

The Leveson Inquiry: Culture, Practice and Ethics of the Press

Witness statement from Professor Christopher Megone, Professor of Inter-Disciplinary Applied Ethics at the University of Leeds.

should cover at least the following matters or issues:-

1. Who you are and a brief summary of your career history.

I am Professor of Inter-Disciplinary Applied Ethics at the University of Leeds, and for seven years have been Director of the Centre for Inter-Disciplinary Applied Ethics (IDEA CETL) (though currently on sabbatical). I am in my twenty-first year at Leeds, having joined the Philosophy Department in 1991, and prior to that was at York for eight years. I studied for my BA (Lit Hum), BPhil and DPhil (Philosophy) at Oxford. As Director of the Applied Ethics Centre I have been responsible for leading the introduction of ethics teaching into many parts of the University, including media and journalism programmes. I have also been working closely with Professional Bodies, mainly in finance and engineering, on the design and delivery of ethics materials within their Continuing Professional Development (CPD) programmes.

*Relevant aspects of the public interest*

2. How would you describe the public interest in a free press?

In order to answer this and subsequent questions on the public interest, it seems to me important to consider the purpose of the press in a free and democratic society. The debate about the relation between a free press and the public interest is often framed in terms of rights, with the right of, or to, a free press being seen as one of several 'speech rights', closely related to the right to free expression, and to the right to free speech. In these terms the public interest in free speech is served by protecting these rights.

However another way to conceive of a free press's contribution to the public interest (suggested by O'Neill) is to think of the way it serves the needs of audiences, in particular the need for communication between citizens, and of citizens with government. But what underlies the needs of audiences here is the purpose the press plays in a free and democratic society.

In my view the serious purpose the press serves, the purpose which makes it critical to a genuinely free and democratic society has two principal components – to inform citizens and to enable citizens to hold accountable those who should be serving the wider public. Clearly the modern press does a range of things – it provides news and comment about the social and political world, but it also informs and provides critical content on finance, sport, culture (theatre, film, galleries, books etc), travel, food, motoring, property etc. However it can perform its significant function across those areas. On the one hand its purpose is to provide information (and ideas) to enable citizens to make informed judgements – and these judgements might range across decisions about legislation or about an investment, a property purchase, a holiday or a night out. On the other hand it is a means by which citizens can hold accountable politicians, businesses, cultural organisations and so on through submitting their practices to public scrutiny.

Given this, the critical public interest in a free press is not so much in a press which exercises self-expression as in a press that is free from censorship, not subject to some kind of central control. For censorship or central control is likely to undermine the ability of the press to provide reliable information. Censorship undermines this purpose by directing what information may or may not be given, and how it is presented. In other words it is likely to

bias the press so that citizens cannot rely on it to make informed choices. And it is also likely to suppress or control investigation, and thus to undermine the press's ability to serve the public as an agency through which politicians and the like can be held to account.

Clearly though, a press which is free in the sense of not being controlled centrally, not censored, will only be meeting a *necessary* condition for serving its purposes of informing and scrutinising. In order for the press to serve these public interests it will also need to pursue its work with accuracy and rigour, to be concerned for the truth, to seek to avoid bias, or serving particular interests, to make wise judgements as to what is worthy of public attention and what not, and perhaps to be courageous in pursuing these goals. (And it may well also be, as O'Neill suggests, that in order to serve its purpose the press needs to communicate in ways that are intelligible and assessable.)

To sum up, there is a significant public interest in a free press, but the social purpose or interest which the press serves is not guaranteed to be achieved simply by the freedom given by lack of censorship, so the public has an interest in a press which is more than simply free in this sense.

3. How would you describe the public interest in freedom of expression? To what extent does that public interest coincide with, or diverge from, the public interest in a free press?

If we take freedom of expression to be the freedom of individuals to express their opinions then there may well be a public interest in this both on the negative grounds that the state is not entitled to restrict free action of individuals unless it will harm others, and on the grounds that it may contribute to the uncovering of truth (subject to a whole range of other conditions). If we take freedom of expression to be the freedom to set certain information before others, or in the public domain, then that too may be important for the pursuit of truth, and thus for the public interest. Freedom of expression, via the press amongst other means, may also be importantly connected with trust and thus with the ability of members of a community to form reliable and enduring relationships, so again significant for the public interest.

Press organisations are not individuals so do not exercise freedom of self-expression as organisations. Nonetheless, freedom of individual expression may be served to some extent by a free press in that such a press provides a vehicle for the expression of opinion in leader and comment columns. Such free expression can contribute to informed citizens through its role in the cut and thrust of ideas. However clearly there are only a limited number whose ideas are expressed in this way, and even with letters pages, and invited contributions from politicians and the like, the number able to express themselves is very small.

Writers of such columns in the press can seek to mitigate these criticisms by endeavouring to articulate what they take to be important or widespread lines of thought. But this still points to the fact that in terms of self-expression the press only allows a select few to promulgate their views. Although absence of censorship allows others to set up press outlets, in principle the resources required to do this effectively limit this opportunity.

This argument could be taken further and it could be said that the public interest in freedom of expression can even be adversely affected by a free press, if certain other conditions hold such that some voices get much more prominence than others. In those conditions the power of the press as a medium of expression may lead to certain views dominating the public sphere and other views being squeezed out.

So the public interest in freedom of self-expression, or freedom of opinion, is served by a free press, but only to some extent, and only if the structure of the press allows for sufficient diversity. It is in the provision of reliable information, and in its role in holding key figures and institutions in society accountable, that a free press can most serve the public interest, though its effectiveness in these spheres may also depend to some extent on the structure of the press.

4. In order to maximise the overall public interest, with what other aspects of the public interest would freedom of expression, or freedom of the press, have to be balanced or limited? The Inquiry is particularly interested in the following, but there may be others:

a) the interest of the public as a whole in good political governance, for example in areas such as:

i) national security, public order and economic wellbeing;

ii) the rule of law, the proper independence and accountability of law enforcement agencies, and access to justice; and

iii) the democratic accountability of government for the formation and implementation of policy.

b) the public interest in individual self-determination and the protection and enforcement of private interests, for example:

i) privacy, including (but not necessarily limited to) the rights to privacy specified in general in Article 8 of the European Convention on Human Rights and in European and national legislation on the protection of personal data;

ii) confidentiality, the protection of reputation, and intellectual and other property rights; and

iii) individual freedom of expression and rights to receive and impart information where those interests and rights are not identical to the interests and rights of the press.

i) This is a complex issue. On the one hand a free press can contribute in important ways both to good governance and to individual self-determination through its critical role in communicating information, and as a means of achieving accountability from those who serve the community. On the other hand much more than mere freedom from censorship is required if the press is to serve these purposes, and if those further conditions are not met the press can undermine these goals. And thirdly there are more components of the public interest than those that are served by a free press, so that the press may need to control its activity to respect those wider factors.

ii) So, good political governance, proper law enforcement and robust security is served by the critical scrutiny of the behaviour of those who govern, police and provide defence, as well as by the free flow of reliable and intelligible information both about society at a local, regional and national level, and about international affairs. The press can be important for both these processes.

iii) On the other hand an uncensored press can undermine good governance if journalists and editors fail to adhere to high standards of accuracy and rigour, if they allow their reporting to be subject to bias or to serve particular interests, or if they make unwise choices as to what to report on or give space to in their publications.

These dangers may become exacerbated if ownership of the press becomes limited to a small number of groups or individuals. This is in part because those individual owners may be in a position to exert significant influence on the behaviour of editors or journalists. (Thus in part encouraging a good press, as opposed to simply a free press, involves recognising the pressures that journalists and editors may be subject to, and putting in place structures to protect them.) It is also in part because one of the checks on standards of accuracy and

rigour (and so on) is the existence of a range of competitor press outlets which can in principle uphold these standards better.

iv) The question of the bearing on good governance of relations between members of a free press and public figures is another complex matter. Of course, the press may find it appropriate to have relationships with significant law makers, law enforcement agencies and business people for the purposes of uncovering information. On the other hand these parties may cultivate such relations with a view to disseminating information. But whilst such relationships may play an instrumental role in achieving the central purposes of a free press, and contributing thereby to good governance, there is a perceived danger, at least, that unless handled with care on both sides such relationships can undermine those purposes.

Thus it is a matter of current debate whether a free press, if structured in a certain way, can undermine the public interest in good governance and democratic policy formation by means of its influence over the expression of views. This relates to the discussion in point three above, and the possibility that a free press structured in certain ways may actually limit the dominating views given public expression. In this case politicians might suppose that they have a partisan interest in relating to press organisations in ways that maximise their chances of having their views put forward via the press.

Such inter-connections between politicians and the press are to some extent inevitable, and have existed for a very long time. As just noted, the press's purpose of informing citizens is to some extent a matter of facilitating the expression of ideas, and politicians have a partisan interest in that activity, and an interest in suitable means for expressing their views. It is an interesting question, and one whose answer is hard to determine, to what extent the press has the power to influence wider public opinion through the promulgation of views. But if it does have that power, or if it is perceived to do so, to a very significant degree, then this may lead to the relations between press and politicians (which as I say are to some extent perfectly natural and inevitable) becoming contrary to the public interest in good governance. However it is obvious that the issues here concern not merely the behaviour, and structures, of a free press, but the behaviour and character of politicians.

v) But clearly there is more to the public interest than the expression of opinions, the free flow of intelligible and reliable information, and intelligent accountability procedures. Thus journalists who recognise their distinctive contribution to the public interest should equally recognise that it has this broader content. On that basis they will need to accept that information may need to be withheld, for example to ensure a fair trial, to respect confidentiality or privacy, or possibly so as not to undermine a security operation.

In a similar way the processes of uncovering information or holding persons accountable may be aided by methods which infringe privacy or undermine confidentiality. It is possible that on occasion the distinctive purposes of a free press are so enhanced by such infringements, that there could be justification for them. However good judgement on such matters will only be possible if the press is very clear that individual privacy and the protection of confidentiality are independent components of the public interest in their own right, which may need to be respected even when they impede press activity.

Sometimes it seems that the press's confidence that its activities are serving the public interest makes it insensitive to the complexity of that notion. Journalists and editors need to recognise that both personal privacy and the importance of confidentiality can in part be understood in terms of an agent's ownership of his own information, and the importance of that to the control of his own life. These are matters a free society seeks to protect as part of the public interest – and the press need to be clear that they may well need respecting even when such respect adversely affects journalistic activity.

There is no algorithm for making decisions here, but it is important for good judgement that the press is clear not only on the nature of the purposes it serves in a free and democratic society but on their partial contribution to public interest as a whole and the independent significance of other components of the public interest.

5. What are your views on the extent to which the overall public interest is currently well served, both in principle and in practice, by the current balance between the public interest in the freedom of the press and free expression on the one hand, and competing aspects of the public interest on the other? In your opinion, what changes if any would be desirable in this respect, in order to maximise the overall public interest? If relevant, please state whether those changes should be voluntary or obligatory.

In my view the press itself at present assumes too quickly that freedom of the press (and free expression to the extent that is related to press freedom) is *sufficient* to guarantee that the press serves its distinctive role in contributing to the public interest. On the one hand this is problematic because press freedom is only a *necessary* condition for the press to make its distinctive contribution to the public interest. Treating it as a sufficient condition is making the press insensitive to all the other factors that are critical to this – accuracy and rigour, avoidance of partiality, bias, conflict of interest, and the other factors mentioned above. All these must receive appropriate attention. But this is also problematic because assuming that a process (a free press) will achieve a beneficial goal allows journalists and editors to fail to address carefully the question of what exactly that distinctive purpose is, or how it relates to other parts of the public interest.

There are structural issues that need to be considered in this light – for example, the extent to which the ownership of the press, and the relation of owners to society, may affect these issues. I do not claim that foreign owners or large press corporations necessarily impinge adversely on matters of partiality, for example, but one could see why they might, and the issue needs further consideration by parliament in light of recent experiences.

A second point concerns the relation of owners, editors and journalists to prominent public figures, law-enforcement, politicians and the like. On the one hand journalists need some such relations as part of their information gathering, and public figures may need the press to help them convey views and information. But clearly relations can develop that are adverse to the public interest, as discussed in point four above. One might hope that these matters are already covered by laws governing matters of corruption, and the like. But there might be useful material to include here in codes of ethics for the press, and for public figures.

Another structural issue would concern the processes by which journalists gain information and the way in which that information is made intelligible to audiences (here I follow O'Neill). It may well be that it would be helpful to require more disclosure of certain key information to audiences, concerning for example, interests of journalists, editors, and news organisations that are relevant to the views or information being placed before the audience.

Regarding issues of privacy and confidentiality, it might be helpful for a code of media ethics to give some attention to the kinds of public interest consideration that can justify intrusions in these areas (as is attempted in the current PCC code, but see below on that), as part of a process of allowing such matters to be thought through more carefully. But a mere written code is of course not sufficient. There are critical cultural issues here, which need to be addressed if any such code is to be a living document (see below).

A further matter that would perhaps be helpful here (also relevant to the next section about press ethics), both in terms of encouraging reflection within organisations and in terms of press accountability to their audiences would be something analogous to a governance

report, in which editors and press organisations reported annually on their performance in contributing to the public interest and in doing so against certain procedural requirements of accuracy, rigour, avoidance of conflict of interest, respect for privacy and confidentiality etc. Of course journalists and organisations may well be aware of all these things already, at a certain level of cognition. But it is important for these goals and values to be lived matters if the overall public interest is to be maximised. Thought needs to be given as to how to ensure such a governance reporting exercise can avoid being over-burdensome on the one hand, or becoming a mere annual ritual on the other.

#### *Press ethics*

6. What would be the distinguishing features of the conduct and practices of a media industry, or any organisation which was a part of that industry, which would make it an 'ethical' one?

Of course an ethical media organisation needs to have an ethical code, one which reflects the distinctive mission of the organisation as part of the press (and thus is aware of the key role of the press regarding the public interest), and one which is sensitive to the particular ethical challenges that may arise for editors, journalists etc in pursuit of their mission.

However even more critical to the existence of an ethical media organisation is culture. In this respect it is no different from other organisations (banks, hospitals, universities, law firms etc.) – and the importance of culture for ethics has been known since the Greeks. It is clear, from the evidence already given to the Leveson inquiry, that in some media organisations there was a very unhealthy culture (and one suspects that aspects of this unhealthy culture may have been widespread across the press/media). If there is an unhealthy culture then the organisation can have an ethical code but it will have little influence. Members of the organisation can undergo 'ethics training' but it will have little effect. As soon as they return from the training to their desk or office the pervasive culture will dominate their decision-making. The culture brings to bear all sorts of 'accepted norms' which an afternoon's training will be relatively powerless to affect. (I do not, of course, think that good 'ethics training' is pointless, but simply that its effectiveness depends on whether, or to what extent, other factors are in place in the organisation.)

On this matter my own organisation (the IDEA CETL) has recently completed some research for the Institute of Chartered Accountants for England and Wales (ICAEW) on "Promoting Integrity in Organisations". The research included amongst other things a large number of semi-structured interviews with employees in a wide range of small and large organisations. This research is very clear on the importance of culture for ethics and integrity (and, as I say, theoretically this was something that Plato and Aristotle were very clear on). My suspicion is that the results of this research will be highly relevant (with some tweaking) to the media industry and I attach a copy of the short and long versions of our report to this submitted evidence.

To pick out some points from our research, there are a number of critical factors that could be expected to bear on ethical culture in a media organisation. First, tone from the top – leadership -- is of tremendous importance. The role of owners and editors here will be crucial. Certainly the organisation needs to have its ethical code, but that code needs to be fully understood and endorsed by its owners and editors, and these people need to live out that code day in and day out. This is a decisive factor in that code having meaning for all who work in the organisation. But their living it out means thinking about how they can convey the code through their practice right across the organisation, how they interact with employees right across the organisation in a way that makes it resonant for them.

It will be no use the code setting out ideas about allowing for interactions between journalists and public figures which maintain an appropriate distance, if owners and editors are known to be socialising too frequently with those figures. It will be no use the code talking about appropriate investigative practices, if the editor is known to turn a blind eye to how information is gathered. Nor will it be any use the code setting out demands for rigour and accuracy, if the editor is slap-dash in reviewing what appears in the paper or programme.

Secondly, an ethical organisation needs to have an open and honest culture in which it is possible for members of the organisation to raise their concerns about practices and to discuss them with colleagues and senior staff. Once again thinking out how to ensure this in practice requires some considerable care and will depend on the working structures of the organisation down to details such as office structures and logistical issues such as the travel demands and geographical locations of journalists, sub-editors, editors, etc. But the key point is that staff need to feel confident that if they perceive unsatisfactory practices to be developing, or face a challenging situation, they can raise the matter with colleagues or senior staff. And they need to be confident that they can do so, and have a proper discussion, without fear of mockery or retribution. 'Accepted norms' need to be open to challenge.

Once again the very clear impression, from a superficial acquaintance with the evidence to the Leveson inquiry, is that in some organisations at least this has definitely not been the case. For example, owners and editors appear to be very powerful figures in the media world and a culture in which their views are very hard to challenge can easily develop. And certain journalistic practices and attitudes seem to have developed with little or no challenge even though they look highly problematic.

Amongst other things, developing an open culture in a press/media organisation will require sensitivity to the particular kinds of pressure that journalists and other employees are bound to be under. The economics of the printed press, in particular, are very challenging at present, so commercial pressures will be great (all too easily stifling any debate). The need to be the first to a story is an historic occupational pressure. The search for an angle or a prominent way of presenting a story (all too quickly sensationalism) is another well-known factor. The new ethical challenges of dealing with an ever changing technological world are particularly pressing on the media. All of these factors, and more, will make the creation of an open and honest culture difficult, but this second condition is very important.

Our report on promoting integrity lists a number of other factors relevant to culture which I will not go through now, but as I say I can see many if not all of them transferring so as to be relevant to this question, so I commend the report for further attention.

7. In particular, to whom might the press be considered to owe ethical duties, and why? What might be the content of such duties? To what extent might such duties come into conflict, and how should any such conflicts be resolved? The Inquiry is particularly interested in the following as potentially owed ethical duties, but there may be others:

- a) readers and consumers of the media;
- b) persons who are the subject matter of stories and other media products;
- c) the wider public;
- d) employees, journalists and other producers of the media;
- e) shareholders, investors, advertisers and others with an economic interest in the media.

Again this is a complex question both because of the critical role of the media in a free and democratic society and because of the very wide range of areas of life with which it

intersects (perhaps all of life, indeed). However the list of those to whom duties are owed, given in (a) to (e) here, is certainly a pretty good starting point.

In order to get clear on the range of its ethical obligations or duties, it is important to begin from the already discussed key purposes or function of the media, its distinctive contribution to the public interest. As I've said these are: to convey information (and to some extent also ideas/opinions) to its audience so as to enable them to make informed choices in the public realm, informed choices about their own actions, and informed choices that bear on the legislative and normative structure of their community; and, secondly, to hold accountable those many people who have roles serving the wider public. The press does this by communicating with its audience. In so doing it enables communication between citizen and citizen, and between government, or public figures understood more widely, and citizens.

From this view of its distinctive contribution to the public interest one can begin to develop an account of the kind of obligations the press has to the range of persons affected by its activity who are mentioned in (a) to (e). Thus, for example:

(a) to readers and consumers it has duties that I have already mentioned, of accuracy and rigour, of honesty and truthfulness, of fairness in its account of the issues and persons discussed – the avoidance of bias or partiality, of wise judgements regarding what it brings to the attention of readers and what it does not, of courage in pursuit of its inquiries. Such duties flow from its role in presenting its audience with information and ideas that contribute to the formation of their judgements and decisions in the public sphere.

But one might think that in virtue of its role in communication it might have other less obvious duties. It may have duties to its audience regarding the images it uses in presenting information, or regarding language. As a parent who is encouraging my children to read serious newspapers, for example, I am not happy at the decision they have made to print in full language which I consider quite unsuitable for them (and which till pretty recently would have been blanked out). This may seem a minor and perhaps disputable example, but I mention it to indicate the extent of possible obligations to readers. In a whole range of ways the media will contribute to accepted norms regarding images, language and behaviour, and its contribution may in part be through its effect on the desiderative or affective aspects of its readers' psychology, not directly through its intellectual powers. These are ethical matters which it cannot ignore, even though they may be less obvious than those I listed first.

(b) Similar obligations follow to those who are reported on whether in stories or images, and whether as primary parties or as third parties (for example children who *even if not directly mentioned* in a story may well still be significantly affected by the way in which their parents, for example, are represented). All those same duties regarding rigour, accuracy, truthfulness, fairness, wise judgement as to what to include and what not – all apply in this case too. But of course in the case of subjects of stories there will also be a range of issues concerning the way in which the story is investigated which involve matters of privacy, confidentiality and the like. And those matters require consideration not merely with respect to the person who is the main object of inquiry, but also with respect to relatives, for example, especially vulnerable parties. And there will also be issues regarding the organisation's own potential conflicts of interests in presenting the story, and how those might adversely affect the persons reported on. So the media has a duty to such persons reflect on any such conflict of interest (and act appropriately).

(c) So far as the wider public is concerned the media has an obligation to recognise the nature and limits of its role in contributing to decision making in the public sphere in a free society. It serves the public interest in informing and setting out views and opinions, but that should be the extent of its role in policy formation. The media owes the wider public a duty to be clear on the ways in which it serves the public interest, and the ways in which it can harm



that interest, and to appreciate the complexity of valuable components of the public interest that it can affect, for good, or for ill.

In addition the media owes the wider public duties of the sort mentioned earlier in this submission, for example a duty not to impair fair judicial process, or a duty not to put at risk (or possibly not to put at serious risk) national security.

(d) Like other organisations, the media has duties to its employees – to editors, journalists, photographers and others involved in its output. Some of these are covered in my remarks about the ethical culture of the organisation. It has a duty to recognise the pressures that employees will be under in seeking to do their work, professional pressures and commercial pressures. It has a duty to support them in avoiding wrong-doing in pursuit of media goals when that might seem attractive in the light of those pressures. It has a duty to provide them with an open culture in which they can express and discuss concerns about their work. It has a duty to provide appropriate training to develop wise judgment in the broadest sense, ethical as well as technical.

(f) The media also has duties to all those with an economic interest in its activity. Perhaps first and foremost it has a duty to make clear to them all the fundamental role the media has in serving the public interest in a free and democratic society. It has a duty to shareholders, investors etc. to make clear that its pursuit of economic goals (which may be their main interest) must be constrained by the pursuit of this public interest. The role of the media in informing and holding persons accountable is so important to the proper functioning of a free and democratic society that it cannot be subordinated to other goals. Media organisations have an ethical duty to make this clear (indeed it is a critical part of their being viewed as trustworthy by a wider audience). This is not to say that the media cannot produce dividends for shareholders or investors, or engage with advertisers, of course. It is just duty bound to make clear to them this constraint. (In other words I of course accept that a media organisation has to have a business plan for the conduct of its activities, but the business plan must be a plan which enables it to fulfil its role in the public interest.) Beyond that it has a whole host of other ethical duties to commercial organisations around honesty, fairness and so on, but these are not specifically in virtue of being a media organisation.

Much more could be said here, of course. These do seem to me the central parties to whom obligations are owed, but the nature and range of those obligations could be discussed in much more detail.

Given the range of these obligations there will of course be conflicts. I've already alluded to the financial and professional pressures on journalists, for example – in other words duties to commercial parties, to their employers (to find good stories), and to their readers may conflict with duties to the subjects of their stories (and other duties to their employers and colleagues -- not to pursue bad investigative practices or be untrustworthy).

There is no simple algorithm for resolving such conflicts. On the other hand, whilst this is a very difficult subject, there has been discussion of the development of good ethical judgement (or *phronesis*) since Aristotle and there is indeed much in Aristotle himself. One critical issue is the development of a perspective on media practice which is sensitive to the wide range of ethical issues that may be pertinent -- developing an eye for these things and this is not at all a trivial matter. Working within an organisation with an ethical culture will help to develop such an eye. Developing the capacity to weigh conflicting considerations is also a difficult matter. Experience is important, and the ability therefore to draw on the experience of others (so issues of culture again). But when I refer to experience here I do not intend to contrast it with reasoning but refer to experience which plays a role in reasoning. As in the law, casuistical reasoning may have some role. There will be clear cut

past cases of conflict, and reflection on these will help in evaluation of more closely balanced cases.

8. What role might reasonably be expected to be played by a code of conduct in encouraging, inculcating or enforcing ethical behaviour by the press? What would be the distinguishing principles and features of any code of ethical conduct with universal application to the media industry?

Much of what I have said in answer to point seven applies here. A code of conduct, or code of ethics, has a role in developing an ethical organisation, or an ethical press more generally, but without a culture of a certain sort within which that code can be lived out, an ethical code can remain a dead document. I've mentioned key features of such a culture above and alluded to more which are set out in the attached IDEA CETL document on "Promoting Integrity".

So far as the key principles and features of such a document are concerned, I have indicated that an ethical code for the media must focus on the critical distinctive contribution of the media to the public interest in a free democracy. And I have suggested that this is: to convey information (and to some extent also ideas/opinions) to its audience so as to enable them to make informed choices in the public realm, informed choices about their own actions, and informed choices that bear on the legislative and normative structure of their community; and, secondly, to hold accountable those many people who have roles serving the wider public.

In addition such a code must also take account of the particular challenges to ethical conduct in the media that arise in virtue of its distinctive goals and of the methods required to pursue those goals – so I've mentioned many things here including matters such as accuracy, truthfulness, fairness, courage, and respect for privacy and confidentiality.

9. Please comment on the current edition of the media industry's Code of Practice <http://www.pcc.org.uk/cop/practice.html> from the perspective of its status as an ethical code. Your answer should in particular address the following:

a) comprehensiveness – are there significant areas of conduct or practice which are not covered which it would be reasonable to expect to be addressed? Does the Code sufficiently address itself to the range of ethical duties which the press might reasonably be expected to owe?

b) the public interest – to what extent does the Code seek to maximise the public interest? Where might it go further in that respect? Are there respects in which it has a potential to operate contrary to the public interest?

c) normativity – does the Code appropriately identify, and distinguish between, conduct which is to be regarded as:

i) obligatory or forbidden (whether or not as a matter of law)

ii) important, and necessarily the subject of best efforts

iii) generally desirable, or good day to day practice

iv) aspirational only - a standard of excellence, or best in class?

and does it appropriately identify exceptions to those rules?

d) interpretation - is the 'spirit' of the Code clear and appropriate?

e) effect - is it clear what consequences will flow from non-compliance with the Code, whether in general or in particular? Are those consequences appropriate?

(a) and (b) My overall response to the code could perhaps be stated in terms of its comprehensiveness. In my view it is a code that has been developed primarily from the point of view of things that can go wrong in media practice. It has a view of ethics as something to

be turned to in order to stop people behaving badly, rather than of ethics as being concerned more broadly with good judgement and a positive contribution to society.

Thus its clauses are motivated by issues of inaccuracy (clauses 1 and 2), invasions of privacy (3,4,and 5), mistreatment of vulnerable parties (6,7,8,9 and 11), breaches of confidentiality (14), partiality or unfairness (12,13) and wrongful investigative practices (10,15, and 16).

What is lacking is a reasonably developed view of the distinctive positive contribution that should be made by the media to the public interest, and thus the code lacks an understanding of a broader context in which the practices of the media, and its positive duties to the various parties with whom it interacts, can be understood. The upshot is a rather piecemeal set of practices to avoid, rather than a conception of the positive contribution one can make by working in the media and thus how certain practices might impinge adversely on that contribution.

In this context the treatment of the notion of the public interest is interesting. On the one hand, in the second paragraph of the preamble the press's role in connection with freedom of expression and publishing in the public interest is implicitly assumed but not explained (that is, there is no clear line of argument explaining these assumptions). On the other hand, no positive account of the public interest is given until a final section of the code, and what is provided there – free expression, prevention of crime, protection of health, preventing the public being misled, is a list of considerations with no clear governing rationale. In particular the code lacks any account of the press's distinctive contribution to the public interest, nor does it give any clear explanation as to why particular media activities might threaten other aspects of the public interest.

Whilst I accept that the account of the press's distinctive contribution to the public interest that I have given above will need further development, it seems to me that a media ethics code which does not attend at all satisfactorily to this will lack coherence and be hard for practitioners to digest and understand.

So far as the piecemeal nature of the code is concerned, the issues picked out are perfectly defensible in themselves but there is no particular attempt to link what is largely a set of prohibitions to any account of the parties to whom the media owes obligations.

(c) On the whole, as I've said, the code appears to set out a series of prohibitions. This appears to be expressed by saying that those acts that 'must' or 'must not' be done. In virtue of this use of the terms 'must' and 'must not', it is natural to read this list of prohibitions as a set of absolute prohibitions. By contrast, generally matters that are important but not obligatory appear to be referred to as things that 'should' be done.

However this distinction based on grammatical use is not always so clear – Clause 15(i) talks of what should not be done, as opposed to what must not be done, but then refers to this as a prohibition. And many of the acts that must not be done are then subject to a provision – they must not be done unless there is an overriding public interest.

So as a whole the code is not very precise in distinguishing acts that are absolutely prohibited, those that are prohibited save for exceptional over-riding circumstances, and those that generally should not be done. This imprecision is likely to lead to a certain laxity of interpretation.

Since the code is almost wholly about acts to be avoided, there is very little here about desirable practices or aspirational behaviour – this reflects the lack of a sense here of the press/media's distinct and critical contribution to the public interest. For similar reasons the

'spirit' of the code is pretty negative, implying a view of journalism as full of ethical pitfalls rather than an activity with high aspirations of public service. It seems to me undesirable that an ethics code should be presented in such a way as to have that implication.

10. What approach would you recommend to the consideration of improvement to the nature, status, content and enforceability of the current Code? Are there changes to either content or enforceability of the current Code you would wish to see? Please explain your thinking.

As I have indicated I would favour a significant revision of the ethical Code which took as its starting point the high calling of the press/media within a free democratic society to inform its audience and hold those in public life accountable for their behaviour. This should enable the code to be aspirational, as well as allowing it to note the wide range of duties owed by the media to diverse parties in virtue of its aspirational goal. And it should also allow attention to those other ethical considerations such as privacy, confidentiality, and the like which need to be recognised as potential constraints on the pursuit of that goal. My earlier answers indicate the range of issues that I think the code should cover.

As I've also indicated earlier, any such code will fail to be a living document unless there is an appropriate culture within the press/media organisations within which it applies. Something like a PCC, whether an agency of the press itself or comprised partly or wholly of independent members, will not in itself be able to create such cultures. This kind of body primarily deals with complaints, and the threat of complaints contributes only in a rather small way to creating the right kind of culture.

As I've indicated, the factors that are critical for the creation of the right kind of culture are largely internal features of an organisation (leadership, openness etc.). However I did also suggest, in addressing point five, that a general requirement which may contribute to the creation of such cultures is some kind of annual governance reporting. Through this reporting organisations would reflect on their performance in contributing to the public interest, and on their behaviour measured against certain procedural requirements of accuracy, rigour, avoidance of conflict of interest, respect for privacy and confidentiality etc.

Considering point eleven below in this light, and noting the central importance of organisational culture for good ethical practice, such an annual governance report might also focus on the internal culture of the organisation. Reporting would then also include a review of the structures and processes in place to enable all staff to develop and maintain good ethical judgement. Evaluation would consider both the effects on their individual decision making and the opportunities for them to contribute to the enhancement of the organisational culture itself.

If such governance reporting were to be introduced, then this might suggest that the PCC rather than being simply a complaints handling organisation could also be the recipient of such reports, with perhaps a sampling audit role (given that the number of press/media organisations entails that there will be many such reports).

11. What other changes would you consider desirable in order to encourage or constrain the press to improved standards of ethical conduct and practice? Your answer should explain the standards you consider appropriate and why, whether conformity should be encouraged or constrained, and how.

I take it that my earlier answers have for the most part already covered this question.

Key points I have made include:

1. There is a need for an aspirational code, not simply a list of prohibitions against failings which those in the media fall into.
2. Such a code needs to be presented in the context of the specific critical contribution that a free press can make to the public interest, which I have outlined at various points above.
3. The code could then be developed in terms of the duties to the key parties with whom the press/media interact in ethically relevant ways.
4. A code by itself is not worth the paper it is written on unless it is a lived code. To make a code a lived code, media organisations need to attend to the critical factors that can bring about an ethical organisation, or promote integrity in an organisation. These factors include tone from the top (or leadership), an open and honest culture, and so on. My own organisation's recent research on "Promoting Integrity in Organisations" (produced for the ICAEW) may be relevant here. (Reports attached)
5. Part of developing such an ethically reflective organisation might be to introduce governance reports which press/media would produce annually, writing such reports in light of the requirements of the code. The reports might reflect both on the ethical culture of the organisation and on the organisation's contribution to the public interest.

Any such governance reporting would need to avoid either being overburdensome or being a mere ritual in order to be both effective and meaningful.

6. If such reports were produced, the PCC might need to become more than a complaints organisation, and in a slightly altered form it could also be the auditor of these reports.

The documents which you should provide to the Inquiry are those relevant to the matters which you have been asked to deal with in your witness statement.

A note regarding the format and use of documents provided in response to this notice is attached. The terms of this formal notice should not necessarily delimit the evidence, including documentary evidence, which you provide to the Inquiry. It may well be that you can give important additional evidence beyond the four corners of the statutory requirements being imposed on you by this notice: if you can, you are encouraged to do so in line with the general invitation extended by Lord Justice Leveson during the course of his opening remarks on 28<sup>th</sup> July 2011.

Lord Justice Leveson is required under his Terms of Reference to complete his report on the matters or issues under Part 1 of the Inquiry within 12 months. With this in mind, and having regard also to the scale and scope of his foregoing requirements of you, he has determined for the purposes of section 21(2) of the Inquiries Act 2005 that you should comply with this notice by 4pm 15 June 2012.