

Witness Statement

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IN THE LEVESON INQUIRY INTO THE PRESS

WITNESS STATEMENT OF CHRIS FROST

ON BEHALF OF THE NATIONAL UNION OF JOURNALISTS

I am Chris Frost and I make this witness statement from matters within my own knowledge, save where I identify otherwise. Where I report that which others have told me, I believe that which I report to be the truth.

1. I am professor and head of Journalism at Liverpool John Moores University and have been a journalist, editor and journalism educator for more than 40 years.
2. I am a former president and current member of the National Executive Committee of the National Union of Journalists and chair of the union's Ethics Council.

3. I am also a National Council member of the Campaign for Press and Broadcasting Freedom and support the Hacked Off Campaign. I am a former member of the Press Council and the incoming National Chair of the Association for Journalism Education. In addition I am treasurer of the Association for Journalism Education, an executive board member of the Institute of Communication Ethics and sit on the editorial board of Ethical Space.

4. I have written several books on Journalism: *Journalism Ethics and Regulation* (now in third edition); *Designing for Newspapers and Magazines* (now in a second edition); *Reporting for Journalists* (now in its second edition); and *Media Ethics and Self-Regulation* as well as several book chapters and papers in journalism ethics and regulation including Frost, C (2012) *Newsroom Culture* in Mair, John and Keeble, Richard Lance *The Phone Hacking Scandal: Journalism on Trial* London: Arima Publishing. I have been published widely in academic journals and regularly write magazine and newspaper articles on journalism ethics, regulation and law as well as broadcasting. I have spoken at conferences or worked as a consultant in much of Eastern Europe, India, Asia and Africa.

5. It is vital for the future of democracy and of a free society that freedom of expression should be given maximum licence, but this is not an absolute freedom and limitations as identified by a democratically elected parliament should apply. Regulation of freedom of expression by the media in the UK has always been a mix of law and statutory and self-regulation with several regulatory bodies in the UK being charged with guarding media standards. All but the Press Complaints Commission have statutory requirements and authority and it is difficult to see a good reason why the press should be the exception to this rule.

6. We have a number of important freedoms in this country: the freedom to own property, the freedom to trade, the freedom to carry out an occupation, but all these freedoms are limited by the need to protect the freedoms of others. This becomes particularly pertinent when we are presented with sound evidence of massive abuses of those same freedoms.
7. Evidence of unethical behaviour and the need for codes of ethics and “reporting etiquette” in the UK can be found as early as the 1870s. The need for accuracy and good notekeeping was mentioned in several reporting books of the time. The NUJ was formed in 1907 and some of the problems faced today were early challenges for the union with falling standards and claims of a previous golden age being identified by F. J. Mansfield in his 1943 history of the NUJ *Gentlemen, The Press!* Plans proposed by the NUJ to beat what were perceived as falling standards included a law to prevent multi-ownership; a well organised workforce; a well-paid work force and a conscience clause, allowing journalists to make ethical decisions about their work without fear of losing their job (campaigns which the union continues to pursue to this day to defeat the same problems).
8. One of the biggest moves by the NUJ to do something about journalistic ethics in the UK was when the union decided at its annual conference in 1936 to introduce a code of conduct. The code covered, amongst other things: the importance of free expression; no falsification or distortion; doing nothing to cause pain or humiliation to innocent, bereaved or otherwise distressed persons; news and pictures should be acquired by honest means only; fairness in court reporting; bearing in mind the dangers of the laws of libel and contempt; that accepting bribes is the gravest professional offence.
9. The clause on pain and humiliation had only recently been seen as an issue of concern and in 1937 both proprietors’ and journalists’ condemned methods of news-gathering that caused distress to private persons. The NUJ’s National Executive Council agreed that:

10. "reporters should not be permitted to intrude into the private lives of private people; that they should not usurp the functions of official or private detectives, and that they should confine their activities to the reporting of, and commenting on, facts." (Mansfield 1943: 525).

11. Journalist had been concerned when the code was introduced about their position if they were called upon to do work that was against their consciences. The Union paid benefit to members who lost their jobs in such circumstances and we continue to fight for and support members who are in similar circumstances today.

12. The 1947–49 Royal Commission on the Press was set up following a free vote in parliament with the object of 'furthering free expression of opinion through the Press and offering the greatest practicable accuracy in the presentation of news, to inquire into the control, management and ownership of the newspaper and periodical press and the news agencies, including the financial structure and the monopolistic tendencies in control, and to make recommendations thereon'. The demand for an inquiry had been developing throughout the NUJ for the previous two years, as Maurice Webb MP, a member of the NUJ's National Executive Council, explained to the House.

13. The Commission reported in 1949, recommending a General Council of the Press to both represent the press and to deal with complaints. The industry dithered for four years before finally setting up a council following a private members Bill proposing such a council receiving its second reading (Frost 2011: 226). The new council had its first meeting in July 1953; it had taken four years and a private members Bill to get this far. It's a pattern that has been repeated over and over ever since with controversy, crises and scandal being met with the minimal possible change needed to quieten protest.

14. The 1961-1962 Royal Commission, The Younger Committee, the 1974-1979 Royal Commission, private members' Bills from John Browne, Tony Worthington and Clive Solely throughout the eighties, the Calcutt Committee and Calcutt 2, the National Heritage Committee and more recently the several Culture, Media and Sport Select Committee reports have all called for change and all have either been ignored or the absolute minimum reform needed to stifle opposition has been reluctantly carried through. The Press Council and more recently the Press Complaints Commission have constantly failed to take regulation seriously, preferring to operate as a protection for the commercial activities of the newspapers that fund them and make up their boards.
15. The NUJ set up its own Ethics Council in 1986 resigning from the Press Council to escape its perceived poor performance. The Council receives complaints from any member of the NUJ who believes there has been a breach of the NUJ Code. There is a system of adjudication and sanctions in place, with the ultimate sanction being expulsion from the Union.
16. The NUJ was persuaded to rejoin the Press Council in 1989 following promises of major reform from the new chair, Louis Blom Cooper, QC. David Calcutt QC was asked by the government to examine privacy at around the same time and his recommendation to wind up the Press Council was seized upon by those keen to dump the Press Council and launch a lighter touch regulator with fewer stakeholders: a much smaller public section and no representatives of journalists. And so the PCC was born allowing those holding the purse strings to continue to ignore the real problems of press journalism ethics whilst pretending otherwise to parliament and the public.
17. The launch of the Ethics Council and then the Press Complaints Commission came at a bad time industrially for the NUJ. The changing economic pattern of the early 1980s, the recession and the determination of the Thatcher government to hobble the power of the unions led many newspaper proprietors to declare war on unions in newspapers and the NUJ soon found its closed shops under attack. Despite the move to new technology in the

middle eighties the NUJ was unable to maintain its strength and the ending of the provincial newspaper national agreement saw derecognition and personal contracts spread a climate of “fear, obsequiousness and conformism within newsrooms” (Foot 1991 cited in Keeble 2001: 6) that is still pervasive in the industry. Although the NUJ managed to renegotiate recognition in many workplaces through the early years of the new century, fear of losing one’s job or damaging career prospects has remained a constant worry for many journalists and bullying and intimidation became such a problem that the NUJ launched a *Stop Bullying* campaign in 2008.

18. The NUJ has campaigned for a wider remit for the PCC and for the inclusion of a conscience clause on several occasions before several Select Committees. Indeed the 2003 Privacy report said:

19. We heard persuasive arguments from PressWise and the NUJ that the writing of the Code into journalists’ contracts of employment should be backed up by either representation on the Code Committee or a conscience clause in the Code or both... We recommend that the Code Committee, Pressbof and the Commission, consider the following in relation to the Code of Conduct.... An additional element of the Code should be that journalists are enabled to refuse an assignment on the grounds that it breaches the Code and, if necessary, refer the matter to the Commission without prejudice

(<http://www.publications.parliament.uk/pa/cm200203/cmselect/cmcomeds/458/458.pdf>: 28)

20. But the Society of Editors opposed this saying editors should be solely responsible for workplace ethics a position they held to strongly throughout the nineties and up to the present day; a position that was strangely at odds with their support for inserting the PCC code in the contracts of journalists. The PCC refused to get involved saying this was an employment issue.

21. The NUJ has met informally with the PCC on several occasions, first in 1995 when Lord Wakeham was chairman. One of the key issues was the conscience clause and the suggestion from the PCC of their code of practice being inserted into journalists' contracts of employment. The NUJ opposed the idea of putting the PCC code into journalists' contracts of employment without a conscience clause. Making the code part of a journalist's contract of employment whilst saying quite clearly that journalists had no role in ethical decision making and should be guided in all things made no sense to the NUJ and was likely to put NUJ members in a position where they were in breach of contract if they followed instructions or in breach of contract if they did not. Lord Wakeham gave the union an assurance this was not PCC policy and not something they were seeking. Further cordial meetings have taken place and a variety of initiatives of a relatively uncontroversial nature suggested by both sides but none of them proceeded any further. In fact PCC policy hardened with regard to journalists' contracts. The PCC subsequently made links more difficult by pushing ahead with the view that the code should be part of contracts of employment.

22. The NUJ rewrote its own code of conduct in 2007 to streamline and update a code that had not been substantially changed since 1976. The PCC reviewed its processes in 2010 and the NUJ submitted written evidence. The PCC invited me as chair of the NUJ's Ethics Council to give oral evidence, an invitation that we accepted. However, the PCC rejected most of the evidence they were given and made only minor changes to its processes. The NUJ decided shortly after this at its 2011 conference in Southport that the PCC was beyond saving, and agreed to campaign for its replacement.

The PCC

23. *'The PCC is a powerful and effective authority performing a function with a skill that a stack of privacy laws could never match' - News of the World, May 1995'.*

24. The PCC was set up to solely resolve complaints deciding not to become involved in issues of press freedom, a decision that was regretted by the old Press Council following a debate where this view was proposed by the NUJ. It felt that to seek to adjudicate on complaints that were not measured against the need for press freedom was to leave the media without true ethical values and vulnerable to censorship. Despite these regrets, the old Press Council shut its doors in December 1990 and the PCC took up the reins in January 1991.
25. The PCC also says it has an important role to play in providing material on self-regulation and the code of practice for trainee journalists and students, although this is a demand service only and is not pro-active. They have never, for instance, contacted me as the head of a journalism department at a university or as a member of the Executive Committee of the Association for Journalism Education. However, when invited they have sent a speaker to meet students and provide documents. The administration staff have always been very helpful in providing me with the material I needed for teaching and research.
26. The PCC did later see the importance of press freedom (c1994) and included it as part of its work. However it has never campaigned specifically for press freedom or carried out any work designed to promote it.

Forms of regulation

27. Essentially the Press Council and its successor the Press Complaints Commission have done as little as they can get away with in terms of dealing with complaints or trying to enforce basic standards for journalism in the UK. Every five to eight years a crisis erupts that exposes bad practice in the press. The Press Council or more recently the Press Complaints Commission would condemn an alleged overreaction from some quarters, portray other critics as opponents of press freedom, make some minor changes (the more

minor the better) and then carry on as before. That is what the proprietors and the Press Council are hoping to do on this occasion. They have characterised the debate as one that was sparked by alleged illegality in one newspaper being used as a Trojan horse to introduce freedom-freezing government control of the media. They have tried to isolate the 'contagion' of illegal and unethical press practice as being solely the fault of News International and suggest that actually, apart from that, they were generally doing a pretty good job. None of this is borne out by any evidence other than the constant whispering and press reports from those with the most to gain by an open system that allows maximum commercial benefit to those with the lowest morals. In fact the evidence based on detailed analysis of complaints made to the PCC and their outcome suggest the opposite. Very few complaints concern standards, and these are not then upheld. The approach the PCC takes allows newspapers to slide towards negotiated remedial action that the complainant finally accepts as the best offer going or does not accept only to then find this "resolution" enforced by the PCC. Usually this is to insert a small correction in the paper and on the website about damaging information that was deliberately inserted in the newspaper in the knowledge it was misleading and which the paper refused to amend until told to by the PCC. (see Frost 2012b and 2010).

28. The fact is that the PC and then the PCC has done, as it has always done since setting up in 1953, the minimum required to present a reasonable face of regulation to the public while failing to actually do anything significant in terms of improving standards. It is inevitable that in a self-regulatory system, the commission is bound to play with the lowest common denominator for fear that to raise standards would risk newspapers leaving the commission. In fact their fears were well founded and Northern and Shell felt persecuted and left. Their record of complaints does not suggest they were under any particular pressure from the PCC. Other papers (notably Private Eye) never joined feeling that such regulation would interfere with their freedom of expression.

Law v ethics

29. The law has a fair bit to say about press standards. Those who oppose moving away from self-regulation characterise it as government control in order to prevent understanding that statutory regulation is about control by the rule of law and the democratic will of the people. We have laws, democratically agreed, to protect reputations, to protect the right of privacy and the right to a fair trial and the presumption of innocence. It is doubtful if there are more than a handful of people in the country who really believe there should be no statutory controls of the press of any kind. Once you accept that press freedom is not absolute it is a matter of working out the best forms of checks and balances. Is it best to leave these in the hands of a handful of proprietors and their appointed editors, or should there be much wider and more democratic accountability through the various stakeholders, including parliament. The NUJ is in no doubt that the latter is the only way forward.
30. The law can be used in two ways:
- specific statutes such as the Defamation Act, and the various pieces of legislation that limit reporting in court in order to protect minors and the right to fair trial and presumption of innocence; or
 - To provide authority to a regulator that would develop ethics and standards and enforce them.
31. The law clearly has its place but is often inflexible, slow, costly and rigid. Whilst having the advantage of being democratically decided upon, it must by its nature be unambiguous and is not good at dealing with grey areas. The law is ideal for saying what one must do (or not do) but is not very good at saying what one ought to do (or not do).
32. One of the problems with the operation of law day to day is that too often people ignore the ethical purpose of the law with all their intellectual effort going into how, whether in business or journalism, they can get around the

law to achieve what they want without breaking the law, but while incidentally ignoring the ethical imperative. An authority with the backing of statute can build on what journalists ought to do, resorting only to enforce what they are obliged to do when all else fails. It is this change of culture that is vital in the UK.

33. To give an example: the law in this country limits what can be reported in a criminal cases in order to guarantee a fair trial and protect the presumption of innocence but a serious crime is a good story and sells papers and so journalists often do what they can to get around this in order to please their editor and get a story that will sell well. Christopher Jefferies was one of the latest to suffer from this approach with his right to be presumed innocent removed before he had even been charged with an offence. In Holland, journalists are not restricted by the law in this way. Therefore journalists have had to develop ethical views, bearing in mind what their readers expect. The approach in Holland is entirely different with the papers refusing to give the identity of suspects in order to protect their privacy: "*De Volkskrant* does not publish pictures of suspects and certainly no identifiable pictures." (Evers et al, 2010: 70). Whilst they might be less strict with the privacy of celebrities, for ordinary people, even after acquittal, the policy of privacy is protected and this is supported by readers. The *De Volkskrant's* ombudsman, for example, was approached by a reader "who stated that the paper should have exercised more caution" when revealing his first name (ibid.73).

Other proposals for a new regulator

34. There are of course other ways of enforcing being suggested.

35. The Lord Hunt, the chair of the PCC, in announcing the winding up of the PCC and a transfer of its interests has proposed that its replacement body should set up a system of commercial contracts on which its enforcement would be based. This PCC2 is essentially PCC1 with the addition of

contractual arrangements and the possibility of financial sanctions should serious standards breaches be discovered. It is difficult to tell from their proposal but one can assume that assume serious standards breaches would be systemic breaches rather than individual complaints, no matter how serious. The contracts would be an agreement between the newspaper and the regulator to put in place a code and enforce it. It is difficult to see how this significantly changes what is already in place with the existing PCC as the list of things the new regulator would require members to do is virtually identical to the existing requirements list with the addition of an agreement to accept financial sanctions (something the PCC has previously said to be impossible, or at least undesirable).

36. The proposal goes on to say that these powers (under the contract) “may – indeed should, never have to be used.” It is difficult to see how they could be or would be. The issue of suing a newspaper for failing to maintain the contract would be explosive. Would other newspapers be prepared to fund such a suit? What would be the result of a positive finding by a court about a breach of such a contract? How long before all or some newspapers put in a notice to end the contract? An organisation (or its predecessors) that has always aimed at the lowest common denomination will be bound to develop a contract that no newspaper will consider breaching but that is virtually unenforceable. That will of course be done around the financial sanctions section and so we will see the enforcement part of this contract inevitably become meaningless; this is a conjuror’s parlour trick to convince us that the ball really is in the cup rather than the trickster’s hand.

Statutory tribunals

37. Some commentators have suggested a statutory tribunal. These would be similar to employment tribunals, made up from panels, one representing the media and one panel representing the public and would be chaired by a legally qualified person. This would hear complaints passed to it by an ombudsman for adjudication. This is certainly one way of getting an

adjudication body to deal with serious complaints but it seems unnecessarily cumbersome, inflexible and rigid to the NUJ.

Registration of journalists

38. Another suggestion that has been made is that all journalists should be registered in some form of professional registration similar to other professionals. Ignoring here, the debate about whether journalism is a profession or a trade, no details of this scheme have been produced by anyone, but such a scheme would presumably require candidates to undertake some level of training and fulfil other criteria to trigger registration. Once a journalist is registered, an upheld complaint to the disciplinary panel of the professional association that would be required as part of registration could remove the licence to practice. This is both wrong in principle and incapable of implementation. Journalists are simply carrying out, as a profession, the right of all citizens to freedom of expression. Registration runs the risk of limiting access to the media, preventing the wide range of different voices that is vital in a free society. In any case, in an era where we can rightly claim that everyone is now a journalist, such a registration would be meaningless. Registering doctors and nurses prevents the employment of unregistered practitioners in establishments that make life and death decisions, but it doesn't prevent people offering and being paid for all sorts of medical and health treatments; the same would be true of journalists.

Proposal for regulation

39. The press has no more right to make money by criminality, lying or cheating than any other commercial organisation. Whilst it is vital to defend press freedom and the right to individual freedom of expression that gives it strength, this is not an absolute right and must be qualified by the protections democratically agreed by an elected parliament.

40. The principle object of the new body should be to uphold and promote free expression and media freedom. This will require it to oversee a responsible

media and hold that media to account both directly from its own monitoring of performance and investigations of practice and through a public complaints system. The new body should be set up with some level of statutory underpinning to ensure it is able to exert its authority over all appropriate media including websites, published media and their related websites. These statutory powers should ensure all media of a pre-determined size (circulation, page hits and/or turnover) comes under the authority of the new body which should have the power to reprimand and/or fine breaches of its code or guidelines. Such a body could be identified and constituted in the new Communications Bill but this would have to identify how the body would deal with a publication that refused to accept the authority of the new body. It has always been the PCC's problem that it has had to pander to the lowest common denominator in terms of agreement to behave responsibly.

Constitution

41. The new body should be constituted in the Communication Bill giving the minister of Culture Media and Sport the power to set up an appointments panel that will select public members of the new body and appoint a chair of the new body. We are not concerned about names, but will call it the Press Standards Commission (PSC) in order to avoid confusion. Its authority should range over all commercial press and websites over a certain size. This could be determined by such measures as VAT registration, or circulation/page hits. This would inevitably leave a large number of small publications, blogs and websites outside of control, but since the vast majority of these are not commercial operations they fall within the scope of free expression and do not require regulation. They could in any case apply to come under the authority of the new body if they wished, being able to use a kitemark identifying their willingness to be policed by the PSC as a benefit.

Structure

42. The PSC should have two sections: A board, and an ombudsman.

43. The board of the new body should be constituted of:

- i. Two fifths representatives from appropriate press organisations:
Employers groups, the NUJ, Society of Editors, Association for Journalism Education; (10 seems a sensible number)
- ii. Three fifths representatives of the public, appointed by an appointments committee (15)

44. This body would determine the policies of the new body, including drawing up a code of practice. It would have a constitution that would oblige it to both protect press freedom in the UK and to identify and enforce press standards. It would do this both reactively, by taking complaints and enforcing the code, and proactively by:

- Campaigning for press freedom;
- Campaigning for high standards in the media;
- organising professional training within the workplace and cooperating with journalism universities and colleges providing pre-entry training;
- Monitoring press performance and standards, identifying areas requiring improvement;
- Investigating occasions when the press seems to be behaving badly and identifying how things could change.
- The body should have the power to take complaints from the public with no limitation on third party complaints and should be able to call any commercial publication or website produced in the UK before it to determine whether they are guilty of breaching the code of practice drawn up by a sub-committee of the new body. It should report annually to parliament.
- In addition the new body should have the power to investigate issues for itself, with the power to call witnesses and reach conclusions. It will also have the power to monitor press performance and issue reports or instigate hearings.

- The body should have the power to levy fines against publications for significant, reckless or repeated breaches of the code. These fines should be linked to the commercial activities of the publication, its advertising rate, for instance, to ensure financial parity between small and large. Such action would only be expected in a tiny number of cases per year. At the moment the PCC typically adjudicates around 40-50 cases a year, upholding complaints against about half that number. Many of these are clearly instances of carelessness or inexperience, or judgement calls where there might be some justification for the erroneous decision made. Only two or three cases a year might merit a tougher sanction than publication of the adjudication or a correction or an apology. However these exemplary cases would show the general public that the PSC has real teeth and is to be taken seriously by the industry.
- The code used by the new body should include a conscience clause protecting journalists from editorial pressure by safeguarding their jobs if they refuse an assignment on ethical grounds.

The ombudsman

45. The board would appoint an ombudsman. He or she would be responsible for processing complaints and identifying issues of concern for the board. An ombudsman as used in the Irish Press Council would allow for a more flexible approach, including leading monitoring and investigation and dealing with the complaints process from readers referring only appeals or complaints concerning matters of principle to the board. All complaints would go through the ombudsman's office and would normally be settled at that stage with legitimate complaints that breach the code of practice being considered and a ruling issued. Only complaints that potentially involved serious or reckless breaches of the code (and therefore might require financial sanction) would be considered by the board. The board would also consider complaints that required a decision on a matter of principle and appeals against a decision by the ombudsman. The ombudsman's office would handle complaints, identify matters of concern for the board and develop training and networks.

46. As well as the introduction of a financial stick, there should be some inducements for good behaviour. The NUJ certainly believes that additional protection in the Defamation Bill for newspapers/websites that show they are behaving responsibly should be considered. Evidence of good practice might include: regular newsroom ethics seminars; evidence that ethics decisions are routinely discussed, a conscience clause written into journalists contracts allowing them to refuse an unethical assignment, allowing the NUJ chapel to meet regularly to discuss ethics and for the M/FoC to discuss matters of concern with the editor; continual development programmes for journalists employed by the newspaper; inclusion of freelancers in such seminars/discussions with pay to ensure their involvement and prevent exploitation.

Complaints

47. Complaints are likely to continue to be the bread and butter work of the new organisation. The PCC presently only takes complaints from those who are the subject of stories. This has had two detrimental effects:

- A number of complaints cannot be followed up because although they have caused considerable upset, the subject of the story has not complained;
- It limits the type of complaints that can be made to those that involve a specific person or identifiable group of people.

48. This means that certain types of complaint cannot be picked up by the present PCC even though these are complaints that have caused a lot of concern amongst readers around issues such as discrimination and harm and offence. Indeed all the complaints to the PCC that have attracted larger numbers of complainants have been knocked back because the complainers were not the subject of the story. More than 22,000 people complained about a column discussing the death of Stephen Gately but only the complaint

made by his partner was eventually taken forward. It is vital that the new body consider complaints from all thus allowing so called third party complaints.

Types of complaint

49. There are some types of complaint that the PCC handles reasonably well and some that it does not. Children was one of the issues that it took seriously and it is fair to say that attitudes on the journalistic treatment of children have changed dramatically over the past 20 years in consequence. This shows that standards can be affected by strong regulation. However its record on discrimination of all types is poor except possibly homophobia (where there is usually a particular subject of the story) and many critics and campaign groups are vitriolic in their attacks on the press for discrimination of all kinds including, racism, prejudice against people with disabilities and transgendered people.

Harm and offence

50. At the moment the PCC does not take complaints about issues of harm and offence unless it involves death, suicide in particular. There is nothing in the code about harm and offence, and the PCC has ruled in the past that it will not take complaints about stories or pictures that cause harm or offence. Whilst this is a big issue for TV and for the broadcast regulators (Ofcom and the BBC), because TV shows moving images and is invited into our homes it has never been seen as a regulatory issue for newspapers. However the change in approach with the introduction of associated websites means that similar criteria need to be applied as apply in broadcasting. It cannot be acceptable to say that broadcasters must take care over images of sex, violence and death but newspapers and their websites are completely immune.

Privacy (harassment and intrusion)

51. Privacy (including harassment and intrusion) is an issue that the PCC has become involved with and it accepts a substantial number of complaints. However, it has to be understood that in order to complain, the average person knows they will be raking up the issues all over again and for very little purpose. Examination of the complaint by the ombudsman with some potential for a real penalty without further identifiable public revelations would be a much better way of advancing this section of the code.

Discrimination

52. Discrimination is another area where the PCC has not done well. Complaints against the press for being racist or discriminatory against some other minority group are far from new. The PCC's decision not to take complaints from anyone other than the subject of a story – the 'Borzello choice' named after a determined activist who submitted numerous complaints against newspapers for stories that were allegedly racist - meant that hundreds of complaints about the treatment of minorities were discarded by the PCC because they either did not have an individual subject or because the complaint did not come from them. It is crucial that complaints be accepted from anyone.

Types of complaints

53. There are several types of complaint and they need to be handled in a different way. The following list different types of complaint and how they could be handled:
- i. Basic breaches, dealt with by the ombudsman's office by resolution;
 - ii. Basic breaches deserving of reprimand; again these would be decided by the ombudsman;

- iii. Significant or disgraceful breaches deserving of reprimand, forced apology and possibly a fine. These might be dealt with by the ombudsman, but would be passed to the board if the ombudsman felt a fine might be merited.
- iv. Significant breaches dealt with promptly and with apology deserving of reprimand;
- v. Reckless or malicious breaches deserving of severe penalty. These would be sent to the board. The board would also deal with appeals.

Code of practice

54. The code of practice could be drawn up by the board and reviewed annually or by a representative sub-panel of the board. In either case it should have a full range of stakeholders involved.
55. This will be a publishers' code, since its aim is to regulate publishers. A journalists' code regulates journalists. Of course there will be considerable similarities; accuracy is accuracy for instance. However, it needs to be understood that there are differences of purpose and therefore different types of code. This becomes significant if it is intended that a code should be placed in the contracts of employment of journalists. This should only be considered if the code involved is a journalists' code, such as the NUJ's code and if journalists are offered sufficient protections in terms of being able to refuse ethical assignments that are underpinned by the new Communications Act or by employment law.

The workplace

56. Changing the culture in newsrooms is one of the most important ways to improve standards. Empowering journalists to make their own decisions in

line with company, NUJ and PSC codes and guidelines would bring the ethics back to the individual. Offering protection to journalists in the form of a conscience clause and a more positive attitude towards trade unions in the workplace could help reduce the climate of fear and bullying that has undoubtedly done huge damage to the quality and standards of British journalism. We have seen where leaving sole newsroom control of ethics in the hands of editors has led us.

57. It is worth looking at the process for the appointment of editors in the UK. In some European countries, the editor in chief must have the support of staff before being appointed. Taking the absolute power of appointing editors away from the proprietors and giving journalists some level of veto over appointments would make editors less dependent on their proprietor's support and more likely to deal with ethics in a cooperative and collegiate way.

58. It is also worth considering whether the new body should have the power to insist that some form of training should be mandated for newsrooms, journalists or editors who seem to consistently be in breach. This could possibly be seen as an alternative to a financial sanction for serious breaches of the code.

Conclusion

59. This is the most significant opportunity in a lifetime to gain a press that applies appropriate standards to provide UK citizens with a lively press that informs, educates and entertains without needing to unduly intrude on people's privacy or behave in a way that most people consider to be unacceptable in order to do it. It is vital to fully seize this opportunity.

Prof. Chris Frost

1/6/12

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Signed



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