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Did the PCC fail when it came to phone hacking?

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An analysis of the actions of the PCC towards phone hacking and other related forms of illegal and unethical privacy intrusion from 2003-2009

Introduction

For many within the press the Leveson Inquiry is unfortunate and unnecessary. It is a political distraction partly designed to divert attention from the Conservatives' links with News International. At best it is an unpleasant airing of the press' dirty laundry that has to be endured. At worst it is a dangerous threat to press freedom.

These Leveson critics acknowledge there is a problem with press self-regulation, though they believe it has little to do with the functioning of the existing system. The chief problem, they suggest, is that certain people are able to choose whether they stay or go.

For this reason their efforts at reform to date have been focused on how to draw everyone together within the self-regulatory fold. Most notably how to draw in the one rogue proprietor who controls about 15% of national newspaper circulation, Richard Desmond.

Their focus is not on how to root out industry malpractice or to create a new system that prevents and uncovers such malpractice. This is because they do not believe the old system really failed in this respect. They do not believe self-regulation was to blame for not investigating and not exposing phone hacking or other widespread forms of illegal and unethical privacy intrusion. These practices, or most of them at least, were against the law. As such they should have been investigated and dealt with by the police, their argument goes.

This piece suggests that such arguments are flawed. It suggests that the current system did fail, though not perhaps in the way some have claimed. Moreover it argues that without acknowledging the failures of the old system it is not possible to craft a new system that is more sustainable and effective.

The PCC - a 'toothless poodle'...

Following the phone hacking revelations in July all three party leaders lined up to criticise the PCC. Ed Miliband, the Labour leader, called it a 'toothless poodle' (8-7-11). Nick Clegg, the deputy Prime Minister and leader of the Liberal Democrats, said that 'The PCC has failed as an effective watchdog' (14-7-11). The Prime Minister, David Cameron, said that 'the way the press is regulated today is not working', and that the PCC was 'ineffective and lacking in rigour' (8-7-11).

At the time public outrage about phone hacking was such that few people stepped in to challenge the leaders' view, except the PCC itself. It put out a statement saying that the organisation was being used as a 'convenient scalp': 'We do not accept' the PCC said on July 8th, 'that the scandal of phone hacking should claim, as a convenient scalp, the Press Complaints Commission. The work of the PCC, and of a press allowed to have freedom of expression, has been grossly undervalued today' (8-7-11).

... or a 'convenient scalp'?

But since July increasing numbers of people, especially within the media, have come forward to reiterate the view that the PCC was made a ‘convenient scalp’. Indeed some have gone further than the PCC itself. Phone hacking, they argue, was against the law. It was not something that the self-regulator had the remit or resources to deal with. The failure to deal with it is the police’s failure, not the PCC’s.

Here is Sir Christopher Meyer, talking on the Media Show on Wednesday 19th October 2011:

“When I was Chairman, which covered the years 2006-2007 when the police initially investigated phone hacking, and I look back now on what we did I think we did it exactly - exactly - as we should have, and if I was re-living those two years again I don’t think we at the PCC would have done anything different. The police discovered a crime, they conducted an investigation, the Crown Prosecution Service sent it to court, there was a trial, two men went to prison, Andy Coulson fell on his sword. Immediately afterwards, the PCC did what it was meant to do. We conducted our own investigation, drew conclusions, and set out a new protocol to raise standards in the industry as a whole, not just at the News of the World. That is the way it should work.”

Here too is Paul Dacre, editor-in-chief of Mail group titles, speaking at the Leveson Inquiry seminars: “Myth Two is that the phone hacking scandal means that self-regulation doesn’t work. I think that’s very unfair. Yes, the PCC was naïve but its main mistake was failing to communicate the fact that phone hacking is blatantly illegal. It is against the law and no regulator can set itself above the law. The truth is the police should have investigated this crime properly and prosecuted the perpetrators” (12 October 2011).

This view is now becoming so mainstream, at least in the media, that Fran Unsworth, the incoming president of the Society of Editors, was able to say to the Society’s annual conference that “phone hacking was a failure of the law, not self-regulation” (Inaugural Address to Society of Editors, 15 November 2011).

So are they right? Is the current system of self-regulation, led by the PCC, relatively blameless when it comes to the phone hacking and other similar forms of illegal or unethical intrusion?

Did the PCC fail?

This is not an academic question. Indeed it is one of the key questions of Part I of the Leveson Inquiry. If such a view is found to be true then, at least in terms of dealing with phone hacking and its ilk, Justice Leveson may conclude that relatively little needs to be changed. Of course, phone hacking is certainly not the only aspect of press culture, ethics and practice the Leveson Inquiry is dealing with, and many of the witnesses to the Leveson inquiry have been critical of other aspects of self-regulation, but phone-hacking was the catalyst.

This article will argue that those claiming the PCC did not fail in the case of phone hacking are wrong. It will show how, although the defenders of the status quo are justified in saying that the PCC did not have the remit or the resources to investigate or deal with phone hacking, it still failed in at least three critical ways:

- It claimed responsibility for regulating newsgathering – including phone hacking – without the resources or the powers to do so

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- It gave the deliberate – and misleading – impression that it was investigating phone hacking and associated problems
- It consistently claimed there were no serious problems and no signs of malpractice beyond one rogue reporter, without having any evidence to show whether there were or were not (there were)

This is not an assessment of other aspects of the PCC. Indeed it is the view of the author of this piece that the PCC secretariat has provided important and much needed help to many individual complainants. It should also be recognised that those now leading the PCC, most notably its current chairman and director, have acknowledged its failings with regard to phone hacking. Neither is this assessment intended to absolve the Information Commissioners Office or the police from culpability. It is, however, meant as a response to the increasing number of voices who seek to absent the PCC from any responsibility for failing to deal adequately with phone hacking and other forms of illegal or unethical privacy intrusion.

An un-investigated ‘area of general concern’

To see how the PCC failed we have to go back to 2003, when Sir Gerald Kaufman was chairman of the Culture, Media and Sport Select Committee and Sir Christopher Meyer had just become the new chairman of the PCC.

It was also a time, we now know, when phone hacking was rife at the *News of the World*, that the paper was employing a private investigator to do covert surveillance (Derek Webb, for example) and that many other newspapers were – at the very least – breaching the Data Protection Act to gather personal private information (as evidenced later by *What Price Privacy?*).

Yet despite this, the PCC went out of its way, in February 2003, to make clear that there was no evidence of widespread malpractice in the press. Indeed in the case of listening into private phone conversations, the PCC assured parliamentarians that not only was this not happening, but that it had not happened since 1996.

In its submission to the Select Committee for Culture, Media and Sport in 2003 the PCC wrote:

‘One area of general concern in the early 1990s was the apparent reliance by some newspapers on material that appeared to have been obtained as a result of bugging or eavesdropping on telephone exchanges. Section B 2 [of this submission] outlines how the Code Committee reacted to this concern by introducing, in 1993, a rule forbidding such practices in the absence of a public interest. Since then only one breach of the Code has been brought to the Commission’s attention which clearly shows how the Code can change newspaper behaviour. Since the breach in 1996 there have been no others’ (PCC Submission to Select Committee, section B(3)20, 2003).

The PCC, in other words, not only took responsibility for overseeing such practices as bugging or eavesdropping, but claimed that the Code was sufficient to uphold – and even to raise – standards.

Sir Christopher Meyer re-iterated the PCC’s commitment to overseeing newsgathering and adherence to the code of practice in newsrooms in a public speech in October 2003: ‘I have seen the editor’s Code of Practice at work in newsrooms and news conferences the length and breadth of the land’ (Society of Editor’s Annual Lecture, 2003). Les Hinton, the chairman of the Code Committee from 1999 to 2008, did the same in the 2003 Annual Review: ‘The success of the Code

in raising journalistic standards is something that many within the publishing industry have acknowledged in recent years'. Yet evidence discovered that year appeared to contradict both Meyer's and Hinton's claims.

PCC made aware of widespread malpractice in 2003

In September/October 2002 the Information Commissioner's office was invited to accompany police on a series of raids they were doing on private investigators as part of Operation Re-Proof (later became Operation Motorman). One of those raids, on the Hampshire house of private detective Steve Whittamore in 2003, resulted in the confiscation of considerable documentation of illegal and unethical blagging of private information on behalf of the majority of the UK's national newspapers (from witness statement of Alex Owens to Leveson Inquiry).

305 journalists working for UK newspapers and magazines had, according to this documentation, requested 13,343 items of information from Whittamore. Of these items, 5,025 were identified "as transactions that were (of a type) actively investigated in the Motorman enquiry and ...positively known to constitute a breach of the DPA 1998," and a further 6,330 "represent transactions that are thought to have been information obtained from telephone service providers and are likely breaches of the DPA. However, the nature of these is not fully understood and it is for this reason that they are considered to be probable illicit transactions" (from Richard Thomas second witness statement to Leveson Inquiry).

The Information Commissioner, Richard Thomas, did not publish any details of the raid, or the evidence gathered, until 2006, but he did contact the then chairman of the Press Complaints Commission, Sir Christopher Meyer. Thomas told Meyer that the ICO had 'obtained extensive and detailed records showing that numerous journalists routinely obtained confidential information they should have no access to', much of which was clearly not intended to expose wrongdoing. This included payments for such confidential information and, 'Given the sums involved, and the nature of the documentation, it is difficult to believe that senior managers were not aware of what was going on' Thomas wrote (letter from Thomas to Meyer, 4th November 2003, from Richard Thomas evidence to Leveson Inquiry, RJT 7).

Although Thomas said he was considering whether to take action under the DPA, 'My provisional conclusion, however, is that it would be appropriate first to give the Press Complaints Commission and its Code Committee the prior opportunity to deal with this issue in a way which would put an end to these unacceptable practices across the media as a whole' (*ibid*).

It was therefore up to the 'independent self-regulator' to take action. Thomas says he went so far as to suggest the wording of a statement the PCC could make about the problem. The PCC did not take action. The PCC did not release a statement.

Further evidence of illegal intrusion in 2003

This was not the only indication of this type of malpractice within the press in 2003. In April the PCC upheld a complaint made by Peter Foster, the then partner of Carole Caplin, confidante and stylist of Cherie Blair. Foster had complained 'that private telephone conversations between him and his mother had been intercepted and published in *The Sun* on 13 and 14 December 2002'. *The Sun* did not deny it had intercepted the private conversations and published parts of them, but it defended its actions as being in the public interest.

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The Commission looked at the text of the conversation and decided it was not justified in the public interest. It upheld the complaint and made clear that 'eavesdropping into private conversations... is one of the most serious forms of physical intrusion into privacy'. 'Of course,' the PCC also stated 'publication can be justified under the Code of Practice where the public interest is clearly served'. The PCC's decision reconfirmed that interception of private telephone conversations fell within the remit of press self-regulation. It also failed to recognise that such interception was, at that time and since, illegal and lacked a public interest defence in law.

In 2004 the Editors Code of Practice committee adapted the wording of the code to re-emphasise that private phone conversations lay within the ambit of self-regulation. Amongst six other revisions to the Code, it was revised to extend 'the protection of private correspondence to include digital communications - prohibiting the interception of private or mobile telephone calls, messages or emails, unless in the public interest' (Editors Code of Practice Committee, May 13, 2004).

We now know that the adjudication and adaptation of the Code did not have an impact on the behaviour of journalists at *The Sun*'s sister paper, the *News of the World*. Indeed we are now learning that not only did these practices extend beyond 2003, but that – as far as phone hacking is concerned – there is evidence that it was happening on an industrial scale between 2003 and 2006. The mobile phones of the Royal Family and members of the Royal household were hacked. There is evidence to suggest the phones of Steve Coogan, Sienna Miller, and hundreds of others were hacked. Therefore the claim made by the PCC and the Code Committee that strengthening and amending the code made a difference was not true.

Failure to take action

The PCC, then, knew about Operation Motorman. It was aware that there appeared to be widespread malpractice within the industry. It upheld a complaint from Peter Foster regarding the interception of telephone conversations. But in response it did only one thing over the next three years (the amendment to the Code having been made in 2004 by the Editors Code of Practice Committee - referred to above). In 2005 it sent out an advisory note on the provisions of the Data Protection Act. This note did not suggest there was any evidence of malpractice, nor did it refer to any specific concerns about phone hacking or blagging. The note was simply for informational purposes only, and most of it was devoted to journalistic exemptions. As it states:

'The DPA carries within it a journalistic exemption and implicit reference to media codes including the PCC Code of Practice. As such, the Commission is from time to time asked questions about how it is applied. Therefore, the Commission has drawn together some of the questions it is most frequently asked'.

Apart from the amendment to the Code and the advisory note, the PCC made no mention of such possible malpractice in 2003, 2004, or 2005. No mention in its annual reports for those years, no mention in any speech or public statement, no mention in any press release. It also made no attempt – at least publicly – to investigate any of the concerns raised by the Information Commissioner. As far as the public were concerned, there was no reason for alarm. As far as the press were concerned, there was no reason to believe they were doing anything wrong.

The PCC may well have argued, privately, that it did not have the resources or remit to investigate these matters, as it has done recently. Moreover, it may have argued that the evidence of the Information Commissioner did not represent a first-party complaint. But this does not explain why,

given the evidence of widespread malpractice, it did not argue for the resources and powers to investigate, or call on the industry itself to investigate, or voice its concerns publicly that there was evidence of large scale intrusion that was not being properly dealt with. Nor does it explain why, instead of doing any of these things, the PCC gave the impression that there was nothing wrong.

The Information Commissioner's reports and the PCC's 'disappointing' reaction

In 2006 the ICO published two reports, *What Price Privacy* and *What Price Privacy Now?* Contained within these reports was some of the information gained from Operation Motorman in 2003. Information that Richard Thomas had made Sir Christopher Meyer aware of at the time. The reports detailed how many UK national newspapers routinely used private investigators to gather personal private information.

What Price Privacy? recommended, amongst other things, that 'The Press Complaints Commission should take a much stronger line to tackle press involvement in this illegal trade' (1.15). There would not be such a flourishing trade in personal information if there was not a market for such information, the report noted. The press was one of the key buyers:

'At a time when senior members of the press were publicly congratulating themselves for having raised journalistic standards across the industry, many newspapers were continuing to subscribe to an undercover economy devoted to obtaining a wealth of personal information forbidden to them by law. One remarkable fact is how well documented this underworld turned out to be.' (*What Price Privacy?*, 7.2, p.28).

Thomas made three recommendations relevant to the press:

- He recommended that the Code of Practice be amended to 'make it clear that it is unacceptable, without an individual's consent, to obtain information about their private life by bribery, impersonation, subterfuge or payment for information clearly obtained by such means'. No such changes were made.
- He recommended that sanctions for breaches of the Data Protection Act be strengthened. The PCC objected strongly to this, as did many newspapers.
- Thomas also suggested the regulator produce further simple guidance for journalists on this issue. This led, eventually in 2007, after Goodman and Mulcaire's convictions, to further PCC recommendations and guidance.

Richard Thomas said the reaction of the press to his two reports was 'disappointing'. The PCC was aware of Thomas' disappointment. 'It is no secret', it said in its 2007 submission to the CMS Select Committee, 'that the Information Commissioner remains disappointed with how the PCC has reacted to his reports and the challenges that he set the industry and the PCC' (paragraph 122).

The arrest of Goodman and Mulcaire, and the PCC response

In August 2006 the police arrested Clive Goodman, the *News of the World*'s royal correspondent, and Glenn Mulcaire, a private investigator working for the *News of the World*. Unlike after Operation Motorman, the PCC quickly put out a short statement following Goodman's arrest. The PCC could not, it said, comment on matters being investigated by the police, but 'The Commission reserves the right to investigate the newspaper's conduct in this case, if, at the end of the legal process, it appears that there are unresolved questions about its application of the Code of Practice.'

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Three months later the PCC reiterated its August statement, making clear that phone hacking is ‘a totally unacceptable practice unless there is a compelling public interest reason for carrying it out’. It said it had received reassurances from Andy Coulson, the editor of the *News of the World*, that steps had been taken to ensure this would not happen again. The chairman, Sir Christopher Meyer, welcomed Coulson’s reassurances (although in early January the PCC noted it planned to go back to him with further questions).

The legal process ended quite quickly in this case. Goodman and Mulcaire pleaded guilty to intercepting voicemails and were sentenced, under the Regulation of Investigatory Powers Act (RIPA), to four and six months respectively in prison in February 2007. The day Goodman was convicted Andy Coulson resigned as editor of the *News of the World*.

Immediately after Coulson resigned, the PCC announced it would not be going to him with further questions about phone hacking (despite January statement). It was, Meyer announced, ‘no longer appropriate’ (PCC press release 1-2-07). It is unclear why it was no longer appropriate. The PCC was not precluded from speaking to Coulson simply because he had resigned. Indeed it could be argued that it gave Coulson more freedom to speak to the PCC and others. Plus, although the PCC did not have any ‘powers’ to question him prior to his resignation, nor did it have such powers following the resignation. Being Goodman’s editor, Coulson was, in fact, the most appropriate person to speak to about how the royal correspondent came to hack phones and whether it was possible he was not alone in hacking.

Though it would not and did not question Coulson, the PCC announced it would do three things: it would write to the new editor of the *News of the World*, Colin Myler, with some questions; it would write to other newspaper editors to find out about internal controls to prevent fishing expeditions; it would use the responses to these letters to write a ‘review of the current situation, with recommendations for best practice if necessary, in order to prevent a similar situation arising in the future’.

Therefore although the Commission had, at Goodman’s arrest, reserved ‘the right to investigate the newspaper’s conduct in this case’, after his conviction it decided not to. Rather than investigate the conduct of the *News of the World* the PCC chose not to question the appropriate editor. Instead it chose to correspond with his successor who had spent the last six years working in the US. It chose not to ask other papers if they had engaged in phone hacking or other forms of illegal or unethical intrusion, but rather to ask if they had mechanisms in place to prevent intrusion.

The PCC chose, in other words, not to investigate. And yet at the same time it committed to writing a ‘review of the current situation... in order to prevent a similar situation in future’. It is not clear how the PCC thought it could write a review of the situation without doing an investigation. Nor is it clear how the PCC thought it could make recommendations to prevent a similar situation occurring without knowing what had occurred or requesting any powers to prevent it recurring.

When an investigation is not an investigation

Yet, in its submission to the Culture, Media and Sport Select Committee in March 2007, the PCC was more assertive. It made clear that not only was newsgathering an important aspect of its responsibility, but that it did not see any reason for concern – despite the Goodman conviction. It said it did not think it necessary or advisable to increase the legal sanctions for breach of the Data

Protection Act. It also said that it would be doing an investigation, and – if necessary – taking further action as a result.

'[T]he Code's 9 separate clauses relating to privacy also cover newsgathering', the PCC said, 'and the Commission undertakes a lot of invisible extra work: pre-publication support for editors, free pre-publication advice for potential complainants about how to use the Code to their advantage, and 24 hour protection from harassment' (paragraph 40).

It re-asserted this responsibility to regulate newsgathering three paragraphs later. 'It is important to remember', the PCC said, 'that the Code recognises that the behaviour of journalists in gathering news may be intrusive as well as the publication of private details. The Commission can take complaints about intrusive newsgathering methods – regardless of whether anything is published – under a number of different clauses' (paragraph 43).

And again later still; '[T]he issue of subterfuge generally is something on which the Commission has a long and consistent record in dealing with,' the PCC wrote, 'even though complaints about it are rare' (paragraph 129).

The Commission dismissed the Operation Motorman evidence – which had been presented to it in and ignored since 2003, and later published by the ICO in 2006 – as old and superficial, and questioned how much of it was actually illegal. It also played down its importance by saying there was 'little to no evidence about whether and when information sought actually led to anything being published' (paragraph 126). It did not say why it was not curious to discover how much of it was or was illegal or unethical, how it knew whether or not it had been published, nor why intrusion without subsequent publication necessarily made the intrusion less valid. Nor is it clear why, in the space of 83 paragraphs, the PCC had appeared to reverse its position on the relevance of publication.

For these reasons the Commission objected to sanctions for breach of the Data Protection Act being increased. 'The Commission does not believe', it said, 'that the case has been made for increasing penalties for breaching the Act for journalists, and indeed thinks that doing so would inhibit legitimate journalistic inquiries'. This despite the fact that the ICO had made clear the DPA was not enforceable without stronger sanctions, despite the public interest defences built within the DPA, and despite the PCC's assertion that that it did not feel responsible for policing breaches of DPA.

The PCC would, however, be doing its own 'investigation'. It said that:

'This [the arrest and conviction of Goodman] is in fact a good example of the Commission and the law working together to deliver different things, and indicative of the added value – rather than duplication of others' responsibilities – that the Commission can offer. The PCC announced that it would – regardless of what the judge had to say – launch its own investigation, based on the editor's responsibility under the Code to take care that it is observed by their staff and external contributors. It seemed to the Commission that the case may have revealed some deficiencies in this regard that merited investigation.' (Para 134)

This appeared to contradict the announcement made the previous month – that the PCC would be writing to the new editor of the *News of the World*, and to other editors, about the mechanisms in place at their newspapers to prevent phone hacking and fishing expeditions generally – but would not be investigating malpractice.

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Even prior to investigating (or not investigating), the PCC expressed its confidence in its 2007 submission that Goodman was a rogue reporter, and that such practices were not widespread, thanks to the Commission and the Code. ‘What the Goodman case highlights’, the PCC wrote, ‘is that unfortunately neither the law nor the Code can guarantee that a determined individual will never breach their terms’ (paragraph 133). Yet, ‘The Commission has been absolutely clear that journalists cannot use undercover means for speculative ‘fishing expeditions’ to look for information when there are no grounds to do so. These standards now guide the industry at large’ (paragraph 130). This is a confident statement that appears to have been made on the basis of little to no evidence.

Goodman and Mulcaire convictions and 2007 PCC report

In May 2007 the PCC published its report on subterfuge and newsgathering, accompanying this with new guidelines. The first line of the report made the claim that the PCC had conducted an investigation: ‘The Press Complaints Commission has conducted an investigation into the use of subterfuge by the British newspaper and magazine industry, with particular reference to phone message tapping and compliance with the Editors’ Code of Practice and the Data Protection Act’. This statement is not nearly such an ambiguous statement as the one issued in February. It does not suggest that the PCC was only looking at the mechanisms for dealing with subterfuge. It states that the PCC ‘has conducted an investigation into the use of subterfuge’.

But it had not conducted any such investigation. It had, as it set out in its February statement, written to the new editor, Colin Myler, who had been abroad for the last six years, and written to other newspaper editors asking what mechanisms they had in place to prevent speculative fishing. In Myler’s case, it had also asked how the situation with Goodman had developed. Questions Myler was in a difficult position to answer since he had not been there. Still, Myler ‘urged the Commission to see the episode in perspective as it represented “an exceptional and unhappy event in the 163 year history of the News of the World, involving one journalist”’. On top of which he made clear to the PCC that “every single News of the World journalist is conversant with the Code and appreciates fully the necessity of total compliance”.

Myler referred to the court case and the sentencing hearing. “[T]he identity of that source [Mulcaire] and the fact that the arrangement involved illegally accessing telephone voice mails was completely unknown and, indeed, deliberately concealed from all at the News of the World”, he told the PCC, ‘...[I]t was made clear at the sentencing hearing that both the prosecution and the judge accepted that’ (PCC Report on Subterfuge and Newsgathering 2007, paragraph 4.9).

We now know that Goodman wrote to News International on 2nd March 2007 claiming unfair dismissal. In that letter he claimed that phone hacking was ‘widely discussed in the daily editorial conference’. There is no reason to believe that News International made the PCC aware of this letter, or of any knowledge they may have had that phone hacking extended further at the News of the World. Nor did the PCC have any powers to require News International to provide information.

However, the PCC did not need any powers, statutory or otherwise, to examine the judgment of Mr Justice Gross in the Goodman case. The judge’s sentencing hearing was referred to by Colin Myler (paragraph 4.9). In it Mr Justice Gross said of Glenn Mulcaire:

"As to Counts 16 to 20 [relating to the phone-hacking of Max Clifford, Simon Hughes MP, Andrew Skylett, Elle Macpherson and Gordon Taylor], you had not dealt with Goodman but with others at News International".

Even if the PCC had missed the judge's remarks, that the evidence showed Mulcaire had been dealing with other people at News International, then it only needed to look at Mulcaire's plea. In addition to pleading guilty to hacking into the phones of members of the royal household, Mulcaire pleaded guilty to hacking five other individuals: Max Clifford, Andrew Skylet, Gordon Taylor, Simon Hughes and Elle MacPherson. None of these were likely to be targets of the royal correspondent.

Yet the PCC concluded that:

'No evidence has emerged either from the legal proceedings or the Commission's questions to Mr Myler and Mr Hinton of a conspiracy at the newspaper going beyond Messrs Goodman and Mulcaire to subvert the law and the PCC's Code of Practice. There is no evidence to challenge Mr Myler's assertion that: Goodman had deceived his employer in order to obtain cash to pay Mulcaire; that he had concealed the identity of the source of information on royal stories; and that no-one else at the News of the World knew that Messrs Goodman and Mulcaire were tapping phone messages for stories'.

Given that there was evidence from the legal proceedings that it went further one can only assume the PCC missed this or ignored it. Instead, their 'investigation' relied wholly on the evidence of an editor who was not there at the time and a chief executive of News International who, throughout the period in question had been, and still was, the Chairman of the PCC's Editor's Code of Practice Committee (Les Hinton, Chairman from 1999-2008).

The PCC wrote to newspapers and magazines to alert them to its recommendations. From that summer the Commission began holding seminars on newsgathering and issues related to subterfuge.

On the basis of assurances from News International – which later turned out to be false – and from other newspapers and magazine, the PCC did not look at the issue of phone hacking, subterfuge or surveillance from 2007 to 2009.

The Gordon Taylor revelations and the 'For Neville' email

This changed in July 2009. On 8th July 2009 *The Guardian* published the findings of an investigation by Nick Davies. Davies' investigation had uncovered evidence to suggest that phone hacking went beyond the 'rogue exception' Colin Myler had referred to. With the court papers of Gordon Taylor, some of which Davies had managed to acquire, there were the names of other journalists at the *News of the World*.

Davies even made public an email 'For Neville' that indicated that other people at the *News of the World* were at least aware of phone hacking.

Indeed it was the Gordon Taylor evidence that had led the QC Michael Silverleaf, working on behalf of News International, to conclude privately to them the previous year that:

"There is overwhelming evidence of the involvement of a number of senior NGN journalists in the illegal inquiries into [redacted]. In addition there is substantial surrounding material about the extent of NGN journalists' attempts to obtain access to information illegally in relation to other individuals. In the light of these facts there is a powerful case that there is (or was) a culture of illegal

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information access used at NGN in order to produce stories for publication" (Opinion, Michael Silverleaf QC, 3 June 2008, from CMS Select Committee documents).

Gordon Taylor was one of the others Mr Justice Gross had referred to in his sentencing remarks in 2007. As the chief executive of the Professional Footballers Association, he was unlikely to be of interest to the royal correspondent at the *News of the World*.

The PCC responded quickly to *The Guardian* story, citing its 2007 'inquiry' as evidence that it had already looked into phone hacking. 'In 2007,' the PCC said in a press release on July 8th 2009, 'the PCC conducted an inquiry across the whole of the British press into the use of subterfuge by journalists'. This stretches the definition of 'inquiry' to its limits.

The 2009 PCC report: PCC is 'satisfied... [it] has played its part in raising standards in this area'

In July 2009 the PCC did not commit to doing another such inquiry but said it would contact *The Guardian* and the ICO to see if it had previously been misled. It was purportedly on this basis that the PCC conducted a second 'inquiry' into phone hacking. Not, in other words, to examine whether phone hacking had been more widespread than one rogue reporter, but whether the PCC had been misled by the - highly limited - evidence provided to it in 2007. It also claimed to be examining whether 'there was any evidence that phone message hacking was ongoing despite its 2007 report aimed at raising standards of undercover journalism' (PCC statement, 9th November 2009).

In its November 2009 report the PCC said it found 'no evidence that it was materially misled by the *News of the World*, and no evidence that phone message hacking is ongoing'. This was based on correspondence provided once again by *The News of the World* (Colin Myler), and by *The Guardian* (Nick Davies and Alan Rusbridger), the Information Commissioner's Office, and un-named national newspaper executives.

The PCC went further than reiterating its belief that phone hacking went no further than Clive Goodman at the *News of the World*, it reminded *The Guardian* of its obligations under Clause 1 of the Code of Practice (accuracy), and claimed that 'the *Guardian*'s stories did not quite live up to the dramatic billing they were initially given' (PCC report, 9th November 2009).

The PCC congratulated itself in the report, and reassured the effectiveness of self-regulation, on the basis of its actions regarding phone hacking:

'The Commission is satisfied that - so far as it is possible to tell - its work aimed at improving the integrity of undercover journalism has played its part in raising standards in this area. It also further underlines the important role that a non-statutory, flexible body such as the PCC has in adding value to the work of the legal system to help eliminate bad practice, and it would be regrettable if the renewed controversy over the historical transgressions at the *News of the World* obscured this'.

This is despite the fact that there was evidence that phone hacking went further, that phone hacking may be continuing (specifically with regard to the arrest of Dan Evans in 2009), and that *The Guardian*'s 2009 story was set to become considerably more dramatic still. The PCC withdrew its 2009 report after the revelations by *The Guardian* that Milly Dowler's phone had been hacked in July 2011. The withdrawal was not explained on the basis of new evidence, but because News International had lied to the PCC. It was on the basis, therefore, of claims made by News International, claims that had previously convinced the PCC that there was no cause for concern.

Conclusion

There is now documented evidence which shows that phone hacking was widespread at Britain's biggest selling Sunday newspaper between 2002 and 2006, and possibly before and after that period.

There is also documented evidence which shows that thousands of illegal and unethical forms of intrusion were commissioned by many UK newspapers and magazines up to 2003 and, it is alleged, since then.

There were multiple systemic failures that meant this industrial scale privacy intrusion by the press was not properly investigated or dealt with. The police failed to deal with it adequately, the Information Commissioners' Office failed to deal with it adequately, and politicians failed to deal with it adequately.

But the PCC, and the system of press self-regulation of which it was the shop window, must shoulder a significant amount of blame. As this analysis has shown, the PCC failed in three crucial ways: it falsely claimed that it was responsible for, and able to, regulate newsgathering – including the use of phone hacking and other techniques; it gave the misleading impression that it was investigating the nature and extent of phone hacking within the press; and on at least three significant occasions it claimed that phone hacking was not widespread, without the evidence to show whether it was or was not.

Its failure not only illustrates the weakness of the current system of press self-regulation, but how the current system helped prevent the exposure of phone hacking and other illegal and unethical intrusion, and almost certainly allowed its continuance long after it had first been discovered.

One could go further and argue that the system of self-regulation was built in such a way as to discourage proper investigation and thereby provide a convenient front for unethical activity. Since, on the one hand the Code claimed responsibility for regulating phone hacking and similar abuses, while on the other the 'regulator' was given neither the resources nor remit to put such regulation into practice.

Anyone considering the future of regulation needs to recognize and learn from the failures of the past. This means not only acknowledging that the old system failed, but acknowledging that built within that system was the apparatus to obscure that failure.

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