Lionel Barber, Second
Financial Times Limited
9 July 2012

IN THE MATTER OF AN INQUIRY UNDER THE INQUIRIES ACT 2005

INTO THE CULTURE, PRACTICES AND ETHICS OF THE PRESS

SECOND WITNESS STATEMENT OF LIONEL BARBER

I, **LIONEL BARBER**, newspaper editor, of 1 Southwark Bridge, London SE1 9HL **WILL SAY AS FOLLOWS**:

1. I am employed by The Financial Times Limited ("FTL") as the Editor of the Financial Times.

2. I make this statement in compliance with a Notice sent to me on 29 June 2012 pursuant to section 21(2) of the Inquiries Act 2005.

3. In this statement I have answered the questions raised in the Notice in good faith and to the best of my recollection. I believe my answers to be true. I am happy to expand on any answer if required to do so.

4. Nothing in this statement should be taken to waive privilege in any legal advice that I have received.

Question 1: Who you are and your current job title

5. I am the Editor of the Financial Times. I provided further details of my role in my first Witness Statement to the Inquiry.

Question 2: To what extent were you personally involved in drawing up this proposal for a new system of self-regulation based on contractual obligations, as now set out by Lord Black?

6. Lord Black's proposal was submitted with my knowledge and after a consultative process within the industry. My first involvement in this process was at a meeting of certain Fleet Street editors and other industry representatives, including Lord Black on November 29 2011. The primary purpose of that meeting was to introduce editors to Lord Hunt and listen to his initial high-level proposals for reform of the current regulatory system. It was at that meeting that the proposed contractual system was first put forward to me.

7. That meeting was followed in December 2011 with a wider industry briefing, chaired by Lord Hunt and attended by Lord Black, where Lord Hunt explained his proposals at a meeting convened by the Newspaper Publishers Association at the offices of the Daily Telegraph. As far as I recall, the meeting was attended by the editors of most national newspapers, as well as representatives from the regional press. On December 6, I had a one-to-one conversation with Lord Hunt at his London office to discuss his proposed reforms.

8. I understand that Lord Hunt carried out similar meetings and briefing sessions with in-house lawyers from the various newspaper and magazine groups and it was decided that the most expedient way of translating Lord Hunt's high level proposals into the appropriate level of detail was to instruct external lawyers to assist with this process. I understand that the Press Standards Board of Finance ("**Pressbof**") instructed Reynolds Porter Chamberlain to produce first drafts which were issued to industry for consultation in February 2012. Since then, there have been a number of opportunities for industry representatives to comment either in writing or at meetings on the documents and they have been amended several times on an iterative basis. I believe that the documents submitted by Lord Black on behalf of Pressbof represent the latest drafts following a recent meeting between RPC (acting for Pressbof) and in-house lawyers from the various publishing groups.

9. The process has been driven by Pressbof and those titles not directly represented on Pressbof, including the Financial Times, have effectively been negotiating the terms of the

documents as part of the consultation process I have described. I have not been personally involved in any of the lawyer meetings. However, the FT's in-house legal team has actively participated in the process and obtained instructions from me, on behalf of the FT, in order to represent the FT's position in this process. I have had full sight of the proposal documents throughout. I have also discussed many of the issues raised by the proposals with fellow editors of other titles.

Question 3: How far would you personally, in your capacity as editor, expect to be involved in the final decision as to whether your publication signed up to the contractual obligations envisaged by this system? Please explain in full how that decision would be taken.

10. FTL is the publisher of the Financial Times and I am a member of the board of FTL. As and when Lord Black's proposal is finalised, a decision will be taken by FTL's management board whether FTL should sign-up to the contract. A summary of the proposals would be presented to the board and I would anticipate making a recommendation to the board for it to consider in making its decision. Since this is a contractual issue as well as an editorial issue, FTL's internal corporate governance process may also require FTL to notify its shareholder, Pearson Plc, of its intention to enter into that contract due to its materiality both operationally and potentially financially.

Question 4: In so far as you are able to do so, please indicate whether your publication is at present fully ready and committed to enter into these contractual obligations. If it is not present fully ready and committed, please explain why, and detail any changes that would need to be made to the proposal, any further development to proposal required, or any preparatory steps that would need to be taken at your publication, in order to put it in the position of being fully ready and committed to enter into these obligations. If there are no circumstances in which it would be prepared to enter into obligations of this nature, please explain why not.

11. I believe that Lord Black's proposals successfully identify the strengths and weaknesses of the Press Complaints Commission. The Financial Times published a leader column on this issue on 1 July which I attach as Exhibit LB1A. That column identified the key constituent parts which the FT believes are necessary if any new system is to succeed in addressing the deficiencies of the current system. Namely, that:

- it should be a system of independent regulation;
- independent laymen should be in a majority on the new regulatory body;
- it should have enforcement powers, including the power to carry out investigations and impose fines;
- it should seek to bring online providers within its remit;

- the new system may require statutory underpinning of the appointments process (but on no account should statutory underpinning extend to statutory regulation of content). I will expand on this point later in this submission.

12. I believe that Lord Black's proposal embodies most of these important principles and agree with Paul Dacre's comment in his submission to the Inquiry dated 15 June 2012, that the proposals presented by Lord Black's submission represent a huge shift by the industry. I am happy to state that in broad terms I am supportive of the proposals and if the discussions to finalise them continue as they have to date, then I would anticipate recommending to the FTL board that FTL becomes a signatory to the contract. I would add that Lord Black's system appears to preserve the largely useful and effective service of complaints handling and mediation currently carried out by the PCC.

13. It is important to note that Lord Black has made clear that the proposals as submitted to the Inquiry remain a draft that is subject to industry comment and which may also need to evolve dependent on the recommendations in the Inquiry's final report. As such my view of the proposals may change depending on any changes made to them in the course of future consultation. As you might expect, there is certainly some devil in the detail to be worked out before the contract is ready for signature. It is my understanding that this was also the consensus view from the in-house lawyers representing publishers at the last "all parties" meeting to discuss the proposals prior to their submission to the Inquiry by Lord Black. I have set out in my witness statement some of the more important points of principle which require further thought or discussion and set out in Exhibit LB2A a few more detailed comments which our in-house team legal team has raised. That said, I believe the industry could work towards finalising the contract in relatively short order if the Inquiry felt that would be appropriate or helpful.

14. It is my view that for the system to represent genuine independent regulation, as I think it should, then it is imperative that the Chairman of the new regulator is independent of the industry, not subject to any industry veto or such like, and that the staff comprising the various bodies of the regulator (i.e. the Trust Board, the Complaints Committee and the Investigations Panel) are represented by a majority of staff from outside the industry. I note from Lord Black's submission (read alongside Paul Dacre's submission) that these requirements are firmly met in the current proposals and in particular it is currently intended that the Chairman will be appointed by a panel consisting of two independent members and two industry members with the appointment to be ratified by an independent assessor, with the involvement of the Public Appointments Commissioner. I believe this is

a sensible and practical approach which takes account the views of the industry but falls short of conferring the power of veto. This is important if the new system is to help the industry to regain credibility in the eyes of the public.

15. In light of the proposed appointments process for a new Chairman, particularly with the plan to involve the Public Appointments Commissioner, my personal view is that any statutory underpinning of the appointments process is not necessary. To the extent it is regarded by the Inquiry as necessary, I should like to underline my belief that any statutory underpinning should be strictly limited to the appointment process of the Chairman and possibly other senior positions at the regulator. The Inquiry will be familiar with the "thin end of the wedge" argument on any statutory involvement within the system and I do not need to rehearse any of those points in this witness statement, save to say that any support the FT might feel able to provide in relation to statutory recognition would be limited to the appointments process and would certainly not extend to the statutory regulation of content. In this respect, I would also commend to the Inquiry the proposals put forward by the editor of the Guardian which seek a "carrot and stick" approach to independent regulation, combining membership of the new body with additional protection against excessive libel damages. I would agree that a "light" statutory underpinning of the new body with minimal wording regarding the new body would, on balance, be worth supporting if membership offered the additional benefit of alternative dispute resolution and subsequent limits to damages.

16. A point I would highlight as requiring further thought is the pro-active reporting obligation set out at clause 3.1.3 of the contract and, more importantly, what the regulator might do with that information. Let us say, for example, that an employee commits a breach of the Editors' Code which is also arguably a civil wrong in law. The publisher/member may then be required to self-report that breach to the new regulator under clause 3.1.3. If the regulator then chooses to report that civil wrong to another body or party, for example the Information Commissioner or a putative victim, it seems that the publisher as an employer has exposed its employee to the risk of civil legal proceedings/enforcement proceedings in their personal capacity. I understand the importance of a pro-active reporting obligation, however I believe that further thought is required from an employer/employee perspective as to whether employers should self-report in a manner which exposes employees to civil claims from third parties. At the same time of course, the interests of any victim of the original alleged wrong must be taken into account. This is a complicated issue and further thought is required on this point.

17. A similar point applies in respect of potential criminal activity which may be required to be disclosed to the regulator pursuant to the same self-reporting obligation. There seems to be a tension between Regulation 59, which provides that the Regulator shall not have the right to require access to materials or information whose disclosure would infringe an individual's privilege against self-incrimination, and the self-reporting obligation contained in clause 3.1.3. On this basis, one assumes that the regulator may be incapable of properly investigating alleged criminal behaviour by the regulated entitles and thereby could leave itself potentially open to the same allegations of ineffectiveness that were levelled at the PCC in the wake of the phone hacking scandal. Our position is not that the privilege against self-incrimination should not be respected. However, I do think that the tension between this clause and Regulation 59 merits further consideration.

18. Likewise, there seems to be a tension between clause 3.1.3. and Regulations 57 and 59 in relation to information whose disclosure to the Regulator would lead to the identification of a confidential journalistic source or would undermine legal privilege. Again, our position is that the protection of confidential sources and veil of legal privilege should be respected, but the tension created by the self-reporting obligation in clause 3.1.3 merits further thought.

19. My final point of principle on Lord Black's proposals is that the FT would want to know that they had overwhelming support from the industry before committing itself to these legally binding obligations. The FT would not wish to place itself at a competitive disadvantage by signing-up and binding itself contractually to a new and tougher system if a significant number of publishing groups opted out. This highlights the remaining, critical difficulty of Lord Black's proposals – how to get everyone into the tent.

20. Paul Dacre's submission makes some useful points as to how all publishers can be encouraged to join the new system. Mr Dacre's points regarding press cards, the press association wire service and a kite mark are potentially effective ideas. But they do not appear to take sufficient account of the rights of blogger-journalists who may wish to attend government press conferences or such like, but who have little incentive and still less inclination to sign up to the new system of independent regulation. It also needs to be tested whether the withdrawal of the press association's service could be carried out without infringing competition law. Lord Black's suggestion in his third witness statement that the government may choose not to advertise within publications that are not members of the system has much merit. That would give the government, in effect, a non-statutory carrot to use to persuade publishers to join. I do not believe that this principle could be

applied to the advertising industry in general, it seems unrealistic to expect private sector companies spending money on advertising to self-restrict their choice in this way.

21. I would like to make the point that a significant issue for the FT's board to consider when making its final decision in relation to any new system will be the cost implications. We operate in an industry that is in a state of flux as publishers seek to re-balance their traditional print business models with new digital models. We also operate in an industry in distress. Times are hard and advertisers are understandably prudent as to how and where they spend their marketing money. There is a clear need for change and there is no doubt that any new regulator needs powers the PCC never had and will need additional staff to operate effectively. With that, inevitably, comes cost. Whilst I support the principles embedded in Lord Black's proposals, I am wary of the potential costs of not only implementing but also operating a new system. I hope that any costs will be proportionate taking into account the state of the industry and the aims of any new system. For the avoidance of doubt, we do agree that costs should be borne by the industry and not by the taxpayer.

22. I set out more detailed but less substantive comments on the proposals at Exhibit LB2A.

Question 5: What specific differences would membership of a system of the kind set out by Lord Black, underpinned by contractual obligations, make to the culture, practices and ethics of your publication?

23. In my first witness statement to the Inquiry I quoted the opening paragraph of the Financial Times' Editorial Code of Practice which states that:

"It is fundamental to the integrity and success of the Financial Times that it upholds the highest possible professional and ethical standards of journalism, and is seen to do so."

24. This is the standard which the Financial Times will always aspire to under my editorship, whatever the regulatory framework applicable to the industry. The challenge for the FT is to enforce this principle and our robust Editorial Code in order to maintain the quality of our news, comment and analysis. I do not therefore believe that Lord Black's proposals, if implemented, will have any effect whatsoever on the quality of the FT's journalism or the culture of the FT's newsroom.

25. The proposals would however require some changes to our current practice in order to implement certain of the more procedural operating points set out in them. For example, it would be necessary to nominate a compliance officer and provide him or her with a clear remit. Training would be required to educate journalists on the FT's obligations under the contract and new regulations. Systems would need to be implemented to ensure that any reporting obligations were complied with. A process would need to be established to ensure that the annual certification reflected relevant activity in the previous year. It would be necessary to implement a series of formal internal corporate governance controls in order to ensure and be able to demonstrate compliance with the new framework. In summary, if Lord Black's proposals are implemented then I think they would result in changes at the FT of process, not of substance, due to the existing high standards we already expect our journalists to comply with.

Question 6: Is there any other comment you wish to make on the proposal put forward by Lord Black, or on the proposals put forward by others, that are now published on the Inquiry website.

26. I would like to make some general comments relating to the background context of the Inquiry which it may wish to consider when considering what an appropriate regulatory regime might look like as part of Module 4 of this Inquiry.

27. First, had existing laws been complied with, properly policed and enforced earlier, there may not have been any need for an inquiry at all. I do not believe that any new regulatory regime needs to be overly complex with the aim of preventing activity that is in any event already prohibited by law.

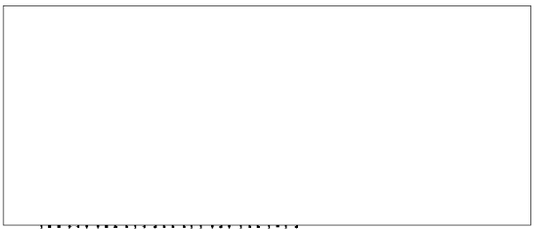
28. Second, it is critical for all news organisations to not only have rigorous codes of conduct, but to police and enforce them internally and to be seen to do so.

29. Third, the price of free speech is occasionally excess. However, those excesses should be dealt with in accordance with the law. That said, I recognise the need for and support making changes to the way in which self-regulation has worked in practice.

30. I would like to ask the Inquiry to consider whether it has sufficiently considered the state of upheaval in which the industry currently finds itself. All newspapers now have digital operations which to an extent compete with other "digital actors" in the market place, including social networks. Whilst nobody would deny that the phone hacking scandal

marked a new low for the industry, the fact remains that the most pressing challenge for the industry is how to make reasonable returns in order to safeguard titles and news operations. In five years time it is conceivable that some existing titles will have ceased to exist and even the term "the press" may seem antiquated. The so-called mainstream media are now competing in a new landscape. With this in mind, it would be most unfortunate if an overly complex, onerous and costly regulatory system were to be imposed which served to unintentionally curb free speech, increase costs and deprive Britain of what remains - especially in comparison with other countries' - a highly competitive, innovative and vibrant press.

31. Lord Black's proposals put forward some significant changes to the status quo which will enable the new regulator to investigate wrongdoing and to hold editors and journalists to account. They mark a break with the past and, subject to the observations in this witness statement, I am broadly supportive of the direction in which they are heading and do not see any reasons why, based on the information available to date, the FT would not participate in such a system.



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EXHIBITS LB1A TO LB2A

Attached are Exhibits "LB1A" to "LB2A" referred to in the Second Witness Statement of Lionel Barber dated 9 July 2012.

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EXHIBIT LB1A

FINANCIAL TIMES

July 1, 2012 7:43 pm

Britain's media and regulation

During his nine-month public inquiry into press standards, Lord Justice Leveson has heard many witnesses air legitimate complaints about the misconduct of the media. Now he must turn his mind to what to do about it. How should Britain's free press be regulated?

The inquiry has set out sensible criteria for future regulation: whatever system is chosen must be effective, cheap, cover all "newspapers", preserve media freedom and be a free service that protects the vulnerable. But finding a mechanism that delivers all this will not be simple.

Most newspapers, including this one, accept the need for change to restore public confidence after the phone-hacking scandal. But they have equally legitimate questions about the impact of regulation on what remains a distressed industry. Nor should the risks to free speech be underestimated.

New rules could raise costs and tie editors' hands in the struggle against unregulated online competitors. Well-meaning regulations might constrain publicly useful activities, notably investigative reporting. This is not only expensive and legally risky, it exercises a vital function in a democracy by exposing injustice and holding power to account.

Lord Justice Leveson should certainly avoid regulating in areas where perfectly good criminal laws exist to stop excesses. Most of the abuses that marked the phone-hacking scandal – the interception of messages, bribing of the police, harassment, trespass and so on – were already offences. The problem was not the lack of laws; it was that they were not enforced.

The primary purpose of regulation must be to protect the public – especially those without recourse to costly lawyers – from unfair treatment at the media's hands.

The existing system, in the form of the Press Complaints Commission, has palpably failed. While the PCC does much good work mediating in disputes between

newspapers and the public, it is too close to those that it regulates and too weak to hold them to account.

The best solution would be to move to a system of "independent regulation". This would fall short of formal state regulation or licensing of journalists – both of which could expose the press to political interference. Independent laymen, appointed by a credible mechanism free from state control, would be in a majority on the new regulatory body. This would dispel the impression of a magic circle of editors or newspaper executives sitting in judgment on itself.

The new body should have greater powers than the PCC. As well as arbitrating complaints, it would enforce compliance with the editors' code of conduct. It should be able to investigate newspapers and impose fines, albeit only in cases of gross misconduct.

This would require some rewriting of the rules. For instance, there would need to be a new public-interest test for defending breaches of the code. The starting point must be that there is a public interest in freedom of expression; the rest is up for debate.

If there is a degree of consensus about the desired destination, several tricky issues remain to be resolved. The biggest is the question of how widely the new code should be applied. This newspaper believes that coverage must be broad. Otherwise, all the new regime will achieve will be to speed the move away from traditional print to online sources.

Yet securing support for a voluntary code from Fleet Street will be hard enough, let alone from the online world. For instance, Richard Desmond's Express newspaper group withdrew from the PCC several years ago. Even if he comes back inside the tent, the question is how to deal with future outliers.

Optimists have suggested that incentives could be used to encourage newspapers and online services to join the new regulatory system. But many of the proposals canvassed – for instance, linking the VAT exemption enjoyed by newspapers to membership, or offering some legal privileges to participants – look impractical. It may well be that some sort of statutory underpinning will be necessary. So long as the regulatory body itself is genuinely independent, this should be workable. One of the first tasks for the body would then be to determine who should fall under its aegis.

As Lord Justice Leveson has noted, previous inquiries into the press have produced little discernible change. The phone-hacking scandal leaves him no option but to propose a new way. Independent regulation is the best of the imperfect solutions available. But it must be broad as well as tough. Sir Brian's conclusions should reflect this.

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EXHIBIT LB2A

Additional comments on Lord Black's proposals

Regulations

1. Regulations 10 and 11 provide complainants with wide scope to bring a complaint in respect of an online article for an open-ended period of time after first publication. We would prefer to see a long-stop date included and suggest that one year from the date of publication would be appropriate, in line with the current proposals in relation to libel actions set out in the Defamation Bill.

Contract

2. Clause 3.1.6 – the obligation on the Regulated Entity to co-operate with the Regulator should be subject to a proviso that the relevant decisions and instructions of the Regulator are within its remit.

3. Clause 3.1.7 – the disclaimer of personal liability in respect of the "senior individual" should be extended to make clear that no directors, officers or employees of the Regulated Entity have any personal liability to the regulator.

4. Clause 7 – there should be limited exceptions to the ability of majority voting to bind all Regulated Entities to variations of the contract. Initial exceptions which come to mind include (a) contract extensions, (b) funding changes and (c) other "significant changes" such as the implementation of an arbitral arm for libel and privacy which would constitute a significant change and therefore all publishers should be permitted to consider them independently.

5. Clause 10 – for completeness, a termination right should be included permitting termination in the unlikely event that the Regulator becomes insolvent or similar.

FT reserves the right to comment further on the Regulations, Contract and Articles of Association as they develop in the future.