NUJ - The Future of Press Regulation
Module 4 Submission

Introduction

This is the NUJ's submission to module 4 of the Inquiry setting out the key issues we believe need to be addressed in establishing a successor to the PCC, tackling and overcoming the considerable flaws that have existed in its self-regulatory approach to date. Through the additional witness statements we have submitted, we will also bring examples of press councils from around the world to the attention of the Inquiry, with examples of how the journalists' trade unions play an integral part in maintaining a healthy system of accountability whilst defending the freedom of the press.

The PCC

The PCC has failed as a regulator of the press. Since Calcutt despaired of his creation in 1993 and called for its replacement with a statutory tribunal the PCC's many detractors and critics have consistently pointed to its failings, failings that have allowed the press to reach the point not just of immorality, but of outright criminality. Despite many opportunities and sustained lobbying by the NUJ and other groups such as Mediawise and the Campaign for Press and Broadcasting Freedom, the PCC has failed repeatedly to seize the chance to reform. During its own review process undertaken as recently as 2009/10 in the middle of the phone hacking debacle very little was changed, ignoring virtually all of the reforms suggested by the NUJ; reforms later suggested by Lord Hunt for a PCC2 during his statements to the Inquiry. Nor is the NUJ the only organisation to be ignored by the PCC.

Several select committees of the House of Commons have suggested reforms that they felt would improve regulation and complaints handling. Indeed, based on the evidence of ignoring advice from a range of bodies, there is every reason to assume that the PCC actively decided to sustain the "business as usual" approach that has played its own sorry part in allowing the industry to drift to where it is today. The PCC's entire history and that of the Press Council before it, indeed all regulation of the press since the Second World War, is a tale of too little too late as Lord Justice Leveson himself noted whilst hearing evidence from Lord Hunt: "it is rather disturbing the number of times since the last war that we've been in a position of great calamity for the press, there has been an inquiry, everybody agrees something must happen that is different, that is taken on board… then disaster happens and everybody starts again."

It is the very structure of the PCC as an industry-fostered self-regulatory body that has led to its failure. Set up merely as a complaints body with no role in protecting the rights and freedoms of the press or public, working to a code drawn up solely by editors and a commission made up, initially at least, almost entirely of editors, it has spent most of its 22 years existence racing furiously to catch up with demands for reform. It included campaigning for press freedom as one of its objects in 1991 after seeing the massive error of not including this in its constitution. The change allowed it to consider journalism ethics in the light of press freedom and public interest, something that is incredibly hard to do without the justification of freedom of expression on your side. After Calcutt recommended its closure in 1993 it added more members of the public to its board in a bid to make it appear more open. It later almost expired in a round of vicious rows following the press's inexhaustible appetite for gossip about Princess Diana; only the careful nurturing of John Wakeham allowed it a short if sickly recovery. Successors to the chairmanship either found the task too monumental or had insufficient appetite for reform to keep pace with increasing bad behaviour and further reforms were few and far between.

Self regulation has been given every possible chance to work in many different forms over the past 40 years and has failed the test every time. It is for this reason that for the past two years it has been the NUJ's policy position – as set down by its democratic delegate meeting which forges and evolves policy on behalf of the 38,000 journalists in the union – that the PCC has shown itself to be incapable of genuine reform and that it must be dismantled and a new organisation created that cuts all links with the way business has been done in the past.

It is important to remember that whilst press freedom is crucial to the rights of citizens and to a strong democracy, the press has no more right to make money through criminality or unethical behaviour than any other commercial organisation. We either reform the press to ensure it is capable of working with a self-regulatory system or we move to a different form of regulation or both. Since changing the structures and working methods of the press is largely (but not entirely) outside the scope of the terms of reference of the inquiry, the concentration must be on

moulding a form of regulation that will be both effective but also minimise interference with press freedom by anyone, including government and media proprietors.

For the reasons given above, the NUJ does not believe that a rebranding – the PCC Mark 2 that is often referred to – would do anything other than repeat (yet again) all the past mistakes that have been made. Even Lord Hunt, after examining from the inside does not believe that a PCC2 could work. The idea is wholly unacceptable to the NUJ and we are sure would be wholly unacceptable to the general public. It would do nothing to introduce the wholesale cultural shift that is necessary within the press to bring ethics and a natural compliance with the law to the forefront of all news gathering. The PCC itself was an attempt to rebrand the old Press Council, a rebranding that actually saw the weakening of press regulation from a body seen as largely useless to one that was not only useless but was actually on occasion complicit in allowing if not conniving at illegal and unethical activity. Many of those giving evidence to the Inquiry, including former chairmen of the PCC, showed the PCC's unwillingness to take on what they knew must be serious matters of immorality. The on-going concerted lobbying exercise we have witnessed in recent months, by those in the industry and the current PCC who believe they have so much to lose, should be seen for what it is – a last ditch attempt to protect vested interests with the aim of seeking to ensure that any replacement body is as palatable to the industry as possible, and as close to the status quo as they can get away with.

Why is regulation important

Regulation is a way of controlling the balance that must exist between freedom of expression and other universal human rights such as reputation, privacy, fair trial. Freedom of expression is vital to a fair, democratic society and is a right often best manifested by the media on behalf of the individual when subjecting the powerful to scrutiny. To suggest that only self-regulation is capable of doing this balancing act is to fly in the face of clear evidence that self-regulation has failed and that other systems can work extremely well for other industries or in other jurisdictions. The NUJ is no keener than anyone else on confusing protection of the rights of others with allowing governments or others in powerful positions to control what appears in the press for their own ends, and it certainly does not believe that press barons and editors should be allowed to interfere with the rights of privacy, fair trial and reputation of private citizens solely to maximise their own right to make a profit. So we must identify a way of regulating that moves on from self regulation to a system that ensures protection without unduly limiting press freedom.

The Future – A System of Genuine Media Accountability

The primary duty of any new body must be to ensure the freedom of the press. It must be free from interference from the state and politicians – and equally independent of the media owners and editors.

The body needs to be free for users at point of access so that there is no financial impediment to complaints about standards. The one small bit of praise for the PCC that is constantly and justly repeated is that it is fast and free. These are attributes that need to remain in a successor regulator and the service should be accessible to all and free from bureaucratic barriers that serve to slow the pace to ensure a speedy redress for those who believe they have been the victim of an injustice.

The body needs to encourage good practice. This must include a Right of Reply allowing those who are the subject of harmful inaccuracies in a report to put the record straight. When errors are made editors must be encouraged to make corrections immediately and in good faith. Mistakes should be acknowledged with equal prominence to the offending article –such changes will over time serve to profoundly change behaviour within newsrooms. Complaints should be dealt with by editors speedily and effectively offering an apology or correction where appropriate without obliging the complainant to seek support elsewhere.

Where the good practice of a right of reply is believed to be inadequate, the new body should be open to take complaints about all aspects of editorial material published in newspapers or their associated websites. One of the main failings of the PCC has been its limitation on who may complain thus ensuring that complaints are largely limited to disputes about inaccuracies. These are the type of complaints that in the main should have been dealt with on first application to the editor but in the PCC's system have normally been dealt with through the resolution process after complainants failed to get satisfaction from the newspaper. Sir Christopher Meyer in his evidence made much of the importance of resolution by the PCC - that is a poor argument when most resolution work done by the PCC was only doing what any good editor should have done on first receiving the complaint. Few cases ought to need the help of a professional conciliation service.

Third party complaints are not normally allowed by the PCC yet it is complaints from third parties that have been most the significant in terms of reader outrage over the past 20 years, whether it was the infamous Jan Moir column concerning Stephen Gately, concerns over coverage of immigrants or pre-coverage of the world cup semi-final against Germany. All these issues brought large numbers of complaints but all were dismissed by the PCC as third party complaints outside their jurisdiction as a readers' complaints body. It is also not acceptable that collective groups are unable to complain simply because they have not been identified personally when newspapers demonise vulnerable groups in society, such as the disabled or asylum seekers. Those impacted collectively should be able to complain and seek a right of redress. The regulator should then be able to use a code that can help to distinguish

between causing harm to a vulnerable group and the right to comment or, if need be, even offend in the pursuit of the right to free expression.

The PCC's approach to third party complaints compares unfavourably to other regulatory bodies, such as Ofcom and the Advertising Standards Association. Ofcom considers all complaints it receives and will assess any complaint against the Broadcasting Code. In the case of the article in the Daily Mail by Jan Moir about Stephen Gately, the PCC initially said it was not able to respond to the many complaints from those who felt the article was homophobic, saying: "The PCC generally requires the involvement of directly-affected parties in its investigations."

This has also been their approach even when journalists themselves have complained about being pressured to write unethical material. In September 2001, NUJ chapel reps at Express Newspapers took the unprecedented step of making a complaint to the PCC about the reporting of the Daily Express's coverage of asylum seekers. Some journalists at the title, particularly those directly involved in the coverage, felt so upset and angry about the racist tone of the Express's coverage and so powerless to individually do anything about it, that they were considering leaving their jobs. The NUJ chapel met and issued a public statement about the "hate stirring" front page headlines – one of which was "Asylum seekers run for your lives". They felt that the headlines were being driven by editorial interference from the proprietor.

In 2004 Express journalists again complained to the PCC over the inflammatory and blatantly inaccurate coverage of so-called gypsies coming to the UK during the enlargement of the EU. In both cases, the chapel believed the paper was guilty of breaking the PCC's code of conduct on discrimination – which states: "The press must avoid prejudicial or pejorative reference to a person's race, colour, religion, sex or sexual orientation or to any physical or mental illness or disability."

In each case the PCC did absolutely nothing at all to help. The complaints merely warranted a short written reply from the then chair, Sir Christopher Meyer, saying he was satisfied that no journalists were being put under any pressure to write inaccurate or unethical material. Perhaps he got that impression from the paper's then editor Peter Hill who sat with him on the PCC, but he certainly didn't get it from any journalists at the Daily Express as no one from the PCC made any attempt to investigate. The NUJ journalists were concerned that these attacks on marginal groups within the UK were groundless in fact and could incite hate attacks against the people they were aimed at. But the PCC's complaint system does not acknowledge a submission on these grounds.

More recently, the media has taken an equally irresponsible approach to disability. A study by Glasgow University, *Bad News for Disabled People: How the newspapers are reporting disability* (October 2011) looked at media coverage of disability in five newspapers in 2010/11 - the Sun, Mirror, Express, Mail and Guardian, comparing

them to a similar period in 2004/5. It found a significant increase in the reporting of disability in the print media with 713 disability related articles in 2004-5 compared to 1,015 in 2010-11. There was also an interesting shift in perspective. Articles focusing on disability benefit and fraud increased from 2.8 per cent in 2005/5 to 6.1 per cent in 2010/11. There had been a significantly increased use of pejorative language to describe disabled people, including suggestions that life on incapacity benefit had become a 'Lifestyle Choice'. The use of terms such as 'scrounger', 'cheat' and 'skiver' was found in 18 per cent of tabloid articles in 2010/11 compared to 12 per cent in 2004/5. The "plucky" disabled person once lionised as someone who survived despite the odds had turned into a benefit scrounger.

Typical headlines and articles cited by the Glasgow University study included *75% on Sick are Skiving* in the Daily Express (January 26, 2011) and in the Sun*: Shirker's Paradise; Exclusive: IDS on Benefits Britain, Wagner's one of Million who Claim Incapacity, Work-shy are Largely to Blame for Deficit Crisis* (December 1, 2010). The authors concluded: "Much of the coverage in the tabloid press is at best questionable and some of it is deeply offensive. The increased focus on benefit fraud with outlandish claims that over 70 per cent of people on disability benefits are frauds is an example of this type of reporting. These claims are made overwhelmingly without evidence and at no point are the media reporting the very low levels of fraud that occurs overall in relation to these benefits. We would further cite the use of pejorative language, the failure to explore the impact of the proposed cuts on disabled people's quality of life, the reluctance to criticise government policy on these issues and the frequent representation of some disabled people as undeserving of benefits as potentially contributing to what could become a highly inflammatory situation."

The study looked at individual cases and cited examples of where individuals, some with mental health problems, were characterised as scroungers were subjected to hate mail, including one man who received letters saying he should be castrated. The Equality & Human Rights Commission report *Hidden from plain sight. Inquiry into disability-related harassment* said that its evidence led it to believe that the 1,567 cases of disability hate crimes recorded in the ACPO data for 2009/10 significantly underrepresented the problem. It said: "Disabled people often do not report harassment, for a number of reasons: it may be unclear who to report it to; they may fear the consequences of reporting; or they may fear that the police or other authorities will not believe them."

Yet because the present system of regulation does not allow third party complainants, these individuals are not able to take up complaints about how media coverage has impacted upon their lives. There has been some redress from parts of the media: Ofcom upheld complaints against the BBC and E4 for use of offensive language to describe disabled people.

The NUJ's code of conduct is explicit. Section 9 says that a journalist must not produce material "likely to lead to hatred or discrimination on the grounds of a person's age, gender, race, colour, creed, legal status or sexual orientation". Unfortunately many newspapers do not follow this code – which underlines again why a conscience clause for journalists is vital. The NUJ's Disabled Members Council issued a statement urging journalists to operate within our recognised code of ethics, which calls on all NUJ members and media colleagues to "support and sustain fair and balanced reporting of matters relating to disabled people".

This was an issue further explored at the Trades Union Congress Disabled Workers' conference in May. Mike Smith, NUJ national executive member for disabled members, said: "The NUJ has told the Leveson Inquiry that the conscience clause needs to be backed by statute to protect journalists who refuse to be pressured into going into the sewer and use methods that we all condemn." He added that the new press regulator must be open to complaints from the public and organisations such as the NUJ and it should have a transparent mechanism to deal with such complaints. The conference passed a motion which acknowledged that unionised workplaces were more likely to be able to "more effectively counter commercial and political pressures that insidiously encourage poor ethical practice; and to promote union membership among all workers handling news and information".

Other submissions to the Inquiry by women's groups have also demonstrated how unbalanced reporting, which places the blame on women for violence committed against them by portraying victims in a negative light, focusing on dress, behaviour or alcohol consumption, can impact upon their lives. As well as normalising this perception, it also serves to discourage other women to come forward and report violent acts. Whereas those who are offended by sexist advertisements may make third party complaints to the Advertising Standards Authority, no such right is accorded to women who are offended by gratuitous images of women in the press or misreporting of issues affecting women.

Of course the media is not responsible for all the world's ills but it does have a powerful role to play in shaping attitudes. Enabling members of the public to gain genuine redress from a future regulatory body will serve to focus the minds of editors who have allowed unethical reporting to flourish, and serve to change newsroom behaviour.

The future of regulation

There are three key questions that need to be answered when a new regulator is formulated:

From where should the new body gain its authority?

What powers should the regulator have and who should it regulate?

How will the regulator be constituted and its members chosen?

Authority

This is by far the thorniest of the three questions and goes to the heart of the self regulation versus any other form of regulation debate. If some commentators are to be believed, any form of regulation other than self regulation will lead to complete curtailment of a free press. Several witnesses, including Lord Hunt, gave evidence suggesting that many parliamentarians are just waiting to get their hands on legislation of this sort in order to pervert it to limit press freedom. First we need to be clear that statutory underpinning of regulation is not the same as statutory regulation. There is after all already plenty of statutory regulation limiting press freedom. This ranges from limits on reporting the courts, through defamation to data protection, regulation of investigatory powers, terrorism legislation, obscenity legislation, copyright law and various hate, harassment and discrimination laws. The number of new Bills before parliament at the moment that contain clauses affecting or limiting press freedom approaches or possibly even exceeds double figures yet hardly anyone seems overly worried about them. Indeed many have been welcomed as a useful reform. So there is no evidence of predatory parliamentarians just waiting for an opportunity to scupper press freedom.

All our experience in broadcasting, including the last eight years with Ofcom, shows that regulation supported by statute is not of itself damaging. It is ensuring that those with access to power whether members of the government, the business community or elsewhere are not able to abuse the regulatory process or press freedom for their own ends.

One idea formulated is a system of commercial contracts tying publishers in to a series of regulatory commitments. Lord Hunt is a strong supporter of this approach and claims to have considerable support within the industry. That is hardly surprising. This structure allows proprietors to retain total control of the organisation and funding; publishers can still choose whether or not to join and would be able to leave when they chose, although admittedly not easily. There are also indications in his initial proposals that most of the ethical pressure will be placed on journalists not editors, whilst giving journalists no voice in the new system.

Plans for the new code to be placed in contracts of employment, audits of internal regulation and training, whilst to be welcomed if journalists or their representatives are involved in its management, would become additional areas of workplace stress and conflict when used (as our evidence to the Inquiry shows they have been) as ways of proprietors and editors having their cake and eating it. Journalists do not shy from taking responsibility for their work, but they require some power and authority over its use if they are to be obliged to be held responsible for it. We would also be concerned that this would be just a short step away from registration of journalists; a system that would make journalists an elitist group instead of ordinary citizens

fortunate enough to be paid to express their right to free expression. It is also by far the easiest way for those keen on suppressing the media to achieve their ends.

Whilst the NUJ is hugely disappointed that we have reached this point, despite more than 20 years of campaigning for reform of the PCC and press regulation, we now see it as inevitable that there should be some statutory provision for a new regulator that would be able to take complaints, enforce penalties, carry out investigations and monitor performance. The legislation would need to identify who would be regulated by the new body, how the new body would be funded and how it would be constituted.

It is vital that a new regulator covers all commercial press equally. No one should be able to avoid regulation simply by walking away from the table or refusing to pay a subscription and the easiest way to do this is with statutory powers. Other methods have been suggested such as amending VAT law to allow members to be VAT free or allowing some other form of carrot. However, the NUJ believes that all of these actually work much better as part of a statutory system.

The new regulator should also have a role in drawing up a code of practice. The NUJ has had such a code since 1936. Whilst we think our present code is entirely appropriate for use by the new regulator we should certainly be involved in the development of any new code. It is the ultimate arrogance to think that those who are most likely to be involved in operating the code on a daily basis should not have some involvement in drawing it up. If a code is to have any value it must be informed by the ethical standards of those who will work within the framework and must be rooted in the highest professional standards. Furthermore, the code must not only lay down standards for those who provide copy and pictures, it must extend to those who publish them.

Funding of the new body requires some careful consideration. There are only three options: state funding, a levy on media enterprises or fees for use. The NUJ, whilst accepting the concern of some critics about the principle of accepting state funding believes this may be the easiest way to ensure true independence. A levy on newspapers and broadcasters could be organised perhaps by use of tax breaks, some level of defamation defence from being an active supporter of the new regulator, or subsidised distribution. The third option would be to charge fees for complaints against those companies who are not prepared to treat complaints seriously in the first instance. These should not be from the complainants; the NUJ is clear that this regulator should be free and fast for complainants. However, a fee could be charged on the newspaper, broadcaster or website concerned for every complaint made with a surcharge for complaints that were upheld. This has the attraction of making those responsible for the most complaints pay more as well as penalising those who are not prepared to treat complaints seriously in the first instance.

Automatic fee charging could be onerous for small newspapers, websites and broadcasters and might in itself encourage vexatious complaints and so would require differential fee arrangements and a potential fee waiver scheme.

Powers

The statutory powers should identify who would be involved in such a regulation scheme. This must include all publications of a certain size and their associated websites. The growth of news websites that stand alone from publications should also be considered. The take up of associated internet sites and the introduction of new newsrooms from internet only publishers has removed the traditional distinction between broadcaster and publisher. Some websites, those associated with broadcasters, are at present regulated by Ofcom and so oblige restrictions that websites associated with newspapers and the PCC are not required to match. Video matters of harm and offence are as likely to be raised on internet video as only traditional broadcast media. Either regulation of such sites should be included in the remit of Ofcom or the new regulator needs to consider introducing a code that includes examination of harm and offence, particularly in internet output.

This makes the whole issue of news websites a thorny one. This presents an opportunity to use the new Communications Bill to reconsider whether the linkage of websites to more traditional technologies for the purpose of regulation is appropriate or whether online news sites should become a new category, regulated in their own right by the new regulator or a separate regulator.

Small publications are sometimes not commercially driven, but when they are, might well seek to be involved with the new regulator in order to benefit from some of the carrots on offer. A trigger point for regulation might be, for example, when a company becomes eligible for VAT, or if the publication has a circulation greater than 5,000 or a turnover exceeding £50,000 or a website has a significant number of page hits. This would avoid the debate about whether small specialist or polemic magazines or websites should be involved. A club or society magazine, a parish newsletter or fan website or blog is not the issue here. A lack of proper regulation of large-circulation national newspapers is what got us into this mess, as research clearly supports, and this is where the major attention should be focussed.

In addition to dealing with complaints from the public, regardless of whether they are involved in the story or not, the new body should have a role in monitoring the press's performance as well as monitoring threats to press freedom. The two are the opposite sides of the same coin and both are important matters of public concern. It could monitor trends on reporting. For example, if a newspaper is regularly responsible for stories that are anti-Islamic, the new body must have the autonomy to launch an investigation and if necessary take action.

The new body should also be given the power to investigate issues of concern over the standards of press performance and commission research into press behaviour. This would allow a better standard of public debate on issues of concern such as coverage of asylum seekers, the demonising of crime suspects or the use of paparazzi pictures all of which have sparked debate over the past couple of years. The new regulator could identify its own investigations or could take up investigations following complaints from journalists about standards in their own paper or more generally or from the public.

It must be able to deal with complaints quickly, effectively and at no significant cost to a complainant. It must also have teeth to be able to enforce its adjudications and if necessary penalise a publication that breaches the code recklessly, repeatedly or carelessly. The only sensible penalty can be fines and the ability to insist on the size and placement of a correction or apology. Real penalties of this sort would quickly persuade editors to deal with complaints themselves very early in the process rather than waiting to be instructed by the new regulator – the best solution for all. With the present system, it is to the editor's advantage to negotiate endlessly with the PCC until eventually (at worst) being obliged to place a short adjudication somewhere inside the paper. If there is a proper recognition of the need to publish rights of reply, corrections and apologies early on this would be a major step to better standards.

Research shows that very few of the complaints that are actually adjudicated by the PCC at present are reckless, repeated or careless and it is unlikely that with as few as 20 upheld adjudications a year that more than two or three newspapers would face fines. Of course with a tougher regulator, there may well be more upheld complaints, but the point of a good regulator is to ensure that standards are high.

Fines would need to be levied on an equitable basis but one that ensured that large circulation newspapers such as the national papers received as much but no more pain than a small weekly paper. This could be done by levying fines based on the paper's circulation or a website's hit rate or (perhaps more appropriately) their basic advertising rates. This could then be factored by the regulator according to their view of the seriousness of the breach.

Constitution

The NUJ is most concerned about journalists, one of the key stakeholders in the regulation mix and the one that has been most consistently ignored since 1989. Journalists have a vital role to play in ensuring ethical and legal standards of reporting and so need to be centrally involved in a new regulator. We believe it is no surprise that despite claims to the contrary, standards within the press have fallen over the past 20 years when the NUJ has been increasingly and intentionally excluded from involvement by newspaper proprietors. There are of course other stakeholders who have an interest in how this regulator will perform its duty:

The public: The public both reads newspapers and also individually or in small groups is often the subject of stories, some of which they might prefer were not published. This group includes celebrities although the relationship between celebrities and the press is more complex than for most of the general public.

Newspaper proprietors: Proprietors are concerned with the profits of their papers and so their standing with their shareholders. However, trading unethically or illegally may not be in the shareholders' best interests.

Editors: editors determine to a large extent the values of a publication and shape the culture of a publication. However editors are also charged by their proprietors with maximising circulation and therefore profit and as such have a major part to play in the type of story run in the paper and the culture that exists in the newsroom. Evidence of the last few years, following the concerted efforts of successive governments and employers to minimise the role of trade unions, shows that this culture has often become toxic, leading to entirely inappropriate behaviour. The PCC has viewed editors as the font of all wisdom whose views should never be open to challenge, excluding from the process of regulation other journalists who would have brought knowledge, experience and an informed perspective to the process.

Pressure groups: There are a large number of pressure groups with particular viewpoints most supporting press freedom but very few suggesting that there is not a major requirement to change.

It is important that all these stakeholders are represented on the new body in some form as excluding them, leaving them outside of the tent, is bound (especially following this long Inquiry) to lead to concerns that the replacement body has been designed to ignore the legitimate concerns of some stakeholder or another. Many of the stakeholders can be represented easily by a professional body, the NUJ for journalists, the Society of Editors for editors, trade associations for proprietors whilst the public could be represented by appropriate civil society organisations in a process similar to that already established successfully by the Press Council of Ireland. At a time when the very existence of newspapers is under threat the involvement of civic society in a new regulatory framework should be seen as an opportunity for the industry to re-establish the place of the newspaper in the ever changing media landscape.

Such a system of co-regulation would fundamentally change the cultural approach that has been dominant for decades – it would do away with what Harriet Harman rightly termed the system of "editors marking their own homework" particularly when – as some editors have claimed – they are unaware of practices widespread in their newsroom. The NUJ believes there is much to be learned from the Press Council of Ireland and the Ombudsman approach it uses.

The use of an Ombudsman fits well with the system of regulation we have outlined above. The Ombudsman would be the first point of call for the public, dealing with

adjudication and conciliation. This office could also run seminars on ethics and professional standards and be a clear champion of press standards and ethics

When this Inquiry is over there will be a vital job of work to do in rebuilding trust within journalism and the media. An Ombudsman whose remit is clearly one of defending press freedom, representing the interests of ordinary members of the public, and standing up for journalistic integrity and ethics could play a major role in achieving this. He or she would be a bridge between the industry and the public, and someone journalists could identify with as a defender of standards and ethics. The Ombudsman would take complaints, deciding whether they were to be upheld or resolved in some other way. The Ombudsman's office would play a significant role in promoting ongoing dialogue about standards, engaging with interest groups on issues of particular concern or sensitivity.

Sitting above the Ombudsman would be the new authority. There would be a right of appeal from the Ombudsman to this authority, which would act as the policing body. The Ombudsman would refer those cases requiring penalties to this panel operating in much the same way as Ofcom's sanctions committee. The Ombudsman would also refer major cases of principle to this panel. The panel would also initiate investigations and ask the ombudsman to monitor the press over specific trends.

Conscience Clause

All those within the new body must agree to implement a Conscience Clause in the contracts of all journalists. This has been something the NUJ has been campaigning for over many years so that when journalists stand up for a principle of journalistic ethics they have a contractual protection against being dismissed. And – crucially - so they have the confidence and the security to put their head above the parapet in the first place. After hearing our evidence in 2003 the commons select committee into privacy and media intrusion recommended such a clause but it was rejected by both the PCC and the Society of Editors who instead prefer to push the idea of inserting their code into journalists' contracts of employment without providing journalist the opportunity to properly defend that code.

The clause is: "A journalist has the right to refuse assignments or be identified as the creator of editorial which would break the letter of the spirit of the Code. No journalist should be disciplined or suffer detriment to their career for asserting his/her rights to act according to the Code."

One mechanism by which this clause could be inserted into contracts of employment would be by including in the future code of conduct a provision requiring such a clause to be so incorporated.

Wider issues

There are wider issues too which would do much to improve press standards. Media ownership, market share and access to distribution all play a significant part in how

the media conducts its business. The increasing consolidation of media ownership and the disproportionate power and influence this brings with it have distorted the culture within our industry. When newspaper titles are bought and sold, there should be a rigorous public interest test. The highest bidder should not be allowed to simply walk away with our national titles in their pocket and the accompanying power and influence that brings, without adequate scrutiny to a process that invariably involves a secretive sealed bid.

It should not be possible for our titles – whether a national title or a local newspaper – to be bought and sold on the whim of one man, or corporation, or used as pawns to further an individual's commercial or ideological interests.

As things stand, companies sometimes close down titles in their entirety without putting the newspaper up for sale – this impacts upon plurality and prevents new operators coming into the sector. When The London Evening Standard merged with The Evening News, it was shortly followed by the latter's closure. For over 20 years this deprived London of having two evening papers, aside from the occasional spoiler newspaper "launched" to stop new entrants. If a company decides it does not want to run a newspaper, it must be obliged to sell on the title – not jealously guard them to thwart potential new entrants to the market.

Consolidation of ownership serves to diminish the editorial viewpoints the public are served up. This is an issue not just in our national titles, but also in the regional and local press and in devolved administrations.

The NUJ believes that limits should be set on news market share. We want to see the maximum market share set at 25 per cent for national news; regional news on all platforms and in each of the following platforms - radio, television, newspapers and online. Any market share that reaches or is liable to reach 15 per cent should be subject to a public interest test and public consultation. The NUJ believes that the power to invoke the public interest test should be assigned to Ofcom rather than the secretary of state, and that Ofcom should review plurality at regular intervals.

Addressing the challenge of ensuring a newspaper's access to display / shelf space in newsagents and retail outlets is also important. This is exacerbated by the monopoly ownership of distribution and of print production in the UK, serving to block competition and make it incredibly difficult for new entrants to gain a foothold in the newspaper sector.

Unwaivable Moral Rights

A new body needs to enforce a more ethical approach to news images. Media proprietors set the agenda of celebrity news and the intrusion to which this can lead, creating a situation where photographers feel forced to take photographs that the publishers demand. Publishers often blame freelances for the worst excesses of the

press. The moral right to identification and accreditation as the creator of the content, as well as to integrity, would reduce the effectiveness of this excuse and create a far clearer line of responsibility for the work published.

Therefore unwaivable moral rights should be extended to cover newspapers and magazines, as these were specifically excluded from the 1988 Copyright, Designs and Patents Act. For example - Sienna Miller raised an example of a photograph being deliberately cropped to make her look drunk.

As the law stands, newspapers and magazines have the right to alter text and images, even if that distorts the original work. This exception was included in the Act at the behest of the publishers precisely because they want the right to distort text and images. Authors care much more about the integrity of their work than the publishers do. If authors were allowed stronger and more enforceable moral rights it would make it much more difficult for their work to be distorted.

Guarding the Guardians - Trade Unions in the Workplace

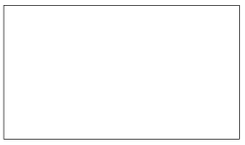
Apart from the code of conduct enforced by the new regulator, the NUJ believes it is essential that the Regulator insists on allowing journalists genuine collective bargaining within their workplaces. A well-organised union provides a counterbalance to the power of the editors and proprietors, it can limit their excesses and gives journalists the confidence to raise their concerns. The collective can tackle stress and bullying and defend principles of journalistic ethics as well as dealing with the bread and butter industrial issues of pay and terms and conditions.

The only way a union is able to sufficiently and actively protect the interests of its members is by the establishment of genuine collective bargaining. This is a vital means of preventing the unacceptable "culture, practices and ethics" under investigation in this Inquiry, as well as being of course a fundamental human right (*Demir and Baykara v Turkey* (Application 34503/97) ECHR, 12th November 2008).

Again, inserting a provision into the future code of conduct requiring the recognition of trade union rights within the workplace would be a mechanism by which this could be achieved.

We believe there is a clear link between a strong trade union presence in a workplace and a strong ethical awareness. Collective trade union representation is a moral, human right yet far too many workers in our newspapers are denied this right.

Michelle Stanistreet, NUJ General Secretary



Prof. Chris Frost, Chair NUJ Ethics Council and National Executive Council member