed of the event or unless it is warranted.

8.19 Broadcasters should try to reduce the potential distress to victims and/or relatives when making or broadcasting programmes intended to examine past events that involve trauma to individuals (including crime) unless it is warranted to do otherwise. This applies to dramatic reconstructions and factual dramas, as well as factual programmes:

- In particular, so far as is reasonably practicable, surviving victims, and/or the immediate families of those whose experience is to feature in a programme, should be informed of the plans for the programme and its intended broadcast, even if the events or material to be broadcast have been in the public domain in the past.

People under sixteen and vulnerable people

8.20 Broadcasters should pay particular attention to the privacy of people under sixteen. They do not lose their rights to privacy because, for example, of the fame or notoriety of their parents or because of events in their schools.

8.21 Where a programme features an individual under sixteen or a vulnerable person in a way that infringes privacy, consent must be obtained from:

- a parent, guardian or other person of eighteen or over in loco parentis; and
- wherever possible, the individual concerned;

unless the subject matter is trivial or uncontroversial and the participation minor, or it is warranted to proceed without consent.

8.22 Persons under sixteen and vulnerable people should not be questioned about private matters without the consent of a parent, guardian or other person of eighteen or over in loco parentis (in the case of persons under sixteen), or a person with primary responsibility for their care (in the case of a vulnerable person), unless it is warranted to proceed without consent.

Meaning of “vulnerable people”

This varies, but may include those with learning difficulties, those with mental health problems, the bereaved, people with brain damage or forms of dementia, people who have been traumatised or who are sick or terminally ill.

APPENDIX 2

GUIDANCE NOTES, SECTION 8: PRIVACY

This guidance is non-binding. It is provided to assist broadcasters interpret and apply the Broadcasting Code. Research which is relevant to this section of the Broadcasting Code is indicated below.

Every complaint or case will be dealt with on a case by case basis according to the individual facts of the case.

We draw broadcasters' attention to the legislative background of the Code which explains that:

“Broadcasters are reminded of the legislative background that has informed the rules, of the principles that apply to each section, the meanings given by Ofcom and of the guidance issued by Ofcom, all of which may be relevant in interpreting and applying the Code. No rule should be read in isolation but within the context of the whole Code including the headings, cross references and other linking text”.

PRACTICE TO FOLLOW 8.1 AN INFRINGEMENT OF PRIVACY IN CONNECTION WITH OBTAINING MATERIAL

Ofcom may only consider an infringement of privacy in the making of a programme if the programme is broadcast.

PRIVATE LIVES, PUBLIC PLACES AND LEGITIMATE EXPECTATION OF PRIVACY

Privacy is least likely to be infringed in a public place. Property that is privately owned, as are, for example, railway stations and shops, can be a public place if readily accessible to the public. However, there may be circumstances where people can reasonably expect a degree of privacy even in a public place. The degree will always be dependent on the circumstances.

Some activities and conditions may be of such a private nature that filming, even in a public place where there was normally no reasonable expectation of privacy, could involve an infringement of privacy. For example, a child in state of undress, someone with disfiguring medical condition or CCTV footage of suicide attempt.

PRACTICE TO FOLLOW 8.11 DOORSTEPPING

Doorstepping may be used (depending on the circumstances) where there has been repeated refusal to grant an interview (or a history of such refusals) or the risk exists that a protagonist might disappear. In such circumstances, broadcaster may themselves require programme-makers to refer to the responsible editor first.

Doorstepping in public places is most frequently and in most circumstances acceptably used in news programmes, where journalists often film and record those in the news without having pre-arranged the interview.

PRACTICE TO FOLLOW 8.12 TELEPHONE CALLS

It is acceptable to record telephone calls for note taking purposes.

PRACTICE TO FOLLOW 8.13 SURREPTITIOUS FILMING OR RECORDING

Broadcasters normally have their own procedures in place to authorise such filming or recording. In such circumstances, broadcaster may themselves require programme-makers to refer to the responsible editor first.

PRACTICE TO FOLLOW 8.14 THE BROADCAST OF MATERIAL GAINED BY SURREPTITIOUS FILMING AND RECORDING

When broadcasting material is obtained surreptitiously, whether in a public or private place, broadcasters should take care not to infringe the privacy of bystanders who may be caught inadvertently in the recording eg by obscuring the identity of those recorded incidentally.

Broadcasters should be aware that “innocent” bystanders can be inadvertently caught (potentially causing an unwarranted infringement of privacy) with the transmission of material gained through surreptitious filming or recording.

Broadcasters should apply the same practice to follow to material shot surreptitiously by others (including CCTV footage) as they do to their own recordings in taking the decision whether to broadcast the material.

PRACTICE TO FOLLOW 8.16 PEOPLE CAUGHT UP IN EMERGENCIES, VICTIMS OF ACCIDENTS, OR THOSE SUFFERING A PERSONAL TRAGEDY

As has been explained in the foreword to Section Eight: “there may be a strong public interest in reporting on an emergency situation as it occurs and [. . .] there may be pressures on broadcasters at the scene of a disaster or emergency that may make it difficult to judge at the time whether filming or recording is an unwarrantable infringement of privacy. These are factors Ofcom will take into account when adjudicating on complaints”. For instance, when news crews arrive at the scene of emergencies etc, they often film and record as much information as possible (which could result in infringements of privacy). However, it is then later, when the broadcaster actually transmits the footage that appropriate decisions can be made in an edit suite in the “cold light of day”. Ofcom has a statutory duty to consider unwarranted invasions of privacy irrespective of the circumstances and genre of programmes. Nevertheless, in the light of a complaint, Ofcom will always take the full circumstances into account as well as the context in which the original footage was obtained.

At funerals, programme-makers should respect requests that they should withdraw.

Broadcasters should also respect any reasonable arrangements made by the emergency services to supervise media access to victims of crime or accident or disaster, or their relatives, in the immediate aftermath of a tragedy.

PRACTICE TO FOLLOW 8.17 PEOPLE IN A STATE OF DISTRESS

Even if grieving people have been named or suggested for interview by the police or other authorities broadcasters and programme makers will need to make their own judgements as to whether an approach to such people to ask them to participate in a programme or provide interviews may infringe their privacy.

PRACTICE TO FOLLOW 8.22 PERSONS UNDER THE AGE OF SIXTEEN AND VULNERABLE PEOPLE

A child of five has a very different view and understanding of the world around it than a 15 year old teenager has. Questions need to be appropriate to both age and development whether the child or young person is taking part in a factual programme or an entertainment programme.

Care must be taken to not to prompt children and that they should be allowed to speak for themselves. Questioning that is likely to cause distress should be kept to a minimum.

Memorandum submitted by The Sunday Times

1. *The Sunday Times* has long believed that the most effective means of regulation is self-regulation. We believe it is always preferable to have all parties agree voluntarily to a code than to have a set of rules imposed. We treat this code extremely seriously and have it written in to the terms of employment for our journalists.

2. As managing editor of *The Sunday Times* I have had the responsibility, delegated by the editor, to act as ombudsman on complaints from individuals or institutions about the content of our newspaper. As such I have a close working knowledge of the Press Complaints Commission (PCC) and its evolution in recent years.

3. Given that John Witherow, the editor of *The Sunday Times*, is a former member of the PCC who now sits on the code committee, and Les Hinton, executive chairman of *News International*, owner of the newspaper, chairs the committee, it is not surprising that our newspaper takes seriously any complaint it receives.

4. All complaints are investigated by me. This is likely to entail the interview of reporters and scrutiny of notes and tape-recordings. A conclusion is discussed with the editor in advance of a formal response to the complainant. All complaints are handled in this manner, not just those made through the PCC.

5. Should the newspaper have made a mistake in any article, or if any comments have been distorted or taken out of context, they will be corrected or clarified. The culture of the newspaper is such that any inaccuracy, however seemingly insignificant, is willingly corrected. Our readers have come to expect this vigilance and regard it as a sign of confidence in the newspaper.

6. *The Sunday Times* fully co-operates with the PCC in their investigations. It is the world’s most independent self-regulatory body governing the press and it is used as a template in other countries. We know that we have to justify ourselves in terms of the code or seek to resolve the complaint by taking an appropriate and agreed action.

7. Even before a complaint is lodged, the PCC can play an important role in guiding the press on sensitive matters. I have often called the PCC for advice prior to publication on such issues as privacy. By the same token the PCC has contacted newspapers directly in advance of publication to give guidance on coverage.

8. For example, should there be a complaint of harassment to the PCC it is possible to resolve the issue within hours without the need for a full and time-consuming investigation. A series of phone calls between the paper and commission can result in senior executives reviewing the public interest before proceeding any further. This light touch of balancing interests to help prevent breaches of the code would not be possible within a formal, punitive legal framework.

9. In the last five years the PCC has investigated 59 complaints against *The Sunday Times* and two have been upheld. In my experience, when a breach of the code has occurred, this has been a genuine mistake on the part of the journalist rather than any determination to flout the code. Sometimes complaints are resolved before a formal adjudication by the commission by publication of a correction, a letter of apology or removal of an item from an archive. The key point is that these are agreed resolutions by all parties in a settlement negotiated by the commission.

10. A more rigid and punitive regime would, we believe, corrode the commission's ability to act quickly and effectively. There are already broad restrictions on usage of private material governed by the Data Protection Act and other legislation. I know of no evidence of growing public opinion that would welcome the imposition of further fines or other punishments. Above all, a privacy law would only provide shelter for the rich and powerful to hide what is genuinely in the public interest. It is the job of the press to test the credibility of those who have influence over us, and in the words of a high court judge, to act as the "eyes and ears" of the public.

11. People subject to journalistic inquiry already have the option of going beyond the commission and seeking legal redress to prevent publication of material they believe should remain private. For example, Lord Levy sought an injunction to prevent *The Sunday Times* from publishing details of how little personal tax he paid. *The Sunday Times* argued that, given his position in public life as chief fundraiser for the prime minister, these facts were in the public interest. A high court judge dismissed Lord Levy's application for an injunction and the article was published. Bizarrely, the Information Commissioner then chose to become involved and requested to interview the editor under caution. This request was rejected because the case had already been heard and adjudicated by a high court judge. My point is that a variety of remedies already exist for complainants and that there is a danger in trying to stifle legitimate journalistic inquiry by adding a new layer of legislation and penalties.

12. The digital dissemination of information across the world poses the biggest hurdle for anyone trying to impose a privacy law. Should such a law come into effect it is likely to be unworkable in this new era of global digital convergence and at best is open to challenge for being anti-competitive.

February 2007

Memorandum submitted by Harbottle and Lewis LLP

I write further to our various telephone conversations, and I attach a note relating to various general points that I would wish to raise relating to the behaviour of the paparazzi. As I indicated to you, I am submitted this evidence based upon nearly 20 years experience of dealing with these issues on behalf of both private and public figures, both in the United Kingdom and elsewhere.

1. The paparazzi and tabloid media work in close conjunction. The way in which that relationship is supposed to be policed is under clause 4 of the PCC Code (see also the commentary in the Editor's Code Book regarding this matter).

2. Editors interpret clause 4(iii) of the PCC Code as meaning that they will only intervene if a complaint is made. The onus however should be on them to first properly investigate the circumstances under which photos are taken before they are published and not to rely upon what they are told by agencies or individuals from whom they are offered.

3. An oft repeated response from many Editors upon receiving a complaint is that the photographs "looked nice" and therefore they published them without enquiring as to the circumstances under which they were taken.

4. The PCC do not of their own volition take action regarding the behaviour of the paparazzi. Again they wait until a complaint is made. The PCC have no direct right of action against the paparazzi.

5. Despite the fact that there have been numerous articles and TV programmes outlining the behaviour of paparazzi and the lengths that they go to, it is still remarkable that the media turn a blind eye to their behaviour. The Police are often very reluctant to do anything about it, usually due to the fact that they believe that they have got better things to do.

6. The paparazzi are highly organised and well drilled in their pursuit of photographs. It is a highly profitable industry dominated by a small number of agencies.

7. The PCC Code is out of step with the developing law in this area—see in particular *Campbell v MGN*, *Caroline of Hannover v Germany*, *McKennitt v Ash* and the recent Strasbourg jurisprudence regarding the use of photographs.

8. See the comments of Lady Justice Smith reported on 2 March 2007 in the case of *Paul and The Ritz Hotel Ltd and Deputy Coroner of the Queen's Household and Assistant Deputy Coroner for Surrey (Baroness Elizabeth Butler-Sloss) etc* (see attached excerpt).⁷

9. Civil action can be taken against the behaviour of the paparazzi, but why should an individual be put to the time and expense of protecting their own privacy?

March 2007

Memorandum submitted by Graham Mather, President of the European Policy Forum

1. Addressing the general regulatory environment seems to me that in regulation across the sectors, we are moving away from a focus on price to one on quality of service, connectivity and effectiveness.

2. Economic regulators have driven prices down and achieved real competitive effects in the market. Customers can and do switch in extremely large numbers—600,000 a month in the energy sector.

3. The worrying problems are not to how to cut a few more pennies off the telecom or gas or electricity or water bill—they are how to finance infrastructure for next generation networks in all these sectors. And they are how to cope with external security of supply issues or quality issues especially of an environmental nature.

4. What makes a difference for customers will increasingly be quality of service—largest bandwidth, the most effective customer service, the best designed package whether triple or quadruple play—although we must note that these packages and bundling are not immune from competition policy problems.

5. I think all regulators have to get their heads around this secular shift, which may be especially difficult for those who have worked these last 20 years in using economic techniques to reduce prices for consumers.

6. My second starting point is to declare an ideological preference for self-regulation and to accept the conventional wisdom that it should wherever possible be tried first, as, at its best, it can be cheap, fast, flexible and effective.

7. Yet a moment's consideration shows that in the UK self-regulation has encountered some very serious reverses indeed in recent years.

8. In insurance markets, Lloyds of London's self-regulatory function disappeared after the mis-selling and market scandals of the 1980s and the FSA now regulates insurance with all other financial services.

9. The SROs of the financial services sector were all incorporated into the FSA. It may be very large—2,400 staff—rather unwieldy and torn between principle and rulebook regulation; it is certainly the current subject of a National Audit Office inquiry where I sit on the Advisory Panel; but I have heard no-one suggest that we should return to self-regulation.

10. The Law Society found that its self-regulatory role presented insuperable conflicts of interest with its representational functions and after the Clementi Report has split these.

11. Rather similar pressures are at large in the medical and other professional areas.

12. The accountancy and audit professions which also used to self-regulate, are now regulated by the Financial Reporting Council, it is closer to being an independent statutory regulator. The Advertising Standards Authority, as a self-regulator which has become a co-regulator, does seem to me to have established trust and confidence in its systems, procedures and results and when it celebrates tonight, its second anniversary within the Ofcom structure, it will have much credibility and delivered results on which to be congratulated.

13. Yet this exception may prove the rule. A true self-regulator is the Press Complaints Commission, which seems to me to have a number of very serious shortcomings when compared against modern regulatory standards. The committee which deals with its code of practice is entirely composed of Press representatives; the terms of appointment of its members have not complied with Nolan Principles; and it has not regulated certain aspects of newspapers, including breaches of its own code, with sufficient vigour to satisfy many critics.

14. One said that using its procedures was “like climbing a staircase with the Commission with as the big thing in the skies. You get to the top of the steps, you are looking around and it is not there”.

15. Part of the problem is that the aspirations are too high. The code suggests, for example, that “journalism must not engage in intimidation, harassment or persistent pursuit”. “They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them”.

16. Because the industry does not want to comply with these principles and because the industry controls the PCC, I fear that the result is a gap in the protection which citizens have a right to expect.

⁷ Not printed.

17. The problem will probably eventually be solved by the courts as the European Convention of Human Rights in Article 10 makes the right to freedom of expression subject to the constraints which include the protection of the reputation or the rights of others. The High Court has said that, given the existence of these rights at law, “a glance at a crystal ball of, so to speak, only a low wattage suggests that if Parliament does not act soon, the less satisfactory course, of the courts creating the law bit by bit at the expense of litigants and with inevitable delays and uncertainty will be thrust upon the judiciary”. (Mr Justice Lindsay in *Douglas v Hello!*). This crystal ball has proved correct.

18. So what is the general lesson of self-regulation?

19. It seems to me that starting point is that we must recognise that in the last two decades we have all become much more sensitised to the need to avoid institutionalised conflicts of interest.

20. The Nolan Principles created a new environment and although there is always scope for some finessing around the margins, any self-regulatory system which fails to comply with them will fail to achieve credibility.

21. The strengths of self-regulation, that they reflect a wish by key players in a sector to deliver redress to consumers should always be held in balance with the potential difficulties when leading players in a sector combine their endeavours. Self-interest may dominate self-regulation.

22. This may be why increasingly there is a search for some validation of the self-regulatory systems and the Office of Fair Trading has done a lot of work itself to provide some comfort level on many retail schemes.

23. The guidance which Ofcom produced some time ago on criteria for promoting effective co and self-regulation is very astute on these issues.

24. A few moments ago I mentioned the role of legal rights in this context. When we consider self and co-regulation, we should never forget that almost invariably customers have contractual or statutory rights against those who deliver poor or no service.

25. But even today, with the advent of small claims courts, to take a rogue trader to court is a challenging and forbidding experience. There isn't a level playing field. Resort to local trading standards officers who are able to deploy the Sale of Goods Act, may be a more promising line of approach which evens up the odds.

26. Frequently, rogue traders break the Theft Act in that they attempt to gain a pecuniary advantage by deception. It is very difficult to get the police to deal with such cases and we may need to find a way of developing more effective redress under the Act.

27. Self-regulatory bodies and those who support them from the statutory arena should ensure that their systems augment and help to deliver these legal rights in practice rather than attempt to modify or diminish them in any way.

28. How does this play out against the particular issues in the communications sector?

29. No sooner had the Internet revolution really begun to spread than the use of rogue diallers dialling premium rate numbers, led many customers to have profoundly negative experiences. BT at that point was not prepared to take a pro-customer view and the self-regulatory and ombudsman system moved in my opinion, far too slowly to help customers who had been victims of criminal behaviour by scamsters.

30. The net effect was that the scamsters got away with the proceeds and many customers found that money had been stolen from their telephone account and no one could help them get it back. This is really not good enough and we must all try to learn the lessons from it.

31. As soon as that problem passed the broadband revolution—which at least has the benefit of being immune from the predations of rogue diallers—began to throw up very serious issues of effective service provision.

32. Technical arrangements and engineer training lagged far behind with the marketing initiatives promoting broadband. Many of us have experiences of unsatisfactory call centres, delayed engineer visits, and sheer technical ineptitude. If engineers connect the wrong jumpers or don't connect the right jumpers and leave customers without Internet access for days on end, real damage is caused and real redress is required.

33. The Ofcom complaints statistics show a number of very serious miscreants, some of which are well known household names, heavily branded and marketed. No one in their senses would order a connectivity product from some of them—but there is information asymmetry.

34. Self-regulators and statutory regulators alike must look in the mirror each morning and ask, “are we doing enough to protect these consumers?”

35. Finally let me turn to an unusual phenomenon, which I have detected in the sector, which is that the incumbent has become rather decisive in some areas, which one would expect to be covered by the regulatory world.

36. I have mentioned the initial reluctance to use BT's rights against the scamsters using rogue diallers, which has eventually yielded to a more customer friendly policy.

37. But on unsatisfactory content nuisance calls, BT has taken a proactive approach with BT Privacy, providing a package, which signs customers up with the Telephone Preference Service. My own experience with the latter body has seen it lagging near the foot of the league tables of self-regulators and to be a pale shadow of its US equivalent, Do Not Call, which the then Chairman of Federal Trade Commission, the equivalent of our OFT, held up on a visit to London as one of the great consumer successes of US public policy in recent years.

38. Do Not Call has the backing of the FTC and some rigorous statutory penalties for those who call people on the Do Not Call list. I know Ofcom is looking at the way TPS works but I fear that it will be sometime yet before it achieves the degree of clout and credibility which its US counterpart has shown.

39. And if I was right at the start of my remarks to suggest that customers are moving away from a focus on the lowest price to one on a proper customer experience, their expectations will be higher in this area and if their service provider will not or cannot protect them from this sort of abuse, the regulatory world will be expected to deliver.

40. Self-regulation can and should do this, but it always must face the burden of proof and I think many of us will be with Julia Unwin at the Food Standards Authority who at a roundtable at 11 Downing Street earlier this week said, "in these areas, light touch regulation is really not enough."

41. In the case of the press, the PCC is not an exemplar of contemporary best practice in regulatory techniques. It seems to me that, as a minimum, it needs to be brought up to the level of credibility and effectiveness of the Advertising Standards Authority, which is a co-regulatory body.

March 2007

Letter from John Toner, Freelance Organiser, National Union of Journalists

MR BRIAN MORGAN

Our member Mr Brian Morgan has again brought to our attention matters relating to the evidence given to your committee in 2003 about the regulation of the press. The reason for this is that there are outstanding issues that Mr Morgan and we thought had been dealt with at the time, but weren't and now we see that there are in fact more serious issues not fully understood at the time.

We knew then that a Mr Ivor Rowlands had given evidence to the committee that was critical in part of our member, and believed that our submitted responses would be put on the record.

They do not appear to have been. And more seriously it is clear that Mr Rowlands gave secret testimony to the then committee leading to seriously disparaging comments made publicly about Mr Morgan, which were included in the record without Mr Morgan or ourselves given the opportunity to rebut them.

292. It could be MPs. It could be people with a potential grudge against an individual. Is that fair?

(Mr Kelner) Yes, it is possible.

293. I am thinking really of a chap called Brian Morgan, whose name may or may not escape your memory. Do you ensure that their allegations are substantiated?

(Mr Kelner) Yes.

and

299. The reason for mentioning that is that my colleague, Mr Bryant, mentioned that this morning we did indeed have a gentlemen come to see us who was keen to have a matter publicly aired and, for various reasons, as a committee we decided otherwise. It relates to the headline "Investigation ordered after 28 babies die in hospital experiment" from the front page of 18 February 1999. I am sure, having now seen that, you are aware of what I am talking about. You have headlines six days a week but the headline, particularly "28 babies die in hospital experiment", was not completely accurate. It was a story that had been promoted by this gentleman, Brian Morgan, who has a grudge to bear, it would appear, against this particular Professor, for whatever reasons.

We do not dispute that the public record later made it clear that Mr Rowlands had submitted written evidence, but at the same time the public record does not say that it was the same Mr Rowlands who gave secret evidence to the committee which later the same day led to on-the-record statements about our member by committee members.

We wish to have our substantive correspondence from that time put on the record now. Moreover we wish to say that a committee inquiring into the standards of the media and journalism should be more open in its dealings and not allow serious criticism of our members to be placed in the public domain without allowing these individuals, whose reputations could be seriously prejudiced, the right of reply.

If we in the media behaved in this way we would be justifiably criticised.

Our member is more than willing to defend his method of working and his investigations into the particular situation (the research methods of a team led by Professor David Southall) discussed at that CMSC meeting in front of this or any future meeting or indeed any forum.

26 February 2007

Supplementary memorandum submitted by the Press Complaints Commission

In light of some of the commentary following the Prime Minister's recent speech, which touched on the changing nature of the media, I would be grateful if I could make this very brief supplementary submission on behalf of the PCC.

It has been suggested in some quarters that the technological developments which enable newspapers and magazines to publish audio-visual material on their websites will lead to greater regulatory controls on newspapers because there will be irresistible pressure for a single Code to cover broadcast and print journalism. We think this is a faulty conclusion from a reasonable analysis. There are numerous reasons for this.

Any formal regulation of commercial online operations would inevitably be viewed as anti-competitive, and therefore at odds with the government's own initiatives in promoting growth in the creative economy. Just as the distinctions between commercial media are arguably being blurred, so the distinction between commercial and non-commercial media is becoming less clear. Individuals or groups with specialist knowledge are free to provide unregulated information through blogs or websites. Forcing commercial media to comply with imposed rules that did not apply to non-commercial operators would not be fair to the former—and would in fact lead to a greater fragmentation of the media as journalists sought to redefine themselves as non-commercial. Furthermore, complications would arise from the inevitable definitional problems about who fell into which category, given the advertising that is attracted by some private blogs. It is no answer to compel everyone who communicates electronically to abide by legal rules. That would neither be compatible with freedom of speech, nor practical to enforce for reasons set out in our original submission.

There is a further point. The traction of a media regulator with legal powers derives in part from its ability to issue licenses for information platforms. But it is not of course necessary for publishers of online information to seek licenses; and it would probably be impossible to introduce such a system without somehow trying to isolate the UK from the rest of the world in terms of which servers the government permitted its citizens to access information through. Apart from the inherent undesirability of such a move, it is unlikely that it would be widely tolerated by consumers.

This all brings us back to the features that we think are necessary in a body that has to police rules for editorial information online: independent administration; flexibility of structure (that means not having to rely on parliament to define the remit); and the buy-in and co-operation of the industry.

We do not believe that anything else can be reconciled with freedom of speech and the freedom of the media to compete in a global and diverse business environment.

There may be grey areas going forward about the jurisdiction of Ofcom and the PCC, in relation to a small number of services provided by both broadcasters and newspapers online. I am happy to report that we have a good working relationship with Ofcom. This will enable us to identify where these grey areas are likely to arise, and to work through any difficulties together. The PCC's own jurisdiction has been growing organically in any case, as you know. We do not believe that it is either necessary or desirable for the government to alter the current balance by force of legislation.

June 2007

Letter from the Director of the Press Complaints Commission to the Clerk of the Committee

How many desist messages were issued by the PCC in each of the ten years from 1997 to 2006; how many of those were issued by the PCC on its own initiative rather than in response to a request; and how many were issued in response to third party requests?

How does the PCC determine which editorial contacts should receive the desist message?

Please see Appendix below for the information on desist messages.

The system was formalised after the PCC did a "lessons learned" exercise following an upheld complaint in 2002 about harassment, when we reviewed whether we could have prevented an unfortunate series of approaches to a member of the public who was briefly in the news. The result was the 24 hour anti-harassment line which started in early 2003. This means that a formal system was not in place between 1997–2003, although messages would have been informally disseminated, and I believe the well-known mass

desist message that took place at the time of the Dunblane tragedy was communicated round the industry by fax (that was before my time of course). The system has gradually developed since then, with broadcasters added to the list and formal records being kept from last year (see below).

The PCC's proactivity in this area involves us approaching people in the news to check that they are OK and if we can help.

The list will comprise editors, managing editors, lawyers and senior journalists at newspapers, depending on the contact point(s) that the Commission has.

APPENDIX

DESIST MESSAGES

In 2003, the PCC introduced its 24-hour-pager to deal with—among other things—harassment (and gets around 100 calls a year). It also undertook, following a recommendation from the previous Select Committee, to liaise with broadcasters in order to prevent the formation of media scums. As a result, the PCC was better able to communicate concerns to the relevant parties more easily.

However, the PCC did not keep individualised records of its desist messages until during 2006. These records show the following:

2006: 17 messages

2007 (until this point): 21 messages

The PCC generally issues these messages in response to concerns raised directly by those involved, or their representatives. It would not issue them of its own volition (as it relies on the information provided by the parties concerned). However, as has been elsewhere detailed, the PCC does contact people to ask whether they have any concerns, which it can then act upon.

The contact list is based upon those with whom the PCC deals at each national newspaper. It has been expanded to include major magazine representatives and also PA (as a means of contacting the regional papers). On individual cases, the list may be augmented with the particularly relevant regional titles. The broadcast details were obtained from the broadcasters themselves and comprise senior editorial figures.

June 2007

Letter from News International Limited to the Clerk of the Committee

1. *Could you let me know the date on which the Executive Chairman instructed editors of News International titles not to use photographs of Kate Middleton taken by paparazzi?*

Mr Hinton instructed editors on 9 January 2007 not to use photographs of Kate Middleton taken by paparazzi.

2. *In answer to Question 91 in oral evidence on 6 March, Mr Hinton described the contract between the News of the World and Glenn Mulcaire; and he described "a second situation" in which Clive Goodman had been allowed to pay cash to a contact, and he said that the detail of how he was using that money was not known to the editor. Mr Hinton went on to say that "That is not unusual for a contact, when you have a trusted reporter [...] to be allowed to have a relationship which can lead to information and which involves the exchange of money". What was it exactly that Mr Hinton was saying was not unusual—was it the existence of "a relationship which can lead to information and which involves the exchange of money" or was it the fact "that the detail of how he was using that money was not known to the editor"?*

Mr Hinton meant that in the case of a trusted reporter it was not unusual for there to be a relationship with a contact which could lead to information and which involved the exchange of money, and that the detail of how the money was used might not have been known to the editor.

3. *At the time that the contract between the News of the World and Glenn Mulcaire was agreed, who, beyond the editor of the paper, had to approve or be informed about such contracts or arrangements? Have procedures for authorising such contracts or arrangements been changed since Mr Goodman was charged?*

The relevant editorial department head and the managing editor and / or his / her deputy.

Procedures for authorising such contracts have not changed. (The Goodman case did not relate to the contract between Mulcaire and the News of the World.)

However, in the wake of the Goodman case the protocol for cash payments were reviewed and amended. The protocol, policy and process now in place (to which every member of staff is required to strictly adhere) are as follows:

1. Cash payments are to be kept to a minimum and are the exception.
2. Requests for Cash Payments must be accompanied by compelling and detailed written justification signed off by the relevant department head.
3. Information supplied on Cash Payment Request documents must be accurate and comprehensive.
4. In the exceptional event of a requirement for a Cash Payment to a Confidential Source, the following applies:
 - a. If the department head / staff member requesting the payment asserts that the identity of the source must be withheld, he / she is required to demonstrate clear and convincing justification for such confidentiality.
 - b. A memo detailing the reason for making the payment to a Confidential Source has to be provided to the Managing Editor's office.
5. Every cash payment request must be signed off by the relevant Department head.
6. Thereafter, details of the intended recipient's name and address are verified via the electoral register and / or via other checks to establish they are correct and genuine.
7. Further, any journalist requesting a cash payment is required, after following the process set out above, to personally endorse by his / her signature each page of the relevant documentation.
8. Finally, every request for a Cash Payment must be accompanied by the appropriate supporting documentation with a copy of the relevant story attached.

We believe this approach is appropriate in those rare instances of cash payments.

June 2007

Memorandum submitted by the Information Commissioner's Office

NOTE IN RESPECT OF OPERATION GLADE SENTENCING FOR PARLIAMENTARY SELECT COMMITTEE

The Judge who found himself having to sentence the defendants in Operation GLADE, the case brought by the Metropolitan Police, could be said to have had his hands tied. He found himself having to deal with the implications of a previous sentence handed out to one of the defendants in the matter linked to that that was before him.

In Operation GLADE, four individuals were charged. The lead (first) defendant was a former Metropolitan police civilian control room employee whose home had been searched during the course of the investigation into the misconduct offences which ultimately led to the pleas to Data Protection Act offences. During the course of that search a number of items of police property were found for which that individual faced theft allegations. This was the separate but connected trial that was referred to in paragraph 6.7 of *What Price Privacy?*. The trial of that matter took place prior to the Operation GLADE matter reaching court and was dealt with by a different Judge. The sentencing Judge in Operation GLADE had given an indication that he considered it to be appropriate that the theft sentencing be reserved to him to deal with at the conclusion of the misconduct/Data Protection offences in order to tie everything together.

However the police civilian was sentenced by the trial Judge after the theft case and received a suspended prison sentence. It is important to note that suspended sentences are not given lightly and are only used in *exceptional* circumstances.

This meant that when all four defendants in Operation GLADE came to be sentenced the Judge was effectively precluded from giving the police civilian (who had pleaded guilty to the misconduct offences and therefore could have been given a custodial sentence) a sentence which would impact upon the previously imposed suspended sentence. The ICO representative in court observing the proceedings had suspicions that the former police civilian worker had severe health problems which would make a custodial sentence inappropriate.

As a result of having to deal with him in such a fashion the Judge had to sentence the remaining three defendants and their sentences had properly to reflect those given to the first defendant. In addition, in the course of their mitigation, the remaining three defendants advanced arguments in respect of their impoverished circumstances. Case law exists in respect of this which states that the level of fines must be linked to the ability of the offender to pay, and therefore the Judge was unable to levy significant financial penalties.

Ev 110 Culture, Media and Sport Committee: Evidence

Whilst the identity of Stephen Whittamore is a matter of public record in respect of his conviction at Blackfriars Crown Court in Operation GLADE he was not named in What Price Privacy as he had not been convicted in proceedings brought by the Information Commissioner and it was felt that to name him would have added nothing to the weight and substance of the report.

July 2007
