THE LEVESON INQUIRY

WRITTEN OPENING SUBMISSIONS FOR NEWS INTERNATIONAL

(NI GROUP LIMITED)

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1. Through its subsidiaries, News International is the owner of three major newspapers, The Times and The Sunday Times (published by Times Newspapers Limited) and The Sun (published by News Group Newspapers Ltd). Until its closure on 10 July 2011, News Group Newspapers also published The News of the World.

2. In these submissions, News International does not try to address the factual issues which the Inquiry is called on to investigate, but it does try to assist the Inquiry in its task of considering the future regulation of the press.

3. News International submits that the principle of self-regulation should be maintained, with a re-modelled and improved Press Complaints Commission, to be known, perhaps, as the Press Standards Authority. The press is, and will remain, subject to the substantive law of the land. The addition of compulsory regulation under statute would be contrary to constitutional principle, impossible to reconcile with the reality of the internet and unnecessary.

The constitutional importance of a free press

4. A free press is essential to a free country. Totalitarian states do not tolerate freedom of the press: they license, control and censor it. Freedom of the press, and its parent, freedom of expression, are the product of a long struggle against authoritarianism and serve as the scouts and watchdogs for all other freedoms.

5. The instinctive reaction of the royal, religious and governmental powers of the day to the invention of the printing press was to impose a system of licensing and control over what could be printed. In Catholic Europe this was enforced by the Inquisition. In 17th Century England it was enforced by the Star Chamber, and then by Parliament under the Licensing Order of 1643. Milton protested against pre-publication censorship in the *Areopagitica*, *A Speech of Mr John Milton For the Liberty of Unlicensed Printing*, which was published in 1644 and set out a sustained and impassioned plea for the populace to be allowed to make up its own mind as to the merits of what was printed:

> *Nor is it to the common people less than a reproach; for if we be so jealous over them, as that we dare not trust them with an English pamphlet, what do we but censure them for a giddy, vicious, and ungrounded people; in such a sick and weak state of faith and discretion, as to be able to take nothing down but through the pipe of a licenser?*

6. In 1688, by the Bill of Rights, "*the Lords Spiritual and Temporal and the Commons assembled at Westminster lawfully fully and freely representing all the Estates of the People of this Realm*" declared to their new Sovereigns, William and Mary:

> *That the Freedom of Speech and Debates or Proceedings in Parliament ought not to be impeached or questioned in any Court or Place out of Parliament.*

7. Six years later, in 1694, the Licensing Order of 1643 was allowed to lapse and pre-publication censorship came to an end in Britain. But escape from the pre-publication censor did not mean freedom to publish without fear of consequences. Criticism of the authorities could mean prosecution for seditious libel and, whilst Parliament claimed freedom of speech for its members, it regarded reports to the populace of what they said as a contempt of Parliament.

8. John Wilkes is justly celebrated for his battles for freedom of the press and, by 1760, there remained plenty for him to battle against. He campaigned for freedom to report Parliamentary proceedings, a fight which was won in 1771 when the Lord Mayor of London, Brass Crosby, refused to punish a printer for reporting Parliamentary debates. Meanwhile, in 1763, Wilkes himself was charged with seditious libel, following his attack, in issue 45 of the North Briton, on the King's Speech to Parliament. Wilkes exiled himself to France and was convicted *in absentia* of both seditious and obscene libel. On his return to the country he was expelled from Parliament and imprisoned. It was the doughty electors of Middlesex who stood up for him in 1769 by re-electing him every time Parliament rejected him as an MP.

9. It was in this atmosphere of an awakening freedom of the press that The Times was founded in 1785 (under the name of The Daily Universal Register).

10. Wilkes's struggles were closely observed from across the Atlantic and provided part of the inspiration for the First Amendment to the US Constitution, which set forth the principles of both freedom of speech and freedom of the press. The First Amendment was adopted in 1791 as part of the American Bill of Rights:

> *Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.*

11. Since 1791 the importance of a free press has come to be well recognised on this side of the Atlantic, as well as the other (although Tom Paine followed Wilkes in being convicted of seditious libel *in absentia* following the publication of the second part of the Rights of Man in 1792). The only current statutory regulation peculiar to newspapers is that provided by the Newspaper Libel and Registration Act 1881 which requires the printers and publishers of every newspaper to make an annual return stating (a) the title of the newspaper, and (b) the names of all the proprietors of such newspaper together with their respective occupations, places of business (if any), and places of residence. You can't publish a newspaper anonymously in Britain.

12. The right of freedom of expression is now expressly recognised in law and protected by Article 10 of the European Convention on Human Rights as brought into domestic law by the Human Rights Act 1998.

13. When the Bill of Rights was passed in 1688, the three estates of the realm were well recognised as the Lords Spiritual, the Lords Temporal and the Commons. It was to this company that the press was added as the unruly and untamed 'Fourth Estate'. The press has remained as the Fourth Estate although, following Montesquieu, the first three estates are now more often thought of as the three branches of government: legislative, executive and judicial.

14. In British constitutional practice the legislative and executive branches of government famously overlap, with the Prime Minister being both the chief executive of the country and the leader of the largest party in the legislature. The judiciary is blessed with independent instincts, but it is funded by the state, applies the laws passed by Parliament and hears only the cases that come before it. All

three branches are subject to the cohesive forces of party discipline, conditions of employment or judicial hierarchy. What then is there to keep these three monoliths honest? There is the free press. Irregular, diverse, irritating, sometimes wrong, sometimes right, frequently vulgar, it is the free press which has the right and the power to ask the awkward questions, to challenge the establishment and, simply but vitally, to report what is going on.

15. The Times, The Sunday Times, and The Sun, amongst others in the British press, have a long and distinguished record of publishing year after year, every day and every week, reports of news, entertainment and comment. They strive to do so in compliance with the PCC Code, with accuracy and integrity, and fearlessly when necessary. On many occasions investigative reporting by the press has uncovered well hidden truths which required to be brought, and sometimes dragged, into the light. Notable examples include the scandals over Thalidomide, cash for Parliamentary questions, cash for honours, Parliamentary expenses, corruption in cricket and many other issues of the day. At the same time the press has continued to fight for the freedom to report and comment on the whole fabric of life, whether it is to be found in the family Courts, where The Times has campaigned against excessive secrecy, or in the doings of politicians, where The Sunday Times went to the House of Lords to establish the 'Reynolds defence' in libel claims, to protect statements published responsibly on issues in the public interest: Reynolds v Times Newspapers Ltd [2001] 2 AC 127.

16. The citizenry, of course, has a role to play in its own government, not least at election time. But, with distinguished exceptions, the ordinary citizen does not have the time, the skill, the resources or the inclination to question, to probe, to investigate or to keep watch on those in power. Even the distinguished exceptions may find that it is the press that takes up and develops their causes. The press plays a vital role in ensuring that, when the citizens come to exercise their right to vote, they have at least some idea of the issues and arguments of the day and of what their elected representatives have been up to. In Reynolds v TNL Lord

Nicholls noted that: "*The press discharges vital functions as a bloodhound as well as a watchdog*" (205F, and see also Lord Steyn at 214D-215A).

17. In a liberal democracy the ultimate answer to the question: *Quis custodiet ipsos custodes?* is always the free press. That is why the guardians themselves, be they politicians, civil servants or judges, should not regulate the press, or control the regulation of the press. It matters not that, at any one time, the press may be good, bad, struggling or overweening, or that the appointed regulators would be of immaculate character, independence and judgment. It is, and should remain a constant of British democracy that the regulation of the press is not the business of government, whether executive, legislative or judicial. The principles that Wilkes contended for, and which are embodied in the First Amendment, still hold good.

Entertainment and the need for a profitable press

18. The press has to make a living. It has to cover its costs and to make a profit. The market for an unremitting diet of daily seriousness is small indeed, and the majority who like more variety in their diet deserve to be served too. Even the august Reithian aims of the BBC are to inform, educate and entertain. There is space for both the Times Literary Supplement (weekly circulation 32,000) and The Sun (daily circulation 2.8 million).

19. In all mass circulation newspapers, the light side supports, subsidises and complements the serious side, as well as providing a varied offering which appeals to readers who would not buy an unremittingly serious newspaper. Thus, the News of the World could run celebrity sex scandals whilst also commissioning a long, expensive and wholly successful operation to expose the willingness of certain international cricketers to accept bribes to fix events in cricket matches and The Sun can juxtapose an informative article on the Euro crisis with a piece on Lady Gaga's father hiring a stripper to teach her the piano.

20. The Courts have rightly recognised that it is legitimate, indeed desirable, to allow newspapers to write about matters of public interest in a manner which is likely to interest their readers. Re S (a child) (Identification: Restrictions on Publication) [2005] 1 AC 593 concerned an application for an injunction preventing the publication of the name of a woman charged with murdering her son in order to protect the identity of another surviving 8 year old son. Although the child's Article 8 rights were engaged, the House of Lords refused an injunction. Lord Steyn said [34]:

> *Thirdly, it is important to bear in mind that from a newspaper's point of view a report of a sensational trial without revealing the identity of the Defendant would be a very much disembodied trial. If the newspaper chose not to contest such an Injunction, they are less likely to give prominence to reports of the trial. Certainly readers will be less interested and editors will act accordingly. Informed debate about criminal justice will suffer.*

21. Last year, in Re Guardian News and Media Limited [2010] 2 AC 697 a seven-Judge Supreme Court considered a similar issue in relation to anonymity orders in proceedings brought to challenge certain directions and designations under the terrorism legislation. Press and media organisations applied for the anonymity orders to be discharged to enable them to publish a full report of the proceedings. The Judgment of the Court, delivered by Lord Rodger, held that the Article 8 rights of the individuals were engaged but were outweighed by the Article 10 claims of the media organisations. At [63]-[64] Lord Rodger said:

> *What's in a name? "A lot", the press would answer. This is because stories about particular individuals are simply much more attractive to readers than stories about unidentified people. It is just human nature. And this is why, of course, even when reporting major disasters, journalists usually look for a story about how particular individuals are affected. Writing stories which capture the attention of readers is a matter of reporting technique, and the European Court holds that Article 10 protects not only*

> *the substance of ideas and information but also the form in which they are conveyed … This is not just a matter of deference to editorial independence. The Judges are recognising editors know best about how to present material in a way that will interest the readers of their particular publication and so help them to absorb the information. A requirement to report it in some austere, abstract form, devoid of much of human interest, could well mean that the report would not be read and the information would not be passed on. Ultimately, such an approach could threaten the viability of newspapers and magazines, which can only inform the public if they attract enough readers and make enough money to survive*.

22. The viability of newspapers depends upon the money they make from circulation revenues and from advertising. The market has always been highly competitive and newspapers now compete with news on the internet and with the internet as a platform for advertising. Newspaper circulation and readership are falling, putting pressure on circulation revenues. Circulation of national dailies fell 25% in the 10 years to January 2011. Advertising spend on newspapers has also been declining. The growth of press which is free at the point of consumption (Metro, the Evening Standard and free magazines such as Sport, Shortlist and Stylist) has created additional competition for readers and fuelled the expectation that news can be free. News free of charge on the internet creates the same expectation.

23. Newspapers have reacted to the rise of internet news by moving online and creating new digital news products. Newspaper websites have become distinct and sophisticated products, as integral to their relationship with their readers as the printed paper. Expansion by newspapers into digital territories has been successful in attracting a substantial national and international on-line readership, but an on-line presence is no guarantee of financial security or that the substantial costs of newsgathering will be covered. The Times and The Sunday Times now make a charge for access to their websites (and announced 111,036 digital subscribers in September 2011), but many newspapers allow free access. Advertising provides a

source of earnings for websites, but the huge supply of on-line advertising opportunities results in a price for the provider which is much lower than the price for hard copy advertising in newspapers.

24. Generally, the profitable UK newspapers are the tabloids. Their circulation accounts for 82% of daily newspaper copies sold. A similar pattern is reflected in online readership, with the Daily Mail having 6.6m unique users per month, 44% higher than its nearest rival the Guardian with 4.6m.

25. The 'broadsheet' newspapers, although viewed as authoritative, reliable, and responsible, are largely in a very different economic situation. For example, the Guardian/Observer titles had an operating loss of £38.3m in 2011.

26. Tabloid journalism is typically bold and robust. It may not be to the taste of some, but its style disseminates news and promotes causes to a vast audience.

Not above the law

27. The press has no exemption from the substantive law of the land. When it goes wrong it is liable to the same civil liabilities and criminal penalties as any other citizen. Indeed, the press lacks even consistent protection when it is pursuing stories which it is in the public interest for it to pursue.

28. The last 15 years has seen something of an explosion in the substantive laws to which the routine activities of the press are subject. On a daily basis the press has now to navigate by reference to:

    (i) The law of defamation (civil liability – remedies include damages and injunctive relief);

    (ii) Privacy law or misuse of private information (civil liability – remedies include damages and injunctive relief);

(iii) Reporting restrictions on many criminal trials, family cases and proceedings involving children;

(iv) The law of copyright (and other intellectual property rights);

(v) The Data Protection Act 1998 (civil, regulatory and criminal liability);

(vi) The Protection from Harassment Act 1997 (civil and criminal liability);

(vii) The Computer Misuse Act 1990 (criminal liability);

(viii) The Regulation of Investigatory Powers Act 2000 (criminal liability);

(ix) The Bribery Act 2010 (in force 1 July 2011 - criminal liability);

(x) The Contempt of Court Act 1981 (reporting restrictions and criminal liability);

(xi) The Official Secrets Act 1989.

29. Two aspects of this formidable list are worthy of note. First, privacy law is a creation of the common law which has developed with remarkable speed since the decision of the House of Lords in 2004 in the Naomi Campbell case (Campbell v MGN Ltd [2004] UKHL 22, [2004] 2 AC 457). Before the development of privacy law, newspapers had to worry about whether their stories were true (if not, they risked a complaint to the PCC or, at worst, an expensive libel action). Since 2004 newspapers have had constantly to face an additional query: If it is true, is it an invasion of privacy to publish it? This development has in itself greatly encroached on the territory within which the press could publish what it liked, so long as it was true.

30. Privacy law is a creation of the common law. Mr Warby QC's presentation to the Inquiry on 23 September 2011 may have given the impression that it is the offspring

of Article 8 of the European Convention on Human Rights as brought into domestic law by the Human Rights Act 1998. It is certainly true that the development of the common law has been spurred by Article 8 and by the 1998 Act, but the jurisdictional basis of the cause of action remains in the common law. It would be controversial to hold that the European Convention constituted a direct source of rights between private parties, as Lord Nicholls noted at paragraphs 17 and 18 of his judgment in Campbell v MGN:

> *17. The time has come to recognise that the values enshrined in articles 8 and 10 are now part of the cause of action for breach of confidence. ...*
>
> *18. In reaching this conclusion it is not necessary to pursue the controversial question whether the European Convention itself has this wider effect. Nor is it necessary to decide whether the duty imposed on the Courts by section 6 of the Human Rights Act extends to questions of substantive law as opposed to questions of practice and procedure.*

31. A feature of privacy law which is often noted is that, once the privacy has been broken, the breach cannot easily be remedied; the genie cannot be put back in the bottle. This reflects the difference between disseminating truths and untruths. An untruth can be corrected (if necessary by a defamation action), a truth cannot. A breach of privacy is therefore harder to remedy than a falsehood. It is, however, defamation rather than breach of privacy which is the exception to the normal rule. Many, perhaps most, wrongs cannot easily be reversed. If a woman loses a leg in a car accident, the Court cannot turn back time or restore her leg. The best it can do is to award an appropriate monetary amount by way of compensation.

32. The second aspect of the developing law which should be noted is the growth in statutes imposing criminal penalties, notably the Protection from Harassment Act 1997, the Data Protection Act 1998, the Regulation of Investigatory Powers Act 2000 and the Bribery Act 2010. Journalists do not wish to incur criminal penalties

and the increased risk of criminal sanctions threatens to have a chilling effect on investigative journalism.

33. This is particularly so as public interest defences are only haphazardly available, if at all. Section 32 of the Data Protection Act provides a 'journalism, literature and art' exemption from the duty to comply with the data processing principles if:

> *(a) the processing is undertaken with a view to the publication by any person of any journalistic, literary or artistic material,*
> *(b) the data controller reasonably believes that, having regard in particular to the special importance of the public interest in freedom of expression, publication would be in the public interest, and*
> *(c) the data controller reasonably believes that, in all the circumstances, compliance with that provision is incompatible with the special purposes.*

34. This exemption is very necessary for newspapers and journalists as the Court of Appeal held in Campbell v MGN [2003] QB 633, [2002] EWCA Civ 1373, that the series of operations involved in producing a newspaper, magazine or broadcast will inevitably amount to "*processing*" of data for the purposes of the Act (see paragraph 122 – this part of the decision is not affected by the reversal by the House of Lords of the Court of Appeal's decision on privacy).

35. The exemption at s.32 of the DPA is concerned with civil liability and applies if the data controller "*reasonably believes*" that publication would be in the public interest. Paradoxically, the parallel criminal defence provided at s.55(2)(d) requires it to be shown that "*in the particular circumstances the obtaining, disclosing or procuring was justified as being in the public interest*". Thus to escape civil liability it suffices to prove a reasonable belief, but to escape criminal liability it is necessary to meet the tougher standard of proving objective justification. Parliament has recognised that this is an anomaly and s.78 of the Criminal Justice and Immigration Act 2008 amends s.55 of the DPA to a reasonable belief test in the case of persons

acting for the purposes of journalism, artistic purposes or literary purposes. However, the amendment has not yet been brought into force.

36. At present, there is no public interest defence at all in, for example, the Computer Misuse Act 1990, the Regulation of Investigative Powers Act 2000 or the Bribery Act 2010. The result is that bona fide journalistic activities which attract a public interest exemption or defence under the Data Protection Act may nonetheless constitute an offence under, for example, the Computer Misuse Act. This is an unwarranted state of affairs. When in pursuit of the public interest, journalists ought not to be at risk of criminal penalties or reliant on the uncertain reach of an Article 10 defence. The logic of the public interest defence provided by the Data Protection Act ought to apply generally to journalistic activities.

37. Where the public interest is taken into account, statute (wisely) provides no definition. S.12(4) of the Human Rights Act requires a court considering whether to grant relief which might affect the exercise of the right to freedom of expression to have regard to, inter alia, "any relevant privacy code". The task avoided by statute is undertaken by the Editors' Code of Practice (one such privacy code) which describes the public interest as follows:

> 1) *The public interest includes, but is not confined to:*
>
> *(i) Detecting or exposing crime or serious impropriety.*
>
> *(ii) Protecting public health and safety.*
>
> *(iii) Preventing the public from being misled by an action or statement of an individual or organisation.*
>
> 2) *There is a public interest in freedom of expression itself.*

38. When reading this statement it is important to give proper weight to paragraph 2. The three specific instances given by paragraph 1 (although not exhaustive) are comparatively narrow and, self-evidently, much of the content of the daily papers is not concerned with such matters.

39. An undue focus on those three instances can give rise to the misconception that the press must justify any publication which involves private information of any kind by pointing to a specific public interest in the publication of the particular information in question. If that were truly the case newspapers could only contain serious public interest articles – there would be no room for gossip, or comic pieces which include any kind of personal information about anyone. Newspapers of that sort would have only a limited circulation and would not be economically viable. They would bear no resemblance to the diverse newspapers that have characterized, and continue to characterize, the British press.

40. The true position is that there is a public interest in freedom of expression in a diverse and vigorous free press which of itself allows anything to be published which is not rendered unlawful by a countervailing public interest which outweighs it. It is this public interest which finds expression in s.12 of the Human Rights Act requiring a Court asked to restrain freedom of expression to have particular regard to:

> *the importance of the Convention right to freedom of expression and, where the proceedings relate to material which the respondent claims, or which appears to the court, to be journalistic, literary or artistic material … to … the extent to which it is, or would be, in the public interest for the material to be published.*

41. If Article 8 rights are engaged, they can outweigh the Article 10 rights to freedom of expression (Re S (A Child) (Identification: Restrictions of Publication, [2004] UKHL 47, [2005] AC 593), but the universal constant is the right to freedom of expression.

42. Despite that constant, the litany of substantive law to which the British press is subject is a heavy one, only occasionally leavened by a public interest defence.

The internet and journalism

43. Amongst many other things, the internet provides access to news and journalism. It is a commonplace that the speed of change and development of the internet is phenomenal, but it is easy to forget just how fast and how widely new developments can take hold:

(1) Facebook was launched in February 2004. It now has over 800 million users worldwide. Facebook is widely used by politicians, with Barack Obama having over 15 million Facebook fans;

(2) Twitter was launched in July 2006. It now has over 200 million users worldwide. The UK based 'tweeters' with the most followers are Coldplay with 4.48 million and Stephen Fry with 3.3 million. Twitter has been heavily used in the Arab revolutions and, in the UK, twitter users spread the news that Ryan Giggs had obtained an injunction against publication of his extra-marital affairs at a time when the press was unable to publish the same news in consequence of the injunction;

(3) Apple released the iPad in April 2010 and has now sold over 40 million, generating a new audience for on-line newspapers, news and comment;

(4) All the major print titles now run parallel internet sites and most offer access via iPads, other tablet computers, smartphones and similar devices. The internet versions are (inevitably) more up-to-date than the print paper and often offer additional material not available in print;

(5) In the United States there are a number of major news sites which exist solely on the internet, such as the Huffington Post, the Drudge Report and the Daily News (owned by News Corporation, parent company of News International). The Huffington Post launched a UK edition in July 2011;

(6) Internet blogs, such as Guido Fawkes, have become well known sources of news and comment.

44. We are not aware of any definition of "the press", or of "journalism" in English law, but there can be no doubt that the internet now harbours both journalists and elements of the press. Indeed, bloggers, are often referred to as "*citizen journalists*". In Author of a Blog v. Times Newspapers Limited [2009] EMLR 22 at [10] Eady J. held that the author of a blog performs a function which is "*closely analogous*" to journalism. The prestigious Orwell Prize for political writing is awarded annually to a blog, as well as to a journalist and a book.

45. The Inquiry's terms of reference refer on several occasions not just to newspapers but to the broader media. In any event, no coherent strategy for the regulation of the printed press can ignore the internet. It is only a matter of time before a respected print title migrates entirely to the internet. A regulatory system which ignored that problem would be absurd, and could well be redundant before it could be implemented.

Corporate governance

46. The Inquiry is particularly concerned with the regulatory regime applying to the press, which is addressed below. However, News International recognises the responsibility which lies on media organisations to put their own houses in order through the adoption of appropriate internal systems of corporate governance. News International has instituted significant reforms to its internal procedures and is in the process of taking external advice on further best practice changes.

The strengths of the current regulatory system

47. The current system of self-regulation of the press by the PCC has a number of things which it does well:

(1) Its pre-publication mediation role provides a valuable avenue for anyone who sees a damaging story coming to raise the problem before publication;

(2) Its anti-harassment notices have been effective in curbing the excesses of paparazzi and door-stepping reporters;

(3) Its mediation and adjudication systems for complaints work well;

(4) Its subscribers take it seriously and greatly dislike suffering adverse adjudications;

(5) It is extremely cost effective, with annual funding of £1.9m in 2010 (by way of comparison the 2011/12 budget of OFCOM is £115.8m, which does not include internal industry compliance costs);

(6) It is free to complainants;

(7) It makes no call on public funds;

(8) Since it is a voluntary organisation, there is scope for flexibility over exactly who can join and the range of complaints it can address. It does not have to espouse any bright line definition of what constitutes 'the press'.

48. The PCC judges complaints and press behaviour against the standards of the Editors' Code, which it publishes, which is widely and rightly admired and has statutory recognition under a variety of statutes, including s.12(4)(b) of the Human Rights Act 1998, s.32(3) of the Data Protection Act 1998, and s.118A(4) of the Financial Services and Markets Act 2000.

49. Despite these strengths, there is broad acceptance that the system is in need of improvement.

The criticisms

50. Criticisms of the current system, and of the PCC in particular, have centred upon:

(1) Insufficient independence from those it regulates – although the 17 strong Commission now has a majority of 10 lay members, the presence of 7 serving editors gives the appearance of regulation of the press, by the press;

(2) A lack of investigatory powers and resources (to get to the bottom of the phone-hacking scandal or of anything else);

(3) An inadequate range of remedies, particularly the lack of a power to require sufficient prominence for corrections and apologies;

(4) The problem of non-members – membership is voluntary and a significant minority of publications are not members.

51. What, then, should be done to address these weaknesses?

Should there be statutory regulation of the press?

52. NI submits that for a number of reasons statutory regulation of the press is not the way forward.

53. First, for the reasons explored at the outset of these submissions, it is a fundamental constitutional principle that the press, warts and all, should be free of regulation by government. That freedom is an essential protection which exists not for the benefit of the press, but for the benefit of the citizen (as the Lord Chief Justice pointed out when quoting Wilkes in his lecture to Justice on 19 October 2011).

54. Secondly, there is no justification for singling out the press for regulation beyond that imposed on the citizen. Why should freedom of the press be narrower than freedom of speech? The usual answer is that the press has more power, as Mark Twain (a newspaper man as well as an author) is said to have observed: "*Never pick a fight with a man who buys his ink by the barrel*". But technology has overtaken the barrel of ink. Now a keyboard and an internet connection will suffice to reach more readers than Twain would have dreamt of. A remark on Twitter can explode across the digital world in a matter of hours. There is no longer a bright line between 'the press' and the citizen blogger.

55. Thirdly, the internet cannot be ignored. If there is a line to be drawn, to divide the regulated from the unregulated, it no longer makes sense to draw it around the printed press. A statutory scheme that regulated a title so long as it appeared in print but gave up when it went digital would be laughable. And yet, any statutory scheme must define those whom it is to regulate and the definitional problem posed by the internet appears insoluble. How to draw a lasting line between those contributors to the internet who belong with the press, and those who do not? How to keep a register of them? How to levy a fee?

56. This is not to say that people can or should be able to break the law on the internet with impunity. Defamation claims are available against web-site hosts in certain circumstances (see Kaschke v Gray [2011] 1 WLR 452). The courts are willing to make orders against the operators of websites hosting material which infringes copyright (see Twentieth Century Fox Film Corporation and Others v. Newzbin Limited [2010] EWHC 608 (Ch) [2010] FSR 21), and against service providers whose services are used to gain access to such sites (see Twentieth Century Fox Film Corporation and Others v British Telecommunications plc [2011] EWHC 1981 (Ch) and [2011] EWHC 2714 (Ch)).

57. But taking steps against those who can be proved to be using the internet to break the law is one thing (and difficult enough). Creating an effective regulatory regime for a large segment of the internet is entirely another.

58. Fourthly, statutory regulation of the printed press, with its inevitable cost, without any equivalent regulation of the internet would grant an unfair competitive advantage to internet news sites. The printed press as a whole, and the more serious papers in particular, face enormous economic and competitive challenges from the digital media. An expensive statutory regulator would add an unfair and possibly fatal burden.

59. Fifthly, statutory regulation is not necessary. The worst excesses of the press constitute transgressions of the civil and criminal law which can be dealt with by the civil and criminal courts, as is occurring in the phone hacking cases. A developed and remodelled PCC can provide an additional route to redress for the public which is quick and free and does not suffer from legalism.

Remodelling the PCC

60. News International has not reached a final view on exactly how the PCC should be re-modelled, but it puts forward the following points for consideration and it will itself pay close attention to the evidence taken by the Inquiry with a view to reaching a final view.

61. As noted above, there is a good deal that the PCC does well, and those features should be retained. The problem is to remedy the identified weaknesses.

62. To distinguish it from the PCC, the re-modelled body should be re-named, for example as the Press Standards Authority (PSA).

Independence

63. The PSA Council should have a 7 to 3 majority of lay members and appointments should be by an independent panel. Serving editors should no longer be members of the Council. Complaints which go to adjudication should be decided by a panel of 3 lay members, with an ex-editor who can advise but who will not have a vote.

Consideration should be given to whether it is necessary to provide for an appeal process.

Investigations

64. The reflex response to a failure by the PCC to investigate in the past is to suggest that its successor should have investigatory powers and the resources to use them. However, egregious behaviour by the press is already unlawful and, in serious cases, a breach of the criminal law. There are already two public bodies with statutory investigatory powers, namely the Information Commissioner and the Police. It is unnecessary (and it would be a waste of resources) to create yet a third investigatory body.

65. The PSA should be able to make inquiries where it chooses but, to avoid an excessive (and costly) number of competing investigators, the ordinary sensible role for the PSA should be to use its daily contacts with complainants and the press to monitor press behaviour for signs of systematic or persistent breaches of the law. If it has reasonable suspicions that a serious problem is emerging it should refer it to the Information Commissioner or the Police, or both.

66. This arrangement would make use of the PSA's unique vantage point from which to observe the behaviour of the press, without adding a significant and duplicative investigative function. In order to emphasise that the PSA will refer reasonable suspicions of systematic or persistent illegality to the Police or the ICO, it should have an express mandate to do so.

Remedies

67. The inadequacy of published corrections and apologies compared to the original story is often noted as a cause for concern. The PSA should have greater powers to direct the prominence to be given to corrections, apologies and reports of adjudications with, where necessary, power to require such reports to be 'flagged' elsewhere in the paper.

Non-members

68. The problem of non-members should not be over-stated: non-members are still subject to the law. Nonetheless, the problem can be minimised by a combination of sticks and carrots. Some or all of the following measures should be considered:

(1) The PSA should accept complaints against non-members on an ad hoc basis if both parties agree and a substantial fee is paid by the press party, alternatively the PSA could accept complaints against non-members and adjudicate them on the basis of the complainant's evidence only. Adjudications in such cases should be published by members;

(2) If a Court action is brought against a press party which has refused to have an admissible complaint adjudicated by the PSA, it shall be subject to a deterrent costs regime analogous to that which applies to a party which fails to beat a Part 36 offer. That is to say, it will be unable to recover costs if it wins and it will pay costs on the indemnity basis if it loses;

(3) The PSA will introduce and promote a Kitemark system enabling its members to differentiate themselves as subject to voluntary regulation. This works for many trades and it could work for the press.

69. In order to remain relevant as the internet develops, the PSA must expand its scope to include solely internet based titles, rather than confining itself to websites operated by print titles, as the PCC does at present. The problems of definition that will ensue are far more easily and flexibly faced by a voluntary body than by a statutory regulator.

70. These proposals are designed to engage the confidence of the public, and to benefit complainants, whilst adhering to the principle that freedom of the press, like freedom of speech, should not be encroached upon by the government.

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9 November 2011