

## **Submission by Tim Toulmin to the Leveson Inquiry**

### **1.0 Introduction**

- 1.1 I was the Director of the Press Complaints Commission (PCC) between March 2004 and December 2009. I started working at the PCC in August 1996 after leaving university. I now have a media relations firm, Alder Media, which works with the clients of law firms when they are involved in newsworthy litigation.
- 1.2 The Director of the PCC is the senior official at the organisation. They are the head of the full time staff with overall responsibility for the direction and management of complaints about newspapers and magazines under the Editors' Code of Practice. They are responsible for budgetary, human resources and management issues, and act as Secretary to the Commission. They operate under the direction and supervision of the Chairman and the board of directors (Commissioners), but they are not a board member.

### **2.0 The Press Complaints Commission**

- 2.1 The PCC is a non-statutory organisation, set up and funded by the UK press in order to consider, conciliate and adjudicate on complaints made about the editorial content of newspapers and magazines - and their websites - and the behaviour of journalists. It was established in 1991, replacing the Press Council.
- 2.2 The PCC's Articles of Association, which set out its powers and remit, can be found here: [http://www.pcc.org.uk/assets/111/PCC Articles of Association .pdf](http://www.pcc.org.uk/assets/111/PCC%20Articles%20of%20Association.pdf). Individuals may make complaints under the Code of Practice. The outcome may be a published correction or apology, upheld adjudication (in which case the offending publication has to publish the Commission's findings in full), or a rejection of the complaint.
- 2.3 The PCC also helps people who feel they are being harassed by journalists. It has developed a system of private advisory or

'desist' notes, drawing editors' attention to problems and complaints as they unfold. This is an effective and useful service, and works quickly to the benefit of ordinary members of the public and high profile individuals alike.

- 2.4 The Articles of Association say that the Commission may also "consider and pronounce on issues relating to the Code of Practice which the Commission, in its absolute discretion considers to be in the public interest".
- 2.5 Since the purpose of the PCC was to create a flexible, non-statutory framework for raising press standards while providing free and quick redress to people without the need for a lawyer, the PCC has no legal powers. It follows from this that it has no power to issue sub-poenas or cross-examine witnesses. Additionally, as it was never granted the power to issue financial penalties, given a general 'supervisory' role over the press, or (obviously) responsibility for media ownership issues, it seems to me to be inappropriate to consider it a 'regulator'. However, many people refer to it as such, possibly arising from the use of the term 'self-regulation'.
- 2.6 In fact, in my view, its functions are more similar to those of an ombudsman. Indeed, in a number of other countries which have similar systems (such as Ireland and Sweden), the head of the equivalent body is known as the Press Ombudsman.

### **3.0 Steps the PCC takes to discharge its functions**

- 3.1 The bulk of the PCC's work, as its name would suggest, is in handling complaints. It raises public awareness about its existence and service through advertising, town meetings, media appearances and so on. It retains a full time staff to investigate the merits of particular complaints, which may then be resolved to the satisfaction of the complainant (for instance through an apology), rejected by the Commission through correspondence, or referred to a meeting of the Commission for an adjudication.
- 3.2 The PCC also has a training programme for journalists, in order to educate them about the Commission's latest thinking in areas such as privacy and acceptable newsgathering methods.

#### **4.0 The PCC's experience of regulating the media, in particular in relation to phone hacking etc**

- 4.1 Since the PCC is not a legal regulator it has no experience of formally regulating the possible offences highlighted: phone hacking, computer hacking, 'blagging', bribery and/or corruption. These are the responsibility of the police or the Information Commissioner.
- 4.2 However, as a focal point for debate and information about press standards, it has been happy to raise awareness about certain legal restrictions on journalists. For instance, the PCC issued a guidance note on compliance with the Data Protection Act and hosted training seminars for journalists in conjunction with the Information Commissioner's Office. This followed an approach from the ICO. But the PCC has always had to be careful to respect the division of responsibilities that exist between numerous organisations for policing the various transgressions that journalists may commit in the course of their professional duties. These include the civil courts, the police, and the Information Commissioner.
- 4.3 There is therefore currently no single organisation responsible for regulating the UK press – and there never has been. Rather, there is a patchwork of rules and authorities, of which the PCC and the Code of Practice – focusing on non-legal complaints – are just a part.

#### **5.0 Phone message hacking at the News of the World**

- 5.1 There was never a complaint about phone message hacking by News of the World journalists while I was Director of the PCC. The PCC's involvement in the matter was pro-active and rooted in its ability, under its Articles of Association, to make pronouncements relating to the Code of Practice when it sees fit. This was because phone message hacking would likely also raise a breach of Clause 10 of the Code of Practice, which says:

“The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or

photographs; or by accessing digitally-held private information without consent.”

- 5.2 The Code of Practice (which is overseen by a committee of editors) was amended in 2004 to include a specific reference to mobile telephone messages.
- 5.3 Following the convictions of Clive Goodman and Glenn Mulcaire, the PCC could not institute an inquiry into other possible instances of phone message hacking at the News of the World, or more generally in the press, since it had neither the legal powers nor the authority vested in it by the newspaper industry to do so. Even so, it wanted to do something useful to complement the police inquiry so that light could be shone on what went wrong at the newspaper, and so that lessons could be learned generally for the industry to ensure that there was no repetition.
- 5.4 The result of this activity was a report published in May 2007 – which can be found here [http://www.pcc.org.uk/assets/218/PCC\\_subterfuge\\_report.pdf](http://www.pcc.org.uk/assets/218/PCC_subterfuge_report.pdf) – which contained a number of recommendations for the industry as a whole. It is clear from this document that the PCC did not attempt an inquiry into possible further instances of phone message hacking at the newspaper, which would have been impossible and seen the Commission acting *ultra vires*. Instead, it required an explanation from the newspaper about how the Goodman/Mulcaire situation arose and what steps had been taken to ensure it could not be repeated. But the main focus when the report was published was in fact on the publication of new guidelines for the industry as a whole on subterfuge and newsgathering. It was therefore predominantly a forward-looking exercise.
- 5.5 Following a suggestion in July 2009 by the Guardian newspaper that the PCC may have been misled by the News of the World during the course of its previous inquiries, the Commission looked again at the matter. Again, this did not constitute an ‘inquiry’ into phone message hacking. It concluded, in November 2009, that it had not been materially misled by the paper. This finding was set aside by the PCC in 2011 in light of further revelations.

5.6 I left the PCC in December 2009 and have no documents relating to any of this. While I have recently seen some of the relevant papers held by the PCC, this submission is mainly based on my own recollection of events. As I have not had access to the full range of papers there may be a small chance that it contains some unintended minor errors. However, I have checked the facts so far as I possibly can.

## **6.0 Views on strengths and weaknesses of the PCC**

6.1 The strengths and weaknesses of the PCC are two sides of the same coin. Its lack of a statutory basis means that it can act quickly and flexibly when issues arise – including dealing with fluid ongoing problems such as disbanding media scrums – without getting bogged down in cumbersome and lengthy legal arguments. Bite is provided by the fact that journalists' contracts of employment contain a requirement to abide by the Code. But it also means that the system is, ultimately, voluntary – and recently this has meant that one major publisher has unilaterally decided to operate outside the system. This is clearly a significant weakness in the system.

6.2 But there are of course sound reasons why state press regulators have been resisted in the UK, and continue to be resisted in almost every democracy. Even if one were now considered to be politically desirable, the recent stories concerning privacy injunctions being freely discussed on Twitter highlight the sort of difficulties that would bedevil a legal regulator.

6.3 With instant messaging and online global communications having transformed the modern media, a flexible PCC-style complaints system – which complements existing legal remedies and has industry buy-in - strikes me as having a more important role to play than ever.

## **7.0 Conclusion**

7.1 The PCC does valuable work in a difficult area, but it is right that its powers and functions should be periodically reviewed, and the self-regulatory arrangements reconstituted if necessary. If considered – as I think it should be – as a complaints body or

ombudsman service, the current PCC does a good job. It has played its part in improving the professionalism of journalism in the UK. I now regularly deal with journalists on behalf of clients, and I am always impressed with their knowledge of the constraints under which they are working.

- 7.2 In relation to phone hacking, the Commission began to be judged at some point, and in some quarters, as a 'regulator' that had failed to get to the bottom of the scandal. This was despite efforts – such as in public statements and appearances before the CMS Select Committee – to explain what the PCC was trying to achieve given the limitations of its powers, and to draw attention to the division of responsibilities between the PCC and other authorities.
- 7.3 Perhaps, then, the PCC should never have become involved: it was not obliged to do so since it never received a complaint about the matter. Conducting the limited exercise that it did undertake seems to have confused people about its role. But there was a view at the time that the PCC was in a position to do something of value to raise awareness about the unacceptability of phone hacking, and suggest ways it could be avoided in future.

Tim Toulmin

16.09.11