

Written Statement by Sir Louis Blom-Cooper QC

to the Leveson Inquiry: culture, practice and ethics of the Press, December 2011

General

Throughout the reports of three Royal Commissions on the Press since the end of World War II – 1949,¹ 1962² and 1977³ – and four decades of the Press Council (1953-1990) the overriding aim and purpose of an institution, set up by the newspaper industry in 1953, had been to encourage the growth of the sense of public responsibility and public service in the profession of journalism. The Calcutt Committee on Privacy and Related Matters (1990⁴) was wrong – at the least, historically – to conclude that the promotion of press freedom was incompatible with a complaints system within the single institution (as exemplified by the Press Council). Even if (contrary to my submission) the Calcutt Committee was right in proposing a successor body to the Press Council, dealing exclusively with complaints from newspaper readers, the Press Complaints Commission, established in 1991 by the newspaper industry, deprived the public of a body vouchsafing freedom of the press. And, even if the Calcutt Committee rightly preferred the option to the Press Council, there remains the need for an overarching body to *monitor and supervise*, rather than regulate, the activities of journalists, editors and media owners. Such a body must be independent both of government and of the newspaper industry. The crucial, and most difficult issue, whatever body is set up in the future, is the nature and extent, if any, of sanctions against breaches of journalistic ethics.

This submission will be in three parts. First, the history of press self-regulation from 1953 to 1990 will reveal the early, predominant role of promoting press freedom, and the ancillary, exponentially growing function of determining complaints from the reading public against journalists, editors and newspaper proprietors, in which issues of invasion of privacy played a minor, but significant, role. Second, a discussion of the implications of strengthening any retained complaints system, paying due regard to the application of Article 10 ECHR. Third, a proposal for the future monitoring and supervising of the press by an independent commission set up under statutory power, with a discrete power to conduct public inquiries along the lines of the Inquiries Act 2005.

¹ Cmnd. 7700.

² Cmnd. 1811.

³ Cmnd. 6810.

⁴ Cm. 1102.

PART I

The history of the Press Council

The first of the three post-war Royal Commissions on the Press was set up in 1947, at the instigation of the National Union of Journalists. The object was to 'inquire into the control, management and ownership of the newspaper and periodical Press and the news agencies, including the financial structure and the monopolistic tendencies in control, and to make recommendations thereon'. The instigators of the Commission had called for a thorough investigation into the British newspaper industry, which would focus on how the freedom of the press could be safeguarded and enlarged. In its report, in 1949, the Commission acknowledged the central dilemma that a free press is essential to a democracy but that a press driven by commercial interests was only half-free. At that time the conclusion was that the British press was more or less exempt from the dangers of too much of it belonging in too few hands.

Strikingly, the Commission's main recommendation was the setting up of a General Council of the Press to encourage public responsibility among journalists – a development that was to take four more years, mainly because there were fierce arguments within the industry about the balance of lay and press representation. Until the second Royal Commission in 1962 the Council was composed exclusively of press representatives, with the Times proprietor, Viscount Astor, as its first chairman. Changes to the composition came later. By the time of the demise of the Press Council in 1990, there was parity between the lay and press representatives, with an independent chairman, the first being Lord Devlin in 1964.

The Commission of 1947-1949 set out the objects of the proposed Council which were modified in 1962 by the second Royal Commission. The recommendation stated:

662. The objects of the General Council should be to safeguard the freedom of the Press; to encourage the growth of the sense of public responsibility and public service among all engaged in the profession of journalism – that is, in the editorial production of newspapers – whether as directors, editors, or other journalists; and to further the efficiency of the profession and the well-being of those who practise it.

663. In furtherance of its objects the General Council should take such action as it thinks fit:

- (1) to keep under review any developments likely to restrict the supply of information of public interest and importance;
- (2) to improve the methods of recruitment, education, and training for the profession;
- (3) to promote a proper functional relation among all sections of the profession;
- (4) by censuring undesirable types of journalistic conduct, and by all other possible means, to build up a code in accordance with the highest professional standards. In this connection it should have the right to consider any complaints which it may receive about the conduct of the Press or of any persons towards the Press, to deal with these complaints in whatever manner may seem to it practicable and appropriate, and to include in its annual report any action under this heading;
- (5) to examine the practicability of a comprehensive pension scheme;
- (6) to promote the establishment of such common services as may from time to time appear desirable;
- (7) to promote technical and other research;
- (8) to study developments in the Press which may tend towards greater concentration or monopoly;
- (9) to represent the Press on appropriate occasions in its relations with the Government, with the organs of the United Nations, and with similar Press organisations abroad;
- (10) to publish periodical reports recording its own work and reviewing from time to time the various developments in the Press and the factors affecting them.

The Chairman's Foreword to the second annual report of the Council in December 1955 stated, on an optimistic note:

In the year under review the Council was not called upon to take any dramatic action to fulfil its first object, *the preservation of the established freedom of the British Press*, [italics supplied] which no one dare openly challenge; but it did its best to restrain where necessary any abuse of that freedom or abuse of journalistic power. The public can now see more clearly how anxious it is to encourage the confidence of readers in their newspapers. That confidence rests on many qualities, one of which is fair play, a brighter journalistic jewel than the most novel enterprise. Colonel Astor, in his foreword as Chairman a year ago, said that the Council had no powers of

sanction, but its less spectacular methods would probably be the most effective and its appeal to conscience and fair play had rarely been in vain. Experience during the second year of the Council has strengthened our belief in the power of that appeal.

The Royal Commission on the Press in 1962 endorsed the general objectives of the Council to encourage the growth of a sense of public responsibility and public service among all those engaged in the profession of journalism (whether as directors, editors or other journalists), but stated that ‘in those general objectives we are not now directly concerned’.⁵ The report went on to consider the proposal of its predecessor that the Council should study the long-term development of the Press and the economic and social factors which affect it, particularly any tendency to produce greater concentration or monopoly, as well as matters of research: ‘These recommendations,’ the Commission added, ‘do concern us.’

On the functioning of the General Council of the Press, the Royal Commission was not uncritical of the former’s performance.⁶ It urged the Council to comply with the recommendations of the 1949 Commission ‘as to membership and objects and to ensure that the Council would have the necessary powers (including the power to call for information about ownership and control) and funds to enable it to carry out all its objectives to the fullest degree’.

The Royal Commission envisaged a revamped Press Council, and additional functions ‘in the hope that a reformed Council would be able to devote itself more effectively to its present stated objectives’.⁷

352. (51) We recommend that the constituent bodies should reconstitute the General Council of the Press so as to comply with the recommendation of the 1949 Commission that there should be a lay chairman and a substantial lay membership.

(52) We recommend that the Government should specify a time limit after which legislation would be introduced for the establishment of such a Press Council, if in the meantime it had not been set up voluntarily.

(53) We recommend that the Council should be provided by its constituent bodies with sufficient financial and other resources to enable it not only effectively to carry out its present functions but also to

⁵ para 320, p 100 of Cm 1102.

⁶ See paras 320-325.

⁷ Para 326.

- (i) report publicly changes in the ownership, control and growth of Press undertakings;
- (ii) publish up-to-date statistical information relevant to concentration of ownership;
- (iii) secure enforcement of the recommendation that newspapers should bear the name of the company or individual in ultimate control of their affairs;
- (iv) act as a tribunal to hear complaints from editors and journalists of undue influence by advertisers or advertising agents and of pressure by their superiors to distort the truth or otherwise engage in unprofessional conduct.

The Royal Commission on the Press in 1977, while being moderately critical of the Press Council in its functioning as a complaints body, was insistent that the Council should establish a Code of Conduct that had been strongly recommended by the earlier Royal Commission in 1962. The response by the Council, belatedly in March 1990 to produce a code of conduct for journalists, was no doubt a factor in the Calcutt Committee's recommendation that the Press Council should be disbanded.

The Calcutt Committee

The Calcutt Committee on Privacy and Related Matters⁸ (June 1990) was hardly expansive in its conclusion that 'the two distinct functions of defending the freedom of the press and adjudicating on complaints sit uneasily together'.⁹ While the Committee grudgingly acknowledged that 'no incompatibility had been detected [*sic*] by the three Royal Commissions on the Press', and the Press Council in its internal (1989) review of its functions had strongly expressed its desire to strengthen the objectives of the Council as established by the newspaper industry founders in 1953, the Calcutt Committee stated in cavalier fashion: 'We have come to a different conclusion'. It proceeded to give as its sole explanation for such a categorical, unhistorical attitude, that 'there is insufficient interdependence between these responsibilities to make it necessary for one body to undertake both'.¹⁰ The Committee did not deign, moreover, to refer to what the Council's first independent chairman Lord Devlin (a retired Law Lord) said in 1966 in a public speech to the Commonwealth Press Union, that he had a profound belief in the Council functioning to promote press freedom and as a complaints system. If the Calcutt Committee's conclusion was woefully inadequate as a sound reason for 'detecting' incompatibility, it is true that by

⁸ The Committee consisted of chairman Sir David Calcutt, David Eady QC, John Cartwright MP, Professor John Last, John Spencer and journalists Simon Jenkins and Sheila Black.

⁹ Para 15.2.

¹⁰ Para 15.3.

the end of the 1980s (if not much earlier) the predominant work of the Press Council had been handling and adjudicating formally upon complaints of breaches of uncodified journalistic ethics in ever-growing numbers, such that its other functions played a minor role in its work. This was due not just to the increasing volume of complaints by readers of newspapers (both regional and national) and periodicals, but to the paucity of funding for the Council's operations. The Calcutt Committee noted¹¹ that the total costs of running the Press Council in 1989 would have amounted to around £600,000. The Council's request for 1990 amounting to £850,000 with the aim of a provision of £1 million for 1991 was declared by the newly-created Presbof (Press Council Board of Finance) as 'not forthcoming'. When the newspaper industry responded to the Calcutt Committee's recommendation that the Press Council be disbanded and replaced by the Press Complaints Commission, ('specifically charged with adjudicating on complaints of press malpractice'), Presbof initially provided the new body with £1.2 million for its first year of operation.

Anyone addressing Article 10 ECHR will instantly appreciate that press freedom (everyone's freedom of expression) in Article 10.1 is qualified by an enumerated list of public concerns in Article 10.2: the two parts of Article 10 are interrelated and entirely compatible. And that is precisely what Lord Devlin said in 1966 – the regulatory organisation was to stand up for the freedom and rights of the press as well as to censure misconduct. 'To censure misconduct effectively,' he asserted, 'it needs the support and respect of the press and it will obtain that much more readily if, in the words of its constitution, it seeks to preserve the established freedom of the British press and work as to maintain its character in accordance with the highest professional standards.' He added, prophetically, that the organisation 'must never allow itself to become mostly a tribunal which convicts or acquits'.

Public Inquiries and Public Duty

One passage in the Calcutt report deserves to be highlighted, if only because it touches on an aspect of press conduct that is pertinent both today and tomorrow. The Calcutt Committee, addressing the main criticism of the Press Council for functioning ineffectively as an adjudicating body, specifically pointed out, among other general matters relating to the level of dissatisfaction with the press, the Council's failure to undertake 'any wider monitoring of press behaviour'. That criticism, which incidentally would presumably be regarded as outside of the role of a complaints body, was qualified only by a concessionary phrase, 'it has on occasion initiated general inquiries into the handling of particular stories'.¹²

¹¹ Para 15.32.

¹² Para 14.28.

One outstanding instance of such an inquiry by the Press Council (few in number, it may be conceded) was its report in 1983 of a two-year inquiry by the Council into the conduct of certain national newspapers buying stories from individual witnesses in the impending trial of Peter Sutcliffe. In summary, the expansive journalistic activity, in the course of press investigations into the alleged killings of a number of prostitutes in the county of Yorkshire during the late 1970s (Sutcliffe was tried and convicted in 1981) led to the subsequent ruling to restrict cheque-book journalism. The Press Council's report additionally established that at least the distinguished editor of a national newspaper had lied to the officials of the Press Council. The report states:

2.11 So far as this part of its inquiry was concerned, the fair trial aspect, the Council received very ready and helpful co-operation from all editors and from almost all others it approached for information and comment.

2.12 Regrettably, the same cannot be said of the reaction of all editors to the Council's inquiries about chequebook journalism. While some editors were forthcoming in the information and comments they made to the Council, it required a prolonged and detailed correspondence to obtain from others information, often given unwillingly, about their own newspapers' attempts to buy the stories of people connected with the case. Sometimes information about such attempts – or even that they were made at all – came to light only as a result of inquiries the Council was making elsewhere.

The significance of this piece of activity by the Press Council into malpractices of some journalists was recognised in a 1983 debate in the House of Lords by Lord McGregor, who had chaired the third Royal Commission.¹³

Furthermore, the Press Council in its dying days (while Calcutt was deliberating on the future of self-regulation of the press) was conducting a public inquiry into local press coverage of the disturbances at Strangeways Prison, which occurred in April 1990. The Council, which reported in 1991 after its disbandment, concluded that over several editions of the Manchester Evening News immediately following the outbreak of prison rioting there appeared banner headlines stating that 20 bodies had been found inside the prison, whereas in fact no prisoner died in the prison. This was the result of misreporting and/or inaccurate publicising of a serious incident in the country's prisons. This posthumous report has been regarded in media circles as a thorough investigation of a piece of

¹³ An extract from Lord McGregor's speech appears in Part III of this statement.

journalistic/editorial malpractice (I will allude further to these two Press Council inquiries in Part III of this statement, together with observations about the role of inquiries in any future system of monitoring and supervision of the media).

The exercise of a power to undertake reviews and studies of journalistic practices, including the conduct of public inquiries where it is perceived that there is an evident public concern about media malpractices, is entirely within the spirit of journalism as understood by the authors of the General Council of the Press. The first Royal Commission stated:¹⁴

We believe that among men of reputation in the Press, whether proprietors, editors or other journalists, there is a considerable measure of agreement on what constitutes sound professional practice. We should like to see the General Council express and extend that agreement, safeguard the traditions and interpret the aspirations of the profession, and use its influence to eradicate discreditable practices.

Throughout the documentary material on the establishment and working of the Press Council, the editorial production of newspapers is regarded as a profession. Certainly, what is expected from journalists and editors is professionalism in their standards of conduct and newspaper production. But, as the first Royal Commission rightly observed, journalism differs from other professions in that the direct responsibility which the individual practitioner normally bears to his client is, in journalism, indirect and diffused. The direct relationship is between the newspaper and the reader, and the responsibility is shared among all those who serve and shape the newspaper's personality. The journalist may be contractually bound to the proprietor of a newspaper, or he may be a freelance reporter or columnist who writes regularly for newspapers. But, strictly speaking, journalism is not a profession like medicine and law – as I will discuss in Part II; to be a professional person, the journalist would need to be registered and susceptible to disciplinary action by his or her professional body.

¹⁴ Para 637.

PART II

Any consideration of a complaints system for the profession of journalism must start from a clear recognition of the status of journalists and editors. Journalism is an occupation which instantly attracts nothing from the legal system that does not apply to anyone minded to take the opportunity to exercise the right of free speech, enshrined in Article 10 of the European Convention on Human Rights and Fundamental Freedoms. Article 10 is a basic civil liberty enjoyed by everyone. The law of the land is as applicable to the journalist as to any citizen who writes for public consumption. As Sir John Donaldson MR stated in the *Spycatcher* case in 1988,¹⁵ there may be a belief

that newspapers have a special status and special rights in relation to the disclosure of confidential information, which is not enjoyed by the public as a whole. This is not the case. I yield to no one in my belief that the existence of a free press, in which term I include other media of mass communication, is an essential element in maintaining parliamentary democracy and the British way of life as we know it. But it is important to remember why the press occupies this crucial position. It is not because of any special wisdom, interest or status enjoyed by proprietors, editors or journalists. It is because the media are the eyes and ears of the general public. They act on behalf of the general public. Their right to know and their right to publish is neither more nor less than that of the general public. Indeed it *is* that of the general public for whom they are trustees.

Lord Justice Bingham, in the same case, reinforced the point.

It is elementary that our constitution provides no entrenched guarantee of freedom of speech or of the press, and neither the press nor any other medium of public communication enjoys (save for exceptions immaterial for present purposes) any special position or privileges. The rule is that anyone and any newspaper and any other media of public communication may say and write anything they like unless there is some legal reason why they should not.

(I am fond of describing contributors to the media as 'scribblers', that is to say we write publicly, whether we are employed by newspapers or are self-publicists.)

¹⁵ *Attorney-General v Guardian Newspapers Ltd* [1989] 2 FSR 181.

When we colloquially talk of journalism as a profession, we are simply acknowledging the skill and expertise of those engaged in the accumulation of knowledge of events and the dissemination of news (or, if you like, information). Strictly speaking (as I said earlier), journalism is not a profession, which implies an occupation or service to the public that is performed by individuals who are licensed by a professional body that can discipline the licensed individual. Disciplinary action will instinctively attract an Article 10 challenge (to which I shall refer hereafter). Above all, registration (i.e. licensing) of journalists is, without doubt, an infringement of the freedom of expression. While it appears that there is little, if any, inclination to place journalism on the footing of a licensed profession, we ought to remind ourselves that way back in the 1970s, there was a sustained proposal from UNESCO to establish registrable systems for journalists. It was ultimately abandoned.

The difficulties of treating journalism like any other regulated profession were highlighted by Lord McGregor of Durriss in 1983 in a speech in the House of Lords on the Sutcliffe report:¹⁶

A fundamental question arising in this debate is: are the objections to a statutory body sustainable? Should democrats fear the use of legal sanctions to impose responsibility upon the press? I believe that a recourse to law, however superficially attractive it may appear, would be a dangerous innovation. I am very happy that all other noble Lords who have spoken feel the same way.

The experience of the last Royal Commission [the one McGregor himself chaired in 1974-1977] may help to demonstrate in a little detail what would have to be involved in legal intervention. At the outset of its deliberations, most members of that commission sympathised with proposals for radical reorganisation of the Press Council. Some witnesses proposed a press ombudsman modelled on the Swedish experience. Others proposed that it should be replaced by a statutory body appointed by the Government with legally enforceable sanctions for use against delinquent journalists. But, the more we tried to frame concrete recommendations along these lines, the greater the difficulties we encountered and the greater our anxiety at the Frankenstein that we were creating.

What would these sanctions be? Suspension from work? Or fines? If the former, there would have to be a register of journalists. How would they be defined? How would the register be compiled? It is worth remembering that in the past 12 months it has been the policy of our Government firmly to oppose at UNESCO attempts which

¹⁶ Hansard HL vol 443 col 1184 (20 July 1983).

have there been made to compile registers of journalists in order that they may be protected and given special privileges for which, if they break them and then if they break a code, they can be removed from their occupations.

If we were to proceed by fines what would be the tariff, and against whom would the fines be levied? Against editors? Publishers? Newspapers? Would there be a different tariff for newspapers in heavy debt as compared with those making ample profits? Would someone aggrieved by a decision of the new body have an appeal to the courts? At the end of the day we became so anxious about the potentially dangerous consequences of a council with legal powers and penal authority that we concluded that it would be better to tolerate the objectionable behaviour of a very small minority of newspapers and journalists than to fashion a strong instrument ready to the hand of a Government which might wish to exercise control over the press. Accordingly, the Commission recommended no essential change in the organisation, functions and powers of the Press Council, because it was compelled to recognise, however dissatisfied it was with the Council's performance, that only a voluntary, self-regulatory body is compatible with the maintenance of a free press. That has been the experience of nearly every other democratic country.

If the idea of disciplining journalists is palpably not possible, there remains the question whether any sanctions are available to a body adjudicating on a complaint against a journalist for some media malpractice. There have been a number of suggestions that a 'beefed-up' complaints system might be devised. I am unsure what precisely is contemplated, but I will try to address some of the issues.

Monetary penalties

The most common suggestion is the imposition of a fine for a proved breach of journalistic ethics. Clearly, a fine would do no more than hit the pocket of the miscreant journalist or editor. But my view is that any such infliction of a penalty on a journalist or editor is indirectly to impinge upon his freedom of expression. If the fine were of anything other than a modest amount, it undoubtedly might impact on him being able to continue to practise as a journalist. The same consideration would apply to an editor, as the publisher. Fines on the proprietor of a newspaper might give rise to different considerations, since the penalty is directed to his proprietorial interest and not to any occupation as a scribbler. I am uncertain about this

statement, but assume that fining the owners of newspapers is compatible with Article 10(1) and (2) of ECHR.

Public announcements

There is a range of sanctions that might be employed, where appropriate. A clear instance is the duty to print a correction as a result of a breach of Article 1 of the PCC's Editors' Code of Conduct. It is in fact common for the complaints body to recommend a correction and an expectation on the part of the editor of the newspaper to comply. But some commentators go further and insist on the manner in which the correction is provided. Equal prominence will interfere with the editors' power to decide not just what goes into the newspaper, but the form and place of any correction. There is some authority on this question. The Supreme Court of the United States in *Miami Herald v Tornillo*¹⁷ held that the statutory provision of a right of reply to a newspaper article was an interference with editorial freedom and hence contrary to freedom of the press under the First Amendment to the US Constitution, even though the motive for the right was to extend the operation of free speech. A ruling of the European Human Rights Commission (not the Court) in *Ediciones Tiempo v Spain*¹⁸ rejected a challenge to a right of reply provision in Spanish law. It did so on the grounds of the pluralism of information, and therefore held it not to be a disproportionate infringement of freedom of expression, if only because the editor, faced with a reader's riposte, remained free to publish his own version of events. The marketplace of ideas was enhanced, not contracted. The question of a statutory right of reply is questionable; so it would be for a complaints body.

Assuming (for the purpose of this discussion) that some, if not all, of the suggested sanctions in a 'beefed-up' complaints system can safely negotiate the hurdle of Article 10, there is still the question of how the adjudicating body will handle a complaint that invites imposing a sanction against the individual(s) held responsible for the breach of a journalistic ethic. I have no doubt that such an individual (through his editor or employer) will claim the right to an oral hearing, with the right to legal representation, an appeal process (if found liable) and resist any enforcement process by resort to the courts by way of judicial review.

It was my experience at the Press Council that a practice was developing in the process of adjudicating some complaints that newspapers were insisting on and obtaining an oral hearing, if nothing more by way of due process. And that was in the context of the Press Council having no power to impose penalties for breach. It is to the credit of the Press

¹⁷ 418 US 241 (1974).

¹⁸ 62 D+R 247 (1989).

Complaints Commission that it has made strenuous efforts to operate a simple, quick and speedy resolution of complaints. It is generally recognised that the essence of a good complaints system is that it maintains an informal procedure. Otherwise legalism creeps in, to the disadvantage of the system. One has to conclude that the standards of due process, so essential in the country's legal system, should play little, if any, part in the determinations of claims that are appropriately adjudicated upon outwith the legal procedures that are reflected in Article 6, which requires a 'fair trial' for the determination of the individual citizen's criminal and civil obligations.

To perpetuate a sound complaints system, it is vital that it should function as in the past – that is, without any injection of the dose of legalism. Ideally, the body administering a complaints system should be composed of persons not connected with the industry under examination. If the newspaper industry wishes to operate its own complaints system, there should be no objection from society. Such a body not only assists in the industry 'consuming its own smoke' but also informs the proprietors and editors to appreciate what, if anything, the public are reasonably complaining about. But it must be understood that a complaints system is only a fraction of the enterprise that encompasses the public service of a free press.

If the Press Complaints Commission is given the green light, that will in no way meet the overriding need for an organisation that monitors and supervises the press in accordance with the traditional view that such an exercise covers far more than a complaints body.

The Press Complaints Commission

Given its provenance and its functioning in the handling and adjudication of complaints of breaches of the editors' code of conduct, the Press Complaints Commission must be judged accordingly. Some of the public criticism of the Commission has been, in my opinion, misguided or ill-judged. On the footing that the Press Complaints Commission, adopting the Calcutt precept that it is not the former's function to act as a public servant, furthering the freedom of the press, the verdict should reflect the quality of service the PCC has provided to individual readers of newspapers complaining of breaches of journalistic ethics. My verdict (for what it is worth) is that as a complaints body, at a period of considerable concern about media activities – and I have in mind the consequences of modern technology in the form of the Internet and the commercial constraints upon the financial viability of newspapers – the PCC has made a contribution to the overall problems of regulation. In terms of a complaints

system, it is entitled to claim that within a regulator of the industry itself, it can have only a very limited role in the public accountability of a free press.

PART III

What next? Clearly, there is now an overwhelming public desire to find a viable remedy for those features of contemporary journalism which outrage the public, while jealously guarding the undoubted virtues of a free press in a democratic society. I am fond of citing the aphorism of that great journalist of post-war Britain, Francis Williams, who once declared that the press should be irresponsible, but not too irresponsible. Invasion of private lives comes into the category of 'too irresponsible', and should attract civil justice.

The starting point is the consistent theme of official reports and public statements ever since the first Royal Commission on the Press in 1949. A complaints system by itself is quite inadequate to establish the prime aim of a watchdog body over every aspect of the print media. My prescription is a body, set up by statute independent of both the State and the newspaper industry. In essence it would have no executive power by way of sanction against journalists, editors or proprietors, but would seek to create a culture of journalistic conduct that abided by a code of ethics, freshly compiled. In essence the Commission for the press would bark authoritatively – even, where appropriate, stentoriously – but would bite only indirectly and influentially. A constant stream of reports on specific topics and outcomes from public inquiries into media malpractices would inform the public. The function would not merely be to portray the daily output of the newspapers. But it would comment on what was missing from the pages of the newspapers.

Such an independent body would pay its attention to the wide range of journalistic activity – a) changes in ownership, control and growth of press undertakings, partiality based on ownership; b) to issue annual reports to Parliament on all these matters; c) to keep under review the training and education of journalists; d) to conduct public inquiries on events in the media which give rise to acute public concern; e) to publish and keep under review a code of ethics for journalists and editors.

Appointments to the Commission on the Media

Parliament should establish an appointments commission which would select the members of the Commission. The appointments commission would be composed of the holders of relevant established posts. It is interesting to observe that the 1949 Royal Commission (at para 661) recommended that the independent chairman of the General Council of the Press

should be 'nominated jointly by the Lord Chief Justice and the Lord President of the Court of Session'. Those two office-holders should be joined by the chairs of the British Museum, the British Library and the Arts Council. The five office-holders would entertain applications for the Commission on the Press and determine the size of the Commission and its members, reflecting a wide range of interests, to serve on the Commission for stated periods of time.

Other functions

One, and *only* one of the many functions of the Commission would be to receive and adjudicate upon individual readers' complaints of breaches of the Code of Ethics. If the newspaper industry wished to maintain its own complaints system, there is no reason why it should not do so. No doubt its own professional members could provide a useful service to the reading public and supply the journalistic world with information as to how its members are performing. The Press Complaints Commission belongs to the industry; it is not for Parliament or Government to say that it must not exist. Restricted to operating a complaints system, it may continue to play its part in overseeing its members' conduct.

Public Inquiries

An essential feature of any organisation designed to promote and maintain the freedom of the press – encouraging 'the growth of the sense of public responsibility and public service' in the production of newspapers, to adopt the phrase from the first Royal Commission on the Press¹⁹ – is the use of public inquiries. Specific statutory power should be accorded to any such organisation. Whether or not there are numerous complaints from the public about press conduct, the organisation should be entitled on its own motion to set up an inquiry into any press activity that has aroused, or is likely to arouse, public concern. In recommending this reform in any press regulatory system, it is helpful to take note of past events which indicate an activity over and above the functioning of the complaints system.

A. Press Conduct in the Sutcliffe Case: a report by the Press Council, 4 February 1983.

¹⁹ Para 661, p 174.

Both Geoffrey Robertson QC in *People Against the Press* in 1983, and Lord McGregor of Durriss heaped praise on the Press Council, the latter in a debate on the Sutcliffe Report in the House of Lords on 20 July 1983 saying 'It is true that if newspapers are free to be responsible they must also be free to be irresponsible. That is a price which has to be paid for a free press. But with the Sutcliffe case, as documented in detail in the admirably cogent and matter of fact report of the Press Council, a point was reached at which irresponsibility became intolerable.'²⁰ As a result the Press Council issued in January 1983 a declaration of principle on cheque-book journalism which has featured in every code of conduct for the press since.²¹

B. The disturbances at Strangeways Prison in April 1990

The last act of the Press Council – its report actually appeared early in 1991 after the Council's disbandment – was an inquiry, initiated by the Council without prompting from any individual complaint against the Manchester Evening News. When the Press Council requested the editor for permission to question the sub-editors on the news desk, the request was turned down. It became impossible to determine who was responsible for the journalistic blunder, although clearly the suspicion was that the headline-writer was to blame. I recount the episode to make the point that the investigating body should be given subpoena powers to interview witnesses and to call for the disclosure of relevant documentation. Such a power would need statutory backing.

Sins of omission

If journalists provide the best medicine for truth, there is a downside to journalism. Journalists and editors are prone to manipulation by politicians and other interest groups who seek to influence the reporting of their activities and there is an inherent weakness in journalism in the degree of self-censorship. Why, as Mr Alan Rusbridger told the Inquiry, was it that there was so little reporting until quite recently by the press, while the Guardian was furiously exposing the hacking scandal? There is a very good question here: if we moan and groan at misreporting of the news, should we not also be asking, what is *not* reaching the columns of the papers about matters of acute public interest? The editors of the New York Times wrote a remarkable editorial on 26 May 2004 entitled *The Times and Iraq*. Reviewing the paper's coverage of the decisions leading up to the Iraq war, the editors said: 'It is past time we turned some light on ourselves'. The editorial ended: 'We consider the story of Iraq's weapons and the pattern of misinformation to be unfinished business. And we fully intend to

²⁰ Hansard HL, vol 443, col 1170.

²¹ The declaration is appended to this statement.

continue aggressive reporting aimed at putting the record right'. Earlier in their editorial they said:

Some critics of our coverage focused blame on individual reporters. Our examination, however, indicates that the problem was more complicated. Editors at several levels, who should have been challenging reporters and pressing for more scepticism, were perhaps too intent on rushing scoops into the paper. Accounts of Iraqi defectors were not always weighed against their strong desires to have Saddam Hussein ousted. Articles based on dire claims about Iraq tended to get prominent display, while follow-up articles that called the original ones into question were sometimes buried, there was no follow-up at all.²²

If it is thought that this comment is only transatlantic, I would cite the words of John Lloyd, the distinguished editor of the Financial Times Magazine and the first director of the Reuters Institute for Media Affairs at Oxford University, who in 2004 wrote a coruscating attack on contemporary journalism, called *What are the Media doing to our politics?* He concluded: 'Can we imagine a journalism which is civic? If we can imagine it, we should be able to create it.'

I venture to think that many issues of contemporary politics are not adequately brought to the attention of readers. Many complaints of breaches of Article 1 of the Code – the duty to report accurately – indicate omission as much as commission.

In summary, my recommendations are as follows:

1. There is now (in 2012) a need for a statutory right of action for unwarranted invasion of privacy. It is necessary, if only because the development in recent years by the courts, case by case, of a privacy law should have statutory endorsement.
2. The establishment of a standing Commission on Media Affairs to monitor and supervise the daily output of the national newspapers, regional newspapers, periodicals and other print publications.
3. The Commission should be appointed by an appointments commission composed of persons unconnected with the industry and independent of Government.

²² The entire editorial is appended to this statement.

4. The Commission on Media Affairs should specifically have subpoena powers to order a public inquiry to investigate any media issues that have given rise to, or might give rise to, widespread public concern.
5. A separate body to entertain and adjudicate upon individual complaints against journalists and editors, in addition to complaints from individual readers, can exist, but without any statutory power to inflict penalties.

The establishment of a Commission on Media Affairs would undoubtedly require substantial public funding; extensive study of the range of its remit would first be called for. However costly, the time has come for bold and imaginative action.

APPENDIX ONE

The Press Council's Declaration of Principle (1983)

Witnesses and Criminals

In November 1966 the Press Council declared:

No payment or offer of payment should be made by a newspaper to any person known or reasonably expected to be a witness in criminal proceedings already begun in exchange for any story or information in connection with the proceedings until they have been concluded.

No witness in committal proceedings should be questioned on behalf of any newspaper about the subject matter of his evidence until the trial has been concluded.

No payment should be made for feature articles to persons engaged in crime or other notorious misbehaviour where the public interest does not warrant it; as the Council has previously declared, it deplores publication of personal articles of an unsavoury nature by persons who have been concerned in criminal acts or vicious conduct.

In making this declaration the Press Council acknowledges the wide support given by editors to the broad principles set out.

The Council does not intend that the principles enunciated shall preclude reasonable contemporaneous inquiries in relation to the commission of crime when these are carried out with due regard to the administration of justice. There may be occasions on which the activities of newspapers are affected by overriding questions of public interest, such as the exposure of wrongdoing.

No code can cover every case. Satisfactory observance of the principle must depend upon the discretion and sense of responsibility of editors and newspaper proprietors.

Indirect payments

In January 1975 the Council extended the application of the declaration to indirect payments made to contributors to enable the contributors themselves to make payment for articles or the ingredients of articles contributed by them.

Associates of Criminals

In January 1983 the Council declared:

While the Council recognises that conceivably, in an exceptional case, publication of stories or pictures from associates of a criminal could be justified by some overriding consideration of public interest (which is not the same as merely being 'of interest to the public') and an editor might be able to demonstrate that the disclosure would have been impossible without payment, generally there is no such justification.

In future the Council proposes to judge cases on these lines:

Just as it is wrong that the evildoer should benefit from his crime so it is wrong that persons associated with the criminal should derive financial benefit from trading on that association.

What gives value to such stories and pictures is the link with criminal activity. In effect the stories and pictures are sold on the back of crime. Associates include family, friends, neighbours and colleagues. Newspapers should not pay them either directly or indirectly through agents, for such material and should not be party to publishing it if there is reason to believe payment has been made for it.

The practice is particularly abhorrent where the crime is one of violence and payment involves callous disregard for the feelings of victims and their families.

APPENDIX TWO

Editorial from the New York Times, 26 May 2004

The Times and Iraq

Over the last year this newspaper has shone the bright light of hindsight on decisions that led the United States into Iraq. We have examined the failings of American and allied intelligence, especially on the issue of Iraq's weapons and possible Iraqi connections to international terrorists. We have studied the allegations of official gullibility and hype. It is past time we turned the same light on ourselves.

In doing so — reviewing hundreds of articles written during the prelude to war and into the early stages of the occupation — we found an enormous amount of journalism that we are proud of. In most cases, what we reported was an accurate reflection of the state of our knowledge at the time, much of it painstakingly extracted from intelligence agencies that were themselves dependent on sketchy information. And where those articles included incomplete information or pointed in a wrong direction, they were later overtaken by more and stronger information. That is how news coverage normally unfolds.

But we have found a number of instances of coverage that was not as rigorous as it should have been. In some cases, information that was controversial then, and seems questionable now, was insufficiently qualified or allowed to stand unchallenged. Looking back, we wish we had been more aggressive in re-examining the claims as new evidence emerged — or failed to emerge.

The problematic articles varied in authorship and subject matter, but many shared a common feature. They depended at least in part on information from a circle of Iraqi informants, defectors and exiles bent on "regime change" in Iraq, people whose credibility has come under increasing public debate in recent weeks. (The most prominent of the anti-Saddam campaigners, Ahmad Chalabi, has been named as an occasional source in Times articles since at least 1991, and has introduced reporters to other exiles. He became a favorite of hard-liners within the Bush administration and a paid broker of information from Iraqi exiles, until his payments were cut off last week.) Complicating matters for journalists, the accounts of these exiles were often eagerly confirmed by United States officials convinced of the need to intervene in Iraq. Administration officials now acknowledge that

they sometimes fell for misinformation from these exile sources. So did many news organizations — in particular, this one.

Some critics of our coverage during that time have focused blame on individual reporters. Our examination, however, indicates that the problem was more complicated. Editors at several levels who should have been challenging reporters and pressing for more skepticism were perhaps too intent on rushing scoops into the paper. Accounts of Iraqi defectors were not always weighed against their strong desire to have Saddam Hussein ousted. Articles based on dire claims about Iraq tended to get prominent display, while follow-up articles that called the original ones into question were sometimes buried. In some cases, there was no follow-up at all.

On Oct. 26 and Nov. 8, 2001, for example, Page 1 articles cited Iraqi defectors who described a secret Iraqi camp where Islamic terrorists were trained and biological weapons produced. These accounts have never been independently verified.

On Dec. 20, 2001, another front-page article began, "An Iraqi defector who described himself as a civil engineer said he personally worked on renovations of secret facilities for biological, chemical and nuclear weapons in underground wells, private villas and under the Saddam Hussein Hospital in Baghdad as recently as a year ago." Knight Ridder Newspapers reported last week that American officials took that defector — his name is Adnan Ihsan Saeed al-Haideri — to Iraq earlier this year to point out the sites where he claimed to have worked, and that the officials failed to find evidence of their use for weapons programs. It is still possible that chemical or biological weapons will be unearthed in Iraq, but in this case it looks as if we, along with the administration, were taken in. And until now we have not reported that to our readers.

On Sept. 8, 2002, the lead article of the paper was headlined "U.S. Says Hussein Intensified Quest for A-Bomb Parts." That report concerned the aluminum tubes that the administration advertised insistently as components for the manufacture of nuclear weapons fuel. The claim came not from defectors but from the best American intelligence sources available at the time. Still, it should have been presented more cautiously. There were hints that the usefulness of the tubes in making nuclear fuel was not a sure thing, but the hints were buried deep, 1,700 words into a 3,600-word article. Administration officials were allowed to hold forth at length on why this evidence of Iraq's nuclear intentions demanded that Saddam Hussein be dislodged from power: "The first sign of a 'smoking gun,' they argue, may be a mushroom cloud."

Five days later, The Times reporters learned that the tubes were in fact a subject of debate among intelligence agencies. The misgivings appeared deep in an article on Page A13, under a headline that gave no inkling that we were revising our earlier view ("White House Lists Iraq Steps to Build Banned Weapons"). The Times gave voice to skeptics of the tubes on Jan. 9, when the key piece of evidence was challenged by the International Atomic Energy Agency. That challenge was reported on Page A10; it might well have belonged on Page A1.

On April 21, 2003, as American weapons-hunters followed American troops into Iraq, another front-page article declared, "Illicit Arms Kept Till Eve of War, an Iraqi Scientist Is Said to Assert." It began this way: "A scientist who claims to have worked in Iraq's chemical weapons program for more than a decade has told an American military team that Iraq destroyed chemical weapons and biological warfare equipment only days before the war began, members of the team said."

The informant also claimed that Iraq had sent unconventional weapons to Syria and had been cooperating with Al Qaeda — two claims that were then, and remain, highly controversial. But the tone of the article suggested that this Iraqi "scientist" — who in a later article described himself as an official of military intelligence — had provided the justification the Americans had been seeking for the invasion.

The Times never followed up on the veracity of this source or the attempts to verify his claims.

A sample of the coverage, including the articles mentioned here, is online at nytimes.com/critique. Readers will also find there a detailed discussion written for The New York Review of Books last month by Michael Gordon, military affairs correspondent of The Times, about the aluminum tubes report. Responding to the review's critique of Iraq coverage, his statement could serve as a primer on the complexities of such intelligence reporting.

We consider the story of Iraq's weapons, and of the pattern of misinformation, to be unfinished business. And we fully intend to continue aggressive reporting aimed at setting the record straight.