



fighting for media freedom

PRIVATE AND CONFIDENTIAL

Response to Lord Hunt proposals for future regulation of the press

1. Lord Hunt argues that advantages of his proposed model are:
 - It would preserve the successful compliance, mediation and adjudication functions of the existing PCC.
 - It would respond to popular and political criticism of the PCC, by creating a body that clearly has 'teeth'.
 - It has straightforward accountability and governance.
 - The proposed system of civil contracts would provide stability and coverage by preventing easy opt-outs.
 - It would retain and entrench independence for the system, from government.
2. The Society of Editors welcomes Lord Hunt's proposals that can provide a solution to the regulatory dilemmas facing newspapers and magazines. The aim to future-proof the plan also provides a long term solution to the growth of online media.
3. They are also capable of satisfying LJ Leveson's view that a new system must be more than tinkering around the edges. In addition they can be acceptable to editors and to the public.
4. In effect the plan maintains the successful elements of the PCC including the Editors' Code, complaints and mediation while addressing the omissions and perceived failures of the existing system.
5. The proposals avoid reinvention of the wheel where it is not needed as well as the dangers of over complicated and therefore costly bureaucracy.
6. **Compliance**
 - The idea that each media organisation should have one senior individual, preferably at board level who would be responsible for compliance is sensible. That does need to be seen in the context of regional newspapers and magazines where editors would be concerned how that would work in practice and the extra costs it would create.
 - The detail of annual audits would need to be discussed in the context of the wide range of business models in the media and the range of criteria required. Above all it

is important that any system should not be over bureaucratic and therefore expensive in terms of resources and cost.

- There needs to be consideration of how compliance and audit systems would be reported for the satisfaction of the public.
- Most important is that the editor or editor-in-chief should remain as the guardian of editorial standards and therefore compliance. Editors and senior executives such as news editors are as much governed contractually by the Editors' Code of Practice as their staff. The editor must be the arbiter in any discussions about the code. Any reporting to a board member or other senior executive should concern the application of the code and governance and not interpretation of the code which is a matter for the editor and ultimately the new regulator.

7. Management Board

A sound idea in principle but it must continue to have strong representation from the industry otherwise there will be no buy-in. There would be objections to members who play an active part in any areas of public life in which the media has a watchdog role.

8. Complaints and Mediation

Newspapers should continue to be encouraged to resolve their own complaints. The growth in the practice of publishing regular Corrections and Clarifications columns has been welcomed.

9. Compensation

The case for compensation and fines still needs to be made. There are particular concerns for smaller papers and there could be concerns about the motivation of complainants, the involvement of lawyers and therefore the increase in costs and delays in dealing with complaints. The power of having to correct, apologise and publish adverse adjudications should not be underestimated.

10. Pre-publication advice

Pre-publication advice from the PCC is valuable but it should remain as that – advice, avoiding any suggestion of prior restraint or censorship. The final decision on publication must remain with the editor.

11. Independent Assessor

A review of adjudications and decisions could be valuable as would the ability to investigate. The success of the system would depend on individuals at the top of it having the ability and strength to resist the dangers of overreaction to pressure from sectional or vested interests. They must be able to balance the public interest of a free media against those interests. This should include resistance to viral complaints and campaigns. Above all, as Lord Hunt appears to recognise, investigations and reviews of adjudications should be rare and limited to clearly serious issues.

12. Contracts.

The idea of contracts is valuable along with the incentives of kite marks because it would require news organisations to opt-out rather than opt-in to the system and would avoid any requirement for any statutory back up to the new system.

13. Editors' Code

The code at the heart of any self regulatory system must be in the “ownership” of the “members”. That said there could be more formal recognition of the need for outside input to revisions of the code. There should also be greater transparency of the system and the wider publicity for the fact that the code has to be approved by the PCC (or new regulatory body) which has a majority of lay members.

14. Public Interest.

Definitions of the possible public interest defences for apparently breaching the code – and indeed in some cases the law - need to be expanded. However, it is difficult to see any solution to the issue at the heart of Leveson, other than that the public interest can only be decided on a case-by-case basis.

There needs to be a clearer system of explaining public interest defences to complainants and why their complaints may not be valid. This could be achieved by expansion and increased publicity for the Editors' Code Book that explains adjudications, advice and practical application of the code. There should be particular attention to issues such as the right of newspapers to be partisan to issues of taste which are matters for editors.

15. Additional points of concern to editors

- There is serious concern about the costs in both cash and resources of an expanded system based on affordability for the regional press and other smaller organisations particularly.
- There is concern that an expanded system might increase the number of trivial complaints. The new organisation should avoid being risk averse by rushing to take up complaints before satisfying itself that newspapers' internal complaints procedures have been exhausted. This would benefit the new organisation by reducing pressure on its resources and complainants themselves.
- Editors in Scotland are concerned about representation in any new system because of their different legal system.
- While incentives built into the new contractual system to encourage news organisations to join and remain in membership of the new system are important, carrots would be more effective than sticks. Suggestions from other sources such as accreditation or special VAT treatment only for those news organisations that join the new system would be problematic as they would in effect be a licensing system. There are already criticisms and concerns from some quarters about lobby systems and special treatment for members of specialist reporting groups etc.
- Issues of privacy can and should be dealt with under the code and existing law. New law is not required on top of this.

16. Concerns about other proposals

- The society is concerned about some suggestions put forward in other proposals for the future of regulation.
- Above all there are worries that the creation of a totally new system would be over bureaucratic and therefore unaffordable. It could also ignore the valuable achievements.
- While greater input from outside into the code revision process would be welcomed it is important that the code remains the Editors' Code that is "owned" by those who use it and apply it.
- The case for statutory back up is still to be made. The concern is that it would give power to politicians to interfere.
- It should not be assumed that there will be a major need for investigations and reviews of the adjudications. History suggests that these would be rare. A system needs to be in place but it does not necessarily require a standing bureaucracy with related costs in terms of resources and finance.
- Suggestions for incentives in the form of reduced legal costs from a new system of fast track remedies in libel and privacy are welcome. However, necessary changes in the legal system must not be allowed to delay the establishment of a revised regulatory system. It should also be remembered that the "incentive" of reduced legal bills balancing out the increased costs of a new regulatory system will not necessarily benefit regional newspapers and other smaller news organisations. The problem for them is the chilling effect on journalism rather than high legal bills that they seek to avoid whenever possible.
- The argument that reference in the Editors' Code to the public interest in freedom of expression should be removed is not accepted.
- The need for a new publication for journalists to explain the code is already covered by the Editors' Codebook. While that might require increased promotion, its production and dissemination is expensive. Similarly, while there is need for training, this can be met by the NCTJ that already sets high standards. There is concern that extra resources and costs of special training by the new regulatory body would be unnecessary.
- Suggestions of state funding even to meet set up costs are likely to be unacceptable to government and to the industry because of what might be required in exchange.
- Overall some of the other suggestions for change are wrong in both principle and in practical terms. Costs of complete change when it is agreed that the code is good and that the complaints and mediation system is good means only parts of the wheel need to be reinvented. That would not be merely "tinkering", it could be part of fundamental or radical change that would be acceptable in principle and could be achievable practically in terms of more manageable bureaucracy and therefore costs.

Executive Director
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