WITNESS STATEMENT OF LORD WAKEHAM

1. I make this statement as a former Chairman of the Press Complaints Commission (PCC), a post I held from 1995 to 2001. Prior to that appointment, I had been involved in the policy issues surrounding press standards and regulation in my capacity as Leader of the House of Lords from 1992-4. The Government of which I was then a member had stated its intention – following the second Calcutt Report in 1992 – to introduce a system of statutory controls on the press. I was Chairman of the Cabinet committee that looked into how we could implement this. Having studied it in great depth, I strongly recommended to John Major that this would an impractical and even dangerous idea, and he accepted my advice.

2. When I arrived at the PCC its reputation had been battered by a series of high profile scandals relating mainly to coverage of the Royal Family. These included stories emanating from the interception of telephone calls (such as the so-called "Camillagate") and also the serialization of a book about Diana, Princess of Wales by Andrew Morton. On my appointment as Chairman I set about trying to improve its performance and I consider I had some success. I was always clear that my task was not to be a "regulator" – the PCC never had formal regulatory powers - but to endeavour to raise standards in the press above the minimum required by law through a process of education, exhortation and adjudication.

3. As part of this process, I persuaded the newspaper industry to strengthen its Code of Practice several times, including a wholesale revision, particularly on matters relating to privacy, following the death of the Princess of Wales in 1997. The new elements of the Code,

especially on children and the use of long lens photography – as well as the introduction of the concept of "private places" - have I think proved very important in helping to raise standards over time across the industry.

4. I never considered it was my role to look into allegations of criminality or illegality. Quite apart from the practical implications of trying to run a quasi-police operation, we never had the powers to do so. When matters of a suspicious nature came up we therefore declined to deal with them and referred them to the relevant authorities to take them up. The same happened on matters brought to me which were clearly libelous or involving, for instance, breach of copyright.

5. Based on my experience at the PCC, and my own beliefs as a Parliamentarian in freedom of expression, I remain strongly opposed to the imposition of statutory controls. They are wrong in principle – the state should not have a role in the regulation of the press - and would not work in practice. The recent problems over injunctions and super-injunctions shows how unworkable statutory controls would be in a digital world. I also believe that no Government would ever willingly introduce a Bill containing statutory controls into Parliament and the Inquiry should recognise quite how problematic enacting statute in this area would be.

6. The only answer therefore is to strengthen self regulation. It may not be perfect but it does balance press freedom with public protection. I am quite sure that the way forward is to differentiate between complaints and compliance.

7. I have never believed there to be a significant problem with the PCC's complaints handling mechanisms. The Commission's staff is very good at resolving most straightforward complaints without cost, speedily

and, as far as I could discern, to the satisfaction of the significant majority of complainants.

8. This of course is exactly what the Press Complaints Commission was set up to do on the advice of Calcutt. But over the years, it has added on functions that are of a more regulatory nature without its structures or remit being amended accordingly. Most of this has happened in the last few years, culminating in the disastrous report on phone hacking. I also suspect that the PCC's Governance Review – with which I was not impressed – tried to remodel it as a regulatory quango, far removed from its original mission, or its powers or expertise, and with little understanding of the nature of the publishing industry. The PCC's absence from the debate about privacy – including high profile adjudications – has also eroded its authority.

9. I think the first thing that has to happen is to separate out and renew the basic complaints handling function. This is after all what matters most to ordinary members of the public and is also probably of greatest practical importance to the industry, particularly in the regional press. The bulk of the complaints, of course, relate largely to accuracy and, especially in a digital age, are relatively easy to resolve.

10. Personally, I think all this could be vested in an "Ombudsman" figure who would obviously need trained complaints handling staff, but would not need a Commission the size it is now, or the complex bureaucracy that has grown up around the PCC. The Ombudsman and his staff could deal with most straightforward complaints and conciliate them: but where an adjudication was needed on a point of principle this could be taken by a small team of assessors, mostly lay people but with solid expert industry input from people at a serving senior level. (I am not attracted by the idea of having retired editors involved in this process. In

my experience they get out of touch with the industry extremely quickly; and those that have left an employer on bad terms have axes to grind.)

11. This would preserve and enhance the best of the PCC – speedy and cost-free conciliation from a body that is independent but draws on the expertise of the press as it needs to. But it would have another added benefit in that it would allow us to deal with the very unsatisfactory situation with regard to injunctions and super-injunctions that has arisen under the Human Rights Act (HRA).

12. Section 12 of the HRA, which I was responsible for negotiating with Jack Straw as Home Secretary, envisaged that injunctions should be rare and most privacy issues dealt with by the PCC. Jack Straw said in terms in the Commons that the aim of this Section was to "preserve self regulation." This has not worked out, partly because the PCC has vacated a lot of ground relating to privacy in recent years. We have the chance to change that now.

13. Because a new body would not be burdened by excessive bureaucracy and would be small enough to be able to take very speedy decisions, I think it would be a perfect first port of call for those seeking to take out an injunction on a privacy matter. The Courts could I hope be persuaded to ask applicants for an injunction if they had (a) taken advice from the Ombudsman on whether a story was likely to breach the privacy sections of the Code and (b) if so, whether the Ombudsman believed it was an issue which could be dealt with through his pre-publication service.

14. Changes would have to be made to the Code to require editors to provide the Ombudsman with information in advance of publication where the issues were of such a serious nature that the Court was

involved in considering injunctive relief, but that shouldn't be difficult. In my experience, these sorts of matters do not arise often.

15. Of course there would still be some cases where the Ombudsman did not feel it appropriate to act; in which case an applicant can return to the Judge to explain that his or her remedies have been exhausted elsewhere. The Judge would then have the benefit of the Ombudsman's advice on the matter. That was the purpose of enshrining the Code in the HRA.

16. This proposals - which I think can be implemented without legislation (something which I think very desirable) - would mean that the first approach of someone seeking injunctive relief would normally be to use the self regulatory mechanism, which is of course free, and only if that was not satisfactory resort to the Court.

17. Quite apart from ensuring that Section 12 would be used as it was intended by Parliament, this mechanism would have two other benefits:

* it would in effect deliver a fair judgment without the massive costs of an expensive legal action which is out of the reach of the vast majority of the population – thereby safeguarding access to justice. This is particularly important in view of the reform of "no win no fee" arrangements; and

* if, as I hope, there is reform of the defamation laws to introduce compulsory arbitration – as envisaged by the Parliamentary Joint Committee which scrutinised the draft Bill - such a model might be of some practical use in that area.

18. Some will consider that this still leaves two substantive problems: how to establish a "standards" regime which can deal with issues or complaints of such a serious nature that it is not appropriate for the

Ombudsman's service to deal with them; and how to ensure full industry compliance with the system from the point of view of funding and indeed support for the Code.

19. On the former, there are in fact very few occasions when I think such an investigation would be required. If you consider recent years, and leaving the obvious issue of hacking to one side, we are looking at the McCanns, the so-called "City Slickers" affair back in 2001, the issues that arose after the death of Diana in 1997, problems with witness payments in the West trial in 1995 and perhaps a very few other events. I do not believe there is need for a permanent body. The Ombudsman could perhaps be responsible for establishing one where a major issue arises, or where he judges a complaint to be so serious that it requires a substantial standards investigation, or where patterns of complaints give rise to concerns about the newspaper management or indeed even an individual reporter.

20. On the issue of industry compliance, I think this is the trickiest area. To some extent, it has always been a problem but in a much less acute manner: there are a handful of very small local or magazine publishers outside the system, and the PCC has been able to deal with those, because the extra costs of doing so were negligible. It's Northern and Shell's size which has produced the real danger. For myself, I can't understand why such a large group should wish to remain outside the system, when the benefits are so clear and the dangers of statutory control so obvious. I think the industry needs to look quickly at various incentives, and when Northern and Shell is back in – which I would be optimistic about – produce binding agreements to keep it there. I think Lord Hunt's proposals on a contractual underpinning to the system, which is an imaginative and coherent way to strengthen self regulation, would be important here.

21. I have more difficulty with some of the other proposals that have been put to the Inquiry, and would highlight three areas of concern:

(i) There have been suggestions that Code compliance ought to be tied to some form of permit or card for journalists. This would, in my view, weaken any system of self regulation because it breaks the crucial link between standards and the responsibility of editors. Editors are responsible for the content of their publication, and for adherence to ethical and legal standards, and they should not be able to shift responsibility to employees or contributors.

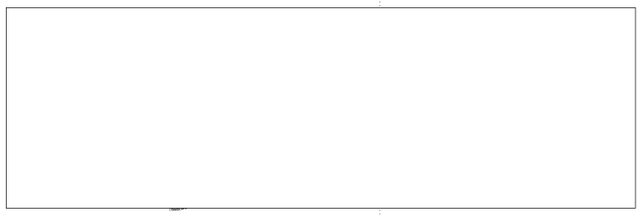
(ii) I have concerns about the idea of fines, because any significant financial penalty against a small publication could put it out of business; the same penalty to a tabloid paper might be a small price to pay for an exclusive. It also ignores the reality of the newspaper market in that it is not unknown for a broadsheet to give a story to a much smaller publication - which would then take the blame - in order that they could write a great deal more about it once the material was in the public domain, and escape censure.

(iii) When I was Chairman of the PCC I always ensured that I or my Director had agreed the prominence of an adjudication before it was published. We did the same with serious corrections. The problems with prominence often occurred when we hadn't been involved, and a lawyer acting for a claimant and dealing directly with a newspaper had forgotten to agree the placing of a correction or clarification beforehand.

22. As someone who has spent so much time considering these issues, going back now over nearly twenty years, I do passionately hope that ways to strengthen self regulation can be found rather than any alternative. Self regulation will never be perfect, but it works both to

protect ordinary people and to preserve press freedom in a way statutory controls would not.

23. I believe the statements set out in this document to be true.



LORD WAKEHAM

9th February 2012