

told that journalists would be expected to consult with the publication's lawyers, editor or managing editor.

- 8.6 One newspaper told the Commission that, in addition to the internal controls that were in place, the threat of negative publicity along the lines of that experienced during the Goodman case would be a sufficient deterrent.

9.0 Data Protection Act

- 9.1 The Commission had specifically highlighted the DPA in its letter to the industry following the publication by the Information Commissioner of two reports titled *What price privacy?* and *What price privacy now?*

- 9.2 In those reports, the Information Commissioner published details of newspapers and magazines that had been paying inquiry agents for information. There was a suspicion that some of the information may have been obtained in breach of the Data Protection Act. The Information Commissioner called on the industry to bring forward proposals to clamp down on the illegal trade in information. He also called on the government to increase penalties for breaching the Act to two years' imprisonment. There would be no exemption from such a penalty for journalists.

- 9.3 The Commission condemns breaches of the DPA – or any law – when there are no grounds in the public interest for committing them. However, it has said before that it does not consider that the case for stronger penalties has been made out. Jailing – or threatening to jail – journalists for gathering information in the course of their professional duties is not a step to be taken lightly, and would send out a worrying message about the status of press freedom in the United Kingdom.

- 9.4 It seems to the Commission from the exercise it has just carried out that the DPA is taken seriously across the industry. As highlighted above, some companies have rewritten their journalists' contracts specifically to make reference to the DPA. Others had specific training on the Act. There were numerous references to the Information Commissioner's work.

- 9.5 The industry has also been working together to draw up a practical note for journalists on how the DPA works and applies to them.

10.0 Conclusions and recommendations

- 10.1 It is essential that the type of snooping revealed by the phone message tapping incidents at the News of the World is not repeated at any other newspaper or magazine. Such events threaten public confidence in the industry, despite the considerable change in culture and practice that has undoubtedly occurred over the last decade and a half, leading to greater accountability and respect by the press for the privacy of individuals.

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- 10.2 But it is similarly important that the industry guards against overreaction. There is a legitimate place for the use of subterfuge when there are grounds in the public interest to use it and it is not possible to obtain information through other means. It would not be in the broader public interest for journalists to restrain themselves unnecessarily from using undercover means because of a false assumption that it is never acceptable.
- 10.3 This balance will be achieved when journalists are confident about where the line is drawn. The Commission welcomes the numerous initiatives that are underway to raise awareness of the Code's requirements on subterfuge and the law; and it endorses the decision by the industry to draw up guidelines on compliance with the Data Protection Act. These will complement those drawn up by the PCC itself in 2005.
- 10.4 The Commission believes very strongly that the impact of these initiatives should be assessed before the government proceeds with its proposals to increase the penalties for journalists who breach the DPA to two years in prison. Such a move would be difficult to reconcile with notions of press freedom. The mere threat of a custodial sentence could be enough to deter journalists from embarking on legitimate investigations, despite reassurances about the public interest exemption from the Information Commissioner.
- 10.5 As a result of this inquiry, the Commission has a number of specific recommendations, drawn from the News of the World episode and best practice around the UK. In particular:
- Contracts with external contributors should contain an explicit requirement to abide by the Code of Practice;
 - A similar reference to the Data Protection Act should be included in contracts of employment;
 - Publications should review internal practice to ensure that they have an effective and fully understood "subterfuge protocol" for staff journalists, which includes who should be consulted for advice about whether the public interest is sufficient to justify subterfuge;
 - Although contractual compliance with the Code for staff journalists is widespread, it should without delay become universal across the industry (the PCC will be pursuing this further);
 - There should be regular internal training and briefing on developments on privacy cases and compliance with the law;
 - There should be rigorous audit controls for cash payments, where these are unavoidable.
- 10.6 The PCC recognises that it has a key role to play in assuring the high journalistic standards that are the cornerstone of a free press and a credible system of self-regulation. To that end, the Commission will continue to offer free training seminars to UK publications. It will invite all national newspapers to attend a