PRIVATE AND CONFIDENTIAL **PCC PAPER NO: 4467**

TO ALL COMMISSIONERS

Media Standards Trust

1. Commissioners will already have seen a copy of the initial report by the Media Standards Trust into self-regulation and the PCC. A copy is attached – along with Christopher's reply to the Trustee who wrote to us – for reference.

2. As we have maintained throughout, the report is little more than a 'case for the prosecution' and, although it apparently has pretensions to being a serious piece of work, it is basically a cut and paste job that is littered with inaccuracies. The authors' aim was to establish in part 1 of their review that the PCC has failed so that they can move to make recommendations about what should happen next in part 2.

3. The question is why they are doing this. To answer this, it is important to understand who these people are, and what the genesis of the Media Standards Trust is. For, while it sounds like an impressive official body, the MST is, in reality, no more than a private pressure group set up by a group of like-minded people who met on a weekend retreat a few years ago – under the aegis of something called 'Common Purpose' – and decided that 'something must be done' about the popular press. One can therefore surmise that their preferred way of achieving this is to replace the PCC with something that will be more restrictive, and that this report is the first substantive attempt to move this agenda on.

4. It also bears repetition that they are guilty of many of the things they falsely accuse the Commission of – lack of accountability and opacity

of appointment procedures, for example – and at least one member of the Review Group for this report, Dame Suzi Leather, has failed properly to declare her interest with the MST, despite the fact that it is a charity and she is Chairman of the Charity Commission. Their Director, Martin Moore, also publicly and wrongly contradicted Christopher's assertion that the Trust had not taken evidence from the PCC in the preparation of the report, claiming that he had consulted Stephen Abell and me. I wrote to the Trust's chairman, Sir David Bell, to complain about this untruth, and received a written apology shortly afterwards.

5. Having established (in their view) that self-regulation is failing, they now want to speak to a number of people in the press and associated with the PCC about what should happen next in terms of press regulation. The question for us is whether we should have any involvement with them at all, given that their minds appear to be closed on the subject and they have made no effort to disguise their hostility to the PCC. Because of this, even independent commentators have questioned their credibility. As Roy Greenslade commented on his blog (attached), "the trust may as well abandon part two of its report now because no-one will take it seriously".

6. They have not established what their credentials are for offering advice about the future of media regulation, and in any case, as Christopher says in his letter to Anthony Salz, we must give priority to the far more significant Select Committee inquiry. Nonetheless, they will continue to be around for a while, and we will need to decide how we will deal with them going forward. We also need to bear in mind that the new Chairman might want some room for manoeuvre.

7. We look forward to hearing your views at the meeting.

TT

04.03.09

A More Accountable Press

Part 1: The Need for Reform

Is self-regulation failing the press and the public?

Media Standards Trust

An Independent Review by the Media Standards Trust

Media Standards Trust

A More Accountable Press

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An Independent Review by the Media Standards Trust

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The Need for Reform: Is self-regulation failing the press and the public?

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1. Purpose of the review

This report forms the first part of an independent review of self-regulation of the press in Britain. It is a diagnosis of the current state of self-regulation and does not present recommendations. This is left until the second stage of the review.

It has been written in consultation with a non-partisan review group that has been brought together by the Media Standards Trust. This is made up of twelve people, each of whom has complementary knowledge and experience that helps to inform the review. Their views are expressed in a personal capacity.

Independent Review Group Members (alphabetical)

Martin Dickson	Deputy Editor, *Financial Times*
Lord Hastings	International Director, Corporate Citizenship, KPMG; House of Lords Select Committee on Communications
Richard Hooper	Chairman of the Independent Review of the Postal Services Sector, previously Deputy Chair of Ofcom
Simon Kelner	Managing Director and Editor-in-Chief, *The Independent* and *The Independent on Sunday*
Dame Helena Kennedy	QC
Dame Suzi Leather	Chair, Charity Commission
Lord Lipsey	Journalist and writer, previously at ASA and ITV
Kate Nash	Chair of Disability Alliance, previously Chief Executive of Royal Association of Disability and Rehabilitation
Anthony Salz, Chair	Executive Vice Chairman, Rothschild, previously Senior Partner of Freshfields Bruckhaus Deringer
David Seymour	Journalist, previously Readers' Editor *Daily Mirror*
Ruth Wishart	Journalist, *The Herald*
Lord Woolf	Previously Lord Chief Justice

Special Advisors

Professor Steven Barnett	Westminster University
Dr Martin Moore	Director, Media Standards Trust

All members of the group are concerned with protecting the freedom of the press and protecting the public from harm. Each wants to promote and sustain good standards in journalism on behalf of the public and on behalf of a democratic society. None comes with a pre-set agenda or with a solution already to hand.

> *'The press is not only free, it is powerful. That power is ours. It is the proudest that man can enjoy. It was not granted by monarchs, it was not gained for us by aristocracies; but it sprang from the people, and, with an immortal instinct, it has always worked for the people.'*
>
> Benjamin Disraeli

The review has been prompted by:

- The challenges faced by an industry under severe economic pressure
- The radically changed technological environment
- Criticisms of press self-regulation made by the House of Lords Select Committee on Communications in its report 'The Ownership of the News'
- Concerns raised about the current state of the press by senior journalists (including Sir Simon Jenkins, Magnus Linklater, and Nick Davies)
- Evidence of low levels of public trust in newspaper journalism
- An opportunity for change presented by the arrival of a new Chair of the Press Complaints Commission

The review is being organised by the Media Standards Trust, an independent registered charity set up to foster high standards in the news media on behalf of the public. It is funded by charitable donations from the Esmée Fairbairn Foundation, the Joseph Rowntree Charitable Trust and the Nuffield Foundation.

Since the review started, the Culture, Media and Sport Select Committee has launched an inquiry into press standards, privacy and libel.

Following the publication of this report the review group will:

seek further views from the public, the press, those who have been involved with the PCC, and political representatives;

further compare the system of press self-regulation with regulation of other industries and with press regulation in other countries (e.g. Ireland).

We plan to present our suggestions for reform later this year.

These suggestions will take account of the economic pressures on the news industry, the inconsistencies in media content regulation, and the opportunities for reform offered by new media.

If you would like to contribute to this review, please visit the Media Standards Trust website at www.mediastandardstrust.org, or contact the director of the Media Standards Trust, Martin Moore at martin.moore@mediastandardstrust.org

2. Summary

This report concludes that the existing system of press self-regulation is not sustainable in its present form. As it currently operates and is constituted, it is insufficiently effective, largely unaccountable, opaque, and failing to reflect the radically changed media environment.

We reach our conclusion as follows:

1. Seismic changes are happening in the way news is gathered, edited, packaged, published, marketed, delivered, and consumed. 'We need to realize that the next generation of people accessing news and information,' Rupert Murdoch said back in 2005, '...have a different set of expectations about the kind of news they will get, including when and how they will get it, where they will get it from, and who they will get it from'.[1]
2. These changes are altering the nature of journalism and raise fundamental questions about how news content should be regulated.
3. News organisations are under enormous competitive and financial pressure. They are investing in costly new technology while at the same time revenue from circulation and advertising plummet. This could have a dire impact on the industry. 'The newspaper and magazine industry could be 'decimated' in 2009 with one out of every 10 print publications forced to reduce publication frequency by more than half, move online or close entirely', the *Financial Times* reported at the end of 2008.[2] Jobs are being lost in virtually every news organisation in the country.
4. In this environment there is an increased risk of inaccuracy. 'I see more inaccuracies in the media in general now', the Director of the Press Complaints Commission (PCC) said recently, 'but that's because there are more platforms and outlets for journalism. This combined with the fact that things go out quickly'. This can only exacerbate the low opinion of newspapers already held by most people. According to research conducted for this review, 75% of people now believe 'newspapers frequently publish stories they know are inaccurate' (for full survey results see Appendix 3).[3]
5. Newspaper publishing has always been a competitive industry, but the current financial and structural crises are unique and are placing intense pressure on the press to capture public attention. The need for more sensationalism and more scoops can have undesirable consequences for standards: at least two senior journalists allege that levels of intrusion have risen in recent years.[4] Operation Motorman provided evidence that the press is regularly invading people's privacy.[5] 70% of the public believe there are 'far too many instances of people's privacy being invaded by newspaper journalists'.[6]

[1] Rupert Murdoch, speech to the American Society of Newspaper Editors, Washington DC, 13-4-2005
[2] 'Writing on the wall for newspapers', *Financial Times*, 10-12-08, based on a report by Deloitte, http://www.ft.com/cms/s/0/4d6576cc-c646-11dd-a741-000077b07658.html
[3] YouGov poll, commissioned by Media Standards Trust for this review, conducted December 11-12-2008. Total sample size was 2,024 adults. The survey did not differentiate between different newspapers.
[4] See Magnus Linklater (section 3.3) and Brian Cathcart (section 3.4)
[5] A police operation on a private detective, as detailed in 'What Price Privacy?' and 'What Price Privacy Now?', by the Office of the Information Commissioner. For more detail see section 3
[6] YouGov poll, commissioned by Media Standards Trust for this review.

6. Trust in journalists is low, and overall may be declining further. A 2008 opinion poll found not only that journalists were among the least trusted of 23 groups, but that trust in journalists overall had fallen further than for any other group.[7]

7. The public have little faith in the willingness of the national press to behave responsibly: research conducted for this review found that fewer than one in ten people trust national newspapers to behave responsibly. Nor do people believe we can rely on editors for guidance. 70% of the respondents disagreed with the statement 'We can trust newspaper editors to ensure that their journalists act in the public interest'.

8. Based on the assessment in this review, the current system of press regulation was not set up to deal with press standards but rather as a complaints body – and it is not therefore constituted to deal effectively with these current challenges. Indeed while systems of regulation of other trades and professions such as advertising and legal services have been transformed in the past two decades to increase their effectiveness, self-regulation of the press has changed little.

9. The current system is also characterised by a lack of transparency, a lack of accountability, conflicting interests and inadequate resources compared to equivalent organisations. According to the outgoing PCC Chairman, even the present resources are in danger of being cut.[8]

10. Because the system of self-regulation is not sufficiently effective, some people are bypassing it in favour of the courts. Particularly in the case of privacy, this is leading to the development of precedent-based law. Paul Dacre, Editor-in-Chief of Associated Newspapers, believes the development of this law is 'far more dangerous' than any other threat facing the news industry.[9] Nevertheless these developments are of little comfort to those who do not wish to go to court. The development of a legal right to privacy is not a satisfactory substitute for effective self-regulation.

11. There is no credible body whose sole responsibility it is to defend press freedom. The PCC is not constitutionally empowered to perform such a role. No alternative currently exists.

12. Lacking faith in press self-regulation, the public would like the government to intervene. Nearly three quarters of people in our survey agree with the statement that 'the government should do more to ensure that newspapers correct inaccurate stories' while six in ten agree that 'the government should do more to prevent national newspaper journalists from intruding on people's private lives'.[10]

13. The government no longer appears reluctant to extend regulation of media content – particularly to address the serious inconsistencies in regulation of online media content. Greater statute based regulation of media content would further marginalise the role of press self-regulation.

14. Without urgent reform, self-regulation of the press will become increasingly ineffective at protecting the public or promoting good journalism. Without prompt and meaningful action, there is a real danger that the current system will become increasingly irrelevant.

[7] YouGov poll, commissioned by *British Journalism Review*, conducted March 27-28, 2008. Total sample size was 1,328 adults
[8] *Sir Christopher Meyer* to the Society of Editors, as reported in the *Financial Times*, 14-11-08, http://www.ft.com/cms/s/0/801d390a-b26a-11dd-bbc9-0000779fd18c.html
[9] Paul Dacre, 'The Threat To Our Press', *The Guardian*, 10-11-08, http://www.guardian.co.uk/media/2008/nov/10/paul-dacre-press-threats
[10] YouGov poll, commissioned by Media Standards Trust for this review.

3. Urgent need for reform

News organisations are under severe economic and competitive pressure. Trinity Mirror, one of the largest newspaper owners in the UK, has seen its share price drop from £5.71 in June 2007 to 56p at the end of December 2008.[11] Emily Bell, director of digital content at *The Guardian*, said she could imagine 'five or six [national newspaper] titles disappearing or consolidating with others' during the current recession.[12] Tim Bowdler, Chairman of the PA Group and Chairman of the Press Board of Finance, is quoted as saying these are 'extraordinarily challenging times' for newspaper publishing.[13]

For years, many news organisations have suffered from declining circulations and revenues. To survive both the economic downturn and the seismic changes affecting news production and consumption, news organisations will need to convince the public that their content – in particular their news – is of continuing value.

An effective self-regulatory system is essential to give the public confidence in the quality of the press. This must include oversight of standards and an effective system for complaints. Without an opportunity to obtain effective redress through the self-regulatory system, those who can afford it will seek help from the courts, leading to the development of law (rather than self-regulation) to protect the public from harm.

Such a system is also critical to defend journalistic standards, particularly when there is significant pressure to cut costs and sustain profitability. The alternative is increased regulation, for which research conducted for this review shows the public are now sympathetic.[14]

3.1 Public trust in the press, already very low, may be declining further

Journalism is not held in high esteem by the public. In figures from Ipsos MORI charting trust in the professions to tell the truth since 1983, journalists come at or near the bottom of a group of 16 professions.[15] The most recent Ipsos MORI poll (2006) shows them at the bottom of the list, retaining the trust of only 19% of the general public.

However, not only does public trust in journalism remain low, there is evidence that trust may be falling further.

A YouGov poll in March 2008 showed that 43% of the public trust journalists on 'up-market' newspapers (such as *The Times*, the *Telegraph* or *The Guardian*) to tell the truth. The equivalent figure is 18% for journalists on mid-market newspapers (such as the *Daily Mail* and the *Daily Express*), and 15% for journalists on red top newspapers (such as the *Daily Mirror* and *The Sun*). By comparison 87% of people trust local doctors to tell the truth, 76% trust teachers and 71% trust local policemen.[16]

Moreover, this poll shows not only low levels of trust, but a significant decline in trust in journalism over the last 5 years. In 2003, 65% of people trusted journalists on up-market papers to tell the truth. By March 2008 this had dropped to 43%. Over the same period

[11] Trinity Mirror PLC share price: 1-06-07 571p, 31-12-08 55.5-56p, London Stock Exchange
[12] 'Amid the carnage, why should we be immune?' Emily Bell, *The Guardian* Organ Grinder Blog, 20-10-2008 http://www.guardian.co.uk/media/2008/oct/20/pressandpublishing-emilybell
[13] Tim Bowdler, quoted in *Press Gazette*, 25-11-2008, http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=42522&c=1
[14] 58% of the public believe 'national newspapers should be regulated more'. Despite the global financial crisis this is only slightly lower than banks (79%) and considerably higher than supermarkets (42%), the BBC (41%) and hospitals (39%). See Appendix 3.
[15] Ipsos-MORI, Opinion of Professions research, April 2008, http://www.ipsos-mori.com/content/turnout/opinion-of-professions2.ashx
[16] YouGov poll, *British Journalism Review*, conducted March 27-28, 2008, total sample size was 1,328 adults

the percentage of people who trust journalists on mid-market papers dropped from 36% to 18%. The figure for red top newspapers stayed close to the bottom of the table but did not decline further. Indeed it rose slightly, from 14% to 15% over this 5 year period.

This decline should be seen in the context of a general decline in trust for many professions. However, for journalists of up-market and mid-market papers, the decline has been faster than with other professions.[17]

Of the 23 groups covered in the YouGov survey, seven cover journalists. Six of these performed worse than all other occupations covered by the poll.[18]

3.2 The risks of inaccuracy in the press are increasing

The significant economic and technological challenges faced by news organisations are leading them to narrow the manner in which news is gathered and to accelerate the speed with which it is published. Journalists are expected to produce more material, for more platforms, in less time. An analysis of news production by Cardiff University found that national newspaper journalists today, on average, have to produce three times more content each day than they did in 1985.[19]

Most news organisations have reduced the number of sub-editors they employ. In October 2008, for example, Express Newspapers announced up to 80 sub-editors across its titles were to be made redundant.[20] *The Independent* reported In November that it was to cut 60 editorial posts.[21] Many are now giving their journalists responsibility for their own editing and, in some cases, for publishing their own articles.[22] As a consequence, there are fewer people editing and fact checking than there were. This is increasing the risks of inaccuracy.

More and more user-generated content is being published on news organisations' websites, in the form of comments, blogs, photographs, and videos. Some of this content is moderated, some is not. Rarely is it checked for accuracy (as opposed to offence).[23] As the quantity of user-generated content on news sites accumulates, so too does the risk of inaccuracies. It has been predicted that within three years more than two-thirds of the content on the web will be user generated – a trend for which the current system of self-regulation is unprepared.[24]

There is also some evidence that competitive pressures have led some news organisations to compete for sales at the expense of accuracy. These pressures have been blamed, for example, for the low standards of reporting of the disappearance of Madeleine McCann.[25] The story dominated newspaper coverage for many months over the summer of 2007. Yet hundreds of the news stories were subsequently found (by a court) to have been highly

[17] Local doctors fell by 6%, from 93-87%. School teachers fell 12%, from 88-76%. Local police officers fell 11%, from 82-71%

[18] With the exception of 'red-top' journalists who were already lower than all other groups save estate agents. Research written up in 'On the road to self-destruction', Professor Steve Barnett, *British Journalism Review*, Vol. 19, No. 2, 2008, pages 5-13

[19] While the number of journalists has, according to the research, remained fairly static. Justin Lewis, Andrew Williams and Bob Franklin, *A Compromised Fourth Estate? UK news journalism, public relations and news sources*, *Journalism Studies*, Vol 9 No 1, 2008, pp1–20.

[20] 'Express unveils plan for sub-free future', Oliver Luft, Guardian.co.uk, 1-10-08

[21] 'Despondency at the Independent', Sky, 24-11-08, http://news.sky.com/skynews/Home/UK-News/The-Independent-Why-Editor-Roger-Alton-Is-Despondent/Article/200811415160063?lpos=UK_News_Article_Body_Copy_Region_0

[22] For example at *The Daily Telegraph*; 'Telegraph experiments with 'post moderation' of news stories', Dominic Ponsford, Press Gazette, 29-10-08 http://www.pressgazette.co.uk/story.asp?sectioncode=1&storycode=42328

[23] See, for example, News Group Newspapers Terms and Conditions for contributions to *The Sun* website: 'it is possible that content provided by other Users (for instance, in a Member's profile) may contain inaccurate, inappropriate, offensive or sexually explicit material, products or services, and NGN assumes no responsibility or liability for this material', accessed 12-12-08. See also Associated Newspapers Ltd Terms and Conditions for websites: 'Associated does not make any warranty or representation as to the accuracy or fitness for purpose of any material on this web site', http://www.dailymail.co.uk/home/terms.html, accessed 10-12-08.

[24] 'The Diverse and Exploding Digital Universe', IDC White Paper, 2006, http://www.emc.com/collateral/analyst-reports/diverse-exploding-digital-universe.pdf

[25] On May 2nd 20008 *Newsweek* reported that the popularity of the McCann story drove further coverage: 'Tabloid sales skyrocket with coverage of even the most minor details... Maddie stories routinely increased sales by 2 or 3 percent'. As a consequence, *Newsweek* reports, many papers published McCann stories that subsequently proved to be false, http://www.newsweek.com/id/135145/output/print.

inaccurate and, in some cases, 'seriously defamatory'. In all, eleven national news outlets were found by the court to have published significant quantities of inaccurate information.[26]

75% of the public now believe that 'Newspapers frequently publish stories they know are inaccurate'.[27]

3.3 There is growing concern about privacy intrusion

'Operation Motorman', a police raid on the office of a private detective in Surrey in 2002, revealed that newspapers had collected significant quantities of personal information including details of criminal records, registered keepers of vehicles, driving licence details, ex-directory telephone numbers, itemised telephone billing and mobile phone records. Detailed records obtained by the police from this single detective showed that 305 journalists used the agency to gather thousands of pieces of confidential personal information on behalf of their newspapers. 58 journalists at the *Daily Mail* alone had made 952 'transactions'.[28]

'This mass of evidence documented literally thousands of section 55 offences', according to the Office of the Information Commissioner (ICO).[29] Nor was this 'just an isolated business operating occasionally outside the law,' the ICO said, 'but one dedicated to its systematic and highly lucrative flouting'. Given that other individuals have been employed by members of the press for similar purposes (as illustrated in the case against Clive Goodman), this is likely to understate the scale of the problem.[30]

Since Operation Motorman, there have been numerous further privacy cases. These include:

- *R. vs Clive Goodman:* the *News of the World's* royal correspondent was jailed for phone tapping. Andy Coulson, the paper's editor, resigned
- *Murray vs Big Pictures (UK) Ltd:* following publication of a photograph of JK Rowling with her husband and baby, the Court of Appeal ruled that JK Rowling can take the photo agency, Big Pictures, to trial. If successful, this will be, according to media lawyers Swan Turton, 'hugely significant for individuals in the public eye who wish to protect their children from media intrusion'[31]
- *Max Mosley vs News Group Newspapers Ltd:* the court found against *News of the World* under Article 8 of the Human Rights Act (Privacy). Mosley was awarded £60,000 and the newspaper ordered to pay costs. Mosley is now taking his case to the European Court of Human Rights in Strasbourg to extend the law of privacy to require news organisations to contact the subject of a story before publication

Some within the industry believe press intrusion has significantly increased in the last two decades. 'In the last 20 years ...there has been a steady deterioration in attitudes within the newspapers themselves', Magnus Linklater of *The Times* wrote in September 2008.

[26] In the cases brought by the McCanns, Robert Murat and others (e.g. see 'Murat settlement: Papers pay £600,000 to Murat for libels in Madeleine case', Stephen Bates, *The Guardian*, 18-7-08. http://www.guardian.co.uk/media/2008/jul/18/medialaw.pressandpublishing). The 11 papers involved were the *Daily Express*, *Sunday Express*, *Daily Star* (all Express Newspapers), *Daily Mail*, *Evening Standard*, *Metro* (all Associated Newspapers), *Daily Mirror*, *Sunday Mirror*, *Daily Record* (all MGN), *The Sun* and the *News of the World* (both News Group).
[27] YouGov poll, commissioned by Media Standards Trust for this review, December 2008
[28] From 'What Price Privacy?' and 'What Price Privacy Now?', Office of the Information Commissioner. The second report cites evidence against 12 national daily and Sunday newspapers (p.9)
[29] Section 55 of the Data Protection Act, 'Unlawful obtaining etc. of personal data'. http://www.opsi.gov.uk/ACTS/acts1998/ukpga_19980029_en_7
[30] Clive Goodman, royal correspondent at the *News of the World*, hired a private detective - Glenn Mulcaire - to hack into the private phone messages of members of the royal family, http://news.bbc.co.uk/1/hi/uk/6301243.stm
[31] e-bulletin, Swan Turton Solicitors, Rowling Privacy Appeal Upheld: David Murray V Big Pictures (Uk) Ltd. http://www.swanturton.com/ebulletins/archive/jkcrowlingupheld.aspx

'So great is the pressure to bring in the next day's front-page exclusive, that questions of how it was obtained, and whether rules were broken or privacy invaded in the course of researching it, are brushed aside'.[32]

According to our survey, 70% of the public believe there are 'far too many instances of people's privacy being invaded by newspaper journalists'.

3.4 These problems are not being properly addressed by the current system of press self-regulation

There is little to indicate the press self-regulatory body is responding to these problems. This is particularly true in the two key areas of accuracy and privacy.

Inaccuracies

Tim Toulmin, Director of the PCC, admits there are more inaccuracies in the press, but suggests this is unavoidable and ought to be accepted as the price of more open media:

> *'I see more inaccuracies in the media in general now but that's because there are more platforms and outlets for journalism. This combined with the fact that things go out quickly. I don't know what the public would think if you asked them to make a choice between getting all of news accurately but later, or get it all immediately but the story may have to be revised. I suspect they would say that they want accurate information and wait for it, but in practice I am not sure that is right'* [33]

This does not, of course, take into account the possible harm done to people by inaccuracies in the media, and the repetition of those inaccuracies across other outlets and the internet.

On average, about 80% of complaints made to the PCC – the majority of which are about accuracy – are rejected. 45-60% of them are rejected because the complaint is 'not formalised'; 10-15% because they 'have no case under the code'; 10-20% because they are 'outside the remit' of the PCC; and 1-5% because they are made by 'third party complainants' – people or organisations not directly referenced in the article concerned.[34]

In a case as high profile as the Madeleine McCann case, where evidence of inaccuracy has been found in scores of articles, the PCC appears to have taken no action. 'Not one editor and... not one reporter has lost his or her job or even faced formal reprimand as a result of the McCann coverage', Brian Cathcart wrote in the *New Statesman*. 'There has been no serious inquest in the industry and no organised attempt to establish what went wrong, while no measures have been taken to prevent a repetition'.[35]

Invasion of privacy

Action against the individual journalists identified by Operation Motorman led only to conditional discharges – to the frustration of the Information Commissioner – who blamed this on the limited punishment available for breaches of Section 55 of the Data Protection Act.[36]

[32] 'What happened to playing fair?', Magnus Linklater, *British Journalism Review*, Vol.3, 2008
[33] Tim Toulmin, quoted in 'What's happening to our news?', Dr Andrew Currah, Reuters Institute, Oxford University, 2009
[34] Based on statistics published by the PCC on www.pcc.org.uk. For example, April 2007 to March 2008: 4,862 complaints (based on detailed figures, which do not correlate with summary figures of 4,791), of which 4,241 were rejected or not pursued (87%) and 621 were upheld, resolved or sufficient action taken. Regarding third party complainants, the PCC 'does not generally accept complaints from third parties about cases involving named individuals without the signed authorisation of the person concerned' (from www.pcc.org.uk)
[35] 'The Real McCann Scandal', Brian Cathcart, *New Statesman*, 23-10-08, http://www.newstatesman.com/law-and-reform/2008/10/madeleine-mccann-daily-british
[36] 'What Price Privacy Now?', Press Release, Office of the Information Commissioner, http://www.ico.gov.uk/upload/documents/pressreleases/2006/what_price_privacy_2.pdf

Nor, it appears, did the press's own self-regulatory body, the PCC, address the issues raised. Despite the evidence provided by the Information Commissioner, no newspapers or journalists were penalised or censured, and no journalists or editors resigned.

Eight months after the publication of an account of Operation Motorman, and only after the *News of the World* royal correspondent had been convicted and jailed for subterfuge, the PCC conducted a brief inquiry into subterfuge and newsgathering at the *News of the World*. During the course of this inquiry, the PCC wrote to other editors 'to inquire about the extent of internal controls and what they did with regard to educating journalists about the requirements both of the Code and the law' (not seeking to investigate whether news organisations had taken part in these activities).[37]

Its report did not say whether or not the practices were still widespread or continuing. It noted that there were 'numerous examples of good practice throughout the industry' without mentioning any wrongdoing beyond Goodman and the *News of the World*.

The PCC's disinclination to take more proactive action in these cases risks having an adverse effect on standards. 'On the larger flaws of the national media, the PCC is strangely silent, and it is here that the standards of what passes as acceptable behaviour have become so grotesquely distorted', Magnus Linklater wrote in the *British Journalism Review*.[38]

3.5 Nor is self-regulation protecting press freedom

At the same time that self-regulation is failing to maintain press standards, self-regulation is also unable to defend press freedom.

In the last five years new laws have been introduced that do not recognise the quasi-constitutional role of the press in a democratic society. The Regulation of Investigatory Powers Act 2000, for example, unlike previous legislation regarding the use of information, has no exemption for journalists. Old laws have also been resuscitated that enable the police to prosecute journalists for gathering and publishing information. Sally Murrer, a journalist at the *Milton Keynes Citizen*, was arrested and charged with 'Aiding and abetting... misconduct in public life' in 2007, for writing articles based on information passed to her by a police contact.[39] Jock Gallagher, who is setting up a centre for press freedom at the University of Sheffield, cites more than seventy UK statutes that now impinge on media freedom.

The current system of press self-regulation is unsuited to defending freedom of the press. The PCC is not constitutionally empowered to perform such a role. When it was set up, in 1991, it was believed this would contradict its primary purpose – to resolve complaints against the press on behalf of the public. Yet no other body exists.

Without anything comparable to the First Amendment to the US Constitution, if the UK press does not make a conscious effort to explain its quasi-constitutional role and to defend its freedom then that freedom will almost certainly be further constrained.[40] There is currently no individual or organisation suitable to do this.

[37] PCC report on subterfuge and newsgathering, http://www.pcc.org.uk/assets/218/PCC_subterfuge_report.pdf
[38] 'What happened to playing fair?', Magnus Linklater, *British Journalism Review*, Vol.3, 2008
[39] 'I faced life in jail... just for writing about Milton Keynes' Sally Murrer, 29-11-08, http://www.dailymail.co.uk/news/article-1090484/I-faced-life-jail---just-writing-Milton-Keynes.html
[40] First Amendment to the US Constitution: 'Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances'

3.6 People are bypassing the PCC in favour of the courts

In 1998, *The Guardian* supported a Bill to increase privacy protection at the same time as rebalancing the libel law in favour of the defendant.[42] This bill did not progress. But, ever since the European Convention of Human Rights was incorporated into English law in 2000, recourse to the courts has theoretically been available via Article 8: 'Everyone has the right to respect for his private and family life, his home and his correspondence'.

The press's Code of Practice is similar. It states in Clause 3 (Privacy) that,

> *'Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications'.*[43]

In practice, without effective means to protect privacy through press self-regulation, some are seeking redress through the courts. Resort to the courts is assisted by the relatively new Conditional Fee Agreements (CFAs), by which lawyers take on cases on the basis that they will only receive a fee if their client wins.[44]

Five years ago Alan Rusbridger, the editor of *The Guardian*, warned his colleagues that if they did not restrain their behaviour and reform the process of self-regulation, then the courts would Impose restraints:

> *'Parliament has never legislated to create a separate tort of privacy: so long as the press can point to effective self-regulation it would be wrong for judges to try and create one.*
>
> *'...[but] it is clear that complainants will increasingly prefer to use the courts as well as, or instead of, the PCC. The Human Rights Act has imported the right to privacy into domestic law. This will put the PCC under greater pressure and scrutiny than at any time during its history.*
>
> *'There are a number of widely held concerns among journalists and editors about some of the PCC's processes... It is in the interests of the newspaper industry for the PCC to take notice of these concerns. A recent European Court of Human Rights judgement found that victims of privacy do not have sufficient remedies in the UK. If the PCC is not seen to be open, independent and effective there is little doubt that the courts will intervene—thus achieving the very result which the press rightly seeks to avoid.'*[45]

The press ignored Rusbridger's warnings. The result has been the incremental development of a privacy law based on individual precedents – from Princess Caroline of Monaco, to Naomi Campbell, Loreena McKennitt, JK Rowling, and most recently Max Mosley.[46] In this way the courts, rather than the PCC, have been defining what constitutes the 'public interest' in terms of limiting rights to privacy.

The Max Mosley case was of particular significance. Mosley took action against the *News of the World* under Article 8 of the Human Rights Act after the paper published text, photographs and video – captured covertly – of Mosley participating in an 'S&M orgy' with a group of consenting adults. The *News of the World* defended itself by claiming that the

[42] http://www.publications.parliament.uk/pa/cm200203/cmselect/cmcumeds/458/3031116.htm
[43] Code of Practice, http://www.pcc.org.uk/cop/practice.html
[44] For example, Musa King v Telegraph Group Limited [2004] EWCA 613 (Civ). http://www.hrothgar.co.uk/YAWS/frmreps/04a613.htm
[45] Memorandum submitted by Mr Alan Rusbridger to House of Commons Select Committee on Culture, Media and Sport, 11th March 2003
[46] http://www.guardian.co.uk/media/2008/jul/24/mosley.newsoftheworld

footage was in the public interest since the orgy had a 'Nazi theme' and Mosley's father led the British Fascist party in the 1930s.[47]

The judge, Justice Eady, found no evidence of a Nazi theme and dismissed further public interest claims. The public interest required that Mosley's privacy be protected, the judge found, not that it be exposed by the paper.

> *'...there was no public interest or other justification for the recording, for the publication of the resulting information and still photographs, or for the placing of the video extracts on the News of the World website – all of this on a massive scale'*[48]

Mosley was awarded £60,000 in damages and the *News of the World* required to pay costs.

The editor of the *Daily Mail* has argued that this, and other legal precedents, have now become the most significant threat facing the newspaper industry:

> *'there is one remaining threat to press freedom that I suspect may prove far more dangerous to our industry than all the issues I have just discussed. Inexorably, and insidiously, the British press is having a privacy law imposed on it, which - apart from allowing the corrupt and the crooked to sleep easily in their beds - is undermining the ability of mass-circulation newspapers to sell newspapers in an ever more difficult market.'*[49]

This suggests some believe that the economic sustainability of newspapers should be a consideration when determining an individual's right to privacy. In any event, it appears likely that, given the success of recent cases, the legal challenges and precedents will increase, unless the system of regulation is improved to give complainants a more effective remedy against invasions of privacy.

3.7 Privacy laws are being extended by legal challenges to non-print media

Actions are also being brought to defend privacy in areas outside the ambit of the press. In these cases too, the development of privacy rights can have knock-on implications for news organisations.

Mathew Firsht, for example, successfully sued his former school friend, Grant Raphael, for creating a fake profile of Firsht on the social networking site Facebook.

The judge ruled in favour of Firsht, partly based on 'the misuse of private information', and awarded him £22,000. The ruling, though made with reference to information on a social networking site, has implications for all those who regularly access, use and publish private information – most notably journalists.

The *Financial Times* commented that the case is likely to have an even broader impact than Mosley. 'It is one thing for the *News of the World* to be ordered to pay Max Mosley £60,000,' media lawyer Ashley Hurst was quoted as saying. 'It is quite another for a private individual to be ordered to pay an ex-school friend £22,000, plus costs. That's a big hit'.[50]

[47] *'News of the World* Editor: Max Mosley's S&M orgy was criminal', Nico Hines, *The Times*, 9-7-2008 http://www.timesonline.co.uk/tol/news/uk/article4302171.ece#cid=OTC-RSS&attr=797084
[48] Mosley vs *News of the World*, Justice Eady Summary of Conclusions
[49] Paul Dacre, 'The Threat To Our Press', *The Guardian*, 10-11-08, http://www.guardian.co.uk/media/2008/nov/10/paul-dacre-press-threats
[50] 'Court damages send stern warning', Megan Murphy, *Financial Times*, 25-7-08. http://www.ft.com/cms/s/0/c12423a8-59e3-11dd-90f8-000077b07658.html

Firsht's is not the only such case. There are further cases in progress in the UK and abroad.

3.8 Convergence has exposed serious inconsistencies in media regulation that the government now plans to address

Until recently the government has been reluctant to regulate content on the internet. Such content was deliberately excluded from Ofcom's remit in the 2003 Communications Act.

The government no longer appears to be so reluctant. In September 2008, the Secretary of State for Culture, Media and Sport said he would like to 'tighten up' regulation for online content and services. 'The time has come for perhaps a different approach to the internet,' Andy Burnham said. 'I want to even up that see-saw, even up the regulation [imbalance] between the old and the new.' [51]

Lord Currie, the outgoing Chairman of Ofcom, reiterated the Secretary of State's remarks in October. 'Ask most legislators today, and, where they think about it, they will say that period [of forbearance] is coming to an end. To say this is not Ofcom going looking for trouble ... but a marker for my successor that Ofcom is likely to find its remit being stretched [to the internet]'.[52]

This change of heart reflects growing recognition of the glaring inconsistencies in content regulation exposed by convergence, growing fears on behalf of vulnerable groups such as children, and recognition that it is less hard to regulate the internet than was previously thought.

It has already led to the formation of the UK Council for Child Internet Safety that will create standards, regulate access, and work out how to supervise usage. And internet content regulation will necessarily extend much further in 2009 with the implementation of the Audio Visual Media Services Directive (AVMS).

The PCC's director, Tim Toulmin, accepts that there are currently few fixed boundaries, and plenty of inconsistencies in the existing system:

> *'Once boundaries between PCC and Ofcom are established, the difficulty will be not to issue contradictory rulings, information that might confuse the public. For example, if someone is complaining about Sky News to Ofcom, and it is the same footage as on Telegraph TV (which we cover), it will be very unsatisfactory if two different bodies looking at the same objection come up with two completely different rulings'* [53]

Given this confusion, and the government's apparent new openness to extending regulation, the press, and more particularly the PCC, will have to decide:

- whether to stop regulating news services on the web, particularly audio visual broadcast services like Telegraph TV and Sun TV, and focus its attention on print
- whether to continue regulating news content on the web, but accept the need for consistency with Ofcom in its online regulation and, potentially, a degree of statutory regulation, for example with regard to audio visual material.

[51] Andy Burnham, Secretary of State for Culture, Media and Sport, speech and Q&A at RTS, 26-9-08
[52] 'Ofcom to have wider remit with more online powers, says David Currie', Mark Sweney, Guardian.co.uk, 15-10-08. http://www.guardian.co.uk/media/2008/oct/15/ofcom-digitalmedia
[53] Tim Toulmin, quoted in 'What's happening to our news?', Dr Andrew Currah, Reuters Institute, Oxford University, 2009

4. Other systems of regulation benefited from reform – so could the press

Many systems of public and private sector regulation have been reformed over the last decade, in order to make them more responsive to the public interest, and to raise confidence in the relevant trade or profession. This reform has not happened in the case of press regulation.

4.1 The regulation of many professions and trades has been reformed

Legal Profession

Following a 2001 investigation by the Office of Fair Trading, Lord Falconer conducted a wide-ranging public consultation about the legal profession and its system of self-regulation. He found that 'the current framework is out-dated, inflexible, over-complex and insufficiently accountable or transparent... Government has therefore decided that a thorough and independent investigation without reservation is needed'.[54]

Sir David Clementi carried out this investigation. His report, *Review Of The Regulatory Framework For Legal Services In England And Wales*, published in 2004, found little public confidence in the existing regulatory framework, in part because 'the governance structures of the main frontline professional bodies are inappropriate for the regulatory tasks they face'. It reasserted the need for reform and made wide-ranging recommendations as to how legal services could be improved.[55]

In 2006 the Department for Constitutional Affairs published the Draft Legal Services Bill that proposed reforms to the way lawyers are regulated and provide services.[56]

These were welcomed by the OFT, who said: 'Increasing the independence and effectiveness of complaints handling mechanisms will mean users of legal services are better protected and more confident'.[57]

'The government is reforming the regulatory framework for legal services', the Department for Constitutional Affairs said in 2006, 'in order to put the consumer first. We want a framework that promotes competition, innovation and protects the consumer'.[58]

This led to the Legal Services Act (2007) and to the creation of two main regulatory bodies: the Office for Legal Complaints (OLC) to oversee complaints; and the Legal Services Board (LSB) to act as a single, independent and publicly accountable regulator with the power to enforce high standards.[59] These oversee the new self-regulatory bodies, the Legal Complaints Service and the Solicitors Regulatory Authority.

'This new Act brings in much heralded changes to how legal services will be delivered and regulated and how complaints will be handled. It is essential that the OLC and LSB

[54] The Office of Fair Trading (2001), *Competition in Professions*, London: HMSO
[55] Review Of The Regulatory Framework For Legal Services In England And Wales, Sir David Clementi, December 2004, http://www.legal-services-review.org.uk/content/report/report-chap.pdf
[56] http://www.dca.gov.uk/legist/legalservices.htm
[57] 'OFT welcomes reforms of legal profession', OFT Press Release, 17-10-2005 http://www.oft.gov.uk/news/press/2005/legal
[58] http://www.dca.gov.uk/legalsys/lsreform.htm
[59] http://www.opsi.gov.uk/acts/acts2007/ukpga_20070029_en_1

are the guardians of fairness, transparency and impartiality for both the legal services consumer and the legal practitioner who provides the service'.[60]

Medical Profession

In 2000 doctors voted for reform of their system of self-regulation, saying both the profession and the public had lost confidence in the GMC following a number of high profile scandals (particularly regarding the Bristol Royal Infirmary, and the case of Dr Harold Shipman). Doctors criticised the GMC's slowness, bureaucracy, and lack of openness, and there were disagreements over proposals for revalidation (renewal of professional registration).[61]

The GMC issued a consultation paper in 2000 that proposed a number of changes including agreeing to become answerable to Parliament and ultimately the Council for Healthcare Regulatory Excellence.

Reform was then taken further after Dame Janet Smith's inquiry published its fifth report in 2004 that made stringent criticisms of the existing system and recommended further changes.[62]

Smith criticised the GMC for a lack of transparency, a lack of accountability, and a lack of balance between its role as a representative of the doctors and protector of the patient. The priority of the GMC had, Smith said, become less the protection of the patient than to 'safeguard the interests of the medical profession'.[63]

Since Smith's inquiry the GMC has instituted wide ranging reforms that are designed to give the medical profession: greater transparency, greater public accountability, more resources to investigate complaints - and more leeway to initiate investigations, a clearer separation of functions (e.g. between investigation and adjudication), greater lay membership and 'partnership regulation' with the public, and further consultation on agreed standards.

The GMC's role has also been set in a wider regulatory framework in order to make sure the interests of the patient remain paramount.

Food industry and public health

By the late 1990s, there was evidence to suggest that the public's confidence in the safety of food had been severely undermined (following salmonella and BSE outbreaks).[64] The Joseph Rowntree Trust commissioned Professor Philip James to review the situation and to make recommendations on the structure and functions of a food standards agency.[65]

A large scale public consultation was carried out following the submission of James' report, attracting over 600 responses. Many respondents suggested that the problems arose from a loss of confidence in the Government machinery for handling food safety issues, rather than a loss of confidence in British food.

Respondents strongly supported the view that there should be a clearer separation between responsibility for promoting food safety and responsibility for promoting the interests of the food and related industries. Any new body had to operate free from

[60] 'Legal Services Ombudsman and Legal Services Complaints Commissioner welcomes new Legal Services Act' OLSO press release, 20-10-2007 http://www.olso.org/news_detail.asp?id=12
[61] 'BMA's annual meeting expresses 'no confidence' in GMC', Linda Beecham, *British Medical Journal*, 8-7-2000 http://www.bmj.com/cgi/content/full/321/7253/72/e
[62] Shipman Inquiry, http://www.the-shipman-inquiry.org.uk/home.asp
[63] The Shipman Inquiry (2004), *Fifth Report - Safeguarding Patients: Lessons from the Past - Proposals for the Future*, London: HMSO
[64] See BBC briefing at http://news.bbc.co.uk/1/hi/health/background_briefings/food_safety/83148.stm
[65] Report at http://archive.food.gov.uk/maff/archive/food/james/part1.htm

conflicts of interest, and on an open and transparent basis, in order to provide an effective vehicle for improving food safety and standards and for restoring confidence.

In 2000 the new Food Standards Agency became operational in accordance with Food Standards Act passed in 1999. The Agency's main objective is to protect public health in relation to food, and 'act in the consumer's interest at any stage in the food production and supply chain'.[66]

Other trades and professions

Over the last decade the regulation of many other trades and professions has been reformed with a view to improving the service to the public. There has been considerable variation in the methods of reform. In almost all cases, reform has followed concern within an industry about public confidence, and has been aimed at raising standards and increasing transparency and accountability.

In some cases there have been moves by the government to regulate previously unregulated areas, for example, where there was concern about consumer protection and redress:

Security

The Security Industry Authority (SIA) was established following the Private Security Act 2001 to raise the professional standards and probity of those working in the private security industry. The SIA licences individuals in the security industry and approves security companies. It conducts regular inspections and actively seeks to promote and spread best practice.[68]

In other cases the industry itself has devised schemes to promote best practice and ensure high standards:

Energy

The Energy Ombudsman, established in 2006, is a voluntary, industry-funded scheme to deal with consumer billing complaints. It follows a demand from the industry regulator, Ofgem, that energy suppliers get their houses in order after an enquiry into billing practices and consumer experiences promoted by watchdog EnergyWatch.

Estate Agents

The Estate Agent Ombudsman, set up in 1998, is the complaints procedure of a trade body representing estate agents. Since 2007, all estate agents have been required to register with a consumer redress scheme approved by the OFT. The Ombudsman is intended to provide a free, fair and independent service for dealing with disputes between sales and lettings agents and consumers.

Existing systems have also been reformed:

Pensions

The 2004 Pensions Act set out specific objectives for a reformed Pensions Regulator. This was intended to lead to more proactive regulation, in place of OPRA (the Occupational Pensions Regulatory Authority) under whose watch several occupational pension scandals occurred. Its aims were to protect members of working pension schemes, to promote the good administration of such schemes and to reduce the risk of compensation being required.[69]

[66] FSA Statement of General Objectives and Practices at http://www.food.gov.uk/multimedia/pdfs/sgop.pdf
[68] The Security Industry Authority, www.the-sia.org.uk
[69] The Pensions Regulator, http://www.thepensionsregulator.gov.uk/index.aspx

Nursing and Midwifery Council (NMC)
The NMC was set up under the Nursing and Midwifery Order 2001 and replaced the previous regulatory system. Nursing and midwifery saw reform alongside GPs and dentists as a way in which to re-establish public trust in healthcare professionals. The NMC establishes standards of education, training, conduct and performance for nursing and midwifery and ensures that those standards are maintained in order to safeguard the health and well being of the public.[70]

General Dental Council (GDC)
In 2001, the GDC was reformed in order to build public trust, particularly by enhancing its governance and increasing lay representation. This was part of a set of reforms across the healthcare sector. The GDC continues to institute reforms and is currently 'delivering a modernisation programme to extend our powers and make us a more efficient and effective regulator'.[71]

BBC
The BBC Governors were replaced with the BBC Trust in order to emphasise accountability to licence fee payers and to put greater distance between those who hold the BBC to account and those who run the BBC on a day-to-day basis.[72]

4.2 Others have been made more transparent

Aside from any organisational reforms, many public bodies have had to become significantly more transparent as a result of the introduction of the Freedom of Information Act (FOI Act).

The PCC styles itself as a regulator (and was referred to by the current Chairman as a 'public service' in November 2008). Yet it does not accept that it should be subject to the Freedom of Information Act.[73] This is somewhat ironic when the industry it regulates is a strong proponent of transparency and a committed user of the FOI Act.

Its position on the FOI Act also appears tenuous as a matter of law. The PCC would seem to satisfy the test of being a public body by performing functions that would otherwise be enforced by legislation. Indeed it was considered a public authority for the purposes of the Human Rights Act 1998 (despite the objections of then PCC Chair Lord Wakeham).

At the time the Lord Chancellor wrote to Lord Wakeham:

> *'I now tend to think that... the press might well be held to be a 'function of a public nature', so that the PCC would be a 'public authority' under the Human Rights Act... I believe this to be an opportunity, not a burden on the PCC. The opportunity is that the courts would look to the PCC as the pre-eminently appropriate public authority to deliver effective self-regulation fairly balancing Articles 8 and 10. The courts therefore would have to intervene only if self-regulation did not adequately secure compliance with the Convention'.*[74]

The PCC argues that it should be excluded from the FOI Act on the grounds that some of the complaints made regard privacy and therefore should remain private. Though in a

[70] Nursing and Midwifery Council, www.nmc-uk.org/
[71] General Dental Council, Current Reforms, http://www.gdc-uk.org/Our+Current+Reforms/
[72] The BBC Trust, www.bbc.co.uk/bbctrust/
[73] Sir Christopher Meyer to the Society of Editors, as reported in the *Financial Times*, 14-11-08, http://www.ft.com/cms/s/0/801d390a-b26a-11dd-bbc9-0000779fd18c.html
[74] From CPBF Response to Ministry of Justice Consultation Paper (2000)

number of other cases – such as the BBC – private personal information can be excepted from FOI requests.

Ofcom, the BBC, Channel 4, The Arts Council and the Information Commission are all covered by the FOI Act.

4.3 Why not the press?

Despite a wave of regulatory reform, press regulation has not changed materially. The PCC has made minor changes in the way in which it operates, such as introducing more accountability in the manner of handling complaints, but these have not reflected the reforms elsewhere, or the changing relationship of the press with the public.

Nor have they focused on press standards and on the chronic lack of trust in print journalism. According to research conducted for this review, only 7% of the public believe that national newspapers can be trusted to behave responsibly. This is lower than police (at 43%), lower than the BBC (at 34%), and lower than banks (at 13%).

As Professor Onora O'Neill said in her 2002 Reith Lectures:

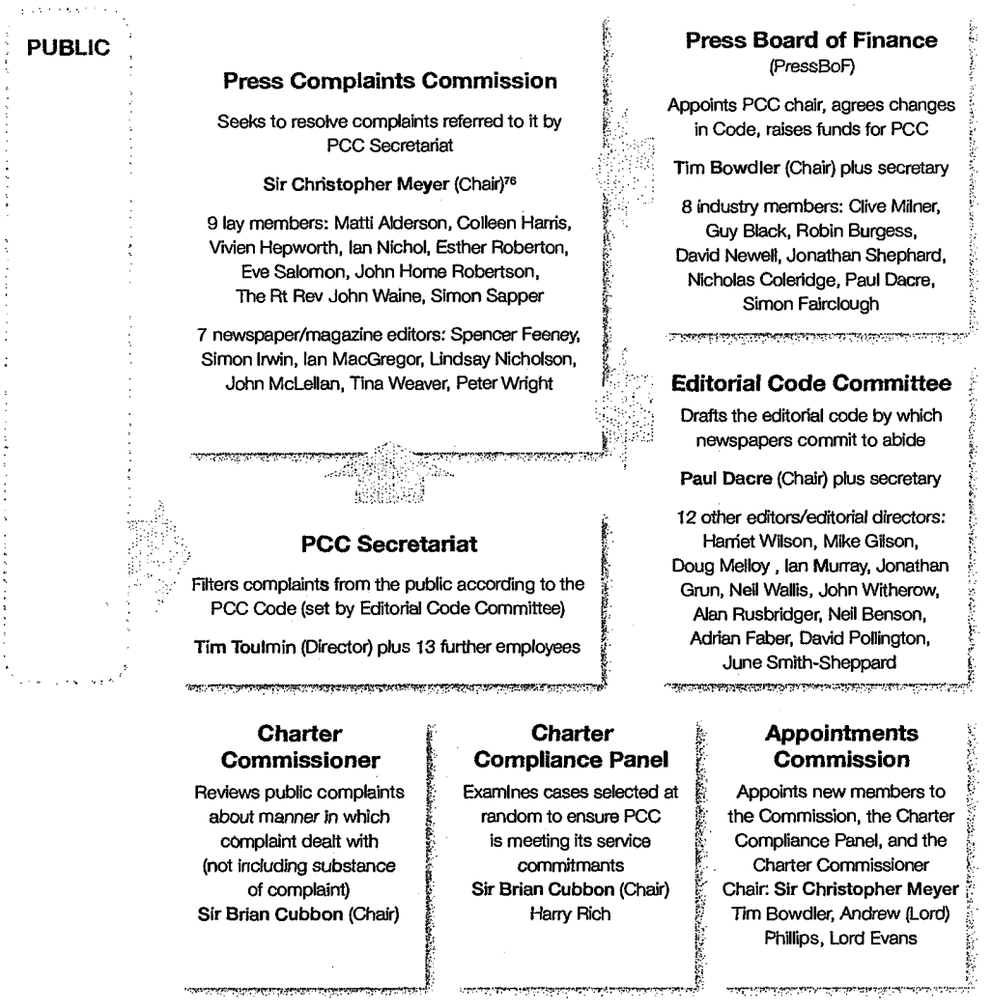
> *'[S]ome powerful institutions and professions have managed to avoid not only the excessive but the sensible aspects of the revolutions in accountability and transparency. Most evidently, the media, in particular the print media – while deeply preoccupied with others' untrustworthiness – have escaped demands for accountability'.*
>
> Onora O'Neill, From Reith Lecture 5 , 'Licence to Deceive'

Over the following pages this report evaluates the current system of press self-regulation against a recent set of standards for good self-regulation.

5. Evaluating the current system of press self-regulation

5.1 The structure of the Press Complaints Commission[75]

The press regulates itself (within the constraints of the law). An Editorial Code Committee (composed of members of the press) drafts a Code of Practice – by which news organisations commit to abide. The Press Board of Finance (again composed of industry members) levies funds from news organisations which pay for the Press Complaints Commission. The PCC is the body (composed of a Chairman, 9 lay members and 7 industry members) which responds to press complaints, as long as they fall within the editorial code of practice



[75] January 2009, taken from PCC website, www.pcc.org.uk
[76] Until 31-3-09, after which Baroness Peta Buscombe will take over

5.2 Assessment of the current system

Recent reforms

Harassment

The PCC has sought to improve how it deals with press harassment. According to its most recent annual report it has achieved some success through the issue of 'desist notices', despite the increasing availability of digital cameras and recording equipment that have led to an increasing number of freelance photographers and reporters, and the rise of the citizen journalist.

The 2007 annual report gives the example of the case of Garry Newlove, who was tragically killed outside his home and whose family complained of press harassment. The PCC served a desist notice to the press which, according to the report, was 'hugely successful'.[77]

The PCC has also introduced a 24 hour 'advice line' that can be called in emergencies (although at times it advises callers to 'Leave a message and you will be phoned back'). It is not clear how much the PCC does to promote awareness of these services.

Charter Compliance Panel and Charter Commissioner

The Charter Compliance Panel was formed in 2003 and began work in 2004. It examines cases selected at random to check the PCC is fulfilling its service commitments to complainants. If unhappy with the service (as opposed to the response to the complaint), a complainant can write to the Charter Commissioner who will look into the manner in which the complaint was handled. More recently the Charter Compliance Panel has also given recommendations to the PCC regarding publicity for breaches of the Code.

Appointment of lay representatives to PCC

From 2003 the PCC began advertising publicly for lay members of the Commission. In 2004 the PCC added an additional lay member to the Commission.[78]

The Code of Practice

The press's Code of Practice has been reviewed almost 30 times since 1991 (for the Code see Appendix 1). In 2003 the PCC introduced an annual audit of the code. This was supplemented in 2005 by an 'Editor's Codebook', a 104 page guide that 'brings together the Editors' Code of Practice – which sets out the ethical rules followed by the British press – and the case-law' of the PCC.[79]

There have been relatively few criticisms of the Code itself. The issues relate to a lack of effective enforcement, either by the PCC initiating action or through effective complaint handling by the PCC.

[77] Press Complaints Commission (2007), *Annual Review*, London: PCC
[78] Press Complaints Commission (2003), *Annual Review*, London: PCC
[79] PCC Press Release, 10-02-05, http://www.pcc.org.uk/news/index.html?article=NTY=

System of governance

The PCC has attracted criticism for serious weaknesses in its framework of governance.

No system of self-regulation can be effective if it is not demonstrably independent, transparent and accountable.

This report assesses the effectiveness of the current system of press self-regulation – as embodied in the PCC – against the National Consumer Council's checklist for credible self-regulatory schemes (see below).[80] This checklist built on the five characteristics of good self-regulation set out by the Better Regulation Task Force (1999). It has since been referenced widely, particularly in the communications industry, and forms the basis of Ofcom's 2004 consultation, 'Promoting effective self-regulation: criteria for transferring functions to co-regulatory bodies'. It is unlikely that any single self-regulatory body achieves all the criteria laid out in the checklist, but they represent a benchmark by which systems of self-regulation can be assessed.

The assessment of the PCC in this report is based on information that is publicly available. It is difficult because, as will be illustrated below, there is limited publicly available information on the PCC, and much of what is available is provided by the PCC itself in Annual Reports. Moreover, since the PCC does not accept that it is covered by the Freedom of Information Act, it is not possible to require more information to fill the gaps or to clarify the apparent inconsistencies.

The credible self-regulatory scheme: a National Consumer Council checklist

1. The scheme must be able to command public confidence
2. There must be strong external consultation and involvement with all relevant stakeholders in the design and operation of the scheme
3. As far as practicable, the operation and control of the scheme should be separate from the institutions of the industry.
4. Consumer, public interest and other independent representatives must be fully represented (if possible, up to 75 per cent or more) on the governing bodies of self-regulatory schemes.
5. The scheme must be based on clear and intelligible statements of principle and measurable standards – usually in a Code – which address real consumer concerns. The objectives must be rooted in the reasons for intervention
6. The rules should identify the intended outcomes.
7. There must be clear, accessible and well-publicised complaints procedures where breach of the code is alleged.
8. There must be adequate, meaningful and commercially significant sanctions for non-observance.
9. Compliance must be monitored (for example through complaints, research and compliance letters from chief executives).
10. Performance indicators must be developed, implemented and published to measure the scheme's effectiveness.
11. There must be a degree of public accountability, such as an Annual Report.
12. The scheme must be well publicised, with maximum education and information directed at consumers and traders.
13. The scheme must have adequate resources and be funded in such a way that the objectives are not compromised.
14. Independence is vital in any redress scheme which includes the resolution of disputes between traders and consumers.
15. The scheme must be regularly reviewed and updated in the light of changing circumstances and expectations.

[80] 'The credible self-regulatory scheme: a checklist', from *Models of Self Regulation*, National Consumer Council, 2000 . The National Consumer council has since changed its name to 'Consumer Focus'

1. The scheme must be able to command public confidence

There is little public confidence in the press, as shown in poll evidence earlier. '[T]he trust and respect of the public' for journalism, Bill Hagerty – editor of the *British Journalism Review* – wrote in autumn 2008, is 'so much diminished in recent times'.

At the same time there are increasing numbers of people who say they have little confidence in the current system of self-regulation. The system relies on editors – to administer the scheme, to draw up the code, and (alongside significant lay representation) to respond to complaints. Yet 70% of the public disagreed with the statement 'We can trust newspaper editors to ensure that their journalists act in the public interest'. Only 10% agreed.

Nor is there confidence within the industry. A number of senior figures within the press have expressed concern with the current self-regulatory scheme.

Sir Simon Jenkins, for example, said recently that the press was not getting the strong self-regulation it needed both to promote high standards and to protect journalists from overbearing owners:

> *'I think that one of the defences that journalists and journalism have against proprietorial interference or unethical practices is a far more rigorous structure of self-regulation', he told the House of Lords Select Committee on Communications, '... and I don't think you are getting it at the moment at all'.*[81]

Lord Puttnam also said he had little confidence in press self-regulation and did not believe it was sufficiently independent: 'I have very limited respect for the PCC and the organisations that surround it because I think essentially it is a cartel. It is a self-regulatory organisation that will very seldom do anything that will discomfit [the press] or make its life difficult'.[82]

Nick Davies, journalist at *The Guardian* and author of *Flat Earth News*, analysed the PCC's statistics and believed its failure to make rulings undermined its credibility: 'It is an extraordinary feature of the Press Complaints Commission that, unlike other watchdog bodies who rule on complaints from the public about professional groups such as lawyers and doctors, the PCC rules on almost no complaints at all.[83]'

Richard Lambert, Director General of the CBI and previously editor of the *Financial Times*, noted the failure of the PCC to offer any guidance during the recent financial crisis. 'You might have thought' Lambert said in a speech published in the *Financial Times*, 'that the industry's self regulatory body, the Press Complaints Commission, would have had some guidance to offer about the special responsibilities of business journalists as they pick their way through the dangerous minefields of the credit crunch. But of course the PCC is nowhere to be seen in this drama'.[84]

2. There must be strong external consultation and involvement with all relevant stakeholders in the design and operation of the scheme

The PCC commissions occasional ad hoc surveys on specific issues. In 2008 it commissioned Ipsos MORI to conduct a survey of public attitudes to social networking to support an event with the Westminster Media Forum.[85]

[81] Simon Jenkins, House of Lords Select Committee on Communications, Report on Ownership of News, June 2008, paragraph 224, page 67
[82] Lord Puttnam, House of Lords Select Committee on Communications, Report on Ownership of News, June 2008, paragraph 222, page 66
[83] Nick Davies, *Flat Earth News*, p.364 (Chatto and Windus, London, 2008)
[84] Richard Lambert, *Financial Times*, 2-12-08, http://www.ft.com/cms/s/0/e5679bd6-c096-11dd-9559-000077b07658.html?nclick_check=1
[85] See PCC press release on 'Public concern about social networking and privacy', 5-6-08, http://www.pcc.org.uk/news/index.html?article=NTEzMg==

Over and above these ad hoc surveys, there is no evidence that it conducts extensive externai consuitation, with reievant stakehoiders or with the wider pubiic.

Each year the Editorial Code Committee issues a press release inviting the public to submit suggestions and recommendations about changes to the Code.[86] The PCC does not report on how these are taken into account. Nor does it provide information on the factors that impact changes to the Code. None of the Editorial Code Committee meetings are public.

The PCC also holds 2-3 'Open Days' around the country each year. The most recent, in Ipswich, was held between 1-3pm on a Tuesday afternoon in October and attracted an audience of around 50 people.[87]

In contrast, Ofcom states that consultation 'is an essential part of regulatory accountability' and commits to consulting on every major decision it takes.[88] In advertising, the Committees of Advertising Practice - Broadcast (BCAP) and Non-Broadcast (CAP), who decide upon the Codes of Practice for the regulation of the advertising industry (which are then upheld by the Advertising Standards Authority) - engage in both open and closed consultations. Even in the case of the closed consultations, the CAP publish the outcome of the consultation and how the responses involved helped to shape the code.[89]

3. As far as practicable, the operation and control of the scheme should be separate from the institutions of the industry

In its 2008 report on 'The Ownership of the News' the House of Lords Select Committee on Communications noted the PCC's 'lack of independence from the industry it regulates'.[90]

The operation and control of press self-regulation is not separate – or separated - from the industry, particularly with regard to its funding and the appointments process.

The newspaper and magazine industry pays for the PCC (as with other systems of self-regulation). The money is collected and distributed by the Press Board of Finance. There is no fixed or transparent mechanism for transferring funding to the PCC itself, no information on how much money is needed to fund the PCC, or on how decisions are made on spending such money as it has.

Appointments to the Press Board of Finance are made by the industry. Appointments to the Editorial Code Committee are made by the industry. The Chair of the PCC is appointed by the Press Board of Finance, which is comprised entirely of senior figures from the industry. The appointments processes for the Chair, for the Press Board of Finance, and for the Editorial Code Committee are not overseen by any independent bodies, and it is unclear what criteria are applied to the processes.

Appointments to the PCC itself (not including the Chair) are made by the Appointments Commission. The Chair of the PCC heads the Appointments Commission. The Chairman of PressBoF also sits on the Commission.

[86] See Press Board of Finance press release, 'Editors Code Committee Review of the Code, 10-12-08, http://www.pcc.org.uk/news/index.html?article=NDg2MA==
[87] From Reports of past events, 'Ipswich Open Day'., 14-10-08, http://www.pcc.org.uk/events/pastevents/Ipswich/Index.html
[88] See 'How Ofcom consults', http://www.ofcom.org.uk/consult/consult_method/ofcom_consult_guide
[89] www.cap.org.uk/cap/consultations
[90] House of Lords Select Committee on Communications, Report on Ownership of News, June 2008, paragraph 226, page 67

4. Consumer, public interest and other independent representatives must be fully represented (if possible, up to 75 per cent or more) on the governing bodies of self-regulatory schemes

On the PCC itself, 9 of the 16 members (excluding the Chair) are 'lay members'.

The other 7 members are working newspaper and magazine editors. This includes the editors of the *Mail on Sunday*, the *Sunday Telegraph*, and the *Sunday Mirror*. These editors know that the decisions made by the Commission may impact their own freedom to publish in the future. They therefore have a direct interest in the outcome of the adjudication, even when their own newspaper / magazine is not directly involved.

There are no lay members or independent representatives on either the Editorial Code Committee or the Press Board of Finance. Both comprise only editors and senior executives of the news organisations.

5. The scheme must be based on clear and intelligible statements of principle and measurable standards – usually in a Code – which address real consumer concerns. The objectives must be rooted in the reasons for intervention

The scheme for press self-regulation is not based on clear and intelligible statements of principle or measurable standards.

It is not clear what the scheme is based on. Its Memorandum of Association states that it is a Commission whose 'primary function... shall be to consider, and adjudicate, conciliate and resolve or settle by reference to the Press Code of Practice... complaints from the public of unjust or unfair treatment by newspapers, periodicals or magazines and of unwarranted infringements of privacy through material published in newspapers, periodicals or magazines'.[91] From this it would seem clear that it is, first and foremost, a complaints body.

Yet, in public statements, the Chair and members of the scheme refer to the PCC as a regulator. In November 2008 the Chairman of the PCC talked about 'the PCC's model of independent regulation'.[92] The 2007 annual report refers to the system as 'independent self-regulation' and states that 'independent self-regulation, along the lines practised by the PCC, is the only way to go in the digital age'. In the 2006 annual report the Chairman talks about the challenges facing 'a system of regulation like the one overseen by the PCC'.

However, nowhere does it explain its aims and objectives as a regulator. It has no statement of purpose – other than this 'primary function' to handle complaints. It does not appear to take on an obligation more widely to monitor standards of the press, or to deal with non-compliance. Nowhere does it make an explicit commitment to protect the public or the press.

It has a Code of Practice and states that it 'is charged with enforcing' this Code. Yet rather than seeking to enforce the Code it tends instead to limit itself to mediating on specific complaints based on the Code. It initiates very little action even where there seem to be clear examples of breaches of the Code.

As the House of Lords Select Committee on Communications said in its report on news, the PCC 'was never designed or established to proactively promote journalistic standards or ethics'.[93]

[91] PCC, Articles of Association, 53.1, http://www.pcc.org.uk/association/index.html
[92] Sir Christopher Meyer, speech at Manchester Art Gallery, 24-11-08, http://www.pcc.org.uk/news/index.html?article=NTM5Nw==
[93] House of Lords Select Committee on Communications, Report on The Ownership of the News, June 2008

6. The rules should identify the intended outcomes

The editorial Code of Practice does identify generally intended outcomes. Clause 1, for example, states that 'The Press must take care not to publish inaccurate, misleading or distorted information, including pictures'. Other clauses relate to matters such as press behaviour towards children, and the public's entitlement to respect for their private and family life.

These rules do not, however, sit within any wider regulatory context. There is no indication, in other words, how the PCC measures compliance or seeks to ensure adherence.

7. There must be clear, accessible and well-publicised complaints procedures where breach of the code is alleged

Some newspapers and magazines regularly publicise details of their own complaints procedures and information about the PCC. Many do not. Neither the *Daily Telegraph* nor the *Daily Mail* publish details of their own complaints procedures or information about the PCC in their print versions. Nor do they have any information about how to make a formal complaint on their websites.[94] When there is information about the PCC within national papers it is, in most cases, buried deep within the paper in small typeface.[95] Exceptions include the *Financial Times* (p.2), the *Guardian* (p.2, and leader page), and the *Daily Mirror* (on the letters page, though not prominent).

For those that do complain to the PCC, the complaints process itself remains largely opaque. There is limited information provided to the complainant. Complainants are not granted oral hearings, nor are they allowed to attend (or send representatives to attend) meetings where their complaints are discussed or adjudicated. The PCC says it will try to keep complainants updated every 15 days (there are no public records to show if it keeps to this).

When MediaWise conducted research with complainants in 2005 they found one of the most frequent criticisms was that the complaints handling procedure was so unclear. The complainants disliked the way in which 'they felt that the PCC stitched up behind-the-scenes deals with offending newspapers and then presented these to complainants on a take-it-or-leave-it basis'.[96]

8. There must be adequate, meaningful and commercially significant sanctions for non-observance

The PCC has limited power to provide an adequate, meaningful or commercially significant response. The PCC sets out that it will try, wherever possible, to negotiate a resolution on behalf of the complainant. This will normally be the publication of a correction, an apology, a follow-up piece or letter from the complainant, or a private letter of apology from the editor.

If no resolution can be reached, the PCC will adjudicate based on the Code of Practice. If it comes to the conclusion that the Code has been breached, the newspaper concerned has to publish the adjudication in full (unless the Commission decides the redress already offered is sufficient).

The PCC can impose no other sanctions. It does not negotiate any compensation on behalf of complainants. It does not instruct newspapers and magazines to withhold

[94] Based on review of print version of *Daily Mail* and *Daily Telegraph* in November 2008 and review of *Daily Mail* website on 25-11-08 and *Daily Telegraph* website on 26-11-08

[95] For example: *Daily Express*, business section, p.67 bottom right corner (26-11-08); *The Independent*, business section, p.53 bottom right corner (26-11-08); *The Sun*, business section, p.52 bottom right corner (26-11-08)

[96] *Satisfaction Guaranteed? Press complaints procedures under scrutiny*, MediaWise, 2005

publication of an article. Nor does it have the power to dictate the prominence of the apology or correction. It can mediate, but its limited scope to impose a remedy puts it in a weak negotiating position with those whose behaviour it is expected to regulate. It has the power to adjudicate. Yet even this it does infrequently (less than 1% of complaints are, on average, adjudicated).

The number of cases on which the PCC has made an adjudication (according to its annual reports) is not rising but falling. In 1997 it adjudicated on 82 cases, or 2.8% of total complaints.[97] In 2007 it adjudicated on just 32 cases, or 0.7% of the total.[98]

This compares with the Advertising Standards Authority (ASA) – a body originally modelled on the PCC. In 2007 the ASA received 24,192 complaints. It formally investigated 3,886 of these and upheld 2,579, or 11%.[99]

The Chairman justifies this on the basis that more complaints are being resolved through mediation.[100] However, the journalist and professor Roy Greenslade believes the small number of adjudications is the PCC's chief failing. 'The failing of the PCC', Greenslade told the House of Lords Select Committee on Communications, 'is the failing to adjudicate often enough. It is an arbitration and it resolves too many cases that I feel it should go on to adjudicate for... Because I think that newspapers escape censure and punishment too often when they actually at the final hour do some kind of a deal to get themselves out of a mess'.[101]

Unlike at Ofcom, the BBC Trust, PhonePay Plus, and many regulators from other industries, appeals to the PCC can only be made about the process by which complaints are dealt with, not the substance of the complaint.

9. Compliance must be monitored (for example through complaints, research and compliance letters from chief executives)

The PCC does not claim to conduct regular reviews nor to monitor standards, for example to assess whether newspapers are complying with the Code of Practice.

It issues occasional 'guidance notes' to editors, for example on the reporting of people accused of crime.[102]

Even in the case of individual complaints that fall within the parameters of the Code the PCC will not conduct its own independent investigation. It relies on the complaint.

In contrast, the ASA regularly releases reports concerning how far the advertising industry is complying with its codes. It also commissions research and reports into the effects of advertising upon different sectors of society. Ofcom conducts regular investigations based on broadcast complaints, conducts wide-ranging consultations to inform its interventions, and describes the state of the broadcast and communications industry in its annual communications market report. The BBC Trust conducts and publishes regular reviews of the BBC's services.

[97] 2,944 complaints in 1997, 82 adjudications (PCC Annual Report 1997), http://www.pcc.org.uk/about/reports/1997/reviewyear.html
[98] 4,340 complaints in 2007, 32 adjudications (PCC Annual Report 2007), http://www.pcc.org.uk/assets/80/PCC_AnnualReview2007.pdf
[99] Advertising Standards Authority, Annual Report, 2007
[100] For example, in the 2005 Annual Report the PCC Chairman said, 'Some people say that the relatively small proportion of complaints formally adjudicated is a sign of weakness. Actually it is a sign of effectiveness. The number of cases resolved amicably between complainant and publication rose by 40% in 2005 alone'
[101] Roy Greenslade, evidence to House of Lords Select Committee on Communication, 23-1-08, Q1733-Q1734, p.352
[102] There are a total of 12 guidance notes available on www.pcc.org.uk dating from June 2000. They average just over a thousand words each (the longest, at almost 5,000 words, is about 'Prince William and Privacy')

10. Performance indicators must be developed, implemented and published to measure the scheme's effectiveness

The PCC does not have performance indicators by which it judges its own success as a regulatory body, although it does have some indicators to measure service levels (e.g. how quickly individual complaints are dealt with).

Without performance indicators it is difficult to assess, for example, whether it is a sign of success if complaints are going down (evidence of rising press standards) or going up (evidence of a higher profile PCC).

When, in 2007, the number of complaints rose by over 30% on the previous year, and by over 70% since 1998, the Chairman of the PCC said this was not due to declining standards but rather because of a 'growing understanding of the watchdog's work, the ease of complaining by e-mail and the extension of the PCC's remit to cover material on websites run by newspapers and magazines'.[103]

This response was criticised by some. 'It takes a particular skill for spin', Jeremy Dear, the NUJ General Secretary said, 'for the PCC to proclaim the success of self-regulation in the face of sharp rises in complaints about media inaccuracy and falling public trust in journalism'.[104]

The PCC says that it aims to deal with most complaints in just 35 working days. Yet since 2003 the PCC has not said how many complaints it has dealt with within its target. [105]

Each year the PCC conducts a 'customer feedback survey' of people who use the service. The survey is anonymous and is completed, on average, by approximately 10% of people asked. There is no further information about who completed the survey (e.g. successful vs unsuccessful complainants). According to the results published, the majority of this 10% believed their complaint was handled satisfactorily.

11. There must be a degree of public accountability, such as an Annual Report

The PCC has a website on which it publishes information, including reports on cases resolved and adjudicated, press releases and news. It also publishes an annual report, though the information contained within the report is limited.

On funding, for example, there is virtually no information about the sources of the PCC's income. We know that the PCC is paid for by an industry levy that varies for each PCC member depending on the circulation of its publications, and that this is collected by the Press Board of Finance (PressBoF). There are no further details of the levy, or of who pays how much to whom.

There is also no information about how decisions are made by the PCC, PressBoF or the Editorial Code Committee. Meetings of the three Committees are private, and their minutes (if kept) are not made public subsequent to the meetings.

On complaints themselves, there is only information given about those resolved or adjudicated, and only after these have been dealt with (as opposed to when they are first made).[106] This is in contrast to other media regulators. Ofcom, for example, releases information about complaints regarding specific programmes shortly after broadcast (such as complaints about the Radio 2 broadcast by Jonathan Ross and Russell Brand in October 2008). The ASA reports

[103] 'Record Year for Press Complaints', BBC News online, 22-05-08, http://news.bbc.co.uk/1/hi/uk/7415434.stm
[104] 'Is self-regulation of the press working?', Maggie Brown, 19-5-08, *The Guardian*, http://www.guardian.co.uk/media/2008/may/19/pressandpublishing1
[105] Based on review of Press Complaints Commission Annual Reports since 1996. In some years the PCC gives an average time to deal with all complaints
[106] The PCC publishes information about complaints resolved or adjudicated on its website, www.pcc.org.uk. Prior to 2003 the PCC published considerably more details about complaints.

complaints about advertising campaigns that are still in progress (such as the complaints made against the AMI billboard campaign in January 2009).[107]

The PCC does not do this. For this reason it does not report complaints in such a way that might influence the press' approach to a particular subject or story.

12. The scheme must be well publicised, with maximum education and information directed at consumers and traders

The PCC provides limited publicity for its service. It has a website. It sends announcements to those who subscribe via its website. It requests that newspapers occasionally include an advertisement for the organisation – pro bono.

The PCC spends no money on advertising (according to its accounts).[108] Newspapers and magazines are under no obligation to promote the PCC, or to tell their readers that their regulation is overseen by the PCC.

This is in stark contrast to the ASA that spent £500,813 in 2007 on 'Promotion and Advertising'.[109] The ASA has, for many years, run a successful advertising campaign stating that advertising must be 'Legal, Decent, Honest, Truthful' or it will fall foul of the ASA code.

In 2007, according to the annual report, the PCC spent £141,807 on 'Travel, entertainment and public relations'. It is not clear how much materially contributed to public awareness of its service. Based on its annual report much of this may relate to two 'Open Days' – one in Oxford and one in Birmingham.

The lack of publicity might help to explain the low (but rising) number of inquiries and complaints the PCC receives as compared to other self-regulatory bodies.

The PCC estimates it receives 10,000 inquiries per year.[110] This contrasts with:

- Ofcom, that receives approximately 285,000 inquiries each year (not including messages on its website, from Annual Plan, 2008/09, p.43)
- *The Guardian* newspaper, that receives approximately 22,500 inquiries a year.[111] *The Guardian* has a daily circulation of only 358,000, compared to the national daily press of just under 11 million[112]

The PCC commissioned Ipsos MORI to do a seven question survey in 2003 and another in 2006. Both surveys found that the majority of people know little or nothing about the PCC.[113] They also showed that the percentage who had 'never heard of the PCC' rose by 8% (from 20% to 28%).

Research conducted for this study actually found there was higher awareness of the PCC than the PCC's own research. Though only 20% of the public said they knew a fair amount or a lot about the PCC, 44% said they knew 'a little', and another 29% said they had 'heard of them'.

[107] On 28th October Ofcom released a statement that it had received 1,900 complaints about the broadcast (made on 18th October), see http://www.ofcom.org.uk/media/features/brandcomplaints. On 7th January 2009 the ASA stated that there had been 'over 400 complaints about the AMI billboard ads headlined 'Want longer lasting SEX?'', http://www.asa.org.uk/asa/news/news/2008/ASA+investigation+of+AMI+billboards.htm

[108] Press Complaints Commission (2007), *Annual Review*, London: PCC

[109] Advertising Standards Association (2007), *Annual Report*, London: ASA

[110] Press Complaints Commission (2007), *Annual Review*, London: PCC, p.14

[111] Guardian Readers Editor, Open Door column, 6-10-08, http://www.guardian.co.uk/commentisfree/2008/oct/06/pressandpublishing

[112] ABCs: National daily newspaper circulation, November 2008

[113] In 2003, 53% of the public had 'never heard of' or 'know almost nothing about' the PCC. The figure rose to 54% in 2006. 'Perceptions of the Press Complaints Commission', Ipsos MORI, Omnibus Topline Results, September 2006

13. The scheme must have adequate resources and be funded in such a way that the objectives are not compromised

The cost of the PCC is not in line with comparable bodies nor has it increased in parallel with the growth of the industry or inflation. In total, the PCC's income for 2007 was £1.82 million.[114] The Advertising Standards Authority, which plays a similar role but for the advertising industry, received £8.03 million, over four times the amount.[115] In 1991, when the PCC was set up, it was given a budget of £1.5m. Accounting for inflation (and not including the expansion of its remit), it should now be over £2.4m.[116]

In November 2008 the outgoing Chairman of the PCC, Sir Christopher Meyer, warned newspaper editors that the PCC required adequate funding and would not 'survive as a public service... if it takes swingeing budget cuts'.[117]

The PCC's ability to perform its functions as a self-regulator also appear to be compromised by the way its funding is controlled. It is funded entirely by the industry though mechanisms that are opaque. Its spending is overseen by the Press Board of Finance which is composed of senior figures from within the industry.

14. Independence is vital in any redress scheme which includes the resolution of disputes between traders and consumers

The independence both of the Editorial Code Committee, which sets the Code, and the Press Complaints Commission, which mediates and rules on complaints, appears to be compromised by their membership.

Working editors often sit on more than one self-regulatory body. For example, the Editor-in-Chief of Associated Newspapers was, until recently, a member of the Press Board of Finance and a member of the PCC. He moved off the PCC in March 2008 in order to chair the Editorial Code Committee. He remains a member of PressBoF.

Editors often move directly from one body to another. The editor of the *Aberdeen Press & Journal*, for example, moved directly from the Editor's Code Committee to the PCC.

Working editors are expected to be involved in decisions about working practices that they know will impact on their own newspapers or magazines. Yet the only statement regarding conflict of interest is that members of the PCC 'should not discuss or adjudicate on complaints about their own publication'.

Editors continue to sit on regulatory bodies even when their own newspaper has been found to have broken the rules. The editor of the *Daily Express*, for example, continued to sit on the PCC until May of 2008, even though the court found in March that over 100 articles about the McCanns in his paper and other Express titles were inaccurate and libellous.

In 2007, having been given evidence of the illegal procurement of private information by newspapers (provided by the Information Commissioner's Office), the PCC asked newspaper editors to confirm that they were no longer gathering such information. The worst offender in that case, according to the Information Commissioner, was the *Daily Mail*.[118] The editor of the *Daily Mail* was, at the time, a member of the PCC. He has now moved to become Chairman of the Editorial Code Committee.

[114] Press Complaints Commission (2007), *Annual Review*, London: PCC
[115] Advertising Standards Authority (2007), Financial Report
[116] Ofcom, Annual Report, 2007/08
[117] Sir Christopher Meyer to the Society of Editors, as reported in the *Financial Times*, 14-11-08, http://www.ft.com/cms/s/0/801d390a-b26a-11dd-bbc9-0000779fd18c.html
[118] Based on evidence found in Operation Motorman published in 'What Price Privacy Now?', ICO (2006), p.9

15. The scheme must be regularly reviewed and updated in the light of changing circumstances and expectations

The system of self-regulation has been reviewed since 1991. The Code of Practice has been adjusted over 30 times since 1991. In 2003 the new PCC Chair introduced new mechanisms of accountability: the Complainants' Charter, the Charter Compliance Panel, and the Charter Commissioner. In 2004 the PCC announced it was introducing an annual audit of the Code of Practice. There was no mention of this audit, however, in the 2005, 2006 or 2007 annual reports.

These reforms do not reflect the enormous upheavals in the news industry, nor do they reflect changes in regulation elsewhere, including in other areas of journalism – particularly with regard to the revolution in transparency and accountability. There has been no review of the process for complaints or of the role of the PCC as the regulator of the press in the sense of initiating actions and generally accepting responsibility for overseeing press standards to raise public confidence.

Based on the assessment in this report, the present system of self-regulation of the press fails to meet many of the criteria for a credible self-regulatory scheme.

6. Conclusion

The current system of press self-regulation is not successfully protecting either the press or the public. As it currently operates and is constituted, the system is not effective enough, accountable enough, transparent enough or sufficiently reflective of the transformed media environment.

Public trust in the press has fallen below the level necessary for it to perform its proper role in a democratic society. Until the system is reformed there is little chance of trust being raised. Indeed there is a very real risk that the current system of self-regulation will be further marginalised, given the impact of technological change, if action is not taken urgently to increase its impact on press accountability.

This is all the more problematic in a period of such intense change for the industry. At a time of serious decline in newspaper sales, a renewal of public confidence would be as much in the industry's interests as in the public interest.

This diagnosis calls for an urgent and radical reform of regulation of the press. Without reform, it is highly likely that:

- There will be greater deterioration in press standards
- Many members of the public will be harmed by inaccurate journalism or by invasion of privacy without the ability to fully obtain effective redress
- There will be further constraints placed on press freedom
- The government will extend statutory regulation to areas where it lacks confidence in the capabilities of the self-regulator
- Trust in print journalism will fall further to the detriment of society as a whole
- There will be increasing resort to legal action – to protect privacy and accuracy
- There will be increased calls by the public for political intervention to bring the regulation of the press into line with that for other professions

As has been shown by many sectors of society (including law, medicine, food, broadcasting), reform is possible and can be effective.

The announced change in the Chair of the PCC, the broader questions about regulation and accountability in the 21st century, and the forthcoming DCMS Select Committee inquiry into press standards, privacy and libel, offer an excellent opportunity for the press to take the initiative and reform its own system of self-regulation.

At the same time a fundamental review of the existing system is imperative given the seismic changes in the media environment, the accumulation of legal precedents, and the ongoing adaptation of media content regulation.

APPENDIX

Appendix 1

Press Complaints Commission: Code of Practice (January 2009)

1. Accuracy

   i) The Press must take care not to publish inaccurate, misleading or distorted information, including pictures.

   ii) A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and - where appropriate - an apology published.

   iii) The Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.

   iv) A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.

2. Opportunity to reply

   A fair opportunity for reply to inaccuracies must be given when reasonably called for.

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 a private place 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.

5. Intrusion into grief or shock

   i) In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. This should not restrict the right to report legal proceedings, such as inquests.

   *ii) When reporting suicide, care should be taken to avoid excessive detail about the method used.

6. *Children

   i) Young people should be free to complete their time at school without unnecessary intrusion.

   ii) A child under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents.

   iii) Pupils must not be approached or photographed at school without the permission of the school authorities.

   iv) Minors must not be paid for material involving children's welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.

   v) Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life.

7. *Children in sex cases

   1. The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.

   2. In any press report of a case involving a sexual offence against a child -

      i) The child must not be identified.

      ii) The adult may be identified.

      iii) The word 'incest' must not be used where a child victim might be identified.

      iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.

8. *Hospitals

   i) Journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.

   ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.

9. *Reporting of Crime

   i) Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.

   ii) Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.

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; or by accessing digitally-held private information without consent.

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

11. Victims of sexual assault

The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and they are legally free to do so.

12. Discrimination

i) The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.

ii) Details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.

13. Financial journalism

i) Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.

ii) They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.

iii) They must not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.

14. Confidential sources

Journalists have a moral obligation to protect confidential sources of information.

15. Witness payments in criminal trials

i) No payment or offer of payment to a witness - or any person who may reasonably be expected to be called as a witness - should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981.

This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.

*ii) Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.

*iii) Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.

16. *Payment to criminals

    i) Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates – who may include family, friends and colleagues.

    ii) Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.

THE PUBLIC INTEREST

There may be exceptions to the clauses marked * where they can be demonstrated to be in 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.

Appendix 2

Declining Trust in Journalism, from British Journalism Review

TABLE 2: Declining trust 2003-08
Q. How much do you trust the following to tell the truth?
(Figures show percentages saying trust a "great deal" or a "fair amount")

	Feb-Mar 2003	Apr-May 2006	Apr 2007	Mar 2008	Change 2003-08
	%	%	%	%	%
Family doctors	93	89	89	87	-6
Schoolteachers	88	81	77	76	-12
Local police officers on the beat in my area	82	72	66	71	-11
Headteachers in State schools	79	–	–	71	-8
BBC news journalists	81	71	62	61	-20
Judges	68	77	70	61	-7
Senior police officers	72	52	52	57	-15
ITV news journalists	82	67	54	51	-31
Channel 4 news journalists	80	–	–	51	-29
Journalists on up-market papers	65	62	43	43	-22
Journalists on local papers	60	–	–	40	-20
My local MP	44	36	29	39	-5
Trade union leaders	32	30	24	31	-1
Leading Lib Dem politicians	36	25	19	29	-7
Leading Conservative politicians	20	19	17	27	7
Managers of NHS hospitals	36	24	17	24	-12
People who run large companies	20	23	17	24	4
Senior officals in my local council	29	22	18	20	-9
Ministers in the current Labour Government	25	20	14	20	-5
Senior Whitehall civil servants	26	19	14	19	-7
Journalists on mid-market papers	36	36	20	18	-18
Journalists on red-top papers	14	12	7	15	1
Estate agents	16	11	10	10	-6

YouGov poll, commissioned by British Journalism Review, conducted March 27-28, 2008, total sample size was 1,328 adults. Research written up in 'On the road to self-destruction', Steven Barnett, British Journalism Review, Vol. 19, No. 2, 2008, pages 5-13

Appendix 3

Media Standards Trust Survey Results

Media Standards Trust commissioned YouGov to conduct an opinion poll for this report. This was conducted on 11-12th December 2008 with 2,024 people.

Q1. On a scale of 1 of 5, where 1 means cannot be trusted to behave responsibly and 5 means can be trusted completely, please indicate how much you trust each of the institutions listed below.

	The Police Force	Supermarkets	The BBC	Hospitals	Banks	National Newspapers
1 (cannot be trusted to behave responsibly at all)	7%	10%	10%	4%	27%	34%
2	17%	26%	21%	10%	32%	34%
3	32%	40%	33%	30%	26%	23%
4	34%	19%	27%	41%	10%	5%
5 (can be trusted completely to behave responsibly)	9%	4%	7%	13%	3%	2%
Don't know	2%	2%	3%	2%	2%	2%
Average	**3.2**	**2.8**	**3.0**	**3.5**	**2.3**	**2.0**

Q2. Some people think that institutions like these should be regulated more, some think that they should be regulated less, some think the level of regulation is about right. For each one of these institutions, please indicate whether you think they should be regulated more, regulated less, or whether the level of regulation is about right.

	The Police Force	Supermarkets	The BBC	Hospitals	Banks	National Newspapers
Should be regulated more	43%	42%	41%	39%	79%	58%
Should be regulated less	15%	8%	11%	19%	3%	6%
The level of regulation is about right	36%	43%	41%	36%	13%	29%
Don't know	7%	8%	7%	6%	6%	7%

Media Standards Trust

The Need for Reform: Is self-regulation failing the press and the public?

Q3. For the following organisations, please tell me how much, if anything, you know about them.

	Advertising Standards Authority	Ofcom	Press Complaints Commission	Media Standards Trust	Financial Services Authority
I know a lot about them	4%	4%	3%	1%	7%
I know a fair amount	20%	21%	17%	4%	22%
I know a little	46%	45%	44%	17%	38%
I have heard of them but know nothing more	24%	26%	29%	30%	24%
I have not heard of them	3%	3%	5%	45%	6%
Not sure	3%	3%	3%	4%	3%

Q4. On the scale below, please indicate how strongly you agree or disagree with each of the following statements?

	Strongly agree	Tend to agree	Neither agree nor disagree	Tend to disagree	Strongly disagree	Don't know
There are times when it is justified for newspaper journalists to invade people's privacy in order to get at the truth	9%	35%	20%	21%	11%	4%
Newspapers frequently publish stories they know are inaccurate	36%	39%	15%	6%	1%	4%
The government should do more to prevent national newspaper journalists from intruding on people's private lives	24%	36%	21%	12%	3%	3%
We can trust newspaper editors to ensure that their journalists act in the public interest	2%	8%	17%	41%	28%	3%
There are far too many instances of people's privacy being invaded by newspaper journalists	32%	38%	18%	8%	2%	3%
The government should do more to ensure that newspapers correct inaccurate stories	36%	37%	15%	6%	3%	3%

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PRESS COMPLAINTS COMMISSION

From the Chairman

Anthony Salz Esq
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19 February 2009

Dear Mr. Salz,

Thank you for your letter of 6 February, which enclosed part 1 of your report "A More Accountable Press". You asked if you, and two of your colleagues, could meet me to discuss part 2 of your review.

I will certainly consider the possibility of a meeting. But, it is hard to see what this might achieve unless part 2 acknowledges and corrects the innumerable inaccuracies and flawed analysis of part 1. The PCC must also give priority to the forthcoming hearing of the Commons Select Committee on Culture, Media and Sport (see below). You no doubt will wish to digest its analysis and recommendations before moving to your next stage.

I am afraid that we also require some reassurance about the credentials of those carrying out the inquiry. In addition to the inaccuracies – some as basic as the false claim that the ASA was modelled on the PCC – the report does not appear to have been written by anyone with much understanding of self-regulation or the relationship between the PCC and the law. More fundamentally, we have to ask whether this enterprise is being undertaken in good faith. We were dismayed that the Trust should be willing to allow publication of a strident report that is, by virtue of your failure to offer us any opportunity to contribute, both unbalanced and misleading.

Your director has compounded suspicions of bad faith by publicly suggesting that there was consultation with the PCC in the preparation of

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the report: this is a grave falsehood, for which I understand he has now apologised following the intervention of Sir David Bell.

In short, your report may be only "diagnostic". But, if the diagnosis is flawed, how can the prescription be any better?

The brevity of my exchange with Sir David Bell on the *Today* programme of 9 February did not allow me to set out in detail the report's weaknesses. Here in summary are some of the most egregious. The list is far from exhaustive.

The report (and subsequently Sir David Bell and Dame Helena Kennedy) fundamentally misinterpret the PCC's statistics, which are set out in detail on our website and in our annual report. The allegation that only "1 in 250" complaints is upheld is wholly misleading. If one were to follow this eccentric statistical interpretation, it would be equally justifiable to say – and equally misleading – that only 1 in 250 complaints is rejected. You have presumably based your calculation on the ratio of formal adjudications to the gross number of complaints. This methodology is flawed for three reasons.

Firstly, and in line with other similar bodies, only about a third of the gross number of complaints fall under our jurisdiction.

Secondly, we receive duplicated complaints that are counted individually in the total statistics, but only as one formal ruling, because they relate to only one article.

Thirdly, and most importantly, you appear to confuse adjudications with rulings. All adjudications are rulings; but not all rulings are adjudications. This should be obvious from our website and annual reports. In 2008, 1420 complaints fell for consideration under the Code. About half of these cases involved a potential breach of the Code. Most of these were successfully mediated following our intervention. Mediation is, of course, increasingly recommended – including by Lord Woolf and Alan Rusbridger in his recent *New York Review of Books* piece on the Tesco libel affair– as the best way of settling disputes, where possible. As a result, we had to adjudicate formally in only 45 cases where it had proved impossible to resolve the complaint, or where there was an important issue of principle at stake. Of these, half were upheld. This underlines the success of our mediation service, which last year resolved 552 complaints to the customer's satisfaction, an all time record. Incidentally, our

customer satisfaction figures – independently audited and available for inspection – have been going up year-on-year.

This is by no means a full record of our activity. Many issues are now sorted out before publication, so that no complaint is necessary. By definition, these approaches for help are not classified as formal complaints, even though they are sorted out to the satisfaction of the person contacting us. Our pre-publication work and anti-harassment service are growth areas. Your report virtually ignores this activity.

Nor, bizarrely, does your report make any mention of the most recent detailed enquiry into self-regulation, namely that of the Select Committee on Culture, Media and Sport, published in 2007. The failure to take its analysis and recommendations into account is inexcusable, especially as the MST cites the far less relevant 2008 House of Lords enquiry into media ownership, where self-regulation was not the primary focus.

Given that self-regulation will later this year be the subject of a further Select Committee hearing – the third such in 6 years – it is hard to understand how the MST can conclude that the PCC is not accountable. The Select Committee, which will look at many of the issues that apparently concern the MST, has already properly set out the scope of its inquiry without prejudging its findings by an attack on the PCC. Furthermore, the Chairman and some of his colleagues will visit the PCC before the hearings open, as they did in 2007. By comparison with the Select Committee, the MST is guilty of very poor practice.

Unlike the MST, the Select Committee appears to recognise that the regulation of media content raises a number of complex factors; and that the debate cannot be confined to the merits or otherwise of "reforming" the PCC. For example, I understand that the Committee will want to look at whether the law has got the balance right on matters of privacy and freedom of the press. This takes us into territory where consideration will have to be given to the adequacy of Section 12 of the Human Rights Act in protecting free speech; the impact of Conditional Fee Arrangements on free expression; the growth of libel tourism; and many other structural issues affecting the way that editorial content is regulated.

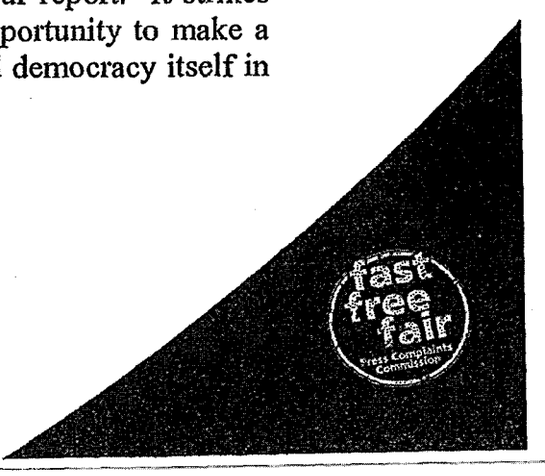
There is no hint of these issues in your supposedly 'diagnostic' report. Instead, the MST baldly asserts that on matters of privacy the PCC is being increasingly by-passed by the courts. How can that be when in 2008 we ruled on 329 separate privacy complaints under the Code, a 35% increase on the previous year and far more than those handled by the

courts? The public have a clear preference for our system, which is free, fast and does not force them to repeat in open court embarrassing details of their private life.

The assertion that the PCC has failed to make changes like other regulatory systems is astonishing in its ignorance. There is an unwarranted, underlying assumption that there is a common template for all regulatory systems. No one in their right mind would deny that the newspaper and magazine industry has unique properties. By definition so does its system of regulation. This point of principle aside, since 2003 the PCC has undergone profound changes in a process of "permanent evolution". We have created a Charter Commissioner to take complaints from those who think their cases have been badly handled; and a Charter Compliance Panel to run quality control on the way we handle cases. Both are independent bodies and write public reports each year. We have also: a) increased the lay majority on the Commission; b) introduced public advertising for new Commissioners; c) introduced annual reviews of the Code of Practice, inviting the public to put forward recommendations for change; d) put in place a 24/7 helpline to protect people from media harassment through "desist" notices (a power not available to OfCom); e) enormously expanded our pre-publication pro-activity; f) instituted Open Days in the towns and cities of the UK; and g) extended our competence to cover audio/visual content on publication's websites.

The assertion that we are trailing behind the radical structural and technological change affecting the industry is similarly perplexing. To the contrary, for several years now we have been at the forefront of the debate in any number of seminars and public events, and in discussions with politicians, other regulators and our international opposite numbers. Self-regulatory solutions are increasingly being relied on by officials and legislators across Europe as the web-based globalisation of media undermines formal systems of regulation. I have myself frequently said that the current regulatory architecture cannot endure; and that I would expect this to mean a greater reliance on self-regulation, not less.

We recognise that there is always room for improvement at the PCC; and we welcome debate on how to achieve this. But the points above are a serious indictment of the quality and integrity of your report. It strikes me as a terrible shame that you have wasted the opportunity to make a sensible contribution at a time when a free press and democracy itself in Britain are facing unprecedented challenge.



I look forward to your comments.

Yours sincerely

[redacted]

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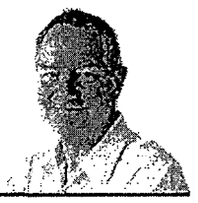

Why Meyer has vanquished his Media Standards Trust critics

I have long been a critic of the **Press Complaints Commission** while defending self-regulation. Though relatively happy about the concept, I have often felt that we could do much better in reality.

My major concern has centred on the opacity of the mediation process that forms the basis of most of the PCC's work. I wish it would adjudicate more often.

I have other worries too. I am not enamoured with the cosiness of the whole structure, though I concede that most other forms of self-regulation are very similar. There is an absence of independence at the heart of that structure, and the so-called independent charter commissioner and the so-called independent compliance panel are but a fig-leaf. Who appoints them, for instance?

I wish the PCC was constituted as a public body in order to allow freedom of information requests.

I believe that the PCC is under-funded. Extra resources might enable it to carry out beneficial work on behalf of the public, such as taking up wider matters of collective press misbehaviour, such as the treatment of asylum-seekers and the McCanns.

Then there is the thorny matter of the PCC's profile. It is higher than 10 years ago, but editors are still too reluctant to publicise it.

None of this will surprise the PCC's chairman, **Sir Christopher Meyer**, because we have debated these matters down the years. (And I think he may even agree about the last two points).

I repeat it here to reinforce my position before I nod in agreement with much of Meyer's full-frontal assault on the **Media Standards Trust's** report on press self-regulation, A more accountable press.

I was shocked when I read it because its scatter-gun attack on the PCC was such a missed opportunity. When it was released 10 days ago, I did my best to see some of the questions it raised in a positive light.

But it failed hopelessly, lacking any academic rigour. It also lacked any sense of history, either of press self-regulation in general or the PCC in particular. (There wasn't even a mention of **Dick Shannon's** book, *A press free and responsible*).

One of its key claims is that trust in journalists is low, "and overall may be declining further" (note the *may*). As I pointed out in my **London Evening Standard** column, we journalists have grown used to the public saying they do not trust us. 'Twas ever thus.

The report's major mistake, however, was in calling into question the PCC's statistics. This is territory that Meyer and his able director, **Tim Toulmin**, can command with ease. If one is to have any hope of defeating them, proper investigation and analysis is required.

So Meyer's withering response to the trust - in the form of a letter to its board member,

Anthony Salz - is hardly a surprise. He had already seen off **Sir David Bell**, the trust's chairman, on Radio 4's *Today* programme (you can hear it here).

But that takes me to a much more fundamental point about the trust itself. Who does it represent? It is a registered charity set up in 2006 at the instigation of Bell, the chairman of the **Financial Times Group**. Its worthy aim is "to find ways to foster the highest standards of excellence in news journalism on behalf of the public, and ensure public trust in news is nurtured."

A bright and enthusiastic director, **Martin Moore**, does most of the donkey work. He obviously means well, as do Bell and other trust supporters (who include **Simon Kelner, Helena Kennedy** and **David Seymour**). But this report smacks of astonishing naivety.

I am reliably informed that early drafts were dire, and I have to say that Meyer's belief that the final version is no more and than a scissors-and-paste job sprang to mind when I read it.

The PCC is imperfect (and I readily agree that self-regulation in any form is never going to be perfect). It does require reform. But the trust may as well abandon part two of its report now because no-one will take it seriously.

That does not mean that we should give up the struggle to reform the PCC. We have to find a way of raising concerns, most definitely at the upcoming select committee hearing, without being trapped inside the statistical web spun so brilliantly by Meyer.

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