

## **Seminar 3 : Supporting a free press and high standards - Approaches to Regulation – Wednesday, 12th October 2011**

### **The future for self regulation?**

#### **Presentation by PAUL DACRE**

Thank you for inviting me today. Let me start by making it clear that I unequivocally condemn phone hacking and payments to the police. Such practices are a disgrace and have shocked and shamed us all. They need to be purged from journalism and reform instigated to prevent such criminal activities ever happening again.

But let's keep all this in proportion, the cities weren't polluted as a result, the banks didn't collapse because of the News of the World, the elected politicians continued to steal from the people they were paid to represent. A nation didn't go to war. Yet the response has been a judicial inquiry with greater powers than those possessed by the public inquiries into the Iraq war, an inquiry, incidentally, that includes a panel of experts who while honourable and distinguished people, don't have the faintest clue how mass selling newspapers operate. Indeed, am I alone in detecting the rank smells of hypocrisy and revenge in the political class's current moral indignation over a British press that dared to expose their greed and corruption? The same political class, incidentally, that until a few weeks ago had spent years indulging in sickening genuflections to the Murdoch press.

Today I would like to try and persuade this inquiry that self-regulation, albeit in a considerably beefed-up form, is in a country that regards itself as truly democratic the only viable way of policing a genuinely free press. I would also like to persuade you that there are thousands of decent journalists in Britain who don't hack phones, don't bribe policemen, and who work long anti-social hours for modest recompense, and if they are in the regional press, often for a pittance, because they passionately believe that their papers give voice to the voiceless and expose the misdeeds of the rich, the powerful and the pompous.

In that context, I would first like to explore several illuminating paradoxes in the current furore over the press. Paradox number 1 is that the political class's current obsession with clamping down on the press is contiguous with the depressing fact that the newspaper industry is in a sick financial state. Some of our quality papers are losing awesome amounts of money. More worryingly, Britain's proud, provincial and local press, currently subject to closures, mergers and swinging cuts, is arguably facing the severest challenges. This diminishes our democracy. Courts go uncovered, councils aren't held to account, and the corrupt go unchallenged. This is a democratic deficit that is in itself worthy of an inquiry.

My second paradox is the growing clamour for more regulation ignores the uncomfortable truth that the press is already on the very cusp of being overregulated. Indeed, over the past 20 years, restriction has been piled upon restriction.

The Data Protection Act means that reporters can be criminalised for such basic journalistic practices as obtaining ex-directory numbers which they need to do to check stories are accurate.

The Human Rights Act has resulted in the creation of a privacy law by judges who seem to attach more weight to the right to privacy than the right to freedom of expression. This is being compounded by the growth of injunctions and super injunctions to prevent information being printed that is freely available on the Internet.

Then we have the ruinous CFA system and its cynical partner, after the event insurance, which means that virtually no newspaper can today afford to fight a court case that can end up costing literally millions.

Meanwhile, the Bribery Act in which there's no public interest offence makes it illegal to pay a civil servant for information that could reveal corruption, and indeed would have prevented the Telegraph from paying for the material confirming MPs' fraud.

Finally, I believe that the PCC's code, which has rightly been strengthened over the years, has blunted Sunday newspaper's ability to secure the kind of sensational stories that were the bread and butter of their huge circulations in the past. Today we are in danger of ignoring the fact that news does not grow on trees. News, let me remind you, is often something that someone, the rich, the powerful, the privileged, doesn't want printed. Establishing the truth and accuracy of such news demands considerable resource and resourcefulness and is, frankly, becoming increasingly difficult.

My last paradox is that this demand for greater press regulation comes at a time when more and more of the information that people want to read is being provided by an utterly unregulated and arguably anarchic Internet. In aid of global communication, imposing rules on British print publications is not going to stop the spread of celebrity tittle-tattle, which seems to upset some commentators so much. Web users can easily access sources for such information, if they can't get it from the printed press, and no regulator will be able to stop them, indeed it would be commercially ruinous to constrain British newspapers from publishing material that is freely available elsewhere.

I now come to the PCC and some of the myths that surround it. Myth 1 is that the conduct of the press has deteriorated over the years. Let me assure you that the British press is vastly better behaved and disciplined than when I started in newspapers in the 70s. Then much of its behaviour was truly outrageous. It was not uncommon for reporters to steal photographs from homes. Blatant subterfuge was commonly used. There were no restraints on invasion of privacy. Harassment was the rule, rather than the exception. The PCC, I believe, has changed the very culture of Fleet Street. The editors' code of conduct imbues every decision made by news desks and backbenchers. When a photograph is presented, the question is immediately asked: did the subject of the picture have a reasonable expectation of privacy? In stories executives question whether the privacy of a person's family or health is being invaded and whether their children are being protected. Were we harassing people? Was there a danger of, say, inciting copycat suicides? The newspaper industry is indisputably much better behaved than 20 years ago and to deny it is, frankly, churlish.

Myth 2 is that the phone hacking scandal means that self-regulation doesn't work. I think that's somewhat unfair. Yes, the PCC was naive but its real failure was to get over the fact that phone hacking is blatantly illegal. It is against the law, and no regulator can set himself or herself above the law. The truth is that the police should have investigated this crime properly and prosecuted the perpetrators. If phone hacking results in the abolition of the PCC and logically, which would result in the abolition of the police and the CPS, should we end a jury system because of a major miscarriage of justice?

Let's quickly debunk the other myths. Editors sit in judgment on themselves. They don't. They leave the room when any complaint against their paper or group is discussed. News International controls the PCC. In fact NI has not had a member on the commission since 2007.

Editors dominate the PCC. They don't. They are a minority of ten to seven. And I tell you as one who has sat on the commission for many years, editors are often more critical of newspaper malpractice than the lay members.

Editors regard adjudications as a slap on the wrists. They certainly don't. They are genuine sanctions. I and other editors regard being obliged to publish an adjudication as a real act of shame.

Okay, enough of being defensive. The truth is we are where we are. The perception is that the PCC is broken. It needs to be reformed if it is to regain trust. So may I make several suggestions? Firstly, it is vital the good work of the PCC, helping vulnerable people obtain protection under redress, without compromising freedom of expression is not lost. Any new system of self-regulation will have to cover the current work of the PCC, dealing with the complaints against the whole of the press and producing swift results, offering pre-publication advice to complainants, preventing possible harassment by journalists and broadcasters, giving advice to editors to help with ethical dilemmas, train journalists and using a body of case law that has set standards and understanding. It would have to do so without government interference. It will have to do so with the collaboration of the industry. It will have to do so in an online environment. It will have to do so efficiently in cost terms, which is why I believe it would be disastrous for any commission to impose fines. If that were to happen, lawyers would, inevitably be used by newspapers resulting in the end of quick and free PCC style justice.

Secondly, while I abhor statutory controls, there's one area where Parliament can help the press. Some way must be found to compel all newspaper owners to fund and participate in self-regulation. God knows the industry fought hard enough to prevent it, but the Express group's decision to leave the PCC was a body blow to the commission. How can you have self-regulation when a major newspaper group unilaterally withdraws from it? But let's not forget it was the political class in the form of the Blair government and the risible belief that he'd turn the Express Labour, which decided that Richard Desmond, the businessman who had made his money from porn, was a fit and proper person to own a newspaper, and it was Ofcom, itself a statutory regulator, which recently judged Mr Desmond a fit person to buy Channel 5, this after he'd quit the PCC, effectively holing self-regulation below the line.

Thirdly, I believe that corrections must be given more prominence. As from next week, the Daily Mail, the Mail on Sunday and Metro will introduce a corrections and clarifications column on page 2 of those papers.

Fourthly, the editors' code committee, which in fact is already attended by the PCC's chairman and director, both represent the commission's lay members, should include some lay members actually on the committee. Indeed, I note with some pride that the editors' code, which has changed 40 times in the last 20 years, is rarely if ever criticised. We have nothing to fear, and possibly much to gain, from responsible lay participation in our deliberations, and possibly some form of public consultation over those changes to the code. The number of lay members on the commission should incidentally not be increased. They form the largest lay majority of any press council in Europe. Lawyers sit in judgment on lawyers as doctors do on doctors. You need editors on the commission, so that they can explain the practicalities of news gathering to the lay members. You also need them to buy into the system, and learn from the concerns of those lay members.

Lastly, I believe the time has come to debate the need for some kind of newspaper industry ombudsman, possibly sitting in tandem with the commission, to deal specifically with press standards. The commission should continue to do what it does well, resolve complaints, issue adjudications and impose the code. An ombudsman, possibly a retired judge or civil servant, and possibly advised by two retired editors from both ends of the newspaper spectrum could have the power to investigate, possibly with specialists co-opted on to his panel, potential press scandals. The ombudsman could also have the power to summon journalists and editors to give evidence, to name offenders, and if necessary, in the case of the most extreme malfeasance, to impose fines. On the principle of polluter pays, offending media groups could, within reason, be forced to carry the costs of any investigation affecting their newspapers.

I'm well aware these proposals provoke thousands of questions, not least as to how these appointments are to be made, but I do believe the debate over them should start now. My greatest concern, however, and it is a very real one, is that any future reforms must take into consideration

the needs and commercial realities of all newspapers, the provincial press, mass selling red tops, as well as loss making broadsheets. Indeed, we should not be blind to the irony that the most virulent criticism of self-regulation comes from papers that lose eye-watering amounts of money and which are subsidised either by trusts or by Russian billionaires. I do not deprecate these papers. They are brilliant, but they are also, I would suggest, freed from the compulsion to connect with enough readers to be financially viable, and the constraints of having to operate in the real world.

"Only connect" said EM Forster, and in that real world, Britain's free, commercially viable, mass selling newspapers have to use great skills to connect with their millions of readers. They leaven their papers with sensation, exclusive pictures, scandal, celebrity gossip and dramatic human stories, whilst still devoting considerable space to serious news, politics, and campaigns that reflect their readers' aspirations and anxieties.

In the coming weeks, I suspect we will hear much about those old chestnuts, the public interest and what interests the public? This inquiry will doubtless devote many hours to debating the almost terminal tension between the right to privacy and the public's right to know. My own view is that as long as the code is observed, and no law is broken, papers should be free to publish what they believe is best for their markets, and anyway, who should decide what interests the public or where the public interest really lies? Judges? Politicians? Is that what Britain really wants?

The Mail of course, which has more quality readers than the Times and Telegraph put together has feet in both the broadsheet and tabloid camps. The problem is Britain's liberal class, the people who know best and who really run this country by and large hate all the popular press. After all, red tops can be vulgar, irreverent, outrageous and even malign, they also represent the views of millions of ordinary Britons. On the euro and immigration, these papers scornfully reject the nostrums of the people who know best. My worry is that this liberal hatred of mass selling newspapers has transmogrified into a hatred of self-regulation itself, and I would ask the inquiry to be aware of this bias. The Hampstead liberal with his gilded lifestyle understandably enjoys the Guardian, a brilliant paper that deals with serious issues, but does he or a judge have any right to deny someone who works ten hours a day in a Sunderland call centre and lives for football the right to buy a paper that reveals the sexual peccadilloes of one of its team's millionaire married players, a player who uses his celebrity to sell products to him and his children?

At this point, it would be useful to deal quickly with two canards about regulation. The first is that independent regulation would be superior somehow to self-regulation. The question of course is, who chooses these independent regulators? Who will guard the guards themselves? Take Ofcom, the so-called independent media regulator. Its chief executive was a close Labour adviser, who helped to write the Labour Party's 2001 manifesto. Its first chairman, a very brilliant man, was a Labour Party donor, and with an annual budget of £115 million compared to the PCC's £2 million budget, it receives millions of pounds in government support.

And a second canard is that other forms of media have superior regulatory systems. But consider this, terrestrial TV and radio which have a legal obligation to be impartial rely on an airwave spectrum, which can be taken away from them by politicians. Satellite TV is effectively controlled by Rupert Murdoch. The BBC relies for its existence on a government imposed poll tax. And if any evidence is needed of how the politicians can bully the BBC, look at the way Alistair Campbell assaulted the corporation after the death of Dr Kelly, and the subsequent defenestration of its director general.

Indeed, I would argue that Britain's commercially viable free press, because it's in hock to nobody, is the only real free media in this country. Overregulate that press, and you put democracy itself in peril.

Don't listen to me. Listen to the judges themselves. I quote Lord Woolf in a 2002 Appeal Court judgment on a footballer's dalliance with a lap dancer: "The courts must not ignore the fact that if newspapers do not publish information which the public are interested in, then there would be fewer newspapers published which will not be in the public interest." Baroness Hale in a 2004 Law Lords case: "One reason why freedom of the press is so important is that we need newspapers to sell in order to ensure that we still have newspapers at all. It may be said that newspapers should be allowed considerable latitude in the intrusions into private grief so that they can maintain circulation and the rest of us can continue to enjoy the variety of newspapers and other mass media which are available in this country."

And self-regulation, I would argue, is at the very heart of this free press, which is why I profoundly regret that a prime minister, who had become too close to News International in general, and Andy Coulson and Rebekah Wade in particular, in a cynical act of political expediency has prejudiced the outcome of this inquiry by declaring that the PCC, an institution he had been committed to only a few weeks previously, was a failed body. It is emphatically not.

In a speech last week Ray Snoddy, The Financial Times' brilliant one-time media commentator, put it perfectly: "Save in one respect, dealing with illegal phone hacking, the PCC is not a failed organisation. It is one that has worked tirelessly to get fast, free redress to those who have been subject to inaccurate or intrusive reporting without reasonable cause, and you can actually make a strong case that on the whole press behaviour has improved over the last 20 years."

Over the past month I have read cases by so-called academic experts for the licensing of journalists and the need for a regulator with supervisory powers over the press to set and monitor standards and have the right, backed by the force of law, to conduct spot checks on newspaper offices and seize equipment and evidence. My own response to these experts is that they should emigrate to Zimbabwe.

Which brings me to the final myth about the PCC, the one that says Britain is alone in having a press self-regulating system. Au contraire. There are no less than 20 nations in Europe with self-regulating systems, many based on the PCC. There are two exceptions, however, France, with its draconian privacy laws and pathetic, torpid government subsidised press, and Italy, which maintains the state licensing of journalists introduced by Mussolini. No prizes for guessing which nation gave the world paparazzi photographers.

Thank you.