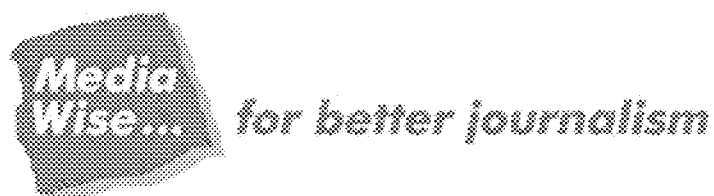


A fair system of regulation



*ADVICE, INFORMATION. RESEARCH & TRAINING ON MEDIA ETHICS*

*'Press freedom is a responsibility  
exercised by journalists  
on behalf of the public'*

## **A FAIR SYSTEM OF REGULATION**

*Further submission to The Leveson Inquiry  
into the Culture, Practice & Ethics of the Press*

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*Prepared by Mike Jempson  
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Bristol, June 2012*

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### 1. A question of trust

1.01 The MediaWise Trust has been invited to expand upon proposals outlined in our earlier statement of evidence to the Inquiry '*Pity the Poor Citizen Complainant*' for a more open and accountable system of self-regulation.

1.02 As a journalism ethics charity providing free advocacy services to people with complaints about the media, our main concern over the last almost 20 years, has been that the Press Complaints Commission is perceived to be, and might reasonably be described as being too closely linked to the proprietors and editors of the publications it has claimed to regulate.

1.03 In a previous submission we quoted a leader column from *The Guardian* from as far back as November 1996 which we still still believe describes exactly the case for a more independent and effective system of press regulation if the term 'Press' replaces the term 'Parliament' in this extract. '*At the moment the people see only a body which claims unique privileges to itself without any of the concomitant responsibilities... prepared to change... but only when it suits them. They see a body scornful of whether or not its proceedings command public confidence. It cannot go on like this.*'

1.04 It went on to quote Lord Nolan on the Standards in Public Life: '*the public needs to see that breaches of rules are investigated as fairly, and dealt with as firmly by Parliament, as would be the case with others through the legal process*'.

1.05 Similarly MediaWise has shared Onora O'Neill's views, expressed in her Reith Lecture a decade ago: '*we are now perilously close to a world in which media conglomerates act as if they too had unrestricted rights of free expression, and therefore a licence to subject positions for which they don't care to caricature and derision, misrepresentation or silence. If they had those unconditional rights they would have rights to undermine individuals' abilities to judge for themselves and to place their trust well, indeed rights to undermine democracy.*<sup>1</sup>

1.06 We have argued for confidence-building measures between journalists and the citizens whom they serve, so that both understand where each stands within the democratic process. This must

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<sup>1</sup> From Lecture No.5: *A Question of Trust*, Onora O'Neil, Reith Lectures 2002: *Licence to Deceive*

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apply most significantly in any regulatory system, which of its very nature, should be part of confidence-building process on both sides.

1.07 The key issue in the establishment of any new regulatory system is trust. It must have credibility with the public and with working journalists as well as proprietors and editors. The problem with the existing system is that it has been created and funded by the latter stakeholders to avoid statutory intervention, and so has been seen as self-serving rather than a public service.

1.08 MediaWise, or PressWise as it was originally called, was founded on the principle that 'press freedom is a responsibility exercised by journalists on behalf of the public,' and, as the International Federation of Journalists puts it 'There can be no press freedom if journalists exist in conditions of corruption, poverty or fear.'

1.09 As far back as 1996 we were arguing for a 'Compact of Trust' between journalists and the public, to counteract plummeting credibility in the trade. It was an issue that was also worrying serious journalists in the USA at the time. The Committee of Concerned Journalists embarked on a three year consultation through public debate and discussions with journalists in an attempt to codify public expectations of the trade.

1.10 Few journalists or members of the public in the UK would quarrel with the principles that emerged: <sup>2</sup>

- Journalism's first obligation is to the truth.
- Its first loyalty is to citizens.
- Its essence is a discipline of verification.
- Its practitioners must maintain an independence from those they cover.
- It must serve as an independent monitor of power.
- It must provide a forum for public criticism and compromise.
- It must strive to make the significant interesting and relevant.
- It must keep the news comprehensive and proportional.
- Its practitioners must be allowed to exercise their personal conscience.

1.11 In 2003 senior US newspaper executives reached similar conclusions when they gathered to discuss how to reconstruct trust

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<sup>2</sup> The results of their project can be found in *The Elements of Journalism: What Newspeople Should Know and the Public Should Expect* by Bill Kovach and Tom Rosenstiel Website: [www.journalism.org](http://www.journalism.org)

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between journalists and the public following a series of scandals at *New York Times* and other media outlets.<sup>3</sup>

1.12 When we launched our Journalism and Public Trust (JPT) project back in 2004 we listed some of the media issues of the time which indicated that the relationship between the Fourth Estate and the citizens who rely upon its wares was out of kilter:

- The sacking of Piers Morgan for publishing faked pictures, and the continuing tabloid excesses around issues of controversy, tragedy and trivia;
- The bizarre ramifications of so-called 'reality TV' opening up a new realm of tabloid coverage featuring ordinary people as 'celebrities';
- The mounds of evidence presented to the Culture Media and Sport Select Committee Inquiry into Privacy and Media Intrusion;
- Another period of reappraisal and reform at the Press Complaints Commission, with the Chairman travelling the country trying to explain its role and win support with statistics from self-serving customer satisfaction surveys;
- PressBof's decision to produce a 'How to keep to the Code' guidebook for editors;
- The credibility gap opened up by the Gilligan/Kelly debacle at the BBC, the Hutton Report (and later the Neil Report rethinking BBC journalism, the Charter rewrite and reform of the complaints system);
- The decision by the National Council for the Training of Journalists to overhaul its curriculum and standards;
- A series of consultation exercises undertaken by OfCom, signalling that that the new lighter touch regulators were anxious to win the confidence of all sections of the public;
- The publications of two influential books on the topic by Ian Hargreaves and John Lloyd;<sup>4</sup>
- Conferences and debates up and down the country about the role and responsibilities of journalists<sup>5</sup>;
- The corrupting influence of 'spin' and the need to rebuild trust between parliament and public signified by the Phillis Report, and the Hansard Society investigation chaired by Lord Puttnam;
- European Parliament proposals to introduce an automatic Right of Reply across all media.

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<sup>3</sup> *Taking Aim: how to make sure your newsroom hits the mark of excellence*, Poynter Report Special Issue, Fall 2003 Website: [www.poynter.org](http://www.poynter.org)

<sup>4</sup> Hargreaves I, *Journalism: Truth or Dare?* Oxford University Press;  
Lloyd J, *What the Media are Doing to Our Politics?* Constable

<sup>5</sup> Eg. *Communication in the Age of Suspicion: Trust, Communication and Culture*, Bournemouth University, Feb 2004; & *Journalism and Public Trust*, (NUJ/MediaWise) London, Dec 2004

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1.14 In his last interview before becoming chief 'spin doctor' for the new leader of the Conservative Party in 2004, the outgoing Director of the Press Complaints Commission, Guy Black had said that journalists should rejoice in being held in low esteem by the public. It was a strange remark for a man in his position to say, a not one many journalists share.

1.15 To earn the dislike of those whose abuse of power you expose is one thing, to be regarded with suspicion by those in whose name you do it is quite another. There will always be amoral hacks willing to concoct anything for cash, but most journalists try to seek out 'the truth' (or more accurately, verifiable facts) and want, indeed expect, what they produce to be believed by a public who regard them as being 'on their side'.

1.16 Launching our Journalism and Public Trust (JPT) following publication of our critique of the PCC<sup>6</sup> in 2004, we commented<sup>7</sup> that journalists and the publications and programmes they work for largely depend for their authority and market position upon the public's willingness to trust them. Yet often they fail to see what all the fuss is about when getting an odd name, identifier, reference or statistic wrong – especially when so many far more important things are happening out in the big bad world.

1.17 In-house lawyers warn them that admissions of error might have financial consequences for the company. At the time they seemed impervious to the view that a willingness to admit to mistakes, and alert the public to them, is the best way to convince people that your primary concern is to get the facts right. The vestiges of this arrogance, and ignorance, has been evident in some of the performances of editors who have come before this Inquiry.

1.18 Ironically they got away with this cavalier attitude because, however much people claim to be sceptical about what they read in the press, most retain a sneaking suspicion that if it's in the newspapers it must have some basis in truth. (And if it is on TV it is even more likely to be trustworthy – after all there are statutory regulations in place.)

1.19 The problem, as Onora O'Neill had pointed out in her Reith lecture, is that '*reporting that we cannot assess is a disaster. If we can't*

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<sup>6</sup> Cookson, Richard & Jempson, Mike (2004) *Satisfaction Guaranteed? Press complaints systems under scrutiny* Bristol, MediaWise

<sup>7</sup> Jempson M, *A Compact of Trust between Journalism and the public?* in *Journalism and Public Trust* (ed. Jempson M) MediaWise/NUJ Ethics Council, Dec 2004

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*trust what the press report, how can we tell whether to trust those on whom they report? How can we tell whether and when we are on the receiving end of hype and spin, of misinformation and disinformation? If the media mislead, or if readers cannot assess their reporting, the wells of public discourse and public life are poisoned.<sup>8</sup>*

1.20 There is gulf of understanding between the pressurised world of mass communications and the inexperience of many of those who supply information, feature in the mass media, and 'consume' the finished product. People who find themselves in the media spotlight quickly learn that all is not what it seems, but being wise after the event is no compensation for the instant distress and longer-term damage that can flow from simple errors, and sloppy or cynical journalism.

1.21 Journalists in all media gather information they consider to be of value to their different markets, and package it accordingly. The branding belongs to their proprietors and editors, which is why we proposed the protection of a Charter to preserve the integrity of their relationship with the public.

1.22 What might journalists and the public want in such a charter? Top of the list would no doubt be the shared concern for accuracy. Many journalists would opt for a 'conscience' clause to provide staff reporters, and the hungry freelance with a family, some protection from the persuasive argument that 'If you won't do it, someone else will'.

1.23 Some might seek 'a right to report' - increased opportunities to investigate stories they believe it is in the public interest to cover rather than being simply 'of interest to the public'.

1.24 And there could well be shared acknowledgement that journalists should be permitted a 'public interest' defence on the (rare) occasions when the techniques used to obtain information might raise an eyebrow or even breach the law. Journalists investigating suspected wrong-doing or hypocrisy among power elites know how problematic it can be to clinch the evidence without subterfuge. Exposure of the scandal of MPs' misuse of expenses claims would be one such example; hacking the mobile 'phones of missing persons or celebrities would surely not be.

1.25 Yet despite the turmoil of through which the media and journalism went all those years ago, we appear to be in no less of a mess

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<sup>8</sup> From Lecture No.5: *A Question of Trust*, Onora O'Neil, Reith Lectures 2002: *Licence to Deceive*

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today, not least because the culture of the newsroom has continued to be controlled by the bottom line rather than the public interest.

1.26 The 'compact of trust' between journalists and their publics has all but vanished; the PCC has washed its hand of employment conditions for journalists; and the Society of Editors has insisted that the editor is the only person capable of determining what should and should not be covered by journalists, so they do not need a conscience clause. Meanwhile we have seen increasingly spurious applications of the 'public interest' defence to excuse prurient and intrusive reporting; and the PCC has allowed itself to be hoodwinked by its own paymasters over their abuses of power.

1.27 The process of rebuilding trust has got to start on the shop floor.

It is publishers and editors who set the tone of the newsroom environment. It is not just a question of example - boorishness and bullying do not help to create the right atmosphere for open and frank exchanges of views nor to generate a positive attitude among staff about the people they work for. This is a corporate responsibility and should be built into the working environment. No amount of external pressure or regulation can influence 'the newsroom culture', since it develops through the responses of people who work there to what is required of them at work.



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**2. A Corporate Responsibility**

2.01 Since journalism is recognised as being a vital part of the process of open democracy – so the corporations that own and control media outlets have a very special social responsibility - not as rumour- or scare-mongers but as the ferrets of reliable information to contribute to informed public debate.

2.02 Journalists are the eyes and ears of civil society and the means by which the many different voices of the public are able to express themselves to those who develop and manage our social, cultural political and physical environment. they need to be able to do this work with out fear or favour especially within their working environment.

2.03 The production of corporate social responsibility reports by media groups like the BBC, the Daily Mail & General Trust, ITV plc, News Corporation, Pearson, Reuters, the Scott Trust and Trinity Mirror plc. has been a welcome if relatively recent development. They are long overdue, in an industrial sector one of whose primary purposes is to examine and comment on the failings and achievements of others.

2.04 Demonstrating their goodwill to the public is not solely a matter of sponsoring (circulation-boosting) charity appeals. They need also to address the real interests of their staff and the reasons why their audiences purchase their wares.

2.05 In January 2006 MediaWise presented to the All-Party Social Responsibility Group 10 suggestions which we still believe would improve public trust in journalism and strengthen confidence among journalists that they are recognised as important stakeholders in the process.

2.06 In our view implementation of these proposals, where they d not yet exist, would be an important first step in persuading the public that the owners and editors have taken to heart the current hiatus in trust.

- An in-house but independent Reader's Editor on every publication above an agreed circulation/ratings threshold;
- A regular Corrections column or programme, which might include review of the company's own journalism.
- A commitment to give suitable prominence to upheld complaints (and to offer compensation if appropriate).
- Agreed minimum competences with which all journalists must comply within two years of joining the company.
- A conscience clause in journalists' contracts.
- Equitable wage rates for staff and freelances, and an end to so-called 'self-billing' (an arbitrary system of deciding how much freelances will be paid, after their work has been published).
- Commitment to the development of some form of transparent career structure within the industry.

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- Mid-career skills updating and specialist in-service training to keep journalists up-to-speed on legislation and social developments.
- A commitment to diversity throughout the workforce, and especially in newsrooms.
- Tough action on discrimination and bullying in the work place.

2.07 These are measures that could be monitored easily and reported on annually in the company's social responsibility audit. They would vastly improve the standing and standards of journalism, and provide the basis for a genuine 'compact of trust' between journalists and the public.

2.08 The primary audience of the journalist is the general public – not least because their employers expect them to help attract readers, listeners and viewers. To that extent journalists could be seen as popular advocates – alerting political, industrial, commercial and cultural decision-makers to the responses of the public to what is happening around them, and to them, and to what is being done on their behalf.

2.09 Information is power, and so as purveyors of information, and opinion, journalists do have power, and the responsibilities that go with it. They straddle the gap between two worlds – mediating dialogue between the 'haves' and the 'have-nots'. Their articles and programmes become the stuff of public debate. If they get it wrong everyone suffers.

2.10 Yet journalists are often expected (by editors and the public) to become instant experts on the topics they cover. However resourceful and inquisitive individual journalists may be, pressure of time means they must rely, often too heavily, upon 'common sense' and a few words from an 'expert'. Their words assume a special authority, even among policy-makers, simply because they are published or broadcast.

2.11 So this is an ethical as well as a professional dilemma. Journalists operate within a highly competitive industry in which there is no formal career structure, and where everyone is judged by the value and impact of their latest offering. Natural justice and an acknowledgement of the important social function they fulfil necessitates that they should be directly engaged in any process that seeks to regulate their behaviour and output. That includes both the workplace and any external regulatory system that might emerge from this Inquiry.

2.12 But in the first instance they need to be engaged in the process of change within publications - and that means recognition of their own codes of conduct and representative organisations.

2.13 In global studies MediaWise has carried out about guidance on the reporting of problematic issues - children, health, suicide, etc - we discovered that many publications have in-house guidance about such coverage. While it is usual for British publications to have in-house style guide, it is rare to hear of editorial staff being involved in the development of guidance about how best to cover sensitive topics. Journalists resent

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external bodies telling them how to do their job, but if they have not received training or expert guidance there are risks that they can get things wrong causing upset at least, and distress or social unrest at worst.

2.14 This is not simply a plea. As our report on consultations with journalists, suicide prevention agencies and mental health groups about the efficacy of guidelines<sup>9</sup>, in this case on suicide coverage, journalists are most likely to take heed of guidance if they have had direct experience of the issue, if it has been flagged up during their training, or if it become the focus of newsroom debate. Finding the space and time to encourage staff to share their experience, expertise and concerns would be an important part of changing the newsroom culture.

2.15 As the Scott Trust has shown, and Sly Bailey of Mirror Group told one of the opening Leveson Inquiry seminars, the audit process can be strengthened by quarantining editorial from the risk of contamination by the other business interests of media companies. This is specially important if journalists are to report on the other business interests of their ultimate employers – notably forestry, oil, transport, and leisure – without fear or favour, especially where they may impinge upon significant financial, environmental, industrial or political events.

2.16 A company's ethic should extend across all its activities, and not just where it is convenient or expedient. A more transparent approach to management aims and policies might also make for improved industrial relations. In an era of global media control, pay and conditions should be equable across borders, and if social responsibility audits do not include such commitments they are little more than window dressing.

2.17 Whatever the eventual shape of the new regulatory regime one important consequence of this Inquiry should be to ensure that individual publications:

- establish a regular spot within the news pages for a 'Corrections & Apologies' column;
- indicate on the front page or contents page where inside reader can find the regulator's adjudications about the publication;
- give equivalent prominence to corrections where the original headline and article were substantial;
- reach written agreement with successful complainants about the wording of corrections and/or apologies, or offer a right of reply;
- properly tag all cuttings and electronic records of articles where corrections have had to be made or apologies published, and;
- offer compensation should the publication repeat the same breach.

2.18 In addition in-house protocols should be agreed to:

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<sup>9</sup> *Sensitive Coverage Saves Lives* Care Services Improvement Partnership (CSIP) & National Institute for Mental Health in England (NIMHE), June 2007

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- acknowledge the right of individual journalists to obey their conscience in the gathering and the presentation of information;
- the use and identification of digitally manipulated images;
- indicating when and how payment has been made to individuals or organisations in the gathering of information and images.

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**3. Regulating journalism for the future**

3.01 In our 2004 study of the Press Complaints Commission *Satisfaction Guaranteed?*<sup>10</sup> we compared a variety of regulatory systems against the then National Consumer Council's model for good self-regulation. Their requirements are worth quoting again in full:

- i. The scheme must command public confidence.
- ii. There must be strong external consultations and involvement with all relevant stakeholders in the design and operation of the scheme.
- iii. As far as is practicable, the operation and control of the scheme should be separate from the institutions of the industry.
- iv. Consumer, public interest and other independent representatives must be fully represented (if possible up to 75% or more) on the governing bodies of self-regulatory schemes.
- v. The scheme must be based on clear and intelligible statements of principle and measurable standards - usually in a Code - which addresses real consumer concerns. The objectives must be rooted in the reasons for intervention.
- vi. The rules should identify intended outcomes.
- vi. These must be clear, accessible and well-publicised complaints procedures where breach of the code is alleged.
- vii. There must be adequate, meaningful and commercially significant sanctions for non-observance.
- viii. Compliance must be monitored (for example through complaints, research and compliance letters from chief executives).
- ix. Performance indicators must be developed, implemented and published to measure the scheme's effectiveness.
- x. There must be a degree of public accountability, such as an annual report.

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<sup>10</sup> Cookson, Richard & Jempson, Mike (2004) *Satisfaction Guaranteed? Press complaints systems under scrutiny* Bristol, MediaWise

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xi. The scheme must be well-publicised, with maximum education and information directed at consumers and traders.

3.02 It is worth noting that the best practice principles of the European Advertising Standards Alliance which enjoy global recognition contain similar requirements:

- i. The consumer should benefit from the self-regulatory system and should be the focus of attention.
- ii. Self regulation must be, and be seen to be impartial and independent of government, specific interests and interest groups.
- iii. The self-regulatory system must be transparent and accessible.
- iv. Self regulation must be effective, rapid, flexible, current and applied in a non-bureaucratic manner.
- v. Self-regulatory rules and procedures should be applied in both the spirit and the letter and should be regularly reviewed.
- vi. Consumer complaints should be handled free of charge.
- vii. A self-regulatory system must have adequate sanctions which can be enforced.
- viii. Self regulation must always be in compliance with the law.
- ix. Self-regulatory systems must be sufficiently resourced and supported to be able to meet their objectives.

3.03. We would suggest that these guidelines provide the basis upon which an alternative to the Press Complaints Commission might be constructed. A way must be found for all the stakeholders to be involved.

3.04 Looking at structures, the Press Council of Ireland and the Irish Press Ombudsman offers a useful model which has both credibility and the benefit of being underpinned by statute without having the force of law. It has the added advantage of already being recognised by many of the UK based publishers whose publications have Irish editions. Modelled on the much longer-established and respected Swedish system,

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the Irish Press Council was created by a Steering Group formed from all sectors of the Irish print media, including the NUJ representing the interests of working journalists.

3.05 To ensure as great a degree of separation as possible between the institution and the industry is 'regulated', this Steering Group set up a separate independent Appointments Panel which then chose the seven non-industry members (the majority) of the Press Council. The remaining six places are held by nominees from the main print industry sectors (national and local newspapers, magazines, and the NUJ).

3.06 The original Steering Group also advertised and short-listed for the post of Press Ombudsman, who is the first port of call for complainants who fail to get satisfaction from a publication's editor. The Press Council itself appoints the Ombudsman, and then acts as an appeal body for any party dissatisfied by the findings of the Ombudsman whose primary task is to resolve complaints through mediation, as swiftly as possible and at minimal costs to those involved.

3.07 In Ireland news organisations, in print and online, opt to become members of the Press Council and abide by its rulings. By so doing they enjoy certain privileges in law by which provide some protection from actions and awards for defamation.

3.08 Just as newspaper once registered in order to be eligible for advantageous postal rates, there should be no problem about requiring companies wishing to run news outlets to register them with the regulator, and thereby gain the advantage VAT exemption, and a level of protection from actions or punitive damages in defamation or breaches of privacy actions.

3.09 Whatever system is developed here, it is vital that the public are able to ascertain easily whether or not a publication is covered by the regulator. The regulator's website should contain a full list of registered members, including their and their contact and ownership details.

3.10 However it is also clear that media convergence, in terms of both ownership of outlets and platforms, makes separate regulators for print and broadcast media increasingly untenable in the longer-term. Journalistic staff are now expected to operate across all platforms, often simultaneously, yet currently different regulatory regimes apply to print and broadcast output and production, while blogging, for example and perhaps quite properly, is virtually free of any such constraint.

3.11 MediaWise rejects the notion that such convergence strengthens the argument for the lifting of all forms of regulation. Quite the reverse. Technological convergence, increased concentration of cross-media ownership, and multi-skilling among media professional across delivery platforms makes stronger the case for common standards of conduct and regulation to apply to the print, broadcast and online media.

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Regulation is after all, for the benefit of the public rather than the convenience of an industry and its investors.

3.12 The ownership of outlets and platforms gives media companies extraordinary influence over public discourse and culture. They are accountable only to those with a vested interest in their commercial success. Few of their readers/users, and even many of their employees, have much idea who the ultimate owners are, what their financial interests are, or the extent to which their other business or political interests shape media content.

3.13 Online versions of national newspapers already 'broadcast' video footage on the web free of the impartiality requirements of mainstream broadcasters regulated by Ofcom, and even refer to this as a television service (as in TelegraphTV, for example).<sup>11</sup> Allowing powerful commercial corporations, including those with only tangential interests in UK-based news media, to call in aid 'freedom of the press' (by which they really mean protecting their investment from any form of statutory regulation) to justify broadcasting party political programmes is inimical to the maintenance of open democracy. Adopting a partisan editorial line is one thing, but excluding other mainstream political parties from expressing their views from what is in effect a news-based 'broadcast' channel does not sit well with the more equitable requirements of terrestrial broadcasters under the Representation of the People Acts.

3.14 MediaWise generally favours the conclusions reached by the Independent Inquiry into the Media and Media Regulation<sup>12</sup> in Australia, recently conducted by Roy Finkelstein QC. He recommended the creation of a News Media Council to set journalistic standards for the news media and handle complaints about news and current affairs coverage on ALL platforms - print, online, radio and television. His justification is simple: *'In an era of media convergence, the mandate of regulatory agencies should be defined by function rather than by medium. Where many publishers transmit the same story on different platforms it is logical that there be one regulatory regime covering them all.'*

3.15 It has long been the MediaWise position that journalists who are now required to work across a variety of platforms should not have to have regard for different standards but work to a common and coherent code of conduct.

3.16 Finkelstein proposed that the Australian NMC *'should have secure funding from government and its decisions should be made binding, but beyond that government should have no role. The establishment of a council is not about increasing the power of government or about imposing some form of censorship. It is about making the news media*

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<sup>11</sup> N. Jones, *Online Television: A threat to balanced political reporting*, Ch. 21 in *Web Journalism: A new form of citizenship*, S. Tunney & G. Monaghan

<sup>12</sup> Roy Finkelstein *QC Report of the Independent Inquiry into the Media and Media Regulation*, February 2012 [http://www.dbcde.gov.au/\\_data/assets/pdf\\_file/0006/146994/Report-of-the-Independent-Inquiry-into-the-Media-and-Media-Regulation-web.pdf](http://www.dbcde.gov.au/_data/assets/pdf_file/0006/146994/Report-of-the-Independent-Inquiry-into-the-Media-and-Media-Regulation-web.pdf)



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*more accountable to those covered in the news, and to the public generally.'*

3.17 We see no conflict in state funding for a regulatory system or, better still, joint funding with the owners of news outlets, providing neither party has a controlling or undue influence over the operation of what must be an INDEPENDENT regulatory system. Essentially a regulator fulfils a public service, and the funds at the state's disposal are raised from the people both parliament and the press serve.

3.18 The proposed membership of the Australian News Media Council (ANMC) comprises community, industry and professional representatives, as should any new regulatory regime here. The bias should be towards 'lay membership' with no direct or vested interest in the news media.

3.19 The ANMC's complaints-handling procedures are expected to be *'timely, efficient and inexpensive'* seeking at best *'to resolve a complaint by conciliation and do so within two or three days'* but if adjudication is required *'it should be resolved within weeks, not months'*. It should *'have power to require a news media outlet to publish an apology, correction or retraction, or afford a person a right to reply'*.

3.20 With such a body and such powers, Finkelstein argues *'both the public and news media organisations should be confident that the News Media Council will carry out its functions independently and effectively .... a single, properly-funded regulator with the power to enforce news standards across all news media outlets.'*

3.21 Meanwhile an independent Convergence Review commissioned by the Department of Broadband, Communication and the Digital Economy of the Australian Government was reaching similar conclusions.<sup>13</sup> One key finding was *'that the community expects significant enterprises controlling professional media content to have some obligations, no matter how they deliver their services.'*

3.22 This Review asserted that publishers that *'have control over the professional content they deliver, a large number of ... users of that content, and a high level of revenue derived from supplying that content'* should be defined as *'content service enterprises'* and should be regulated *'based on their size and scope, rather than how they deliver their content'*.

3.23 It went on: *'The threshold for users and revenue would be set at a high level to exclude small and emerging content providers, and regulation would be 'only concerned with professional content. For example it would include 'television-like' services and newspaper content but exclude social media and other user-generated content.'*

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<sup>13</sup> *Convergence Review Final Report*, Australian Government, 30 April 2012, [http://www.dbcde.gov.au/data/assets/pdf\\_file/0007/147733/Convergence\\_Review\\_Final\\_Report.pdf](http://www.dbcde.gov.au/data/assets/pdf_file/0007/147733/Convergence_Review_Final_Report.pdf)

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3.24 It is interesting to note that one of the Review's most radical proposals was to end the requirement to license broadcasting services - did not obviate the need for regulation. The review defined three specific areas where regulations would remain essential:

- i. **Media ownership**—A concentration of services in the hands of a small number of operators can hinder the free flow of news, commentary and debate in a democratic society. Media ownership and control rules are vital to ensure that a diversity of news and commentary is maintained.*
- ii. **Media content standards across all platforms**—Media and communications services available to Australians should reflect community standards and the expectations of the Australian public. As an example, children should be protected from inappropriate content.*
- iii. **The production and distribution of Australian and local content**—There are considerable social and cultural benefits from the availability of content that reflects Australian identity, character and diversity. If left to the market alone, some culturally significant forms of Australian content, such as drama, documentary and children's programs, would be under-produced.*

3.25 On the first point, the Competition Commission, the Department of Business, Innovation and Skills and Ofcom, may currently be responsible for checking that individual companies do not have control of an inordinate share of the market, but it is not unreasonable to expect media regulators of the future to alert readers and users to any potential or perceived conflicts of interest between news purveyors and their other business interests, and the risk of abuse of power where one publisher has a dominant market share.

3.26 On the first and second points, post 'hackgate' the old dispensations no longer apply. Members of the public are unlikely to 'take it on trust' that notions of editorial freedom and independence still separate news content from public relations and advertising, and the vested interests of stockholders. Product placement is not merely an issue for broadcasters - it dominates the thinking of web design and access to web content.

3.27 Furthermore, as the Cardiff University study<sup>14</sup> quoted in Nick Davies' *Flat Earth News* has indicated, an increasing proportion of newspaper content now originates from the public relations industry, so readers can no longer be sure that they are receiving properly sourced and independently verified information.

3.28 And as overheads are cut and publications shift to greater reliance on web-based versions of publications to attract readers and advertising, and encourage cheaper PR or user-generated copy, so the notion of who is a journalists is changing and with it the nature of the

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<sup>14</sup> *The Quality and Independence of British Journalism* (MediaWise, Feb 2008, <http://tinyurl.com/dcpmzu>) also cited in *Flat Earth News* by Nick Davies.

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relationship between readers and producers. It is even more important that those who function as journalists know that they are operating to the same standards of conduct and within a unified regulatory framework whatever their delivery platforms.

3.28 The Australian Convergence Review introduces the concept of the '*content service enterprise*' which it considers a '*dynamic*' alternative to conventional notions of news outlets, and is '*designed to be effective in a changing media landscape. Organisations may move in or out of the content service enterprise framework, with its related regulatory obligations, depending on the size and scope of the services they deliver in the future*'. It may also be a useful concept for this Inquiry and the government's long-awaited Green Paper to adopt when considering how best to define news outlets for the future.

3.29 If media regulation is to be transparent and equitable, there needs to be a single system, open to all. A single system would ultimately be beneficial for the general public and media professionals alike. They would then all know where they stood in an increasingly crowded and confusing global media marketplace, where material produced in one country may cause harm, offence or other unforeseen consequences elsewhere in the world.

3.30 The argument for a genuinely independent regulatory system with power residing neither with government nor the industry, to protect everyone's rights – including the freedom of the press – has never been stronger.

3.31 Our proposals would be to a unified but two tier system, with a single Office of Media Ombudsman (OMO) which could act as a bulwark against erosions of press freedom from the politicians and well as holding print, online and broadcast producers of news to account.

3.32 The first port of call for complainants would remain the offending publication, a far less problematic task if the reforms outlined above have been implemented. However complainants could also go direct to the Media Ombudsman if preferred. So too could a journalist faced with an ethical dilemma or an interest group concerned about representation issues, including journalists and editors concerned about encroachments on freedom of the press by oppressive legislation, for example.

3.33 The Ombudsman's role would be to seek to resolve the matter swiftly and to the satisfaction of all parties - again a simpler task if the news outlets have a more open attitude towards complaints. If and when appropriate the Ombudsman could arrange oral hearings or conciliation meetings, in front of a small panel of adjudicators acting in much the same way as industrial tribunals.

3.34 To be efficacious the new system will need genuine sanctions rather than the current fiction that peer pressure alone maintains standards. Breaches of the Code should be treated seriously and persistent breaches should be dealt with severely. Editors whose

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newspapers have been found in breach of their own Code have in the past, remained in post or been 'promoted' and even remained on the PCC or the Editors' Code Committee. It not surprising that such a system is viewed with contempt.

3.35 Breaches of the new Code should be dealt with like any other violation of professional standards or human rights – with appropriate sanctions, including compensation for the victim/s. We have always argued for a sliding scale of financial sanctions, related to the severity of the breach and the turnover or circulation of the publication, as a way of convincing the public, if not the industry that self-regulation is not an easy option. Proprietors would be unlikely to tolerate lackadaisical reporting or editing if it had an impact on profits. Indeed, however modest the level of fines - perhaps measured against sales or advertising revenue to protect less well patronised publications - they would provide publishers with a stronger case for protection against the threat of litigation from successful complainants.

3.36 Although the PCC has always claimed that its services are free, as we and many complainants know to their cost, obtaining evidence to support a complaint (which may even include, on occasion, purchasing transcripts of inquests or court cases) can be costly, especially in comparison to a person's means. The time and worry involved also comes with a potential price tag - for time off work, for example.

3.37 It is entirely unreasonable that innocent victims of unwarranted and/or inaccurate media coverage should be expected to cover the cost of putting right the failings of a material published with commercial intent. Yet advertisers expect to be compensated when errors appear in their copy, or publishers fail to honour their contractual obligations in other ways.

3.38 This is where editors get jittery. The line against any form of sanction or compensation for the last 20 years has been that if money becomes an issue, lawyers will inevitably get involved and that will make the whole system too costly, and thus unworkable.

3.39 The PCC has also claimed that its services obviate the need for lawyers, but it is disingenuous to imagine that the publishers do not rely upon their legal departments or advisors in countering complaints, as we have seen in our earlier submission. Complainants should not be denied the option of seeking and paying for advice from a lawyer or advocate, and should have the right to reasonable reimbursement if they are successful.

3.40 In our experience those who complaint are NOT looking of any form of compensation beyond the most obvious form of redress - corrections and apologies. However it can take time and money to obtain redress, and few would reject the idea of reimbursement for actual costs incurred.

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3.41 Our proposal would that there should be a modest cap upon the upper limit of compensation in the form of reimbursement, if only to limit the likelihood of people complaining simply to obtain a financial reward - as some editors have claimed to fear. Most editors enjoy salaries substantially above the national average, generous allowances, and the protection of the support services of the companies they work for. They have little idea about the financial consequence of trying to set the record straight, especially if an inaccurate or intrusive story has lost you a job, a home or your family.

3.42 The second tier of the new system would be a Media Advisory Panel (MAP) drawn from representatives of the general public with representatives of print, broadcast and online news and current affairs producers and users supplemented by other appropriate professional advisors, to whom the OMO would report annually. The MAP would also deal with appeals from members of the public or publishers when disputes arise about adjudications by the Ombudsman.

3.43 The MAP could also commission research into public attitudes towards media products and standards and encourage dialogue between producers and consumers, particularly around ethical issues and reviews of Codes of Practice, to improve both the standards and standing of journalism. One of the futilities of much academic research in the field of journalism is that it fails to 'hit the mark'. It is often seen by practitioners as being too abstruse and too far removed from the rough and tumble of the real world of the newsroom seem to be of much practical benefit. The MAP could help to bridge this gap between the academy and the industry.

3.44 Among the many issues that would merit research would be the coverage and management of coverage of disasters, including their impact on the news-gatherers, the representation of specific social groups, particularly children and minority groups, and 'low level' chequebook journalism of the kind used when seeking out 'human interest' features. In short the MAP could replicate some of the valued research functions once carried out by the Broadcasting Standards Council.

3.45 It could also play an invaluable role in developing and overseeing the validation of professional training courses for journalists, replacing the currently confused situation where several bodies now compete for the right to be considered arbiter of best practice in vocational training. In particular, the MAP could be given responsibility for ensuring that those entering the media industries are given a thorough grounding in regulation and codes of conduct, and that those already at work receive opportunities to update awareness of their responsibilities through accredited industry-wide in-service and mid-career training on regulatory and ethical issues.

3.46 The processes described here may seem expensive, but if the OMO and MAP between them incorporated the roles of the PCC and the Content and Complaints roles of the Ofcom (leaving Ofcom to deal

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with telecoms licensing and technical issues), a significant proportion of its enormous budget would be freed up to fund the new unified regulatory regime - further boosting public confidence that an efficient one-stop shop solution had been found to that is currently and complex and confusing array of regulatory norms.

3.47 Funding for the new system could be channeled through the MAP which could also be empowered to levy a 'goodwill bond' from publishers, over and above their annual subscription to the system. It would be from this fund that compensation awarded fines by the Media Ombudsman or the MAP for breaches of the new Code would be paid. The bonds would be held by the MAP and released only once a formal adjudication had been made against a publication and any appeal procedure had been exhausted. The level of the bond could be based upon circulation figures or advertising revenue. A premium might be added if a company were to be found in frequent breach of the Code.

3.48 Only publications found to have breached the Code would be expected to replenish the fund, at the level of the compensation awarded. A premium might be added if a company were to be found in frequent breach of the Code. In this way publications that comply with both the spirit and the letter of the Code would not have to subsidise the errors of those who do not.

3.49 A mix of public funds and contributions from the print and broadcast companies fits the pattern of co-regulation developed at Ofcom as well as protecting the democratic agenda. Just because public money is involved doesn't mean political control transfers to politicians.

3.50 There is neither shame nor anxiety about public funds being injected into the new systems, since Parliament exists to defend the rights of citizens, and media regulation should be seen in that light. The 'Team Murdoch' propaganda machine has set out over the years to damage to the reputation of the BBC in pursuit of its own desire to dominate the airwaves, by convincing public and politicians alike that state administered funding means state control and that market-driven, unregulated commercial media is the only acceptable alternative. That is patent nonsense.

3.51 There is one further element of the new system that we would urge the Inquiry to consider, and that is the need for an advocacy service for complainants. This is not special pleading for MediaWise although it is a role we have been playing for almost 20 years. We know that some complainants are, or feel, incompetent when dealing with bureaucracy or officialdom, and many become especially anxious when approaching so powerful an institution as the media.

3.52 If the OMO and the MAP are to be genuinely independent and impartial bodies, there may be some value in having a unit which is independent of both the media and the regulators to whom complainants could go for assistance in couching and pursuing their complaints. Some years ago we suggested that such a service could be supplied at a

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relatively low cost to press or media companies, but whoever had to pay for it - and MediaWise has found it immensely difficult to fund its free advice service - access to a sympathetic but professional advocacy service was one of the things our 70+ founders saw as essential 20 years ago, and has proved invaluable to those who have used the service. Some thought should be given to how such a support service could be provided to

3.53 Beyond that our proposals are broadly in line with ideas mooted by the Co-ordinating Committee on Media Reform, in which MediaWise has played a part, and the Media Standards Trust/Reuters Institute Roundtable proposals. However we would also strongly commend the Inquiry to examine in detail both the experience of the Irish system and the new ideas generated by the two separate investigations into future proofing media regulation in Australia.

3.53 We would also urge the Inquiry to consider the findings of a recent survey of journalists in the UK (and in 13 other countries), about attitudes toward media ethics and regulation, as part of the EU-funded Media Accountability and Transparency research project<sup>15</sup> in which MediaWise is a partner. The raw data has only just been released and we can supply relevant findings as they become available.

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<sup>15</sup> [www.MediaAct.eu](http://www.MediaAct.eu)