The Rt. Hon. Lord Wakeham

HOUSE OF LORDS
LONDON SW1A 0PW

Lord Justice Leveson,

The Leveson Inquiry,

c/o The Royal Courts of Justice,

Strand,

London,

WC2A 2LL

7 January 2012

Dear Lord Justice Leveson

I wonder if it would be helpful if I set out some thoughts that may help your Inquiry in to Press Standards. I do so particularly with a view to the ongoing issues relating to the granting of injunctions and anonymised injunctions, with which I was closely involved during the passage of the Human Rights Act 1998, and how self regulatory reform might usefully help deal with some of the problems that have arisen in this area.

As you will know, I was Chairman of the Press Complaints Commission from 1995 to 2001. I was not new to the issues when I took the job. The Government of which I had been a member until 1994 had stated its intention – following the second Calcutt Report in 1992 – to introduce a system of statutory controls on the press. It is no great secret that I was Chairman of the Cabinet committee that looked into how we would implement this. Having studies it in great depth, I strongly recommended to John Major that this would an impractical and even dangerous idea, and he accepted my advice.

On my appointment as Chairman of the PCC I set about trying to improve its performance and reputation – which had been battered mainly by a series of scandals relating to members of the Royal Family - and I consider I had some success. I was always clear that my task was not to be a "regulator" but to endeavour to raise standards in the press above the minimum required by law through a process of education, exhortation and adjudication.

As part of this process, I persuaded the newspaper industry to strengthen its Code of Practice several times, including a wholesale revision particularly on matters relating to privacy following the death of

Diana, Princess of Wales in 1997. The new elements of the Code, especially on children and the use of long lens photography, have I think proved largely successful.

I never consider it was my role to look into allegations of criminality or illegality. Quite apart from the practical implications of trying to run a quasi-police operation, we never had the resources or powers to do so. When matters of a suspicious nature came up we therefore declined to deal with them and referred them to the relevant authorities to take them up. The same happened on matters brought to me which were clearly libelous or involving breach of copyright.

Based on my experience at the PCC, and my own beliefs as a Parliamentarian in freedom of expression, I remain strongly imposed to the imposition of statutory controls. They are wrong in principle and would not work in practice. The only answer therefore is to strengthen self regulation. I am quite sure that the way forward here is to differentiate between complaints and compliance.

I have never believed there to be a significant problem with the PCC's complaints handling mechanisms. The Commission is very good at resolving most complaints without cost, speedily and, as far as I could discern, to the satisfaction of the significant majority of complainants.

This of course is exactly what the Press Complaints Commission was set up to do on the advice of Calcutt. But over the years, it has added on functions that are of a more regulatory nature without its structures or remit being amended accordingly. Most of this has happened in the last few years, culminating in the disastrous report on phone hacking. I also suspect that the PCC's Governance Review – with which I was not impressed – tried to remodel it as a regulatory quango, far removed from its original mission, or its powers or expertise.

I think the first thing that has to happen is to separate out and renew the basic complaints handling function. This is after all what matters most to ordinary members of the public and is also probably of greatest practical importance to the industry, particularly in the regional press. The bulk of the complaints, of course, relate largely to accuracy and, especially in a digital age, are relatively easy to resolve.

Personally, I think all this could be vested in an "Ombudsman" figure who would obviously need trained complaints handling staff, but would not need a Commission the size it is now, or the complex bureaucracy that has grown up around the PCC. The Ombudsman and his staff could deal with most straightforward complaints and conciliate them: but where an adjudication was needed on a point of principle this could be

taken by a small team of assessors, mostly lay people but with solid expert industry input.

That would preserve and enhance the best of the PCC – speedy and cost-free conciliation from a body that is independent but draws on the expertise of the press as it needs to.

Because such a body would not be burdened by excessive bureaucracy and would be small enough to be able to take very speedy decisions, I think it would be a perfect first port of call for those seeking to take out an injunction on a privacy matter. The Courts could I hope be persuaded to ask applicants for an injunction if they had (a) taken advice from the Ombudsman on whether a story was likely to breach the privacy sections of the Code and (b) if so, whether the Ombudsman believed it was an issue which could be dealt with through his pre-publication service.

Changes would have to be made to the Code to require editors to provide the Ombudsman with information in advance of publication where the issues were of such a serious nature that the Court was involved in considering injunctive relief, but that shouldn't be difficult. In my experience, these sorts of matters do not arise often.

I think that this would give effect to the original intention of Section 12 of the Human Rights Act, as amplified by Jack Straw in the House of Commons during its passage, that self regulation and the application of the privacy parts of the Code should be the norm, and interlocutory injunctions kept extremely rare. Of course there would still be some cases where the Ombudsman did not feel it appropriate to act; in which case an applicant can return to the Judge to explain that his or her remedies have been exhausted elsewhere. The Judge would then have the benefit of the Ombudsman's advice on the matter.

My proposals - which I think can be implemented without legislation (something which I think very desirable) - would mean that the first approach of someone seeking injunctive relief would normally be to use the self regulatory mechanism, which is of course free, and only if that was not satisfactory resort to the Court.

I think these suggestions would also be helpful in various other ways:

1. it would mean Section 12 would be used as it was intended by Parliament;

2. it would in effect deliver a fair judgment without the massive costs of an expensive legal action which is out of the reach of the vast majority of the population – thereby safeguarding access to justice. This is

particularly important in view of the reform of "no win no fee" arrangements; and

3. if, as I hope, there is reform of the defamation law to introduce compulsory arbitration, such a model might be of some practical use in that area.

Some will consider that this still leaves two substantive problems: how to establish a "standards" regime which can deal with issues or complaints of such a serious nature that it is not appropriate for the Ombudsman's service to deal with them; and how to ensure full industry compliance with the system from the point of view of funding and indeed support for the Code.

On the former, there are in fact very few occasions when I think such an investigation would be required. If you consider recent years, and leaving the obvious issue of hacking to one side, we are looking at the McCanns, the so-called "City Slickers" affair back in 2001, the issues that arose after the death of Diana in 1997, problems with witness payments in the West trial in 1995 and perhaps a very few other events. I do not believe there is need for a permanent body. The Ombudsman could perhaps be responsible for establishing one where a major issue arises, or where he judges a complaint to be so serious that it requires a substantial standards investigation, or where patterns of complaints give rise to concerns about the newspaper management or indeed even an individual reporter.

On the issue of industry compliance, I think this is the trickiest area. To some extent, it has always been a problem but in a much less acute manner: there are a handful of very small local or magazine publishers outside the system, and the PCC has been able to deal with those. It's Northern and Shell's size which has produced the real danger. For myself, I can't understand why such a large group should wish to remain outside the system, when the benefits are so clear and the dangers of statutory control so obvious. I think the industry needs to look quickly at various incentives, and when Northern and Shell is back in – which I'm optimistic about – produce binding agreements to keep it there.

As someone who has spent so much time considering these issues, going back now over nearly twenty years, I do passionately hope that ways to strengthen self regulation can be found rather than any alternative. Self regulation will never be perfect, but it works both to protect ordinary people and to preserve press freedom in a way statutory controls would not.

I hope these thoughts are of some use.