

### Submission to the Leveson Inquiry by Professor Thomas Gibbons

I should like to draw the Inquiry's attention to an article that I wrote in 2009, "'Fair Play to All Sides of the Truth": Controlling Media Distortion,' (2009) 62 *Current Legal Problems* 286-315, in which I suggested a system of 'enforced ethics' as a means of dealing with problems of distortion in the media. I believe that such system would also be an appropriate response to problems raised by news gathering, including intrusions into privacy.

The main points of the article, which I attach, are as follows.

- There is evidence that the organisation and financing of the media industry places severe pressure on editorial decision making, resulting in priorities and selection of material which tends to distort the true state of affairs. 'Distortion' does not imply that a definitive version of the 'truth' is always available; rather, it describes the withholding or manipulation of information that is needed to evaluate the meaning and significance of events.
- In the interest of acknowledging media freedom, and its close association with freedom of expression, the law does not deal with editorial decisions about the selection and presentation of material. It confines itself mainly to protecting certain interests that exceptionally may override free speech, such as reputation, privacy, national security or the administration of justice (requirements for accuracy and impartiality in broadcasting are an exception). Beyond that, media distortion is not remedied, the implication being that it is inevitable, or is sufficiently harmless to be condoned, or is too costly (whether socially, politically or economically) to regulate.
- However, freedom of expression does not justify media distortion. Various arguments may be advanced to suggest that it might do so – that it actually assists the discovery of truth, that it is a price worth paying for the media to exist, that it is too difficult to identify for regulatory purposes, and that it serves interests more important than truth – but all are shown to be unconvincing.
- Existing remedies for falsehood, by way of defamation, and for dealing with broadcasting inaccuracy and lack of impartiality, are not adequate for dealing with distortion that flows from editorial selectivity. Self-regulation is an appealing alternative, but the work of the PCC has exposed its weakness. Self-regulation can only be effective where the policy objectives that it serves in the public interest are aligned with the economic objectives of the industry. In the media, the basic values of the industry are not in tune with the values associated with journalistic ethics.
- Statutory regulation of the media obviously raises concerns about censorship, where it threatens journalists' and individuals' free speech. A system of 'enforced ethics' would oblige the media industry actively to take steps to minimise inaccuracy and distortion, but the interpretation of what that means would be derived from a set of ethical standards which journalists would be required to articulate. The duty not to distort would not be imposed on journalism itself but on the organised production process, the principal source of distortion. A new institutional structure, within journalism, would be required to specify and review good ethical practice. The principles underlying such good practice could form the basis for a separate, and new, complaints resolution mechanism.

'Enforced ethics' would be appropriate to all aspects of journalism in the media industry. It assumes that, essentially, journalists are willing to behave ethically, and would be more so if some commercial pressures to do otherwise could be eased. Imposing a duty on media companies, to enable ethical practice, would not constitute an unjustified interference with freedom of expression, and it would introduce some levelling of the playing field in news gathering and presentation.

Furthermore, in relation to the Inquiry's Key Questions relating to 'Culture, practices and ethics,' as my article suggests, ethical discussion within journalism does need to give explicit attention to matters of editorial selection and choice. These are topics which are not covered adequately in the current Editors' code in relation to inaccuracy. Furthermore, these are matters where there is little justification for behaving in an ethically questionable way, and claims that the survival of the industry depends on the relaxation of standards seem doubtful.

I would be happy to elaborate on any of these points or others, if so wished.

**Statement of Truth**

I believe the facts stated in this witness statement are true.

Signed .

Date .....

*24th February, 2012*