BIOGRAPHY

I am ROY GREENSLADE, Professor of Journalism at City University London. I also write a daily blog for the media section of *The Guardian* and a weekly media column for the *London Evening Standard*. I have been a journalist for 48 years, starting on a local weekly, progressing to a regional evening and then joining my first national paper, the *Daily Mail*. I have since worked for almost every national title at one time or another.

In 1981, I was appointed as Assistant Editor of *The Sun*. In 1987, I joined the *Sunday Times* and became Managing Editor (News). In 1990, I was appointed as Editor of the *Daily Mirror*. I departed 14 months later after a series of disputes with the owner, Robert Maxwell. I then became, for about three months, Consultant Editor jointly of the *Sunday Times* and (the now defunct) *Today*. Since 1992, I have been a freelance who writes and broadcasts on media matters.

1. WHY THE PCC WAS FLAWED

From the beginning of this inquiry, it was obvious that the status quo was not an option. Before setting out a possible alternative regulatory structure, however, it is vital to grasp the history and context. We cannot go forward without a consideration of the past because many of the problems stem from the way the industry exercised control of the system following the Calcutt report and the creation of the Press Complaints Commission some 21 years ago. And we surely wish to avoid making the same mistakes again.

The flaws in the operation of the PCC, which had been the subject of concern to some commentators, editors, lawyers and academics throughout its existence, were finally exposed to public scrutiny following the Milly Dowler phone hacking

revelation on 4 July 2011, which engendered the creation of this inquiry.

In the blame game that followed the revelation, the PCC became one of the inevitable victims. It was not a surprise. The Commission had, after all, failed to address *The Guardian's* original story in July 2009 with sufficient rigour and even that might have been overlooked had it not, in a single sentence in its November 2009 report, foolishly and unjustly taken the newspaper to task for doing its job.

The PCC did advance a coherent reason for its failure to hold the *News of the World* to account. It had, in effect, lacked the power within its remit to do anything other than ask the paper to comment on the allegations about phone hacking. It did not expect a newspaper and/or its publisher, News International in this instance, to lie or dissemble. Similarly, it took comfort from the fact that the Metropolitan Police had also "cleared" the paper.

But it is important to see the PCC's failure over this particular affair in the light of other failures to secure public confidence in its procedures in previous years. In almost all cases, these were systemic, the result of the way in which the body was conceived and funded. Without wishing to cast aspersions on any of the chairmen and directors, all of whom had undoubted merits and consistently asserted their independence, they were hostages to the industry they were supposedly regulating.

The die was cast in the prolonged period of the industry's own undermining of the PCC's predecessor body, the Press Council. That body, which was independently chaired, found itself being attacked externally and internally, gradually losing the confidence of the public while struggling against bitter opposition from publishers and newspaper editors, who criticised and lampooned its negative adjudications in their own publications. From its inception, the PCC therefore sought to

avoid emulating the Press Council by doing all it could to avoid alienating the industry. In practical terms, that meant seeking consensus, and it is that philosophy that has informed the way in which the PCC has conducted itself throughout its existence, as we shall also see in the following section.

That is the reason I have often referred to the Commission being subject to "string pulling" by its paymasters, the Press Board of Finance (PressBof). This has been wrongly taken to mean that I was suggesting PressBof members, or people acting for them, made interventions in individual cases. As far as I'm aware, that never happened, and that indeed was my point: it did not need to happen. The PCC's chairmen and directors could not be other than aware of the vulnerability of the Commission and of their own positions when attempting to hold their own paymasters to account (and I am deliberately choosing to use a phrase borrowed from the journalistic lexicon about "holding power to account"). They were regulating, or seeming to regulate, the people on whose very existence they depended.

It is important not to see this as a personal criticism. There were obvious structural constraints, and they were acting for what they believed to be the best interests of the Commission (and press self-regulation). With memories of the Press Council's collapse of authority in mind, they were bound to seek a middle path. I may be in danger of paying them a back-handed compliment by saying that the fact they succeeded for so long is a tribute to them.

Though I believe the chairmen and directors did not consciously act on behalf of their industrial bosses, I do contend that, when dealing with high profile and sensitive cases, they could not be other than aware of the need to tread carefully. They were therefore predisposed to be lenient or, at the very least, to exercise extreme caution, when confrontation looked likely, except and unless the evidence was overwhelmingly clear. So, as I say, I really cannot imagine that PressBof ever found it

necessary to contact the Commission over individual complaints.

The composition of PressBof itself is also instructive. Though representing the whole of Britain's newspaper and magazine industry, four of its nine members are drawn from the national newspaper sector while the regional newspaper and magazine sectors have two representatives each. The ninth person, the secretary-treasurer, is nominally at least the Scottish representative (though arguably more of an ex officio member). I imagine that the weight of representation from the nationals' sector reflects that it provides the greater amount of funds.

However, PressBof's disproportionate national paper composition also reflects a further fact of life. Despite there being more complaints from the public about regional and local newspapers than the nationals, the complaints about the national press tend to garner more publicity and engender more controversy than those from the other publishing sectors. This is often due to many complainants having a high profile, such as politicians and celebrities.

2. HOW THE PCC OPERATED

From the outset, the PCC adopted an approach in dealing with complaints that sought to avoid confrontation with publishers and editors. In order to do so, it quickly developed a custom of acting as an arbitrator and/or mediator, choosing to avoid adjudicating on complaints if at all possible. It has to be said that this custom evidently gained a large measure of support from complainants (if the PCC's polling of "customers" is to be believed) and it was only sporadically the subject of external concern.

In the general run of things, the system worked well enough. Complainants seemed pleased with the way in which matters

were resolved, with agreements by editors to publish relatively small corrections and clarifications, or to publish agreed letters on letters' pages. Similarly, in more recent times, this has involved removing offending or contentious material from websites, or appending corrections.

I suspect that part of the reason for complainants being happy with the service they received was their low expectation of achieving anything positive at all. Such is the public perception of "the power of the press". It would be unfair to blame the PCC for this. What cannot be denied, however, is that the normal process, which involved the PCC acting as mediator for complainants in discussions with newspaper executives, tended to favour the newspapers, who naturally sought to resolve disputes in order to avoid adjudications. This inevitably meant that newspapers escaped censure for breaches of the Editors' Code, albeit relatively minor breaches (usually of accuracy). It is true that complainants were able to see all the correspondence between the PCC and the newspapers about which they were complaining. But they were not party to discreet telephone negotiations prior to exchanges of letters.

Clearly, one of the PCC's greatest failings was in keeping adjudications, especially those relating to the national press, to a minimum. It meant that nationals were only ever censured for very severe breaches of the Code and it therefore implied that they were better behaved than was the case. Similarly, it meant that there was little pressure on editors and their staffs to ensure that, for want of a better term, minor breaches (most notably, accuracy) would not be repeated.

It must be said, in fairness to the PCC and to publishers and editors, that there were improvements over time. For example, after insistent pressure, the PCC did manage to persuade editors to place corrections, clarifications and apologies in more prominent positions. Latterly, the PCC – again after some persuasion – did begin to publicise its role as mediator by

insisting on its actions as negotiator being publicised. It might well have been helpful to the PCC's public standing if this had been adopted as a practice earlier on.

Two recurring difficulties have concerned third party complaints and complaints by groups rather than named individuals. The PCC has gradually taken on board criticisms about these problems. In the former instance, it is obvious that the Commission could not deal with complaints by third parties if the individual involved did not want to complain. In the latter case, there is much greater reason for the PCC to have been more obliging. That was a major reason that it was slow in dealing with stories about immigrants and asylum seekers. Again, it is fair to say that it did up its game on this front in recent years.

To its credit, it is also the case that the PCC secretariat carried out invaluable work in which it sought to restrain newspapers from causing grief to people caught up in news events, so-called "media scrums." Similarly, I am aware that it did the same on behalf of celebrities who felt they were being harassed or who were felt they were likely to be harassed. Of necessity, this work was not publicised.

Overall, seen across the 21-year period of its history, there cannot be any doubt that the PCC, even if one takes on board the inequality of the power relationship between newspapers and complainants, has been helpful to thousands of people. Over that time it has honed its code compliance and mediation roles into a system that has worked well, and it would be foolish to dismantle it altogether.

3. THE EDITORS' CODE OF PRACTICE

There is nothing intrinsically wrong with the current Editors' Code of Practice. [I must declare an interest here as one of the editors who helped to draw up the original code]. It has been

sensibly amended over time to take account of entirely unforeseen events.

The only big change that strikes me as necessary, in the light of what we have heard in evidence over the past months, is the inclusion of a conscience clause. If journalists are to have codes written into their contracts of employment – as is already the case at several companies – then it should be the case that there needs to be a formal clause that journalists can invoke if they believe they are being asked to do something that may breach the code and thereby threaten their employment. Seen from the opposite perspective, their employment must not be threatened should they invoke the clause. (See my recommendation at Para 13 about the role of in-house Readers' Editors).

It may be argued that the code should be renamed. It might, for example, be called the Journalists' Code Committee (see Para 12). That will be necessary if there is a change of composition for the Editors' Code Committee.

4. THE EDITORS' CODE OF PRACTICE COMMITTEE

If there is to be an entirely independent press regulator, then it may seem like an anachronism for it to administer a code drawn up by editors alone, especially when changes to that code are possible only if a committee of editors agrees to them. However, just as there has been relatively little, if any, controversy about the code, there has been little or no criticism of the changes made by the editors' committee.

Though there have been some questions about the Committee's composition, I cannot see any advantage in removing editors altogether. I would suggest that the Committee is chaired by the Ombudsman and reconstituted (see Para 9) to allay any public misgivings about the way the Committee operates.

5. DEFINING THE PUBLIC INTEREST IN THE CODE

The Editors' Code of Practice has included within it a reasonable definition of the public interest, but its operation has illustrated the difficulty of drafting such a measure. It has not proved restrictive enough to prevent the unethical journalism that the Inquiry has learned about over the past months.

The first two clauses – ie, (i) Detecting or exposing crime or serious impropriety and (ii) Protecting public health and safety – have not been problematic. But it is a rather different matter when we come to (iii) Preventing the public from being misled by an action or statement of an individual or organisation. This is subjective enough to allow journalists to make unwarranted intrusions into privacy.

However, it is not the intention of the clause, nor even its wording, that is at fault. What causes problems are the different interpretations of the clause in practice, and they are located in the differing editorial agendas of the national newspapers. It is the difference between papers whose major raison d'etre is to publish information in the public interest and those who prefer to publish material interesting to the public.

I accept that all newspapers wish to inform society about itself; all seek to hold power to account; and all also want to entertain. But there are wide differences in the way that papers balance those three functions. Papers that prefer to entertain rather than inform, for example, will argue that they have a right to publish a preponderance of material interesting to the public and that it is a denial of press freedom to deny them from obtaining it. If it means intruding into the privacy of a married footballer in order to show that he has committed adultery, then so be it. The paper is therefore "preventing the public from being misled." By contrast, another editor on another paper would view that as not being in the public interest and therefore off limits.

If we were to apply a stricter public interest test to every article we would also deny papers that see themselves principally as organs of information from publishing a range of light-hearted material that forms part of their editorial agenda as well.

In the end, given that a change to the current code definition is unlikely for the reasons I have stated, it will always be a case of whether editors obey the spirit or the letter of the code. The exposure of so-called public role models for their private indiscretions strikes me as counter-productive. It surely achieves the opposite effect, suggesting to the suggestible that they should follow the wayward route taken by their supposed role model.

There are certainly cases where the exposure of a person for misleading the public or engaging in gross hypocrisy can be justified. That is why the clause, despite its subjective nature, has to be retained.

6. DEFINING THE PUBLIC INTEREST IN LAW

With the exception of the Data Protection Act, there is no "public interest" defence in law. So the interim guidelines issued by the Director of Public Prosecutions on 18 April 2012 were welcome.

I know they are open to consultation but I am accepting them in their current form for the purposes of this submission. They are much more narrowly drawn than the Editors' Code, of course. The DPP believes journalists would have a public interest defence for revealing that a criminal offence has been committed, is being committed or is likely to be committed. Similarly, the defence could be offered if they were disclosing that a person was failing to comply with a legal obligation or they were exposing a miscarriage of justice. They would need to

show that they had a "responsible" belief before setting out on their journalistic inquiries.

I would urge that in any new settlement these sensible guidelines are applied to every law in order to offer journalists a public interest defence for their activities. I can see that it would be unduly onerous to change every law in order to include a new clause. But I imagine that it would be possible to introduce them separately as a single bill or as an Order in Council.

7. TOWARDS A NEW SYSTEM OF REGULATION

As is evident from the above, I accept that the PCC has been effective as an arbitrator. It has not been effective as a regulator. Indeed, it has not been a regulator. It was therefore incorrect to describe the system as a form of self-regulation because the Commission lacked either the will, or the powers, to act as a formal regulator. Part of the reason was entirely understandable. Any interference in the operation of journalism is viewed as an inhibition of press freedom. That remains a problem for any body that replaces the PCC.

Having been one of the first countries to secure press freedom by ending the system of licensing it would be a giant step backwards to give the state powers over publications. State regulation is therefore a non-starter. The task is to find a middle way between self-regulation and state regulation in order to preserve press freedom while ensuring that the press behaves responsibly. I would therefore urge that the state's role is restricted to creating a framework at arm's length in order to create a regulator that is both independent of the industry and independent of the state.

Over a long period, Britain's judiciary have shown that they operate independently from the Executive and it is their appointment model that I believe would be appropriate for

creating a workable, arm's length state framework for press regulation.

8. THE PRESS REGULATION BOARD

For the purposes of this exercise, I shall call the arm's-length state body The Press Regulation Board (PRB). Its membership should be appointed in much the same way as the Judicial Appointments Commission is appointed at present (see http://jac.judiciary.gov.uk/about-jac/157.htm). In turn, its major responsibility will be to appoint the senior regulator, The Press Standards Ombudsman (PSO), and then, in consultation with the Ombudsman, the chairperson of the Press Standards Commission (PSC). It will further scrutinise and approve the appointments of the 15 members of the PSC.

In order to preserve press freedom from any possible state involvement, the PRB will have no powers over the decisions taken by either the Ombudsman or the PSC. Its other major function will be to ensure that the regulation body is adequately financed. It will also receive annual reports from the Ombudsman and the chair of the PSC.

9. THE PRESS STANDARDS OMBUDSMAN

The Ombudsman will not have any formal links of any kind to the newspaper and magazine industries, nor any past links. The Ombudsman's office will be served by the secretariat of the PSC. His/her office will be responsible for ensuring that the system of regulation is properly funded by the publishers and individuals who sign up to its system.

The Ombudsman will oversee the operation of the PSC, with the power to monitor all documentation. He/she will audit the PSC's work, ensure that the PSC has dealt appropriately with complaints and also act as the court of last resort for complainants, including the handling of appeals. The

Ombudsman will have the power to order the PSC to hold inquiries and the power to initiate inquiries him/herself.

The Ombudsman will have the power to order the PSC to hold inquiries and the power to do so him/herself. The Ombudsman will hold investigations into cases where there have been significant breaches of the Journalists' Code (see below, para 12) or when there is evidence of systemic breaches of the Code. In extreme cases of serious or systemic Code breaches, the Ombudsman will have the right to interview editors and journalists, and to see internal documents and email trails. The Ombudsman will present public reports of such investigations with the proviso that the privacy of individuals is protected and that confidential journalistic sources are not compromised.

In extraordinary cases of very serious, blatant or persistent Code breaches, the Ombudsman will have the power to levy fines appropriate to the publisher's misdemeanour. In such cases, the Ombudsman will issue a public statement.

The Ombudsman will be responsible for preparing and presenting an annual report of the PSC's activities to the House of Commons Select Committee for Culture, Media & Sport. If necessary, the Ombudsman and PSC chair will appear before the Committee to answer questions about the report and the operation of the PSC.

10. THE PRESS STANDARDS COMMISSION

The Press Standards Commission (PSC) will carry on with the Press Complaints Commission's Code compliance and mediation work by handling complaints from the public.

Its chair will be appointed through open competition and the selection will be jointly agreed by the Ombudsman and the Press Regulation Board. He/she will not have any formal links to the newspaper and magazine industries, nor any previous

links. The PSC will be composed of the chair plus 14 members, 10 of whom will come from outside the publishing industry. There will be four editors on the PSC – two from national and one each from the regional newspaper and magazine sectors. (Why have editors on the PSC? Because every lay member of the PCC I have spoken to down the years has told me of the invaluable advice given by industry figures. Most have also stressed that they are not "soft" on those who breach the Code). The 10 independent PSC members will be appointed by a Nominations Committee, which will be composed of the Ombudsman, the PSC chair and the Director of the PSC secretariat.

The PSC will liaise with Readers' Editors (see Para 13) in order to obtain swift resolution of complaints. Where practicable and fair, the PSC will try to resolve complaints by acting as advocate for the complainant and as conciliator. It will do so by reference to the Journalists' Code. If the mediation process breaks down, the PSC will have the power to hold oral hearings attended by a complainant and the representatives of a publication. If there is no agreement at that point, the PSC will adjudicate. In all cases where breaches are sufficiently blatant, there will be an adjudication. The PSC will give editors pre-publication advice, usually when requested but - in the case of sudden events requiring swift action - it will do so unasked.

Editors will be required to publish the PSC's decisions and acknowledge the PSC's involvement when publishing the correction, clarification or apology. In the case of adjudications, the publisher should be required to carry the PSC's logo, in print and online. The PSC will have the right to ensure that all corrections, clarifications, apologies and adjudications appear with equal prominence. (That will, if necessary, mean carrying front page statements).

The PSC will hear third-party complaints in cases where individuals are happy for them to do so. The PSC will also

consider complaints made by, or about, groups of people. In addition, the PSC will consider complaints from journalists who have invoked the conscience clause in the Code in the belief that they have been ordered to breach the Code.

If complainants are unhappy with the PSC's decision, or with its handling of their case, they will have a right to appeal to the Ombudsman. If the PSC deems it necessary, it will call on the Ombudsman to use his/her investigatory powers.

11. THE PSC SECRETARIAT

The Ombudsman and the PSC chair will appoint a Director after advertising for applicants. The Director will be responsible for appointing the staff of the secretariat. The secretariat will service both the PSC and the office of the Ombudsman.

12. THE JOURNALISTS' CODE

Following the appointment of the Ombudsman and the PSC, their first task will be to convene a Journalists' Code Committee. This will be composed of the Ombudsman, 3 public members of the PSC, 8 editors drawn from the various sectors of the industry and 2 nominees from the National Union of Journalists. Using the current Editors' Code as a blueprint, they will agree the wording of The Journalists' Code, which will also include a conscience clause.

Once agreed, the Code will be publicised and subsequently included in the employment contracts of journalists on the staffs of newspapers and magazines that sign up to the regulatory system.

Publishers and editors will not be able to fire members of staff for invoking the conscience clause nor those who act as whistleblowers by complaining to the PSC about Code breaches within their publications.

13. READERS' EDITORS

Every major media company should appoint a Readers' Editor in order to deal with complaints from members of the public. The Readers' Editor should have enough seniority or independence to act impartially with the newsroom. The Readers' Editors should liaise with the PSC in order to effect speedy resolution of complaints made directly to the PSC.

The Readers' Editor would also have the right to monitor behaviour in the newsroom and be the first port of call for any journalist who believes it necessary to invoke the conscience clause. The Readers' Editor could also act as a conduit for informal editorial advice from both the Editor and his/her staff. The Readers' Editor would be able to provide the PSC and/or the Ombudsman with a record of internal occurrences should there be a need for further investigation by the Ombudsman.

(Incidentally, it is entirely feasible that publishers/editors could encourage readers to complain initially to the Readers' Editor and only go to the PSC if they feel unhappy with the treatment they receive. This would be obviate some of the regulator's work and might well build better relationships between publishers and their audiences. In Ireland, the Ombudsman does not get involved until and unless a person has first complained direct to the newspaper).

13. FUNDING THE REGULATOR

Publishers who sign up to the system will provide funds proportionate to the size of their circulations. They will enter into annual contracts with the office of the Ombudsman (though, arguably, these contracts could be extended to, say, five years to provide a guaranteed sense of continuity). It will be

expected that all large media companies will agree to sign up to the system.

14. SIGNING UP TO THE SYSTEM

There should be a range of sanctions available to the Ombudsman should publishers refuse to sign up, though to impose the most effective and severe sanction may well require some form of state involvement, possibly even legislation, and maybe even European Commission agreement.

Firstly, the Ombudsman could order the withdrawal of the services of the trade bodies, the Newspaper Publishers' Association and the Newspaper Society. This would mean losing the chance to obtain visas and passes to national news events.

Secondly, the Ombudsman could order the withdrawal of a publisher's publications from the Audit Bureau of Circulations and the National Readership Survey, which together provide the "currency" that advertisers use to buy space.

Thirdly, and surely most effectively, the Ombudsman could call on the Government to withdraw from a refusenik publisher the zero rating of VAT on newsprint.

In addition, in legal cases where people sue newspapers and magazines for, say, libel or invasions of privacy, the judiciary should be encouraged to take into account whether a publisher has signed up to the regulatory system and whether its journalists are therefore being required to adhere to the provisions of the Journalists' Code. A publisher standing outside the system will surely be regarded as failing to favour responsible journalism and this will weigh in the balance of judicial rulings.

15. ONLINE ENTITIES & SMALL PUBLICATIONS

It is blindingly obvious that certain small publications (such as *Private Eye*) will not sign up to the system. I think we can live with that and it would be wrong in such circumstances to impose the kind of sanctions in Para 14. Similarly, it is clear that bloggers, such as Guido Fawkes, will not sign up. Again, we should live with that too.

Amid the ongoing digital revolution, we are in a transition phase in which almost all publications are required to publish in both newsprint and on screen. At present, newsprint newspapers still exercise considerable influence and that is the why press regulation is necessary, to encourage responsible journalism and squeeze out unethical journalism.

Newspapers that wish to retain or build audiences online will need to convince audiences that their content is credible and authoritative. One way they can do this under the reformed system of regulation, as I have laid out above, is to promote the fact of their membership on their websites. They should make clear that their journalists are working to an ethical code and that their journalism is therefore responsible.

Doubtless, bloggers outside the regulatory system will relish in doing just the opposite – promoting themselves as being outside a system they will probably dub self-censorship. We have to take that on board and allow that the public will decide what they wish to read. The only constraint on web-based journalism is, and will be, the law. This takes me to my final point.

16. A FINAL, PERSONAL OBSERVATION

In a perfect world, we would not need press regulation. We could leave it up to the law. American journalists look askance at our current press regulation, let alone the future one, and wonder whether we have taken leave of our senses. This overlooks the fact that every major American newspaper has an internal ethical code administered by an ombudsman. Most importantly, it does not take account of the very different press landscape that exists in Britain where centrally located national newspapers compete aggressively for audiences and, in so doing, have a track record of ethical malpractice.

I think self-regulation could, and should, have worked. It did not. I have struggled to come to terms with the need for some kind of state involvement. But, in order to clean house and to restore public confidence in our journalism, I reluctantly agree that Parliament will need to provide enough power to a regulatory system to ensure that it has real teeth.

My inescapable conclusion is that the motor for bad press behaviour is commerce. And I am obliged to one of my City University MA students for her wise observation in her end-of-term essay this year: “Most ethical dilemmas in the media are a struggle between conscience and revenue.” Indeed they are.