Supplement to written statement of 5 December 2011 by Sir Louis Blom-Cooper QC to the Leveson Inquiry: culture, practice and ethics of the Press, July 2012

Part I – General

1. Since submitting my evidence to the Inquiry seven months ago, much material has emerged in the course of the proceedings to merit fresh consideration on what, if anything, should replace the Press Complaints Commission. Lord Hunt of Wirral, the new chairman of the Press Complaints Commission, together with the industry's funding body, *Pressbof*, is proposing a replacement by way of a regulator, with certain executive powers over newspapers, their editors and journalists, being enforceable through contractual arrangements with the various media owners. In the light of this development, I would like to submit my opinion, together with evidence of factors that relate exclusively to the disbandment of the Press Council and the establishment of the Press Complaints Commission in 1990. I should also like, if the Inquiry is interested, to expand on the history of press self-regulation, to which I alluded in outline in my written statement of 6 December 2011. I should add that I do not resile from the recommendations which I submitted in my previous statement, although some elaboration may be necessary.
2. Under the heading *Other functions* in my earlier evidence (page 15) I indicated that if the newspaper industry wished to maintain its own complaints system, without any statutory intervention either to give legitimacy to the compaints system, privately established, or to provide a method of legally enforceable powers of the private body, there seemed (and seems) to me no reason why society should interfere with private rights to engage in activities that have a profound impact on the public interest. The establishment of the Advertising Standards Authority is a prime example of a sector of media life that can, and does, function successfully without statutory intervention. It is, perhaps, useful to point out that Ofcom, established under the Communications Act 2005, is predicated upon the existence in broadcasting and television of a public service. Statutory intervention in the field of the electronic media is thus instinctively appropriate. Not so, the print media which is founded upon the premise that anyone can start up a newspaper without the sanction of governmental authorisation. My conclusion is that the newspaper industry is perfectly entitled to regulate itself internally (even interstitially) under, of course, the operation of the private law of contract and tort. If that is the correct approach, the result is that the Inquiry should conclude that the newspaper industry can go ahead with its 'contractual'

arrangement, and needs no endorsement from the Inquiry, although the latter may think it appropriate to favour the proposed new development of a self-regulative system.

3. A decision of the Inquiry not to recommend any statutory intervention of the proposed self-regulatory system does not, in my view, answer the question whether that suffices to provide a society which rightly places high human value on freedom of expression as provided in Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (to give the Convention its full title) as set out in Schedule 1 to the Human Rights Act 1998 and enacted in section 1(3) of the Act. Given the ordinary law which applies to every person under the legal system (including all forms of journalism) the question is whether a non-statutory system of self-regulation is enough. That is a question which is not for me as a private citizen to answer. What I can supply to the Inquiry is my experience of the operation of a system of self-regulation which existed at the time of the transfer from the Press Council to a complaints body as envisaged by the Calcutt Committee in June 1989. I can also provide some knowledge of the functioning over 37 years of the Press Council, and my approach to the task of its last chairman, from 1989 to 1990. I have made some brief references in my earlier statement to the history of the Press Council which I have always assumed were pertinent to the social and political issues of press regulation.
4. I trust that it can be generally assumed that when I was chosen by the members of the Press Council at that time (which, for names are irrelevant, did *not* include the requisite two members of the National Union of Journalists: they came back to the Council's deliberations in 1989) I profoundly believed in self-regulation. I had read the reports of the three post-war Royal Commissions, in particular the third one of 1974-77 which was initially chaired by Mr Justice Finer and, after his untimely death in December 1974, by Lord McGregor of Durris, both of whom were close friends and from whom I had imbibed the ethos of journalism in Britain which I regarded as at the apex of high standards. I was acutely aware of the international efforts to license journalists, and considered such a development as an unwarranted constraint on any person's right to free speech. I anticipate that today no such form of certifying journalists would be considered, except that I note that Mr Paul Dacre, editor of the Daily Mail, in his oral evidence to the Inquiry was suggesting (if I understand him correctly) some form of accreditation of journalists in performance of their work in connection with certain public activities. I would regard such a proposal as a limited form of restriction on journalism that is publicly unjustified.

5. My espousal of self-regulation as practised (even if ineffectually) by the Press Council in 1989 was weakened by my experience as chairman, and my twenty years since, and as an outsider viewing journalism sporadically over the last two decades, and assessing its role in a civilised democracy, I am now sceptical of a continuation of the industry's self-regulation. I conclude, as I did in my earlier evidence, that the public needs an organisation, wholly independent of government and, likewise, independent of the print media industry, to monitor and supervise, but not to regulate *directly*, by executive sanctions on malpractices of journalism, the freedom of the press. My general approach is that there is a constant need to upgrade the journalistic culture of the press. Such upgrading cannot be achieved by a complaints system which, at best, will provide adequate remedies for individuals who complain of journalistic maltreatment. Cultural change is achievable over a time span in which authoritative overseeing and reporting on journalism (including, specifically, a statutory power to conduct public inquiries into matters of acute public concern) without at the same time impinging upon the activities of editors and journalists in pursuance of press freedom.

Part II – Specific matters

6. The behaviour of the newspaper industry before, and more particularly during my involvement in the affairs of the Press Council may have some relevance to the Inquiry's judgment about the efficacy or desirability of any new style of self-regulatory Press Complaints Commission. History can inform the events of today. To that issue I can offer only my personal view: the time has come for society to say (in Macmillan idiom) enough is enough. Self-regulation, whether exercised in its wider form of protecting freedom of the press and a complaints system or in the restricted realm of individual victims' complaints, has been unsuccessful in promoting what successive Royal Commissions had designed as acceptable cultural journalism – namely, 'the encouragement of the sense of public responsibility and public service in the profession of journalism'.
7. It may be helpful, in my attempt to make good that assertion, if I indicated the sequence of events that led to the setting-up of the Calcutt Committee and the ensuing emergence of the Press Complaints Commission. It is on record that in 1989 Mr David Mellor, then Minister of State at the Home Office, uttered the famous remark that the press was at that moment drinking in the last chance saloon bar. This did no more than restate what the Calcutt Committee itself said at para 14.38 (see

my para 11 below). In my view, that graphic picture of journalism was fully justified then; it has become prophetic now that much of the malpractice has been publicly exposed.

8. It is instructive to note what the journalistic scene presented to parliamentarians of that time. The Government set up the committee to consider *Privacy and Related Matters* under Sir David Calcutt QC largely in response to activities in the House of Commons. Three private members' Bills had reached the report stage. The Bills sponsored by Mr Clive (now Lord) Soley, then MP for Hammersmith, Mr John Browne (MP for Winchester) and Mr Tony Worthington (MP for Clydebank and Milngavie) collectively would have put on to the statute book a law entitling anybody to take action for unwarranted invasion of privacy and a statutory system of regulation with a code of practice. These three Bills did not have the support of Government. But the views of MPs were such that intervention by an independent commission of inquiry appeared to be essential. The rest is history, in which the Inquiry is well versed. My observation is that the parliamentary activity is enough to underline Mr Mellor's comment in endorsing the response expected of the newspaper industry, post-1990.
9. The conduct of the newspaper industry, as witnessed first-hand by me, immediately before, during and after the Calcutt Committee's report in June 1989 may be of some assistance to the Inquiry in assessing the credibility, or indeed reliability of the industry in 2012 to provide the public with an organisation that can predictably (I use that word deliberately to indicate that the public should not be at risk any more to reflect the present culture) satisfy the public's demand for high quality journalism throughout the print media.
10. I was appointed chairman of the Press Council following a meeting in May 1988, and to take over from my predecessor, Sir Zelman Cowen, at the end of that year. I was not the first choice. Indeed the Newspaper Proprietors Association made it widely known that its preference was to have Professor Lord McGregor, who had been chairman of the third Royal Commission and a former chairman of the Advertising Standards Authority and chairman of Reuters Trust. Unlike the method of appointment(s) to the Press Complaints Commission which were made by *Pressbof*, under the constitution of the Press Council the power to appoint an independent chairman since Lord Devlin in 1966 had resided in the Council itself. That body declined to accept Lord McGregor. I had not been a candidate until Sir Zelman Cowen accordingly approached me to see if I was interested. I was, and was duly interviewed and offered the post. I was aware that my appointment was unwelcome generally in press circles, for three ostensible reasons: first, I was not the industry's

choice; second, my record as a journalist manqué (legal correspondent for The Guardian and The Observer from 1957-64) did not endear me to the tabloid press, since I was viewed both as a broadsheet elitist and (like my predecessor) publicly favouring a privacy law; thirdly, my professional record as a practising lawyer displayed unmistakeable desires for reform. That reaction to my public record became manifest in the early days of my chairmanship. One of the first matters that I took up with the main personnel within the management of the Newspaper Proprietors Association was the future aims of a Press Council. The main person with whom I discussed the question of a review of the Council by an independent body was Sir Frank Rogers. He and his colleagues were not merely disinterested in any review of the Press Council; they were actively hostile to the idea. Hence I was driven to setting up an internal review, which took place and reported in 1989 during the currency of the Calcutt Committee's deliberations. I need do no more than set out here paras 14.37 and 14.38 of the Calcutt report.

> 14.37 The Press Council has existed as an adjudicating body for many years. In that time it has laid down principles and guidelines directly bearing on the problem of press intrusions into privacy. It has, therefore, had considerable scope to influence the way the press behaves. Nevertheless, its impact has been limited in part by its nature and in part by the lack of full commitment by the industry to its aims and objectives. The proposals of the Press Council review may significantly change the character and effectiveness of the Press Council. Yet, we do not consider that these will go anything like far enough to meet the criticisms we have identified.
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> 14.38 We *recommend* that the press should be given *one final chance* [my italics] to prove that voluntary self-regulation can be made to work. However, we do not consider that the Press Council, even if reformed as proposed in its internal review, should be kept as part of the system. We therefore *recommend* that the Press Council should be disbanded and replaced by a new body, specifically charged with adjudicating on complaints of press malpractice. This body must be seen to be authoritative, independent and impartial. It must also have jurisdiction over the press as a whole, must be adequately funded and must provide a means of seeking to prevent publication of intrusive material. We consider it particularly important to emphasise the break from the past. The new body should, therefore, be

called the Press Complaints Commission. It should not be tied to taking over the existing staff or other resources of the Press Council.

11. In my earlier evidence I mentioned briefly (page 12) my experience that the day-to-day work of the Council and staff of the Press Council was predominantly about processing individual victims' complaints against the print media. It may be helpful if I elaborate on this theme. But it was not all about the application of ethical standards which until March 1990 were not codified (see Appendix P, Calcutt Committee Report, p. 119). The Council was always keen to engage in its non-complaints powers. I mention two of them: I referred in my earlier statement to the inquiry into the press coverage of the disturbances in HM Prisons on 1st April 1990 as it occurred at Strangeways Prison. *Press at the Prison Gates* was published as the 8th Press Council Booklet in January 1991. This was not the only general issue relating to publication as can be gleaned from that booklet at page 197. It is worth noting that the two-year inquiry into *Press Conduct in the Sutcliffe Case* in 1983 was not repeated until the Strangeways report. This was a reflection of the Council's preoccupation with the complaints system. The report was comprehensive and contained five recommendations. In the light of recent rulings of the Press Complaints Commission to the contrary of the Press Council's view, recommendation number 2 is worth citing: 'Newspapers should ensure that headlines, however dramatic, are soundly based on facts and do not overstate the text below.' Throughout the Inquiry the Press Council was in contact with the official government inquiry into the riot and its wider implications which was set up under the chairmanship of Lord Woolf. I make this observation to indicate that in the future a public inquiry into matters of public concern under the Inquiries Act 2005 may be usefully accompanied by a parallel investigation by the new regulatory body of the subject-matter under the public inquiry's terms of reference.
12. The other matter that deserves mention, if only because it was, to my direct knowledge, the source of much irritation by newspaper editors, was the Press Council's power to make representations to the then Monopolies Commission whenever there was a case of change of ownership of a newspaper. There was at least one occasion during my chairmanship where the Council publicly exercised that power.
13. One other feature of the Press Council's procedures that merits some reference was the method of appointment to the Council. The industry itself was accorded the power to nominate representatives from eight organisations. This amounted to 18 members, four of whom were nominated by the National Union of Journalists. The

non-journalistic members selected as public members amounted to 16 members in addition to the Chairman. Notably, the 16 members were appointed by an Appointments Commission, chaired as at 1990 membership by Lord Asa Briggs. Each year applications from the public were entertained; my recollection is that more than a thousand people applied to become members. The selection was made wholly outwith the involvement of the newspaper industry. (I attach the list of members for 1990.)

14. There is a good deal of media reporting on issues of governmental policy that impacts directly on the formation of public opinion on socio-legal issues, both by individual members of the public and by politicians. In his recent study, *Democracy under attack* (p76) Mr Malcolm Dean, Associate Fellow of Nuffield College, Oxford, observed how complex were the various factors deployed in policy-making, in which the media were found to be prominent players. Their influence was pervasive. Most notably the reporting in news and comment by the print media on crime and punishment has infected both legislation and practices in criminal justice and the penal system to such an extent that within the penal systems of Western Europe this country is perceived as displaying the least liberal outlook on civil liberties and possessing one of the highest levels of prison population. The rapidity with which policy-makers have, since 1979, reacted to negative attitudes in some national newspapers has been little short of deplorable. Until the 1960s criminal justice legislation was introduced on average every five years. Since then lengthier pieces of legislation on law and order issues have been introduced every eighteen months, much of it tinkering with the items on the criminal calendar but also ratcheting up the penalties in an experimental manner in sentencing for criminal offences. Successive administrations since World War II have failed to codify the criminal law and have recently declined to modernise the law of homicide.

Part III – Other options

15. If the recommendations which I proffered in my written statement of 6 December 2011 do not gain the Inquiry's endorsement or approval, I would wish to associate myself, in broad principle, with the recommendations of the Roundtable of February 2012, with the exception that I would wish that the Media Standards Authority should give priority to paragraphs 36 and 37 of the Roundtable proposals over the sensible recommendations for dealing with complaints, mediation, arbitration and conciliation. If necessary, I could elaborate on these proposed features of a Media Standards

Authority. I would add that since compliance with any future regulatory body would be voluntary for print media organisations, it would be appropriate to give the new regulatory body the title of 'Commission'.

Part IV – Conclusion

16. The contretemps over the scope of the Inquiry, as evidenced by the statement from Sir Brian Leveson on 25 June 2012, fortifies me in my view that any recommendation for statutory intervention into the *output* of media (as distinct from statutory provisions directly related to procedures for giving some legal redress to readers aggrieved by breaches of any formalistic code, such as a tort for an unwarranted invasion of privacy) will not be acceptable to the media world. Only monitoring and supervision, without any executive power enforceable by statutory authority, will hope to attract consensus.