



Can independent self-regulation
keep standards high and preserve
press freedom?

A submission by the Media Standards Trust to the
PCC's review of governance



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Can independent self-regulation keep standards high and preserve press freedom?

Introduction

The Media Standards Trust strongly supports the principle of press self-regulation, provided a viable model can be found for such regulation to be effective. Self-regulation should, when effective, help protect individuals from inaccuracy and intrusion by the press or other unfair treatment, protect the press from undue interference by the State and excessive encroachment by the law.

In a specially commissioned survey from Ipsos MORi for this submission, we found the majority of the public also supported the principle of self-regulation, but said they wanted an independent self-regulatory body, rather than a newspaper industry complaints body.¹

At its best the standards which underpin self-regulation can provide a competitive edge, rather than a limitation, on publications covered by the scheme. It can demonstrate to readers the publication's commitment to fact-checking, fair dealing and accountability. In an age when newspapers are competing for readers and advertising revenue with outlets which are not subject to any self-regulatory framework (such as blogs and social networking sites) a quality assurance mark can help guide readers towards publications which adhere to standards. On a practical level, self-regulation is also generally quicker and less expensive than statutory regulation.

We believe that the Press Complaints Commission (PCC) performs a valuable role as a mediation and conciliation body. It provides an important service for complainants which, according to the PCC's satisfaction surveys, is appreciated by many of those who use its services.

However, the PCC is often promoted as an 'independent self-regulatory body'.² This is misleading.³ Mediation is only one aspect of regulation. In addition to mediating the public also expects a press regulator to monitor standards within the industry, proactively investigate possible breaches of the code, report

¹ Ipsos MORi face-to-face survey commissioned by the Media Standards Trust, conducted 8-17 January 2010, sample 980 people

² The PCC is an "independent self-regulatory body that deals with complaints ... [and] raise[s] standards" Annual report, Press Complaints Commission (2008)

³ "to refer to it as a regulator is—in its current state—entirely wrong. It is, as everyone knows and it admits itself, really a mediator." "Pressure mounts on the PCC, but will this storm lead to genuine reform?", Roy Greenslade, The Guardian (19 November 2009)

regularly on compliance with the code, and have the power to invoke a range of remedies for breaches of the code.

The survey conducted for this submission found that seven out of ten people believed the chief purpose of an independent self-regulatory body should be to "monitor the press' compliance with a code of practice, on behalf of the public" or "conduct investigations where there is significant public concern about possible wrong-doing." Only 12% thought its chief purpose should be to mediate complaints about news articles between newspapers and complainants.⁴

The PCC performs a wider regulatory function on occasion but does not have the resources to do this consistently or the powers to do so effectively. If it is to perform the role of independent regulator (to which it aspires and which society expects) it will need significant change.

The PCC has taken several steps to reassure the public of its independence from the industry. Self-regulators always have to work particularly hard to demonstrate their independence. However, the PCC could do more to reassure the public. For example, the funding sources for the PCC could be transparent, the workings of the commission itself could be opened up and the PCC could act in accordance with the Freedom of Information Act. There is considerable support for this sort of transparency amongst the general public, shown by the survey commissioned for this report.

Opponents of reform believe that it is not possible for a body without statutory backing to perform effective regulatory functions. We disagree and this paper provides examples of self-regulatory bodies which do discharge effective regulatory functions without statutory backing.

Baroness Buscombe told the Society of Editors conference that she is "yet to hear a constructive alternative" to the PCC "that might preserve press freedom and keep standards high".⁵

This brief submission sets out how the Press Complaints Commission could be reformed to maintain self-regulation whilst ensuring higher public confidence in its effectiveness. Wider debates, such as the costs of libel law or desirability of a privacy law, are outside the parameters of this submission.

⁴ Ipsos MORi Research (2010)

⁵ Baroness Buscombe speech to the annual conference of the Society of Editors (November 2009)



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Not all of the recommendations will command consensus. We hope they will help stimulate a debate in the industry of how to support a strong and effective self-regulatory body with sufficient public confidence to act as a safeguard against further statutory encroachment.

Acknowledgments

The Media Standards Trust would like to thank those who have assisted with the drafting of the document. The Press Complaints Commission took great care to explain its work to the Media Standards Trust. Sir Robert Worcester and the team at Ipsos MORi helped design the opinion poll research. The press review group provided counsel and guidance on drafting the document and its chairman, Anthony Salz, provided tireless scrutiny and encouragement. The work would not have been possible without the support of the Trust's core funders, notably the Pearson Foundation, Esmee Fairbairn Foundation, the Joseph Rowntree Charitable Trust and the Gatsby Foundation.

Any omissions or errors that remain are entirely our own.

Summary of recommendations

This submission sets out how the PCC can play a much more effective regulatory role than it currently does, without requiring statutory backing.

if the PCC were an independent self-regulator it would:

- Make clear who was covered by the code and incorporate these publications as members, so as to be able to enforce remedies as a condition of membership
- Be able to investigate breaches of the code without requiring a complaint
- Accept complaints from any source – except where they run contrary to the interests of an individual in privacy and intrusion cases
- Act on behalf of the public, in the public interest – a wider role than its current efforts to work on behalf of the complainant
- Monitor compliance with the code and assess breaches and remedies with reference to a newspaper's track-record
- Place a financial value on an adjudication which would be reflected by the size and prominence of the publication's correction

An independent self-regulator would also be expected to ensure:

- it complied with best practice on freedom of information, particularly ensuring transparency of funding and decision-making processes
- There was a clear right of appeal for newspapers and complainants
- it provided comprehensive and consistent data to ensure it could be clearly understood by the public

A body which fulfils these obligations may be better named the 'Press Standards Commission'.



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Though the PCC was created to prevent direct statutory control, it has not served as a safeguard against the emerging case law around privacy and the costs of libel have increased dramatically. Combined, these have introduced further limits to the freedom of expression.

Further statutory regulation of the press is a significant threat to a fair and democratic society. Therefore, it is imperative that self-regulation retains public confidence and demonstrates that it is independent, transparent and accountable.

The MST's recommendations can be found in bold throughout the document. For a full list of recommendations see Appendix 1.

Section one: Complaints resolution vs regulation

The PCC is currently constituted primarily as a complaints mediation body. Its objects, as set out in its memorandum of association are:

"to consider, adjudicate, conciliate and resolve, or settle by reference to the Code of Practice ...complaints from the public of unjust or unfair treatment by newspapers, periodicals or magazines ...unwarranted infringements of privacy ...and to publish or procure the publication of any findings of its adjudications ...for the purpose of ensuring that the Press of the United Kingdom maintains the highest professional standards and having regard for generally established freedoms including freedom of expression and the public's right to know, and defence of the press from improper pressure".⁶

Tim Toulmin, director of the PCC until the end of 2009, reiterated the PCC's focus on complaints resolution in his evidence to the culture media and sport select committee in July 2009:

"We are a complaints body; we are not statutory; we are like an ombudsman, really. People want us to be more like a general regulator with statutory powers and so on. That is a separate argument; the fact is we are not that body."⁷

This role of complaints resolution has also been emphasised by others, including the National Union of Journalists (NUJ).⁸ Bob Satchwell, executive director of the Society of Editors wrote in the Guardian:

"The PCC is not really self-regulation. It is a system established and paid for by the industry and then left quite correctly in the control of the lay chairman, lay commissioners and their staff who do not have a background in the industry.

⁶ Memorandum of association (as amended), Press Complaints Commission (October 2003)

⁷ Uncorrected transcript of oral evidence, culture media and sport select committee, HC 275-xii (July 2009)

⁸ Memorandum submitted by the National Union of Journalists, culture media and sport select committee (January 2009)



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"The bottom line is that the system is not designed, and should not set out to control, the press. It is a system that should make editors and journalists think twice."⁹

Alan Rusbridger, editor of the Guardian, told the select committee that the PCC has placed ever greater emphasis on mediation in recent years:

"Over the last ten years it [the PCC] has changed its role into being more of a mediator and less of a regulator, and it did so almost without people noticing."¹⁰

"[The PCC] sees itself as primarily a mediator and, secondly, as a reactive body, so it waits for people to come and bring complaints to it."¹¹

This is an important and useful role. It has led to the resolution of hundreds of complaints to the satisfaction of complainants.

The PCC recognises that its constitution is limiting. The then PCC director Tim Toulmin told the select committee that the PCC had "actually stretched the boundaries of our remit as far as possible" when investigating phone tapping at the News of the World.¹²

However, the PCC's annual report 2008 defines it as an "independent self-regulatory body that deals with complaints [and] raise[s] standards".¹³ The PCC website calls the PCC "an independent self-regulatory body which deals with complaints ... keeps industry standards high ... and works proactively behind the scenes to prevent harassment and media intrusion".¹⁴

This gives the impression that the PCC is an independent self-regulatory organisation, with the corresponding remit, powers and resources. This impression is misleading. In addition to mediating, the public expects a press self-regulator to monitor standards within the industry, proactively investigate possible breaches of the code, report regularly on compliance with the code, and have the power to invoke a range of remedies for breaches of the code.

⁹ 'What should be done with the PCC?' Bob Satchwell, The Guardian (23 November 2009)

¹⁰ Uncorrected transcript of oral evidence, culture media and sport select committee, HC 275-ix (May 2009)

¹¹ Uncorrected transcript of oral evidence, culture media and sport select committee, HC 275-xii (July 2009)

¹² ibid

¹³ Annual report, Press Complaints Commission (2008)

¹⁴ www.pcc.org.uk , as accessed 20 January 2010

For the PCC to be constituted as an independent self-regulator, its constitution, its governance arrangements, and its operations require significant alteration and clarification and it will require more money to conduct its regulatory tasks.

The PCC has previously considered that it has received unjustified criticism (including from the Media Standards Trust) for failing to perform duties for which it has no powers. The PCC's review of governance provides an excellent opportunity for the PCC to make the changes necessary to reflect properly the role it aspires to play, and the role increasingly expected of it. If it fails to make those changes, the pressure for increased statutory regulation of the press will inevitably grow.

The PCC should have an obligation to investigate possible breaches of the editorial code of practice (the code), regardless of whether or not it has received a complaint.¹⁵ It should undertake research both into individual stories and press standards more generally, accept complaints from the general public (with limitations on vexatious complaints) and be pro-active in investigating instances where there is prima facie evidence of wrong-doing.

An independent press self-regulatory body, with responsibility for upholding the code, investigating non-compliance and acting in the public interest might be better understood if it were called the Press Standards Commission.

Recommendation: the Press Complaints Commission should be re-named the Press Standards Commission.

Recommendation: The remit of the PCC should be widened: to uphold the code, consider complaints and adjudicate on breaches of the code, on behalf of the public, in the public interest, for the purpose of ensuring public confidence in the code is maintained.

¹⁵ As set by the editors' code committee

Section two

1. The independent custodian of the code

An independent self-regulator would have responsibility for upholding the code of practice. This would mean acting as a 'custodian of the code' (the editorial code of practice), rather than simply mediating complaints.

A 'custodian of the code' would, like the press itself, act as a watchdog for abuses, would be obliged (rather than simply empowered) to investigate cases where there was prima facie evidence of wrong-doing, monitor compliance and record breaches of the code.

Currently, the PCC deals with a significant number of cases in which it does not determine whether or not the code has been breached. This means that these cases do not provide any clear precedent for future decisions and provide no public guidance on publications' levels of compliance with the code.

The PCC's scope for investigation is also limited by usually requiring a complaint in order to take action. It sometimes works around this by trying to generate complaints where one is not forthcoming. On occasions it also proactively contacts people in the public eye (or their representatives) to offer its services.

The PCC's articles of association make clear that the primary function of the commission is to consider complaints from the person affected by a story. The PCC website states: "We normally accept complaints only from those who are directly affected by the matters about which they are complaining."¹⁶ And "Generally speaking, the PCC does not deal with ...third party complaints".¹⁷

When the PCC was created, there was a concern that its predecessor, the Press Council, had spent too long investigating complaints from third parties. The PCC would therefore focus on "real complaints" (from parties referred to directly) rather than "general complaints" (from third parties).¹⁸

However, this approach means that where the main party in a story does not believe their interest would be best served by complaining to the PCC, the case does not usually get investigated. This means that there can be no investigation of whether the code has been breached or if it has, whether it is in the public interest. This reduces public confidence in the code of practice as an effective check on publishers' activities.

The PCC has, on occasion, investigated possible breaches of the code without having received a complaint. At the start of 2009 the PCC was listed as the complainant in 13 cases in which it examined possible breaches of clause five (intrusion into grief or shock).¹⁹

The lack of consistency creates an impression that the PCC will ignore cases that it does not wish to investigate without a transparent, consistent and easily understood rationale. We do not believe that the distinction between 'real' and 'general' complaints is any longer publicly acceptable.

Almost half of people (48%) believe that an independent self-regulatory body should be obliged to investigate if there is evidence to suggest a newspaper may have published an inaccurate article. A quarter of people believe that the body should have an "option" to investigate whilst - at the other end of the spectrum - just one in twenty people believe that it should wait for a complaint from someone directly referred to in the article before investigating.

There are parts of the code which are not likely to attract a complaint and the PCC's reliance on complaints makes it more difficult to uphold these clauses. For example, a complaint about a possible breach of clause 13 (financial journalism) is unlikely to arise from someone directly involved in the story. And when a payment has been made by a publication to a criminal for a story, the PCC is often alerted to it only by court proceedings.²⁰

The PCC should make clear in all of the cases it considers whether the code has been breached to provide an indication of levels of compliance. This includes cases which have been resolved. This will also serve as a guide to the public and the press about appropriate behaviour in future cases.²¹

¹⁶ <http://www.pcc.org.uk/complaints/process.html> as accessed 20 January 2010
¹⁷ http://www.pcc.org.uk/faqs/index.html#faq1_11, as accessed 20 January 2010
¹⁸ Richard Shannon, 'A Press Free and responsible', (John Murray, 2001), p. 41

¹⁹ <http://www.pcc.org.uk/cases/adjudicated.html?article=NTQ1MA==>, as accessed 20 January 2010

²⁰ Unpublished research, Media Standards Trust (November 2009)

²¹ In *Tom Murphy v Daily Mail* the case summary records that the newspaper argued that it did not breach the code, but provided no indication of a decision from the PCC on whether the code had been breached.



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If the PCC accepts complaints from a wide range of sources and investigates prima facie evidence of wrong-doing it will increase the sense that its acting in the public interest.

Recommendation: The PCC should have an obligation, not just discretion, to investigate possible breaches of the code, where there is prima facie evidence of wrongdoing, and formal responsibility for ensuring that the code maintains public confidence.

Recommendation: The PCC should determine whether the code has been breached in each case which has a material impact on standards and public confidence in the code.

Public attitudes

- 48% of people believe that the chief purpose of an independent self-regulatory body should be to monitor the press' compliance with a code of practice, on behalf of the public
- 25% believe it should primarily conduct investigations where there is significant public concern about possible wrong-doing
- 12% believe it should primarily mediate complaints about news articles between newspapers and complainants
- 48% believe that there should be an obligation to investigate an article that may be inaccurate
- 26% believe that there should be an "option" to investigate
- 10% believe that the body should "wait for a complaint from a member of the public or elsewhere before investigating whether it is inaccurate"
- 5% believe that the body should "wait for a complaint from someone directly referred to in the article before investigating".

Ipsos MORI face-to-face survey, 980 sample, conducted 8-17 January 2010

2. Acting on behalf of the public, in the public interest

The role of the PCC would also be understood more clearly if it was clear on whose behalf it operates, The PCC strongly believes it acts on behalf of the complainant and not of the industry but this is not spelt out in a clear mission statement nor in its constitution.

Reform of the PCC's governance should begin with a clear statement of who the PCC is acting for. The constitution should make explicit that the PCC acts on behalf of the public – not as a public advocate – but in the public interest

This is not simply a codification of current practice. Acting on behalf of the public is not the same as acting on behalf of the complainant. A mediator acts solely on behalf of the complainant (as the PCC does now). A regulator acts on behalf of the complainant and on behalf of the wider public.

Nine out of ten people believe that it is important that an independent self-regulatory body should operate in the interests of the general public. Three out of five people believe this to be "very important". A similar proportion believe that the body should act in the interests of those making a complaint.

Acting only on behalf of the complainant, without regard to the interests of the wider public compromises the effectiveness of self-regulation. As the European Advertising Standards Authority recognises, self-regulators which only investigate complaints will "inevitably be haphazard and lack consistency or thoroughness."²²

Recommendation: The PCC should have a clear statement that its role is to operate on behalf of the public, in the public interest.

Recommendation: The PCC should accept complaints from any source (ie. including third parties).²³

²² Advertising Standards in Europe, Appendix 3: The EASA Best Practice Self-Regulatory Model, European Advertising Standards Alliance (2004)

²³ There may be cases where an investigation can only proceed with the consent of the first party but that first party does not wish to proceed. In such circumstances, the PCC should be free to not investigate further.



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Public attitudes

- 89% of people believe that the self-regulatory body should represent the interests of the general public (61% think it is “very important”).
- 88% of people believe that the body should represent the interests of those making a complaint (57% think it is “very important”).

Ipsos MORI face-to-face survey, 980 sample, conducted 8-17 January 2010

3. An independent arbiter, not the first port of call

Many publications appear to use the PCC as a method of out-sourcing internal complaints mechanisms. They do not publicise their own complaints mechanisms and do not regularly print corrections, clarifications or apologies. This undermines the principle of self-regulation.

We understand the PCC executive’s reluctance to turn away complainants – but the primary relationship is between the reader and the publication. If publications offered a clear, accessible and speedy complaints process, many complaints could be addressed without the need for recourse to the PCC, an intention when the PCC was created.²⁴ Many regulators from other industries require a complaint to have been through the internal processes provided by its members, before they can be escalated to the self-regulatory body.

The public expects to have to make a complaint to the newspaper that published the article in the first instance. Three out of five people would expect to have to complain to the newspaper compared with one in four who expect to take their complaint to an independent self-regulator.

The argument has been made that requiring people to complain to the newspaper in the first instance would deter less well-off complainants. However, over half of people from lower social grades indicate that they expect to complain to the newspaper in the first instance.

Recommendation: The PCC should require each complaint to have been through a publication’s internal processes before being escalated for handling by the PCC. The requirement for an internal complaints mechanism could be a condition of membership.

Recommendation: Publications should be required to report cases to the PCC that were not resolved within a 35 working day timeframe.

24 Shannon, p. 41

Public attitudes

- 59% of people expect in the first instance to complain to the newspaper that published the article in the event that they believe an article to be inaccurate
- 57% of people in social grade C2 and 55% of people in social grade DE expect to complain to the newspaper in the first instance
- 24% of people expect to complain to an independent self-regulator in the first instance

Ipsos MORI face-to-face survey, 980 sample, conducted 8-17 January 2010

4. Become a membership organisation

It is currently not clear over which titles and over which content the PCC has jurisdiction.

The PCC's constitution empowers it to deal with complaints against any newspaper, periodical or magazine.²⁵ It is important that any self-regulatory system involves as many publishers as possible, so that compliance with the code does not become a competitive disadvantage.

However in practice there are complaints which it rejects because the publication in which the offending article was published is not covered by the code. These are likely to increase as a consequence of the increasing number of web-only publications.

Northern and Shell stopped contributing financially towards the PCC in 2008/09.²⁶ Yet the PCC continued to consider Northern and Shell's publications within its jurisdiction. Northern and Shell began contributing again some time in mid 2009 (precise dates are not available).

This dispute only came to light in Press BoF's written submission to the culture media and sport select committee's hearing and the only public evidence that the dispute was settled was in an interview that Baroness Buscombe gave to the Guardian.^{27 28}

This confusion is only likely to increase over time as newspapers and magazines publish more content, from more sources, on more platforms.

Such confusion could easily be cleared up if the PCC maintained a public register of each publication (and website) covered by the code.

²⁵ Memorandum of Association, Press Complaints Commission (2003)

²⁶ Memorandum by Press Standards Board of Finance, culture media and sport select committee (January 2009)

²⁷ *ibid*

²⁸ 'Watching the watchdog', James Robinson, The Guardian (10 August 2009)



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The PCC should have a formal system of membership. This would mean that publications would have to apply for membership of the PCC. The PCC would then have the right to accept or reject their application. If the application were accepted, the publication would then be required to sign up to the PCC's rules and regulations as a condition of membership. This would then form the basis of a contract between the PCC and its members.

The PCC can make a persuasive case for formal membership of the commission, particularly for publications operating online. Historically newspapers have supported the PCC as a defence against statutory regulation. More recently, its desist notices have helped reduce potentially costly legal battles for publishers. This is a concern shared by many online publishers and if the PCC can demonstrate its effectiveness in this area, membership may be welcomed by other news publishers.

Adherence with the PCC code could become a quality assurance mark, in the same way that the Sun advertises its membership of the internet Watch Foundation on its website. Over time, this could help the public distinguish between those news outlets that do adhere to a code of practice and those that do not.

As a membership organisation the PCC would also be able to exercise greater powers under contract law, which we examine in a later section.

Recommendation: Publications covered by the PCC should be invited to apply for membership. Signing up to the PCC's rules and regulations (e.g. compliance with the code of practice) should be a pre-requisite of membership.

Recommendation: The PCC should keep a regularly updated list – publicly available – of all the publications that are members.

Case study: Self-regulatory membership organisations

The Internet Watch Foundation

The IWF was established in 1996 by the UK internet industry to enable internet users to report potentially illegal online content. Like the PCC, it describes itself as “an independent self-regulatory body”. It is funded by the EU and the industry, including internet service providers, mobile operators, content providers and search providers. The Foundation can issue a notice to its members to take down illegal content. Compliance with IWF notices reduces the likelihood of legal action.

Like the PCC, the IWF is a company limited by guarantee, and the guarantors are the members of the company. Membership is aimed at “any organisations which the board decides to admit to membership”. The members pay subscription fees, determined by the board, and can leave with 28 days notice. The board may also suspend or terminate membership. The foundation publishes a list of its full and associate members on its website.



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5. A range of available remedies for breaches of the code

Reconstituting the PCC as a membership organisation would allow it to spell out the remedies available to it. The PCC could then enforce these remedies, with recourse to the terms and conditions of membership if members refuse to cooperate.

There is concern that the remedy currently offered by the PCC makes the legal route more attractive²⁹. There needs to be a debate about appropriate remedies, involving the public, complainants and publications, to ensure they are satisfactory for all parties.

We understand that there are a range of informal remedies currently used by the PCC. These include a letter from the chairman to the editor of the publication and a public rebuke. However, these are not codified and how, when and why they are used is not obvious to the public.

The public would have a better understanding of the work of the PCC if its remedies were explained clearly, in the context of the seriousness of the breach of the code and any previous warnings given to a publisher.

Adjudications

There has been frequent criticism that PCC adjudications are not prominent enough and lack economic sanction. In light of the concern about the financial plight of many newspapers, we do not believe this is the most appropriate time to introduce a system of financial penalties.

The debate about publishers being compelled to print an upheld adjudication of 'equal prominence' with the original article has foundered for a number of reasons. Publications object to undue interference in editorial decisions, there are concerns that some adjudications can be on a narrow point so the punishment is not proportionate with the breach of the code, and equal prominence is even more difficult to assess online.

However, there remains concern that an adjudication is not a sufficiently strong penalty to deter breaches of the code. We propose that the PCC place a financial value on each upheld adjudication, graded according to the seriousness of the offence. This financial value would then be met when a

correction or apology was published of equivalent advertising value.

In this model, the PCC would grade the relative seriousness of the breach of the code according to previously upheld adjudications. So a serious breach of the code would require an apology the size and prominence of which would be equivalent to a large and prominent advert. The value of this would be stipulated by the PCC in its adjudication, with reference to the publication's advertising rates card.

Placing a financial value on each adjudication would enable the commission to indicate the seriousness of the offence, relative to other offences. And, it would demonstrate to the public that adjudications had commercial significance. It should also be attractive because the newspaper would still have the freedom to choose the size and prominence of the published adjudication, as long as it equated to the publicly advertised rates for its advertising.

We believe that commercially significant penalties are a critical element of an effective self-regulatory system. More than four out of five people believe that an independent self-regulatory body should be able to impose a fine on a newspaper, in serious cases.³⁰

There are financial penalties in place in other self-regulatory regimes, without legislative backing. The Property Ombudsman can direct a member to pay a fine of up to £25,000³¹. But, for such a scheme to work, it needs to have the support of the majority of the industry. Placing a financial value on the publication of an adjudication adds strength to the Commission's penalties and ought to be acceptable to all those within the industry who are committed to self-regulation.

Reporting an editor: the PCC currently says that it has the power to report an editor to his proprietors, in the worst cases. However, the MST can find no public evidence that this power has been used and it is not set out in the constitution.

Desist notices: former chairman Sir Christopher Meyer implied that the PCC could issue desist notices "a power not available to Ofcom".³² We can find no

²⁹ 'Toothless Tiger', Roy Greenslade, The Guardian (7 June 2008)

³⁰ Ipsos MORI, 2010

³¹ Membership of a property ombudsman scheme (as defined by the OFT) is required by the Consumers, Estate Agents and Redress Act 2007 but before its introduction, the ombudsman still oversaw a system of fines.

³² Letter from Sir Christopher Meyer to Sir David Bell (19 February 2009)



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formal codification of this or what effect they have on the publisher. An editor also told the select committee that publishers were not bound by the PCC's advice.³³

Membership: As a membership organisation, the PCC could exercise the power of suspension of membership or termination of membership to any publication that frequently breached the code, or did so in a particularly serious manner. Nearly three out of five people believe it important for the self-regulatory body to be able to eject a newspaper in the most serious cases.³⁴

A publication that was suspended from the PCC would no longer receive its services, its support, or its protection.

Recommendation: The PCC should consider publishing a clear 'ladder of intervention' to indicate the different remedies it has at its disposal, according to the seriousness of the issue.

Recommendation: The PCC indicates the seriousness of a breach of the code, by placing a simple grading system on each upheld adjudication.

Recommendation: The PCC places a financial value on each upheld adjudication, graded according to the seriousness of the offence. This financial value would then be met when a correction or apology was published of equivalent advertising value.

Recommendation: The PCC should stipulate its powers and remedies in its constitution.

Recommendation: The industry and the PCC should examine what range of powers the PCC requires in order to ensure public confidence that they act as an effective deterrent to unacceptable forms of journalistic practice.

³³ Uncorrected oral evidence to the culture media and sport select committee, HC 275-ix (May 2009)

³⁴ Ipsos MORI 2010

Public attitudes

- 61% of people believe it "very appropriate" for the self-regulatory body to be able to impose a fine in serious cases of a breach of the code and 25% believe it to be "fairly appropriate"
- 56% of people believe it to be very or fairly appropriate for the self-regulatory body to be able to eject a newspaper in the most serious cases whilst 29% believe it to be fairly or very inappropriate

Ipsos MORI face-to-face survey, 980 sample, conducted 8-17 January 2010

Case study in effective remedies

The Association of Television on Demand was established as the self-regulatory body for the industry on demand, in particular where that content was not historically regulated by Ofcom. ATVOD enforces a code of conduct, under an independent chairman. It has been deemed successful by Ofcom which delegated responsibility for regulating this sector when it was required to do so at the end of 2009, by the audiovisual and media services (AVMS) directive.

ATVOD's objectives are primarily to:

- "Regulate the conduct of its members in relation to their provision of television on-demand services ...so as to ensure television on-demand providers are committed to delivering a broad range of high-quality consumer services"
- "develop and keep under constant review a code of practice containing standards and core principles"

Its constitution empowers the directors to pass rules or bye laws governing the terms of membership. ATVOD has the following remedies available. It may:

- require the member to remedy the cause of the complaint; and/or
- require an assurance from the member regarding its future behaviour; and/or
- require the member to reimburse you any service charges in connection with the matter giving rise to the complaint; and/or reimburse ATVOD any reasonable amount in respect of administration charges incurred in determining the complaint;
- warn the member about the consequence of any further infringement, fine the member and/or suspend the member from ATVOD.

6. Independent of the industry

All self-regulatory systems have to go out of their way to demonstrate independence in application of their regulatory role, particularly with regard to the regulated industry itself. The PCC has made steps to enhance its independence (such as the majority of lay members on the commission), but needs to go further.

The key roles and posts within the PCC should be reformed to reflect its role as an independent self-regulator.

The office of the chairman of the commission: Currently, the constitution empowers the Press Standards Board of Finance (Press BoF, the funding body) to appoint and remove the chairman of the commission at any point. This puts too much power in the hands of the funding body and compromises the independence of the chairman as a result.

Role of working editors on the commission: The participation of currently serving editors on the commission poses a greater challenge. It is very difficult, from the perspective of the public, to see how a working editor can accept complaints against a publication which may set a precedent which then has an impact on their own publication.

Recommendation: The office of chair should have a fixed term, preferably three years, with an option to renew. The decision to appoint and to renew should be made by the appointments commission.

Recommendation: The chairman of the PCC should not sit on the appointments commission.

Recommendation: No currently serving editors should sit on the commission itself.



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7. Stable and sustainable funding

The PCC's has an annual budget of about £1.9m. Whilst the budget has increased steadily, it has not grown in proportion to its scope. In 1995 the PCC only dealt with complaints about print publications and its budget was just over £1m. By 2008 its remit had been extended to cover all audiovisual materials and website articles (excluding user generated content). This means that there is far more content that could breach the code. For example, on 1 December 1995 there were 165 articles in the Guardian (including the supplements).³⁵ This had increased to 421 articles in print and online on 1 December 2008.³⁶

Other self-regulatory bodies have a clear formula by which the contributions are calculated. The Advertising Standards Authority is funded through a levy on advertising spend: 0.1% on display advertising and airtime expenditure and 0.2% of the Royal Mailsort contract.³⁷

If there was a clear formula to determine the funding of the PCC it would increase transparency and provide for greater independence. Three quarters of the public believe it to be very or fairly important that an independent self-regulatory body makes known the identity of its funders, whilst seven out of ten believe that it should publish the amount of funding from each contributor. Having to renegotiate the budget on a regular basis creates unnecessary unpredictability for the PCC and limits its freedom of action.

The funding formula for the PCC needs to reflect the financial success of the publisher as well as the possible workload it creates for the PCC. The formula could, for example, be based on the amount of money spent on production and distribution of content such that it reflected both the financial resources and the output of the publisher.

If the PCC is to become a self-regulator rather than a mediator, its additional responsibilities may require an increased budget. Specifically, in order to monitor press standards, launch more investigations, and report regularly on compliance, the PCC may need more funding.

The increased workload for the PCC would be at least partly offset because it would no longer be the first port of call for all complaints. We envisage that many more complaints would be resolved before they reach the PCC.

Part of the costs could also be offset with greater efficiency. The Advertising Standards Authority cost £297 per complaint in 2008. In 2008 a PCC complaint cost £391 – based on the same methodology.³⁸

However, it may still be that the overall budget of the PCC needs to be increased to reflect its increased responsibilities.

We recommend that this come in part from a new funding mechanism. It is not currently clear by what mechanism the funding for the PCC is determined. Press BoF (the funding body) will not reveal the formula by which national newspapers contribute. And although it has revealed that regional and specialist magazines contribute according to their circulation, this appears to account for less than half of the total income of the PCC.

An additional transparent source of revenue for the PCC would be a fee levied on each publisher when it is subject to an investigation in which it was found to have breached the code. When such an investigation had been triggered by a complaint, there would be an incentive for the publication to satisfactorily resolve the complaint before it was escalated to the PCC.

Recommendation: The overall budget of the PCC should be increased to reflect its greater remit but accompanied by a plan to reduce the cost of handling complaints over time.

Recommendation: the PCC should publish the financial contributions of all publishers in its annual report.

Recommendation: There should be a clear and transparent formula which determines how much each publisher contributes to the PCC.

Recommendation: The PCC should charge the publisher the costs of an investigation, where it is found to have breached the code.

³⁵ The Guardian, 1 December 1995

³⁶ The Guardian archive reports 118 articles in The Guardian and 303 on guardian.co.uk

³⁷ Funding and accountability, Advertising Standards Authority: <http://www.asa.org.uk/About-ASA/Funding-and-accountability.aspx>, as accessed 20 January 2010

³⁸ Annual Report, Advertising Standards Authority (2008). This methodology was used in the PCC's annual report (1995).

Case study in sustainable funding: The Financial Services Ombudsman

Under the FSA's rules for funding the ombudsman service, each industry sector is placed in a relevant funding "block". These blocks mirror, as far as possible, the fee-blocks that apply for the FSA's own funding arrangements.

When setting its budget each year, the ombudsman calculates the estimated cost of handling complaints in relation to each industry block.

The FSA consults annually on the levy that applies to each industry block and it both calculates and collects the levy from FSA-regulated firms.

The amount each FSA-regulated business pays currently ranges from around £100 a year for a small firm of financial advisers to over £300,000 for a high-street bank or major insurance company.

In addition to the core funding, the ombudsman charges a case fee when a company is under investigation. Fewer than one in six of the initial complaints and enquiries become chargeable cases. The ombudsman can rule a case as "dismissed without consideration of its merits" which means that no fee becomes chargeable.

The fee does not become payable until the case is settled and closed. And all businesses are entitled to a number of "free" cases. The standard case fee is currently £500 and is reviewed each year.

The fee is still chargeable even if the complaint is found in favour of the company that was under investigation.

Public attitudes

- 75% of people believe that an independent self-regulatory body should make known the identity of who is funding the regulator.
- 69% of people believe that the independent self-regulatory body should publish the amount of money being provided by those funding it.

Ipsos MORI face-to-face survey, 980 sample, conducted 8-17 January 2010



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8. Effective accountability

The offices of the charter commissioner and charter compliance panel are currently constituted to assess whether the PCC has provided a satisfactory service to those who have brought complaints. These bodies need to be refocused to reflect the PCC's status as an independent self-regulator rather than a complaints mediation body.

The charter commissioner can currently only investigate cases where the complainant is concerned about the handling of the complaint. The charter compliance panel currently reviews the standard of service given to complainants.

These bodies may be more effective if they were merged, with a single remit to assess the effectiveness of the PCC in upholding the code, in the public interest. This might be called an audit panel.

The audit panel should be appointed by the appointments commission, in line with the process adopted for its predecessor bodies.

The starting point for the PCC's audit panel would be those stories over the year which had generated a significant level of public concern about whether the code had been breached. The panel should also review those cases where there appeared to be consistent breaches of the code – either a particular clause or a particular publication.

The audit panel should also hear appeals of complaints from publications and the public. This would need to ensure there was not a delay in the resolution of complaints. The appeal process should be limited to those complaints that had already been closed and provide the complainant a limited time period to launch an appeal. An appeal would, as now, only be accepted if there was material evidence that challenged the original decision.

The panel would not have the power to decide cases but could refer decisions back to the commission where there was new evidence or concerns that the code had been applied inconsistently.

The most appropriate measure of the effectiveness of the PCC should be an annual review of public confidence in self-regulation of the press.

Recommendation: The offices of charter commissioner and the charter compliance panel should be merged, and renamed the audit panel.

Recommendation: The public and the press should have the right of appeal to the audit panel which could then refer cases back to the commission.

Recommendation: An audit panel (formerly the charter commissioner and charter compliance panel) should have responsibility for measuring the effectiveness of the PCC in ensuring compliance with the code and, ultimately, maintaining public confidence self-regulation of the press.

Case study in accountability

The Association of Television on Demand has appointed an independent appeals adjudicator. If a complainant feels that any decision of ATVOD is incorrect or is based on an error of fact or that the remedy for an upheld complaint is inadequate, inconsistent or otherwise inappropriate, then they may appeal against the decision to the ATVOD independent appeals adjudicator.

The adjudicator may uphold, vary or rescind the ATVOD decision in whole or in part and may replace any of ATVOD's findings with his own findings. His findings are binding on both parties.



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9. Transparent operations

The Media Standards Trust believes that greater transparency of the work of the PCC would lead to greater public understanding of its work, greater confidence in press self-regulation and a higher profile for the PCC.

Complaints data

Currently, important publicly available data about complaints is not available, is difficult to understand, or is hard to learn lessons from. Whilst the PCC has recently improved the amount of information it publishes about complaints, there are a number of further steps it could take to ensure that its work is more transparent and that the press is made more accountable as a result.

The PCC should publish data that enables the public and the press to see which publications and which articles have broken the code. The PCC could indicate when a story was under investigation, or subject to a complaint, as a matter of routine. This might help better, and more quickly, inform journalists and the public that a story might need to be treated with caution – and reduce multiple complaints about the same article.³⁹

We understand that on some occasions data is not published on the PCC website because it is not in the interests of the complainant.⁴⁰ This risks being unfair to the publication (if there has been no breach of the code) and unclear for the public. This is an important distinction between a body which acts on behalf of the complainant and an independent self-regulator acting in the public interest.

³⁹ The upheld adjudication of *Deborah Rundle v Sunday Times* highlights the importance of a complaint being publicly available in order to inform other journalists (a freelance on this occasion) that the story and its follow-up should be treated with caution. In this instance the journalist was unaware of the complaint before being alerted to it by the complainant.

⁴⁰ The case of *Sue Curtis v Take a Break* was published on the PCC's website only later to be removed, despite the magazine accepting that it had published "significant inaccuracies"

Recommendation: The PCC should publish comprehensive complaints data that enables the public and the press to see who is being complained against and why, except where privacy concerns mean that it is not possible.

Recommendation: The PCC should publish an annual summary which breaks complaints down by publication and by code clause, setting out where it has complied with, or transgressed the code, enabling comparison with its peers. This could form the basis of a brief report to each proprietor with recommendations and offers of assistance for improving performance in the next year.

Recommendation: The PCC should maintain a daily or weekly log of articles that are subject to complaint or investigation.

Case study in complaints data

The Local Government Ombudsman publishes annual reports setting out how effective and efficient each local authority has been in complying with the office of the ombudsman. This report takes the form of a letter to the chief executive of the local authority which sets out the performance of that authority in the context of how his organisation compares with other local authorities.

These reports, which are available on its website, set out:

- a dashboard of the type of complaints and the matter under complaint
- the number of enquiries and complaints that were received about the authority
- the number of actions taken against the authority
- the average length of time it has taken for the authority to respond to the ombudsman, in comparison with other authorities



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PCC business

The PCC could be more transparent in the way it conducts its business, in order to bring it into line with best practice for other similar bodies.

Currently it is not clear when the PCC meets, who attends the meetings, what matters it considers, how or why decisions are made. This is not supported by the general public. Less than one in twenty people believe it is not at all important for the minutes of its meetings to be publicly available or for members of the general public to be allowed to attend its meetings.⁴¹

Whilst there may be cases which need to be heard in private, there are a number of other bodies which holding meetings, or part of meetings, in public, with confidential agenda items. Although very different, local authorities demonstrate that it is possible to conduct meetings partly in public but with private agenda items for cases which involve issues such as commercial confidentiality or child protection.

The press has been one of the key campaigners for – and users of – the Freedom of Information Act. It is understandable that the press resists further legislative creep into the work of the PCC. However, it could act in accordance with the act, without being compelled to comply. Many bodies do this already (see case study).

Recommendation: the PCC should, at minimum, make the minutes of its meetings public.

Recommendation: The PCC should act as if it were subject to the Freedom of Information Act.

41 Ipsos MORI, 2010

Case study: Voluntary compliance with FOI

There are a number of other organisations which broadly comply with the Freedom of Information Act, without being required to do so by the law. Each organisation is transparent in its own way, according to its own culture.

Defence Press and Broadcasting Advisory Committee

“Although not subject to the Freedom of Information Act 2000 or the Freedom of Information (Scotland) Act of 2002, the DPBAC is committed to practising a policy of maximum disclosure of its activities consistent with the effective conduct of its business and the need to ensure that it honours any assurance of confidentiality given to the individuals and organisations with which it deals.”

Solicitors Regulation Authority, the Law Society, Legal Complaints Service

Although the Solicitors Regulation Authority is not subject to the Freedom of Information Act 2000, the Authority will respond to requests as though they were subject to the Act.

Public attitudes

- 79% of people believe that an independent self-regulatory body should make the minutes of its meetings publicly available
- 78% believe that it should allow members of the general public to attend meetings where cases against the press are being investigated

Ipsos MORI face-to-face survey, 980 sample, conducted 8-17 January 2010



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Conclusion

The PCC's governance review comes at a critical juncture for the industry. Public expectations of independence, transparency and accountability have changed significantly since the PCC was created. These expectations have, in part, been fuelled by the press and new media.

There remains public support for an independent self-regulator. However, many industries have lost the right to conduct self-regulation because ombudsmen and regulatory bodies were ill-equipped to meet public demands. Utilities companies, banks and even politicians have lost public confidence in part due to being ill-served by their self-regulatory arrangements.

The public opinion survey, conducted by Ipsos MORI on behalf of the Media Standards Trust, demonstrates that public expectations of an independent self-regulator are greater than those which the PCC is currently constituted to fulfil. If it is to continue referring to itself in this way, its governance and operations require reform.

Though the PCC was created to prevent direct statutory control, the emerging case law around privacy has introduced further limits to freedom of expression.

Further statutory regulation of the press represents a significant threat to a fair and democratic society. Therefore, it is imperative that self-regulation retains public confidence and demonstrates that it is independent, transparent and accountable.

Rapid changes in the media, fuelled by technology, mean that statutory regulation is becoming ever more problematic. If the press is able to support a system of effective self-regulation, it can demonstrate to other parts of the media, politicians and the public that it is possible to devise an effective self-regulatory system that remains fast, free and fair whilst also being independent, transparent and accountable.

Self-regulation, as opposed to just complaints handling, can work without statutory backing, as demonstrated in this submission. But the industry needs to decide if it wants the PCC to act as a complaints ombudsman and be presented as such or be empowered to act as a wider self-regulatory body.



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Appendix 1: List of recommendations

The Press Complaints Commission should be re-named the Press Standards Commission.

The remit of the PCC should be widened: to uphold the code, consider complaints and adjudicate on breaches of the code, on behalf of the public, in the public interest, for the purpose of ensuring public confidence in the code is maintained.

The PCC should have an obligation, not just discretion, to investigate possible breaches of the code, where there is prima facie evidence of wrongdoing, and formal responsibility for ensuring that the code maintains public confidence.

The PCC should determine whether the code in each case which has a material impact on standards and public confidence in the code.

The PCC should have a clear statement that its role is to operate on behalf of the public, in the public interest.

The PCC should accept complaints from any source—ie. third party complaints

The PCC should require each complaint to have been through a publication's internal processes before being escalated for handling by the PCC. The requirement for an internal complaints mechanism could be a condition of membership.

Publications should be required to report cases to the PCC that were not resolved within a 35 day timeframe.

Publications covered by the PCC should be invited to apply for membership. Signing up to the PCC's rules and regulations (e.g. compliance with the code of practice) should be a pre-requisite of membership.

The PCC should keep a regularly updated list – publicly available – of all the publications that are members.

The PCC should consider publishing a clear 'ladder of intervention' to indicate the different remedies it has at its disposal, according to the seriousness of the issue.

The PCC places a financial value on each upheld adjudication, graded according to the seriousness of the offence. This financial value would then be met when a correction or apology was published of equivalent advertising value.

The industry and the PCC should examine what range of powers the PCC requires in order to ensure public confidence that the code acts as an effective deterrent to unacceptable forms of journalistic practice.

The office of chair should have a fixed term, preferably three years, with an option to renew. The decision to appoint and to renew should be made by the appointments commission.

The chairman of the PCC should not sit on the appointments commission.

No currently serving editors should sit on the commission itself.

The overall budget of the PCC should be increased to reflect its greater remit but accompanied by a plan to reduce the cost of handling complaints over time.

There should be a clear formula which determines how much each publisher contributes to the PCC.

The PCC should charge the publisher the costs of an investigation, where it is found to have breached the code.

The offices of charter commissioner and the charter compliance panel should be merged.

The public and the press should have the right of appeal to the audit panel which could then refer cases back to the commission.

An audit panel (formerly the charter commissioner and charter compliance panel) should be have responsibility for measuring the effectiveness of the PCC in ensuring compliance with the code and, ultimately, maintaining public confidence in the code.

The PCC should publish comprehensive complaints data that enables the public and the press to see who is being complained against and why, except where privacy concerns mean that it is not possible.



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The PCC should publish an annual summary which breaks complaints down by publication and by code clause, setting out where it has complied with, or transgressed the code, enabling comparison with its peers. This could form the basis of a brief report to each proprietor with recommendations and offers of assistance for improving performance in the next year.

The PCC should maintain a daily or weekly log of articles that are subject to complaint or investigation.

The PCC should, at minimum, make the minutes of its meetings public.

The PCC should publish the financial contributions of all publications in its annual report.

The PCC should act as if it were subject to the Freedom of Information Act.

Appendix 2: Attitudes towards press self-regulation

The Media Standards Trust commissioned Ipsos MORI to conduct a face to face opinion survey for this report. This method of polling gives access to a representative sample, including the views of older people and those from lower socio-economic groups. Where the question allowed alternative responses, the answers were rotated at random.

The survey was conducted between 8 and 17 January 2010 with 980 adults aged 15 or over in Great Britain.

Q1: Journalists writing articles for British newspapers abide by a code of practice. Who do you consider to be the best body to oversee this code of practice?

	Total
An independent self-regulatory body set up and run by those independent of the newspaper industry.	52%
A regulatory body set up by the British government.	17%
A newspaper industry complaints body – set up and run by the newspaper industry	8%
An independent body	1%
Other	<0.5%
Do not think newspapers should have a code of practice	3%
Don't know	19%



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Q2: Would you expect the chief purpose of an independent self-regulatory body for British newspapers to:

	Total
Monitor the press' compliance with a code of practice, on behalf of the public	48%
Conduct investigations when there is significant public concern of wrong-doing	25%
Mediate complaints about news articles between newspapers and complainants	12%
Don't know	14%

Q3: How important, or not, is it that an independent self-regulatory body governing British newspapers should represent each of the following?

	The interests of the newspapers	The interests of those making a complaint	The interests of the general public
Very important (4)	16%	57%	61%
Fairly important (3)	42%	31%	28%
Not very important (2)	25%	3%	3%
Not at all important (1)	8%	1%	1%
Don't know	9%	8%	8%
Important (net)	58%	88%	89%
Not important (net)	33%	4%	3%
Mean	2.72	3.57	3.61



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Q4: If there is evidence to suggest that a newspaper has published an article that may be inaccurate, do you think an independent self-regulatory body should:

	Total
Be obliged to investigate whether it is inaccurate	48%
Have the option to investigate whether it is inaccurate	26%
Wait for a complaint from any member of the public or elsewhere before investigating whether it is inaccurate	10%
Wait for a complaint from someone directly referred to in the article before investigating whether it is inaccurate	5%
Don't know	11%

Q5: Where there have been signs of public concern, would you expect an independent self-regulatory body to carry out an investigation:

	Alleged phoningtapping by a British newspaper	Accusations by a British newspaper that parents of a child were involved in the disappearance of their child	An article in a British newspaper infringing the Prime Minister's privacy by recording a personal telephone call between the Prime Minister and a third party	An article in a British newspaper alleging that there are unexplained circumstances over the death of a pop star
Yes – definitely	55%	53%	40%	25%
Yes – probably	26%	28%	33%	38%
No – probably not	5%	8%	11%	19%
No – definitely not	4%	2%	6%	5%
Don't know	9%	10%	10%	11%
Yes (net)	82%	80%	73%	64%
No (net)	9%	10%	17%	25%

Q6: How appropriate or Inappropriate do you consider each of the following possible penalties on the newspaper to be?

	Require a newspaper to publish a correction in whatever part of the newspaper the editor decides	Require a newspaper to publish a correction and the newspaper editor to specify where the apology should be published	Require a newspaper to publish a correction and the newspaper editor to specify where the apology should be published and its size	Impose a fine on the newspaper, in serious cases	Eject the newspaper from the self-regulatory body in the most serious cases
Very appropriate (4)	31%	40%	36%	61%	27%
Fairly appropriate (3)	27%	30%	33%	25%	29%
Fairly inappropriate (2)	18%	13%	14%	5%	16%
Very inappropriate (1)	14%	8%	8%	1%	13%
Don't know	10%	9%	9%	9%	15%
Appropriate (net)	58%	70%	69%	85%	56%
Not appropriate (net)	32%	21%	22%	6%	29%
Mean	2.84	3.12	3.07	3.59	2.83

Q7: To what extent is it important, or not, that an independent self-regulatory body:

	Makes the minutes of its meetings publically available	Allows members of the general public to attend meetings where cases against the press are being investigated	Makes the identity of who is funding the regulatory body known	Publishes the amount of money being provided by those funding
Very important (4)	41%	38%	41%	36%
Fairly important (3)	38%	40%	35%	33%
Not very important (2)	9%	10%	12%	16%
Not at all important (1)	2%	3%	3%	3%
Don't know	10%	9%	10%	13%
Important (net)	79%	78%	75%	69%
Not important (net)	11%	13%	14%	19%
Mean	3.32	3.25	3.26	3.16



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Q8: If you believe a newspaper article to be inaccurate, would you expect in the first instance to have to complain to:

	Social grade				
	Total	AB	C1	C2	DE
The newspaper that published the article	59%	64%	58%	57%	55%
An independent self-regulator	24%	25%	25%	29%	17%
The journalist who wrote the article	10%	6%	10%	8%	16%
Don't know	7%	5%	7%	6%	11%

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**5/7 Vernon Yard
Portobello Road
London W11 2DX**

020 7727 5252

**info@mediastandardstrust.org
www.mediastandardstrust.org**

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