

Lord Justice Leveson

**Proposals for the Regulation of the Press
by Paul Dacre, Chairman of the Editors' Code Committee**

I am grateful to be given the opportunity to expand on some of the proposals I put to the Inquiry in January and in my seminar speech last October since when, sadly, many newspapers around the country have, for financial reasons, folded.

This period also saw the flotation of Facebook (which now has a net worth probably greater than the current value of all newspapers in Britain and America), a global internet phenomenon predicated on people freely spreading information about themselves and others.

During this time, the Inquiry has done invaluable work both in exposing some of the unacceptable practices in our industry and in exploring better ways of policing them. That said, nothing I have seen or heard has changed my passionate belief that self-regulation of the press is the only way to ensure a correct balance between the public's right to know and the need to protect the rights of the public.

I also believe absolutely that one of the main responsibilities of the new regulatory system should be to ensure that the Editors' Code is followed both in spirit and the letter by all newspapers, magazines and, importantly, their Online versions.

The Editors' Code has been widely commended and is continuously revised in the light of experience. Only recently, the Code Committee met and voted to include independent lay members so that its work can be better understood and there can be no doubt that issues of public concern are fully addressed.

At the same time I recognise more than ever that, for self-regulation to work, it must have real teeth, it must be transparently independent and it must be supported by the whole of the Newspaper Industry.

Since October, a great deal of work has been done by the Industry and some promising new ideas on these three hugely challenging issues have emerged – the best of which, I believe, can provide the framework for a system that stands the test of time.

When I spoke at the Inquiry seminar in October, I said that I believed the time had come to appoint some form of Newspaper Industry Ombudsman who “would have the power to summon journalists and editors to give evidence, to name offenders and, if necessary – in the cases of the most extreme malfeasance – to impose fines.”

This suggestion, I hope, made some contribution to the excellent proposals being put forward by Lord Hunt and also by the Industry under the leadership of Lord Black.

In a system of regulation now being explored by the Industry, an independent Chairman or Ombudsman would head an independent Trust Board which would preside over the Complaints Committee (which would continue the work of the existing PCC) – and a new body, the Standards and Compliance Panel.

It's this latter body that would have the power to investigate putative scandals, summon journalists and editors to give evidence and issue critical reports that could result in the imposition of substantial fines.

It is proposed that this Compliance Panel would also audit all newspapers annually to ensure standards were being maintained.

Without in any way wishing to second guess the conclusions of the Inquiry, I do believe these are robust and significant steps forward. But for this new system to be credible, it **MUST** be independent ... independent of the Industry (which nevertheless must be involved because ALL newspapers and magazines must buy into the new system and, more pertinently, provide the necessary funding) but also independent of politicians and the judiciary.

And I cannot stress too strongly the importance of the *whole* industry in all its rich plurality – the Red Tops, the Women’s Magazines, the Provincial Press and their Online counterparts – being able positively to support the new system, as opposed to just the loss-making, elitist publications which have had the loudest voices about this Inquiry.

So bearing in mind the eternal question of “Who guards the guardians?”, how can this independence be achieved?

Some point to the example of OFCOM (which, of course, consumes huge amounts of taxpayers’ money), but broadcasters are state licensed and, in the case of the BBC, state funded. Such state involvement only works in a democracy because it is balanced by the commercial press and the Internet, both of which are unlicensed and therefore genuinely free. It is also worth stressing that broadcasters have a legal obligation to be impartial while newspapers, both by tradition and culture, have a long history of partiality.

Others point to the example of statutory regulation in Ireland – a small country with a very different media from Britain’s. It must be pointed out that their model has only been going for a very short time and is, therefore, untested and, more pertinently, is **NOT** a compulsory system. Significantly, it still requires a politician to ratify the Appointments Panel choosing the Chairman.

No, it's the kind of Appointments Panel suggested by Lord Hunt that seems to me to be a very promising proposal – one that could gain the trust of all parties in the independence of the new regulatory system. It is this model – which would also have an Independent Assessor - that the Industry, without trying to pre-empt the Inquiry, is now exploring. Its composition and the operating structure of the whole potential regulatory scheme might be as follows ...

- The Industry's new over-arching body, the independent Trust Board, headed by an independent Chairman/Ombudsman, might consist of three independent members and three industry members (if editors, they would have to be retired).
- The Appointments Panel might consist of two independent members and two Industry members. The post of the independent Chairman/Ombudsman and independent Trust Board members would be advertised and head-hunters employed to draw up a shortlist. The Panel's choices would have to be unanimous. It would also have to be scrutinised and ratified by an Independent Assessor appointed on the advice of the Public Appointments Commissioner.
- The Trust Board, with its independent majority, might appoint members of the Appointments Panel. Its choices would also have to be unanimous and again subject to the scrutiny and ratification of an Independent Assessor.
- Serving editors – perhaps five in total - would sit alongside seven independent members on the Complaints Committee and would clearly be in the minority.

- The Standards and Compliance Panel might draw upon a standing Presidium of independent experts with backgrounds in the Police, Judiciary, Civil Service etc. for its special investigations.
- The Editors' Code Committee has voted that its future composition should consist of ten editors and five independent members, two of whom would be the Ombudsman and his Director.

Although these proposals - which represent a huge shift by the newspaper industry - are still being debated, they would seem to have great attractions. They avoid the almost inevitable controversy and possible conflict that would arise from appointments being made by an outside quasi-statutory body. The new regulatory system would be seen to be sufficiently independent. And the Industry as a whole, which funds the process and which needs to enthusiastically buy into it, would be reassured that newspapers were not being forced to accept appointees whose objectivity and understanding of the media as a whole might be in doubt.

The greatest weakness in my view of the PCC was that it couldn't lock publishers into self-regulation. In my seminar speech, I suggested that perhaps Parliament could help with this issue.

In retrospect, after hearing some of the devastating evidence to the Inquiry in the third module, I regret this suggestion because I now fear that ANY parliamentary involvement would be the "thin edge of the wedge" which could result in fuller statutory control of the press.

Again, however, much work is being done by the Industry to come up with sticks and carrots which, if implemented, I believe would be so powerful that they would lock all papers into the new system...

Civil Contracts

David Hunt's idea of five-year rolling contracts, backed by civil law, for all newspapers, who can be sued for breach of contract if they refuse to obey the judgments of the new regulator, has much to commend it but may not be enough to do the job on its own.

Arbitral Arm

There can be little doubt that, if membership of a self-regulatory body gave access to swift and cheap resolution of defamation and privacy cases, this would be a major boon for both the industry and the public. It would also be a huge incentive for cost conscious publishers to sign up to the new system. Although it would be dependent on Parliament changing libel legislation, it deserves the fullest support.

Press Cards

In my evidence to the Inquiry, I suggested that Press Cards – which at present are merely proof of identity and offer no guarantees whatsoever about ethical behaviour – should in future only be issued to journalists working for publishers subscribing to the new regulatory body. The courts, Parliament, local councils, Police, sports and entertainment bodies would agree only to deal with journalists accredited with the new press cards. In my view, any newspaper would struggle to operate if its journalists were denied access to such bodies.

There are about 20,000 press cards in circulation issued to a standard format by the UK Press Card Authority via 17 gatekeepers ranging from the Newspaper Publishers Association to the National Union of Journalists.

Since I gave evidence, the “ethical” press card concept has been explored in more detail by Mike Granatt, former Director General of the Government Information Service and now Chairman of the UKPCA. At a specially called meeting, he proposed a rule change under which journalists working for publishers – or belonging to unions or associations – outside self-regulation (or its broadcast equivalent) could be denied a UK Press Card. Talks are

continuing on this and I see that the Prime Minister in his evidence was thinking along similar lines. Again without trying to second guess the Inquiry, its endorsement of this proposal would be a significant step towards its possible ratification.

Such a press card – which could carry the new regulator’s “kite-mark” – would also bind in the very large number of freelancers who, at the moment, are outside the regulatory system.

Press Association

The Press Association wire service is the bedrock of any news operation. Subscribers rely on it to supply court and Parliamentary coverage, notice of forthcoming events, legal warnings, and newsflashes on major breaking stories. All major public bodies use it to communicate news to the media at large. It also provides a wide range of service journalism – TV pages, sports results, weather – in cost-effective page-ready format. It would be very difficult to produce any newspaper without PA.

Denying this service to publishers who refuse to comply with a Code of Practice would be a devastating blow to them. It is a little known fact that the newspaper industry owns PA, with most individual publishers possessing share allocations. There are significant steps afoot at the moment to examine how PA’s service could be denied to publishers who chose to remain outside the new regulatory body.

Kite mark

A simple device, but an effective one. A “kite mark” would allow the public to know immediately which publications sign up to self-regulation and which do not. It could be carried alongside Corrections and Clarifications columns (which have been remarkably successful since we introduced them last autumn in our newspapers) to tell the public how to make a complaint, and the sort of result they are likely to achieve. It would encourage internet news providers, whose

Achilles heel is lack of credibility, to join up. And it could be used to persuade advertisers, particularly government and public sector bodies, not to advertise in non-compliant newspapers.

Finally, I have been asked for my views on the Inquiry's overall draft criteria for a new regulatory system. In general, I would endorse most of these wholeheartedly, however, there are some areas which cause me concern.

Firstly, pre-publication advice. The current PCC operates an excellent service informing the media when individuals in the news do not want to be approached for interview, dispersing media scrums and explaining the Code.

However, it seems that some would like to extend this to advising editors on whether they should carry a story. This is fraught with danger, not least for the regulatory body itself, which would take on the burden of decisions currently rightly carried by editors – but without full knowledge of the facts and legal arguments. The easy way out, particularly on a Saturday afternoon, will always be to advise against publication – especially if there was the threat that that advice could later form part of legal proceedings.

Secondly, I worry about the suggestion that the industry needs to provide credible remedies in respect of issues affecting wider groups in society. This, I fear, could open a Pandora's box of problems with every lobby and fringe pressure group in Britain (and abroad) deluging the regulator with complaints which may often be politically or ideologically motivated and aimed at forcing newspapers to report events in a way that furthers the group's objectives.

Newspapers, I believe, should have the basic freedom to be pointed and polemical about groups, ideas and issues. And the regulatory body needs to be wary of being used as a lobbying tool. While groups already have the right to complain about inaccuracies in articles about them, the Ombudsman should

be free – as was the old PCC – to take up what is considered to be an important third party complaint and, possibly with the help of the Complaints Committee or Compliance Panel, formulate a judgment that could result in changes to the Editors' Code or Code Book.

Finally, it hardly needs me to remind the Inquiry of the Sisyphean nature of defining the public interest. The simple definition, of exposure of criminality, is far too narrow. It must clearly also cover wrong-doing, hypocrisy and incompetence in cases where no criminal law has been broken, as well as allow disclosure of information that helps the public understand and make decisions on any matter that affects them.

Public views in this area shift and change with remarkable speed. Until a decade ago, no High Court judge would grant an injunction to a man cheating on his wife, on the grounds that by exposing his betrayal a newspaper was uncovering wrong-doing. That changed and a whole series of super-injunctions were granted to football stars and show-business celebrities who had betrayed their wives – injunctions that, incidentally, ignored the rights to free expression of the women involved. Arguably, this misjudged the public mood. The super-injunction collapsed ignominiously in the face of a welter of citizen journalism on the internet and Twitter while, in a series of judgments, the courts ruled that the public DOES have a right to know when society's role models are exposed as cheats and hypocrites.

Bearing all this in mind, I am concerned that the draft criteria appear to introduce an overarching principle that all journalism must be "benchmarked" against the public interest. If this is what is intended it would be an extraordinary departure from the law and the Code of Practice, which would seriously limit the rights of the Press and the public to impart and receive information.

Neither Parliament nor the common law has ever required journalists to demonstrate that the public interest is served, across the board, in all conduct and all published material.

The inquiry has heard elitist and sanctimonious references to “celebrity gossip”. In the real world, millions of people are interested in such celebrity fare which is why it is a staple of red top papers and websites which, of course, also devote considerable space to serious matters. That is why I believe that an entirely new public interest restriction on what the public are allowed to read has no place in a democracy which values the right of people to learn about subjects which interest them, whether or not they are to the taste of others.

If I may quote Lord Hoffman: “A freedom to publish what judges think to be responsible or in the public interest is no freedom. Freedom means the right to publish things which government and judges, however well motivated, think should not be published.”

Large areas of popular journalism – gossip, the lives of celebrities and real-life human dramas – lay no claim to public interest whatsoever (but, in fact, often make a considerable contribution to the public debate about what is right and wrong in society). These kinds of stories are enjoyed by many millions of readers and always have been. Efforts may be made to try to suppress such material in newspapers. It will be a huge struggle to do so on the internet.

To conclude: as someone who has spent his twenty-two years as an Editor passionately supporting self-regulation, I believe that the proposals outlined in this submission represent a huge shift by the Industry. If adopted, they would reconcile the contradiction contained in the term “independent self-regulation”. They would also – despite the fact that the printed newspaper industry is beginning to die – make the new system the toughest press regulatory body in the free world.

Paul Dacre

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