

*Appendix 3*

STATEMENT

*Introduction*

My name is Jeremy Roberts. I was a practising barrister for 35 years before becoming one of the permanent judges at the Central Criminal Court in October 2000. On my retirement in April 2011 I was appointed as a public member of the Press Complaints Commission, a position which I still hold. I am also a member of the Parole Board.

I am submitting this statement because it occurred to me that it might be of some use to provide some first-hand information about two issues which I know have been raised during the Inquiry: (1) whether the editorial members of the PCC, despite being in a minority, have a disproportionate amount of influence on its discussions and decisions, and (2) whether the public members of the Commission are people with a natural inclination to place the freedom of the press ahead of the rights of individuals.

I have sent copies of this statement to all the other members of the Commission (public and editorial) so that they could draw my attention to anything in it with which they disagree. None of them has done so. All the public members have expressed their strong support for it. Four of them have asked to contribute comments of their own, which I have added at the end.

I would of course be happy to give oral evidence if that were desired, or to provide any further information which the Inquiry might like.

*Issue (1): Do the editorial members have a disproportionate amount of influence on the PCC's discussions and decisions?*

There does appear to be a perception in some quarters that the PCC is in some way "dominated" by the editors, despite the fact that there are only seven of them as against ten public members. That perception certainly does not accord with my experience since I joined the Commission.

As I think the Inquiry is aware, the Commissioners' participation in the decision making process occurs at two distinct stages:

- (1) when each of us considers and comments on the recommended decisions which have been prepared by the complaints officers and are sent to us each week: we call them the "greens" because they are printed on green paper, and they arrive through the letter box in a large envelope each Saturday morning; and
- (2) when all of us discuss cases at the regular Commission meetings which are held every 6-8 weeks.



*The "greens"*

I have been very impressed by the quality of the work produced by our very conscientious and hard-working team of young complaints officers, some of whom are lawyers and some not. It is apparent that they apply their own minds quite independently to the sometimes difficult problems posed by our cases, and I agree with the vast majority of their recommended decisions: on the rare occasions when I don't, I don't hesitate to say so!

We all send in, by e-mail, any comments we have on the week's batch of cases. We are expected to do that by the Friday following the arrival of the greens. I am told by our Director Stephen Abell and by our Head of Complaints Charlotte Dewar that the editorial members in fact send in relatively few comments compared to the public members. The public members certainly send in quite a lot: I can think of at least five of us who I know regularly send in several pages worth of comments, mainly suggesting various changes of approach or wording (or corrections of typos) but sometimes disagreeing with a recommendation and explaining why.

By way of example, my last batch of comments ran to 8 typed pages and commented on 25 of the 40 cases sent to us that week. In two of those cases I disagreed with the recommended outcomes (in both cases the recommended decision was that there was no breach of the Editors' Code, but I thought there was), and in another two I tentatively suggested that a different view might be taken. It remains to be seen whether others will agree with me!

Each of us arrives at his or her own view of each case independently in the comfort of our own home: we have not at that stage seen the comments of any other Commissioners, and are therefore not influenced by them in any way.

The original recommended decisions are quite often amended in the light of Commissioners' comments; and, once everybody is happy, they are issued by the office. If one or two of us have expressed disagreement with the recommended outcome, but everyone else is happy with it, the dissenter or dissenters usually give in gracefully.

If there is substantial disagreement as to the outcome, or if the case raises an important issue which the Director and Head of Complaints feel should be discussed around the table by the full Commission, the case is put on the agenda for the next Commission meeting.

Very few cases need to be discussed round the table, because the vast majority have been decided on paper in the way I have described. I very much doubt whether any of the decisions arrived at on paper can have been significantly influenced by the editors, and I have certainly not seen a case where a recommendation to find a breach of the Code has been changed to one finding no breach - if there has been a change of outcome, it has always been the other way round.



*Round the table discussions*

There are usually about half a dozen cases tabled for discussion at Commission meetings.

There is discussion round the table, with each member being invited to state a view. Almost always, a strong majority emerges and the minority gracefully bow to the majority view. There was one occasion when we were fairly evenly split, and we decided to put the case back to our next meeting for further information to be obtained: when it was, we were able to reach a consensus in the usual way. No doubt if there was significant disagreement the matter would be put to the vote, but I have not yet seen a case where that has needed to happen.

I have always been impressed by the quality of discussion round the table, and the good spirit with which opposing views are put forward and debated by editorial and public members alike. In fact on most occasions any stranger listening to the debate would probably have no idea who was an editor and who was a public member. Occasionally one of the editors will make a comment based on practice at his or her newspaper or magazine, and these comments are invariably helpful (they are often along the lines of "We wouldn't have done that because our policy is ...").

When there is a divergence of view it does not seem to be between the editors on the one hand and the public members on the other: rather, one or more members of each group will subscribe to one view and the rest to the other.

There is certainly no truth in any suggestion that the public members or any of them are inclined to give way to the views of the editors: I think we are all much too bolshie a lot to think of doing that! If one of the editors finds himself or herself in a minority at the end of the discussion, he or she will give in gracefully as the rest of us do.

I hope this is of some use as giving a bit of an inside view of the way the PCC works in practice.

*Issue (2): Freedom of the press versus the rights of individuals*

I know that the Inquiry is interested in the appointment process and specifically whether the selection criteria for public members of the Commission may have focussed more on the importance of freedom of the press than on the protection of members of the public.

I was interviewed in April for one of the four vacancies which were about to arise, and was certainly asked quite a lot of questions about the balance between the freedom of the press and the rights of individuals, and specifically about the potential tension between the Article 10 rights of the press and the Article 8 rights of individuals.

As I think the Inquiry is aware, the interviewing panel consisted of the then Chairman (Baroness PetaBuscombe), two of the public members (Ian Nichol and Ian Walden) and an independent reviewer Lucinda Bolton. Stephen Abell was also present and asked quite a



few questions himself, though I do not think he had a vote. I did not detect any sign in any of the questions asked or observations made by the panel (or by Stephen) that any of them attached more importance to the freedom of the press than to the rights of individuals. I certainly do not do so myself, and it is inconceivable that I could have given the impression that I did. The panel and Stephen all seemed genuinely interested in the balance between the two factors, which is in fact one of the things which makes the work of the Commission so fascinating.

If they were looking for somebody inclined to attach more importance to Article 10 than to Article 8 (and the protection of members of the public generally) I am sure they would not have appointed me. I made no secret of the fact that during my time at the Central Criminal Court I had been the victim of several unfair criticisms and misleading reports in newspapers, and that I had on most of those occasions written personally to the editor of the newspaper in question, usually (but not always) receiving a polite and constructive response (and sometimes a printed apology). Nor did I make any secret of the fact that as a QC I had on one occasion successfully sued the BBC for damages for defamation.

Stephen Abell has told me that this question about the balance between the respective rights of the press and of individuals was on the list of questions asked of all the interviewees. Michael Smyth and Neil Watts (two of the three other successful applicants) have told me that they were certainly asked about it: Michael's appointment took effect just before mine and Neil's more recently.

I gather that Michael Grade (the other successful applicant, whose appointment took effect at the same time as Michael Smyth's) did not remember the question when he gave evidence to the Inquiry, but he has since confirmed (having been reminded of it by Stephen) that he was in fact asked about it too. He has confirmed that he is happy for me to pass on this information to you. I suspect that Michael Smyth and I as lawyers, and Neil with his own particular background, were probably more likely to have an immediate recollection of the discussion about the potential Article 8/ Article 10 tension than Michael Grade.

I should perhaps add that in none of the Commission's meetings have I detected any signs that any of the public members was inclined to attach greater weight to the freedom of the press than to the rights of individuals.

Ian Nichol, Simon Sapper, Julie Spence and Neil Watts have all asked me to add the following personal comments of their own. I hope they provide an illustration of the breadth of background and experience (and independence) of the public Commissioners. They have all said that they will be happy to provide any further information that may be required.

IAN NICHOL

*I am a chartered accountant and a Commissioner of the Criminal Cases Review Commission in Birmingham. My background lies in taxation.*



*I was interviewed for the post of PCC lay Commissioner in 2005 by Christopher Meyeraud Alison Hastings (consultant to the Commission). I started my 6-year run as a Commissioner on 1 March 2006 and will end it on 29 February 2012: as I write this, I am the longest serving Commissioner. During the latter part of PetaBuscombe's leadership (2010-11) I was Deputy Chairman of the PCC: I believe I was the first person to take on that role.*

*I entirely echo and endorse Jeremy Roberts's statement to the Inquiry. For my first PCC meeting on 8 March 2006 the three national newspaper editors on the board were Roger Alton of The Independent, Paul Dacre of the Daily Mail and Peter Hill of the Daily Express. They were all good team players, showed no sign whatsoever of bias in their judgments, were extremely independent, never sought to dominate the discussion, and were generally splendid to work with. Because myths have spread about Paul Dacre, it may be worth making a special note here that in my experience he spoke infrequently at the PCC but with considerable wisdom when he did so.*

*My favourable impression of the editors on the PCC board, both national and regional, both from newspapers and from periodicals, has been maintained throughout my six years at the PCC.*

SIMON SAPPER

*I was appointed to the PCC in 2008 following my involvement in regulatory matters in local authority, legal and premium rate telephony sectors. Since 1986 and currently I have been a national trade union official, a position which has at its core respect for the protection of the rights of individuals against vested and powerful interests. I am also a strong supporter of the campaign group Liberty. For all these reasons, plus the fact that in the past my family has been the subject of attention from the press that I believe to have been unwarranted and unfair, I find the notions that I would be dominated by the industry members of the Commission or would be favourably predisposed towards press interests as opposed to those of the individual entirely unsupported and unsupportable.*

*I am happy to endorse the comments in Jeremy Roberts' statement and I too would be most willing to give evidence in person.*

JULIE SPENCE

*I joined the PCC in January 2010 just prior to retiring as Chief Constable of Cambridgeshire in September 2010 after serving for 32 years in three different forces, including Thames Valley and Avon and Somerset; I was also President of the British Association for Women in Policing between 2001 and 2010. As Chief Constable I had an open yet robust but nonetheless professional relationship with the local and national media in my quest to ensure the public had the correct facts on which to base their views of policing in their county. I personally experienced a range of media reporting (accurate, inaccurate and speculative) and would always challenge the inaccurate. Since joining the PCC, I have a better understanding of the industry's perspectives but remain committed to ensuring the right to freedom of expression is preserved but is properly balanced with the responsibility to ensure that those issues or people in the spotlight receive fair coverage and treatment.*

*I am at one with the comments made by Jeremy Roberts and am happy to expand further on any issue should it be required.*

NEIL WATTS

*I was appointed to the PCC in November 2011, following interviews held in March of that year. My professional background is twenty-one years as the Headteacher of two large comprehensive schools in Suffolk, followed by a period as Consultant Headteacher for Suffolk County Council. In these roles I have had frequent contact with the press, and media in general, and my fair share of positive - and sometimes negative - coverage! Headteachers spend their lives dealing with the rights of the individual versus those of the majority and I fully understand how difficult at times that balance can be. An outstanding school is an indication that the headteacher has got that balance right; exactly the same applies to an outstanding society and that is where the PCC can play such a major role in protecting the individual whilst safeguarding the rights of a free press.*

*I have extensive experience of regulation as, in 2004, I was appointed to the Council of the Advertising Standards Authority, becoming deputy chairman in 2009 upon my retirement from full time headship, and I am also on the Board of Ofqual (the national regulator of qualifications, examinations and assessments) and a lay member of the Architects Registration Board. In the ASA Council, which I left in April 2011 after a maximum term of six and a half years, there was the balance of industry and lay members that is found on the Board of the PCC and my experience is that on neither body could an outsider distinguish the background of members at Board/Council meetings, other than specific knowledge of a professional situation. To suggest that either body is dominated by industry members is completely inaccurate.*

*I fully endorse the comments of Jeremy Roberts.*

JEREMY ROBERTS

9 February 2012

The following personal statements by the remaining Public Commissioners have been added in October 2012, specifically for the re-submission of this document to the Inquiry in response to its Rule 13 notice dated 15 October 2012.

CHARLES ANSON

*I was appointed as a Public Commissioner to the PCC in March this year, following a full and open public appointments process and interview held in February/March 2011 (a process, incidentally, in which a senior assessor from the Cabinet Office Public Appointments Unit participated from start to finish in the sifting, selection and interview process to ensure objectivity and an independent view in the final decision). There were over 3000 applications from members of the public from all over the United Kingdom for five posts.*

*Most of my professional life has been spent in the area of communications and the media both in the public service and at senior levels of the private sector. This has included spells in the Number 10 Press Office, then later as Press Secretary to The Queen (1990 -97) and as Director of Communications of three FTSE 100 British companies. Consequently, I have had daily contact with the press and with Editors for well over 30 years, some of it cooperative, some of it healthily adversarial and on several occasions I have also been on the receiving end personally of intrusion into privacy as well as inaccuracy.*

*I have considerable experience of trying to balance the interests of clients and organisations and the public interest, the right to freedom of expression and the right to privacy of the individual. I am a firm believer in the value of an effective and vigorous system of press self-regulation, which is why originally I applied to join the PCC in the latest public appointments process. Like my fellow Commissioners, I also believe that there is room for change and improvement in the present system and that this must be approached with enthusiasm and an open mind.*

#### LORD GRADE OF YARMOUTH

*I was appointed a Public Commissioner of the Press Complaints Commission in April 2011. The interview process was an extremely rigorous one, involving existing Public Commissioners, including the Chairman, and an independent, external assessor.*

*I only applied for the role because I was satisfied that the process of appointment was open and transparent, and because I believed – as I continue to believe – that the PCC would benefit from strong voices independent of the newspaper and magazine industry.*

*The large part of my career has been in the broadcast industry, encompassing London Weekend Television, the BBC, ITV, as well as over nine years as Chief Executive of Channel Four Television.*

*As a high-profile figure in a rival industry, I have been the natural target of some newspapers. Throughout my career, I have experienced considerable personal criticism by the press, and the publication of inaccurate and intrusive material about me. I was, perhaps famously, dubbed the “pornographer-in-chief” of Channel 4 by one newspaper, which disagreed with some of the programmes we were making.*

*This experience was a factor that made me, in my view (and, I know, the view of the appointments panel), especially qualified to serve as a Public Commissioner.*

*Indeed, one of the published, qualifying criteria for the position was “an understanding of the problems faced by those caught up in the media spotlight, in particular vulnerable groups of people, and a commitment to the public service of helping them”. I am not a vulnerable person, but I can speak on behalf of such people, and have certainly done so during my tenure at the PCC.*

*My previous experience of media regulation has been almost entirely in the broadcast sector. I am, therefore, not an intuitive critic of statutory regulation, or a feckless supporter of self-regulation for the press at all costs. On mature reflection, I was able to support the existing work of the PCC, on the grounds that it offered a workable approach to helping members of the public, both before and after publication, with problems caused by journalists. I have seen that it has been of real, practical assistance to countless vulnerable people in need of support.*

*I have also been an advocate for improving the structure of the organisation, and took part in debates about how to achieve that from my earliest days as a Commissioner. I believe that improved, independent self-regulation with a clear, written and published remit is the most attractive approach – in both philosophical and practical terms – in order to maintain standards in the press, especially as we move forward in the digital age.*

PROFESSOR IAN WALDEN

*I was appointed as a Lay Commissioner to the PCC in December 2009, following a full and open public appointments process and interview. At that time, my appointment was the responsibility of an Appointments Commission, which comprised the PCC Chair, the chair of PressBoF and three public members (who were appointed separately and were not members of the PCC). There were some 1200 applicants for the post.*

*In response to the phone hacking scandal, I was asked to participate in a sub-committee of Commissioners to investigate how the PCC had responded to the unfolding events. This work culminated in us recommending to the Commission that the 2009 Report be withdrawn.*

*I am a Professor of Information and Communications Law in the Centre for Commercial Law Studies, at Queen Mary, University of London. I have been an academic for some 25 years. I research, teach and write in a number of fields, including media law, computer crime, privacy/data protection and freedom of information. My publications include Computer Crimes and Digital Investigations (2007), Media Law and Practice (2009) and Telecommunications Law and Regulation (4<sup>th</sup> ed., 2012). I am also a qualified solicitor, consulting to the global law firm Baker & McKenzie.*

*My career has been spent examining and critically analysing various regulated environments and industries, especially the Internet. Prior to my appointment to the PCC, I was an Independent Board Member and Trustee of the Internet Watch Foundation, which was established to tackle the availability of child sexual abuse images over the Internet. Much of my work involves examining the often complex balancing exercise required between various public interests and individual rights.*

*My appointment as a Lay Commissioner seemed a natural extension of this work. I am a supporter of self-regulation in certain circumstances and for certain types of activity, which include the press. However, I have always supported the need to reform aspects of the current system and was a member of the PCC's Reform Committee. I pride myself on my independence of mind and action and would neither have applied to join nor continued to be part of the PCC otherwise.*

MICHAEL SMYTH

*I am a visiting professor of Queen Mary College, University of London and of the University of Essex, in both cases attached to the law faculty. I am also an Associate Fellow of the Centre for Public Law at the University of Cambridge. I was for 20 years a partner at Clifford Chance and was for nearly a decade the global head of the firm's public policy practice. I am author of Business and the Human Rights Act (2000) and joint author of the Law of Political Donations (2012). I remain a consultant to my old firm and retain my practising certificate. I was awarded the CBE for pro bono legal services in 2009. Much of my client work involved issues regarding regulatory bodies of every sort.*

*I was appointed a public member of the Press Complaints Commission in April 2011, at the same time as Lord Grade. My appointment followed a lengthy and rigorous process, described by the selection panel which interviewed me as seeking so far as possible to follow the procedure for making public appointments. An external assessor was present throughout my interview.*

*Among other matters I was asked to identify particular challenges facing the PCC. I recall that I referred to (i) the phone-hacking story as then understood, (ii) what has become dubbed the Desmond Problem and (iii) perceived concerns about the PCC independence (or lack of it). There then followed an exchange about the PCC's form and structure.*

*I was also asked about my understanding of and empathy for those subject to press intrusion. I explained that I was a sometime Vice-Chairman of the Advice Bureau at the Royal Courts of Justice and had seen there that numbers of pro bono clients were aggrieved in one way or another by their treatment at the hands of print media. Although I do not recall referring to this at my interview, I had been in any event on the receiving end personally of unwelcome press comment in relation to my professional life and on one occasion I made a formal legal complaint as regards a particular reference to me. It was partly on this basis that I was induced to apply to become a member of the PCC for, unlike the great majority of practising lawyers, I knew, stated crudely, what it was like to be at the sharp end.*

*In the immediate wake of The Guardian's revelations about Milly Dowler, the PCC established a Reform Committee with me as its Chairman. The Committee's brief was entirely open-ended, save that it was charged with reporting to the Commission as soon as possible and that it should canvass every possible option for the PCC. The Reform Committee's proposals were already substantially fleshed out by the time Lord Hunt was appointed Chairman of the PCC.*

*Having specialised in public law for many years (and been recognised by independent directories as a leading practitioner in the area) I have been professionally retained at various times to challenge and also to defend all sorts of regulatory regimes. Against that background, it is perhaps unsurprising that I should have no overweening intellectual attachment to any particular model. That was my view before I applied to join the PCC and it remains my view now.*

*I reject as absurd any suggestion that I am some form of cipher for the press industry and that I and my colleagues deliberately and deceitfully sought to conceal from the public our true agenda, namely to act as agents provocateurs for newspaper interests. These are grave and very damaging charges and I reject them as entirely without foundation."*

ESTHER ROBERTON

*In Spring 2006, I saw an advertisement for a lay member for the PCC in the newspaper. I immediately knew that this was something I would be keen to do for two reasons. One is that I had, and still have, a strong belief that a free press is a crucial part of a healthy democracy. The other was that I also knew from personal experience that this freedom needed to be exercised responsibly. To that end, I believed that there was a place for rigorous self-regulation to ensure the highest possible standards and protect the rights of the public.*

*The criteria for the post included an understanding of and commitment to the freedom of the press and self-regulation, as well as an understanding of the impact of press intrusion particularly for vulnerable groups and individuals. During my time as chair of two major public bodies in Scotland, I had personal experience of unwelcome and unpleasant press coverage. I also had second hand experience of colleagues and patients, in the context of the NHS, being subjected to distressing attention and intrusion by the media and had done all I could to help them.*

*I was appointed to the PCC in September 2007 after a recruitment process overseen by the then Appointments Commission which was made up of several senior independent figures. Since then, I have worked with all my colleagues to protect the interests of the public. I have a reputation for being independent minded and outspoken in that cause where necessary. I believe that all Commissioners manage the challenging judgements required to balance the often opposing interests of the rights of individuals with the right to free expression and do their very best to protect the public.*

*From the outset, I played my part in the on-going efforts to improve the system through the process that Sir Christopher Meyer described as "continuous evolution" and believe that we had already made progress to that end. This was formalised in the establishment of the Reform Committee which had already made significant progress in its task of identifying ways to strengthen and improve the system before the Inquiry was launched.*

