

THIRD WITNESS STATEMENT OF LORD BLACK OF BRENTWOOD

Introduction

1. I submit this witness statement as part of Module 4 of the Inquiry into the Culture, Practices and Ethics of the Press, in response to the letter from the Inquiry dated 24th April 2012. I do so as Chairman of the Press Standards Board of Finance, which is the co-ordinating body for the newspaper and magazine publishing industry's trade associations: the Newspaper Publishers Association (the national press); the Newspaper Society (the local and regional press); the Professional Publishers Association (magazines and periodicals); and the Scottish Newspaper Society (publishers in Scotland).

2. This witness statement should be read in conjunction with the following four documents, which I also submit.

(A) "Towards a New and Effective System of Self Regulation" - *a draft proposal for the establishment of a new regulator with powers of investigation and sanction that works for the public and for the upholding of good journalism*. This comprehensive document sets out in detail proposals for a new regulatory system.

(B) "Draft Contractual Framework for a New System of Self Regulation for the Press". This provides a draft contract framework for the new system, which has been prepared by Reynolds Porter Chamberlain, working with Andrew Green QC.

(C) "Draft Regulations" to accompany the contract, setting out the powers of the Regulator and the guidance on financial sanctions.

(D) "Draft Articles of Association" for the new Regulator, to be established as a Community Interest Company, prepared by Bates Wells & Braithwaite LLP.

3. These proposals are submitted as working documents in draft both because they are part of a continuing process of consultation within the industry and because the industry is mindful of Lord Justice Leveson's concern to ensure that the Inquiry proceeds through an iterative process of work. I regard this proposal as being one which will continue to evolve, and the industry is keen to adapt and, if necessary, modify it still further in the light of the evidence submitted during Module 4 and indeed the Inquiry's eventual report.

4. Responses to the industry consultation from within an extremely diverse set of businesses have inevitably been varied. Parts of the industry - particularly the regional and periodical press - have been understandably anxious about such substantial change, especially when the current system works well for them (as the Inquiry has heard) and above all for their readers. They have rightly been worried about the potential increase in costs and bureaucracy of a new system. But at the other end of the spectrum, some national publishers have argued for even tougher controls. At the end of the day, therefore, this proposal seeks so far as is possible to balance these views. But there is no doubt to me that the vast majority of the industry sees them as credible, likely to prove effective and that they will take part. Northern and Shell has indicated that it is willing to participate, subject to detailed contract terms.

5. In support of this, the industry's four trade associations - listed below - have approved the following statement:

*The Newspaper Society (regional and local newspaper organisation), the Newspaper Publishers Association (national newspaper organisation), the Scottish Newspaper Society (Scottish newspaper organisation), and the Professional Publishers Association (magazine organisation) have been consulted by PressBoF on the industry proposals for future press regulation. The organisations have circulated the proposals to their members, at each stage of their development, and the proposals have also been circulated to Northern and Shell in the same manner.*

*While a lot of detailed work is still to be done, the proposals have the broad support of the organisations and their members. The proposals are being further developed in the light of comments received as part of the ongoing consultation process. This process will take into account the deliberations and recommendations of the Leveson Inquiry and the Government responses to its findings.*

*Separate meetings of the NS, NPA, SNS and PPA members will take place in June and July when the outcomes of the current round of consultation will be discussed and members will be asked to approve the proposed contractual framework for further development.*

6. Finally, I am aware that the Inquiry will not report until October and that the recommendations will then be passed to Government. Against that background, the industry stands ready to implement the proposal outlined in the attachment to this witness statement as soon as is appropriate. The existing Press Complaints Commission continues to function, in order to deal with complaints from members of the public and to give pre-publication advice as requested, but the legal transition from that structure to the new body can begin in a swift and orderly fashion at any appropriate juncture so that the public can both see real change and begin to benefit from change.

7. The rest of this witness statement seeks to deal with the measurement of the proposed new system against the "Draft Criteria for a Regulatory Solution" outlined in the letter from the Inquiry of 24th April.

Criterion 1 - Effectiveness

8. The proposed solution is perceived as credible by the press as an industry because it has been formed *within* the industry (criterion 1.1). In December 2011, Lord Hunt of Wirral, Chairman of the Press Complaints Commission, presented to the industry's leaders concepts for a completely new system of self regulation. Those ideas met with universal support from within the constituent parts of the industry. Since then PressBof, acting as a co-ordinating body, has worked with lawyers - both in-house within publishing companies, and with Reynolds Porter Chamberlain, Andrew Green QC and Bates Wells and Braithwaite - to work up those ideas into concrete proposals for submission to the Inquiry. This has involved three separate consultation exercises across the industry.

9. Judging the public reaction to these proposals is not straightforward. The ongoing process of industry consultation - as well as a desire to work in step with the Inquiry - means that there has been no opportunity for a public consultation. If the Inquiry would find that helpful, the industry would be content to conduct such an exercise. In the meantime, it is arguable that the Inquiry has highlighted the main areas of public concern: that the PCC was only a conciliator and not a regulator; that it lacked effective powers of sanction; that it was not independent enough; and that it was not proactive enough. The details set out in the attached proposal deal with each of those areas in a way that we believe the public will find credible. I point in particular to paragraphs 9-15 of the proposal document. Ultimately, public perceptions of the new system will be established only after it has been in operation for some time.

10. In my view, the proposal strikes a reasonable and legitimate balance between different interests because it is a self regulatory solution, backed by contract law (criteria 1.1 (a) and (b)). Statutory regulation of the written word

would be an unacceptable impingement on press freedom. Self regulation, based only on conciliation of disputes as operated through the PCC, is no longer sustainable. The new model balances the two: it protects the rights of the public through a regulator with legal powers and a majority of independent people throughout the regulatory structure, but does so in a way which maintains press freedom and will protect investigative and responsible journalism which is essential in a democracy. It is genuinely independent self regulation, because although the industry rightly has a stake in the structure of the system, its operational independence is guaranteed.

11. So far as the understanding of the public interest is concerned (criteria 1.1 (c)), it is in my view unlikely that anyone will ever be able to produce an overarching definition, as the recent Joint Committee into Privacy and Super Injunctions, of which I was member, concluded after extensive deliberation. Public interest considerations will always arise in an infinite variety of forms, which it is impossible to codify. The public interest test in the Editors' Code - which started with the Calcutt Code and has been significantly strengthened since, including the imposition of an "exceptional public interest" in matters regarding children - is a good place to start. I do not believe it is for the industry - in putting forward these proposals - to seek to produce a new definition. It is the industry's intention that the new Regulator should be an independent body, and it would be inappropriate to guide it from the start. Its new component parts - an independent Trust Board, a Complaints Committee, an Investigations Panel - should work with the Code Committee to look at the cases that have come before the Inquiry and work out how now to develop further the concept of the public interest.

12. In terms of its durability and flexibility (criteria 1.1(d)), the stability of the proposed system is guaranteed by long-term contracts. If a publisher tries to

leave the system, there will be serious financial consequences attached. This gives the new Regulator an enforceable legal basis on which to work without the need for any form of statutory intervention. It will work for future markets and technology because it will be open to purely digital and electronic publishers who are prepared to enter into contracts with the Regulator. The structure is, in other words, future proof and capable of universal application, though it would seem likely that it will take time for entry into the system to reach critical mass with on-line only publishers. A statutory or co-regulatory system would be set in stone and incapable of change at a time of extraordinarily rapid technological development within the media. (For example, broadcasting regulation is still conducted under the Communications Act 2003 which makes no mention of the internet. Self regulation has been able to adapt to on-line developments as they have occurred in real time from 1997 onwards.)

Criterion (2) - Fairness and objectivity of standards

13. The Editors' Code provides a clear set of ethical standards. It is recognised as credible with the industry because it is written by those within the industry, independently of Government (criterion 2.3). No other set of rules - written by the Courts, or by Parliament - could ever have such authority among editors and journalists.

14. Until now, public involvement with the drafting of the Code has been limited to the fact that members of the public have been able to make suggestions for Code changes during an annual review. It is now intended that the public's voice will be considerably strengthened in a way which is sufficiently independent of the media through the involvement of four or five public members on the Code Committee. I believe this will strengthen the credibility of

the system among the public (criterion 2.1). In addition, any changes to the Code will have to be approved by the Regulator's independent Trust Board.

15. Of much greater significance is the establishment of an Investigations and Compliance Panel which can look into the observance of ethical standards that go beyond the Code, and can for instance include the investigation of why criminal behaviour has occurred. The Panel will be able to launch an investigation in a number of circumstances including:

- \* where it appears there have been significant or systemic breaches of the Editors' Code or of what are generally regarded to be ethical standards - such as in the case of the McCanns;
- \* where serious breaches of the criminal or civil law have been resolved by the Court, but the Trust Board believes that an investigation is desirable because of the wider issues raised - for instance in the case of phone hacking; or
- \* where annual certification by a publisher identifies significant and substantive issues of concern in relation to a single incident, compliance processes or a long-term pattern of Code breaches.

16. The Panel, and in turn the Trust Board which will make decisions on financial penalties, will both have majorities of public members, but will include a minority of press representatives (and in the case of the Investigations Panel these will not be serving editors). This makes the enforcement of standards clearly independent of government and Parliament, and also sufficiently independent of media interests (criterion 2.3).

17. It is expected that the Regulator will, from time to time, wish to issue guidance on best practice, and to benchmark that in terms of the public interest. That will be a matter for the Regulator, probably in consultation with the Code Committee. But the structure of the new system will allow and indeed encourage that (criterion 2.2).

Criterion 3 - Independence and transparency of enforcement and compliance

18. The enforcement procedures of the new regulator will be both operationally independent of government and sufficiently independent of media interests in order to command public respect (criterion 3.1). This is because all the component parts of the regulatory structure will have majorities of public members, independently appointed, on them. Specifically:

\* the Trust Board which oversees the system will have four public members, including an independent Chairman, to three press representatives;

\* the Complaints Committee - which will deal with the majority of complaints to the Regulator - will have only five editors on a Committee of 13. The other eight members - more than 60% of the Committee - will be public members;

\* all teams convened by the Investigations Panel will have a 2:1 majority of public members. And the press representative will *not be a serving editor*, though he or she must have some senior editorial experience.

19. Crucially, an industry funding body will have no operational involvement with the enforcement or complaints handling parts of the regulatory system, unlike in the existing structure. Its relationship will be only with the independent



Trust Board which will structurally guarantee the operational independence of the Complaints Committee and the Investigation and Compliance Panel.

20. In terms of appointments throughout, there will be no role for Government or Parliament, as that would be unacceptable in a system of self regulation (criterion 3.2). The procedures will also be sufficiently independent of media interests. Specifically:

- \* the Trust Board - not the industry - will be responsible for establishing appointments procedures for the public members of the Trust Board itself, the Complaints Committee and the "pool" of public experts who may form any team convened by the Investigations Panel. Public members will have no connection with the press or digital media; and

- \* the Independent Assessor who will hear appeals on complaints will be independently appointed by the Trust Board.

21. In terms of the appointment of the independent Chairman of the Regulator - who can have no connection with the press - it is proposed that there should be a clear and transparent process for the appointment that is sufficiently independent of media interests and fully protects the interests of the public. This is dealt with further in the proposal document below.

22. For the first time, compliance by editors and publishers with the Code and with ethical standards will be transparent and demonstrable to the public as a result of the process of annual certification overseen by the Regulator (criterion 3.3). This annual reporting will include:

- \* copies of internal manuals, codes or guidance issued to journalists relating to ethical issues along with training undertaken;
- \* details of compliance processes including how the publisher deals with pre-publication advice, Code compliance, verification of stories and editorial complaints; and
- \* details of steps taken in response to any adverse adjudications from the Regulator in the previous year.

#### Criterion 4 - Powers and remedies

23. Both in respect of the handling of complaints, and investigation of ethical failures by the Investigation Panel, there will be “ladders” of sanctions which will provide credible remedies (criterion 4.1). For the bulk of complaints, an expert conciliation mechanism will provide swift and effective resolution to a problem, including issues of harassment where there need have been no publication. At the other end of the scale, where there have been systemic breakdowns in ethical behaviour or internal governance, the Trust Board will be able to levy proportionate fines of up to £1,000,000.

24. The new Regulator will have effective investigatory powers, guaranteed by contracts, to look into serious or systemic ethical breakdowns (criterion 4.2 and 4.3). The Complaints Committee will have advisory powers relating to pre-publication issues, and more general Code issues where appropriate. In regards to "kitemarking", it is envisaged that this will be part of the system - and indeed provide an incentive to join it - but the details of that will be a matter for the Regulator.

25. The proposed new regulatory structure will not overlap with the other media regulators - the ASA, OFCOM, the BBC Trust and ATVOD - in a way which would cause the public confusion or uncertainty. I therefore consider it to be a "good fit" in the regulatory and legal tapestry (criterion 4.4). At the moment the PCC takes the lead in dealing with cross-media problems of harassment as OFCOM is prohibited from doing so by statute. I envisage that the Complaints Committee of the new Regulator will continue to do so in a way which complements OFCOM's lack of powers in this area. With regard to other law enforcement functions, the Investigation and Compliance Panel will be complementary to the work of the police or statutory authorities such as the Information Commission. Where it uncovers evidence of criminal behaviour during the course of an investigation, it will pass that material on. And once any criminal prosecution has been completed, the Panel will be free to undertake a further investigation into the wider issues raised - as it might do in the case of phone hacking - and take action accordingly.

#### Cost

26. The proposed system will be reliably financed because funding will be guaranteed through the long-term contract between publishers and the Regulator (criterion 5.1). If a publisher chooses to leave the system, then action can be taken to recover the funding that it would have had to commit during the rest of the contract period. This will also give a guarantee of reasonable operational independence, although the industry's co-ordinating body will need to have authority to scrutinise spending and agree budgets in order to ensure accountability within the system. It is proposed that the industry will bear all of the costs of the new regulatory structure. It would be inappropriate in a system of self regulation for the taxpayer to make any contribution through state funding, and the industry is - to the best of my understanding - wholly opposed

to that. It would also be wrong to place any burden on complainants by charging for the handling of complaints. The industry invests in the regulatory system as a sign of its commitment to protecting the public and putting right things which have gone wrong.

LORD BLACK OF BRENTWOOD

7<sup>th</sup> June 2012

## A. TOWARDS A NEW AND EFFECTIVE SYSTEM OF INDEPENDENT SELF REGULATION

*A draft proposal for the establishment of a new regulator with powers of investigation and sanction that will work for the public and for the upholding of good journalism*

### SECTION 1: BACKGROUND

#### Introduction

1. The evidence submitted throughout the Inquiry into Press Standards has made clear that the Press Complaints Commission ultimately failed. While it had some significant achievements to its name, particularly in its early years, it proved incapable of dealing with the major ethical and cultural issues that have arisen in recent times. The scandal of phone hacking – and the PCC’s inadequate response to it – underlines that point. As a result, the existing system lost the confidence of Parliament, of the public and of the judiciary, all of whose support is essential if self regulation is to flourish. Crucially, the Commission also lost the support of parts of the newspaper and magazine publishing industry.
2. The industry accepts the need for wholesale change, but within the framework of self regulation. The Press Standards Board of Finance, representing the component parts of the industry, has therefore worked through the industry’s trade associations and their publisher members (who represent the overwhelming majority of national,

regional and local, and magazine publishers) with Lord Hunt, the Chairman of the PCC, to devise a completely new system of regulation which will both provide swift redress for members of the public with complaints about the press and increasingly with digital news sites, and will introduce a tough new standards and compliance regime for the first time in the industry's history. The scale of this change is profound.

3. This document, which should be read in conjunction with a draft contract and regulations for the proposed new regulatory body ("the Regulator") and its draft Articles of Association, sets out the detail of the system, how it will work to raise standards, and how it will ensure the continued freedom and independence of the press. Before that some background might be useful.

#### The problems

4. The PCC had some successes which it is right to summarise, because the best of its record of service needs to be preserved within an enhanced and toughened system of regulation. These include the establishment of a comprehensive Code binding the entire industry, a swift and free conciliation and complaints handling service for straightforward complaints mainly about inaccuracy, the development of effective procedures to deal with most complaints relating to harassment and "media scrums", a user-friendly service for pre-publication advice and a widely accepted funding formula within the industry to fund the system. But set alongside that, recent events and the evidence to the Inquiry have shown there to be some significant structural problems within the existing system.

5. The first and most important is its lack of any powers to uncover and deal with systemic ethical or governance failures within publishers. The PCC was clearly unable to deal with the emerging evidence of phone hacking at The News of the World; with the coverage of the McCanns; and with the issues surrounding the arrest of Mr Chris Jefferies. These events revealed the absence of investigative powers and of effective sanctions.
6. Second, there has been a perceived lack of independence, a consequence mainly of the clear and direct relationship between the industry's trade associations, as represented on the Press Standards Board of Finance which co-ordinates them, and the PCC. This has sapped confidence in the system in some quarters.
7. Third, the withdrawal of Northern and Shell, and the subsequent inability of the PCC to deal with complaints about *The Daily Express* and its sister titles, has highlighted the limits of purely voluntary self regulation without any legal basis, from which it is possible for a publisher to withdraw with impunity.
8. And fourth, it became clear from a number of the high profile cases that internal governance and compliance controls within some newspapers were not as strong or as comprehensive as they should be.

#### The remedies

9. The industry understands the need to tackle these problems in proposals for a new system of regulation. There are six proposed

remedies to these deficiencies that should be stressed, which are themes running through the detailed proposal below.

10. First, the Regulator should have enforceable powers to investigate where it believes there has been a serious or systemic breakdown in ethical standards, in governance or in respect for the Code of Practice. It should have powers to view documents and call for witnesses during the course of an investigation.
11. Second, where there has been a serious or systemic ethical failure – including breaches of criminal law - the Regulator should have powers of financial sanction.
12. Third, the Regulator should have ongoing responsibility for monitoring compliance with the Code and internal ethical governance by publishers, and should be able to take proactive action where it believes these are failing or where the public is not being protected. New internal compliance systems, with a named senior individual responsible for this area, should be established within each publisher.
13. Fourth, in order to fulfill these functions – and to guarantee the long-term stability of the Regulator – it must be able to enforce strict contractual obligations accepted by its members under a membership contract across the industry.
14. Fifth, there must be long-term financial stability for the Regulator, which will be guaranteed through these contracts.



15. And finally, there needs to be greater independence from the industry for the complaints handling and investigations arms of the Regulator by breaking the link between them and the industry's trade associations through the establishment of an independent Trust Board to oversee them.
16. We believe strongly that, as a matter of practicality, all this can be achieved through self regulation without the need for any form of statutory intervention or "underpinning." But self regulation is as much a matter of principle. Self regulation is vital for the maintenance of press freedom and therefore for the protection of the public interest.

#### Why self regulation?

17. It is important to recognise that no model of media regulation is ever likely to be perfect. All media regulation involves the engaging of the fundamental right to freedom of expression: and free expression and free speech have rough edges.
18. Statutory systems are deficient in many ways. To take OFCOM as an example, first and foremost to make it work it requires a licensing system, which would be inimical to press freedom. Second, it is slow, legalistic and therefore arguably serves the public poorly. In OFCOM's case, it does not now even acknowledge or deal with all complaints and often takes over a year to complete consideration of them.<sup>1</sup>

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<sup>1</sup> I notice that on 8<sup>th</sup> May 2012, OFCOM published its decision to fine a TV channel £10,000 for programmes broadcast in October and November 2010 – 18 months from the original broadcast.

19. The Advertising Standards Authority is a form of co-regulator because it covers broadcast advertising under licence. But its funding base derives from only around 60% of the industry; and some advertisers deliberately flout its authority.
20. The BBC Trust is regarded by many as ineffective because it is both champion of the BBC and regulator, and has arguably failed to use what powers it has to scrutinise how licence payers' money is spent on new services.
21. Self regulation, too, is also always likely to be imperfect. Yet it is vital to the maintenance of a free press, reflecting the special role that the unlicensed media – in print and on-line – have in a democracy. It is the job of that media to scrutinise those in positions of power and authority in a way that impartial broadcasters will never be able to do. Such a role would be severely compromised if the state had responsibility, however limited, for the regulation of editorial content. That is what makes journalism very different from any other trade or profession. Indeed, self regulation is the only model of regulation that involves all the key stakeholders – publishers, editors, journalists, and civil society – without external interference. That is an important achievement for civil engagement and for democracy. The state, by contrast, is not a stakeholder in, but is held to account by, the press.
22. That point has recently been made most effectively by the Lord Chief Justice, Lord Judge, who has argued:

“It is the birthright of the citizen that the press should be independent ... And that is why, if you accept as I do, the

independence of the press is not only a constitutional necessity, it is a constitutional principle.”<sup>2</sup>

23. That is a fundamental belief about which the newspaper and magazine publishing industry is passionate, and why it has always opposed any form of statutory intervention which would inevitably undermine the “constitutional principle” of independence. Journalism is the exercise of a fundamental human right – that of free speech, which is intrinsic to it – which no regulated profession exercises. When studying these matters, the recent Joint Committee of both Houses of Parliament on Privacy and Super-Injunctions agreed that “we do not recommend statutory backing for the new regulator”<sup>3</sup>.
24. And a belief in self regulation doesn’t just spring from philosophy but from practicalities, too. In a fast-moving media environment, any form of statutory intervention in the industry would be likely to be out of date before a statute was even in place, whereas a self regulatory system can move swiftly to deal with the pace of technological and industrial change. The broadcasting complaints regime, for example, is currently conducted under the 2003 Communications Act which doesn’t even mention the internet.
25. There are advantages for the public, too, whose interests the Inquiry has rightly placed at its heart. As both the ASA and PCC have shown – and the experience of OFCOM confirms – redress is usually likely to be quicker in systems of self regulation than in any form of statutory system. More, of course, can always be done, but where an error or

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<sup>2</sup> Speech by the Rt Hon The Lord Judge, 13<sup>th</sup> Annual Justice Lecture, 19<sup>th</sup> October 2011  
<sup>3</sup> Joint Committee on Privacy and Super-Injunctions, HL Paper 273, para 187

problem occurs in the press, swift redress is absolutely vital: and only self regulation can deliver that. The proposals for the tightening of internal governance and complaints handling procedures within publishers – which should see more complaints dealt with internally by newspapers, magazines and websites themselves without the need for intervention by the Regulator – would help ensure that.

26. Finally, the Inquiry has rightly concentrated on the issue of independence and there have been discussions about “independent regulation.” While it is possible – and indeed desirable – to ensure that the operation of a regulator is independent, it is difficult, if not impossible, to see how its architecture and legal basis ever could be. Someone needs to establish a regulator, even if it is managed independently. Someone needs to make initial appointments, even if subsequent appointments are devolved. Someone needs to write the rules, even if they are subject to independent approval. And someone needs to fund the system. There are only two alternatives for those tasks: the industry does it; or the state does it with powers vested in it by legislation, and the taxpayer foots the bill.
  
27. The key, surely, is how *operational* independence can be delivered. We believe that this can be done through genuinely independent self regulation rather than statutory control, which is the alternative and which would always be subject to political pressures.

## SECTION 2: A PROPOSAL FOR A NEW MODEL

### Background points

28. The industry is proposing a wholly new system of independently led self regulation. It does not just build on the PCC, or seek to remodel it. It is an entirely different structure which will be tougher, more effective, more independent and above all future-proof to take account of the rapidly changing face of the media. The diagrams included as Appendices 1 and 2 may be helpful in explaining the new system and how significantly it will change structurally from the existing one.
29. In any self regulatory regime there will always be a need for the industry to be involved in some way. In this case, the publishing industry's chief involvement will be through the operation of the Code Committee - though (as will be explained later) that too will be evolving with the appointment of lay members - and some form of industry co-ordination body to be responsible for funding. This is currently provided through the Press Standards Board of Finance. Its structure and role may change so for the purposes of this note this entity is referred to as the Industry Funding Body ("IFB").

### Legal structure, remit and roles

30. It is proposed that the Regulator will be constituted as a Community Interest Company (CIC) under the Companies Act 2006. A CIC is designed for enterprises such as the Regulator that use their assets for the public good. They have flexibility and certainty of company form, but with special features to ensure they are working for the benefit of

the public. The central aim of the Regulator will be "to promote and uphold the highest professional standards of journalism"<sup>4</sup>

31. The Regulator will be able to cover companies in the UK, Channel Islands and Isle of Man which are responsible for publishing printed newspaper and / or magazine titles in the UK and their related websites, or are web-only news publishers or news aggregator services with content viewable in the UK. In order to become a part of the system, companies will have to enter into a binding contractual undertaking with the Regulator. Details of the contract are set out in paragraphs 60 to 64 below.
32. The Regulator will deal with editorial content published by a member included in a printed newspaper or magazine, along with content on electronic services they operate, such as websites and apps, audio-visual material and user-generated content that is reviewed or moderated by the publisher.
33. Certain things will be outside the remit. These are set out more fully in Section (2) of the Regulations but will include complaints about material that is regulated by OFCOM, complaints about advertising covered by the ASA, and matters of taste, decency and impartiality.
34. While it is likely that the initial participants in the new Regulator will be the traditional print based media, it will be a "future proof" structure and purely digital publishers will also be actively encouraged to join. (The Huffington Post is already on board.) They will be bound by the terms of the contract and will help fund the

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<sup>4</sup> Regulations, Section 5

system according to a formula based on the number of unique users for their websites.

35. The Regulator will, at the start, have two core functions split into separate arms:

- complaints handling and mediation; and
- standards and enforcement covering compliance with the Editors' Code and with general ethics and governance.

36. The nature of the system – based on contracts that can be changed – means that over time more functions can be added to it. This might include an “arbitral” arm to deal with matters of libel, or privacy issues arising under the Human Rights Act 1998. These are not included in the current proposal because they are contingent on changes in the law. It is possible that this might follow from the Defamation Bill which has just been brought before Parliament. The industry is extremely keen to pursue this – believing it will be good for the public and good for the industry at the same time – and believes that the structure that is being proposed will be flexible enough to allow such an important development.

#### Overseeing the system and guaranteeing its independence - a Trust Board

37. To guarantee the independence of this new system, and to oversee its activities, a new independent Trust Board will be put into place. This Board will, as the draft Articles (Section 8) appended to this document make clear, be "responsible for the management of the Company's [ie

the Regulator's] business." In other words, it will supervise the governance of the company, manage its finances and audit, be responsible for public appointments under public appointments procedure, set and monitor benchmarks for performance and liaise as necessary with the industry's trade associations. As a Board, it will not have any role in the adjudication of individual complaints, or the conduct of any investigations that may be launched into serious or systemic breakdowns in ethical standards, but it will be responsible for triggering such an investigation and exercising the power of sanction following an adverse report. The Trust Board's powers and responsibilities are set out in the draft Articles of Association.

38. The Trust Board will have a majority of independent, public members on it. It is proposed that there should be seven Directors in total, comprising the independent Chairman of the Regulator, three public members who have no connection with the print or digital media and three press or new media representatives. The appointment of the independent members of the Board will be through an independent appointments process *determined by the Trust Board itself* in line with public appointments procedures. Members will serve a three year term, renewable once. It will be for the Trust Board to put in place arrangements to ensure the orderly rotation of members. The minority press or new media representatives will be appointed by the IFB, and are likely to be individuals with senior editorial or publishing experience, but not serving editors. The Trust Board will also be responsible for appointing the CEO, who will head the full time staff of the Regulator. His or her salary and conditions will be fixed by the Board in accordance with budgets.



39. In order to set up this new system in an independent and transparent manner, there will need to be an interim or “shadow” Trust Board which can put in place an independent appointments procedure. It is proposed that in order to deliver this transition Lord Hunt – in his capacity as the existing PCC Chairman – should appoint three public members, who will sit alongside three press members, under his Chairmanship to decide on an appointments process and set it in train. As soon as permanent appointments have been made to the Trust Board under the new process – which should not take more than a few months - these “shadow” members will relinquish their roles. The three public members appointed by Lord Hunt for this short term position should not be individuals who would wish to put themselves forward for permanent roles on the Trust Board.

#### Dealing with complaints

40. The bulk of complaints about the press – as the experience of the PCC over twenty years has shown - is always likely to relate to relatively straightforward and inadvertent inaccuracies, or to opportunity to comment. Many can be dealt with by a quick correction or apology, a published letter or an amendment of electronic records. This is particularly effective in the digital age where the record can be amended very swiftly, often even within hours of publication. In the main these complaints should always be dealt with directly by the editor of the publication concerned, as that is likely to be the fastest way to resolve a dispute. The changes to internal compliance systems which the new regulatory structure is designed to foster – including annual reporting to the Regulator – should ensure that this happens more often than it does now.

41. Only where a complaint cannot be resolved with the publication concerned should it become a matter for the Regulator. Most such disputes can then be mediated through a process of conciliation. Relatively few of them – particularly on matters of accuracy – will require a formal ruling.
42. One of the two arms of the Regulator will deal with such complaints. Building on the widely regarded conciliation techniques of the PCC, it will seek to provide a quick, free and effective service for members of the public who have a grievance about a published article. The Regulator will have published standards of service that seek to guarantee brisk timescales within which complaints will be dealt with. Unlike the statutory regulator OFCOM, it will guarantee to look into and acknowledge all complaints. It will produce regular and transparent complaints statistics, according to benchmarks laid down by the independent Trust Board. It is hoped that – as a result of the tightening of internal governance systems within publishers which is inherent in these proposals – the number of complaints that the Regulator is dealing with should actually fall over time, thereby increasing speed and efficiency still further.
43. The Regulator will publish a “ladder of sanctions” for breaches of the Code. These will graduate, for instance, from informal resolution, to published apologies, to a formal reprimand through an adjudication. It will be for the new Regulator, which will be independent in such matters, to set these out. It will also be for the Regulator to look into how critical adjudications are presented and branded in the relevant

publication to make clear that it has been criticised, and – under the Code – to agree where it should be placed.

44. The most significant penalty of the complaints arm of the Regulator will be the issuing of a critical adjudication, which remains a powerful sanction. The complainant will have right to appeal this decision to an Independent Assessor (see paras 85-86 below). It is not proposed that the Regulator will have the ability to award compensation for breaches of the Code (which is indeed in line with OFCOM's role in this area). Such a sanction would inevitably lead to the “legalisation” of the system which would undermine its ability to provide swift and effective redress to complainants where the breach had been inadvertent or insignificant. Given that speed is of the essence in the correction of inaccuracies, or in dealing with harassment, compensation would in reality run counter to the interests of most complainants by making effective mediation much more difficult, if not impossible. Compensation is, of course, an option within the range of existing civil law remedies available to complainants.
45. Complaints will be handled by a full time secretariat within the Regulator. Its work will be overseen – and rulings issued – by a Complaints Committee which will be totally independent of the industry, although it will have some senior editorial input.
46. It is proposed that the Complaints Committee should be a standing body of 13 adjudicators. They would comprise the independent Chairman of the Regulator, seven public members appointed by the independent Trust Board under public appointments procedures and five working editors representing the broad texture of the industry -

two from national newspapers, one magazine editor, one regional editor and one editor from Scotland (in view of the distinctive nature of the Scottish press). The minority press members will be nominated not by the IFB as now, but by the relevant industry trade association. It may be that, in order to reflect structural change within the industry, one of these may from time to time be a digital editor.

47. It is envisaged that there will be regular rotation among the editors on the advice of the independent Trust Board; and that the public members should have three year terms of office, renewable only once. Arrangements to ensure orderly rotation will be a matter for the independent Trust Board.

#### Compliance and investigations

48. The Regulator will have an entirely new function - in a radical departure from any previous press regulatory regime - to ensure compliance with ethical standards, to monitor governance within newspapers, to investigate where it believes there has been a systemic breach in standards, and to impose sanctions. These new and significant powers will derive from the contract between the Regulator and its member companies, set out in more detail below.
49. It is proposed that there will be a small number of full time staff within the Regulator to service its Investigation and Compliance Panel ("the Panel"). It will be overseen by a public member of the independent Trust Board, whom the Trust Board will appoint.

50. It will be for the Regulator to set out precise details of how the Panel will operate. But it will have some core functions. These include:

- \* overseeing the process of annual certification by publishers about ethical and governance issues among their titles;

- \* monitoring and analysing the responses to that process and taking up issues that arise from them;

- \* monitoring trends in individual complaints dealt with by the Complaints Committee to detect issues of concern on individual titles or across and individual publishers; and

- \* analysing public or Parliamentary reports about press standards within specific areas to see if there is a substantive compliance issue highlighted by them that requires investigation.

51. In each of these areas, the Panel will report to the Trust Board on its findings and, if necessary, make a recommendation that there needs to be an investigation into a particular title or publisher based on the evidence it has uncovered. This may, in the first instance, be simply on paper. But if the Trust Board believes a full investigation - including requests for documentation and the interviewing of witnesses - is required, it can proactively trigger such an investigation. This list is not exhaustive, but a trigger may take place:

- \* where it appears there have been significant, systemic breaches of the Editors' Code or in general ethical behaviour - such as in the case of the McCanns;

\* where serious breaches of the criminal or civil law have been resolved by the Court, but the Trust Board believes that an investigation is desirable because of the wider issues raised - for instance in the case of phone hacking, or Mr Chris Jefferies; or

\* where annual certification identifies significant and substantive issues of concern in relation to a single incident, compliance processes or a long-term pattern of Code breaches.

52. It will be for the Regulator to develop detailed procedures for pursuing such investigations in line with the draft Regulations (Sections 25-53), but it is proposed that, where one is triggered, it will be undertaken by a bespoke team of three investigators appointed for that specific investigation according to the expertise required. They will be drawn from a wider list of experts whose names will be kept by the Trust Board and will be publicly available. Of the three individuals, two will be public representatives with no connection to the press, and the third will be an individual with a senior newspaper or digital background, but *not a serving editor*.

53. At the conclusion of the investigation, the team will report to the independent Trust Board - including its assessment of any public interest issues - with one of a number of possible conclusions which may include (as set out in more detail in Section 38 of the draft Regulations):

\* determining that there is no evidence of any wrong-doing;

- \* making recommendations about future best practice;
- \* reprimanding the publisher which is the subject of the investigation;
- \* directing the publication or publications that were the subject of the investigation to publish a summary of the Panel's findings;
- \* requiring undertakings from the publisher in respect of future conduct which the Regulator will then monitor; or
- \* referring the matter to the independent Trust Board to consider a financial penalty.

54. The Trust Board will have the power to levy a fine against the publisher involved in the investigation in the most serious cases of a breakdown in ethical standards, or internal compliance and governance. Even taking into account the parlous financial state of much of the industry, this power will play a crucially important role in the Regulator's pursuit of its objectives of enforcing standards and compliance across the industry.

55. The Trust Board will be able to impose a fine according to published guidelines. The fine can be levied at up to 1% of the annual turnover of a publisher relating to the publication or publications (both print and digital) which is or are found to be in serious or systemic breach of the Code or where there has been a serious breakdown in ethics or internal governance, with an upper cap of £1,000,000. In determining the level of fine, the Trust Board will have to take into account the nature of the breach and its impact, whether it was inadvertent or reckless, whether

there were aggravating or mitigating factors and so on. These draft criteria are set out in the Annex to the Regulations. Issues relating to the financing of investigations and the use of the fines are dealt with in paras 92-93 below.

56. There will be an appeals process against any decision by the Trust Board. On the request for an appeal, the Trust Board (excluding any member that was involved in the original investigation) will review the request itself and, if there are grounds, appoint an independent team - drawn from the Panel, but different from those who undertook the original investigation - to do so. Their decision will be final.
57. One of the central aims of this new system of compliance and enforcement is to ensure a renewal of internal governance and observance of ethical standards within all publications. Sanctions will be all the more severe where there is evidence that these have broken down or were inadequate in the first place. There will therefore be real benefit to publishers to ensure the highest standards within the newspaper. To ensure this happens, it is proposed that there is a senior figure within an individual publisher responsible for overseeing and monitoring compliance.
58. It will be the role of the Panel to monitor these standards, and it will do so by means of annual process of certification by individual publishers. Each year the publishers will have to provide an annual statement covering a number of key issues. These are set out in detail in the Annex to the Regulations but include:

\* copies of internal manuals, codes or guidance issued to journalists;



- \* details of compliance processes including how a publishers deals with pre-publication advice, Code compliance, verification of stories, editorial complaints and training it gives its staff; and
- \* details of steps taken in response to any adverse adjudications from the Regulator in the previous year.

59. It is not intended that this will be a bureaucratic or costly process for the publisher. Providing good internal records are kept, it should be a straightforward and easy process to provide this information. But it will allow the Regulator to maintain an overview of ethical standards throughout the industry in a way which should lead to consistent, tangible improvement and an increase in those standards over the years. This unprecedented level of transparency will be of direct benefit both to the public, and also to the publisher.

#### Giving the Regulator a legal foundation

60. To work, the Regulator will require a legal basis. It is proposed to provide this through a series of legally enforceable membership contracts between individual publishers and the Regulator. The contract and the Regulations accompanying it will provide the powers the Regulator needs - particularly with regard to investigations and sanctions - but will also provide it with long term guarantees of funding, thus fortifying its independence. It will also build flexibility into the system in two ways. First of all new publishers that are established - mainly in the digital area - can join. Secondly, it can

respond to changes in legislation, for instance in regard to the "arbitral arm", discussed at para 36 above.

61. The draft contract framework and Regulations are set out in Exhibits B and C attached to this document. The contract will be governed by English law except for publishers in Scotland, where the law of Scotland will apply. The contract framework includes:

- \* the obligations of the "regulated entity" (in other words the publisher) relating to compliance with the Editors' Code and with the Regulations, to annual reporting (as set out above) and to co-operation with any standards investigation;
- \* an undertaking to abide by the Regulator's decisions;
- \* the obligations of the Regulator to deal fairly and proportionately with the contracting parties; and
- \* commitments on funding.

62. The Regulations will cover the remit and functions of the Regulator, the procedures for the mediation and conciliation of complaints, the powers of the Investigation and Compliance Panel, the powers of the Trust Board to levy sanctions, and the detail of the annual certification process.

63. To guarantee the long term foundations and funding of the Regulator, particularly in the early years when it is being established, publishers will enter into a contract which lasts for at least five years. Thereafter

the contract will continue on an annual rolling basis. The terms of the contract or the Regulations may need to be varied from time to time. Variation will not require the unanimous approval of all publishers who are signed up to the contract, but will be considered incorporated where a majority of votes cast by the scheme's members agree. A proposal for the voting methodology has yet to be finalised.

64. Changes to the Regulations will be the responsibility of the Regulator. In order to ensure there is proper consultation on any changes, and indeed to ensure there is accountability within the system, the IFB will need to approve any amendments before they are made. The IFB will not, however, itself be able to amend the Regulations of its own volition, underlining the independence of the system.

#### Incentives to join – and keeping publishers within the system

65. A great deal of work is continuing to ensure that there are incentives to join the system and to stay in it. These fall into four areas:
- the provision of press cards;
  - the use of agency copy through the Press Association;
  - a “kite-mark” or badge for publications which are part of the system; and
  - the way in which advertisers can help support the system.
66. On the provision of press cards, there is a proposal currently under consideration by the seventeen “gatekeepers” who issue cards to ensure that where journalists are employed by a newspaper or magazine, they will be able to receive a press card only where their publisher is signed up to the system of self regulation. Full details of

this proposal are being submitted by Mr Paul Dacre, and a meeting of the UK Press Card Authority to agree a final position is being held this month.

67. A further proposal under consideration includes the question of whether the Press Association might provide its copy only to publications which have signed a contract with the Regulator. Because of the commercial pressures on newspapers, it is difficult to see how some publications might be able to exist without such copy. PA News is currently undertaking a study in what is a legally challenging area, but one which could provide a key incentive.
68. As regards the “kite-mark” or badge, the provision of this would be a matter for the Regulator, and it is understood that Lord Hunt already has this matter under active consideration.
69. Finally, the Joint Committee on Privacy and Super-Injunctions helpfully recommended that “major advertisers should require membership as a condition of advertising in news publications, including on blogs”<sup>5</sup>. The Incorporated Society of British Advertisers [ISBA], the umbrella body for advertisers, is currently assessing how such a system might work. There may also be some additional incentives around the placing of Government advertising only in publications which subscribe to the new Regulator.
70. Once publishers are in the system, it is clearly important to keep them there, and the membership contract between publishers and the Regulator is designed to do that. There will be a five year fixed term

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<sup>5</sup> Joint Committee Report, HL Paper 273, para 80

contract, renewable on a rolling basis after that. We are advised it will work to underpin the system in these ways.

- Fees to fund the system are payable for the life of the contract. If a publisher seeks to withdraw from the system and refuses to pay fees, the Industry Funding Body can pursue legal action for recovery of unpaid fees.
- If a publisher ceased to perform its contractual obligations, it would be in repudiatory breach of its contract with the Regulator but it would not be able unilaterally to bring the contract to an end. The Regulator could “affirm” the contract and seek to enforce its rights and the publisher’s obligations.
- The Regulator can seek a Court order to compel “specific performance” of an obligation of a publisher. Not every obligation will be specifically performable. We expect an obligation to produce documents to be specifically enforceable by the Court.
- If a publisher refused to pay a fine, these should be enforceable as a debt through the Courts.

#### Guaranteeing the independence of the system

71. The independence of the Regulator is built into its architecture, and is radically different from the existing system. As the diagrams in Appendices 1 and 2 show, under the existing arrangements PressBof has a direct relationship with the Commission and its staff. Under the new proposals, the IFB will have a relationship only with the Trust Board - on which there will be a majority of independent public members - and no direct link with either the Complaints Committee or the Investigation Panel. This is therefore a structural guarantee of

independence for all those handling complaints or investigating ethical or governance issues.

72. Although there must be press and new media representatives within a system of *self* regulation, there will be majorities of public representatives, appointed by transparent public appointments procedures, throughout the regulatory structure.

\* The Trust Board itself will have four public members to three press representatives.

\* The Trust Board - not the industry - will be responsible for establishing appointments procedures for the public members of the Board itself and the Complaints Committee. It will draw together a "pool" of public experts who may form any team convened by the Investigations Panel.

\* The Complaints Committee - which will deal with the majority of complaints to the Regulator - will have only five editors on a Committee of 13. The other eight members - more than 60% of the Committee - will be public members. The Committee will only be quorate when there is a majority of independent members sitting on it.

\* All teams convened by the Investigations Panel will have a 2:1 majority of public members. And the press representative will *not be a serving editor*, though he or she must have some senior editorial experience (but not with the publication under investigation) in order to be of real assistance during an investigation.

73. Another guarantee of independence is certainty of funding. In its report to the Inquiry - which recommended against statutory intervention - OFCOM made clear that this was one of the key issues in assessing independence. As a result of the five year contract, as set out above, the Regulator will for the first time have certainty of funding (which is dealt with more fully below.)
74. Also crucial to the independence of the system is, of course, the appointment of an independent Chairman who has no links to the press or new media. There is unlikely ever to be a universally agreed way of appointing the Chairman within a self regulatory system. But we start from two general premises: first that the industry should have *some* role while the Government or other statutory regulator should not ; and second that the Chairman must be an authoritative individual with no current or recent connection with the industry.
75. The industry is determined to ensure there is a clear, transparent and independent process for the appointment of the Chairman that protects the interests of the public while maintaining the proportionate role for the industry that is a hallmark of self regulation.
76. Our proposal means that the industry would cede its control of the appointment of the Chairman. A four person Panel would be appointed with two industry members alongside two public members entirely independent both of the publishing industry and of the regulator. The industry members would be appointed by the IFB; and the public members would be appointed by the Trust Board under an independent process, which might perhaps be agreed with the Public Appointments Commissioner. The Panel would meet to commission a

search consultant independently to draw up a shortlist of candidates following the terms of public appointments procedures and open advertisement. The Panel would interview this shortlist and make a choice but the decision of this Panel would have to be unanimous. The support of the independent members of the Panel for the appointment would safeguard the interests of the public; and the support of the press members would ensure that the Chairman of the Regulator would be a figure for whom the industry has the respect it needs. This system of appointment is genuinely independent of all interests because no one has control of it.

The Code Committee - strengthening public involvement

77. The Editors' Code Committee is perhaps the most visible and most important aspect of *self* regulation. Editors abide by the rules because they are written by those who understand how the industry works and the high standards that are to be expected.
78. While there will always be debate about the definition of "public interest", which is central to the Code, there has been little significant criticism during the Inquiry about the content of the Code itself. Criticism has focused on compliance with it, and enforcement of its rules. This underlines that the formation and regular updating of the Code has been one of the successes of the current self-regulatory system.
79. There is no proposal to change the basic editorially led structure of the Code Committee, which currently has 13 members on it drawn from across the industry, in much the same way as the Committee of



Advertising Practice is formed in the ASA system. However, it is clear that there is a demand for some public input into the work of the Code Committee. This - alongside the publication of its minutes and an annual, public review of the Code - would help significantly increase the transparency of the way the Code is written.

80. It is proposed that there should be up to five public members of the Code Committee alongside the serving editors - nearly a quarter of their number - who would include the independent Chairman of the Regulator, its CEO, and two or three other public members appointed by the Trust Board (who may - though they don't necessarily have to be - themselves be members of the Board or of the Complaints Committee. If they were it would help ensure effective co-ordination throughout the system). The Code Committee Chairman will be elected by its members from among the editorial members.
81. In order to ensure the public interest is protected with regard to any future changes to the Code, changes will have to be ratified by the Trust Board before they come into effect. Given the Board has an independent public majority, this will guard against any potential dilution in the ethical standards enshrined in the Code.
82. The Inquiry has heard a number of proposals for changes to the Code. These include the tightening of the public interest, how the Regulator can deal with "group" complaints and the issue of prior notification. It will be for the reconstituted Code Committee to look at this evidence and decide whether changes to the Code are necessary. On the issue of group complaints in particular, the draft regulations now give the Regulator the power to deal with a third party or group complaint

where there is a clear issue of public interest involved, even if there is no identifiable first party or individual affected (see Regulation 9). This will give the Regulator considerable leeway to deal with the sorts of issues that have been raised with the Inquiry.

Embedding accountability and transparency in the system

83. The industry would wish the Regulator to be as open and transparent as possible. It will be for the Trust Board, however, to establish the precise way it seeks to achieve that, including the setting of benchmarks and targets, the publication of statistics, reporting on an annual basis and possibly more often, publication of minutes and open and transparent appointments procedures including for senior full time staff.
84. For the first time, the Regulator itself will have clear objectives, outlined in its Articles (Section 5), in its contract with publishers and within the Regulations. This will give the industry certainty about the powers and mission of the Regulator, and give Parliament and the public criteria by which to judge its success.
85. Built into the system will also be mechanisms for internal review, which will help buttress the accountability of those dealing with complaints, and with compliance issues. The key to this will be the appointment of an Independent Assessor who can review an adjudication of the Complaints Committee. He or she will be able either to confirm the decision or determine a different conclusion in relation to the complaint and will then refer it back to the Committee with his or her reasoning. The Independent Assessor will be appointed

by the Trust Board, and must be a person who is not a member of the Complaints Committee and not connected with the industry. The Assessor will be appointed for a three year term, which can be renewed once.

86. In order that the Assessor's role should not produce "complaint fatigue" through the drawing out of a complaint, any appeal will have to be heard within a strict deadline. Requests for review must be made within 14 days of a decision, and a finding on the review within a further 14 days.
87. As noted above, there will also be a right of appeal for publishers against any finding by the Investigations and Compliance Panel.
88. The other significant driver of accountability and transparency within the entire system will be the process of annual certification by publishers. Once they have been analysed by the Investigations Panel, summaries of these reports, with any commercially confidential information redacted, will be published so that the public, and indeed Parliament, can draw its own conclusions about the effectiveness of internal governance and whether the system is working to raise standards.

### Funding

89. Funding for the Regulator will be guaranteed by the contract, which will commit publishers to funding the Regulator in proportion to an agreed formula. Under the current system, national publishers bear around 54% of the costs, regional and Scottish publishers 39% of the

costs, and magazine publishers 7%. That proportion is likely to be reviewed once the costs of the new system become clear. With the entry of new, digital publishers into the system over time, these proportions will inevitably change, but that is unlikely to happen rapidly.

90. In order that the system of funding is transparent, the list of publishers who have signed a contract which commits them to meeting the costs of the regulator will be published by the IFB, which will also produce an annual record of the proportions of funding met by different parts of the industry.
91. Every regulatory body needs to account to someone for its budgeting and expenditure. In the case of OFCOM, which has had a budget cut of 28% over four years at a time when the PCC's finances have been protected, it is to Government. In the case of the ASA it is to the Advertising Standards Board of Finance. In the case of the Regulator it is appropriate that it is to the IFB, which will scrutinise budgets put forward by the independent Trust Board and agree an annual figure for expenditure. The budgeting process will have to take account of the commercial state of the industry, just as in a statutory system OFCOM's budgets have to take account of the realities of public spending.
92. There is one part of the new system which will, at least at the start of its operation, need separate financing arrangements - and that is the work of the Investigations and Compliance Panel. While the costs of the full time members of staff servicing the Panel will be covered in the Regulator's core budget, it is impossible to know how often this Panel

will need to launch investigations which will need to be paid for out of non-core expenditure. There may be two or three a year, there may be more or fewer: it's impossible to tell. While in the case of a successful investigation, costs can be recouped if a fine is levied on the basis of the "polluter pays" principle, there may be occasions when an investigation takes place which clears a publisher of any wrong-doing and no costs can be recouped. In such circumstances, one off costs will have to be met from an Enforcement Fund. This will be necessary to ensure the Regulator can launch an investigation without concern about its funding.

93. In order to achieve this, it is proposed that the Regulator will be established with a ring-fenced enforcement fund of £100,000, which is likely to be provided through the Newspaper Publishers Association. In its initial years of operation, any monies received by the Regulator from fines and costs contributions will be placed in the Enforcement Fund. At such time as the Fund reaches a level of around £500,000, the initial £100,000 endowment will be returned to its initial contributors.
  
94. In terms of the core budget of the Regulator, the best estimate - based on the architecture outlined in this document - is that the annual cost will be in the region of £2.25 million. In addition, the industry will need to cover one-off transitional costs. These continue to be significant sums for an industry which is in a very severe commercial situation, but they are costs we will meet because of our strong commitment to self regulation.

Building public confidence in the benefits of the new system

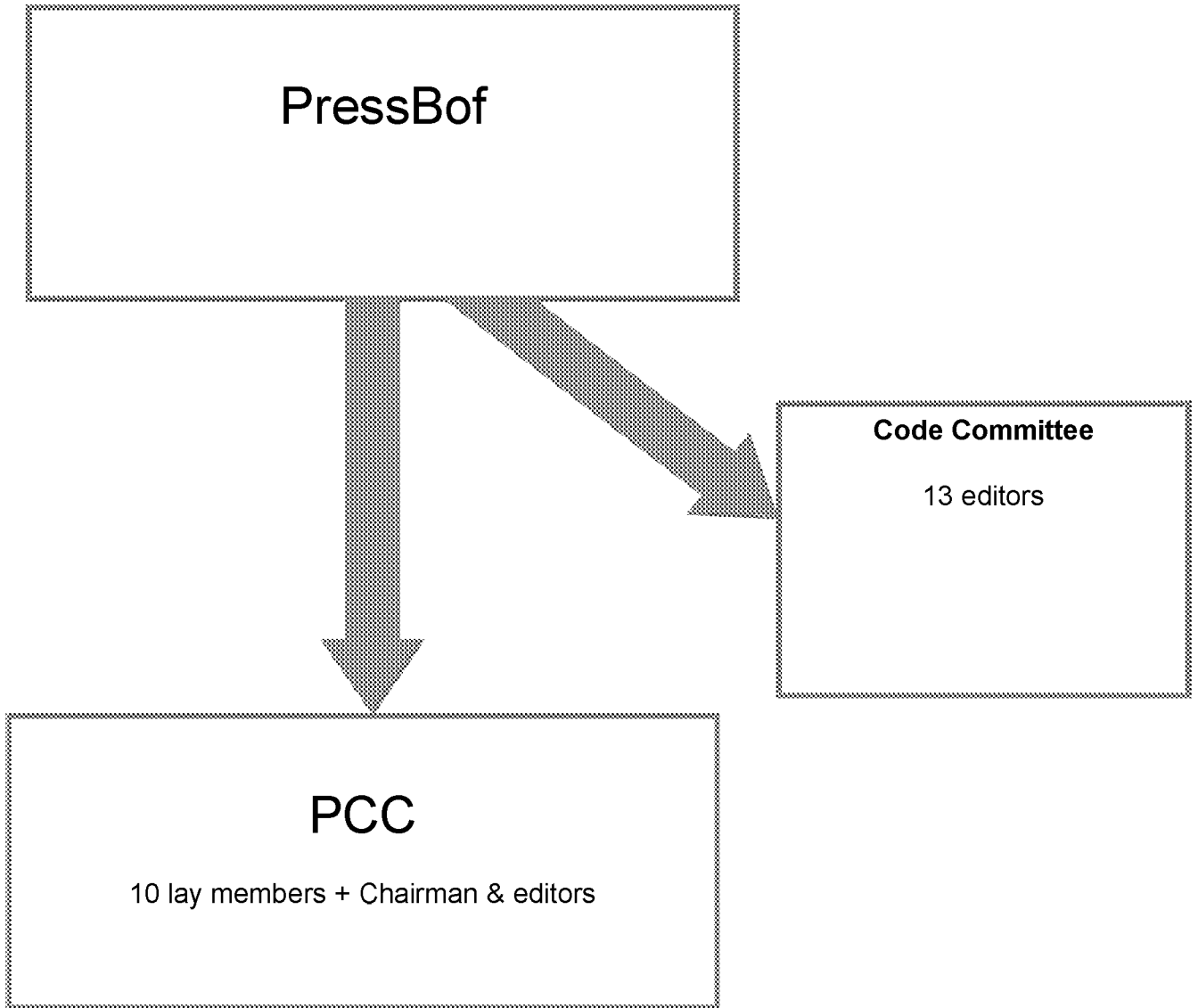
95. This entirely new system of tough, independent self regulation will deliver considerable benefits to the public, and do so in a number of ways.
96. **A new standards and compliance regime.** First, the introduction of a new and robust standards and compliance function for the Regulator will raise standards. Annual transparent reporting from individual publishers, a renewal of internal governance and compliance, and powerful sanctions where ethical standards are seriously or systemically breached will bring continual upward pressure to bear on standards of reporting and newsgathering across the industry.
97. **Faster complaints resolution.** Second, the changes to internal governance and compliance procedures should see more complaints being dealt with quickly by publishers themselves before the Regulator has to be engaged. This should be of real benefit to individual members of the public in particular where there has been a straightforward error.
98. **Quicker and more effective redress.** Third, the Regulator will provide quick and effective redress for individual complaints that cannot be resolved directly with an editor. A “ladder” of remedies will be applied to ensure that each individual complaint where a breach of the Code is found is met with an appropriate response. Critical adjudications where conciliation fails will continue to be a potent sanction. And a system of appeals under an Independent Assessor, with a speedy timetable to conclude any appeal against a ruling, will

further protect the public. The pre-publication advice service, which is an invaluable part of the system, will continue to be strengthened.

99. **Public involvement in setting standards.** Fourth, the public will for the first time have a formal input into the drafting of the Code. Public members on the Code Committee, alongside annual public consultation on possible Code changes and ratification of these changes by the independent Trust Board before they come into effect, will ensure the interests of the public are fully and transparently protected.
100. **Independence from the industry.** Fifth, the Regulator will be demonstrably and structurally independent of the industry. The supervision of the system by an independent Trust Board, with significant majorities of public members on the Complaints Committee and Investigation Panel, will ensure the complete *operational* independence of the system.
101. **Tough, independent and enforceable self regulation.** And finally, the public will know that the Regulator is - for the first time - backed by the force of law. Strong enforceable membership contracts will give the Regulator the power it needs proactively to investigate breakdowns in standards, to levy sanctions where wrong-doing has occurred, and to ensure continuing industry compliance and commitment to a system of tough, independent self regulation that works both for the press and the public.

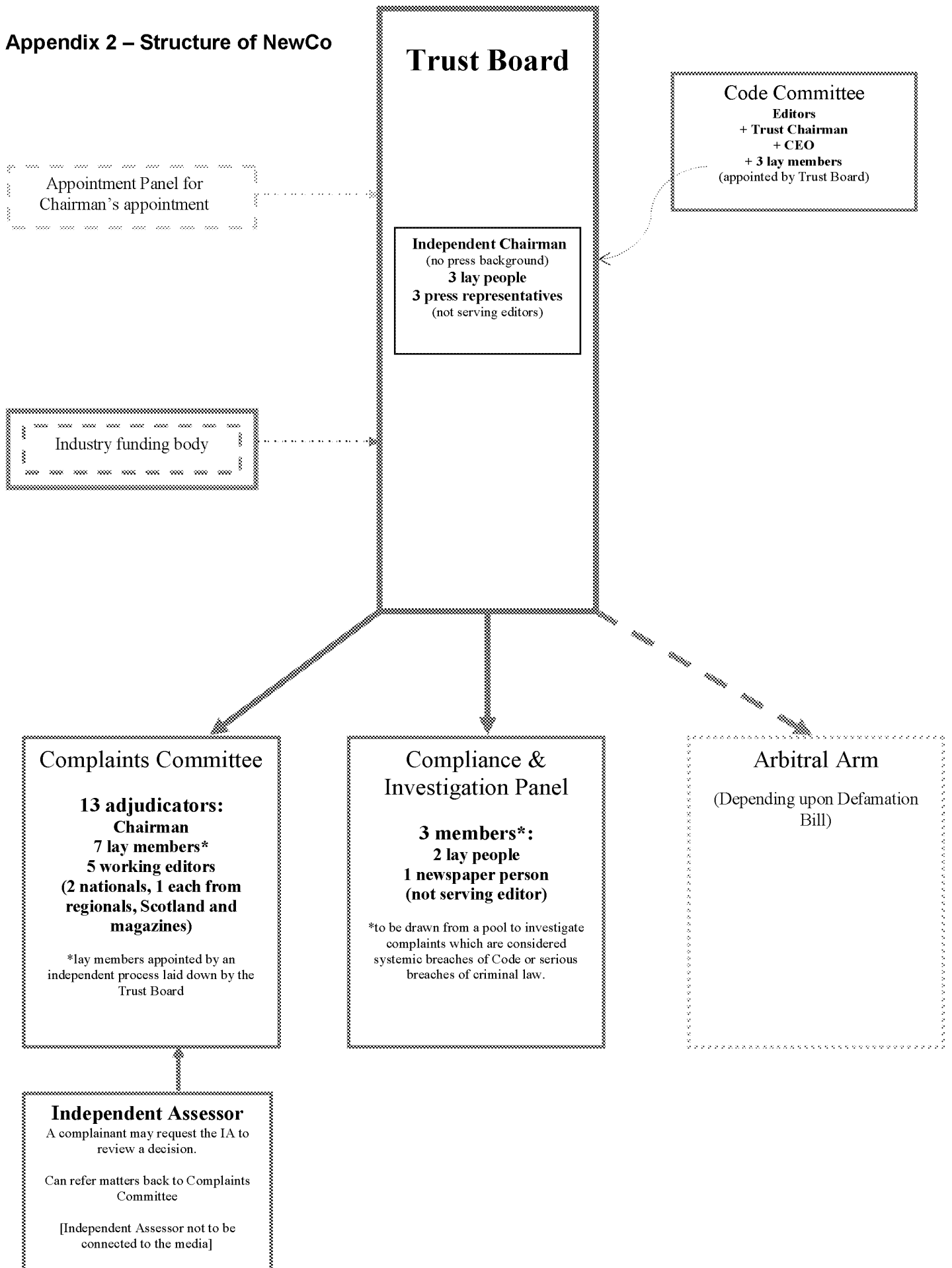
June 2012

Appendix 1 – Existing structure





Appendix 2 – Structure of NewCo



**B. Draft Contractual Framework for a New System of Self  
Regulation for the Press**

**C. Draft Regulations**

**D. Draft Articles of Association**