

The following supplements my evidence sent to the Inquiry on the 8th January 2012.

General Comments

I do not think all media outlets should be covered by a single regulator. In my opinion a single regulator would be too complex and slow to adapt to technological change. I therefore think we need a body separate to OFCOM.

I also take the view that any regulator should have a duty to balance regulation with a duty to protect freedom of speech and expression within the law. I do not think they should be able to apply pre-publication censorship.

If the Inquiry decides to recommend a statutory structure then I would suggest that the proposals in my Bill of 1992/3 (copy attached) should be followed, as this balances freedom with responsibility - a duty to protect a free press.

Since my original proposals in the Bill I have taken the view that there are alternatives to a statutory body but that regulation can incorporate some statutory involvement – ie, it is not an either/or option. There are variations on the two extremes of a full statutory body versus no regulation at all.

It is often claimed that regulation will destroy investigative journalism – this has never been my view. Radio and television do good investigative journalism and they are regulated. The case against regulation which involves a requirement of balance in news reporting is that newspapers and magazines have a culture of political campaigning. This does not mean they should be allowed to publish factual inaccuracies. I believe these can be corrected and regulation would not be harmful to the public interest.

I think the regulation of TV/radio is working well.

What the regulatory regime should do. (Newspapers and Magazines)

Correction of inaccuracy. Clauses 1 and 2 of my 1992/3 Bill are a fair description of the type of powers I think the body should have, but the following expands on this.

The regulatory body should seek the presentation of news with due accuracy and where this is challenged it should have the power to conciliate and see that an agreed correction is published with due prominence. Where there is no agreement or where the regulatory body had identified a serious inaccuracy themselves they should have the power to ensure a correction is published. One of the failings of the old PCC was that it resisted a proactive approach and simply left it to the affected individual/organisation to complain. I believe this to have been a major weakness of the PCC. This implies a duty on the new body to scan the news proactively and to investigate where it thinks fit to do so. This would be an important new duty and it is no accident that the old PCC and the newspapers resisted it so strongly.

Although it is invasion of privacy that attracts most interest it is factual inaccuracy that attracts most complaints and I think there is an important point here about how standards can be raised that are wider than just factual accuracy. At present some stories are written with scant regard to accuracy. By making accuracy an issue that has to be addressed I believe it would make journalists and editors

more conscious of the way the story is written and this, I think, would focus the mind of journalist and editor alike on other aspects of journalistic ethics. Some might claim this is the triumph of hope over experience but I am a little more optimistic! Factual accuracy opens the door to a right of reply and this must surely have some effect on the way stories are written and edited.

The newspapers have previously argued that correction of inaccuracy may conceal an underlying truth known to the newspaper. This may be true but the publication of the correction would not stop the newspaper from publishing an editorial explaining their position if they so wished, and the correction must stand alone and in an appropriately prominent position. It also must not be repeated in the editorial or anywhere else. If they subsequently find themselves in a position to justify their original story, they can re-run the story.

Where there is no agreement between a complainant and a newspaper the regulatory body should proceed to adjudicate. It should be able to call witnesses and to look at relevant files held by the newspaper including the journalist's notes. The regulatory body should have the power to take a case to court or assist in a legal action.

Balance/Fairness. I do not think the regulatory body should have a duty to require balance in news reporting. TV and radio are generally seen to be fair and balanced. To require the press to do the same risks creating a 'sameness' to the news that is not healthy in a vibrant democracy. The difficulty in requiring balance and fairness in the press is that the papers would have to do the same operation as that done by radio/TV. How would a magazine like the *New Statesman* or the *Spectator* deliver balance and fairness when they align themselves quite closely to political parties? The same applies to the *Guardian* and the *Daily Mail* with their known political alliances. Requiring a regulatory body to insist on fairness and balance would mean abandoning a political campaigning mode for magazines/newspapers. I think we should rely on factual accuracy. A campaigning press is in my view healthy for democracy.

Privacy. I deliberately excluded privacy from my Bill because at that time there was not a Freedom of Information Act or a strong defence of press freedom, generally, and I was worried that it could inhibit investigative journalism. I was probably over-cautious but in any event the Freedom of Information Act and the acute concern over continuing and gross invasions of privacy suggest we now need good regulation in this area. I think the courts are developing the ability to balance press freedom with privacy (aided by articles 8 and 10 of the European Convention on Human Rights) but the code and any accompanying notes should be drafted in a way that would assist a court in reaching a conclusion on the difficult issue of genuine public interest. Although I acknowledge this is not an easy area I don't think it is as difficult as it is made out to be in most cases. It is the ones at the margins that are very difficult but I think these are less common than the press would have us believe.

In cases of unjustified invasion of privacy the regulatory body should attempt to agree a penalty that satisfies the complainant. This might include a hefty financial penalty as well as an apology. If the body thinks the newspaper is unreasonable in rejecting their recommendation then court proceedings could be initiated either by the complainant aided by the regulatory body or by the body itself. A newspaper could plead a public interest defence, in which case it would then be up to the court to reach a conclusion but I suspect most cases would not reach this stage.

The regulatory body should have a duty to challenge a newspaper when it (the body) considers that a story invading an individual's privacy is not justified in the public interest even where the individual or organisation has not complained. Such cases will be rare but can be important. I raised a case of this type with the editor of a newspaper that had in my view invaded the privacy of a young child.

The editor declined to comment but I know from my own sources that my complaint was seen as valid (see page 6 of my 8th January submission). A regulatory body will occasionally pick up such cases.

Hacking into telephone conversations which triggered this Inquiry has always been a criminal offence. However, in order to protect investigative journalism I think there is a case for extending the existing public interest defence to areas of this kind because there are rare occasions when it can be justified. The courts or prosecuting authority would have to decide whether any intercept carried out by a newspaper would attract the public interest defence. I do not believe that any of the hacking offences leading to this Inquiry would have been protected by law – they were clearly and grossly illegal and morally indefensible.

Other relevant matters

I suggest that the new body should produce an annual report including a section on media ethics and another section dealing with potential or actual threats to press freedom. I would also suggest that the annual report should be made available to the Culture and Media Select Committee of the House of Commons as an additional check on progress.

The new body should have the power to call and cross-examine witnesses where necessary. It should not have the power to compel a witness to attend but failure to do so would be seen as a serious matter and this might be used in any future court hearing.

The new body should have the power to run conferences and to report on the relationship between the media and key decision-making groups in society – politicians for example. It should also report on the quality of political reporting. In my view this is particularly important as currently there is a declining interest in democratic politics and part of the reason for this is the very negative method of current political reporting (see the section headed 'The relationship between politicians and the media' in my evidence of the 8th January 2012).

The new regulatory body should have the power to call for an investigation by the Competition Commission of media ownership and should be able to give evidence to the Commission.

The power of the Secretary of State to decide questions of media ownership should be ended. That power should transfer to the Competition Commission.

I am suggesting a structure where the regulatory body would be powerful enough to get compliance in most cases. I am reluctant to go much further than that. We should try and avoid a regulatory body that can end up penalising a newspaper to the point that it is put out of business, or an editor or journalist faces a jail sentence (even if it is via a court case). It is a difficult balance.

How the new body should be structured

In my 1991/2 Bill I had a model for appointment which I now think would place it too close to government (see the schedule to the Bill). This is not an area I have great knowledge in so I am reluctant to be too prescriptive. I would hope there are people better informed than I on an appointment system that maximises the distance from government.

If the new body is to be fully statutory then something along the lines of the BBC or Broadcasting Acts would be necessary. I am inclined to the view that the new body should not be set up by statute

but that it be given the power to take a case to court if necessary. I do not know if it is still the case but the Advertising Standards Authority used to have an element of this.

Note: The ASA describes itself as follows:

The ASA is here to make sure all advertisements are legal, decent, honest and truthful.

We are independent of both the Government and the advertising industry and we are recognised by the Government, the courts and other regulators such as the Office of Fair Trading (OFT) and Ofcom as the body to deal with complaints about advertising.

This is a model that the Inquiry might find useful.

I do think the broad structure proposed in the schedule of my Bill is satisfactory if a little dated. I think it is acceptable to have a maximum of two or three people with recent journalistic or editorial experience on the board. This could help protect journalistic freedom but none of the committees should be chaired by such a person. The alternative is to allow the body to co-opt people with relevant specialist knowledge for a particular case.

The Chairman of the Committee charged with drawing up the code of the old PCC was an editor. This was always a bad idea and partly explains the weakness of the PCC. That should never happen again.

I think the new body should be paid for by a levy on newspapers including their online papers. This contribution should be tax deductible for the newspapers. If the amount so raised is insufficient then some state funding may be necessary but I would hope not. I referred to the funding question in my 8th January submission.

The Detailed Rules

In my submission of the 8th January I drew attention to the last PCC code. I think the content of that code is broadly right but there were, as I pointed out, some key, serious weaknesses. I described them on pages 7 and 8 of my submission. (I have attached an additional copy of that submission.) The new regulatory body should have the power to draw up and amend the code.

Apart from specific areas to be stipulated by the Inquiry, I think the new body must be allowed to draw up its own rules and procedures.

I don't think I can be more specific in my replies to the points laid out in your module 4 'The Future' guide.

I hope these comments are useful. I am willing to expand on them if that would be at all helpful.

Yours sincerely,



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