

Submission to the Leveson Inquiry Module 4
By Lord Hollick of Notting Hill

1. I am former chief executive of United Business Media PLC, previously United News and Media, and so have experience working with regulators in the media. I have run businesses regulated by the Press Complaints Commission (the Daily and Sunday Express, Daily Star, Star on Sunday and a number of regional papers) and also by the predecessor of Ofcom, the ITC (Meridian, Anglia, Yorkshire Tyne-Tees and HTV). I recently served as a member of the Joint Parliamentary Committee on Privacy and Injunctions. I would like to submit the following thoughts on the future of press regulation for consideration by the inquiry.
2. Britain is the home of some excellent journalism, but also of some bad journalism. Your inquiry has exposed with unprecedented rigour and scope some of the ugly and unacceptable methods that have been used by some newspapers to secure and present stories to the public, and also, importantly, it has made plain that these methods have victims. The victims are people in all walks of life who have suffered in ways that they did not deserve. They had the right to expect protection from such abuse and the right to swift, effective and affordable redress when such protection failed.
3. Society as a whole has the right to expect that journalists and newspapers will behave ethically, and that when they fail to do so they will be called to account and that lessons will be learned. Accountability of this kind has been greatly strengthened in other areas of British life in recent years, often with the encouragement of the press, which rightly stresses the rights of citizens to fair and proper treatment by public bodies, services, companies and other institutions. It is ironic and disappointing that the press industry has not made the demands of itself that it has made of others.
4. Not only has the Press Complaints Commission failed as a regulator and consequently lost the trust of the public, but it is also clear that the whole idea of self-regulation of the industry must now be abandoned. The historic pattern of national papers being disgraced and called to account, and then promising to regulate themselves more effectively, has been repeated so often, and with such disappointing and even tragic results, that the public can never again be asked to accept mere promises. No model of regulation that is owned, overseen and audited by the industry itself, without a strong external guarantor of good regulatory practice, can satisfy the public today or command public confidence into the future. All experience tells us that if we accept that we will find ourselves once again in difficulties within a few years.
5. I reject the argument often put forward that such an external guarantor, particularly when backed by statute, would inevitably 'gag' the press. Newspaper managements and journalists may sincerely hold that view, but they are mistaken. I am aware of no serious desire in Government, Parliament or any other significant part of society for such a gag, indeed every party leader and almost every interested person or body has expressed a firm commitment to free expression and the greatest possible freedom of the press. Furthermore I cannot recall any occasion when the television companies I ran were 'gagged' by their statutory regulator.
6. If, as is sometimes argued, there was an inevitable tendency of legislators to seek control of or restraint of the press, it would surely have happened by now. Yet even the repeated failures of the press in recent decades to rise to the challenge of some notorious press scandals have failed to provoke such measures. Instead legislators have stood back and seen standards fall, wrongdoing become commonplace and sufficient redress frequently denied.

7. Statute which facilitates effective regulation need pose no threat to free expression, and such a statute is now surely necessary and inevitable. If effective regulation without the support of statute was ever workable we have passed that point, and we have passed it because the industry has shown insufficient desire to have effective regulation.
8. I propose the creation of a new regulatory body for the press that is independent of government and funded by the press itself, to be called the Press Standards and Complaints Authority.
9. The Authority will have ten members and a chair. Of the ten members, three should represent the industry. They may be editors or senior journalists, as nominated by leading industry bodies. The remaining seven independent members should in, the first instance, be chosen by a panel comprising the chairs of public bodies such as the Arts Council, BBC Trust, C4 and ASA. Thereafter a nomination committee of the Authority, comprising the independent directors, will be responsible for recommending new independent directors.
10. The Chair of the Authority will be nominated by the members and the appointment will be subject to confirmation by either the House of Commons Select Committee on Culture, Media and Sport or the House of Lords Select Committee on Communications, or a joint panel of both committees. These committees will represent the public in the appointment, seeking to ensure that the chair, when appointed, is someone who will act in the interests of the public. .
11. The primary duty of the Authority will be to provide the opportunity for redress to those with complaints about the press who have not found satisfaction in direct dealing with the publisher within a specified and reasonable period of time. The Authority will provide and manage alternative dispute resolution procedures to handle these issues in a timely and inexpensive fashion, sparing those with complaints the need to go to court. This will be sufficient remedy for most complainants.
12. The Authority will also write and keep up to date the industry code of practice against which complaints will be tested. Publishers adhering to the Authority should incorporate the code in the contracts of their journalist employees (including editors) and significant contributors.
13. The small number of hard cases that cannot be resolved using ADR would pass for adjudication, not to the Authority, but to Ofcom. Ofcom is a proven regulator with a track record of operating independently of government and reputation in the broadcast journalism community for sustaining high ethical standards. Its present remit, which does not give it a role in relation to the press, should be altered by statute. Ofcom should be empowered to hear and rule on cases which the Authority's standard procedures are unable to resolve.
14. In addition to this role, Ofcom should act as external guarantor of good regulatory and complaints-handling practice at the Authority and in the industry and should be empowered to review the Authority's activities annually to ensure its processes meet required standards and that the Authority fulfils its remit in the public interest. As part of the review the Authority will report annually on the complaints procedures operated by the various publishers, which will have to meet certain standards.
15. This function is essential to safeguard the public interest. Among the principal lessons of the PCC experience is that, no matter how satisfactory the Articles of Association and the Code of Practice may appear, without an external guarantor of rigour there is a risk of, or even a tendency towards, extending the benefit of the doubt to the industry. Over time this can become entrenched as practice, robbing the self-regulator of credibility and denying victims of abuses due redress.
16. Besides taking advantage of the expertise of Ofcom in the proximate (though undoubtedly different) world of broadcast journalism, this arrangement offers some

economies of scale. Ofcom already exists and has a national structure; it could fulfil this role at relatively modest additional cost to the taxpayer.

17. Legislation extending the Ofcom remit should also require companies above a given size (measured by turnover) whose principal operations include the publication of journalism to be subject to the new Authority and to maintain their own complaints procedures – the courts of first instance in the field of press complaints.
18. The reach of the Authority could be further widened by amendment to the law of defamation along the lines adopted in the Republic of Ireland, where courts recognise a defence of ‘fair and reasonable publication on a matter of public interest’, an element of which may be membership of, and adherence to standards required by, the Press Council. An alternative might be for judges in fixing damages to take adherence to the Authority into consideration. Either measure (or both) would provide an incentive to groups below the turnover threshold to sign up to the Authority’s oversight. Such a step makes the role of the external guarantor of good regulatory practice all the more essential: judges are entitled to expect that any body recognised by law in this way is subject to regular external audit.
19. Unlike the PCC, the Authority will accept and process so-called third-party complaints where a paper’s internal complaints procedures have proved insufficient. It is right, for example, that readers who have paid for a news product should have redress where they have been seriously misled and a paper has failed to deal satisfactorily with their complaints. Equally it is right that group complaints should be considered.
20. The Authority shall have powers and resources to investigate and report to the public, at its own instigation if necessary, on suspected breaches of the code or the law that raise concerns about standards. This will include the power to see journalistic audit trails attached to articles and to question journalists. While the Authority may draw lessons and for example amend the code after such an investigation, disciplinary action will be a matter for employers (who will bear in mind that the code figures in contracts of employment).
21. In instances of particularly grave or persistent failure of standards, the Authority and Ofcom will have the power to impose fines or other suitable sanctions on publishers.

ENDS

Statement of Truth

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

Signed ...

Date

12th July 2012