

Third witness statement of John Moore Witherow, Editor of The Sunday Times.

This is my response to the notice under section 21 of the Inquiries Act, dated 29 June 2012.

Q2. To what extent were you personally involved in drawing up the proposal for a "New and Effective System of Self-Regulation" submitted to the Inquiry by Lord Black?

I was not involved in drawing up the proposals but have been consulted by both Lord Hunt and Lord Black a few times before I saw the draft proposals for a fortified press body binding members by contract. I had a breakfast meeting with Lord Hunt shortly after he was appointed where we discussed his thinking on reform. I also attended a meeting of editors on 15 December where Lord Hunt presented his proposals to national and regional editors. Lord Hunt then came to News International to discuss his proposals further with me, James Harding, the Times editor, in house lawyers, and the TNL Managing Editor. I received copies of draft proposals at the end of February from the interim head of legal affairs at News International. I attended a Press BoF meeting at which both Lord Black and Lord Hunt were present on behalf of Tom Mockridge for the Newspaper Society last month. I then met Lord Black in June this year to discuss the proposals further, with James Harding and NI in-house lawyers, and I have spoken to him by telephone since.

Q3. How far would you personally, in your capacity as editor, expect to be involved in the final decision as to whether your publication signed up to the contractual obligations envisaged by this system? Please explain in full how that decision would be taken.

I expect to be closely involved as to whether both The Sunday Times and News International sign up to the obligations. The decision will be made after discussions with James Harding, Dominic Mohan and Tom Mockridge, the CEO of News International. I would also inform the TNHL board.

Q4. In so far as you are able to do so, please indicate whether your publication is at present fully ready and committed to enter into these contractual obligations. If it is not at present fully ready and committed, please explain why, and detail any changes that would need to be made to the proposal, any further development to proposals required, or any preparatory steps that would need to be taken at your publication.

The Sunday Times is ready to recommend in principle that the regulated entity (Times Newspapers Limited) enter into these contractual obligations. Lord Black has taken into account our concerns about the independent nature of the new body and incorporated that element. I believe that a system of independent self-regulation underpinned by contracts is an improvement on the previous PCC model and I support it. There is some finessing in the detail of the framework proposals still to be done which I would hope can be achieved by discussion between participants.

Q5. What specific differences would membership of a system of the kind set out by Lord Black, underpinned by contractual obligations, make to the culture, practices and ethics of your publication?

I would envisage the complaints system working in a similar manner as the existing PCC. However, the independent nature of the new body, its investigatory powers and the tough

sanctions it can impose after any serious misdemeanours would be a very powerful inhibition on improper behaviour.

The Sunday Times already abides by the Editors' Code of Practice and will continue to do so.

An annual certificate will mean that good records must be kept, as will the introduction of the new investigatory arm. This is a matter of good practice.

Since the inquiry has started The Sunday Times has formalised some of its practices, which means it will be able to satisfy the proposed annual audit requirements. As I said when I gave evidence to the inquiry, proposals to use subterfuge or covert recording must be fully discussed with me, the paper's internal Ombudsman, the Head of News and the Editorial Legal Director, and records have to be kept. We discuss the public interest, bearing in mind that a recent change to the Editor's Code requires editors who claim a breach of the Code was in the public interest to show not only they had good reason to believe the public interest would be served, but how and with whom that was established at the time. The Sunday Times has had to answer this question recently in dealing with a complaint to the PCC. Under the new body, we would have to continue this process.

I believe that the ethics of the press is best served by self-regulation. The most effective way of retaining standards while protecting the flexibility which produces good journalism is through training, mentoring, constant review and transparency at the newspaper. News International has introduced some clear policies about journalists' conduct which explain they are required to act in accordance with the law and the Code, and training explains in a lay person's terms what that entails.

Another recent amendment to the Code requires publishers to agree the prominence of corrections with the PCC if it has been ruled against in a complaint. The flexibility of the Code is one of its advantages, as it can be amended quickly and in response to problems which are discussed by the Commission. The Code Committee has become more transparent in recent years, publishing minutes and with detailed explanations, with case studies, of the Code on its website. It has agreed to take lay members on to the Code committee so that independent voices can be heard and it is not seen as a closed shop.

Q6. Is there any other comment you wish to make on the proposal put forward by Lord Black or on the proposals put forward by others that have been published on the Inquiry website?

In my view the proposals from Lord Black are both tough and pragmatic, arguably making it the fiercest form of self-regulation anywhere in the western world. I remain a firm believer in self-regulation because I do not want to see freedom of expression inhibited by any form of statute, however well intended. While in theory framework legislation may not mean direct governmental control, there is still potential for such legislation to be amended by a short bill which could, depending on the political climate, increase control over the press. Even a theoretical risk of this country compromising the constitutional importance of freedom of speech is an unnecessary and disproportionate response to the issues which arose from the phone-hacking crisis and a failure of policing.

In my view the laws which regulate the conduct of journalists, together with the Code and our new proposals for self-regulation, are more than sufficient to regulate the press. The issues

which have emerged during the inquiry have not changed that view. There have been several additions to the law governing journalists' conduct since the press was in the 'last chance saloon' in 1990, including the Bribery Act, the Fraud Act, the Human Rights Act, the Harassment Act, RIPA, and the Data Protection Act. I do not believe you can regulate relations between the press and politicians, or the authorities and press, without interfering with freedom of speech.

The proposals by Lord Black are tougher than the current system as they introduce for the first time an independent investigatory arm with ability to impose heavy fines. Critics might say that elements of the press would take the risk, as they do with libel or contempt, but I believe that this punitive element would greatly inhibit bad behaviour. Being ruled against by the press's own body also brings a strong element of humiliation, which can be more effective than a fine. Having said that, a million pound fine with the current parlous state of the industry would be a serious penalty. I am not an advocate of compensation for victims. Bringing money into case by case complaints will muddy the waters and provide a different motivation from setting the record straight and raising press standards. Ofcom does not offer compensation.

The independent element of the new body is also important. A new chair person can only be appointed with unanimous agreement between lay and press members, and the trust board will have a lay majority. This is essential if the body is to have credibility with politicians and the public. It will no longer be convincing to say the new body is a toothless creature of the press, as the PCC has been labelled, because of its independence and its ability to impose heavy fines.

The question of how to encourage or coerce publishers to be members is still to be answered. Not every journalist will sign up. Bloggers may not do so, although there may be an incentive if they are provided with access to a simple dispute resolution process. But signing up carries a burden of bureaucracy that not every individual or small publisher will have the resources to deal with.

The problem from the outset has, however, not been the individual, but those publishers who hold or are seen to hold the most power. Internet publishers, even if invited to join, cannot be mandated to join. Although I understand the concern about enforcing membership, I object to membership brought about by statute, as this amounts to the licensing of the press and seems dangerously antiquated in the midst of a digital revolution. Journalism is not a profession like medicine or the law and you should not have to be 'part of a club' to be a journalist. There are proposals for incentives, such as kite marks, press cards and dispute resolution. There are also proposals for penalties, such as restriction to Press Association copy, which would have financial consequences.

It would also be a futile exercise to introduce statute which cannot keep up with fast evolving publishing technologies. The industry is experiencing its biggest challenge in 200 years and the way news is consumed is changing dramatically. A form of regulation imposed by statute would look hopelessly leaden footed as fleet-footed technology roars off and creates information platforms far beyond the reach of national boundaries.

There are a few issues which have been discussed during the inquiry which I would like to comment on.

Prior notification

I do not believe that prior notification to the subject of a story should be compulsory even though The Sunday Times does this routinely as a matter of good practice. European law has found that this would be an interference with free speech, and I think it is important to preserve the discretion not to have to approach the subject of a story before publication.

Public interest

I do not believe that a statutory definition of the public interest is required. I deal with the question of 'what is in the public interest' regularly. It is often straightforward for The Sunday Times, but even for other publications I do not think it would be helpful to go beyond the definition in the Code, which recognises the public interest in freedom of expression itself. This captures the wider importance of stories such as those The Sunday Times has pursued which raise or contribute to topics which become matters of important public debate – for example, the 'Cash for Honours' and 'Cash for Amendments' investigations (mentioned in my first statement), which explored questionable conduct by not illegality. A statutory definition would also be inflexible.

Investigative journalism

I have had real concerns throughout this inquiry that any outcome may further chill the climate for investigative journalism, as I wrote in my article "Secrets and Lies", last July (exhibited to my first witness statement). Investigative journalism is already threatened by the financial pressures and we need to do our utmost not to inhibit further this form of journalism.

As I said in the article, investigative journalism can often tread the line in terms of legality. I welcome the DPP's interim guidelines which recommend that the prosecutor thinks about the importance of freedom of speech under the Human Rights Act and assesses the public interest before deciding whether to prosecute journalists. We will have to wait and see how the guidelines' continue to be interpreted by the CPS before assessing their impact. This may change over time and the problem remains that journalists may break the law when acting in the public interest to uncover illegality or ethically questionable behaviour, but have no actual defence, other than for offences under the Data Protection Act.

I hope the CPS guidelines will consider the extent to which editors and journalists have complied with the Code. As I have explained, the Code requires editors to explain that they held a reasonable belief that pursuing a story was in the public interest when they decide to use, for example, covert recording. Where the public interest is strong, investigations may result in the law being broken as well as the code being breached. If the CPS looks at how the decision was reached on public interest in an investigation, it will have the journalists' position in mind before making any decision to prosecute. I mention this here as there must be some connection between the guidelines for the press laid out by the new press body and those used by the law enforcement authorities if investigative journalism is to be properly recognised and protected.

Arbitration and/or mediation

I can see that there is some merit in introducing mediation as a quick route to resolving libel and privacy actions for members of the public, although I would not want to see the court system replicated or costs being increased by a lawyer-driven process under the new press body. I would not object to a statute requiring mediation to happen, but it must be a system open to all publishers, and not just to those who sign up to the new body.

We have observed recently that complainants to the PCC are increasingly using lawyers to drive through their complaints. This was not the original purpose of the PCC: it was for ordinary members of the public to have recourse to swift, fair and free adjudications. Multi-millionaires and multinationals are now using lawyers to tie up the press with legalistic arguments or to gain access to information with the intention of suing separately.

Press ombudsman

I do not agree with the idea that a new regulatory body should have an ombudsman who has to be consulted by an Editor on difficult matters before publication. It is a key element of a free press that the Editor has the final decision and must also take responsibility for any decision made.

I believe the facts in this witness statement are true.

Signed.....
JOHN MOORE WITHEROW

Date.....