

*Appendix 2*

**RESPONSE OF THE PUBLIC COMMISSIONERS TO THE RULE 13 NOTICE**

Dear Sir Brian

We, the signatories to this letter, are the nine Public Commissioners of the PCC. We write in response to some of the proposed criticisms contained in the Rule 13 notice addressed to our Chairman Lord Hunt of Wirral. We confirm that we have all been provided with copies of that notice, having signed the necessary confidentiality agreements.

These criticisms are based on a number of assertions about us which involve serious imputations against our integrity, honesty and impartiality. These assertions are wholly untrue but capable, if repeated or given credence in your report, of causing serious and unfair reputational damage to each of us. We therefore request their withdrawal.

We will deal first with the central allegation that we were all selected on the basis of our support and sympathy for the press's interests rather than on the basis of our commitment to being independent and free-thinking (Paragraph 3(e)). The clear implication of this is that in performing our roles at the PCC we have been pre-disposed to favour the press over complainants, and have failed to exercise the independent thinking required of us.

This fundamental untruth - seemingly based on the preconceptions and assumptions of people who have no actual knowledge of the workings of the PCC but who are opposed in principle to the present form of self-regulation of the press - can be seen to lie at the root of a number of the other proposed criticisms in the Rule 13 notice, accusing us (for example) of allowing decisions to be unduly influenced by the editorial members and of having acted in a number of respects with improper motives and intentions. We will refer briefly to these criticisms below.

**OUR SUPPOSED LACK OF INDEPENDENCE**

In the earlier stages of your hearings it was noticeable that you and Robert Jay QC appeared to have picked up two of the "myths" about the PCC which had come into existence as a result of the preconceptions and assumptions to which we have just referred: (1) that the editorial members of the PCC, despite being in a minority, have had a disproportionate amount of influence on its discussions and decisions, and (2) that the public members of the Commission are people with a natural inclination to place the freedom of the press ahead of the rights of individuals.

It was for that reason, and in order to demonstrate the true position as opposed to the myths, that on 9 February 2012 one of us (Jeremy Roberts QC) submitted to your Inquiry a detailed witness statement based on his first-hand knowledge. We can confirm that that witness statement set out the true position entirely accurately, and we would have hoped that it would have demolished the two myths once and for all. All of us (except Charles Anson, who has joined the Commission since February) had seen and approved the statement before it was submitted.

Receipt of the statement was acknowledged by Dr Simon Miller on 9 February 2012. We do not know whether you personally have ever seen it. We rather suspect that you may not have done: if you had, and if you had had any reservations about the accuracy of any of its contents, we would have expected you to take up Jeremy Roberts' offer to attend and give oral evidence, so that he could be challenged about it and have the opportunity to respond to any such challenge. That offer of course stands, even at this stage. We are sure that you would not wish your report to contain criticisms based on serious and reputationally damaging assertions to which we have already provided a comprehensive rebuttal which has not been the subject of any challenge.

Jeremy Roberts' witness statement appears as Appendix 3 to Lord Hunt's response to the Rule 13 notice. In his statement he set out brief details of his own previous experience as well as his experience at the PCC (including his experience when applying for appointment as a Commissioner). At the end of the statement there were brief summaries of their own backgrounds and experiences provided by four of the other lay Commissioners: Ian Nichol (whose term of office came to an end on 29 February 2012), Simon Sapper, Julie Spence and Neil Watts. Similar brief summaries have now been provided by Charles Anson (who joined the PCC in March 2012 in succession to Ian Nichol), Lord Grade, Esther Roberton, Michael Smyth and Ian Walden, and will be found after the witness statement in Lord Hunt's Appendix 3.

Paragraph 3 of the notice says that the PCC "was not independent from the press industry". Of course neither the PCC nor any other self-regulatory body is completely independent (in its broadest sense) of the industry or profession in question, which has invariably set up the system and invariably finances that body.

What matters is, however, whether those who are appointed to handle and adjudicate on complaints are people who approach their task independently, i.e. without any bias or predisposition to favour one side rather than the other. That is exactly what we are. Each of us applied to join the PCC as a result of being attracted by the opportunity to contribute to an important public service, and in the belief that our contributions would help to uphold a proper balance between the freedom of the press and the rights of individuals. Any suggestion to the contrary is quite untrue.

The first sentence of paragraph 3(e) ("Members ... were only recruited who supported the existing system of self-regulation in principle") appears to carry with it the suggestion that for that reason we must be pre-disposed to favour the newspaper over the complainant: indeed this is made explicitly clear by the third sentence ("This meant that even the lay members were selected on the basis of their support and sympathy for the press's interests rather than on the basis of their commitment to being independent and free-thinking").

None of us has seen for a long time such an obvious *non sequitur* as the suggestion that because you support self-regulation you will support the press's interests as opposed to being independent and free-thinking. The suggestion that any of us lacks a commitment to being independent and free-thinking is a wholly unjustified slur not only on us but on those involved in the selection process which resulted in our appointments.

To illustrate the fairness and openness of the appointments process (which was modelled on the Code of Practice issued by the Commissioner of Public Appointments) we would refer to the section of Lord Hunt's response to the Rule 13 notice which deals with the criticism in sub-paragraph 3(e). The involvement throughout of an independent reviewer has been an important feature of the process. For the most recent selection process (between January and April 2011, resulting in the appointment of five of us) the independent reviewer was a senior public appointments representative of the Cabinet Office. Although it is not of course our direct concern, we cannot help wondering whether - given the implied criticism of the supposed lack of independence in the appointments process - a Rule 13 notice has been sent to the Cabinet Office.

The suggestion that the appointment process and selection criteria focused more on the importance of the freedom of the press than on the protection of members of the public was exposed as a myth by the second part of Jeremy Roberts' unchallenged witness statement.

We would wish to echo the comment in Lord Hunt's response that it is a pity that you have not come to observe any of our regular Commission meetings or to observe the day-to-day work of our dedicated, bright and hardworking staff. If you had done so, and indeed if you had seen the weekly comments which we send in each week on the week's batch of cases, we do not believe that you would have begun to entertain the view that we are in any way lacking in independence or fair-mindedness.

Despite the criticisms to which we have been subjected in some quarters (and the fact that your Rule 13 notice frequently refers to the PCC in the past tense, as if it no longer existed) we have continued week in and week out to perform the public service which we signed up to do and for which there remains a continuing public demand; and we are confident that we have always succeeded in our aim to hold the scales of justice equally between complainants and the press.

#### **THE SUPPOSED INFLUENCE OF THE EDITORS OVER OUR DECISIONS**

Paragraph 3 of the notice says that "serving editors ... have wielded considerable influence, particularly with regard to decision-making"; and paragraph 3(d) makes a similar suggestion in different words.

As you know we significantly outnumber the editors on the Commission, and any suggestion that we feebly allow the editors to exercise a disproportionate amount of influence over our decisions is entirely untrue, and is a slur not only on our independence and robustness but also on the way in which the editors themselves perform their responsibilities as Commissioners. They are valued colleagues who contribute to our discussions and decisions in exactly the same way as we do. As you know from Lord Hunt's statement, they scrupulously absent themselves from any discussion of complaints against their own publications or others in the same group.

This particular criticism was, we hope, comprehensively demolished in the first part of Jeremy Roberts' unchallenged witness statement, which we will not repeat here. We all agree that it contains an entirely accurate description of how our decisions are arrived at.

## OUR SUPPOSED MOTIVES AND INTENTIONS

The Rule 13 notice contains a cluster of suggestions attributing to us improper motives for doing this or not doing that. It seems that all of these suggestions are based on the entirely erroneous belief (exposed above as a myth) that we are here to support and protect the press instead of being independent and free-thinking.

We will not deal with all the points individually, as they are dealt with in Lord Hunt's response. By way of example and to illustrate the general point we will just mention the accusation in paragraph 2(g) of being "unwilling" to resolve factual disputes, so as to enable the press to avoid adverse adjudications, and "allowing" the existence of a factual dispute to prevent us from reaching a conclusion. This is inaccurate and unfair.

Our limited powers mean that we are sometimes *unable* (as opposed to "unwilling") to establish the truth about disputed facts, and if we cannot establish sufficient facts that can mean that we are *unable* to reach a conclusion. As is pointed out in Lord Hunt's response, if we were to accede arbitrarily to one version of the facts over another without good reason, we would open ourselves to significant criticism and, potentially, to legal challenge by way of Judicial Review. The fact that with our limited powers we are sometimes unable to resolve factual disputes may be a weakness of the present system, but it should not be a criticism of our approach, still less of our independence or impartiality.

We will also mention the criticism (in paragraph 2(f) of the notice) of the fact that the PCC does not normally carry out investigations (a) where no complaint has been made, or (b) where a complaint has been made by a third party or (c) where there are ongoing civil actions or criminal investigations. Insofar as that may be intended as a criticism of us for not changing these policies (which the PCC has applied for many years) we would merely say that we remain of the genuine and strongly held (and, we would submit, correct) opinion that there are good reasons - not recognised in the Rule 13 notice - for all three policies.

As to (a) and (b) there are often real difficulties in attempting to carry out, without the co-operation of the person(s) directly affected, the kind of investigations which the PCC is equipped to carry out; and such an investigation may often be counter-productive in that it may cause further unwelcome attention and additional problems for the person(s) directly affected. As to (c) concurrent investigations of the same matter by different bodies will often get in each other's way; and the powers available to the police in criminal investigations or to the courts in civil actions generally provide a more effective means of getting at the truth and resolving disputes.

Of course none of the three policies is inflexible, and in particular cases where there is good reason to depart from them, we can (and do) do so.

As regards paragraphs 6(b) and 6(c) of the notice, the two of us who were members of the Commission at the time can state categorically from their personal knowledge, and the rest of us can state to the best of our knowledge, information and belief, that the suggestion that there was some kind of a conspiracy involving any of us or our predecessors 'deliberately to give false comfort to politicians and the public that allegations of widespread phone hacking

were baseless' (paragraph 6(b)) is entirely untrue, as is the suggestion of such a conspiracy to attack the PCC's critics with the intention of 'shoring up the system of self-regulation which would otherwise have been fundamentally undermined' (paragraph 6(c)).

It is certainly true that the 2009 report itself did make some critical remarks about the Guardian; but these remarks, whilst possibly regrettable, were not the result of any conspiracy involving any of us or our predecessors, as is now suggested. We and so far as we know all our predecessors have always acted in good faith and not from the kind of motives now ascribed to us.

It is also true that Baroness Buscombe, the then Chairman of the PCC, did on one occasion make some remarks which were considered defamatory of Mark Lewis, and which resulted in a substantial out-of-court settlement. This was obviously regrettable. However, her remarks were not made with the prior knowledge or approval of any of us or, we believe, any of our predecessors, let alone in pursuance of any conspiracy such as is now alleged against us. We do not know whether there were any other "attacks" made by any other "representatives of the PCC"; but, if there were, the same applies to them.

We are concerned that these very serious proposed criticisms involve serious imputations not only against the integrity of two of us but also on that of a large number of our predecessors. The confidentiality agreements which we have signed have prevented us from contacting them and discussing the matter with them. We do not know whether they have been served with Rule 13 notices: if not, you will no doubt agree that it would be entirely inappropriate for these criticisms to be made when most of those being criticised have been given no notice of the 'charges' against them and have had no opportunity to answer them.

We trust that in the light of the above comments all criticisms accusing us (whether expressly or impliedly) of bias, partiality, lack of good faith or improper motives or intentions will be withdrawn in their entirety in your final report

Charles Anson CVO

Lord Grade of Yarmouth CBE

Esther Roberton

Jeremy Roberts QC

Simon Sapper

Michael Smyth CBE

Julie Spence OBE QPM

Professor Ian Walden

Neil Watts