Written evidence from Tim Crook (PS 130)

Reforming UK libel, privacy and media standards through the creation of a 'Media Law and Restorative Justice Commission' in a constitutionally reforming 'Media Freedom and Restorative Justice Act'.

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Background: Journalist of 34 years standing; proprietor of specialist news agency covering Central Criminal Court and Royal Courts of Justice 1981-1997; first UK specialist broadcast legal affairs correspondent; negotiator of first broadcast from Royal Courts of Justice on the occasion of Lord Denning's valedictory ceremony in 1982; campaigner for media freedom and open justice who was thanked in the House of Commons by government law officers in 1987 for cooperating with the UK government in establishing a right of appeal against reporting bans and exclusion orders at the Crown Court; author of *Comparative Media Law & Ethics* to be published by Routledge, December 2009; academic and lecturer in media law & ethics at Goldsmiths, University of London since 1991; visiting lecturer on media law to BBC Training and College of Journalism since 1982.

1. I would respectfully invite the Committee to consider widening the remit of the enquiry to consider a constitutional settlement of the balance between freedom of the media, freedom of expression and other social, political and cultural imperatives such as privacy, right to reputation, national security and administration of justice and the establishment of a mechanism of legal and regulatory remedies that is based on restorative

justice across all forms of media expression.

2. The asymmetrical and multi-media interpenetration of media publication, platforms of distribution and reception means that separate regulatory mechanisms for print/magazine, broadcasting and Internet are no longer effective. Discrete methods of separating the evaluation of standards could be seen as redundant in a multi-media world where the scale and complexity of media platform delivery managed by media institutions has expanded greatly and the speed of delivery increased significantly.

3. The UK's liberal democracy needs a constitutional settlement, whether written or unwritten/residual, that gives priority and a genuine 'particular importance' to freedom of the media and freedom of expression. Our country's comparative reference point should be our common law cousin, the USA, the success of its written federal constitution and the jurisprudence of its successful and respected Supreme Court and not the European Court of Human Rights at Strasbourg, the Council of Europe and EU jurisprudential and treaty constituted institutions.

4. The problems of the 'chilling effect' and strategic lawsuits against public participation identified in the operation of libel and privacy laws exemplified in the unwritten and oral evidence supplied to the Committee provide an opportunity to consider a structure of regulation and remedy based on proportionately compensatory rather than retributivist remedies that are relevant and appropriate to the largely emotional harm created by media communications. The example of *Campbell v MGN* 2004 where the eventual damages on the issue of media privacy (£3,500) appear to be in grotesque disproportion to the legal costs (£1 million), and the speculated settlement of £700,000 between Gordon Taylor, the Chief Executive of the Professional Footballers' Association and the *News of the World* over unlawful access to some of his mobile phone answer-messages give rise to a debate about the justice and fairness of legal retribution and remedy.

5. It is regrettable that the UK Parliament and judiciary could be seen to have undermined the power and importance of media freedom and freedom of expression over the last thirty years by surrendering to the idea that there should be 'a balancing exercise.' The inevitable consequence of such decisions has been the appearance of inroads into the liberty of the media and the extent to which British citizens can be effectively informed about and receive truthful information. The media could well argue that legislative changes and judicial decisions have not been necessary in a democratic society, have been brought about without any pressing social need, have been subject to instances of judicial rulings that were not prescribed by law, and have not been jurisprudentially proportionate in the social and political context. The 'balancing exercise' results in the appearance of statutory and judicial censorship and may not be an appropriate mechanism for judicial decision making in a democratic society. By not giving legal and constitutional paradigmatic status to freedom of the media and freedom of expression the United Kingdom is by a process of logic giving priority to censorship that is both direct and indirect. The situation is settled when the restrictions are supported by public opinion. When they are not the role of the judiciary risks being misunderstood. The UK media are also becoming financially exhausted by having to assert the free media imperative in the balancing exercise either as proactive litigants or defendants in legal and regulatory case law.

5.1.The construction of the European Convention of Human Rights was designed to give priority to freedom of expression. The treaty document was largely written and proposed by British common law jurists. It could be argued that the courts should therefore give prominence to British case law over ECHR jurisprudence when interpreting the Articles of the convention incorporated in the Human Rights Act 1998. But the British courts have felt obliged through sections 2 and 6 of the Act to take into account Strasbourg jurisprudence and give effect to convention rights. It might have been wiser to provide discretion to take into account ECHR jurisprudence where a British judge had taken a prominent role in giving judgment and in cases involving the United Kingdom. Article 10 is not qualified in 10.2 by the terms of the 'privacy' Article 8. Furthermore the terms of Article 8 indicate explicitly that it was intended it should only be asserted against public authorities on a vertical citizen to government body basis. The British courts have been compelled to follow ECHR precedent, guided by Council of Europe resolutions, establishing a positive right to a media privacy (described as 'a right to respect for privacy') enforced by the vector of judiciary as public authority. It would appear that some UK media institutions could interpret this development as constitutional conjuring and jurisprudential conceit driven by political imperatives that risks damaging the United Kingdom's democratic culture.

5.2. A series of political resolutions by the Council of Europe, a body constituted by political appointment and with an arguable democratic deficit compared to the Westminster Parliament, combined by UK case law arguably running in defiance of the English and Welsh common law tradition of freedom of expression, have resulted in the application of the policy that neither Article 10 nor Article 8 has priority over the other. It has been inevitable that some sections of the British media have decided that a privacy law created by 'back door legislation' has been imposed on them through 'judicial activism.' It is difficult to appreciate how the judiciary has felt constitutionally obliged to take into account ECHR case law in the 1998 Human Rights Act, and that the majority House of Lords decision in *Campbell v MGN* in 2004, making a media privacy right an enforceable remedy on a horizontal citizen to media publisher basis, is the consequence of British judges applying statutory and case law through traditional methods of judicial interpretation. These developments can be seen as tipping points undermining freedom of the media and expression. It is difficult for the media to understand the difference between the courts 'taking into account' Strasbourg law and being bound in *stare decisis*. The distinction between the recognition of 'a right to media privacy' and the creation of an explicit 'law of privacy' is difficult to understand, particularly when the media experiences the former being enforced against their publications and news-gathering. I would argue that it would have been more appropriate that the Human Rights Act only gave the power to the courts to give consideration to ECHR case law on the same basis that they might have found

case law influential or relevant from common law Commonwealth jurisdictions. In other words a ruling by the ECHR on a human rights issue arising from a country with an historical background of authoritarian government and given by judges nominated by countries such as Russia, Turkey, Albania or the former Yugoslavia should be given no more weight than a superior court decision in South Africa when that country was ruled by an apartheid regime. The speech given by the Law Lord, Lord Hoffmann to the Judicial Studies Board in 2009 provides a compelling and persuasive discourse on the ECHR's lack of judicial credibility and authority and the substantial democratic deficit underpinning the Council of Europe. I would argue that the UK judiciary's proper reference point for persuasive common law authority should have been the US Supreme Court, which is a judicial institution that over 200 years has derived the majority of its key freedom of expression decisions on English and Welsh Common Law. It has been a judicial authority distinguished by the quality of its juristic writing and discourse, and democratic legitimacy. I believe that the influence of US written constitutional law should have been recognised by the British courts as the jurisprudential mirror of the rights to liberty, freedom and democracy inherent in our residual unwritten constitution and common law custom, practice and case law. But my view is a minority one and would be regarded by British judges as eccentric and wrong.

5.3.The main mischief of the appearance of the creation of a media privacy law by judicial activism is that the process casts UK judges into a political role to make censorial value judgements about the dimensions of truth that should be suppressed. The public does not fully understand how the courts are guided in interpretation through precedent and statute. In *Campbell v MGN* Baroness Hale articulated a hierarchy of what should be the 'public interest' from tabloid 'title tattle' to political discussion. In isolation this could be seen as a political value judgment instead of a focus on case law and statutory interpretation. In further jurisprudence UK judges could be seen to be making apparent political decisions on what constitutes the aspects of truth that should be censored from the public record under the principle of 'reasonable expectation of privacy', 'private information' and 'the private zone of interaction.' These include reports of public figures and individuals working in and consuming services in the sex industries, and committing the moral infraction of adultery. No problems arise if these decisions coincide with a public consensus on what should remain private and not in the public interest.

5.4.The UK judiciary, executive, and legislature have retained paradigmatic power over the exercise of freedom of expression by having total discretion over the setting of the boundaries of the private zone of interaction and defining and controlling the concepts of public interest, national security, pressing social need, necessity in a democratic society. This is in the nature of our residual rights/largely unwritten constitution. Clearly a bill of rights and written constitution would prevent the disablement of the imperative of freedom of the media and freedom of expression. The problem of leaving media freedom as a contingency in an unwritten constitution is that there is a risk that gradually the UK media will be stripped of its initiative, discretion and responsibility to make its own decisions in the setting of the boundaries of taste, discretion and judgement in media publication.

5.5.The UK Parliament has been repeatedly constraining and removing the residual common law principles of open justice and freedom of expression through legislative changes. The 1981 Contempt of Court Act gave the UK courts statutory postponement and prohibition powers that hitherto had rarely been exercised without any mechanism of media appeal. In subsequent years it can be argued that the paradigm of secret justice and open justice has catastrophically shifted in favour of the former despite the provision of an appeal mechanism in 1988.

5.6.There has been a substantial growth in statutes criminalizing fields of media conduct and expression such as the Protection of Harassment Act 1997 and Regulation of Investigatory Powers Act 2000, some of which exclude public interest defences for journalistic conduct and publication. British media publishers can argue that these changes have undermined their ability to investigate and publish matters and issues questioning the policies and behaviour of government bodies, global corporations, celebrocrats and the rich and powerful. There have been many laws passed as a result of moral panics seeking to address 'hard cases' that have proved to be redundant in application, though their existence contributes to a self-censorial chilling effect. Examples include the wasted costs order provision of the 2003 Courts Act. (SI 2004/2408), section 58 of the Criminal Procedure and Investigations Act 1996 providing postponement of reporting of derogatory assertions in mitigation,

5.7. The construction of Section 12(4) of the Human Rights Act 1998 means that the UK courts have not given priority to 'a particular regard for the importance of the Convention right to freedom of expression' because the section obliges them to undertake a balancing exercise between freedom of expression in the public interest and 'any relevant privacy code'; hence the manifestation of 'a right to respect for privacy.' It can be argued that the phrase 'particular regard to the importance of' was intended by Parliament to give priority to freedom of expression. I would argue that the statutory construction of the phrase 'particular regard' should have been in the context of the US constitutional authority and supremacy of the First Amendment since this was written and buttressed by direct reference to English and Welsh common law jurisprudence and historical tradition. But such an approach would only be possible through Parliamentary legislation.

5.8. I would argue that it is not in the British national interest for its judiciary 'to take into account' Strasbourg

jurisprudence as a balancing exercise with the common law tradition and precedent whereby ECHR jurisprudence takes priority. Lord Hoffmann's 2009 speech to the Judicial Studies Board has supported the view that the ECHR is a weak and discredited transnational legal institution with pretensions of being a US style Supreme Court of Europe, a tendency to make rulings on issues of freedom of expression on the basis of social and cultural contexts that are alien to and irrelevant to the UK's common law heritage and traditions of equity, and fail to extend a proper application of the principle of margin of appreciation. It could be argued that some UK case law since October 2000 has revealed a tendency for higher British courts to interpret the expression 'take into account' as an extension of hierarchical *stare decisis*. The situation has led the UK judiciary in some case law decisions to give far too much credibility to the ECHR decision in *von Hannover v Germany* 2004, which was a seven judge panel adjudicating on a freedom of expression/privacy dispute brought by a member of the monarchy of Monaco against the decision of a German constitutional court. One of the ruling ECHR judges expressed a bizarre political prejudice against the Anglo-American tradition of freedom of the press that he dismissed as 'a fetish.' The British media might rightly complain that it is not appropriate, reasonable or constitutionally reliable for UK courts to give credence and precedence to such rulings.

5.9. During the last thirty years well intentioned legislation and case law designed to protect the human rights of individuals and the interests of the state have established a 'right to anonymity' in a variety of legal processes. To what extent has this been widened into a 'cult of anonymity?' Is it possible to argue that important common law principles of rule of law, open justice, and freedom of expression have been sacrificed for pragmatic purposes, administrative convenience and some instances executive abuse of power? There may be a risk that the UK legislature and Judiciary is demonstrating a lack of confidence and trust in British society to respect the administration of justice and as a result anonymity is being seen as the solution to protect 'vulnerable' witnesses, notorious defendants, and state investigators from the presumed risk of vigilante justice and reprisals. The authority and importance of the inauguration of the new Supreme Court in October 2009 may not be assisted by the apparent manifestation of secret justice in claimants and defendants being deracinated to the anatomised status of anonymous quantities. To what extent is the reputation and authority of British justice discredited by this practice? In one case the anonymity relates to a dispute over the freezing of the financial assets of 'terrorist suspects'. In another it relates to a freedom of expression dispute involving a former member of the Security Service. The Supreme Court is, of course, following case law and statutory obligation in conferring the right to anonymity, but there is a serious risk that this will be seen as an absurd and unfortunate derogation of the open justice principle. It is certainly paradoxical that an individual seeking a substantial freedom of expression remedy at the country's most superior court participates and is represented to the public as an anonymous value. The position is challenged by the philosophical irony in Franz Kafka's satire on the corrupt totalitarian and judicial culture of the Austro-Hungarian Empire in his novel *The Trial* where the central character is known only as 'Joseph K' throughout. The British open justice principle has also been substantially compromised by the practice of conferring anonymity on terrorist detention and control order suspects. There have been three substantial rulings by the previous appellate committee of the House of Lords asserting historically significant legal principles in relation to detention without trial, the justice of secret evidence and the admissibility of evidence obtained by torture. Yet the very identities of the subjects at the centre of these ground-breaking precedents have been anonymised and legally rendered as secret concepts. The nature of this secrecy does not provide a disincentive to a wider world blighted by countries with politically oppressive and authoritarian governments which thrive on the exigencies of secret police forces, secret arrests, trials in secret, the deracinated and stripping of individuals of their dignity and identity as human beings, and the imposition and oppression of secret processes of torture, detention without trial and arbitrary execution.

5.10. There is growing evidence that the public has been losing its respect for and confidence in the administration of justice and the authority of Parliament as a result of the curtailment of freedom of expression rights. The secrecy applying to the Family Courts has resulted in the manifestation of a campaign of protest and civil dissent conducted by pressure groups. The court rulings seeking to impose censorship orders on the trials of adults accused of offences connected to the 'Baby P' case were subject to widespread public defiance and subversion through protest action on the Internet, even though the courts were properly seeking to protect the right to fair trial and the welfare of children. The *contra mundum* order protecting the new identity of Maxine Carr has generated the 21st century phenomenon of witchcraft style persecution of women suspected of being Maxine Carr. The adoption of the route to choose secrecy as the solution rather than the police and judiciary using arrest, prosecution, punishment and deterrence to assert the rule of law may result in an unfortunate blowback in public respect for the authority of the administration of justice and the rehabilitation of offenders. Public cynicism and a general collapse in any public confidence in the rule of law has been evident during the attempted exercise of Freedom of Information Act rights over public access to the detail of House of Commons expenses. Individuals have defied Parliament, the Information Commissioner and a High Court ruling to disseminate the accurate publication of information they believe should have been in the public domain. There is a real risk these apparent failings in the proper exercise of executive, legislative and judicial discretion in respecting freedom of information concepts will further decay and decredentialize public confidence and respect for constitutional authority.

5.11. The development of the UK media privacy remedy flies in the face of a British historical tradition of irreverent, rumbustious and mocking media whose freedoms are defined by the exercise of irresponsibility as much as responsibility. British liberties and freedoms have been developed and marked by media expression that disrespects authority and power. It could be argued that the steam of media calumny and prurience has blown from a pressure cooker relationship with political power that has thus avoided the incidence of violent revolution and civil war experienced in other jurisdictions. Part of this tradition has been the exercise of the right to gaze,

pry and voyeuristically marvel at the exercise of private and public indulgence and privilege on the part of the rich and powerful. The parliamentary and judicial enterprise in recent decades to narrow and close down this process could have dangerous and unfortunate consequences. This is particularly acute in the context of a substantial reduction in the equal distribution of wealth. There is also an intense contemporary discourse on the issue of greed and excessive concentration of wealth, perks and privileges for individuals working in the banking, political and media professions. It can be argued that the public needs the media to intrude into private zones of interaction on their behalf in order for the public to be politically and socially informed. Otherwise the debate on greed and dislocation between merit and financial reward cannot take place. Subsequently the losing position in recent 'privacy' litigation and prosecution cases can be readdressed with questions that have been marginalized in the current debate on press standards, privacy and libel: Why shouldn't Niema Ash have the right to publish her account of her life with Canadian folk singer Loreena Mckennitt? How in the 21st century can the British courts sustain the unequal exercise of the power of mistress/master to servant relationship so that the right to autobiography only resides in the mistress/master?; Why shouldn't *News of the World* readers be entertained by the exposure of the bizarre sexual peccadilloes of the global head of formula one racing and a son of 2nd World War fascist leader Oswald Mosley particularly when the exposure is initiated by one of the women he has hired to provide the service?; Why shouldn't the *Daily Mirror* be able to prove Naomi Campbell's alleged hypocrisy over her denial of taking drugs by stating that she was attending Narcotics Anonymous?; Why shouldn't *News of the World* readers learn that one of the privileges of being 'heir to the throne' is that an ITN reporter is prepared to loan an expensive professional video recording kit without charge? Why shouldn't the public have the right to see photographs of the world's richest living woman author appearing in public space even with her children when she exercises her financial power by donating a million pounds to a main political party? How can an 18-month-old child being pushed in a buggy in an Edinburgh Street philosophically and jurisprudentially assert the sentience and consciousness of hurt feelings in being photographed in the company of his world famous mother and thereby articulate a valid complaint of invasion/intrusion into a private zone of interaction in a public street? Of course, it can be strongly argued that existing public opinion and a consensus in contemporary social values would answer all these questions in the negative. But what happens when the consensus shifts and social values change, but the boundaries set in law on what cannot be communicated remain as they are?

6. There has been a wider social and politico-economic decline of the British media's ability to exercise its role as the critical ears and eyes of the public. The policy of managerial rationalisation of profits through cost reduction in the resources of news and story gathering means that journalists do not cover most UK courts. There is therefore a substantial democratic deficit in the journalistic scrutiny of the UK judiciary. My own news agency was a casualty of this trend. At the same time the UK media has had to substantially increase its expenditure in media law and regulation compliance. Cumulative budgets across the British media of tens of millions of pounds each year in maintaining legal compliance infrastructures, funding media law litigation in defence and assertion of media legal interests means that media publishers have had to sacrifice financial investment in vital reporting resources. The chilling effect from the extraordinary level of legal costs and damages in privacy and libel actions inevitably supplants the initiative of media publishers to invest in the employment of investigative and inquisitive journalists. The 'eyes and ears of the public' role of British journalism is thereby being substantially weakened with a concomitant negative impact on the quality of the democratic process.

7. I would argue that as UK political, cultural and social values have more in common with those of the USA than EU and many commonwealth jurisdictions it is both logical and appropriate that the UK should calibrate its libel and privacy laws with the First Amendment constitutional standard and US Supreme Court jurisprudence. Consequently, Parliament should consider introducing a new Defamation and Privacy Act that strengthens the particular regard for freedom of expression in the Human Rights Act. This could be achieved by inserting the Article 8 right in the 10.2 qualifying paragraph of Article 10 of the Human Rights Act [as recommended by Geoffrey Robertson & Andrew Nicol in *Media Law* (5th edition 2008)] and statutorily rendering the Article 8 remedy as only being available vertically against public authorities without the judiciary being used as an intervening mechanism for litigation. ECHR rulings should be reduced to an advisory role that is no higher than the jurisprudence of the US and commonwealth jurisdictions. This could be clarified by legislation and resettled in case law. In libel the burden of proof should be transferred to libel claimants, libel claimants should be divided into public interest and private categories. Public interest claimants should have to prove actual malice and/or reckless disregard of the truth instead of applying the ten point Lord Nicholls manifesto of 'responsible journalism' against media defendant conduct as set out in *Reynolds v Times* in 1999. Both public and private claimants should have to prove that defamation has caused actual material harm in order to be in a position to be awarded damages. A one publication rule should be introduced so that claimants have only one year to sue over any publication on the Internet.

8. It could be argued that the UK is woefully behind the USA in maintaining and developing the public's trust, confidence and understanding of its legal system. Its judiciary, in comparison to the USA, is remote, still drawn from a narrow social and gender profile, and unlike much of the US states system of judiciary devoid of any democratic process of accountability. The USA has recognized and realised that the 20th century development of electronic media requires broadcast access to proceedings. The UK judiciary's resistance to either radio or television coverage of the courts has fundamentally restricted and limited the public's appreciation and understanding of the legal process. The resistance adds to the unfair dinosaur image of the judiciary and wrongly suggests some kind of hostility to the public's role in seeing justice manifestly and undoubtedly being seen to be done. Whilst the prospect of the new Supreme Court permitting the televising of legal argument represents some degree of progress (ironically more progressive than the situation with the US Supreme Court) Parliament and the judiciary should expedite some significant development in the widening of media representation of all tiers of the legal system. A positive and relatively low-cost step would be to set up a national 'court radio' channel on a digital platform with webcasting jointly run by the Department of Justice and a public broadcaster such as the BBC. This would provide an effective bridging arrangement offering the merits of experimentation and confidence building in the same way that Parliament took the first step towards broadcasting of its proceedings with the

radio medium. The engagement and involvement of an effective legal broadcaster such as Joshua Rosenberg as a presenter and analyst would add to the educational and journalistic value of scrutiny and explication. We also have a cadre of brilliant and responsible women broadcasters over the age of 50 allegedly cleansed from the broadcast industry through ageism whose background in home affairs and legal/political journalism would contribute authority and quality to the project.

9. The penal and retributivist nature of libel and media privacy law enforcement through damages and disproportionately high legal costs combined with statutory broadcast regulation that involves the imposition of multi-million pound fines are further disincentives to pursue constructive and inquisitive journalism in all media. Such financial resources should be channelled into producing more qualitative media content and the employment of creative and constructive media expression.

10. Rather than deal with freedom of expression and media freedom issues piece-meal in the areas of press standards, libel and privacy I would argue that the Committee should consider recommending an imaginative and radical constitutional settlement through the creation of a 'Media Law and Restorative Justice Commission' and the passage of a 'Media Freedom and Restorative Justice Act'. In chapter 6 of my forthcoming book *Comparative Media Law & Ethics* (Routledge 2009) I argue that many of the problems caused by media abuse of power, oppressive and inhibiting libel and privacy laws could be solved through restorative justice procedures based on arbitration, apology, case conferences and compensation rather than civil and criminal litigation and prosecution. The following reforms would substantially transform the problematization of the UK media and successfully resolve the conflict between media harm and media freedom:

10.1.Transfer all media law processes (criminal and civil) to a new system of 'Media Law courts' that would sit with single specialist judges to adjudicate on final disputes that could not be resolved through restorative justice/alternative dispute resolution conferences. The remedies would be fixed on the basis of published 'right to replies' and a maximum compensation level of £10,000. Fines, imprisonment and damages would be struck from the lexicon of media law. The courts would address anything from libel, privacy to contempt and breach of statutory reporting restrictions. I would suggest that the specialist media law courts would sit in first tier High Court centres. This recognizes that the bulk of its business would probably take place in London, but regional centres would be able to operate to serve local media throughout the country. The compensation remedies would be available to identifiable 'victim' parties in the case of privacy and libel. In what were formally criminal matters the compensation would be available for distribution on a discretionary basis by the adjudicating judges to victims of criminal cases, which had been disrupted by irresponsible reporting. This could include defendants who had been the victims of miscarriages of justice, witnesses wrongly identified, or charities serving the interests of criminal trial participants where the targets for compensation were not so well defined.

10.2.Transfer all of the positive restorative justice functions of the existing Press Complaints Commission and the regulatory media content functions of the BBC Trust and Ofcom to a single 'Media Law and Restorative Justice Commission' constituted by Parliament in the form of an independent trust joint funded on a 50/50 basis by the broadcast and print/online industries and the State. The Commission would perform the following functions:

10.2.i Act as a law and ethical regulatory reform commission for evaluating and creating media law and regulation under a recognized constitutional principle established as a Rubicon in the Media Freedom and Restorative Justice Act:

'All media laws and regulatory procedures will apply a particular regard and importance to the freedom of information and freedom of the media in the United Kingdom.'

10.2.ii All complaints concerning media law and ethical transgression shall at first instance have to go before the MLRJC for investigation and then potential consideration through restorative justice procedures of conferencing and alternative dispute resolution. The disputing parties would have an opportunity to meet, exchange views, agree to disagree and take no further action, agree resolutions through private and/or public apology and compensation of up to £10,000. Public apology shall be a remedy of apology and correction that would be agreed between the parties and appear on the media space of the offending publication. It would be limited to 400 words in the case of online/print publication and two minutes in the case of broadcast publication. In the case of online publication, the apology/correction would be embedded on the web-page of the offending publication after agreed deletions and changes had been carried out.

10.2.iii Where restorative justice processes have been unable to achieve a solution to the dispute, the cases would then go to the Media Law courts for trial. The remedies available to the Media Law courts would be no greater than those available in the restorative justice processes but they would be by order of the court. The courts would be constituted under civil jurisdiction so that their 'findings' would not amount to criminal offences.

The Media Law courts would therefore have the status of the High Court. A right of appeal would be established to the Court of Appeal Civil Division and then to the Supreme Court. The higher courts would not be in a position to order higher remedies. However, they would have jurisdiction to try under common law contempt, instances of deliberate flouting and refusal to comply with the Media Law court orders under the legislation.

10.2.iv The Commission would be constituted on the proportion of 50% of representatives from the print, broadcast, and online publication industries, with 20% (two fifths) of representatives being nominated from unions representing members in the industries. The rest of the commission would include 10% of media law specialist judges, 10% democratically elected representatives from the Westminster Parliament, Northern Ireland assembly, Scottish Parliament and Welsh Assembly, and 30% of lay members. Each Commission member shall serve terms limited to 3 years and would be able to serve again after a gap of 3 years from the last time of service.

10.2.v Claimants and defendants involved in MLRJC and Media Law court disputes will have to bear their own costs whatever the outcome of the complaints.

11. In conclusion, I would recommend restorative justice remedies for media law and ethical disputes since the vast majority of media communications considered harmful and offensive has generated damage that is primarily emotional rather than materialistic. The current criminal, civil law and regulatory range of sanctions are arguably out of all proportion to the actual nature of injury and harm produced by the mere publication of words. A system of apology, case conferencing, where the 'victims' of media publication have the opportunity of meeting and discussing their complaints with the authors of their misfortune, and limited compensation and right to reply, is the most appropriate method of addressing the problem of hurt feelings. The weight of the evidence provided to the Committee has neglected to appreciate the restorative justice benefits inherent in the current structure of Press Complaints Commission self-regulation. Many of the criticisms levelled at the PCC would be addressed by adopting its restorative justice model in a wider structure of media legal and regulatory reform based on capped compensation and legal costs combined with a constitutional prioritisation of freedom of expression. I would strongly urge the Committee to consider intelligent, radical, constitutional and creative solutions to the problems being investigated.

N.B. This memorandum represents solely the views of the author and does not imply support by or expression of policy on behalf of the various organisations employed by the author.

September 2009