

Statement to The Leveson Inquiry

Rt Hon Lord Smith of Finsbury

1. *Who you are and a brief summary of your career history.* I am Christopher Robert Smith, Lord Smith of Finsbury. For 22 years, from 1983 to 2005, I was the Labour Member of Parliament for Islington South & Finsbury. From 1997 to 2001 I was Secretary of State for Culture, Media and Sport, responsible amongst other things for Government policy towards the media and the press. From 2003 to 2008 I was the Founding Director of the Clore Leadership Programme; and I am currently the Chairman of the Environment Agency (a non-departmental public body), and Chairman of the Advertising Standards Authority (which as you will know from evidence already submitted is a self- and co-regulatory body responsible for the maintenance of standards in advertising). I have recently been re-appointed for a further term of office for both positions.
2. *Upon taking up this role (as Culture Secretary), what were your views on the culture, practice and ethics of the press, and on the state of public confidence in the press? What were your views on the effectiveness of the self-regulatory system in place in relation to the press? Did your views on either of these topics change substantively at any stage during your tenure as Culture Secretary?* I took my view at the time – as I still do – from first principles: that in our society, statutory control of the press is potentially seriously detrimental to democracy; that there is great public benefit from the free exercise of intelligent investigatory journalism; that there should be the widest range of robust opinion available to the public; but that there are many occasions when the press, through sloppiness or intrusiveness or deliberate misrepresentation falls far short of the standards to which it ought to aspire. I believed (and still do) that there is some tabloid journalism in particular – though by no means all – that has assisted a cheapening of public discourse and cultural awareness over many years. The balance between the importance of free expression and the unacceptable lengths to which the press sometimes goes is, and will always remain, the central dilemma in policy-making in this area.
3. Over the seven years prior to my becoming Secretary of State, there had of course been much debate about the conduct and ethics of the press. The 1990 Calcutt Committee had made a number of recommendations, which at the time were endorsed by the then Government in return for not legislating for press regulation. Sir David Calcutt's Review of Self-Regulation in 1993 concluded that insufficient change had taken place in response to his Report, and recommended a statutory complaints tribunal. This was not established, and the then Government remained committed to a self-regulatory approach; but very few of the original Calcutt proposals were implemented by the press and the Press Complaints Commission. This was the position I "inherited" on coming into office.

4. There was however one major change that had recently taken place, which was the appointment of Lord Wakeham as Chairman of the PCC. He had already begun to take a serious look at how the procedures and powers of the PCC could be strengthened; and for the first time in several years it did seem that the PCC were determined – at least partially – to make some real changes. My initial approach following the 1997 election was to endorse the self-regulatory approach, but to try to persuade the press and the PCC to make it work better. I met with Lord Wakeham on 25th June 1997, to hear his views and proposals and to identify areas where further progress might be needed.
5. Throughout my time as Secretary of State, and subsequently, my view has remained that the only way to secure the objective of ethical behaviour in the press is through the self-regulatory route, imperfect though it undoubtedly is. But that self-regulation must be far more robust and effective than it has, in the event, turned out to be. My views during my time as Secretary of State probably became stronger in wanting to see more robustness in the operations of the PCC. As I'll identify below, there were significant improvements in the wake of the death of Diana, Princess of Wales, but they were still insufficient.
6. *The Inquiry would be grateful for an account, from your perspective as Culture Secretary, of the issues for the media raised by the death of Diana, Princess of Wales in 1997 and public concern about the role of the media in relation to her life and death, and the Government's response. Your account should in particular cover: (a) details of any discussions you had with representatives of the media about these matters.* In the days immediately following Princess Diana's death in Paris, there was much public concern about the actions of the paparazzi in chasing her, and more generally the impact that media intrusion had had upon her. This tragic event undoubtedly changed the public climate in relation to press activities and press regulation, and in particular spurred Lord Wakeham to more urgent consideration of changes that needed to be made for the PCC.
7. I wrote to the Prime Minister on 2nd September, shortly after Princess Diana's death, to recommend that the Government should not make any hasty public comments about press regulation; that it might be necessary to look at laws relating to harassment, but that it would not be desirable or practical to move towards privacy legislation; that it was up to newspaper editors and proprietors, in the light of public sentiment, to indicate now what action they proposed; and that I would be meeting with Lord Wakeham on 8th September.
8. My principal conduit for discussions with the press at this stage was through Lord Wakeham and (as he then was) Guy Black at the PCC; I don't recall very much contact directly with editors or proprietors. At the meeting with Lord Wakeham, he indicated that he was urgently seeking major changes to the Code and the operation of the PCC, especially in relation to the treatment of children by the press, and hoped to report on this publicly within a few weeks. I welcomed this,

and suggested other possible measures which could be contemplated in particular in relation to the actions of paparazzi – for example making it mandatory for photographs to carry the name of the photographer and a statement if it was taken without the permission of the subject; the need to explore whether it might be appropriate to consider an equivalent in the UK of the French *droit de l'image*, which gives the copyright to the subject, not the photographer; and the value of looking again at the definition of public interest that can be cited by the press in their defence.

9. *(b) The views you reached about the extent of and justification for public concern about the media, and the steps that would be necessary to address that concern, and why.* Public concern was certainly widespread at the time, as evidenced by the 1200 letters about press conduct that I and the Department received in the two or three weeks following Princess Diana's death. I think, though, that we all realised that over time, as the current events receded from memory, the intense demand for change would diminish. I felt, however, that it was necessary for us to encourage the press to seize this opportunity to make a permanent change in their practices, and I believe this view was shared by Lord Wakeham, and by some – though not all – editors.
10. Most of the discussions I had with Government colleagues at this time centred around the dual approach of supporting the principle of self-regulation, but making it clear that we wanted to see a sea-change in the way the press operated.
11. *(c) Details of any representations you made to, and any discussions you had with, the PCC, their purpose and effect.* As noted above, I met with Lord Wakeham very shortly after the death of Princess Diana, and I kept in regular contact with him and his office over the following three weeks, as he worked up his proposals for changes to the Code. I met with him again on 24th September, the day before he published his proposed changes. My general approach was to welcome the changes he was making, but to point out that more would be needed.
12. Lord Wakeham's proposals, published on 25th September, included increased protection against the publication of photographs obtained by persistent pursuit or in places which might legitimately be regarded as private; extended protection for children between 16 and 21 (this was particularly relevant, of course, for the two young Princes); a ban on payment to minors for stories; a requirement for intrusion into grief or shock to be handled with sympathy; a small tightening of the public interest definition to insist it had to be "overriding" in a small number of circumstances; and the prominence of adverse adjudications to be decided after discussion between the editor and the PCC. On the day of publication I issued a Press Release welcoming the changes, and saying that the Government expected newspapers to abide by the new provisions in the spirit as well as the letter. I added that the Government expected the Commission and the newspaper industry to take the process of self-regulation further.

13. *(d) A full explanation of all steps taken by the Government to effect or encourage change in the culture, practices and ethics of the press; (e) your views at the time about the steps taken by the PCC, including the changes made to the Editors' Code.* Following the initial flurry of activity, I wanted to keep the pressure on the PCC not only to implement in full the Wakeham proposals (there were certainly rumours of back-sliding on this within the Code Committee) but also to look further at areas that could be further strengthened. On 25th November I wrote a Minute to the Prime Minister, circulated to all Cabinet colleagues, in which I said of the Wakeham proposals: "Although these proposals are a very welcome step in the right direction, they still have to be agreed by the trade bodies which fund the Commission. And I think they do not go far enough to ensure a proper balance between the freedom of the press and the rights of the individual. I propose to recommend to Lord Wakeham several improvements to procedures, Code and sanctions." *(Please note, I am currently seeking Government approval to be able to submit this Minute to the PM to you, in addition to this Statement.)*
14. Amongst those areas that I identified for further strengthening were a more proactive role for the PCC, to enable it to instigate complaints itself; a speeding up of the adjudication process, with targets for resolution of complaints; a tightening of the provisions on harassment and intrusion; a more restricted definition of the public interest; and the introduction of stronger sanctions for breaches of the Code.
15. Lord Wakeham's proposals were, I recall, largely accepted by the PCC's Members, and they had a positive effect – especially on the handling of Princes William and Harry through the whole of their education. (The impact of press activity on the two Princes had, in the immediate aftermath of Princess Diana's death, been a matter of considerable public concern.) The further measures which I was pressing on behalf of the Government, however, made little headway.
16. *(f) Your views at the time about any other steps taken by the press; (g) the extent to which you continued to keep matters under review and with what result.* Fairly soon after the series of discussions with the PCC about the changes to the Code, the focus changed to the Government's proposal to incorporate the Human Rights Convention into British law. Article 8 of the Convention provides for a right to individual privacy; Article 10 provides for a right of freedom of expression. Getting the balance right between these two Articles, between press freedom and protection of the individual, was something we were very anxious to secure; and there were many discussions, within Government, and between myself and the PCC and individual editors, to establish how we could best achieve our objectives within the Human Rights Bill that was submitted to Parliament.
17. The press argued strongly that they were worried that the Human Rights Bill would introduce a judge-made law of privacy by the back door, as cases were gradually brought. They were demanding at the outset that the PCC and the press should be exempted from the provisions of the Human Rights Bill. Government

colleagues, especially the Law Officers, were fundamentally opposed to such an exemption, and this was especially compelling coming so soon after all the controversies around press activity that had been aroused by Princess Diana's death. I was however seriously concerned about the potentially chilling effect on legitimate investigative journalism that access to prior restraint (injunctions, for example) under Article 8 might have. These issues, of the balance between the two Articles, and the way to protect legitimate press activity, were discussed in depth over the succeeding six months, between the Prime Minister, the Home Secretary, the Lord Chancellor, the Solicitor General, and myself. I also kept in touch with Lord Wakeham, and had occasional discussions with editors. In June of 1998, agreement was reached across Government – and welcomed by the PCC – that a new clause would be brought forward for the Human Rights Bill: giving a steer on the need to respect the media's right to freedom of expression as well as individuals' right to privacy; requiring the courts to have regard to the PCC Code of Practice and the broadcasting codes; and making it more difficult to obtain injunctions restraining publication.

18. With the Human Rights Act on the statute book, and the revised PCC Code in place, the public pressure on the issue diminished; and Lord Wakeham's tenure as PCC Chairman – considerably more vigorous and publicly conscious than that of his predecessor or successors – did bring a degree of enhanced confidence to the self-regulatory system. It was still decidedly imperfect, and regarded as so by the public, but for the next three years it was held in somewhat better regard than it had been in the immediate period following Princess Diana's death.
19. One major issue, however, remained unresolved, and that was the issue of cross-media ownership. The rapid growth at this time of BSkyB made this an increasingly important issue. Towards the end of my period as Secretary of State, I was working very closely with the Secretary of State for Trade & Industry in drawing up a Green Paper on the future of Communications regulation, including the proposals for the creation of Ofcom. This (*A New Future for Communications*) was published in 2000 and – in inviting views from respondents about what future rules should apply for ownership of both newspapers and broadcasters – stated a very firm commitment to ensuring a plurality in services for the consumer and the citizen. This commitment was, I fear, diluted when the draft Communications Bill subsequently appeared, after the 2001 election, though some of the principle was restored following the advocacy of Lord Puttnam in the House of Lords.
20. *How far do you consider all the steps taken, and the changes made, to have been effective in changing the culture, practices and ethics of the press and securing public confidence in the media? With the benefit of hindsight, do you think further action at the time would have made a difference?* At the time, I believed that the changes made – especially to the provisions of the Code – would make some difference, but I didn't think they would resolve the problems completely. With hindsight, that view is stronger. Lord Wakeham's changes did lead, for a

period at least, to more acceptable behaviour on the part of the press. I'm afraid that after a while some old habits began to creep back; and in any case there had been little progress on proactive work by the PCC, on the public interest test, or on effective sanctions. Looking back, I should probably have been more active in continuing to press the case for further change, especially once the immediate public concerns had died down. I still believe that strong self-regulation is the right answer, but it does have to be demonstrably strong, and that cannot be said of the PCC at present.

21. *In the light of what has now transpired about the culture, practices and ethics of the press, and the conduct of the relationship between the press and the public, the police, and politicians, are you prepared to offer a view as to reform that would be most effective in addressing public concerns and restoring confidence and, if so, what is your view?* I can probably best answer this question by reference to my current role as Chairman of the Advertising Standards Authority, which has given me valuable insight into the strengths and challenges of good self- and co-regulation. I believe the ASA does work well and effectively, and serves its purpose of keeping advertising legal, decent, honest and truthful. It commands considerable confidence from the public. In recent months, I have thought long and hard about what lessons from the ASA experience might be relevant for the continued, but better, self-regulation of the press.
22. There are, I believe, a number of reasons why the ASA is effective. First, there is buy-in to the ASA system from right across the advertising industry: there is a recognition that advertising depends on consumer trust, and loses it at its peril, and robust regulation is a way of securing that trust. Second, there is a clear separation of powers in the system, between the Committee on Advertising Practice (CAP) that writes the Codes, the Advertising Standards Board of Finance (ASBOF), that raises the funds for the system by a levy of 0.1% across all advertising, and the ASAS, that administers the Codes and adjudicates on transgressions. Third, there is a strong independence about the ASA's Council. Two-thirds of its membership, and the Chairman, are lay members with no previous connection with the industry; a third have an industry background, but drawn from advertisers, media owners, and agencies, and they act on Council as independents rather than as representatives. Fourth, the ASA gives regular prominence to its adjudications, to ensure the public are constantly reminded of the work of the self-regulatory system. Fifth, there are real sanctions for breaching the Codes. If an ad is found to be in breach, it cannot appear again – whatever the medium it is in. And sixth, there is a back-stop statutory authority if the self-regulatory processes don't work – in the case of non-broadcast media, a referral to the Office of Fair Trading, and in the case of broadcast media, a referral to Ofcom.
23. The exact format of the ASA couldn't, I suspect, be transferred over to apply to the press. But some of the elements here could perhaps be considered. A stronger degree of independence for the PCC Members; a clearer separation

between the industry and the operation of the Commission; real sanctions, including equal prominence rules and perhaps even a system of fines; and a statutory back-stop – not to carry out adjudications or to operate the system, but to enforce decisions made by the Commission. These might perhaps be elements to strengthen the PCC that could be considered?

Chris Smith
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