



Northern & Shell Plc
Britain's Leading Independent Publisher

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Lord Black of Brentwood
PRESSBOF
21 Lansdowne Crescent
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15 December 2010

Dear Guy,

Thank you for your letter of 10 December 2010 addressed to Richard Desmond. I was surprised that you chose not to reply to me. This could be taken as undermining my position. Richard has asked me to respond and I deal below with the points you make in order.

Handling Complaints

I am advised that the vast majority of complaints involving Northern & Shell titles could not give rise to legal claims through the courts. The PCC refuses to obtain an undertaking from the complainant that a settlement or adjudication by the PCC is in full and final settlement. In fact the reverse is the case. Certain solicitors obtain a PCC ruling as a precursor to taking action through the courts and use it to exert pressure on the publication to settle. This is a major failing of the PCC self regulatory system.

I am further advised that the potential for saving on legal costs is not as great as you suggest. In part this is because of the reasons set out above. Further, many complaints are received from complainants in person and not from solicitors. As stated above, the vast majority of complaints could not found a legal action whether made personally or by a solicitor. There are no cost implications in such complaints. There are no grounds on which they can be claimed. None are incurred in answering them as they are dealt with in-house.

While Northern & Shell will no longer be subject to regulation by the PCC it would be wrong to state publically "that it no longer subscribes to the set of basic ethical standards in the Code of Practice to which all other newspapers and magazines subscribe". Northern & Shell editors will continue to follow the Code of Practice. Should the PCC publically state otherwise appropriate action will be taken. Please confirm that no such statement will be made.

The Data Protection Act 1998 (“the DPA”) and the Human Rights Act (“the HRA”)

You refer to protection given to editors and journalists by these Acts. This appears to be a reference to Section 32 of the DPA and Section 12 of the HRA.

I am advised that under Section 32 of the DPA, the PCC Code is a designated Code. The effect of this is that the provisions of the Code will be used as assisting criteria in determining whether a particular publication is reasonably believed to be in the public interest by the data controller, Northern & Shell, within Section 32(1)(b) of the DPA. Such a role has nothing to do with whether the data controller subscribes to the PCC.

Similar issues arise under Section 12 of the HRA which deals with freedom of expression. The PCC Code is regarded as a relevant privacy code. However, its provisions are a guide which the Court should have regard to. This applies whether or not Northern & Shell subscribe to the PCC or not.

Financial Journalism

We presume that your letter refers to Section 21 of the Financial Services & Markets Act 2000 and the Investment Recommendation (Media) Regulations 2005. Article 20 of the Financial Services and Markets Act 2000 (Financial Promotions) Order 2005 provides protection for certain communications by journalists. I am advised that, while being subject to the Code of Practice gives protection, there are alternative ways of obtaining protection under the regulations.

Audiovisual Media Services Regulations 2009 and 2010 (“the Audiovisual Regulations”)

Your letter states: *“At the moment, on demand programme services on Northern and Shell websites are protected from the terms of the Audio Visual Media Services Directive through membership of the PCC. If Northern and Shell is outside the system, it will be a matter for OFCOM and for ATVOD, the audiovisual regulator, to determine what action to take.”*

I am advised that this is incorrect: we assume you are referring to the exemption under EU law whereby “electronic versions of newspapers and magazines” are not classified as on demand services of a television-like nature that must be licensed by ATVOD in the UK (the on-demand co-regulator delegated its authority by OFCOM). This exemption is set out at Recital 28 of the Audio Visual Media Services Directive, but no mention is made of the exemption being dependent on membership of any trade body or self-regulation, such as the PCC.

This position is reflected in the UK enabling legislation, the Audiovisual Regulations, as noted by ATVOD in their guidance. It is clear that the application of this exemption for “electronic versions of newspapers and magazines” is not dependent on membership of the PCC.

Communications Act 2003, Section 235(3)

You mention "... as Northern and Shell currently holds a broadcast licence, the industry will need to notify OFCOM and Secretary of State of your decision to withdraw from the PCC in case this raises for them issues they may need to consider under Section 235(3) of the Communications Act 2003."

I am advised that in effect this section sets out the limited circumstances under which OFCOM are entitled to refuse applications for broadcast licences. No such circumstance(s) existed at the time any of Northern and Shell's subsidiaries applied for broadcast licences, nor at the time Northern and Shell acquired Channel 5. We cannot see how any such circumstances might possibly arise as a consequence of our decision not to renew our membership of the PCC, and accordingly we are not obliged, nor do we think it would be appropriate for you or us to engage with OFCOM or the Secretary of State on this issue. Our fulfilment of our OFCOM licence obligations is entirely unaffected by our decision to withdraw from the membership of the PCC.

Conclusion

As stated above, our editors will continue to adhere to the Code of Practice and to act in an ethical and professional manner. Withdrawing from the PCC will not in any way affect our editorial policies. However, I am advised that there is no legal or statutory obligation on Northern & Shell to subscribe to the PCC and there appears to be very little financial incentive to do so.

Yours sincerely,



Martin Ellice
Group Joint Managing Director

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20 December 2010

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Dear Mr Ellice

Thank you for your letter of 15th December addressed to Lord Black of Brentwood, the contents of which we have noted.

I fear you have fundamentally misunderstood the workings of the self-regulatory system. The Code of Practice is drawn up by the Editors' Code Committee, which is a Sub Committee of the Press Standards Board of Finance. PressBoF then promulgates the Code and asks the PCC independently to enforce it.

The application of the Code (as indeed the jurisdiction of the PCC) is therefore inextricably tied to the payment of PressBoF subscriptions. This system is not an *a la carte* menu from which publishers can pick and choose.

Without payment of registration fees from 1st January, Northern and Shell titles will be excluded from the system in its entirety. This will not just mean, as Lord Black's earlier letter indicated, that Northern and Shell readers will have no recognised, independent means of their complaints being dealt with (of which there were over 700 in 2009) but also that the Code of Practice, and the ethical standards contained in it, will cease to apply to you.

It is a matter of deep regret that Northern and Shell should be the only major national, regional or magazine publisher in the UK not to subscribe to the industry's successful system of self regulation, and I would again strongly urge you to reconsider your decision before your current subscription expires on 31st December this year. If you do not, then the industry will automatically take the action outlined in Lord Black's letter.

I look forward to hearing from you.

Kind regards,

Yours sincerely,

Jim Raeburn
Secretary & Treasurer