

THE LEVESON INQUIRY INTO THE CULTURE, PRACTICES AND ETHICS OF  
THE PRESS

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PRIVATE & CONFIDENTIAL

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WITNESS STATEMENT OF: STEPHEN ABELL

ADDRESS: HALTON HOUSE  
20/23 HIGH HOLBORN  
LONDON  
EC2N 2JD

OCCUPATION: DIRECTOR  
THE PRESS COMPLAINTS COMMISSION LIMITED

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I, **STEPHEN ABELL**, of The Press Complaints Commission Limited, Halton House, 20/23 Holborn, London, EC1N 2JD, **WILL SAY** as follows:-

1. I am the Director of the Press Complaints Commission Limited ("the PCC" or "the Commission").
2. On 16 August 2011, I received a letter dated 8 August 2011 from the solicitor to the Leveson Inquiry ("the Inquiry") which contained a notice ("the Notice") under s.21(2) of the Inquiries Act 2005 ("the 2005 Act"). The Notice requires me to provide evidence to the Inquiry in the form of a Witness Statement and to provide any documents in my custody or under my control which fall into certain categories. I was asked to provide this by 16<sup>th</sup> September 2011.
3. This has meant that the statement that follows, and the documents that supports it, have required to have been produced and assembled in just over three weeks, part of which has included the holiday period. If, because of the time exigencies, it should emerge that there are any omissions in my statement, I shall endeavour to assist the Inquiry in remedying them.
4. A separate question arises because of the time constraints imposed upon the Inquiry. This statement is accompanied by a very substantial amount of documentation responsive to the categories of information required by the Notice. I note from Lord Justice Leveson's remarks at preliminary hearings of the Inquiry that he may be constrained by time as to the level of detail which the Inquiry can explore, if he is to complete Part 1 of the Inquiry in time. To facilitate Lord Justice Leveson

and the Inquiry, I have therefore sought in this statement to give a detailed narrative account of matters (specifically as regards phone hacking) which are more fully explained in the supporting documents. Although this has the effect of substantially lengthening this statement, I hope that this approach may be considered convenient.

5. It may be the case that the Inquiry considers that certain of the matters regarding phone hacking, which I deal with in this statement, fall more properly under Part 2 of the Inquiry. I am content to be guided by the Inquiry in relation to that.
6. The Notice requires my Witness Statement to cover at least the following matters or issues:
  - 6.1 who I am and a brief summary of my career history;
  - 6.2 a description of the PCC covering (at least) its origins, status, history (in brief summary), organisation, remit, authority and powers;
  - 6.3 the steps which the PCC takes, in general terms, to discharge its regulatory function;
  - 6.4 the PCC's experience of regulating the media, in particular in relation to phone hacking, computer hacking, "blagging", bribery and/or corruption, to include examples and evidence which conveys the scale on which these issues have come to my attention; and
  - 6.5 my views on the strengths and weaknesses of the PCC and, in particular, my views on the steps which might be taken to improve the regulatory framework and effort.
7. The Notice requires me to provide documents which fall into the following categories:
  - 7.1 any document setting out the PCC's organisation, remit, authority and powers;
  - 7.2 any documents relating to the regulation of matters concerning phone hacking, computer hacking, "blagging" or bribery by the media or those acting on behalf of or at the instigation of the media; and

- 7.3 any documents relating to the effectiveness of the PCC's regulatory effort (limited to matters within the scope of the Inquiry's terms of reference) and/or proposals for improvement of reform of the same.
8. I provided the documents described in paragraph 682 to the Inquiry on 16 September 2011. In this statement, I provide evidence in relation to the matters described in Part 4 save that I hope to be in a position to provide further material (on the basis of additional information then available to me) in relation to the matters described in Part 4 in a separate, subsequent statement.
9. I am authorised by the Commission to make this statement on its behalf

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**MY BACKGROUND AND ROLE OF DIRECTOR**

10. I joined the PCC in 2001 soon after graduating from University of Cambridge with a Double First in English Literature.
11. I had some initial inclination to pursue an academic career, in which regard I was encouraged by my examination results (in which I attained the highest mark in both years of the Cambridge Tripos). However, I was also interested in the practicalities of the real world outside of academia.
12. Following graduation, I saw an advertisement for a complaints officer (a junior position), seeking someone with strong writing skills to draft decisions regarding complaints about the press. I had a general interest in the media, in common with many who study an arts subject, and was attracted by a job that had an aspect of creativity connected to it.
13. The role, as I learned, was a combination of drafting (decisions and correspondence, involving the marshalling of arguments about ethical issues) and negotiation (representing complainants in a bid to obtain redress from newspapers and magazines). I found that very appealing.
14. Since joining in 2001, I have fulfilled the following roles: Complaints Officer; Press Officer; Assistant Director (a role which encompassed Head of Complaints); and Deputy Director. A description of how the differing roles fit within the Press Complaints Commission appears in paragraph 125. As Deputy Director, I remained in charge of the complaints department, and retained a hands on role in overseeing the complaints process. That process now encompasses around 7000 complaints annually, alongside hundreds of occasions of pre-publication intervention and thousands of contacts with members of the public.
15. I became Director of the PCC on 21 December 2009.
16. I have, therefore, over ten years' experience of the work of the PCC and have held positions ranging from the most junior to the most senior. I am, as a result, perhaps uniquely placed to be able to assist the Inquiry to understand how self-regulation of the press and the PCC has operated from 2001 to date.

17. The role of Director of the PCC covers numerous areas, and corresponds – in essence – to that of Chief Executive. When the job was advertised in October 2009, the following specification was published<sup>1</sup>:

*"The Director is responsible to the Chairman and Members of the PCC for the administration of the Commission's activities – principally the handling of complaints from members of the public, and the PCC's own proactive programme of public information. Full details of the Commission's activities can be found elsewhere on the PCC's website.*

*Specifically, the Director – who is also the Company Secretary of the PCC and reports directly to the Chairman – is responsible for running a full time staff of 13 people<sup>2</sup>, a Board of 17 members and managing a budget of £1.9 million. He or she is therefore, in conjunction with the Chairman and Board, responsible for all personnel and employment issues, as well as business and building administration, and the preparation of management accounts.*

*He or she must have an overview of all the Commission's complaints work, and have specific responsibility for high profile or complex disputes, and those where there are legal issues involved. The Director must ensure compliance with the PCC's Complainants' Charter.<sup>3</sup> The Director attends up to 10 Commission meetings a year, where he or she is responsible, through colleagues, for the provision of draft adjudications and other papers.*

*The Director is responsible for the Commission's external relations programme, agreed by the PCC on an annual basis – specifically establishing and implementing an ongoing programme of public information, undertaking up to 50 speaking engagements a year, and liaising with various international organisations where these impact on the work of the Commission. This includes the handling of press office and other inquiries. The Director will, from time to time, be required to undertake interviews on radio and television.*

*The Director must liaise with the Commission's professional advisers – and in particular its lawyers. An understanding of the legal issues surrounding the media and self-regulation – particularly both judicial review and the application of the Human Rights Act 1998 – is essential.*

*The Director must maintain links with editors and publishers to ensure continuing compliance with the work of the Commission, and to understand ongoing editorial developments.*

*The Director is responsible for overseeing the Commission's links with stakeholders – specifically Parliament, Whitehall, Select Committee, the judiciary, the European Commission, and other regulators. A knowledge of all these processes, including the passage of legislation, is essential. Similarly, understanding of the needs of vulnerable people in their own handling of the media is an advantage.*

*The Director oversees – and from time to time takes part in – the Commission's work in the training of journalists.*

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<sup>1</sup> PCC/B/1/193-194

<sup>2</sup> This has now increased to sixteen people.

<sup>3</sup> PCC/C/3/41-42. The Complainants' Charter has been since replaced, following the recommendations of an external Governance Review, by a set of performance objectives. See paragraph 340

*While the Commission has no pre-publication powers, the Director must be available to give swift advice both to newspapers and magazines, and to complainants, on the background to a variety of Code issues where necessary.*

*The Director sits in an ex officio capacity on the editors' Code Committee, and must maintain links with the Chairman and Secretary of that Committee. The Director must also liaise regularly with the Chairman and Secretary of the Press Standards Board of Finance. The Director must attend a weekly meeting of the PCC's Complaints Department, chaired by the Chairman or a Senior Member of the Commission.*

*The Director of the PCC is also Secretary of the PCC's Appointments Commission<sup>4</sup>, and is responsible for the administration of that body, which meets up to three times a year.*

*The Director acts as Secretary of a number of PCC Sub-Committees on finance, the Code of Practice and complaints.*

*The Director will chair regular internal staff meetings on a number of matters including external relations and public information, and EU issues.*

*The Director answers on a day to day basis to the Chairman of the Commission, and will need from time to time to join her on regional visits and tours, assist with colleagues in the preparation of briefing material and speech drafts, and report regularly on every aspect of the Commission's administration.*

*Apart from those qualities mentioned specifically above, the successful candidate must be able to exhibit first class writing skills, an ability to present with authority and credibility, experience of public presentation, an aptitude for public relations and information, an understanding of the legal and parliamentary processes, and a track record of both achievement and leadership.*

*Because of the importance of the Commission's independence, applicants should not have been recently employed in the newspaper or magazine industry at management or editorial level."*

18. I have now been performing the role of PCC Director for over eighteen months. Within its current limited remit, I believe that the PCC performs a valuable and effective role and I have, throughout my career, been impressed by the commitment of both the staff and Commissioners. However, I recognise that reform is necessary to improve the organisation further.
19. Much of my time at the PCC has been spent in executing reforms to the PCC's procedures under the leadership of successive Chairmen. At the time this Inquiry was established, that process of reform had been accelerating. Achieving reform remains a substantial part of what I do. I believe that the PCC can provide valuable assistance to the Inquiry in its investigation into the areas which are defined in the Inquiry's terms of reference.

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<sup>4</sup> This has been subsequently replaced by an internal Nominations Committee (see paragraph 146). The Director retains a Secretary role on this Committee.

## LEGAL STATUS & PURPOSE OF THE PCC

20. The Press Complaints Commission Limited was incorporated on 1 January 1991 as a private limited company<sup>5</sup>. The Memorandum of Association, adopted on 24 April 1991<sup>6</sup> provided, at clause 3 that:

*"The objects of the Company (hereinafter called "the Commission") are to consider, adjudicate, conciliate, and resolve or settle by reference to the Code of Practice promulgated by the Press Standards Board of Finance Limited (registered in England and Wales with No. 2554323) for the time being in force complaints from the public of unjust or unfair treatment by newspapers, periodicals or magazines and of unwarranted infringements of privacy through material published in newspapers, periodicals or magazines (other than advertising placed by third parties) or in connection with the obtaining of such material and to publish or procure the publication of any findings of its adjudication, for the purpose of ensuring that the Press of the United Kingdom maintains the highest professional standards and having regard to generally established freedoms including freedom of express and the public's right to know, and defence of the Press from improper pressure".*

21. By a Special Resolution passed on 29 October 2003<sup>7</sup>, clause 3 of the Memorandum of Association was revised and the following clause adopted in substitution:

*"The objects of the Company (hereinafter called "the Commission") are to consider, adjudicate, conciliate and resolve or settle by reference to the Code of Practice promulgated by the Press Standards Board of Finance Limited (registered in England and Wales with No. 2554323) for the time being in force complaints from the public of unjust or unfair treatment by newspapers, periodicals or magazines and of unwarranted infringements' of privacy between material published in newspapers, periodicals or magazines (other than advertising placed by third parties) or in connection with the obtaining of such material and to publish or procure the publication of any findings of its adjudication and to establish such procedures as it may see fit from time to time in relation to the foregoing and for the effective discharge of its functions, for the purpose of ensuring that the Press of the United Kingdom maintains the highest professional standards and having regard to generally established freedoms including freedom of expression and the public's right to know, and defence of the Press from improper pressure".*

22. The Articles of Association of the PCC were adopted by Special Resolution passed on 24 April 1991<sup>8</sup>. Revisions to the Articles of Association were adopted by Special Resolution, passed respectively on 28 April 1993<sup>9</sup>, 30 October 2002<sup>10</sup> and 29

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<sup>5</sup> PCC/A1/1/15

<sup>6</sup> PCC/A1/1/18-24

<sup>7</sup> PCC/A2/1/538-541

<sup>8</sup> PCC/A1/1/125-55

<sup>9</sup> PCC/A2/1/171-173

<sup>10</sup> PCC/A2/1/475-476

October 2003<sup>11</sup>. The current Articles of Association were adopted by Special Resolution on 26 April 2006<sup>12</sup>.

23. I highlight some of the principal provisions contained in the Articles of Association<sup>13</sup>, below:

***“Objects***

4. *The Commission is established for the objects expressed in its Memorandum of Association.*

***Members***

5. *The number of members of the Commission shall not be less than nine and shall not exceed seventeen or such other number as the members shall decide by special resolution. Members of the Commission shall be appointed in accordance with Article 6 below provided that at all times a majority of the total number of members so appointed shall be Public Members.*
- 6.1 *There shall be three classes of members of the Commission, namely:*
- (a) the Chairman;*
  - (b) Public Members;*
  - (c) Press Members.*
- 6.2 *The Chairman shall be appointed by PRESSBOF, for such period and upon such terms as PRESSBOF may in its absolute discretion think fit, and PRESSBOF shall be entitled to vary or revoke such appointment. The Chairman shall not be engaged in or, otherwise than by his office as Chairman, connected with or interested in the business, of publishing newspapers, periodicals or magazines.*
- 6.3 *Subject to the provisions of Article 5 above, the Public Members and the Press Members shall be appointed by the Appointments Commission for such period and upon such terms as the Appointments Commission may in its absolute discretion think fit and the Appointments Commission shall be entitled to vary or revoke any such appointment. None of the Public Members shall be engaged in or, otherwise than by his membership of the Commission, connected with or interested in the business of publishing papers, periodicals or magazines. Each of the Press Members shall be a person experienced at senior editorial level in the business of publishing newspapers, periodicals or magazines.*
- 6.4 *The period of appointment of a member and any extension thereof shall be capable of extension, in the case of the Chairman, by PressBoF and, in the case of any other member, by the Appointments Commission but if not so extended (or re-extended) the member shall cease to be a member on the expiry of the period of the appointment or, as the case may be, the extended period of appointment.*

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<sup>11</sup> PCC/A2/1/538-541

<sup>12</sup> PCC/A2/1/660

<sup>13</sup> PCC/A2/1/661-674

- 6.5 Any appointment or any variation or revocation of any appointment of any member or any extension of such appointment shall be effected by notice in writing served on the Commission at the office or delivered to the Board.
- 6.6 Every person who is invited and is willing to become a member shall deliver to the Commission an undertaking to be bound by Clause 5 of the Memorandum of Association, in such form as the Commission may require, executed by such person.
7. [intentionally deleted]
8. Any member may cease to be a member of the Commission by giving not less than 3 months' prior written notice to the Board, or such lesser period of notice as the Board may in its absolute discretion decide and any member who has ceased to be a Board Member for whatever reason shall automatically cease to be a member of the Commission.
9. The Board shall have power to expel any member who by any act or omission in its opinion brings the Commission into disrepute or who is guilty of any disgraceful, scandalous or dishonourable conduct or any breach of these Articles.

#### **Appointments Commission**

- 10.1. The Appointments Commission shall consist of the following five persons:
- (a) the Chairman;
  - (b) the Chairman for the time being of PressBoF; and
  - (c) three other independent persons (being persons not engaged in or, otherwise than by their membership of the Appointments Commission, connected with or interested in the business of publishing newspapers, periodicals or magazines) as the Chairman and the Chairman of PressBoF shall in their absolute discretion from time to time nominate ("the Public Nominees").
- 10.2. The Public Nominees shall be appointed Chairman by notice in writing to the Board and the Chairman may remove a Public Nominee by like notice. A Public Nominee may retire from the Appointments Commission by giving not less than one month's notice in writing to the Chairman, or such lesser period of notice as the Chairman may in his/her absolute discretion decide.
- 10.3. The Appointments Commission shall meet to consider for appointment as a member any person who is qualified under these Articles for such appointment. The Appointments Commission shall "further meet to consider the appointment of the members of the Charter Compliance Panel and the Charter Commissioner.
- 10.4. The Appointments Commission may meet together for the dispatch of business, adjourn and otherwise regulate its meetings as it shall think fit. The quorum for any meeting of the Appointments Commission shall be three and questions arising at any meeting shall be decided by a majority of votes. In case of an equality of votes, the Chairman of the meeting shall have a second casting vote.
- 10.5. The Chairman shall be entitled to preside as Chairman of the meeting at all meetings of the Appointments Commission at which he shall be present, but if at any meeting the Chairman is not present within 15

*minutes after the time appointed for holding the meeting and willing to preside, the Chairman of the meeting shall be the Chairman for the time being of PressBoF.*

**Board of Management**

25. *The number of Board Members shall not exceed 17 (including the Chairman) or such other number as the members shall decide by special resolution.*
26. *Each of the members shall be and shall consent to be a Board Member. No person who is not a member of the Commission shall in any circumstances be eligible to hold office as a Board Member.*
27. *The Board Members shall be entitled to be paid reasonable and Proper remuneration for their services as Board Members actually rendered to the Commission and all reasonable expenses properly incurred by them in attending and return from Board Meetings or General Meetings of the Commission or in connection with the business of the Commission.*

**Powers and Duties of the Board**

28. *Subject to the provisions of the Act, the Commission's Memorandum of Association, the Articles and to any directions given by Special Resolution of the Commission, the business of the Commission, including all matters referred to in Article 53, shall be managed by the Board who may pay all the expenses incurred in the formation of the Commission and may exercise all such powers of the Commission as are not required to be exercised by the Commission in General Meeting. Any such requirement may be imposed either by the Act or by these articles or by any regulation made by the Commission in General Meeting; but no such regulation shall invalidate any prior act of the Board which would have been valid if that regulation had not been made.*
29. *All cheques and other negotiable instruments, and all receipts for moneys paid to the Commission, shall be signed, drawn, accepted, endorsed or otherwise executed, as the case may be, in such manner as the Board shall from time to time determine.*
30. *The Board shall cause minutes to be made:*
  - (a) *of all appointments of officers made by the Board;*
  - (b) *of the names of the Board Members present at each Board meeting; and*
  - (c) *of all resolutions and proceedings at all meetings of the Commission and of the Board.*

**Disqualification and Removal of Board Members**

31. *The office of Board Member shall be vacated if the Board Member:*
  - (a) *becomes bankrupt or makes any arrangement or composition with his creditors generally; or*
  - (b) *ceases to be a Board Member by virtue of any provision of the Act or he becomes prohibited by law from being a Board Member; or*



- (c) *becomes incapable by reason of mental disorder, illness or injury of managing and administering his property and affairs; or*
  - (d) *resigns his office by written notice to the Commission; or*
  - (e) *is directly or indirectly interested in any contract with the Commission and fails to declare the nature of his interest as required by Section 317 of the Act; or*
  - (f) *ceases to be a member of the Commission for whatever reason.*
32. *The Commission may by ordinary resolution, of which special notice has been given in accordance with Section 303 of the Act remove any Board Member before the expiration of his period of office notwithstanding anything in these Articles or in any agreement between the Commission and such member.*

#### **Proceedings of the Board**

33. *The Board may meet together for the dispatch of business, adjourn, and otherwise regulate its meetings, as it thinks fit. Questions arising at any meeting shall be decided by a majority of votes. In the case of an equality of votes the chairman of the meeting shall have a second or casting vote. A Board Member may, and the Secretary on the request of a Board Member shall, at any time summon a Board Meeting. It shall not be necessary to give notice of a Board Meeting to any Board Member for the time being absent from the United Kingdom.*
34. *The quorum necessary for the transaction of the business of the Board may be fixed by the Board and unless so fixed shall be five provided that for the transaction of business pursuant to Article 53 a majority of the members present shall be Public Members (which term shall, for the purpose of this Article 34 only be deemed to include the Chairman).*
35. *If at any meeting the Chairman is not present within five minutes after the time appointed for holding the same, the Board Members present may choose one of their number to chair the meeting.*
36. *The Board may delegate any of its powers to such person or persons or sub-committees as it thinks fit; such person or persons or sub-committees shall conform to any regulations which may be imposed upon it or them by the Board.*
37. *Any sub-committee may elect a chairman of its meetings; if no such chairman is elected, or if at any meeting the elected chairman is not present within five minutes after the time appointed for holding the same, the members of the sub-committee present may choose one of their number to chair the meeting.*
38. *Any sub-committee may meet for the dispatch of business, adjourn and otherwise regulate its meetings as it thinks fit. Questions arising at any meeting shall be determined by a majority of votes of the members of the sub-committee present, and in the case of an equality of votes the chairman of the sub-committee shall have a second or casting vote.*
39. *All acts done by any meeting of the Board or of a sub-committee, or by any person acting as a Board Member, shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such member or person acting as aforesaid, or that they or any of*

*them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a Board Member.*

40. *A resolution in writing, signed by all the Board Members entitled to receive notice of a Board Meeting, shall be as valid and effective as if it had been passed at a Board Meeting duly convened and held, and may consist of two or more documents in like form each signed by one or more Board Members.*

### **Complaints**

- 53.1. *The primary function of the Commission shall be to consider, and adjudicate, conciliate and resolve or settle by reference to the Press Code of Practice promulgated by PRESSBOF for the time being in force complaints from the public of unjust or unfair treatment by newspapers, periodicals or magazines and of unwarranted infringements of privacy through material published in newspapers, periodicals or magazines (in each case excluding advertising by third parties) or in connection with the obtaining of such material but shall not consider complaints of any other nature.*
- 53.1A *It shall also be the function of Commission to consider and pronounce on issues relating to the Code of Practice which the Commission, in its absolute discretion considers to be in the public interests.*
- 53.2. *All complaints shall be made in writing save that the Commission may consider formal complaints made orally to the Commission and notify the relevant publisher of any such complaint (but not adjudicate on the merits thereof) for the purpose of enabling the publisher to review the complaint and take any necessary action to prevent the anticipated unjust or unfair treatment or to limit or put an end to the unwarranted infringement of privacy complained of.*
- 53.3. *A complaint may be made by an individual or by a body of persons (whether incorporated or not) but, in addition to the requirements of Article 53.1, shall only be entertained or its consideration proceeded with if it appears to the Commission that:*
- (a) *the complaint is made by the person affected or by a person authorised by him to make the complaint;*
  - (b) *the matter complained of is not the subject of proceedings in a court of law or tribunal in the United Kingdom; and*
  - (c) *where the matter complained as a matter in respect of which the person affected has a remedy by way of proceedings in a court of-law in the United Kingdom, in the particular circumstances it is appropriate for the Commission to consider a complaint about it.*
- 53.4. *Notwithstanding the provisions of Article 53.3, the Commission shall have discretion to consider any complaint from whatever source that it considers appropriate to the effective discharge of its function.*
- 53.5. *The Commission shall not consider a complaint which it believes to be frivolous or which it believes to be inappropriate to entertain or proceed with for any other reason.*
- 53.6. *The Commission may refuse to entertain a complaint if it appears to it not to have been made within a reasonable time after the last occasion when*

the relevant material was published or when the unwarranted infringement of privacy took place.

53.7. In carrying out its functions in relation to complaints the Commission shall have regard to generally established freedoms including freedom of expression and the public's right to know, and defence of the press from improper pressure.

53.8. [intentionally deleted]

53.9. In this Article 53:

- (a) "complaint" means a complaint to the Commission of any such unjust or unfair treatment or unwarranted infringement of privacy as is mentioned in Article 53.1;
- (b) "the person affected" means:
  - (i) in relation to any such unjust or unfair treatment, a person named or identified in the relevant material who was the subject of that treatment;
  - (ii) in relation to any such unwarranted infringement of privacy, a person whose privacy was infringed;
- (c) "the relevant material" means the material which is the subject of the complaint in which the alleged unjust or unfair treatment occurred in connection with which the alleged unwarranted infringement of privacy occurred; and
- (d) "unjust or unfair treatment" includes treatment which is unjust or unfair because of the-way in which material included or to be included in a publication has been selected or arranged.

53.10. The Commission shall be entitled to consider and amend any Adjudication which it has made on the application of any of the parties or otherwise but it shall not normally do so unless some error in the Adjudication is shown or new material not available prior to the Adjudication is put before the Commission.

#### **Rules or Bylaws**

54.1. The Board may from time to time make such Rules or Bye Laws as it may deem necessary or convenient for the proper conduct and management of the Commission and in particular but without prejudice to the generality of the foregoing, it may by such Rules or Bye Laws regulate:

- (a) the conduct of complaints of the nature referred to in Article 53 received by the Commission and the publication and circulation of its findings in relation thereto;
- (b) any procedures which may be established from time to time to review the work of the Commission;
- (c) the procedure at general meetings and meetings of the Board and sub-committees in so far as such procedure is not regulated by the Articles;
- (d) the conduct of members of the Commission in relation to one another, and to the Commission's employees;

- (e) *the setting aside of the whole part or any part or parts of the Commission's premises at any particular time or times or for any particular purpose or purposes;*
- (f) *and, generally, all such other matters as the Board considers appropriate to be the subject matter of rules or bye-laws.*

54.2. *The Board shall have the power to alter or repeal the Rules or Bye Laws and to make additions to them and the Board shall adopt such means as they deem sufficient to bring the notice of members of the Commission all such Rules or Bye Laws, which so long as they shall be in force, shall be binding on all members of the Commission. Provided, nevertheless, that no Rule or Bye Law shall be inconsistent with, or shall effect or repeal anything contained in, the Memorandum-of Association or the Articles.*

#### **Charter Compliance Panel**

- 55.1 *The Commission shall establish a Charter Compliance Panel whose function it shall be to examine the handling of complaints by the Commission pursuant to Article 53. The Board shall institute an audit at least once every calendar year.*
- 55.2. *The number of members of the Charter Compliance Panel shall not be less than two, provided that at all times the number of persons appointed shall not contain a majority of persons who are or have been connected with the business of publishing papers, periodicals or magazines. The members of the Charter Compliance Panel shall be appointed by the Appointments Commission for such periods and on such terms as the Appointments Commission may in its absolute discretion think fit, and the Appointments Commission shall be entitled to vary or revoke such appointment as it shall think fit.*
- 55.3. *The Charter Compliance Panel shall report to the Board in respect of its findings and shall make such recommendations as it sees fit. Nothing in this Article shall oblige the Board to act upon any recommendations made by the Charter Compliance Panel but, in the event that the Board decides not to act upon any recommendation so made, then the Board shall provide the Charter Compliance Panel with its reasons for this. The Board shall publish any final reports in respect of each calendar year.*

#### **Charter Commissioner**

- 56.1. *A Charter Commissioner shall be appointed by the Appointments Commission on such terms and for such length of time as the Appointments Commission shall in its sole discretion decide. The Charter Commissioner shall be a person who would otherwise be eligible to be a Public Member of the Commission but shall not be a member of the Commission during the time of his or her appointment.*
- 56.2. *The Charter Commissioner shall consider complaints (other than complaints relating to the substance of an adjudication) from persons who have received a decision from the Commission and who are dissatisfied with the way in which the Commission has handled their matter.*
- 56.3. *The Charter Commissioner shall make a written report to the Board in respect of each complaint and shall make such recommendations as he or she sees fit. Nothing in this Article shall oblige the Board to act upon any recommendations made by the Charter Commissioner but, in the event that the Board decides not to act upon any recommendation so*

*made, then the Board shall provide the Charter Commissioner with its reasons for this.*

56.4. *The Board shall publish an annual report in respect of all of the complaints dealt with during the period under review”.*

24. A draft revised Articles of Association were prepared following the independent Governance Review (to which I refer in paragraph 94, but have yet to be adopted).
25. I provide, below, a list of the Directors of the PCC (who also acted as Commissioners) from the date of inception of the PCC to date.

**Public Commissioners**

DIRECTOR	DATES OF TENURE	OTHER CURRENT AND FORMER POSITIONS
Lord McGregor of Durris	19/12/1990 - 31/12/1994	Retired Professor Director - Advertising Standards Authority Ltd Director - Modern Law Review Ltd Director - Reuters Founders Share Company Ltd Director - Political Quarterly Ltd
Lord Colnbrook	12/09/1991 – 31/12/1994	Director – Trans World Communications PLC
Lady Elizabeth Cavendish	12/09/1991 – 31/12/1995	Chairman – Cancer Research Association
Dame Mary Donaldson	12/09/1991 – 31/12/1994	Chairman – Banking Ombudsman Council Director - Employers Confederation Guarantee Trust
Sir Richard Francis	12/09/1991 – 30/06/1992	Director-General – The British Council Director – Charities Aid Foundation
Professor Robert Pinker	12/09/1991 – 31/07/2004	Professor of Social Work Studies at LSE
Professor Lesley Rees	12/09/1991 – 31/12/1994	Professor of Medicine
Baroness Dean of Thornton-Le-Fylde	01/07/1993 – 31/07/1998	Director – ABSA Consultants Director – ICSTIS Ltd
Ms Jennifer Brown	01/08/1993 – 30/07/1997	Writer and Broadcaster Director – Edinburgh Book Fair
Dr Angus Macintyre	01/08/1993 – 22/12/1994	University Lecturer, Oxford University Director – Fleet Tutorship Co.

The Rt Hon Lord Wakeham	03/01/1995 – 19/03/2002	Director – Bristol and West Building Society
Sir Brian Cubbon GCB	20/04/1995 – 31/07/2002	Director – Ashley Gardens Ltd
Lord Tordoff	20/04/1995 – 31/07/2002	Chairman of the Liberal Party
Baroness Smith of Gilmorehill	20/04/1995 – 30/09/2001	Director – Scottish Television
Lady Browne-Wilkinson	20/04/1995 – 24/02/1999	Solicitor Director – Charco 502 Ltd
Mrs Arzina Bhanji	01/03/1996 – 30/09/2001	Dental Surgeon Director – The Royal Hospitals Trust Director – Airojudge Limited
Rt. Rev. John Waine	30/07/1997 – 10/09/2010	Retired
Viscountess Ruth Runciman	01/10/1998 – 30/09/2001	Director – Prison Reform Trust
Dr. Arthur Hearnden	25/02/1998 – 30/06/2005	Education Consultant Director – The Hall School Charities Trust
Mrs Mary Francis	01/10/2001 – 28/02/2006	Non-Executive Director – Bank Of England Director – International Financial Services London Member of CBI Council
Mrs Vivien Hepworth	01/10/2001 – 30/09/2009	Chairman – Surrey & Sussex NHS Trust Trustee – Prince's Foundation Director of Development – National Centre For Young People With Epilepsy
Mrs Matti Alderson	06/03/2002 – 26/05/2011	Regulatory Consultant Director – Firehorses Ltd
Lord Michael Chan	01/09/2002 – 24/01/2006	Retired Medical Practitioner Director – Afiya Trust Director – Chinese In Britain Forum Director – Wirral Multicultural Organisation
Sir Christopher Meyer	31/03/2003 – 30/03/2009	Chairman - PCC
Mrs Ila (Dianne)Thompson	14/04/2003 – 30/09/2008	Director: Camelot Group PLC Camelot International Services Limited National Lottery Enterprises Limited CISL Limited

		Camelot Lotteries Limited RAC Group PLC Advertising Standards Authority
Ms Eve Salomon	01/01/2004 – 14/04/2011	Solicitor Director – Sonderel Ltd
Mr Adam Phillips	01/08/2004 – 01/08/2007	Director – Real Research Limited
Rear Admiral Nicholas Wilkinson	01/07/2005 – 31/07/2008	Historian Director Greenwich Foundation Victory Services Association Southside Quarter Princess Helena College Savile Club Association of Royal Naval Officers
Mr Ian Nichol (Deputy Chairman)	01/03/2006 – present	Accountant
Mrs Colleen Harris	01/08/2006 – 31/07/2009	Civil Servant
Ms Esther Roberton	01/08/2007 - present	Director - Scottish Council For Development & Industry Director – Maggies Cancer Centre (Fife)
Mr Simon Sapper	01/09/2008 - present	Trade Union Official
Mr John Home Robertson	01/10/2008 31/10/11	Retired
The Baroness Buscombe (Chairman)	06/04/2009 - present	Director, Three Valleys Water plc
Professor Ian Walden	09/12/2009 - present	Academic
Mrs Julie Anne Spence OBE, QPM	02/01/2010 - present	Chief Constable
Mr Michael Smyth CBE	01/05/2011 - present	Lawyer Member of Executive Board, JUSTICE Chair, International Senior Lawyers Project (UK)
Lord Michael Ian Grade CBE	01/05/2011 - present	Chairman, BBC Executive Chairman, ITV plc Director, Pinewood Shepperton Plc Director, Ocado Group Plc Director, James Grant Group Ltd
Mr Jeremy Roberts QC	01/06/2011 - present	Former Permanent Judge at the Central Criminal Court

## Editorial Commissioners

COMMISSIONERS	DATES OF TENURE	OTHER CURRENT AND FORMER POSITIONS
Mr William Anderson CBE	12/09/1991 – 31/10/1992	Managing Editor
Sir Edward Pickering	12/09/1991 – 30/06/1993	Executive Vice-Chairman, Times Newspapers Ltd Director, Times Newspapers Ltd, Times Newspapers Holdings Ltd, The Times Supplement Ltd, Times Network Systems Ltd, Newscorp Investments Ltd
Mr David Chipp	12/09/1991 – 30/06/1993	Media Consultant Director, TVam News Director, The Observer Ltd Director, Lloyd's Information Services, Lloyd's of London Press, Lloyd's List
Miss Patricia Chapman	12/09/1991 – 31/01/1993	Editor
Mr Michael Clayton	12/09/1991 – 31/03/1993	Editor
Mr Max Hastings	12/09/1991 – 30/06/1992	Editor
Mr Brian Hitchen CBE	12/09/1991 – 01/02/1995	Editor Director – Express Newspapers PLC Director – Sussex Yacht Club Director – Airspeed International Inc
Mr Andrew Hughes	12/09/1991 – 31/03/1993	Editor Director – Sunderland and Hartlepool Publishing & Printing Ltd
Mr Robert Ridley	12/09/1991 – 31/08/1992	Editor Director – Manchester Morning News Director – The Advertiser Ltd
Mr Peter Preston	12/09/1991 – 02/11/1994	Editor



		Director – Guardian Newspapers plc, Manchester Evening News PLC
Ms Iris Burton	01/04/1993 – 31/07/1998	Editor-In-Chief – Woman's Realm, Woman's Weekly
Sir David English	01/03/1993 – 10/06/1998	Director: New Era Television Ltd Anodyne Limited Associated Newspapers Holdings Limited Associated Newspapers North America Inc. Associated Newspapers Limited Burlington Publishing Company Limited Chapmans Publishers Limited Classic Traditions Limited Daily Mail International Ski Show Limited Daily Mail Limited Harmsworth Media Limited Mail On Sunday Limited Pinnacle Events & Exhibitions Limited Studio West Limited Teletext UK Limited
Mr Gerald Isaaman	07/05/1993 – 01/02/1995	Editor & General Manager
Mr George McKechnie	26/08/1992 – 31/12/1994	Editor – The Herald Scotland Company Director – Caledonian Newspaper Publishing
Mr David Williams	10/02/1995 – 25/02/1997	Editor Director – EMAP Anglia Newspapers Ltd
Mr Derek Tucker	10/02/1995 – 31/12/1996	Editor
Mr Geoffrey Elliot	10/02/1995 – 25/02/1997	Editor Director – Portsmouth Publishing and Printing Limited

Mr Tom Clarke	26/07/1995 – 31/07/1998	Editor – The Sporting Life Hardelot Holidays Ltd Thorndon Hall Management Co Ltd
Mr John Witherow	26/07/1995 – 08/09/1998	Editor – Sunday Times
Mr James Cassidy	01/01/1997 – 16/09/1999	Journalist Director – Scottish Daily Record Director – Sunday Mail Ltd
Mr John Griffith	25/02/1997 – 24/02/1999	Editor Director – Liverpool Daily Post and Echo Ltd
Mr Graham Collyer	25/02/1997 – 24/02/1999	Editor Director – Surrey Crimestoppers Director – Surrey Help The Children
Mrs Patricia Roberts Cairns	01/08/1998 – 30/07/1999	Journalist
Mr Phillip Hall	01/08/1998 – 23/05/2000	Editor
The Hon. Dominic Lawson	01/09/1998 – 30/12/2002	Editor – National Newspaper
Mr Paul Dacre	14/12/1998 – 31/03/2008	Editor Director – Associated Newspapers
Ms Alison Hastings	24/02/1999 – 19/09/2002	Journalist
Mr Malcolm Starbrook	15/03/1999 – 07/03/2002	Journalist
Mr Russell Twisk	01/08/1999 – 17/04/2002	Editor-in-chief Director
Mr John McGurk	01/12/1999 – 31/12/2001	Journalist
Mr Neil Wallis	05/09/2000 – 31/08/2003	Journalist
Mr David Pollington	16/01/2002 – 31/12/2003	Editor
Mr Edward Curran	07/03/2002 – 30/04/2006	Editor Director – Alpia Newspaper Group Director – Tontine Rooms Holding

		Company
Mr Phillip Hall	10/04/2002 – 28/02/2003	Editor
Mr Paul Horrocks	01/10/2002 – 31/12/2006	Editor Director – Manchester Evening News
Ms Jane Ennis	05/03/2003 – 31/01/2007	Editor Director – IPC Connect
Mr Roger Alton	01/03/2003 – 31/12/2007	Journalist
Mr Peter Hill	17/09/2003 – 14/05/2008	Editor Former Director – Express Newspapers
Mr Charles McGhee	01/01/2004 – 31/12/2005	Editor
Mr Derek Tucker	01/01/2006 – 31/12/2008	Editor Director – Aberdeen Journals Limited
Mr Spencer Feeney	01/05/2006 – 30/06/2009	Editor
Mr Simon Irwin	01/01/2007 – 13/03/2009	Editorial Director – Kent Messenger Ltd Editorial Director – Maidstone Radio Ltd
Ms Lindsay Nicholson	01/11/2007 - present	Editorial Director
Mr Ian MacGregor	01/03/2008 - present	Journalist
Ms Tina Weaver	01/04/2008 - present	Editor Director – Mirror Group
Mr Peter Wright	15/05/2008 - present	Editor
Mr John McLellan	07/01/2009 - present	Editor
Mr Simon Reynolds	30/06/2009 - present	Editor
Mr Anthony Longden	30/06/2009 - present	Managing Editor
Lord Michael Ian Grade CBE	01/05/2011 - present	Company Chairman
Mr Jeremy Roberts QC	01/06/2011 – present	Retired

26. In paragraph 107 of this Witness Statement, I provide details of the current structure of the PCC and identify the individuals who are currently Board Members/Commissioners.

27. The PCC publishes a "Mission Statement", on its website, in the following terms:

***"Who we are***

*The PCC is an independent body which administers the system of self-regulation for the press. It does so primarily by dealing with complaints, framed within the terms of the Editors' Code of Practice, about the editorial content of newspapers and magazines (and their websites, including editorial audio-visual material) and the conduct of journalists. It can also assist individuals by representing their interests to editors in advance of an article about them being published.*

*The purpose of the PCC is to serve the public by holding editors to account. We strive to protect the rights of individuals, while at the same time preserving appropriate freedom of expression for the press. We proactively advertise our services and reach out to people who may be in need of our help. We aim to promote high standards by developing clear guidance and practical principles through our rulings, and offering training and advice to editors and journalists.*

***How we work***

*The Commission comprises seventeen members and has a majority (ten) of "lay" or public members (including the Chairman) with no connection to the newspaper and magazine industry. The remaining seven Commissioners are serving editors. The PCC enforces the Editors' Code of Practice agreed by the newspaper and magazine industry, which deals with issues of accuracy and privacy in reporting and how journalists should behave in gathering the news.*

*The PCC acts by:*

- *negotiating remedial action and amicable settlements for complainants;*
- *issuing rulings on complaints;*
- *using published rulings as a means of guiding newsroom practice across the industry;*
- *publicly censuring editors for breaches of the Code;*
- *passing on pre-publication concerns to editors to prevent the Code being breached;*
- *passing on requests to editors that their journalists cease contacting individuals, and so prevent media harassment;*
- *issuing formal guidance, based on its interpretation of the Code, to the industry on important issues;*
- *instigating its own investigations under the Code in the public interest where appropriate;*
- *conducting training seminars for working journalists and editors;*
- *and liaising with other press councils internationally.*

We are committed to transparency and accountability and publicise all of our rulings. We also raise awareness among policymakers, public agencies and charities, lawyers, officials, journalists and the general public about the work of the PCC.

### **Standards**

The system is designed to maintain standards in the press by enforcing the terms of the Code and so holding editors to account, while still preserving appropriate freedom of expression. This is primarily achieved by the PCC administering an efficient and free complaints service. We encourage complainants, as the more people use the system, the more editors are held to account for their decisions. This will - and indeed does - lead to a rise in standards.

Some "standards" issues fall outside the remit of the Commission: questions of taste and offence; tone of coverage; newsworthiness of stories; quality of writing. It would be inappropriate for the Commission to comment upon these issues, as they are not covered by the Code of Practice. The test for the PCC must be whether the Code has been breached.

### **Sanctions**

The PCC can enforce a range of sanctions, summarised below:

- negotiation of an agreed remedy (apology, published correction, amendment of records, removal of article);
- publication of a critical adjudication, which may be followed by public criticism of a title by the Chairman of the PCC;
- a letter of admonishment from the Chairman to the editor;
- follow-up from the PCC to ensure that changes are made to avoid repeat errors and to establish what steps (which may include disciplinary action, where appropriate) have been taken against those responsible for serious breaches of the Code;
- formal referral of an editor to their publisher for action.

### **Proactivity**

The PCC cannot act on every story or issue that arises in connection with the press. It would not be practical, or possible, to monitor the output (online and in hard copy) of newspapers and magazines, and to seek to establish whether it complies with the Code of Practice. The Code is designed to protect individuals, and the PCC needs to respect the wishes - and consider the evidence - of those individuals when investigating complaints about information relating to them.

So, if an issue relates to a named individual, the PCC will generally not conduct investigations without that person's consent. However, the Commission will not just wait for complaints to come in. We endeavour to:

- contact those at the centre of news stories to offer our services, when we become aware - either through information from individual Commissioners or the Secretariat, or third parties - of issues of possible concern relating to the application of the Code;
- act to help complainants shape their concerns, so that a complaint can be considered as efficiently as possible;

- *of our own volition, initiate investigations relating to possible breaches of the Code where there are no obvious first parties who might complain (for example in cases involving payments to witnesses or criminals);*
- *issue guidance on best practice in areas that have caused public concern;*
- *help train journalists and editors about the application of the Code;*
- *raise awareness of the PCC with representatives of vulnerable people and interest groups, to enable them to use the service effectively;*
- *advertise and market our services as widely as possible.*

*When there is a major incident, attracting considerable media coverage, we will ensure that we act decisively and quickly”.*

28. In relation to its complaints work, no complainant has ever been successful in obtaining permission for an Application for Judicial Review against the PCC. The question of whether the PCC is amenable to Judicial Review remains open, although the PCC has not challenged being amenable in cases where Applications for permission have been made.

## THE PRESS AND THE LAW

29. Before examining the work of the PCC, it is important to note the legal framework within which the press in this country operates, which is a mixture of common law and statutory provision. In the present context, for example, one of the most relevant statutory measures is the Regulation of Investigatory Powers Act 2000.
30. The Editors' Code of Practice enforced by the PCC represents an additional layer of rules adopted by the press to govern its behaviour. The provisions of the Code are broadly of two types. The first essentially tracks the current position under English law. An example of this is Clause 3 (Privacy) of the Editors' Code<sup>14</sup>, which essentially mirrors the Human Rights Act. In the second category are Clauses that extend existing legal protection, such as Clause 8 (Hospitals), which defines how journalists should behave in relation to people in hospitals or other similar institutions.
31. In this respect, the Code is very similar to the ASA's CAP (Committee of Advertising Practice) Code for non-broadcast advertisements, which contains both general obligations that reflect the law, such as Section 3 (Misleading advertising), and specific rules for certain products, such as Section 19 (Motoring) which, in the words of the ASA, "*add an extra layer of consumer protection on top of consumer protection law*".
32. While the 'extra-legal' elements of the Editors' Code do not have the 'force of law', they have been granted statutory recognition in certain contexts<sup>15</sup>, as a standard against which those involved in the press can be assessed and held to account. In that sense, they are seen as forestalling the need for an expansion of the existing law.
33. When dealing with complaints and compliance with the Code, the PCC therefore has a concurrent competence in respect of those rules that embody substantive English law, but exclusive competence in respect of certain extra-legal rules. Where concurrent competence exists bearing on individual rights, the PCC offers the complainant a fast and cost-free alternative dispute resolution process to the courts.

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<sup>14</sup> See paragraph 184

<sup>15</sup> For example, Data Protection (Designated Codes of Practice) (No. 2) Order 2000/1864; Financial Services and Markets Act 2000 (Financial Promotion) Order 2005/1529 and Investment Recommendation (Media) Regulations 2005/382.

As far as the criminal law is concerned, however, the PCC has no authority nor has it in the past sought any.



## ORIGIN AND HISTORY OF THE PCC

34. The Press Complaints Commission was established two decades ago to replace the British Press Council. It was designed solely to be a complaints body, mediating and judging complaints from members of the public against an agreed Code of Practice. It did not have a press freedom mandate nor, specifically, a wider role in initiating investigations into press standards. At the time it was established, it had a majority of editorial members.
35. However, the PCC has evolved dramatically in the last twenty years, and has grown from the base established in 1991. I have included with this statement a personal account of this evolution, written by a founding member of the PCC, Professor Robert Pinker.<sup>16</sup>

### 1990-1991 The Establishment of the PCC

36. During the course of the 1970s and 1980s the British Press Council was subject to a number of criticisms. As Richard Shannon noted in *'A Press Free and Responsible'*:

*"The Press Council simply could not cut a figure to any credible degree commensurate with the scale of events, whether of tabloid degradation or of industry tumult."*<sup>17</sup>

37. Matters came to a head in July 1989 when Rt. Hon. Douglas Hurd MP, then Home Secretary, announced the formation of a Home Office Committee to be chaired by the late David Calcutt QC to:

*"...consider what measures (whether legislative or otherwise) are needed to give further protection to individual privacy from the activities of the press and improve recourse against the press for the individual citizen..."*<sup>18</sup>

38. The Calcutt Committee took evidence over a period of several months and reported its conclusions in the summer of 1990. Rather than recommending statutory measures, as some had anticipated, Calcutt proposed that the existing Press Council should be abolished, to be replaced by a new Press Complaints Commission. The government endorsed that recommendation.
39. To that extent, it might be said that the PCC is a product of the recommendation of an independent inquiry endorsed by government. It was not created by the press itself.

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<sup>16</sup> PCC/D/2

<sup>17</sup> PCC/D/1/1

<sup>18</sup> PCC/D/1/4

40. Subsequently, the five publishing associations in the UK (the Newspaper Publishers Association, the Newspaper Society, the Periodical Publishers' Association, the Scottish Newspaper Publishers' Association and the Scottish Daily Newspaper Society) worked together to establish the new body, as well as a funding mechanism, the Press Standards Board of Finance (PressBoF). PressBoF was modelled closely on the arrangements in place in the system of self-regulation for advertisers, as overseen by the Advertising Standards Authority.
41. A Code of Practice, which had been a specific prerequisite in Calcutt's proposals, was drawn up by the newly-formed Editors' Code of Practice Committee<sup>19</sup>. This Committee, comprising serving editors, would exist as a standing committee, ready at any stage to amend the Code as necessary.
42. Borrowing further from the experience of the advertising industry, the first Chairman of the Press Complaints Commission was announced as Professor Lord McGregor of Durris, whose term as Chairman of the Advertising Standards Authority came to an end in 1990.
43. With an agreed annual budget of around one million pounds<sup>20</sup> on 1 January 1991 the PCC began operations.

#### **Lord McGregor's Chairmanship 1991-1995**

44. Calcutt had called for independence of the PCC, but had also strikingly recommended that the new Commission have a majority of press members drawn from the "*highest level of the press*".
45. This may have been a popular view among those in the industry. Andreas Whittam-Smith (one of the founders of The Independent newspaper) was one who argued that editors should be judged "only by their peers and not by Mr and Mrs Great and Good".<sup>21</sup> The idea of a majority of press members also chimed with the then premise of 'self'-regulation.
46. At the outset, then, the Board of the PCC consisted of:
  - 46.1 seven editors;

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<sup>19</sup> The Committee's website is [www.editorscode.org.uk](http://www.editorscode.org.uk)

<sup>20</sup> PCC/D/1/6-7

<sup>21</sup> PCC/D/1/1-8

- 46.2 two senior industry figures in David Chipp (former Editor-in-Chief of the Press Association) and Edward Pickering (Vice-Chairman of Times Newspapers);
- 46.3 seven 'lay members', including the Chairman (four of whom were peers).
47. The new Code of Practice was to be the cornerstone of the PCC's operations; the Commission was to examine complaints against the rules set out in the Code, rather than to "make pronouncements" as McGregor put it in an early speech. Moreover, the agreed resolution of complaints was to take precedence over formal adjudications:
- "The primary aim is to reconcile complainants and editors and thus reduce the need for formal adjudications."<sup>22</sup>*
48. In its first year, the PCC received 1,396 complaints, of which 387 were amicably resolved. Almost half were judged to raise no breach of the Code. But forty three were upheld.
49. Important early adjudications by the Commission included criticism of the News of the World for an intrusion into the private life of Clare Short MP; and criticism of The People over publication of a snatched photograph of Prince Andrew's naked baby daughter Eugenie. In the latter case, The People publicly criticised the PCC's decision.
50. At the outset, Lord McGregor expressed himself opposed to the PCC exercising any form of pre-publication intervention (even though such powers had been suggested by Calcutt), for he believed that any form of what he referred to as 'prior restraint' was incompatible with press freedom.
51. Nonetheless, by 1992 McGregor was already contemplating evolution, making clear in interviews that he wished to push for the PCC to have a greater role in promoting press freedom.<sup>23</sup>
52. Yet, in fact, the next step taken by the Commission, and by McGregor in particular, related to an attempt to protect an individual's privacy, namely that of Diana Princess of Wales. As an increasing volume of personal information about the Princess appeared in various national newspapers, McGregor made a public

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<sup>22</sup> PCC/D/1/6

<sup>23</sup> PCC/D/1/11

statement, in which he referred to the stories in question as: "...an odious example of journalists dabbling their fingers in the stuff of other people's souls."<sup>24</sup>

53. At this time Princess Diana had made no complaint to the PCC and this first attempt to deal with a press standards issue without the benefit of a complaint or investigation backfired when it emerged very swiftly that considerable information was being given to newspapers by Princess Diana herself. Newspaper executives, therefore, regarded the PCC's intervention as rash at best.
54. Just a few weeks later, in July 1992, the government announced that a review of press regulation would be carried out by (now Sir) David Calcutt, who had himself envisaged in 1990 that a review of the PCC would be necessary after eighteen months. Many, however, had anticipated that it would not take place and so in some quarters the news of a further review was greeted with surprise.
55. Calcutt's conclusion – published in January 1993 – was that the Commission had not sufficiently proved its effectiveness and should be replaced with a statutory tribunal, to be headed by a judge or senior lawyer appointed by the Lord Chancellor.
56. The PCC argued broadly that Calcutt's proposals were excessive and that his report had failed to take account of relevant evidence, but acknowledged that changes to the system were necessary. The Editors' Code of Practice Committee met to amend the Code, not least to include requirements against eavesdropping and phone-bugging (in light of several examples of stories based on transcripts of intimate, private telephone conversations which had been recorded by journalists and their agents) and new rules about how journalists were to identify themselves. The Board of the PCC was reconstituted so that it now consisted of a majority of public members (nine including the Chairman, set against seven editors), despite the misgivings of many in the newspaper industry. The separate Appointments Commission was also rebalanced, so that it now had a majority of four to one in favour of non-press members. Further changes included:
  - 56.1 The PCC given the power to ratify (or not) proposed changes to the Code by the Editors' Code of Practice Committee;
  - 56.2 increased funding for the Commission; and
  - 56.3 the development of a new helpline for members of public.<sup>25</sup>

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<sup>24</sup> PCC/D/1/12

57. While the PCC awaited the government's formal response to the Second Calcutt review, and to a similar exercise which had been carried out by the Heritage Department Select Committee, the final months of the year saw the implementation of further internal proposals for reform. Notably, the position of 'Privacy Commissioner' was established, with one public Commissioner (Professor Robert Pinker) tasked with the personal oversight of each and every complaint that touched on privacy matters. And on the question of sanctions, it was agreed that, in serious cases, the Commission could refer the terms of a critical adjudication to the offending newspaper's proprietor for possible disciplinary action against his or her editorial staff.
58. Lord McGregor stood down in November 1994 to be replaced in January of the next year by Lord Wakeham of Maldon.

#### **Lord Wakeham's Chairmanship 1995-2002**

59. In the Press Complaints Annual Review for 1995, Lord Wakeham noted of his new position that:

*"After fifteen years in government I came to the job well aware of the difficulty involved both in balancing the public's right to know with the right of individuals to privacy, and in ensuring accuracy in reporting. I also came to the job with an open mind about the PCC."<sup>25</sup>*

60. Wakeham sought to emphasise to the press that a public interest justification could not be used as a 'get of jail free card'. The complaint by Earl and Countess Spencer against the News of the World, which was upheld by the Commission in April 1995, gave notice that the PCC under its new Chairman would reject public interest defences without hesitation if they were not truly sustainable. This was the first case in which the terms of the Commission's adjudication were referred to a proprietor.
61. In the summer of 1995, the government finally responded to the recommendations of the Heritage Select Committee (and, by implication, those of Calcutt), concluding that it did not support calls for statutory regulation. It supported the ongoing development of the PCC, noting the importance of evolution over forthcoming years.
62. Lord Wakeham had already initiated discussions about possible reforms and several specific measures were confirmed during the remainder of 1995 and in 1996:

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<sup>25</sup> PCC/D/1/13-21

<sup>26</sup> PCC/D/1/22-23

- 62.1 the Director and Chairman of the PCC became non-voting observers of the Editors' Code of Practice Committee;
  - 62.2 the Editors' Code of Practice was revised to incorporate new rules on payments to criminals and payments to witnesses;
  - 62.3 a Complainants' Charter was introduced, which set out the standards of service complainants could expect from the PCC and performance targets in such matters as the time taken to respond to and process cases;
  - 62.4 the Commission's role in training young journalists was bolstered when the rules of accreditation for colleges or universities affiliated to the National Council for the Training of Journalists were amended to require that "all tutors must satisfy themselves that students have a working knowledge of the Code of Practice"<sup>27</sup>;
  - 62.5 literature about the Commission's procedures was published in minority languages.<sup>28</sup>
63. Less obvious changes were also being made. Lord Wakeham had sought to give the PCC a more obviously national role. Complaints about regional newspapers had formed a considerable proportion of the total since the PCC's inception and so Wakeham ensured he spent time meeting relevant figures from all over the UK, especially within the newspaper industry.
64. In line with his desire to ensure that a focus on complaints remained paramount, Lord Wakeham also aimed to promote the idea that PCC rulings were important as a means of setting journalistic standards. This was key to ensuring that the Commission dealt with wider standards issue in a way that was compatible with operating a complaints service.
65. Another way to achieve the same end was to set out guidance on a particular issue by using the principles established by particular rulings. In 1996 the Commission explained its approach to dealing with cases where privacy and public interest considerations came up against one another.<sup>29</sup> The production of guidance in this way became another crucial tool for the PCC.

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<sup>27</sup> PCC/D/1/24

<sup>28</sup> This is available on the Commission's website: [http://pcc.org.uk/complaint/other\\_lang.html](http://pcc.org.uk/complaint/other_lang.html)

<sup>29</sup> PCC/D/1/25

66. 1997 brought a new government which, like its predecessor, quickly indicated its support for the current system of press self-regulation. Yet the year was to prove a tumultuous one for the PCC. On 31 August, Diana Princess of Wales was killed in a car crash in Paris, while apparently being chased by paparazzi. This led many to agree with her brother, Lord Spencer, that the press had 'blood on its hands'<sup>30</sup>.
67. The response of the PCC was to call for a wide-ranging and rigorous review of the Editors' Code of Practice. The Editors' Code of Practice Committee accepted that there was a need to consider changes and a radical overhaul of the Code was confirmed by the end of November, despite the concerns of some in the newspaper industry that the action was excessive<sup>31</sup>.
68. The new Editors' Code of Practice took effect from 1 January 1998 and the Commission negotiated with the Society of Editors (the Guild of Editors as it was then) to print and distribute thousands of pocket-sized copies to journalists as well as to potential complainants. This awareness-raising campaign was considered crucial, and the fact that most journalists would now have a copy of the Code proved important in making sure that its use became part of day-to-day life for journalists. The Society of Editors still provides pocket-sized Codes to journalists today.
69. This was to become increasingly necessary because, in 1997, the PCC had announced the extension of its remit to cover newspaper and magazine websites, which although then in their infancy, were to have considerable significance in the years ahead. Since material could in theory – as it now is in practice – be published much more quickly (and with arguably fewer checks) than ever before, it was imperative that journalists were *au fait* with the Code's requirements.
70. The Code was also circulated to potential complainants as the Commission initiated a programme to increase levels of awareness among those groups who might be vulnerable to negative press coverage (including, at that time, mental health groups, prisoners and prison officers, travellers' and Gypsy organisations and carers' representative groups). This 'outreach' work was to become a central plank of the PCC's operations during the next decade, and continues to this day<sup>32</sup>.
71. With a new Code in place, the job of making rulings in key cases reverted to centre stage and the years 1998-1999 saw a number of significant rulings. Stand-alone

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<sup>30</sup> PCC/D/1/26

<sup>31</sup> PCC/D/1/27

<sup>32</sup> See paragraph 267

guidance was also issued on matters relating to the reporting of mental illness and the coverage of National Lottery winners. This emphasised once again the Commission's primary role and even Sir Louis Blom-Cooper – the former Chairman of the old Press Council and a long-term critic of the PCC – was moved to say:

*"Lord Wakeham, its second chairman, is right when he claims publicly that self-regulation of the press, via the Commission, works."<sup>33</sup>*

72. Another feature of the regulatory landscape after the death of Princess Diana was a desire better to understand how matters were handled elsewhere, especially in Europe. In 1999, the PCC invited to London representatives of all the other European Press Councils. It transpired that British arrangements were remarkably similar to those in many other countries around the continent. The meeting led to the establishment of the Alliance of Independent Press Councils of Europe (known as "AIPCE")<sup>34</sup>, which continues to meet annually to share experiences and ideas. This co-operative body remains of immense value to the PCC and its counterparts. It had its first formal meeting in Bonn in 2000, hosted by the German Press Council.
73. Ruling on complaints and producing guidance in key areas (such as financial journalism, in the wake of the City Slickers case involving the Daily Mirror, and – following consultation with the Association of Chief Officers of Probation – the practice of 'naming and shaming' sex offenders) continued to dominate the Commission's activities in 2000 and 2001.
74. A new website was also launched to improve accessibility and transparency. All new rulings were to be published online at the earliest opportunity and past adjudications since 1996 were also uploaded. Search engines allowed for vastly improved access to the growing corpus of PCC rulings.
75. In a further development, the Commission's advertisements, which had been regularly published by newspapers and magazines since the inception of the PCC, were rewritten.
76. Lord Wakeham retired as Chairman of the PCC at the beginning of 2002. It was agreed that an interim Acting Chairman would be appointed while a permanent successor was sought.

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<sup>33</sup>PCC/D/1/28

<sup>34</sup> The AIPCE website is [www.aipce.net](http://www.aipce.net)



77. The task of steering the PCC through this period fell to Professor Robert Pinker, who had been a member of the Commission since its establishment as well as its Privacy Commissioner. He was faced with the prospect of the first Parliamentary enquiry into press regulation since 1993 when the Culture, Media and Sport Select Committee announced that it was to investigate the work and role of the PCC.
78. The initiation of such an enquiry was generally welcomed since it provided an opportunity for the PCC to demonstrate the scope and effectiveness of its complaints-handling activities.<sup>35</sup>
79. One of the initiatives introduced by Professor Pinker had been a customer satisfaction survey to measure whether the PCC was living up to the expectations of complainants. The positive results from the first year's feedback were included as part of the Commission's submission to the Select Committee.
80. Another small but important development in 2002 was the establishment of a mechanism to enable complaints to be made online. Around 500 complaints in that year (about 20% of the total) arrived via email.<sup>36</sup>
81. Professor Pinker had already established a role in advising newer press councils around the world in the early stages of their development. This work, based on invitations from such bodies to assist, as well as the Commission's involvement in the Alliance of Independent Press Councils of Europe became a significant element of the PCC's outreach programme. A number of positive submissions by counterpart bodies abroad were made to the Select Committee inquiry.
82. Having overseen the Commission's submission of evidence, and having giving further oral evidence to members of the Select Committee, Professor Pinker's tenure as Acting Chairman came to an end. His replacement had been appointed in the summer of 2002 and took over the reins of office in March 2003.

### **Sir Christopher Meyer's Chairmanship 2003-2009**

83. On arrival at the Press Complaints Commission, Sir Christopher Meyer pronounced himself struck:

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<sup>35</sup> See paragraph 182

<sup>36</sup> PCC/D/1/29-32

*“by how completely at odds the Commission’s work is with how it is perceived in some quarters. Let it not be said, for instance, that the Commission is not a ‘proactive’ body: PCC staff are engaged in countless initiatives...aimed at educating people before things go wrong about how the Code of Practice can help them. And it is a myth that the Commission has to wait for a complaint before acting in all cases where there may be a breach of the Code. There are three areas of the Code – the so-called ‘victimless’ clauses related to financial journalism and payments to witnesses and criminals – where it has long been Commission policy to investigate a matter without the benefit of a complaint.”<sup>37</sup>*

84. The idea that perception and reality were some distance apart was a commonly held one among the Commission’s members and staff. Yet, the conclusions of the CMS Select Committee in 2003 were broadly supportive. “Overall,” it noted, “standards of press behaviour, the Code and the performance of the Commission have improved over the last decade”<sup>38</sup>.
85. The Select Committee had additionally made a number of proposals for reform. And the new Chairman himself had already made clear his view that some criticisms of the PCC were justified. At a speech to the Newspaper Society in May 2003, Sir Christopher noted that the Commission was part of a constantly changing landscape and that its natural state was turbulence amid the “*ceaseless dialectic between the public and private interests, between the right to free expression and the obligation to responsibility*”. The PCC’s response to this state of affairs was, he said, to be ever-ready to improve its services and anticipate future challenges: in short, by embracing “*not permanent revolution, but permanent evolution*”.<sup>39</sup>
86. The first year of Sir Christopher’s Chairmanship saw the implementation of an eight-point plan to kick-start this ‘permanent evolution’. It was to be the most considerable set of reforms to the Commission to date. The measures are summarised below:
- 86.1 the public membership was increased so that lay members numbered 10 against seven editors. The PCC thereby acquired the highest ratio of public to press members of any equivalent press council in Europe;
- 86.2 in future, public members would be appointed following an open advertisement process. The first vacancy attracted over 1,000 applications;
- 86.3 in order to ensure that standards of service were enhanced, a ‘Charter Compliance Panel’ was appointed. The three-person panel was given the authority to examine any case files of the Commission they wished to see

<sup>37</sup> PCC/D/1/33-34

<sup>38</sup> PCC/R2/1/315

<sup>39</sup> PCC/D/1/35-43

and to judge whether the 'Complainants' Charter' was being met. It could also review more general issues about PCC procedure and make recommendations to the Commission;

- 86.4 one member of the Panel, Sir Brian Cubbon, was also appointed to the role of 'Charter Commissioner'. He was to work entirely independently of the Commission and its staff and consider any concerns from complainants who believed that their case had not been handled properly. The Charter Commissioner had the power to request that the Commission revisit any complaint where procedures were found wanting;
- 86.5 following a recommendation by Sir Christopher, the Editors' Code of Practice Committee agreed that it would carry out a regular, annual 'audit' of the Code, examining proposals from any interested parties and making rule changes where appropriate. This institutionalised system encouraged the view that the Code was an organic document that had to be updated regularly in order to retain its relevance;
- 86.6 the Code Committee agreed to put together a users' guide to the Code (known as the Editors' Codebook), which would give guidance on how the PCC had interpreted the Code's various principles. Not only would this be of practical use to editors and journalists; it would also assist the public in understanding what type of journalistic activity was legitimate<sup>40</sup>;
- 86.7 a longstanding bugbear of the Commission was the failure of some newspapers to publish adverse adjudications in a suitable manner. New requirements in the updated Code were to include an obligation that any critical adjudication should be published with a headline reference to the PCC; and
- 86.8 to improve the profile of the Commission further, and to build on the work begun by Lord Wakeham, it was agreed that the PCC should hold public 'Open Days' (public meetings) around the United Kingdom.
- 86.9 These reforms constituted significant changes to the Commission's modus operandi and sought to deal with some of the more perennial criticisms of the self-regulatory regime: a lack of independence, a lack of public engagement at the local level and a lack of oversight. In many ways the

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<sup>40</sup> PCC/M/2/3-88

measures were effective, not least in proving that the PCC was (a) serious about improving itself; and (b) sufficiently flexible to initiate a major programme of changes swiftly and at no cost to its day-to-day work, which was not interrupted.

87. The work of the Commission's complaints department was bolstered by the improved structures. The establishment of a new 24-hour emergency helpline in 2003 was designed to help members of the public who found themselves at the centre of a media storm (there were 40 calls in 2003<sup>41</sup> and twice as many in 2004<sup>42</sup>). The initiation of Open Days and the creation of the Charter Commissioner role as well as the other measures, were welcomed internally as markers of an even deeper commitment to helping those who had cause to complain about press misdeeds.
88. There were further important developments during the course of 2003 and 2004, as follows:
- 88.1 new leaflets, under the generic title 'The Code and You', were produced to give simple and specific guidance about certain key elements of the Editors' Code of Practice (Harassment and Hospitals, for instance);
- 88.2 the Commission held several seminars for working journalists. Having previously focussed almost exclusively on journalism students, the PCC's training role took a new and crucial turn. The programme of update seminars steadily increased thereafter; and
- 88.3 the time limit for making a complaint was increased from one month to two. At a stroke, the number of complaints ruled inadmissible on the grounds of delay was cut drastically.
89. Perhaps the most striking development of all, however, was the agreement of broadcasters to liaise with the PCC in instances where 'media scrums' were developing and causing difficulties to those at their centre. A system was established whereby the Commission would, if asked to by a concerned member of the public – or their representative – be able to dispatch to editors and executives across the media a message asking journalists to desist in their activities. This so-called 'desist notice' system was to become one of the most vital aspects of the PCC's work by the end of the decade, and is at the heart of its work today. Set

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<sup>41</sup> PCC/D/1/44

<sup>42</sup> PCC/D/1/45

against the enormous concern expressed by McGregor in the Commission's early years about any form of 'prior restraint', the development of this pre-publication work was possibly the most remarkable area of the PCC's evolution.

90. These manifold changes to the Commission's structure, outreach activity and complaints procedures were broadly welcomed.

91. The years 2005-2008 witnessed considerable onward development. For example:

91.1 the Commission began to analyse the prominence with which corrections and apologies were published, and campaigned for improved standards in this area across the industry;

91.2 the remit of the PCC was formally extended to cover editorially-controlled audio-visual material on newspaper and magazine websites;

91.3 Commission staff began proactively to contact individuals who found themselves caught in a media storm, especially where that storm was not of their own making and where it involved some personal tragedy. In 2006 for instance, the Commission liaised with Suffolk police over the coverage of a series of murders of sex workers. Liaison with police forces across the country was to become paramount on this area of the PCC's proactive work;

91.4 following a high-profile story which focussed unwanted attention on service personnel and their families, the Commission established a working partnership with the Defence Media Operations Centre (DMOC). To this day, all participants in DMOC's media foundation course receive a briefing about the PCC. A senior member of the PCC's staff attends DMOC sessions on a regular basis;

91.5 the Editors' Code of Practice was amended to include a new sub-Clause about the reporting of suicide. Following a much-reported cluster of suicides in South Wales in 2008, the Commission responded by working with the Samaritans, Parliamentarians, journalists and the police to improve press coverage of this difficult subject.

91.6 for the first time in 2008, the PCC formally censured a newspaper for failing to publish a critical ruling with 'due prominence', thereby setting a new marker in proper reporting of the Commission's rulings.

- 91.7 a teachers' pack was produced to assist media studies teachers at GCSE and A-Level plan lessons about the PCC<sup>43</sup>; and
- 91.8 the Commission was consulted by the National Aids Trust and by the Samaritans in advance of the publication of their respective media guidelines<sup>44</sup>.
92. A Culture Media and Sport Select Committee investigation into self-regulation in 2007 had concluded that statutory controls were not required.
93. As Sir Christopher Meyer's Chairmanship came to an end, the Select Committee announced another, new enquiry into Press Standards, Privacy and Libel, largely in light of two or three high profile incidents of newspaper malpractice. In particular, the Committee sought to examine the background to the phone-hacking scandal that had emerged first in 2006, and to consider the libels committed by Express Newspapers against Kate and Gerry McCann.

#### **Baroness Buscombe's Chairmanship, 2009-2011**

94. Shortly after taking over as Chairman of the PCC in April 2009, Baroness Buscombe announced that the PCC's governance would be subject to an independent review. Speaking at the time, Baroness Buscombe explained that "*it is important periodically to reflect on the way an organisation works to make sure we have taken account of good practice elsewhere and wider public expectations*"<sup>45</sup>. This maintained the vision of previous Chairmen that the primary task for the PCC, aside from the practicalities of dealing with complaints, was continually to improve itself. However, for the first time, an independent group was to oversee the possibilities for reform.
95. The review<sup>46</sup> would examine and consider the arguments for change in five main areas: the PCC Board; the Appointments Commission; Transparency; Accountability; and the PCC's Articles of Association. Following a public call for submissions towards the end the year, the Review Panel – Chaired by Vivien Hepworth and consisting also of Stephen Hadrill, Elizabeth Vallance and Eddie Young – examined a range of suggestions by interested parties. It also undertook a series of evidence sessions with various individuals and organisations.

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<sup>43</sup> PCC/I/10/220-254

<sup>44</sup> PCC/I/11/302-422

<sup>45</sup> PCC/B/1/48-49

<sup>46</sup> PCC/I/11/382;402

96. In addition, the Review Panel was able to take account of the outcome of the Select Committee's 2009 inquiry, which had made a number of its own recommendations for the PCC's future, while reaffirming its commitment to self-regulation of the press.
97. As the Governance Review was being conducted, the Commission announced that its remit was being extended to cover any online-only publications which wished to subscribe to the system of self-regulation.<sup>47</sup> This was an important development and it demonstrated the Commission's – and the newspaper industry's – desire to embrace technological change and to improve accountability.
98. The Review Panel published its report in July 2010 and its proposals were welcomed by Baroness Buscombe:

*"I am very grateful for the thorough, innovative and rigorous review that Vivien Hepworth and her team have undertaken. While the Commission needs to reflect carefully on the Panel's recommendations, I want to say right away that we are as an organisation committed to moving the PCC forward. This report now provides us with the impetus to do so."<sup>48</sup>*

99. The Panel had made 74 discrete recommendations for improvements to the PCC and to the system of press self-regulation. Responding formally to them in December 2010, following full discussion by the Commission members, staff and other relevant bodies, the PCC indicated that it would accept the vast majority of the proposals. The key developments were:
- 99.1 a proper statement of aims and duties was to be published by the PCC in order to make its services more transparent;
  - 99.2 an enhanced register of interests would ensure that members of the public knew of any conflicts that might impact on the ability of Commissioners to participate in discussion of certain complaints;
  - 99.3 a public Commissioner would be appointed as Deputy Chairman, to further bolster the role of the public Commission members in the work of the PCC;
  - 99.4 new performance objectives would be set down to measure the success of the Commission's work;
  - 99.5 a new website would be launched to improve accessibility to complaint statistics, case law and complaint-making facilities;

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<sup>47</sup> PCC/B/2/343

<sup>48</sup> PCC/B/1/234

- 99.6 Commissioners would from now on be updated weekly on the day-to-day activities of the PCC's staff;
- 99.7 the PCC would establish dedicated working groups to consider key questions that arose from public concern or from complaint trends. The first such working group, to look into matters connected to online issues, had been set up earlier in the year.
100. The Commission had already taken several steps towards reform, including the publication of minutes of its meetings.
101. The system of appointments to the Commission was overhauled, so that public Commissioners would play a greater role. The roles of the Charter Commissioner (from then to be known as the Independent Reviewer) and the Charter Compliance Panel (from then to be known as the Review Panel) were revised. The Governance Review also made recommendations to the way that the Editors' Code of Practice Committee and PressBoF should operate.
102. The reforms overseen in the wake of the independent Governance Review at least matched, in their scope and impact, those set in place under Sir Christopher Meyer's 'permanent evolution' plan of 2003.

#### **A Lengthy Process of Reform – the PCC 1991-2011**

103. The Press Complaints Commission, as established in 1991, was a response to a failed Press Council and a failing press. Its job was to handle complaints from the public when requirements set out in an agreed Editors' Code of Practice appeared not to have been met. It would settle disputes where possible and make formal rulings when mediation failed.
104. The PCC today still does those things. But it has shifted in the following areas:
- 104.1 it has moved from a body being dominated by the press to one where public members are the clear majority;
- 104.2 it involves itself in proactive efforts to establish where problems exist and seeks to address them;
- 104.3 notwithstanding perceived concerns about prior restraint, it has a dynamic pre-publication remit;



- 104.4 it trains journalists, as well as journalism students (over 100 titles have received the benefit of PCC update sessions since the beginning of 2010 alone);
- 104.5 the Code it oversees has kept pace with technological developments and, generally, the public mood; and
- 104.6 the PCC now has a transparent and accountable Board, appointed following a public procedure.
105. In May 2011, the Prime Minister stated in a radio interview: *"I sense that there's still more to be done to recognise that actually the Press Complaints Commission has come on a lot in recent years, and we should be working with that organisation to make sure that people get the protection that they need.... while still having a free and vibrant press."*<sup>49</sup>
106. The PCC, as stated above, recognises that there is now a need – and opportunity – for further improvement and reform. This is something that will be briefly discussed in Part Four, and will form the basis for a later submission by the PCC to the Inquiry.

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<sup>49</sup> Speaking on BBC Radio 4's Today programme, 3 May 2011.

**THE PCC IN 2011**

**The Structure of the Commission**

107. The PCC has 17 members. There are 10 public or "lay" members, who are unconnected to the newspaper and magazine industry, and seven editorial members from the industry itself (representing the national and regional press, and magazines). The current Commissioners are:

**Baroness Buscombe, Chairman**

**John Home Robertson** (public member)  
Former MP and MSP

**Lord Grade of Yarmouth CBE** (public member)  
Former BBC Chairman, Executive Chairman of ITV plc and Chief Executive of Channel 4

**Anthony Longden** (editorial member)  
Managing Editor, North & East London Newsquest

**Ian MacGregor** (editorial member)  
Editor, The Sunday Telegraph

**John McLellan** (editorial member)  
Editor, The Scotsman

**Ian Nichol** (Deputy Chairman; public member)  
Accountant  
Member of Criminal Cases Review Commission

**Lindsay Nicholson** (editorial member)  
Editorial Director, Good Housekeeping

**Simon Reynolds** (editorial member)  
Editorial Director  
Lancashire Evening Post & Wigan Evening Post

**Esther Robertson** (public member)  
Chair, Sacro

**Jeremy Roberts QC** (public member)  
Retired Permanent Judge at the Central Criminal Court

**Simon Sapper** (public member)  
Assistant Secretary, Communication Workers' Union

**Julie Spence OBE QPM** (public member)  
Former Chief Constable of Cambridgeshire Constabulary

**Michael Smyth CBE** (public member)  
Retired Senior Partner, Clifford Chance  
Chairman, Public Concern at Work

**Professor Ian Walden** (public member)

Professor of Information and Communications Law, Queen Mary, University of London

**Tina Weaver** (editorial member)

Editor, Sunday Mirror

**Peter Wright** (editorial member)

Editor, The Mail on Sunday

108. John Home Robertson completes his term as Commissioner in October 2011. He will be replaced by Neil Watts, the former Deputy Chairman of the ASA.
109. The work of the PCC can, in broad terms, be summarised as follows:
- 109.1 investigating complaints, primarily from concerned individuals, that relate to the terms of the Editors' Code of Practice;
  - 109.2 dealing with pre-publication concerns of individuals and advocating on their behalf with news organisations, with a view to preventing the publication of non-compliant material;
  - 109.3 preventing harassment by journalists;
  - 109.4 proactively contacting people who need assistance;
  - 109.5 giving guidance on ethical issues to the industry; and
  - 109.6 raising industry standards.

### **Chairman**

110. The Chairman of the PCC is appointed by PressBoF<sup>50</sup>. The post has recently been advertised with the recruitment process – which is intended to track that for public appointments – now under way<sup>51</sup>. As recommended by the independent Governance Review, there will be an independent assessor involved, and there will be consultation with public members of the PCC.
111. The role of the Chairman covers the following areas:
- 111.1 overall responsibility for the working of the PCC, and its staff;

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<sup>50</sup> See paragraph 357

<sup>51</sup> PCC/B/1/305

- 111.2 acting as public representative and figurehead for the Commission;
- 111.3 liaison with connected parties to the system: politicians, the legal profession, interest groups, and the newspaper and magazine industry itself;
- 111.4 chairing Commission meetings;
- 111.5 chairing the Nominations Committee<sup>52</sup> of the Commission; and
- 111.6 attending Audit Committee<sup>53</sup> meetings.

### Deputy Chairman

112. This role was created following the independent Governance Review<sup>54</sup>, which said:

*"This role would underline the strength of the lay majority; it would mean there was someone available to take the chair in the absence of the Chairman; it would provide a useful sounding board for the Chairman, but should also be used as a conduit for Commissioners to pass back constructive feedback to the Chairman. We further recommend that whoever holds this post would normally be expected to take a specific interest in the audit function of the Board".*

113. The current Deputy Chairman is Ian Nichol. His role lapses when the current Chairman departs.
114. The Deputy Chairman is the Chairman of the Audit Committee.

### Public Members

115. Public members are appointed following a process of open advertisement, and a process recommended by the independent Governance Review<sup>55</sup>. The advertisement in 2011 read:

*"Applications are invited for three new public members of the PCC, the body that deals with complaints about the editorial content of UK newspapers and magazines and their websites (including audio-visual material). The appointment - which is made by the full Commission, following recommendations by the Nominations Committee of the PCC, working in conjunction with an Independent Adviser, is for an initial term of three years. Membership - which comes with fees of £11.5k per annum, plus reasonable expenses - involves nine board meetings in central London each year (usually on a Wednesday afternoon), and occasional adhoc Committee work. In addition, Commission members are sent papers for consideration each week.*

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<sup>52</sup> See paragraph 146

<sup>53</sup> See paragraph 142

<sup>54</sup> PCC/F/1/12

<sup>55</sup> PCC/F/1/13

*Applicants will need to demonstrate a number of criteria, including: a record of achievement in their own walk of life; an understanding of the principles of self-regulation, and its legal and political context; an understanding of the problems faced by those caught up in the media spotlight, in particular vulnerable groups of people, and a commitment to the public service of helping them. A full list of criteria is available on the PCC website.*

*Because of the importance of the Commission's independence, applicants should not have been employed in the newspaper and magazine publishing industry – at management or editorial level – for the last ten years.”*

116. The full list of criteria<sup>56</sup> was as follows:
- 116.1 a record of achievement in their own walk of life;
  - 116.2 an understanding of the principles of self-regulation, and its legal and political context; and an understanding of, and commitment to, the role of the PCC in maintaining press standards;
  - 116.3 an understanding of the problems faced by those caught up in the media spotlight, in particular vulnerable groups of people, and a commitment to the public service of helping them;
  - 116.4 an understanding of the impact of technology (especially online) on the dissemination of information;
  - 116.5 an interest in, and appreciation of, the dynamics of a free press and freedom of expression; and the recognition of the need to balance that with other rights;
  - 116.6 an ability to analyse and digest a large amount of written material, and argue cogently about the merits of individual cases;
  - 116.7 an ability to work collegiately, balancing independence of thought with a willingness to assume collective responsibility; and
  - 116.8 the capability to command the respect of the newspaper and magazine industry.
117. The appointment is overseen by a Nominations Committee of three lay members of the PCC together with an external independent assessor. The Chairman of PressBoF is consulted at the longlist stage, and the final appointment is made by the Commission as a whole.

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<sup>56</sup> PCC/G/3/10-12

118. Public members are appointed for a period of three years. The term can be renewed once at the recommendation of the Nominations Committee.
119. Upon appointment, public members receive a full briefing pack<sup>57</sup>, with information about the PCC and its work. They also visit a newspaper to see the practicalities of the editorial and production process.

### Editorial Members

120. Editors are in the minority on the Commission. They provide necessary industry expertise and the weight of peer judgement, both of which benefit the consideration of complaints. As already noted, the ratio of editors to public members is the lowest of any comparable press council in Europe<sup>58</sup>.
121. Editorial members are appointed by their trade bodies. They now serve the same terms as public members (a three-year period, with the option of up to one further three-year extension).
122. All members sign a register of interests<sup>59</sup> and declare conflicts. Editors are bound by the following principles in terms of the complaints they can consider:
- 122.1 they do not consider complaints relating to titles over which they exercise editorial control;
- 122.2 they do not consider complaints relating to titles with which they have close links (e.g. sister titles); and
- 122.3 if they report to an Editor-in-Chief, they will not consider complaints against any titles under that executive's control.
123. If an editorial Commissioner has a conflict in a particular case, he or she is given no papers about it and leaves the room when the complaint is discussed by the Commission.
124. A full list of titles in regard to which editorial members do not consider complaints is published on the PCC's website.<sup>60</sup>

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<sup>57</sup> PCC/G/4/13-53

<sup>58</sup> See Part 3

<sup>59</sup> PCC/A2/3/902-906

<sup>60</sup> PCC/A2/3/902-906

## Secretariat

125. The Commission is supported by a professional staff of sixteen people (two of whom work part-time). Staff are appraised every six months by the Director. A list of staff follows, organised by department, together with a description of their function.

### Director's Office

Stephen Abell  
Director

Kim Baxter  
PA to the Chairman and Director

The Director<sup>61</sup> is supported by a PA, who also serves as PA to the Chairman. She also is responsible for overall office management and invoicing.

### Complaints Department

Scott Langham  
Head of Complaints

Hannah Beveridge  
Complaints Officer

Elizabeth Cobbe  
Complaints Officer

Charlotte Dewar  
Complaints Officer

Rebecca Hales  
Complaints Officer

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<sup>61</sup> The role of the Director is described in paragraph 10

Ben Milloy  
Complaints Officer

Amber Mun  
Complaints Officer

126. The Head of Complaints is responsible for the Complaints Department. His role is to oversee the assessment of all complaints, their investigation and their submission to the Commission for consideration. He will communicate with the Director about the progress of complaints, and important issues arising from them.
127. The complaints officers are responsible for investigating complaints, and preparing reports and draft decisions for the Commission to consider. A complaints officer is generally responsible for up to 60 cases at any time.
128. Complaints officers also share responsibility on a rota basis for the 24-hour emergency hotline and, when on call, are expected to be available at all times to:
  - 128.1 act to prevent media harassment by print or broadcast journalists;
  - 128.2 act on behalf of a complainant, concerned about an article that is yet to be published;
  - 128.3 give immediate advice to complainants, and their representatives, about complaints matters. This may include taking forward a complaint immediately; and
  - 128.4 give advice to editors about ethical issues.
129. Two complaints officers have professional legal training. Others have joined from other industries such as television and publishing.
130. The Director and the members of the Complaints Department meet once a week to discuss complaints. Complaints are ordered chronologically<sup>62</sup>, and those that have been active for longer than two months are discussed in detail. Any difficult case is also discussed in detail.

#### Communication and Information

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<sup>62</sup> PCC/H1/1/1-13



Jonathan Collett  
Director of Communications

William Gore  
Public Affairs Director

Tonia Milton  
Information and Events Manager

Catherine Speller  
Communications and Research Manager

131. This department is responsible for external and public relations for the PCC. Its roles include:
- 131.1 preparing press releases<sup>63</sup> to accompany decisions of the Commission and other announcements;
  - 131.2 preparing an annual PR and Communications Plan;
  - 131.3 disseminating information about PCC work as widely as possible;
  - 131.4 preparing and editing formal publications of the PCC, such as Annual Reports;
    - 131.4.1 providing internal communications to members of the Commission, in the form of a weekly update email<sup>64</sup>. This covers the following areas: recent notable complaints; examples of proactive work; examples of pre-publication intervention; interviews or articles published by PCC staff; and issues of ethical concern that have arisen;
  - 131.5 monitoring media and social media. This includes awareness of arising situations where PCC intervention might be appropriate;
  - 131.6 managing the PCC website, and overseeing the development of a new website;

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<sup>63</sup> PCC/B/1

<sup>64</sup> PCC//1/1-42

- 131.7 managing the PCC presence on Twitter;
- 131.8 overseeing the surveying of complainants;
- 131.9 overseeing public polling and focus groups<sup>65</sup>;
- 131.10 establishing and maintaining relationships with key stakeholders such as charities, police, health services and MPs;
- 131.11 organising PCC events, such as Open Days<sup>66</sup>;
- 131.12 responding to press inquiries via a 24-hour contact number;
- 131.13 responding to public enquiries;
- 131.14 researching policy issues related to the PCC;
- 131.15 establishing and maintaining relationships with other press councils<sup>67</sup>; and
- 131.16 overseeing and organising the PCC's training and information programme for working journalists, student journalists, and schools.<sup>68</sup>

#### Administration

Lauren Hay  
Complaints Assistant

Mel Sahin  
Receptionist/Complaints Assistant

Simon Yip  
Administrator

132. This department provides administrative support to the foregoing work of the PCC, and maintaining its archive. It also handles initial helpline calls, and gives advice to members of the public about how to make complaints.

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<sup>65</sup> See paragraph 346

<sup>66</sup> PCC/1/2/43-61

<sup>67</sup> See Part 3

<sup>68</sup> See paragraph 264

133. Further information about the work of the PCC is available on its website: [www.pcc.org.uk](http://www.pcc.org.uk).<sup>69</sup>
134. In addition to an introduction and explanation of what the Press Complaints Commission is and how it works, the existing PCC website provides three key areas of information:
- 134.1 a searchable public record of PCC rulings;
  - 134.2 information about the complaints process (including the option to make a complaint via an online form); and
  - 134.3 information about our communications, events, outreach work and training.
135. Cases are added to the site on a daily basis and are featured on the homepage in the 'latest news' section.
136. They can be searched by:
- 136.1 publication;
  - 136.2 clause(s) of the Code of Practice;
  - 136.3 PCC decision (i.e. whether it was resolved or adjudicated);
  - 136.4 whether or not it was a complaint about editorial audio-visual material; or
  - 136.5 keyword (as appropriate).
137. The PCC has been working on a major project to completely overhaul the website which will categorise complaints by the date which they were concluded by the PCC. More information about this is given below.
138. Approximately two years ago, the PCC began publishing monthly complaints summaries in order to provide as much information as we can about all complaints handled by the Commission. These provide a short summary of *every* complaint concluded by the PCC in a given month, including those that are found not to raise a breach of the Code, those that are outside the Commission's remit, and those that are not pursued by the complainant.<sup>70</sup>

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<sup>69</sup> PCC/I/3/62-76

<sup>70</sup> PCC/H2/1/363-839

139. The PCC has commissioned a new website in order to improve the online information it provides to the public. The new website will encompass a range of new features, including:
- 139.1 an entirely revised complaints form, which will streamline the complaints process for the public, and better capture the information needed by the PCC to process a complaint;
  - 139.2 a fully integrated and searchable online database, which will allow interested parties to search PCC decisions since 1996;
  - 139.3 the prominent display on the homepage (and throughout the site) of information about the PCC's 24-hour anti-harassment service. Given the importance of this service – and the number of times it is used by the public – it is crucial that this is easy to find; and
  - 139.4 a dedicated section on outreach and training work.
140. The PCC's twitter account is <http://www.twitter.com/ukpcc>.

#### **Sub-Committees**

141. The PCC has the discretion to form Sub-Committees of its members in order to scrutinise particular areas of business. I list the Committees, established to date, with a brief description below:

#### Audit Committee

142. This is a Committee solely of public members, meeting between four to six times a year. It is chaired by the Deputy Chairman of the PCC, and has two other members:

Ian Nichol, Chairman  
Esther Robertson  
Jeremy Roberts QC.

143. The Director and Chairman attend meetings. The remit of the Committee is as follows:

- 143.1 *financial oversight*. It examines the budget and expenditure of the PCC on a six monthly basis, and meets with external auditors. It examines annual accounts, which are then approved by the Commission at the AGM<sup>71</sup>;
- 143.2 *risk assessment*. It examines risk to the organisation and reports to the Commission;
- 143.3 *performance*. It will have oversight of a newly-constructed Review Panel<sup>72</sup>. It will liaise with the panel in conducting audits of complaints files, and examining issues of concern. It will also review results of customer surveys.
144. The Chairman of the Audit Committee receives, on a monthly basis, a copy of the PCC's accounts and expenditure.
145. The Audit Committee<sup>73</sup> has replaced the Business Sub-Committee of the PCC, following a recommendation from the Governance Review<sup>74</sup>.

#### Nominations Committee

146. The Nominations Committee was created following a recommendation of the Governance Review<sup>75</sup>. The Governance Review stated that "*the process of appointment for lay members of the PCC has, in the past, not been sufficiently clear, and has not been previously codified to a proper extent*". Previously, the Commission relied on an external committee, the Appointments Commission, comprising the Chairman of the PCC, the Chairman of PressBoF, and two independent members<sup>76</sup>.
147. The Governance Review said that "*the current system relying on the Appointments Commission is not sustainable. The effect of it has been to disconnect the system of appointments from the needs of the Commission itself. This has meant that due diligence about the merits of each appointment has been harder to achieve*".

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<sup>71</sup> PCC/L/2/201-218

<sup>72</sup> See paragraph 173

<sup>73</sup> PCC/L/1/198-199

<sup>74</sup> PCC/F/1/9

<sup>75</sup> PCC/F/1/14

<sup>76</sup> The final Appointments Commission, in 2009, comprised: Baroness Buscombe, Chairman of the PCC; Lord Black of Brentwood, Chairman of PressBoF; Lord Phillips of Sudbury; and Dr Elizabeth Vallance.

148. In its response to the Governance Review, the PCC said it:

*“agrees to institute a Nominations Committee to handle appointments. It believes the appointment of lay Commissioners should primarily be a matter for the lay Commission, with some consultation with PressBof. Symmetrically, the appointment of editorial Commissioners should be a matter for the industry, with some consultation with the Nominations Committee.*

*The Nominations Committee will consist of three lay members, including the Chairman of the Commission (who would be the Chairman of the Nominations Committee). An independent assessor will be appointed from outside the Commission to ensure the selection process of lay members is robust and fair. The Chairman of PressBof will not be a member of the Committee, but will be consulted at the longlist stage.*

*At the end of the process, the Committee will make a nomination for ratification by the full Commission.”*

149. The new Nominations Committee is a committee solely of public members of the PCC.

150. Its terms of reference were agreed by the Commission at a meeting in December 2010<sup>77</sup>, whereby it agreed:

150.1 to institute a Nominations Committee to oversee appointments and reappointments of lay Commissioners, and to liaise with PressBoF over the appointments and reappointments of editorial Commissioners.;

150.2 the Nominations Committee consists of three lay members, including the Chairman of the Commission (who will be the Chairman of the Nominations Committee). An independent assessor will be appointed from outside the Commission to ensure the selection process of lay members is robust and fair in accordance with sound diversity and equal opportunities principles (as agreed by the Commission from time to time). The Chairman of PressBoF will not be a member of the Committee, but will be consulted at the appropriate stages;

150.3 at the end of the process, the Committee will make a nomination for approval by the full Commission;

150.4 for the reappointment of lay members, the Nominations Committee will meet to discuss each reappointment. The Nominations Committee will take fully into account evaluation by the Chairman of the PCC and the needs of the board. Reappointment will be ratified by the full Commission;

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<sup>77</sup> PCC/G/1/1-6

150.5 for the appointment of editorial members, the Nominations Committee will meet with the Chairman of PressBoF to discuss the needs of the Commission. This would cover the Governance Review's recommendation that "*efforts should be made to ensure that the regions of the UK are properly and widely represented. There should also be wide representation of publishers and types of publication*". The Chairman of PressBoF would then liaise with the trade bodies, and agree the representatives. The Committee would then be informed of the proposed names.

150.6 the reappointment of editorial members will be a matter for individual editors and PressBoF. The Nominations Committee will be consulted in this process.

150.7 these terms of reference will be reviewed every three years.

151. The Nominations Committee is chaired by the Chairman of the PCC, and has two other members:

151.1 Ian Nichol, Deputy Chairman;

151.2 Professor Ian Walden.

152. Its primary purpose is to make recommendations for the appointment and reappointment of public Commissioners, and to liaise with PressBoF (the funding body for the system) over the appointments and reappointments of editorial Commissioners.

153. It is responsible for appointing the Independent Reviewer and the Review Panel<sup>78</sup>.

154. The Nominations Committee was responsible for the appointment of the three most recent public Commissioners (Lord Grade of Yarmouth CBE, Jeremy Roberts QC and Michael Smyth CBE). Following open advertisement, nearly 3000 people applied for the roles, including senior lawyers, former members of the judiciary, members of the House of Lords and senior executives from the business world.

#### Online Working Group

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<sup>78</sup> See paragraph 164

155. This committee was established in April 2010, to lead the Commission's thinking on online issues. It was created by a formal meeting of the Commission on 21 April 2010, following a paper circulated to Commission members<sup>79</sup>. This contained the following introduction:

*"The PCC has been active in considering complaints about online versions of newspapers and magazines now for several years. In 2007, the PCC's remit extended to audio-visual content of newspaper and magazine websites. At the beginning of 2010, PressBof announced that the PCC would cover participating online 'newspaper-like' sites which do not have a hard copy version.*

*It shows no great insight to point out that the online world for magazines and newspapers is increasingly important, and complicated. It is absolutely necessary for the PCC to be considering the regulatory issues that arise from this.*

*Of course, this is something that is ongoing within the PCC, and has been for some time. However, it would be helpful to structure the thinking a little more, and to develop ideas and strategy for the future.*

*The office proposes that a group of Commissioners be set up to work with the staff on discussing this area, with a view to informing PCC policy. Such a group should include both editorial and lay members, and the Director. It would be run by Catherine Speller (who has been managing the Governance Review process). For ease of operation, it should perhaps number no more than 5 or 6. External individuals with particular experience may be asked to contribute thoughts."*

156. The Online Working Group comprises four Commission members (two editorial, and two public), together with the Director of the PCC:

156.1 Simon Sapper, public member;

156.2 Professor Ian Walden, public member;

156.3 Ian MacGregor, editorial member; and

156.4 Anthony Longden, editorial member.

157. Its work has led to a proposed expansion of the PCC's remit to cover certain journalistic Twitter accounts. This is currently the subject of industry consultation. The conclusions of the group have been made clear to the industry<sup>80</sup>, and are as follows:

157.1 newspapers and magazines should be encouraged to develop clear policies as to their relationship to specific social networking accounts. They should be able to state for which accounts they take responsibility and for which

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<sup>79</sup> PCC/J3/1/831-832

<sup>80</sup> PCC/L/3/223-224



they do not. They should take steps to be clear about those for which they take responsibility.

157.2 social networking accounts which are marked out (in their titles) with the name of a publication, *and whose content is editorially controlled*, should generally be considered to fall within the remit of the PCC.

157.3 one model for self-regulation might be the use of appropriate and timely take-down of material under complaint. Editors could be given the chance to respond to a concern about Twitter content that has been marked as under their control. If they do not take action, they could be held liable by the PCC under the terms of the Code.

157.4 personal accounts of journalists, unless marked as under the control of the publication, would continue to fall outside the remit of the PCC, even if the content relates to journalism and the journalist is identified as such in the "bio".

157.5 there will be a distinction between overall corporate policy (journalists being accountable to their employer for their public behaviour), and a policy of adherence to the Code (editors being accountable to the PCC for journalistic output on agreed accounts).

158. The Group has also contributed to published guidance over online prominence<sup>81</sup>. The guidance covers a number of practical points that editors should take into account when considering the prominence of online corrections and apologies. Some of the points covered by the note include giving consideration to linking back to the original article, the length of time that the correction or apology should remain online, tagging, and the amendment of URLs if necessary. The note also gives some more specific guidance about the publication of upheld adjudications issued by the PCC.

#### Phone Hacking Review Committee

159. At a meeting in January 2011, the Commission "*undertook to institute a working group, with a lay majority, to consider the new information that becomes available, and make recommendations to the Commission (which will be published)*". The purpose of this was to draw together lessons learned as a result of the outcomes of

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<sup>81</sup> PCC/K/1/1-2

the relevant police inquiries and ongoing legal actions. It was also to consider the outcome of the current internal inquiry of the News of the World. The Committee was to review the PCC's own previous actions in regard to this matter.

160. The Phone Hacking Review Committee comprises the then two most recent lay Commissioners (who joined after December 2009), both of whom are experts in relevant legal fields, and one editorial member:

160.1 Professor Ian Walden, public member;

160.2 Julie Spence, public member; and

160.3 John McLellan, editorial member.

161. The Phone Hacking Review Committee has led the PCC's recent response to the phone hacking scandal. It has kept a full log of its work<sup>82</sup>, and is discussed more fully in Part Two.

#### Reform Committee

162. This Committee was established at the beginning of July 2011<sup>83</sup>. It has a majority of public members (four, to two editorial):

162.1 Michael Smyth, Chairman, public member;

162.2 Simon Sapper, public member;

162.3 Jeremy Roberts QC, public member;

162.4 Professor Ian Walden, public member;

162.5 Peter Wright, editorial member; and

162.6 Anthony Longden, editorial member.

163. Its task is to propose reform for the PCC, and the current system of self-regulation.

#### **Independent Reviewer**

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<sup>82</sup> See Part Two, paragraph 518

<sup>83</sup> PCC/J2/2/893

164. The PCC originally established the role of Charter Commissioner in 2003, as part of its process of 'permanent evolution' initiated by Sir Christopher Meyer. The proposal was explained in the 2003 Annual Report<sup>84</sup>:

**“Proposal:** To provide disgruntled complainants with the opportunity to have the Commission's handling of their complaint reviewed by an independent “Charter Commissioner” who would operate a sort of internal system of judicial review.”

165. The status of this role is set out in the Articles of Association<sup>85</sup>:

*“The Charter Commissioner shall consider complaints (other than complaints relating to the substance of an adjudication) from persons who have received a decision from the Commission and who are dissatisfied with the way in which the Commission has handled their matter.”*

166. The first Charter Commissioner was Sir Brian Cubbon, a former lay Commissioner (1995-2002) and the former Permanent Secretary to the Home Office. He was replaced in May 2009 by Sir Michael Willcocks.

167. In 2011, the title was changed to Independent Reviewer, following the Governance Review, as it would “*have clearer meaning to the public*”. The current incumbent, Sir Michael Willcocks, is the former Gentleman Usher of the Black Rod, Secretary to the Lord Great Chamberlain and Serjeant at Arms of the House of Lords (2001-2009).

168. The Independent Reviewer received 64 complaints in 2010, which represented almost 2% of overall cases that could be referred to him. There are several possible outcomes of complaint to the Independent Reviewer<sup>86</sup>:

168.1 a finding of a failure in the handling of a complaint such that the Commission should be asked to reconsider its decision;

168.2 a finding of a failure in the handling of a complaint, such that – while the decision is unaffected – he requires the PCC to apologise and change its practices;

168.3 a finding that the Commission should provide a further explanation of its decision;

168.4 a request for further information or action from the publication, which may lead to the complaint being amicably settled;

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<sup>84</sup> PCC/E/1/11

<sup>85</sup> PCC/A2/661-674

<sup>86</sup> PCC/C/4/43-187

168.5 a response containing a further explanation about the PCC;

168.6 a finding that the handling of the complaint has been sound.

169. The Charter Commissioner / Independent Reviewer publishes an Annual Report<sup>87</sup>.

#### Review Panel

170. This group is to replace the previous Charter Compliance Panel ("the CCP"), and is in the process of being formed. The work of the CCP was suspended pending the Governance Review, which in the event recommended that its function be retained. The Governance Review stated:

*"The Governance Review recommends that the Charter Compliance Panel should be renamed the Review Panel. It will report to the Audit Committee. It will consist of the Independent Reviewer and no more than two other external individuals. Its role will be:*

- *to conduct audits of randomly-selected complaints files to monitor performance;*
- *to consider complaints files in specific regard to issues of interest (such as the prominence of apologies, concerns about headlines, cases involving children). The scope of such reviews should be decided by the panel, or follow the suggestion of the Audit Committee, and should link where appropriate to any business of the PCC's working groups.*<sup>88</sup>

171. The role of the Charter Compliance Panel was originally established in 2003, as part of the Meyer proposals for evolution:

*"Proposal: To improve accountability by establishing a panel of people to scrutinise all aspects of the Commission's handling of complaints, and to report once a year to the board on how customer service might be improved.*

*The panel has the authority to review as many files as it wishes, at random, before publishing its recommendations in a report.*<sup>89</sup>

172. During the auditing process, the Charter Compliance Panel exchanged formal correspondence with the Chairman of the PCC, and published an Annual Report<sup>90</sup>.

173. The new Review Panel will be chaired by the Independent Reviewer, and will have up to two other members (only one of whom may be connected to the newspaper and magazine industry).

174. Its terms of reference are below:

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<sup>87</sup> PCC/C/1/1-21

<sup>88</sup> PCC/F/1/9

<sup>89</sup> PCC/E/1/11

<sup>90</sup> PCC/C/2/22-40

*"The Press Complaints Commission has agreed to establish a Review Panel, whose function it is to examine the handling of complaints. The Panel will oversee an audit of complaints files at least once per calendar year. The terms of each audit will be agreed in advance with the Audit Committee of the Commission.*

*The number of members of the Review Panel shall not be less than two, provided that at all times the number of persons appointed shall not contain a majority of persons who are or have been connected with the business of publishing papers, periodicals or magazines.*

*Panel Members will be appointed by the Nominations Committee of the Commission and will serve on the panel for a three-year period. An extension of service for a further three-year period is at the discretion of the Nominations Committee.*

*It is envisaged that the Chairman of the Review Panel will be the Independent Reviewer, although this can be varied at the discretion of the Nominations Committee.*

*The Review Panel shall report to the Audit Committee in respect of its findings and shall make such recommendations as it sees fit. A report will be circulated to the Commission.*

*The Commission is not obliged to act upon any recommendations made by the Review Panel but, in the event that the Commission – either as a whole, or via its Audit Committee – decides not to act upon any recommendation so made, it shall provide the Review Panel with its reasons for this."*

### **Work of the Commission**

175. The PCC publishes on its website the following summary<sup>91</sup> of the areas in which it acts:
- 175.1 negotiating remedial action and amicable settlements for complainants;
  - 175.2 issuing rulings on complaints;
  - 175.3 using published rulings as a means of guiding newsroom practice across the industry;
  - 175.4 publicly censuring editors for breaches of the Code;
  - 175.5 passing on pre-publication concerns to editors to prevent the Code being breached;
  - 175.6 passing on requests to editors that their journalists cease contacting individuals, and so prevent media harassment;
  - 175.7 issuing formal guidance, based on its interpretation of the Code, to the industry on important issues;

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<sup>91</sup> PCC/1/4/77-78

175.8 instigating its own investigations under the Code in the public interest where appropriate;

175.9 conducting training seminars for working journalists and editors;

175.10 and liaising with other press councils internationally.

176. The work of the PCC can, therefore, usefully be categorised under the following headings: Complaints; Pre-publication Intervention; Editorial Guidance; Training; International Liaison; and Outreach.

The PCC's business is overseen by the Commission, either by correspondence or (for all significant policy decisions) at regular meetings.

### **Commission Meetings**

177. The Commission meets approximately every six weeks (eight times per year). At each meeting it discusses and adjudicates upon those complaints considered by me, in conjunction with the Chairman, to be of most systemic significance, including cases that: raise a likely breach of the Code; raise a significant principle; or have been referred to the formal meeting by Commissioners (having considered the matter via correspondence) for further discussion.<sup>92</sup>

178. At meetings, the Commission also considers and discusses the following (based on material circulated in advance of the meeting by the PCC office):

178.1 policy papers prepared about the work of the PCC, including recommended guidance notes to be issued to the industry;

178.2 papers about ethical issues to do with the press;

178.3 oral updates from the Chairman and Director about relevant issues;

178.4 PR and communications plans;

178.5 details of meetings held by the Chairman and Director;

178.6 updates from the Independent Reviewer;

178.7 updates from the Secretary of the Editors' Code of Practice Committee; and

178.8 updates from the Secretary and Chairman of PressBoF on funding matters.

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<sup>92</sup> See paragraph 188 for details of the complaints consideration process.

179. Commissioners can raise any issue, either by requesting an agenda item or instigating a discussion under 'Any Other Business'. Since the beginning of 2010, the minutes of Commission meetings have been published on the PCC's website<sup>93</sup>.
180. Having examined minutes from meetings dating back to 2003, I refer to the following papers circulated for discussion, which may be relevant to the terms of reference of the Inquiry<sup>94</sup>:

## 2003

- 180.1 'The Judiciary and harassment' (PCC Paper 2819): a paper setting out correspondence between the PCC's Director and the then Lord Justice Judge, focussing on the difficulties facing judges who were asked to comment publicly about sentencing. The discussion by Commissioners led to the PCC issuing a Guidance Note to the industry.<sup>95</sup> (1-10)
- 180.2 'Chat Rooms' (PCC Paper 2820): issues had arisen in a complaint about the Evening Standard's website. This paper set out concerns about allegedly prejudicial comments uploaded by readers and requested Commissioners' comments. It was proposed that the industry consider the Commission's jurisdiction in respect of online chatrooms hosted by newspaper and magazine websites.<sup>96</sup> (11-50)
- 180.3 'Permanent Evolution' (PCC Paper 2861): a paper setting out the text of a speech given by the Chairman of the PCC on 6 May 2003 with regard to his ideas for reform of the Commission. Commissioners were asked to discuss, in principle, the implementation of the Chairman's proposals. (51-62)
- 180.4 'Permanent evolution: outline implementation plan for the Chairman's proposals' (PCC Paper 2883): Noting that the Commission had previously adopted in principle the Chairman's 'Permanent Evolution' proposals (see PCC Paper 2861), this paper set out how those proposals might be implemented in practice and requested consideration by the Commission. (63-72)

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<sup>93</sup> PCCJ2/2/718-894

<sup>94</sup> PCC/J3/1-1107. Page numbers for each paper are included in parenthesis at the end of each paragraph. Papers relating to phone hacking are discussed in Part Two of this statement.

<sup>95</sup> See paragraph 262.11

<sup>96</sup> This clarification eventually was made within the announcement of the PCC's remit expansion to cover A/V material on newspaper and magazine websites. See page x.

- 180.5 'Reporting of asylum issues' (PCC Paper 2885): a paper reporting discussions between staff of the PCC and representatives of various external organisations, notably the Refugee Council, about whether there might be merit in developing guidance around the correct use of terminology relating to refugees and asylum seekers. Commissioners were asked to decide whether such an idea was acceptable in principle. The discussion by Commissioners led to the PCC issuing a Guidance Note to the industry.<sup>97</sup>(73-74)
- 180.6 'Select Committee inquiry into privacy and media intrusion' (PCC Paper 2887): a paper setting out the main conclusions and recommendations of the CMS Select Committee inquiry into privacy and media intrusion. The paper noted that many of the recommendations were already being implemented as part of the Chairman's proposals for 'Permanent Evolution'. (75-80)
- 180.7 'The Guardian and the PCC' (PCC Paper 2925): a paper setting out the background to a ruling against The Guardian over payments to a prisoner for information about the prison life of Jeffrey Archer. Commissioners had expressed concern about the reaction to the PCC's decision in the case and the paper set out to summarise those concerns and requested the views of the Commission as a whole. (81-102)
- 180.8 'Branding of PCC Adjudications' (PCC Paper 2926): this paper set out proposals to standardise the manner in which offending titles were obliged to publish critical PCC rulings. It noted that headlines to rulings, their layout and their prominence lacked consistency and asked Commissioners to consider how this area could be improved.<sup>98</sup> (103-114)
- 180.9 'International Report 2003' (PCC Paper 2964): a summary of the PCC's international work for 2003, including Professor Pinker's chairmanship of the Bosnian Press Council, the role of the Alliance of Independent Press Councils of Europe and other matters. The paper also set out a summary of the plans for 2004's international work. (115-120)
- 180.10 'External affairs report and strategy for 2004' (PCC Paper 2967): a summary of the PCC's external affairs work for 2003, including its links with local

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<sup>97</sup> See paragraph 262.12

<sup>98</sup> In June 2004, the Code was changed to require headline reference to the PCC in adjudications. See page x



government authorities, its training work with student journalists and a list of conferences attended. The paper set out brief proposals for 2004. (121-124)

## 2004

180.11 'Code of Practice' (PCC Paper 3037): a paper asking Commissioners for any thoughts on possible changes to the Editors' Code of Practice for consideration by the Editors' Code of Practice Committee. (125-26)

180.12 'Note by the Charter Commissioner' (PCC Paper 3073): a note from the Charter Commissioner<sup>99</sup>, who also chaired the Charter Compliance Panel, updating Commissioners on his work and setting out a number of questions that had arisen about his role (and the role of the Panel) in its first months of operations. (127-128)

## 2005

180.13 'Charter Commissioner Annual Report and discussion paper on the Charter Commissioner's role' (PCC Paper 3349): a paper setting out the text of the Charter Commissioner's first annual report<sup>100</sup>, which was shortly to be made public, and a note by the Charter Commissioner and PCC Director discussing the practicalities of the former's role. Proposals to improve the transparency of the Charter Commissioner's role were put forward for discussion, and subsequently accepted. (129-134)

## 2006

180.14 'Conflicts of Interest' (PCC Paper 3619): following an announcement by the Chairman that the PCC was to review its rules and procedures relating to conflicts of interest, the paper set out for discussion three notes regarding the current position and proposals for a possible register. Commissioners were also asked to put forward any additional suggestions for strengthening public confidence in the PCC's work. A register of interests was subsequently published.<sup>101</sup> (135-152)

180.15 'External Relations' (PCC Paper 3644): a paper summarising the PCC's external activities since September 2005, setting out proposals for improved

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<sup>99</sup> See paragraph 164

<sup>100</sup> PCC/C/1/1

<sup>101</sup> PCC/A2/3/902-906

communications between the Commission and its staff, and asking for any further suggestions from Commissioners about possible initiatives to be taken in this area. (153-162)

180.16 'Proposal for an Away Day' (PCC Paper 3642): noting that the members of the Commission had last met for an 'away day' in 2003, this paper suggested that a similar meeting be arranged for 2006 and put forward a number of topics that would be worthy of discussion, including: media convergence and its impact on the PCC; the relationship between the PCC and PressBoF; and raising awareness of the Commission's work. An away day was subsequently held. (163-166)

180.17 'Mental health reporting' (PCC Paper 3725): this paper noted that the PCC secretariat had now consulted with external agencies about a revised guidance note on the reporting of mental health issues. Commissioners' views on the revised guidance were requested. The note was ratified and issued.<sup>102</sup> (167-172)

180.18 'Payments to criminals' (PCC Paper 3865): a paper informing Commissioners about the launch of a Home Office consultation on the subject of criminals profiting from their crimes. The paper noted that a working party comprising representatives of the PCC, the Editors' Code of Practice Committee and of industry bodies had been established to consider the Home Office paper in depth. Early views from Commissioners were invited. (173-228)

## 2007

180.19 'PCC online remit' (PCC Paper 3878): a paper setting out the current position of the PCC's competence as it related to the consideration of complaints about audio-visual material published on newspaper and magazine websites. The paper notified Commissioners of a Guidance Note by PressBoF setting out its formal decision about the extension of the PCC's remit to include editorial audio-visual material. (229-232)

180.20 'Perceptions report follow-up/public affairs programme' (PCC Paper 3952): a summary and analysis of a report by Hill & Knowlton (a communications and public affairs agency) into perceptions of the PCC, including a

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<sup>102</sup> See paragraph 262.5

consideration of the recommendations made in that report and a reminder of the Commission's current work in the area of external relations. (233-238)

- 180.21 'Payment to criminals' (PCC Paper 4014): a paper informing Commissioners that the PCC office had recently learned that payments to criminals and their associations were being made in the real-life sector of the magazine industry. The paper reported that PCC staff had taken a sample of relevant magazines over a two-week period and, in any instances of true-life stories about convicted criminals or their associates, had written to the relevant magazines and asked whether payment had been made. All magazines in the sector had also been asked to confirm their position on this matter in principle. The paper set out all the replies that had been received. (239-274)
- 180.22 'Third party complaints' (PCC Paper 4042): following a request by the Charter Compliance Panel, the PCC's secretariat had written an overview of the Commission's stated policy and practice in regard to third party complaints. That overview was set out for Commissioner's information and comment. (275-278)
- 180.23 'Subterfuge report follow-up' (PCC Paper 3986): a paper summarising the media's response to the Commission's recent report into subterfuge and newsgathering and asking for Commissioners' views on whether further measures were necessary at this stage. The paper also noted that a date for the planned PCC seminar on undercover newsgathering had been agreed and that a representative of the Information Commissioner's Office would speak at the event. (279-280)
- 180.24 'The Complainants' Charter' (PCC Paper 4099): following recommendations from the Charter Compliance Panel, this paper set out proposals for amendments to the Charter and requested Commissioners' consideration of them. The Charter was subsequently amended. (281-284)
- 180.25 'Internet Regulation' (PCC Paper 4104): a paper considering the current position with regard to internet content regulation, both in connection to the press and other media outlets, and setting out the importance of the PCC remaining at the forefront of developments and to highlight its considerable work in the online arena. (285-294)

- 180.26 'Online archives' (PCC Paper 4164): a discussion paper on the issue of complaints about articles that were published in the past (sometimes months or years ago) but which remain freely and publicly available on newspaper and magazine websites. The paper set out the Commission's current position in respect of such complaints (that they would not be regarded as outside the time limit for submission) and put forward proposals for a refinement of that position, on which Commissioners were invited to comment. The amended position was accepted. (295-316)
- 180.27 'Legal action after complaints' (PCC Paper 4169): in light of several instances of complainants initiating legal proceedings after the conclusion (and resolution) of a PCC complaint, this paper sought to consider the implications of a possible 'double-jeopardy' position developing. The paper recommended retention of the current practice, which sought to deal with each complaint on its merits, seeking 'full and final settlements' where appropriate and taking account of difficulties for newspapers where legal action seemed likely. (317-334)
- 180.28 'Press coverage of recent suicides and suspected suicides in Bridgend and the surrounding area' (PCC Paper 4208): a paper summarising the Commission's response to concerns about press coverage of suicides and suspected suicides in and around Bridgend<sup>103</sup>. As well as setting out issues for review and recording the status of complaints that had been received, the paper set out proposals for further action to be discussed by the Commission. (335-618)
- 180.29 'PCC working party on the internet' (PCC Paper 4216): a paper updating Commissioners on several issues connected to the PCC's work in the online sphere and setting out the conclusions of a meeting of a small group of Commission members and staff. The paper invited Commissioners to consider how the PCC should proceed in this area and to make any further recommendations for action. (619-642)
- 180.30 'Reporting of suicide/Bridgend' (PCC Paper 4252): a report of the PCC's meetings during a one-day visit to Bridgend following the cluster of suicides in the county. The paper summarised the themes that had emerged during the meetings and sought to consider how various concerns might reasonably

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<sup>103</sup> See paragraph 297

be addressed, especially the lack of awareness about how the PCC might have been able to assist the relatives of those who had died. (643-648)

180.31 'Photographs and Privacy' (PCC Paper 4334): following several recent cases about the publication of allegedly intrusive photographs, this paper summarised the PCC's current position in relation to pictures and private places, noting that the anti-harassment 'desist request' system had been effective in reducing the publication of photographs taken in a climate of harassment. (649-652)

180.32 'Commission away day' (PCC Paper 4376): a paper setting out details for the planned meeting of Commissioners to be held in Manchester in November, including proposed topics for discussion. (653-654)

**2009**

180.33 'Articles of Association' a paper setting out proposed amendments to the PCC's Articles of Association in light of the withdrawal by Northern and Shell from the Newspaper Publishers Association. It was decided to await the outcome of the Governance Review before amending the Articles further. (655-662)

180.34 'Publication of addresses' (PCC Paper 4468): following a request from one member of the Commission the PCC's staff prepared a paper setting out the Commission's approach to the subject of addresses being published by newspapers or magazines. The paper examined Commission case-law in several specific areas. (663-704)

180.35 'Media Standards Trust' (PCC Paper 4467): a paper commenting on a recent report by the Media Standards Trust into the work of the PCC, noting the background to the MST's establishment and a number of concerns about its report. (705-758)

**2010**

180.36 'Response to Select Committee' (PCC Paper 4729): a paper summarising the recent Select Committee report, and setting out areas for response. (759-830)

180.37 'Working group on online issues' considering the need for a designated committee of Commissioners to oversee the Commission's thinking on

online matters. This committee was subsequently established.<sup>104</sup>  
(831-832)

180.38 'NUJ and Johnston Press' (PCC Paper 4831): a paper setting out the background to a concern raised by the National Union of Journalists (and directly with the PCC by a confidential source) about new working practices at Johnston Press. The paper set out all correspondence to which the PCC had been a party and invited Commissioners to discuss the matter further.  
(833-864)

180.39 'Media coverage of Cumbria shootings' (PCC Paper 4848): a summary of the media coverage of a series of shootings in Cumbria and the PCC's response to it, including meetings between PCC staff and relevant key figures in the locality (notably police, clergy and editors). Noting the concerns raised about the media's behaviour, the paper proposed initiatives to improve the Commission's response to this type of high-profile incident.<sup>105</sup>  
(865-868)

180.40 'Communicating PCC rulings' (PCC Paper 4922): a paper setting out proposals for simplifying and regularising the release of information about PCC decisions and the outcome of successfully mediated complaints. (869-872)

180.41 'Nominations Committee' (PCC Paper 4967): in light of a recommendation by the Governance Review for the establishment of a new Nominations Committee for the purpose of appointing (and reappointing) lay Commissioners, this paper set out steps taken to implementing the proposal, including an account of the new nominations process as currently envisaged. This was accepted, and the process followed in the most recent Commission appointments. (873-878)

180.42 'PCC and the publication of rulings' (PCC Paper 4968): noting that concern had been raised during a previous meeting of the Commission about the mechanism by which the PCC sought to make public its decisions, this paper sought to establish a process with which all relevant parties could be content. The paper noted the absolute importance of convincing sceptics of the power of an adverse adjudication and suggested that ensuring publicity

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<sup>104</sup> See paragraph 155

<sup>105</sup> See paragraph 276

of its rulings on a regular basis could go some way to resolving that issue.  
(879-882)

## 2011

180.43 'PCC PR and Communications Plan 2011' (PCC Paper 5041): a summary of the Commission's public relations and communications strategy and putting forward detailed plans for 2011 in respect of numerous specific areas, including: advertising, web communications, lobbying, polling, the annual review, education and community outreach, international work and internal communications work. (883-892)

180.44 'The Deputy Chairman' (PCC Paper 5029): a document by the deputy Chairman, Ian Nichol, setting out the background to the creation of the role and how it was being interpreted in practice. (893-896)

180.45 'Delayed complaints' (PCC Paper 5106). discussing how to consider complaints about online archives, based on the Commission's experience of two cases. (897-1088)

180.46 'The Laws of Libel and Privacy: how the PCC is affected' (PCC Paper 5138): this paper sought to summarise current thinking on these two key areas of the law, and on their possible reform and development, and consider the impact on the Press Complaints Commission. The paper also set out some proposals for how the PCC could take advantage of current opportunities afforded by the current debate to highlight its role in dealing with thousands of complaints about accuracy and privacy cases each year. (1089-1107)

### Away days

181. Occasionally, the PCC has held away days for Commissioners to have broader, more informal discussions about relevant matters.

### Complaints

182. In 2010, the PCC received over 7,000 complaints, either by letter or email. It also answers thousands of helpline calls from those people wishing to express an opinion about the press or who wish to learn more about the complaints process. There is an emergency 24-hour helpline for those with urgent concerns.

183. There is an online complaints form on the PCC website, which is now the preferred means of making a complaint. More complaints are now made about online versions of articles than print versions.

#### Editors' Code of Practice

184. Complaints must be framed under one or more Clauses of the Editors' Code of Practice<sup>106</sup>, reproduced below:

##### **Editors' Code of Practice**

*This is the newspaper and periodical industry's Code of Practice. It is framed and revised by the Editors' Code Committee made up of independent editors of national, regional and local newspapers and magazines. The Press Complaints Commission, which has a majority of lay members, is charged with enforcing the Code, using it to adjudicate complaints. It was ratified by the PCC in January 2011. Clauses marked\* are covered by exceptions relating to the public interest.*

##### **The Code**

*All members of the press have a duty to maintain the highest professional standards. The Code, which includes this preamble and the public interest exceptions below, sets the benchmark for those ethical standards, protecting both the rights of the individual and the public's right to know. It is the cornerstone of the system of self-regulation to which the industry has made a binding commitment.*

*It is essential that an agreed code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual nor so broadly that it constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest. It is the responsibility of editors and publishers to apply the Code to editorial material in both printed and online versions of publications. They should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists. Editors should co-operate swiftly with the PCC in the resolution of complaints. Any publication judged to have breached the Code must print the adjudication in full and with due prominence, including headline reference to the PCC.*

##### **1. Accuracy**

- (i) *The press must take care not to publish inaccurate, misleading or distorted information, including pictures.*
- (ii) *A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and - where appropriate - an apology published.*
- (iii) *The press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.*
- (iv) *A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.*

##### **2. Opportunity to reply**

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<sup>106</sup> Examples of key cases under each Clause begin in paragraph 239



*A fair opportunity for reply to inaccuracies must be given when reasonably called for.*

**3. \* Privacy**

- (i) *Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.*
- (ii) *Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information.*
- (iii) *It is unacceptable to photograph individuals in private places without their consent.*

*Note - Private places are public or private property where there is a reasonable expectation of privacy.*

**4. \* Harassment**

- (i) *Journalists must not engage in intimidation, harassment or persistent pursuit.*
- (ii) *They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.*
- (iii) *Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.*

**5. Intrusion into grief or shock**

- (i) *In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. This should not restrict the right to report legal proceedings, such as inquests.*
- (ii) *\*When reporting suicide, care should be taken to avoid excessive detail about the method used.*

**6. \* Children**

- (i) *Young people should be free to complete their time at school without unnecessary intrusion.*
- (ii) *A child under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents.*
- (iii) *Pupils must not be approached or photographed at school without the permission of the school authorities.*
- (iv) *Minors must not be paid for material involving children's welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.*
- (v) *Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life.*

**7. \* Children in sex cases**

*The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.*

*In any press report of a case involving a sexual offence against a child –*

- (i) *The child must not be identified.*
- (ii) *The adult may be identified.*
- (iii) *The word “incest” must not be used where a child victim might be identified.*
- (iv) *Care must be taken that nothing in the report implies the relationship between the accused and the child.*

**8. \* Hospitals**

- (i) *Journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas  
  
of hospitals or similar institutions to pursue enquiries.*
- (ii) *The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.*

**9. \* Reporting of Crime**

- (i) *Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.*
- (ii) *Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This  
  
should not restrict the right to report legal proceedings.*

**10. \* Clandestine devices and subterfuge**

- (i) *The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents, or  
  
photographs; or by accessing digitally-held private information without consent.*
- (ii) *Engaging in misrepresentation or subterfuge, including by agents or intermediaries, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.*

**11. Victims of sexual assault**

*The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and they are legally free to do so.*

**12. Discrimination**

- (i) *The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.*
- (ii) *Details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.*

**13. Financial journalism**

- (i) *Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.*
- (ii) *They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.*
- (iii) *They must not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.*

#### **14. Confidential sources**

*Journalists have a moral obligation to protect confidential sources of information.*

#### **15. Witness payments in criminal trials**

- (i) *No payment or offer of payment to a witness - or any person who may reasonably be expected to be called as a witness - should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981. This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.*
- (ii) *\* Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.*
- (iii) *\*Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.*

#### **16. \* Payment to criminals**

- (i) *Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates - who may include family, friends and colleagues.*
- (ii) *Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.*

#### **The public interest**

*There may be exceptions to the clauses marked \* where they can be demonstrated to be in the public interest.*

*The public interest includes, but is not confined to:*

- (i) *Detecting or exposing crime or serious impropriety.*

- (ii) *Protecting public health and safety.*
  - (iii) *Preventing the public from being misled by an action or statement of an individual or organisation.*
2. *There is a public interest in freedom of expression itself.*
3. *Whenever the public interest is invoked, the PCC will require editors to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.*
4. *The PCC will consider the extent to which material is already in the public domain, or will become so.*
5. *In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.”*

### Sanctions

185. The PCC's range of current sanctions, in response to complaints it receives, are as follows:
- 185.1 negotiation of an agreed remedy (such as a published apology, published correction, clarification or explanatory letter, private letter of apology, amendment or removal of online information, amendment of a publication's internal records, *ex gratia* payments);
  - 185.2 publication of a critical adjudication in the offending publication, which may be followed by public criticism of a title by the Chairman of the PCC;
  - 185.3 a letter of admonishment from the Chairman to the editor;
  - 185.4 follow-up from the PCC to ensure that changes are made to avoid a repeat of the failing and to establish what steps (which may include disciplinary action, where appropriate) have been taken against those responsible for serious breaches of the Code;
  - 185.5 formal referral of an editor to his or her publisher for action.
186. For a number of years, adherence to the Code of Practice has been written into journalists' contracts. This has been actively encouraged by the PCC<sup>107</sup>. It means that a breach of the Code can have disciplinary and contractual consequences for journalists. It has not, however, been traditionally the role of the PCC to enforce the contractual aspect of Code breaches. It has recently formalised its procedure to

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<sup>107</sup> PCC/T1/1/364-367

follow up serious issues, and this aspect will be key to appropriate action being taken by employers in the event of the Code being breached<sup>108</sup>.

187. The range of sanctions available to the PCC is under examination, by the PCC's Reform Committee,<sup>109</sup> to establish what further powers of sanction the PCC should possess.

#### Complaints Process

188. Whether or not the Code has been engaged, every complaint made to the PCC is formally logged on to the complaints database, and has a file allotted to it. The Head of Complaints, or an experienced Complaints Officer, assesses all of the new complaints. The first sift removes cases that plainly fall outside of the remit of the PCC, and the Code of Practice.
189. A considerable number of complaints received by the PCC do not fall within its jurisdiction. This may be for one of several reasons, including:
- 189.1 the complaint is about an advertisement, TV programme or some other concern unrelated to the print media;
  - 189.2 the complaint raises issues connected to taste and decency not specifically covered by the Code of Practice.
190. In each of the last two years, almost a thousand complaints could not be ruled on by the PCC because they did not engage the Code of Practice (and usually were not even about material in newspapers or magazines). In every case, however, the Commission seeks to direct the complainant to another body which may be able to assist with their concern (such as the ASA in a case involving an advertisement). A list of complaints that fall outside the PCC's remit is circulated each week to the Commission.
191. The PCC also receives a great many complaints that are incomplete (for instance they may not give details of inaccuracies or indicate a particular article under complaint). In any case where further information is necessary to enable proper assessment, the relevant details will be requested from the complainant. When they are not forthcoming (as often is the case, despite routine reminders from the complaints team), it is not possible to make a ruling on the case. In both 2009 and

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<sup>108</sup> See paragraph 199

<sup>109</sup> See paragraph 170

2010 there were over 2,500 complaints that were not pursued by complainants when the PCC requested additional information from them.

192. On some occasions assessment of a complaint is possible but the complainant elects during the course of a PCC investigation to withdraw their case.
193. If a complaint falls within the remit of the PCC, it will either be presented to the Commission for an immediate decision under the terms of the Code (on the grounds that there is no *prima facie* case to answer) or it will be assigned to a Complaints Officer for investigation. There are 8 people in all who deal with complaints investigation and resolution.
194. With all investigated complaints, the PCC first writes formally to the editor of the newspaper or magazine. He or she is sent a full copy of the complaint and are asked to respond within seven days. Complaints officers are tasked with driving the case to ensure that all of the issues are then fully explored in the ensuing correspondence. The process is transparent, each side seeing the other's comments. The PCC's protocol for disclosure<sup>110</sup> states:

*"The Press Complaints Commission is committed to be as open and transparent as possible. However, we also deal with private and confidential matters, and wish to ensure that complainants have confidence in our ability to respect their privacy at all times.*

*We wish to be as open as we can with our complainants. To that end we will:*

- *ensure that the complainant has sight of all material submitted by the newspaper or magazine. The Commission will not consider material that has not been seen by the complainant;*
- *consider on request providing to the complainant copies of our correspondence – conducted during an investigation – with editors; and*
- *allow the Independent Reviewer access to the full complaints file, when investigating a complaint.*

*The Commission does not release internal working documents prepared for the purpose of reaching decisions on complaints.*

*In response to external scrutiny of the PCC, we commit to:*

- *publish minutes of Commission meetings;*

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<sup>110</sup> PCC/H2/4/855

- *respond to external inquiries about ongoing complaints by confirming the existence of the complaint, the newspaper complained of, and the relevant clause of the Code;*
- *present our complaints statistics clearly, and account publicly for all of the complaints made to the PCC. This will include making clear where the PCC has been involved in the negotiation of published remedies.*

*We will not:*

- *publish personal information about complainants without consent;*
- *make public confidential discussions with complainants or their representatives about possible complaints or other issues; and*
- *make public pre-publication advice given to editors or journalists by PCC staff. The existence of such advice is not relied upon by the Commission, if asked to reach a decision about a possible breach of the Code in the published material."*

195. During an investigation, the Complaints Officer will generally seek to resolve the complaint to the complainant's satisfaction at the same time as gathering the necessary information upon which the Commission can then come to a view.
196. If it is possible, the Complaints Officer will broker a resolution to the satisfaction of the complainant. These might include:
- 196.1 publication of corrections or apologies;
  - 196.2 publication of clarifying letters;
  - 196.3 removal of inaccurate information from a publication's website;
  - 196.4 amendment of a publication's internal records to ensure information is not republished;
  - 196.5 undertakings about future behaviour; or
  - 196.6 donations to charity or *ex gratia* payments (which are offered at the publication's discretion).
197. Once a complaint is resolved, the PCC publishes a short summary of the case on its website. The wording for the summary is circulated to Commissioners on a weekly

basis<sup>111</sup>. It is then circulated to both complainant and publication for comment before it appears on the PCC website.

198. Should the complaint not be resolved, it is passed to the Commission for it to reach a decision (with a recommended text drafted by the Complaints Officer). There are three possible decisions:

198.1 the complaint raises no breach of the Code;

198.2 the complaint raises a breach of the Code, but the publication has offered sufficient remedial action ("SRA") in response to the breach. For example, there might be an accepted inaccuracy, but the complainant has not accepted the correction offered by the newspaper. The test for Commissioners is whether the offer is a proportionate remedy to the breach of the Code; or

198.3 the complaint raises a breach of the Code, which has not been satisfactorily remedied. This complaint is then upheld by the Commission, which requires the publication to publish its ruling with due prominence and headline reference to the PCC. The PCC also publicises it on its website and notifies the media of the decision, as part of its "naming and shaming" function.

199. Following the Governance Review<sup>112</sup>, the Commission has formalised an approach to following up serious breaches of the Code to ensure that action has been taken by the publication concerned in response to the outcome of the complaint and that this is duly recorded.<sup>113</sup>

200. Decisions are taken by the Commission in two ways: on a weekly basis via correspondence; and once every six weeks at a formal meeting of all Commissioners. In the former case, the Complaints Officer is responsible for summarising the key points of complaint, preparing a file of relevant supporting material, and drafting a recommended decision based on the circumstances of the case and the Commission's previous decisions on similar issues. A bundle of reports is sent via post to Commissioners every Friday. I have included all reports sent in June 2011<sup>114</sup>. In this way, the system ensures that Commissioners see

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<sup>111</sup> PCC/N2/1/1-531

<sup>112</sup> PCC/F/1/11

<sup>113</sup> PCC/H1/2/14-57

<sup>114</sup> PCC/P/1



every draft determination made by Complaints staff and are required formally to confirm them (or otherwise).

201. Commissioners agree, amend or oppose the proposed ruling. Each week the comments of Commissioners in each case are discussed with the Director and Head of Complaints. One of the following actions will then take place:
  - 201.1 proposed amendments are incorporated into the ruling, which is then recirculated to Commissioners for approval (if the amendments are substantive);
  - 201.2 further investigation is undertaken by the Complaints Officer, before the complaint reverts to the Commission once more;
  - 201.3 the Commissioner discusses the complaint further with the office, and withdraws any objection; and/or
  - 201.4 the complaint is brought for further discussion to a full meeting of the Commission.
202. All decisions made by correspondence have to be signed off by every Commissioner. They are then sent to the complainant and the publication concerned.
203. Commission meetings address complaints that appear to raise a breach of the Code (requiring censure), raise points of principle, or have been the subject of disagreement among Commissioners (having seen them via correspondence).
204. For each complaint discussed at a meeting, the Commission sees the full file of correspondence. A recommended decision is also prepared by the Complaints Officer, to form the basis of discussion by the Commission. I have included dossiers provided to the Commission for May and July 2011.<sup>115</sup>
205. No vote is taken at Commission meetings. Decisions are reached by consensus. There is a required quorum of five Commissioners, with a majority of public members. If significant changes are proposed to recommended decisions, amended texts are circulated via email after the meeting.

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<sup>115</sup> PCC/Q/1/1-570 and PCC/Q/2/571-787

206. Once ratified, decisions are sent to the complainant and publication concerned. Both sides are given seven days to raise points of disputed fact. After that, the decisions are published by the PCC and (if the complaint has been upheld) by the publication.
207. Complainants can raise concerns about the handling of complaints, within one month of receipt of the decision (or correspondence with the PCC after the decision) with the Independent Reviewer<sup>116</sup>.

*Third parties*

208. In common with content regulators from other sectors, the PCC will generally not consider accuracy and privacy complaints that relate directly to named individuals, without the involvement of those individuals.
209. The PCC considers all complaints from any reader about general points of fact – something which is becoming more and more common. Indeed, our customer survey<sup>117</sup> recently showed that 66% of complainants were not featured in the story under complaint.
210. The PCC does not consider complaints from third parties if there is a principal subject named in the article who would need to consent to a complaint for it to be taken forward. This is for obvious reasons: it would be impossible (and discourteous) to assess whether someone has been inaccurately described, or had their privacy intruded upon, without that person's cooperation.
211. However, if a third party has raised an apparently significant issue, the PCC proactively uses this as a trigger to contact the subject of the story to see whether he or she might wish to complain, through a number of different means: police; coroners; hospitals; PRs etc. The PCC also proactively contacts subject parties of its own volition, if they appear to require assistance.<sup>118</sup>
212. If no involvement from the subject parties is forthcoming, Commissioners are asked whether they wish to investigate the complaint from the third party. As part of the Commission's weekly bundle of cases, a Complaints Officer provides a summary of

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<sup>116</sup> See paragraph 164

<sup>117</sup> PCC/H1/3/60-64

<sup>118</sup> See paragraph 269

the issues, with a recommendation about whether the complaint can be investigated.<sup>119</sup>

213. The Commission also considers complaints from any source about points of clear principle in regard clauses of the Code where there are no “victims” in the conventional sense. These are:

213.1 Clause 5 ii (Intrusion into grief or shock) – the question of whether excessive detail about the method of suicide has been published;

213.2 Clause 13 (Financial journalism);

213.3 Clause 15 (Witness payments in criminal trials); and

213.4 Clause 16 (Payments to criminals).

214. Should the Commission’s attention be drawn to any possible breach of these Clauses, it also has the power to initiate an investigation, without reference to any complainant. These are known as “own volition” investigations.<sup>120</sup>

#### *Delayed complaints*

215. Generally the Commission will not accept complaints more than two months after publication of the article (if the article is not also online) or two months after the close of correspondence with the editor, unless there are special circumstances. It will, however, always give a putative complainant the opportunity to argue why a delayed complaint should be entertained. Once a complainant gives reasons for the delay, the file is submitted to the Commission with a recommendation as to whether the delay rules should be waived.<sup>121</sup>

216. The Commission currently regards downloading an article from a website as tantamount to republication<sup>122</sup>. Therefore, material that is freely available on a newspaper’s website can generally be complained about, even if the piece was not originally published within the previous two months.

217. A long delay will have an impact on the extent to which the Commission can reach a finding on the merits of a particular case. It will also affect the possible action

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<sup>119</sup> PCC/03/2/1109-1187

<sup>120</sup> PCC/N1/1/128,369-80, 534-546, 551-556

<sup>121</sup> PCC/P2

<sup>122</sup> PCC/J3/1/897-1008

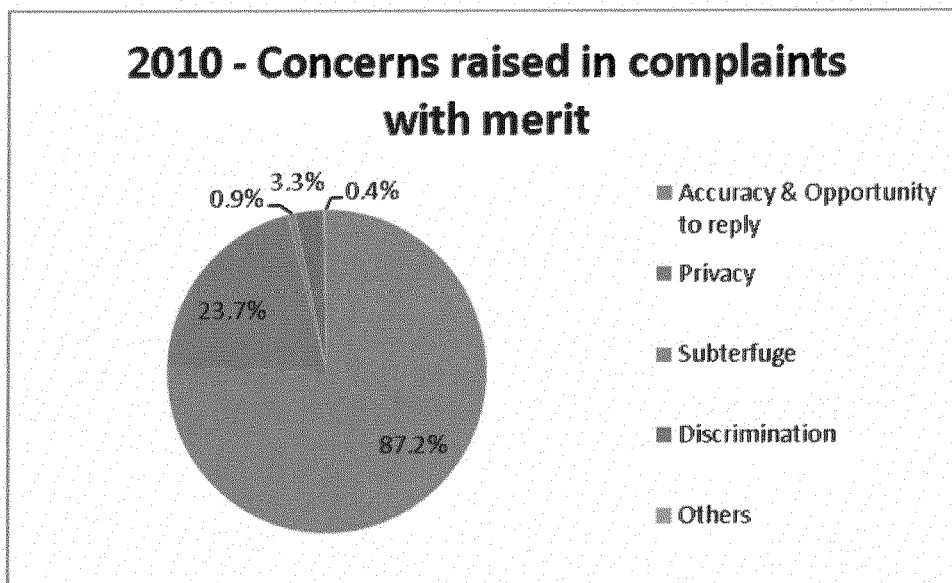
necessary from a publication to resolve the complaint appropriately. The Commission will take into consideration the circumstances accounting for the delay being lodged (including whether a complaint was possible at the time of original publication).

218. The Commission’s delay rules are, in its view, essential to its delivery of expeditious decisions. However, only two complaints were disallowed for delay reasons in 2010.

Complaints statistics

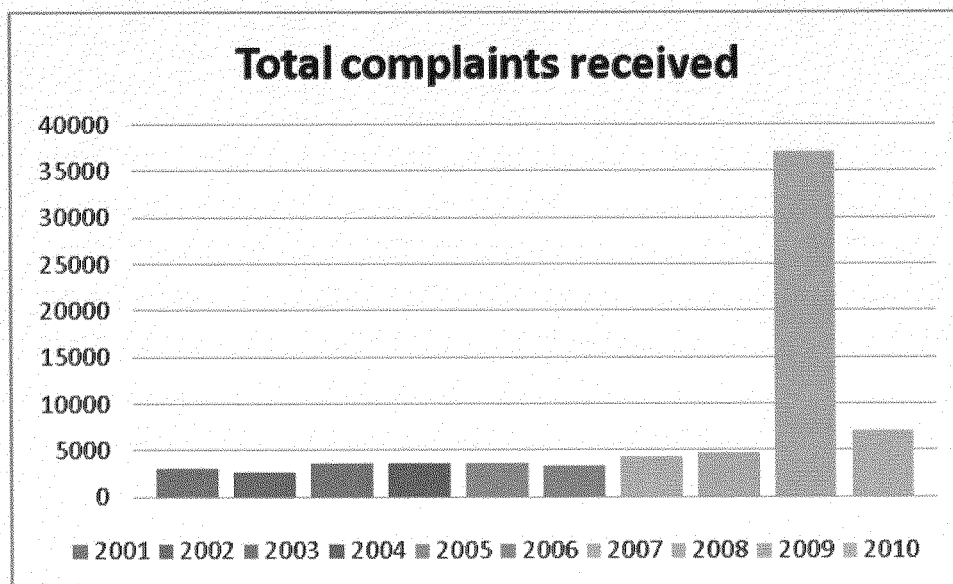
219. The major cause of complaint has, for many years, been inaccurate or misleading reporting. Last year, looking at those cases judged by the PCC to have merit, 87.2% raised such concerns – almost exactly the same proportion as in 2009.

220. In fact, the figures from the last two years in relation to the issues most commonly raised by complainants are remarkably consistent. As in 2009, the second major area of concern related to invasion of privacy and grief<sup>123</sup>: 23.7% of complaints made reference to one of the Code’s privacy Clauses, slightly up from 21.4% in 2009.



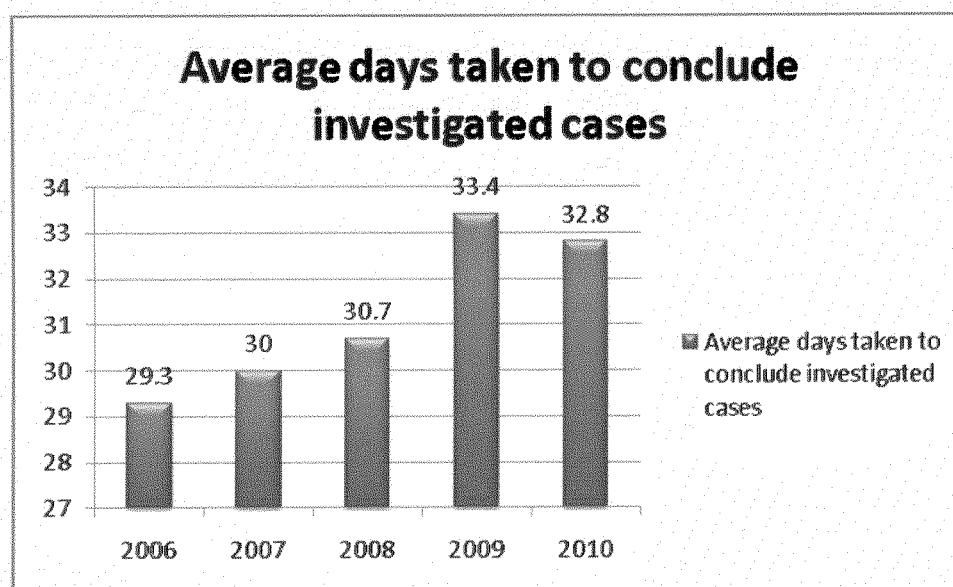
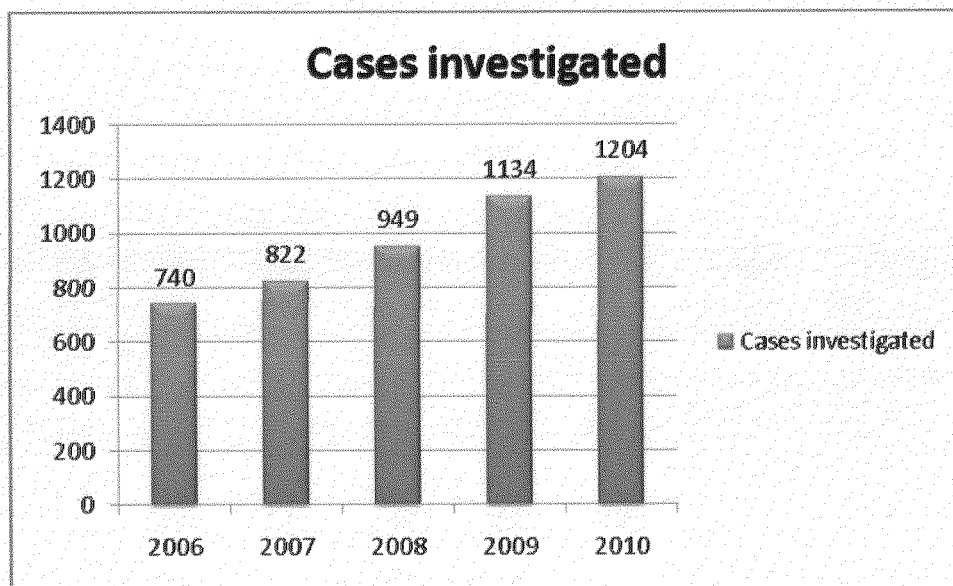
<sup>123</sup> The total percentage when you combine accuracy and privacy complaints is more than 100% because many complaints raise more than one issue under the Code. So if a complaint is made under Clause 1 (Accuracy) and Clause 3 (Privacy) it will be included in both categories.

221. In the years 1998-2000 the PCC received between 2,200 and 2,500 complaints annually. Between 2001 and 2006, only once were fewer than 3,000 complaints received. In 2007 and 2008, complaint numbers rose above 4,000 for the first time.
222. In the last two years, due in part to several high-profile cases, which led to hundreds (even thousands) of people complaining about one article, the annual figures have been over 37,000 in 2009 and over 7,000 in 2010.

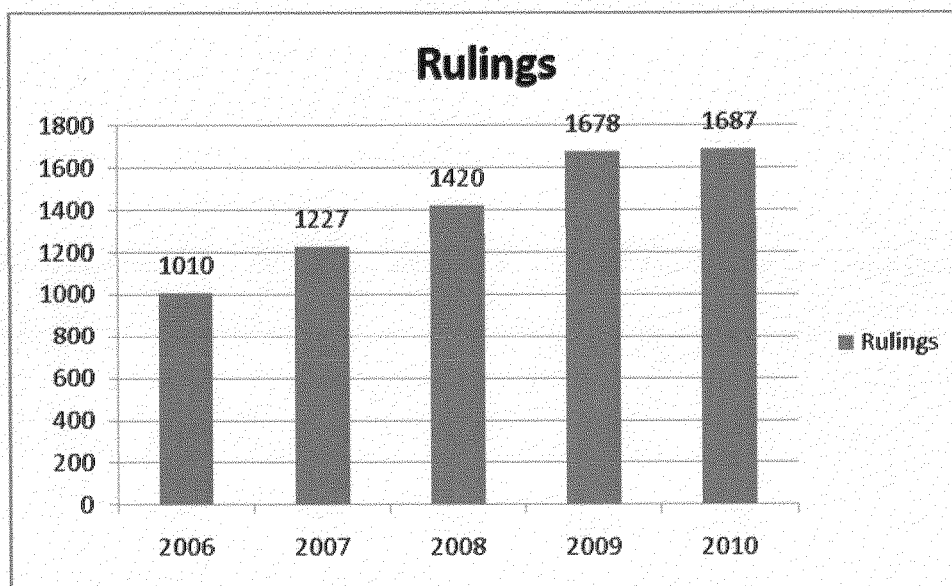


223. These overall statistics may be slightly misleading in some instances. The 37,000 figure, for example, is distorted because 25,000 people complained about one article<sup>124</sup>, in the Commission’s first experience of a “Twitter storm”. This could be classed as, therefore, one complaint, rather than 25,000 complaints. The increase in overall numbers may demonstrate, perhaps, an increasing knowledge of and willingness to use the PCC’s services.
224. Certainly, the advent of online journalism and an online complaints facility has led to increased accessibility for the PCC, and therefore contributed to an increase in workload.
225. In 2010, we investigated about 1200 complaints, a rise of 50% in the last five years. Formal investigations were concluded in an average of around 33 working days.

<sup>124</sup> PCC/N1/509-514



226. The Commission issued rulings, including a formal summary of a case following mediation, on 1687 complaints in 2010.

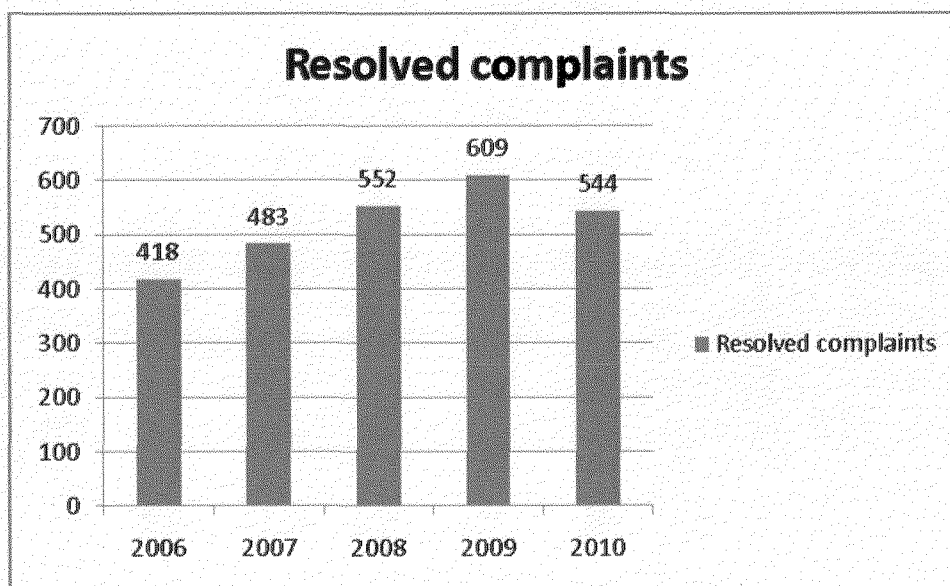


227. These cases can be divided into those raising a likely breach of the Code, and those that raised no breach of the Code.

*Complaints 'with merit'*

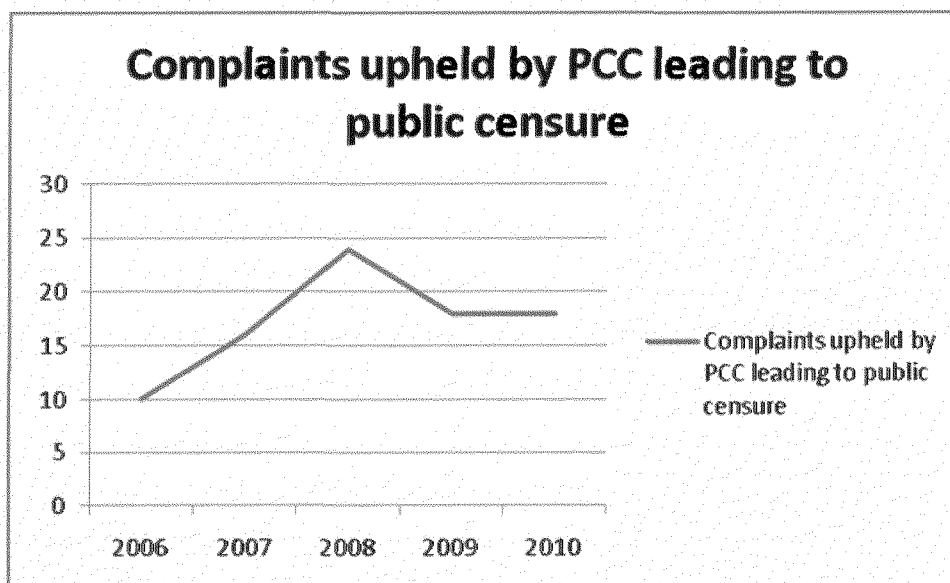
Resolutions

228. Most cases that raise a likely breach of the Code are resolved by agreement. Editors generally see the benefit of conciliation, so as to avoid being publicly criticised by the Commission for breaching the Code and, in some cases, to maintain positive relationships with their readers. In 2010, there were 544 resolved complaints. This figure has more than doubled over the last ten years, and increased by 30% over the last five. By 31 August 2011, there had been 386 resolved complaints in 2011.



Censure of the editor

229. Any complaint raising a breach of the Code, for which no suitable remedy has been offered, is upheld by the Commission. Such cases are discussed in a formal meeting, at which the Commission agrees the wording of a decision criticising the editor. The PCC upheld 18 complaints in 2010<sup>125</sup>, and has upheld 14 thus far in 2011.



Approval of sufficient remedial action (SRA)

<sup>125</sup> PCC/H2/6/859-878



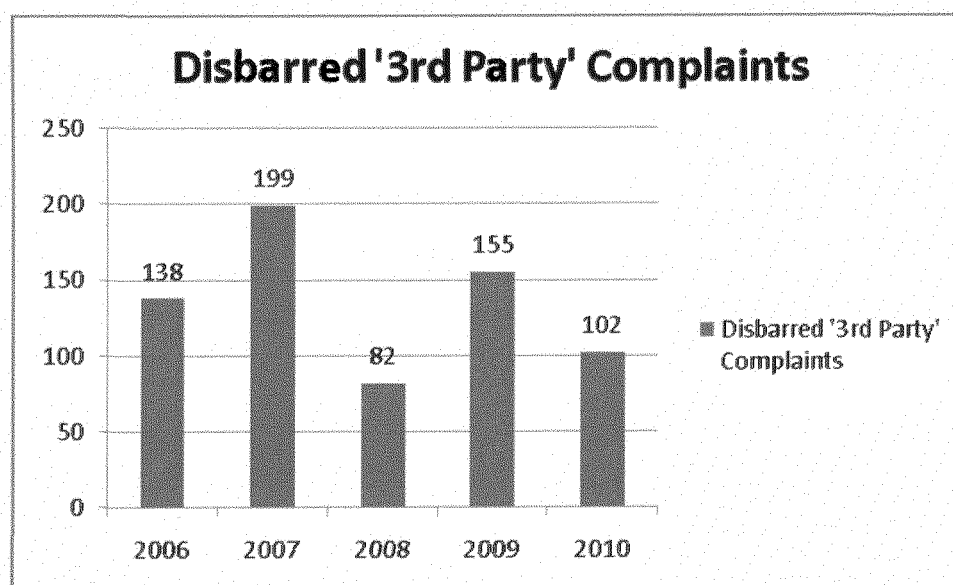
230. The Commission may rule that there has been a breach of the Code, but that the remedial action taken or offered by the publication represents a sufficient remedy. The Commission issued 187 SRA rulings in 2010<sup>126</sup>, and 57 up to 31<sup>st</sup> August 2011.

*Complaints which raise no breach of the Code*

231. The Commission may rule – either via correspondence, or following a meeting – that there has been no breach of the Code raised by the complaint. In 2010, the Commission issued 937 No Breach rulings<sup>127</sup>.

*Third parties*

232. Last year 102 complaints<sup>128</sup> were rejected when the Commission judged the complainant to be a ‘third party’ (and where there were no exceptional circumstances, or subsequent involvement from first parties), down slightly from 155 in 2009.



*Complaints by Sector*

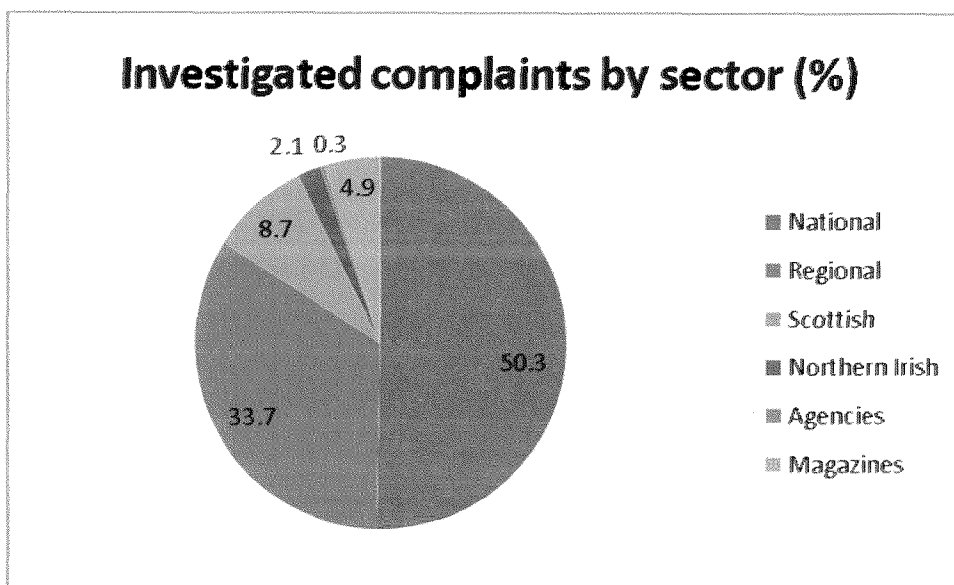
233. The work of the PCC covers the breadth of the industry: national newspapers, regionals and locals, and magazines.

234. Around 50% of all investigated complaints are about national newspapers.

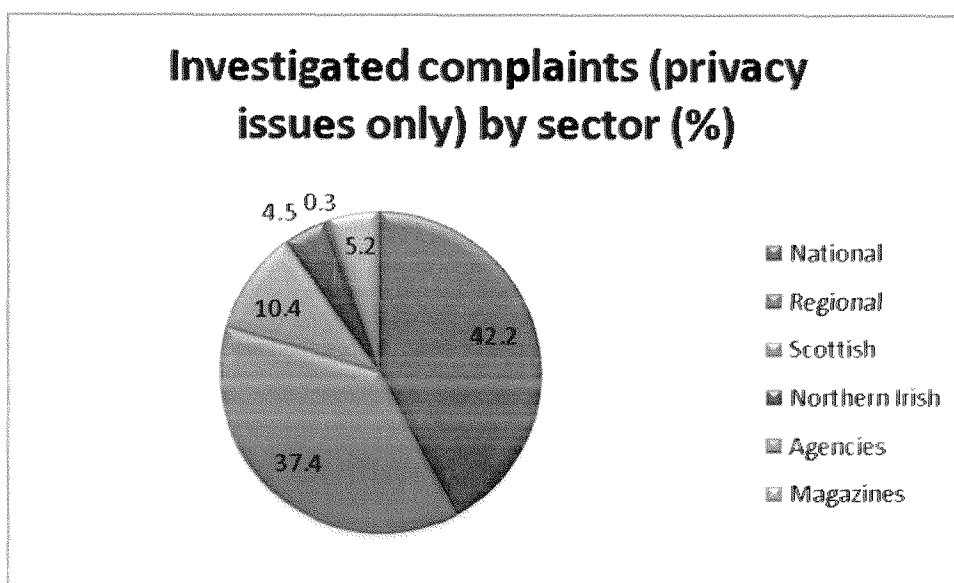
<sup>126</sup> PCC/O3/1/938-1108

<sup>127</sup> PCC/O1/1/1 – PCC/O2/1/937

<sup>128</sup> PCC/O3/2/1109-1187



235. In substantive privacy cases, more complaints are received about regional and local papers, than nationals.



Case Law

236. The Commission publishes in full around forty or fifty key decisions a year. It also publishes summaries of every resolved complaint. It intends to publish summaries of every case where a breach of the Code has been established, but remedied<sup>129</sup>. The PCC website provides an archive of significant cases dating back to 1996.

237. The PCC, therefore, has a significant body of case law, enabling the work of the PCC to influence (and improve) future newsroom decisions. The Commission

<sup>129</sup> PCC/F/2/35-6

actively draws editors' attention to these rulings, and requires that they are taken into consideration. The industry itself has collated significant rulings in a publication called the Editors' Codebook, which discusses significant cases and their practical application<sup>130</sup>.

238. The use of precedent is a vital tool in raising industry standards. By making use of its earlier decisions, the Commission can expand upon principles that appear in the Code of Practice. A summary of the practical effects of recent case law (dating back more than ten years), and how they have helped to entrench best practice within the industry, appears below. Each clause of the Code is examined separately.

Clause 1 (Accuracy)

**i) The Press must take care not to publish inaccurate, misleading or distorted information, including pictures.**

**ii) A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and - where appropriate - an apology published. In cases involving the Commission, prominence should be agreed with the PCC in advance.**

**iii) The Press, whilst free to be partisan, must distinguish clearly between comment, conjecture and fact.**

**iv) A publication must report fairly and accurately the outcome of an action for defamation to which it has been a party, unless an agreed settlement states otherwise, or an agreed statement is published.**

Clause 2 (Opportunity to reply)

**A fair opportunity for reply to inaccuracies must be given when reasonably called for.**

239. The PCC's statistics consistently show that nearly 90 per cent of the complaints it receives mention concerns about accuracy. Clause 1 imposes several duties on editors, most notably: to take care to minimise errors; and to correct, clarify or apologise for them appropriately when they do happen. In addition, Clause 2 – which is generally considered alongside Clause 1 because it effectively prescribes a remedy for a particular type of breach of Clause 1 – recognises a right to reply to

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<sup>130</sup> PCC/M/2/3-88

inaccuracies “when reasonably called for”. Clauses 1 and 2 permit no public interest exceptions.

### **Key rulings**

*The Association of Ukrainians in Great Britain Ltd v Daily Mail (2001)*<sup>131</sup>

**The Commission accepts that events of the past are often open to considerable levels of interpretation. Provided that newspapers and magazines take care to present articles about historical matters in that context, complaints of inaccuracy are likely to fall.**

An article about the Galizien Division of the Waffen-SS described the division as having ‘fought for Hitler’, and as allegedly having ‘the blood of hundreds of innocent civilians on its hands’. The Association of Ukrainians in Great Britain Ltd argued that this was a misleading portrayal of the Galizien Division’s history and activities. It said the newspaper had set out partial accounts and had failed to make clear that no member of the division had ever been convicted in the post-war years of committing war crimes. The Association also said that the article was too simplistic in its description of the feelings of Ukrainians towards Poland and Poles and contained a raft of other misleading points.

The newspaper said that it had taken great care to be accurate, but acknowledged that the points being dealt with had been, and would continue to be, subject to debate.

In its ruling, the Commission concluded that the main thrust of the complaint related to issues of interpretation. The claims put forward in the article had not been presented as fact and, as the Commission noted: “the construction of history often involves taking a partisan standpoint. Newspapers are free to be partisan under the terms of the Code, providing that they distinguish clearly between comment, conjecture and fact. The article was very clearly presented as the view of its authors and the sources they quoted. By including the phrase ‘the truth may never be known’ the article accepted its own limitations as an interpretation of the available facts.

*McIntosh v Sunday World (2002)*<sup>132</sup>

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<sup>131</sup> PCC/N1/1/1a-1b

<sup>132</sup> PCC/N1/1/1c

**In the absence of a full and proper response to a complaint, the Commission is likely to assume that an editor cannot defend his actions and will uphold the complaint automatically.**

A man had complained that a story about him contained inaccuracies. But although the newspaper told the PCC that it stood by its story and denied the allegations of inaccuracy, it had failed to answer the specific complaints made by Mr McIntosh. This meant that the Commission could not make an informed judgement as to whether many of the complainant's claims were well founded. It therefore had to assume simply that the newspaper could not offer a detailed defence to the claims and had, in the circumstances, no choice but to uphold the complaint.

In its ruling the Commission emphasised the preamble to the Code, which states that "it is the responsibility of editors to co-operate with the PCC as swiftly as possible in the resolution of complaints". In this case, such co-operation by the newspaper had not been forthcoming, and the Commission subsequently wrote to the editor to request assurances about the handling of future complaints.

*A man v Luton on Sunday (2003)*<sup>133</sup>

**Digital manipulation of photographs may well constitute a breach of the Code if the nature of alterations is not made clear to readers. If editors are unsure about whether their changes are significant, they should incline towards transparency and declare any alterations.**

A photograph accompanying an article about the increasing problem of prostitution on the streets of Luton did not depict a real scene: the image showed a street corner and a supposed vice girl on the pavement, but the newspaper acknowledged that it had been created from two separate images. The newspaper emphasised that highlighting the rise of prostitution was in the public interest and defended its use of an "illustrative photograph" in these circumstances. The Commission noted that there was nothing to indicate to readers that the scene had been posed; even though the subject matter concerned an important matter of local public interest, the PCC considered that the newspaper should have taken greater care – for instance by publishing a suitable caption – to ensure that readers were not misled. It acknowledged that the breach of the Code was "not particularly grave", but upheld

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<sup>133</sup> PCC/N1/1/12

the complaint, noting that the concerns related to a point of principle to which it attached high importance.

*Tolkien family v Sunday Mercury (2003)*<sup>134</sup>

**The death of an individual does not give a newspaper or magazine *carte blanche* to publish serious allegations about that individual as if they have been established as fact (unless they have).**

In this unusual case, the Commission was asked to consider whether serious claims about a man who had recently died were set out accurately. The central claim, published uncritically on the basis of one individual's account, was that the dead man had been guilty of committing child abuse, even though he had never been brought to justice in his lifetime.

It was not for the Commission to come to a decision as to the veracity of the serious allegations levelled against the man. Its primary role was to assess whether the newspaper had presented such allegations with sufficient care and accuracy. It decided that the newspaper had not; while it was clear that the newspaper believed that Father Tolkien was guilty of abuse – based upon the evidence of an alleged victim and other sources – it had misleadingly presented its belief as an explicit statement of fact. By publishing such extremely serious allegations without sufficient qualification, the newspaper had therefore breached the terms of Clause 1 of the Code, failing to distinguish conjecture from fact

*Mr George Millichamp v Brecon & Radnor Express (2005)*<sup>135</sup>

**A failure to publish the verdict of court proceedings that have been the subject of earlier coverage risks breaching the Code.**

The newspaper had reported that the complainant had appeared before magistrates facing a charge of assault, but it had not reported that the charges had later been dismissed, despite the complainant's several requests. The newspaper said the omission was a result of its absence from court due to illness, and that the onus was now on the complainant to prove that he had been acquitted. Following the complaint to the Commission, the editor published a short note recording the acquittal. The complainant said that the editor's reluctance to publish an apology and the long delay had caused great stress and upset. The Commission

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<sup>134</sup> PCC/N1/1/3-5

<sup>135</sup> PCC/N1/1/69

did not agree that the onus was on the complainant to produce evidence that he had been acquitted of the charge. In the circumstances, the failure to publish the verdict created an unnecessarily misleading impression that had lasted for several months in breach of the Code.

*Mr Samir El-Atar, Managing Director of Dar Al-Taqwa bookshop v Evening Standard (2005)*<sup>136</sup>

**In evaluating whether measures offered by a publication are sufficient to remedy an initial breach of Clause 1, the Commission will take account of the nature of the allegations and the potential consequences of the inaccuracy.**

The managing Director of Dar Al-Taqwa, a bookshop in London, complained about an article published several weeks after the 7 July 2005 attacks which had focused on allegedly extremist literature on sale in Islamic bookshops in London and included a photograph of the complainant's bookshop alongside pictures of titles that the newspaper said advocated terrorism and which were said to be sold at premises "such as" the complainant's shop; in fact, as the newspaper accepted, these items had not been stocked by the shop. The complainant also said that the newspaper had quoted selectively from a pamphlet which was on sale in the bookshop. As a result of the article, abuse and threats of violence had been made against staff, and the shop had requested police protection.

The newspaper had published a clarification to the story (without the complainant's approval) and offered to publish a letter from the complainant and an apology. The Commission decided that while there was a public interest in the subject matter, sufficient care had not been taken over the accuracy of the story. Given the nature of the allegations and the climate in which they had been published, the consequences could have been extremely serious. In those circumstances, the offered remedies were inadequate; the Commission upheld the complaint.

*A man v The Voice (2006)*<sup>137</sup>

**Particular care should be taken to present multi-page stories on each page that they appear; clarifying information included on inside pages may not be sufficient to mitigate any misleading impression given by a front-page story.**

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<sup>136</sup> PCC/N1/1/67-68

<sup>137</sup> PCC/N1/1/73

The newspaper had published a front-page article reporting the alleged rape of a 14-year-old black girl by 19 men in an Asian-owned shop. A front-page headline had misled readers by stating as fact that a rape had taken place; the word “alleged” had only been used once on the front page. While stories on page 4 and 5 had made clear – in headlines and text – that the crime was “alleged”, the Commission did not consider that sufficient care had been taken to present the story accurately. There was insufficient qualification to enable people reading the front-page article to realise that the story related only to allegations. The Commission upheld the complaint about this failure to distinguish between comment, conjecture and fact.

*Leila Mahmoud v Isle of Wight County Press (2007)*<sup>138</sup>

**Publications are free to publish reports of court proceedings but must take care to distinguish between established facts and claims heard in court.**

The complainant had been the subject of an assault by her friend’s boyfriend, who had pleaded guilty to the offence at his trial. In mitigation, the man had said he was upset because he had discovered his girlfriend and her friend - the complainant - were having an affair. Ms Mahmoud complained that the subsequent article had effectively stated that she and her friend were lovers, in both the headline and opening paragraph, as if this had been established fact. Ms Mahmoud, and her friend, made clear that the claim was completely unfounded. The Commission considered that the newspaper had failed to distinguish the man’s claim in mitigation for what it was and there was therefore a breach of Clause 1 (Accuracy) of the Code. It considered that readers may have been misled into believing that the claim had been accepted as established fact, when it was denied by the two women.

*Mrs Pruw Boswell-Harper v Daily Express (2007)*<sup>139</sup>

**The Commission will uphold complaints under Clause 1 if a correction (arranged either directly between the parties or negotiated by the PCC) is published without due prominence.**

The Mayor of Totnes complained that the correction to an article about the scrapping of council prayers (the wording of which had been agreed following mediation by the PCC) had been published unilaterally by the newspaper on page 33, when the original article had appeared on page 5. The newspaper had agreed to inform the Commission in advance where the apology was to be published but had not done so. The complainant said that this

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<sup>138</sup> PCC/N1/1/94

<sup>139</sup> PCC/N1/1/91



did not meet the Code's requirement of due prominence; the Commission agreed and the complaint was upheld.

In January 2011, Clause 1 (Accuracy) of the Code was amended. The prominence of corrections, clarifications and apologies must now be agreed in advance in all cases involving the Commission.

*Paul Burrell v News of the World (2008)*<sup>140</sup>

**The Commission has never enforced a blanket requirement for newspapers to ask for comment from the subject of a story before publication. However, a failure to obtain or publish such comment – for example a denial of serious allegations – may show that a lack of care has been taken to ensure accuracy and may, depending on the presentation of the story, mislead readers in breach of the Code.**

Paul Burrell complained about an article headlined "Burrell: I had sex with Diana", which was largely based on his brother-in-law's recollection of a conversation he had allegedly had in 1993, in which Mr Burrell was said to have boasted of having sex with Princess Diana.

Mr Burrell said the claims were entirely without foundation and that the newspaper should at the least have gone to him for comment before running the story. The newspaper said it thought that Mr Burrell could not be trusted and was concerned about him obtaining an undeserved injunction.

However, the Commission agreed with the complainant. The claims were substantial, published with great prominence, and were based on the recollection of a fifteen-year-old conversation. The newspaper should have obtained his response to the allegations and then, if it continued to believe there were grounds for running the story, should have included the complainant's denial. Having not done this it should have made a prompt and proportionate offer to publish the denial soon after the story appeared. There was a strong likelihood that the omission of any denial from him may have misled readers into believing that he accepted the allegations. The complaint was upheld.

*Ms Alicia Singh v Closer (2009)*<sup>141</sup>

**The preparation of "real-life stories" will often involve considerable editing, but publications must be sure not to distort the information.**

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<sup>140</sup> PCC/N1/1/115-116

<sup>141</sup> PCC/N1/1/131

The article was about the complainant having a baby when she had not known she was pregnant; she said that it had exaggerated and distorted her experiences and included a number of fabricated direct quotes from her. The Commission decided – by comparing tapes of the interviews with the published story – that the magazine had exaggerated a number of important points and falsified some of the direct quotes attributed to the complainant. The Commission accepted that magazines will often edit considerable amounts of material to present the story in a readable way but made clear that they must do so in a way that does not distort the source's account. It upheld this serious complaint.

*Natalie Cassidy v Woman (2009)*<sup>142</sup>

**When a publication is unable to provide on-the-record corroboration for disputed claims from confidential sources, the Commission will expect the publication to offer an appropriate opportunity to reply.**

The article reported that a source had told the magazine that Ms Cassidy had visited a gym frequently while preparing for the taping of a weight-loss DVD; this was denied by the complainants' solicitors, who said that she had lost weight only by doing the exercises in her DVD. The Commission made clear that while it does not expect publications to identify confidential sources of information, they should either supply on-the-record corroboration or offer an opportunity to reply when the accuracy of an anonymous source is questioned. The magazine had done neither in this case. The complaint was upheld, and the Commission also criticised the magazine for having taken an excessive time to provide a response during its investigation.

Contrary to the requirements of the Code, the magazine published the adverse adjudication in edited form, without the required headline reference to the PCC, and with insufficient prominence. As a result, the Commission upheld a further complaint against the magazine, which it was required to publish. This time it did so appropriately.

*Mr Edward Clark v Herne Bay Times/Whitstable Times/Canterbury Times (2010)*<sup>143</sup>

**Where the subject of a story denies its accuracy, the publication of such a denial is not sufficient on its own to establish that the publication has taken appropriate care under the terms of Clause 1 over the accuracy of the story, especially when the allegations against the subject are of great seriousness.**

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<sup>142</sup> PCC/N1/1/124

<sup>143</sup> PCC/N1/1/159-161

The newspapers had reported an allegation, made in an anonymous email, that a performer in a local operatic production was an "ex-heroin user" despite the strenuous denials of the individual concerned. Although the complainant's denial had been reported in the article, the newspapers had not made other efforts to establish the truth of the claim. The publication of the complainant's denial did not fully absolve the newspapers of their own responsibility for care over the accuracy of the serious claims they had published. The complaints were upheld.

\*Clause 3 (Privacy)

**i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.**

**ii) Editors will be expected to justify intrusions into any individual's private life without consent. Account will be taken of the complainant's own public disclosures of information.**

**iii) It is unacceptable to photograph individuals in private places without their consent.**

***Note - Private places are public or private property where there is a reasonable expectation of privacy.***

Clause 3 (Privacy) is a perennial source of difficult judgment calls for the PCC. The Code's protections in this area were overhauled in 1998 following the death of the Princess of Wales. Since that time, the Code has drawn from the European Convention on Human Rights in recognising the entitlement of individuals "to respect for private and family life, home, health and correspondence". In June 2004, "digital communications" were added to this "protected zone" in recognition of the potential for intrusion posed by the reporting methods covered by Clause 10 (Clandestine devices and subterfuge) of the Code.

In addition to this general entitlement, the Code also imposes a specific ban on intrusive photography, defined as the photographing without consent of individuals on public or private property where there they have a reasonable expectation of privacy. In a number of decisions the Commission has provided guidance to newspapers about when and where it considers that individuals have a reasonable expectation of privacy. A man eating a butterscotch tart in a small café did (*Tunbridge v Dorking Advertiser*; see below); a woman standing in a garden, visible and identifiable to passers-by, did not (*Sheridan v Scottish Sun*; see below).

The Commission has emphasised in a number of rulings that the requirements of Clause 3 apply just as much to public figures as private citizens. However, it acknowledges that the relationship between celebrities and the press, and by extension the public, often poses particular problems. It recognises that celebrities may be at particular risk from stalkers and obsessive fans; as such, in a number of decisions it has limited how much information may be published about the location of celebrities' homes. On the other hand, in 2009 the Code was amended to make clear that the PCC will take into account an individual's previous public disclosures; the right to privacy can be compromised if an individual has previously placed information about their private lives into the public domain.

### **Key Rulings**

*Mr Stephen Lamport of St James' Palace on behalf of HRH Prince William v OK! Magazine (2000)*<sup>144</sup>

**Publications must carefully check the origins of photographs and recognise that remote places, even if publicly accessible in theory, may be regarded as private for the purposes of the Code. (And the likelihood of a subject effectively being pursued in order to obtain the images may lead to additional breaches in relation to the requirements of Clause 4 (Harassment).)**

The complaint concerned photographs taken of Prince William on his gap year in South America and showed him involved in a number of outdoor activities. The Commission concluded that Prince William was on a trip to a place where he had a reasonable expectation of privacy (the Chilean outback). It strongly criticised the magazine's actions in publishing the pictures, saying it could only have served to stoke the market for such paparazzi photographs – making Prince William more uncomfortable as a result. The Commission quoted guidance issued in a speech by its then-Chairman, the Rt Hon Lord Wakeham, which had emphasised that “the ability of all young people to go about their normal lives without physical intimidation is hugely important”. The pictures could only have been taken as a result of persistent pursuit; Prince William was not in a place where photographers would normally have been. The Commission upheld the complaint under Clause 3 and also under Clause 4 (Harassment) because it was clear that the photographs have been taken following persistent pursuit of the Prince.

*Mrs Kim Noble v Jersey Evening Post (2002)*<sup>145</sup>

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<sup>144</sup> PCC/N1/1/329

<sup>145</sup> PCC/N1/1/203

**Publications must avoid unjustified intrusions into privacy, no matter the source of the material (even readers' letters).**

Details of the complainant's rental payments over a number of years had been published in a letter from a housing official with whom the complainant was engaged in a dispute. The Commission considered that this information was clearly private and, while the editor had considered that the author of the letter was a competent authority to release the information, there was no legitimate public interest in publishing it. The complaint was upheld.

*Mr Hugh Tunbridge v Dorking Advertiser (2002)*<sup>146</sup>

**The interior of publicly accessible buildings such as cafés can constitute private places under the terms of the Code.**

A member of the public complained that he had been photographed without his consent as he was eating afternoon tea in a quiet tearoom in Dorking. The Commission concluded that "customers of a quiet café could expect to sit inside such an establishment without having to worry that surreptitious photographs would be taken of them and published in newspapers". The complaint was upheld.

*Miss Julie Goodyear MBE v The People (2002)*<sup>147</sup>/*Mrs Gail Sheridan v Scottish Sun (2007)*<sup>148</sup>

**When considering a complaint about whether an individual has a reasonable expectation of privacy on their own property, the Commission will have regard to whether he or she would be visible and identifiable to ordinary passers-by.**

Julie Goodyear, an actress, complained about the publication of photographs taken with a long lens that showed her sitting in her back garden. The newspaper said that that the garden was not hidden by trees or bushes, and that it was possible to see the complainant from public places which bordered her property. Moreover, the editor argued that the complainant could not now legitimately complain that her privacy had been invaded when she had previously cooperated with features and stories about her home.

The Commission noted that a long lens had apparently been necessary to photograph the complainant with any clarity; it considered that in these circumstances it was unlikely that passers-by – even if they could have seen figures in the garden – would have been able to

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<sup>146</sup> PCC/N1/

<sup>147</sup> PCC/N1/1/207

<sup>148</sup> PCC/N1/1/276

identify the complainant. It was clear that the complainant had a reasonable expectation of privacy where she was sitting. The complaint was upheld.

Mrs Gail Sheridan, the high-profile wife of a Scottish politician, objected to the publication of a photograph, taken with a long lens, of her in her garden, where she considered she had a reasonable expectation of privacy. The newspaper said that Mrs Sheridan had been standing on her driveway, easily and clearly visible from the street — even without a long lens camera — and was not engaged in any private activity. The Commission accepted these points and concluded that the type of lens used was immaterial on this occasion (indeed Clause 3 was amended in 2004 so that specific reference to long-lens photography was removed): what was important was that she was identifiable to ordinary passers-by. The complaint was not upheld.

*Miss Suranne Jones v Daily Sport (2003)*<sup>149</sup>

**An individual's previous acquiescence in the publication of stories about his/her private life is not sufficient to justify the publication of further intrusive material.**

The complainant was an actress. A former boyfriend of hers had spoken to the newspaper and provided an explicit account of their relationship. The complainant said that the article contained an intrusive level of detail and that she had been distressed by the invasion into her privacy. The newspaper advanced no defence for publication other than that the complainant had not previously complained about the publication of accounts of the same relationship that it regarded as similar. The subject matter was of the most personal nature and graphically described, and there was no public interest in its publication. The complainant's failure to complain several years previously about a small number of interviews with the same individual was not sufficient to justify the publication of such an intrusive article. The complaint was upheld.

*Ms Dynamite v Islington Gazette (2003)*<sup>150</sup>/*Rowling v Scottish Mail on Sunday (2008)*<sup>151</sup>

**Because of the security problems that some celebrities have encountered from stalkers and obsessive fans, when publishing details about a celebrity's home without consent, publications must take care to ensure that they do not publish the precise address or other information that would enable people to find the exact location of the home. However, when considering such complaints the Commission will have regard**

<sup>149</sup> PCC/N1/1/210

<sup>150</sup> PCC/N1/1/209

<sup>151</sup> PCC/N1/1/283-6

**to whether the information is already available publicly (and to what degree), and the extent to which it will have been material assistance to those who may wish to locate the property.**

An article in the *Islington Gazette* reported that the singer Ms Dynamite had purchased a new property in North London. The name of the street was given and a photo of the specific property was included. The complainant's representatives said that the inclusion of such detail made identification of Ms Dynamite's new home possible and could put her at risk from obsessive fans. The Commission was satisfied that sufficient detail was included in the article for the home to be identified, and it therefore upheld the complaint.

By contrast, when the *Scottish Mail on Sunday* published an article about JK Rowling purchasing a new property close to her existing home in Perthshire, a complaint from Ms Rowling was not upheld because the information in the article (as well as more detailed information about the location of the property) was already available very widely in the public domain.

*Ms Joanna Riding v The Independent (2006)*<sup>152</sup>

*Ms Charlotte Church v The Sun (2007)*<sup>153</sup>

*Ms Dannii Minogue v Daily Record (2010)*<sup>154</sup>

*Ms Dannii Minogue v Daily Mirror (2010)*<sup>155</sup>

**Publications should not reveal news of an individual's pregnancy without consent before the 12 week scan, unless the information is known to such an extent that it would be perverse not to refer to it. Publications may not circumvent this requirement by publishing claims of "rumours" that they know to be true. The existence of speculation online is not sufficient to establish that it would be "perverse" not to refer to the pregnancy; the Code requires the Commission to have regard to the "extent" to which the information has previously appeared.**

A diary item in 2006 revealed that the actress Joanna Riding was in the early stages of pregnancy, before the complainant had informed her family. The Commission made clear that this was a serious intrusion and that "as a matter of common sense newspapers and

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<sup>152</sup> PCC/N1/1/256

<sup>153</sup> PCC/N1/1/275

<sup>154</sup> PCC/N1/1/313

<sup>155</sup> PCC/N1/1/314

magazines should not reveal news of an individual's pregnancy without consent before the 12 week scan, unless the information is known to such an extent that it would be perverse not to refer to it". This was because of the possibility of complications or miscarriage – something that was sadly a feature in this case – and because it should be an individual's decision when to share such news in the early phase of a pregnancy. This was the first time that this principle had been publicly articulated by the Commission.

In 2007, The Sun received information that the singer Charlotte Church was pregnant. It approached her representative for comment, who said that she considered such information to be private but confirmed that Ms Church was "not more than 12 weeks pregnant". In spite of this, the newspaper published an article referring to "rumours" about a pregnancy, which it said had been prompted by a "very public change in behaviour when it came to her consumption of alcohol and cigarettes". But the newspaper had provided no evidence of such rumours, and had not denied that it had known for a fact that she was pregnant when it published the piece. In the view of the Commission, by reporting as speculation information that it knew to be true, the newspaper had tried to circumvent the privacy provisions of the Code. This was not acceptable within the spirit of the Code, and the complaint was upheld.

In 2010, the Daily Mirror and the Daily Record reported that Dannii Minogue was pregnant with her first child, despite the fact that she had not yet had her 12-week scan. The newspapers argued that publication could be justified on the grounds that the information about the pregnancy was already in the public domain, having appeared on the Sydney Morning Herald website the day before, as well as on a blog. As such, they argued, the information ceased to be private. The Commission did not accept the public domain argument: these references to the pregnancy were speculative rather than confirmed and did not mean that the information was so extensively in the public domain that it would have been perverse not to refer to it. This was no more than common sense; otherwise, any reference online would justify the publication of intrusive material. The Commission upheld the complaints, describing the incident as a "regrettable lapse in editorial judgement".

*A woman v News of the World (2007)*<sup>156</sup>

**An individual has a right to freedom of expression. As such, they may be at liberty to tell a newspaper about the existence of relationship in which they are involved. But their right does not extend so far that newspapers may publish intimate details about a relationship without the consent of the other party.**

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<sup>156</sup> PCC/N1/1/266



A woman complained about a report of her daughter's extra-marital affair, which was based on material supplied by the other party in the relationship. The woman said her daughter was not a public person and had a right to keep the affair private.

In an important ruling the Commission noted that "when reporting one party's account of a relationship, newspapers must also have regard to the other person's right to respect for their private life." While the man was entitled to make public the fact of the relationship, his right to freedom of expression did not extend to talking about intimate, sexual details of the affair. The woman's daughter had not courted publicity, nor was there some other public interest to justify publication of such details. There was an unacceptable intrusion into the woman's privacy and the complaint was upheld.

*A woman v OK! Magazine (2007)*<sup>157</sup>

**Indicating that an individual is receiving treatment for an addiction (even when they are not the focus of the material in question) is likely to constitute a serious intrusion into an individual's privacy.**

The article was about a male celebrity, and it mentioned that he and a friend – the complainant – were "spotted at an Alcoholics Anonymous meeting". The complainant's addiction and treatment had never been previously revealed in the media, and the article had been published along with an intrusive photograph of the complainant taken as she left the meeting. It was clear to the Commission that publication of this information about the complainant constituted a serious intrusion. There was no public interest reason for publishing references to the treatment without her consent. The Commission dismissed as "clearly without merit" the magazine's defence that readers might think the complainant was at the meeting only to provide moral support. The magazine did not know whether she had been there for treatment herself (though should have realised that it was, in fact, the only feasible reason for her attendance), and had taken no care to avoid a possible intrusion into her privacy. This was reckless in the circumstances; the complaint was upheld.

*Elle Macpherson v Hello! (2007)*<sup>158</sup>

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<sup>157</sup> PCC/N1/1/279

<sup>158</sup> PCC/N1/1/262

**In considering complaints under Clause 3, the Commission will have regard to specific steps taken by a complainant to guard against press intrusion.**

The complainant and her children had been photographed holidaying on a private island, which had, said the complainant, been deliberately chosen for the protection it would give her children. The complainant had been unaware that the photographs were being taken. In coming to a view on the complaint the Commission noted that the complainant had taken specific steps to protect her privacy. By contrast, it was not satisfied that the magazine had been able to demonstrate convincingly that the complainant and her children were not in a place where they had a reasonable expectation of privacy. It upheld the complaint.

*Mr Brian McNicholl v Scottish News of the World (2007)*<sup>159</sup>

**The publication of private correspondence poses the risk of a significant intrusion that will normally require a very strong public interest justification.**

The article reported that the complainant had been caught by his long-term partner engaging in “secret internet sexychat with a string of Kazakhstani beauties”. There was dispute as to how the complainant’s private emails – which contained the information upon which the article was based – had been obtained; the complainant said his partner used a surveillance programme to infiltrate the messages, which she in turn denied. However, it was not in dispute that she had obtained his emails without consent and supplied them to the newspaper, which had published extracts from them, along with photographs of the complainant, one of which showed him partially naked. While the woman had a right to discuss their relationship, and clearly had strong views about the complainant and his behaviour, this was not sufficient to warrant publishing information taken from private e-mails to which the woman was not a party. The complaint was upheld.

*Carolyn Popple v Scarborough Evening News (2008)*<sup>160</sup>

**Newspapers cannot invade an individual’s privacy with impunity simply because they have the consent of the police. Moreover, newspapers must be aware that audio-visual material they publish online must meet the same requirements as anything that appears in print.**

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<sup>159</sup> PCC/N1/1/277-78

<sup>160</sup> PCC/N1/1/289

The newspaper, at the invitation and with the full consent of the police, filmed officers entering and searching the complainant's house. The footage was posted on its website and an image published in the paper. The Commission found that "showing a video and publishing a picture of the interior of the complainant's house was highly intrusive, particularly when the coverage contained information likely to identify her address". No charges were brought as a result of the raid. The Commission considered that there was insufficient public interest justification for entering the complainant's home without consent and photographing its contents. The complaint was upheld.

*A man v Dorset Echo (2008)*<sup>161</sup>

**It is critical to obtain appropriate consent before the publication of medical information. A family member (except in some circumstances a parent or legal guardian of a minor) may not give consent on behalf of another person.**

The article reported that the complainant had cystic fibrosis, and that his mother had said that he needed a heart and lung transplant. The complainant said that his mother had been asked questions by a journalist on her views of current events, during which she said she approved of "opt out" organ donations in light of her son's illness. She did not recall saying that the complainant needed a new heart and lungs, but in any case, he did not. The complainant also considered the references to his health to be intrusive; he had not given consent for his details or his photograph to be published. While it was not in dispute that the complainant's mother had volunteered that her son had the illness, it was also accepted that the newspaper had not obtained permission from the complainant himself to publish the information. The complainant was an adult and able to speak for himself; the newspaper could have waited to ensure that he was willing for his health details to be publicised. The Commission upheld the complaint.

*Ms Mullan, Mr Weir & Ms Campbell v Scottish Sunday Express (2009)*<sup>162</sup>

**The publication of publicly accessible material hosted on social networks may constitute an unwarranted intrusion into privacy, even when no specific steps such as password protection have been taken to protect the material.**

A front-page article about survivors of the Dunblane shooting in 1996 – who were turning 18 around the time the article was published – claimed they were "shaming" the memory of the deceased with "foul-mouthed boasts about sex, brawls and drink-fuelled antics" on social

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<sup>161</sup> PCC/N1/1/282

<sup>162</sup> PCC/N1/1/299-300

networking sites. The article featured a number of photographs of the teenagers taken from those sites. While the information was publicly accessible, the Commission ruled that since the shooting the teenagers had done “nothing to warrant media scrutiny, and images appeared to have been taken out of context and presented in a way that was designed to humiliate or embarrass them”. This represented a “fundamental failure” to respect their private lives. The complaint was upheld.

*Goble v The People (2009)*<sup>163</sup>

**In some situations material that has been obtained from social networking sites may be published, even if the subject of that material has limited its availability to a small number of people. But this is likely to be true only when there is a public interest justification to permit what would otherwise be an invasion of privacy.**

Following the death of a man during the G20 protest in London in April 2009, a serving police officer had posted the following message on his Facebook wall: “I see my lot have murdered someone again. Oh well, shit happens.” This comment, which could only be seen by the police officer’s Facebook friends (of which there were around 250), was shown to the People newspaper by one of those individuals who had legitimate access to it. The newspaper subsequently republished the comment and identified the policeman, who subsequently complained that the its actions were an invasion of his privacy.

In this case, which was notably different to *Mullan et al v Scottish Sunday Express* the material was not publicly accessible, albeit that the complainant appeared to accept all-comers as Facebook friends (including for a short time a reporter from the newspaper). On the other hand, there did seem to be a public interest in scrutinising the attitudes of serving police officers towards the death of an innocent man during a confrontation with police.

The Commission considered that any intrusion into privacy was therefore justified and the complaint was not upheld. Additionally, the Commission considered it reasonable for the newspaper to have published two further comments also relating to his work, since they provided additional context to his remarks about Mr Tomlinson.

*A couple v Loughborough Echo (2009)*<sup>164</sup>

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<sup>163</sup> PCC/N1/1/305-6

<sup>164</sup> PCC/N1/1/291

**The publication of private contact details may raise a breach of Clause 3.**

An article about a couple's concern that their home had been damaged by a building developer had accidentally included the mobile phone number of the husband, who had subsequently received numerous crank calls. The newspaper had apologised privately and had offered to publish a public apology as well. Although an obvious error, the publication of the number, which was not accessible to the public, without consent was undoubtedly intrusive. The complaint was upheld.

*A Woman v Loaded (2010)*<sup>165</sup>

**The Commission will consider whether otherwise potentially intrusive material has been widely published in a similar context to that which has led to the complaint.**

The magazine had published a number of photographs of a young woman, labelled the "Epic Boobs girl", asking its readers to identify her and offering a financial reward for encouraging her to do a photoshoot for the magazine. The photographs had originally been uploaded by the complainant to a social networking page in 2006 but had since been published without permission across numerous websites. The article had caused the complainant upset and embarrassment.

The Commission sympathised with the complainant, but it noted that the magazine had not taken information out of context from a social networking site; rather, it had already been made widely available for a considerable time. At the time of complaint, there were over one million search results that related to the girl, and over 200,000 images of her as the "Epic Boobs" girl. It was not possible to censure the magazine for commenting on material already in wide circulation, and which had already been contextualised in the same specific way, by many others. The complaint was not upheld.

*Ms Sarah Baskerville v Daily Mail (2011)*<sup>166</sup>

**In considering complaints about social networking, the Commission will have regard for the nature of the material and the extent to which it is publicly accessible.**

The complaint was the first considered by the Commission to involve the republication of information originally posted on Twitter. The complainant was a civil servant. The articles reported on a number of messages she had posted on her Twitter account about various aspects of her job. In the complainant's view, this information was private: she had a

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<sup>165</sup> PCC/N1/1/319-320

<sup>166</sup> PCC/N1/1/324-5

“reasonable expectation” that her messages would be published only to her 700 or so followers, and had included a disclaimer on her Twitter feed making clear that the views expressed there were personal.

The Commission found that the publicly accessible nature of the information was a “key consideration”. The complainant had not restricted access to her messages, which could easily be re-tweeted by others. It also noted that the published information related directly to the complainant’s professional life as a public servant. The complaint was not upheld.

\* Clause 4 (Harassment)

**i) Journalists must not engage in intimidation, harassment or persistent pursuit.**

**ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent.**

**iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.**

The Commission considers relatively few formal complaints under the terms of Clause 4 yet it devotes a considerable amount of time to dealing with the issues it raises. This is because the Commission tries to prevent unwanted contacts from media representatives, so many cases that initially raise concern (or that have the potential to do so) are resolved without the need for a formal investigation. The PCC’s emergency helpline enables members of the public to get in touch at any time to ask for help in making desist requests to an individual publication or to the industry as a whole. The PCC also regularly contacts publications, on request, to communicate concerns that as-yet unpublished material has been obtained in breach of Clause 4.<sup>167</sup>

### **Key Rulings**

*Mr Stephen Lamport of St James’ Palace on behalf of HRH Prince William v OK! Magazine (2000)*

**Individuals must not be persistently pursued without considerable public interest justification.**

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<sup>167</sup> See paragraph 254

See above, under Clause 3 Key Rulings for further details of this case.

*Mr Glen Swire v The Mail on Sunday (2001)*<sup>168</sup>

**Publications must put in place appropriate systems to ensure that relevant staff are aware of desist requests to avoid breaching Clause 4.**

The father of a girl who was caught up in a news story complained to the Commission that, after he had asked a reporter to desist from contacting the family and made the same request in writing to the newspaper's editor, a reporter and photographer had turned up trying to interview his daughter. The Commission made clear that it will find a breach of the Code in such circumstances where there is no public interest: reporters must respect the wishes of the public if they are asked to desist from approaching or telephoning them. The newspaper's explanation of the events – that the editor had been on holiday so had not opened the letter, and the reporter had not passed on the message to desist – was insufficient. The Commission accepted that the newspaper may not have acted in bad faith but, as a result of messages not having been passed on or not acted on, the terms of the Code had been breached. The complaint was upheld.

The Commission also took the “opportunity of this complaint to publish advice to members of the public about how to deal with persistent or unwanted approaches from newspapers. This would apply equally to those in the complainant or his daughter's situation or to those more removed from a story but who are approached by journalists for background or other information.”

*Greater Manchester Police v The Daily Telegraph (2008)*<sup>169</sup>

**A desist request cannot last in perpetuity. If circumstances change, a further approach may be appropriate provided it can be justified in the public interest.**

Two Police Community Support Officers arrived at the scene several minutes after a child had disappeared under the surface of a local pond, but did not enter the water to rescue him. (The child drowned.) The officers were widely criticised for not trying to help. Many newspapers requested interviews with them and their families, which were refused. After the inquest, Greater Manchester Police asked the PCC to circulate a request that no further contact be made. A week later a journalist from the newspaper returned to the home of one

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<sup>168</sup> PCC/N1/1/331-332

<sup>169</sup> PCC/N1/1/336-337

of the officers. Greater Manchester Police complained that this further approach constituted harassment.

The newspaper argued that it was legitimate to seek further comment because David Cameron (then Leader of the Opposition) had referred to the case some days after the desist request was circulated. The Commission considered that Mr Cameron's comments had indeed moved the issue forward. This was a rare occasion in which there was a public interest justification for overlooking a desist request. The complaint was, therefore, not upheld.

Clause 5 (Intrusion into grief or shock)

**i) In cases involving personal grief or shock, enquiries and approaches must be made with sympathy and discretion and publication handled sensitively. This should not restrict the right to report legal proceedings, such as inquests.**

**\*ii) When reporting suicide, care should be taken to avoid excessive detail about the method used.**

The terms of Clause 5 are designed to protect individuals at extremely vulnerable moments, when they are grieving or in shock in the immediate aftermath of a tragedy. The Commission recognises that death and suffering are often legitimate subjects of public inquiry and press interest; however, there can be no public interest in unsympathetic enquiries or insensitive publication. It will always be a matter of judgment whether publication has been handled sensitively; however, in a 2005 adjudication (*Claypoole v Daily Mirror*; see below), the Commission gave examples of some of the elements likely to constitute a lack of sensitivity in publication. They were: the use of gratuitously gory information in pictures or stories at a time of grief; unnecessarily ridicule of the manner of death; publication of a pictures showing the subject engaged in obviously private, or embarrassing, activity.

### **Key Rulings**

*Mr and Mrs Kimble v Bucks Herald (2000)*<sup>170</sup>

**Even in the absence of an explicit request to desist, repeated approaches to a grieving family within a short period of time may be insensitive in breach of Clause 5.**

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<sup>170</sup> PCC/N1/1/343



The complainants were the parents of a teenage girl who had recently died. They had been approached several times over a short period of time about the possibility of a tribute article in the local paper, because the reporter was trying to meet a deadline.

The Commission noted the difficulty of seeking information about such tragic stories, but it decided that in the circumstances, regardless of whether the complainants had made an explicit request that the journalist should leave and not return to their house, common sense should have indicated that the repeated approaches over a short period of time were not appropriate. It upheld the complaint.

*Mrs Dorothy Yeoman v Rhondda Leader (2004)*<sup>171</sup>

**Decisions about whether a report of an individual's death is insensitive will inevitably be subjective to some degree. However, the Commission will take account of several factors: the tone of the piece, the level of detail about the manner of death, how soon after the death it is published and whether the information has been put into the public domain.**

The article reported the recent death of a man, who had collapsed in his home. His sister complained that the article was distressing and included unnecessarily sensationalist details. Any judgement about whether such pieces are sufficiently sensitive will inevitably be subjective to some degree, but the Commission felt in this case that the overall tone of the article (which was close to being lighthearted) and the gratuitous inclusion of some of the detail resulted in a breach of the Code. The Commission bore in mind that the article had been written shortly after the death – and before the funeral – and that the details had not been officially put into the public domain, for example as a result of an inquest. It upheld the complaint.

*The family of Alice Claypoole v Daily Mirror (2005)*<sup>172</sup>

**The publication of an innocuous image, obtained from a public source, of someone caught up in a shocking and newsworthy event was not insensitive.**

A picture of a woman missing in the 2004 Asian tsunami appeared in a national tabloid against her family's wishes. The father's request that no photograph of his daughter be used was not passed on, due to a miscommunication, and an image from a publicly-accessible website was published. While regretting the lapse in communications, the PCC ruled that

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<sup>171</sup> PCC/N1/1/345

<sup>172</sup> PCC/N1/1/348-349

publication of a publicly available, innocuous image of someone caught up in such a shocking and newsworthy event was not insensitive. The Commission greatly sympathised with the complainants, but it did not uphold the complaint.

*A man v Chat (2007)*<sup>173</sup>

**While the rules on grief and shock have greatest relevance in the immediate aftermath of an incident, in exceptional cases the Commission may find that material published at a later period breaches the Code.**

The article was a woman's account of life with an abusive former partner, which referred to his later conviction for the murder of the complainant's step-daughter. In addition to what the complainant said were unnecessarily graphic details, the complainant and his family were distressed by an uncaptioned, staged photograph of a female body wrapped in bin liners, which was how the body had been discovered. The piece had been published on the first anniversary of the murder.

The Commission upheld the complaint under Clause 1 (Accuracy) in relation to the magazine's failure to make clear to readers that the photograph was staged. But it was even more concerned that by using the misleading picture near to the first anniversary of the death, the magazine had also shown a total disregard for the complainant's family. Even though some time had passed since the woman's death, the remarkable lack of sensitivity by the newspaper meant that there was a breach of Clause 5.

*The Commission v The Guardian, Metro, Crawley Observer, Daily Mail, Daily Mirror, Daily Record, Daily Star, The Daily Telegraph, The Independent, London Paper, The Sun (2009)*<sup>174</sup>

**In cases involving suicide, the editing process is crucial. Care must be taken to remove excessive information prior to publication – both online and offline – even if that information has been heard during an inquest or has been provided by a news agency.**<sup>175</sup>

A number of newspapers published reports about a man who had killed himself with a chainsaw, giving details about how the implement had been positioned and activated. The Commission investigated the issue without a formal complaint because it raised an important matter of principle. Whilst the newspapers argued that the information had been heard at an inquest and provided by an agency, the Commission ruled that this was not a sufficient

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<sup>173</sup> PCC/N1/1/97

<sup>174</sup> PCC/N1/1/369-80

<sup>175</sup> See paragraph 296 for further information on how the PCC has developed guidance on suicide reporting.

defence. It concluded that The Guardian and the Metro had handled the story in a manner that met the requirements of the Code; by contrast the Crawley Observer, the Daily Mail, the Daily Mirror, the Daily Record, the Daily Star, The Daily Telegraph, The Independent, the London Paper, and The Sun had breached the terms of Clause 5 by failing to remove detailed information about the exact method of suicide. These complaints were upheld.

The case served to set out the Commission's standards in this area and made clear that there was no "safety in numbers" in such cases; each editor would be held responsible for the nature of the material published.

*Mrs Hazel Cattermole v Bristol Evening Post (2009)*<sup>176</sup>

**Publications should take account of the circumstances of a death and the identity of the deceased when considering how to report and present the story, as well as making common-sense decisions about the wishes of the family as to publication.**

The complainant's son had sadly taken his own life. On the day of the funeral, a photographer seen outside the crematorium was asked to leave by the undertaker, on the instructions of the family. The complainant was distressed that, in spite of this, an article about her son's death was accompanied by photographs of the mourners outside the crematorium and included details taken from the order of service and from messages left on flowers outside the crematorium. The newspaper said its photographer had legitimately and unobtrusively taken some photographs of what was, in the final analysis, a public event and had immediately left once the undertaker signalled that he should stop taking pictures.

The Commission recognised that newspapers have an important role to play in the reporting of tragic events and that at some funerals the presence of reporters is welcome. However, there was a particular need for sensitivity in this case, especially since the complainant's son had no public profile and had died in tragic circumstances. The newspaper should have taken steps to establish the parents' wishes before sending a photographer and a journalist to the funeral. Once the photographer had been warned away, it should have considered the likelihood that the family would object to the publication of the photographs. The complaint was upheld.

*Choose Life v Daily Sport (2009)*<sup>177</sup>

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<sup>176</sup> PCC/N1/1/384

<sup>177</sup> PCC/N1/1/381

**Careful regard should be paid to the presentation of articles about suicide to avoid glamorising it or increasing the potential for imitative suicides.**

The article purported to be a list of the 10 most popular “suicide hotspots” in the United Kingdom. The Commission made clear that the Code does not seek to prevent publications from investigating a pattern of suicides in a manner that serves the public interest. However, the article in question had been an entirely gratuitous guide to where individuals have killed themselves and explicitly pointed out to people that there were a number of options about how and where to attempt suicide. The Commission was also seriously concerned about the light-hearted presentation of the piece, which called one bridge a “well-known favourite for Britain’s top-yourself tourists”. The complaint was upheld.

*Ms Rosie Nicol-Harper v Southern Daily Echo (2010)*<sup>178</sup>

**The restrictions on suicide reporting do not extend to a prohibition on referring to the basic method of death. By removing key details about how exactly the suicide was achieved, newspapers can ensure they balance the need for accurate inquest reporting with the requirement of the Code.**

An inquest report into the suicide of a local man described how he had taken his own life by inhaling helium. The complainant, who was not connected to the man, said the method of suicide was unusual and even to mention it at all was unnecessary.

However, the Commission concluded that to interpret the Code in this way would be too restrictive. Rather, the newspaper had acted quite properly by removing key details such as how precisely the gas had been inhaled, or the quantity that would generally lead to death.

*Mr Andrew Cowles v Daily Mail (2010)*<sup>179</sup>

**The need for sensitivity during a time of grief must be carefully balanced against the public interest in freedom of expression.**

In February 2010, the Commission received over 25,000 complaints about an article published by the Daily Mail following the death of Stephen Gately. Andrew Cowles, Mr Gately’s civil partner, also complained about the article under Clause 1 (Accuracy), Clause 5 (Intrusion into grief or shock) and Clause 12 (Discrimination) of the Editors’ Code. The

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<sup>178</sup> PCC/N1/1/389

<sup>179</sup> PCC/N1/1/509-514

Commission made clear that it understood why Mr Cowles and others had been upset by the article. It considered that the newspaper had to accept responsibility for the distress it had caused and welcomed the columnist's apology to the family for the ill-timed nature of the article. However, it also had to consider the complaint in the wider context of press freedom - a fundamental component of a working democracy.

The Commission decided that it should be slow to prevent columnists from expressing their views, however controversial they may be. The price of freedom of expression is that commentators and columnists say things which may find offensive or inappropriate. The article had plainly caused distress to Mr Cowles, as well as many others, and this was regrettable. Ultimately, however, the Commission did not uphold the complaint.

**\*Clause 6 (Children)**

**i) Young people should be free to complete their time at school without unnecessary intrusion.**

**ii) A child under 16 must not be interviewed or photographed on issues involving their own or another child's welfare unless a custodial parent or similarly responsible adult consents.**

**iii) Pupils must not be approached or photographed at school without the permission of the school authorities.**

**iv) Minors must not be paid for material involving children's welfare, nor parents or guardians for material about their children or wards, unless it is clearly in the child's interest.**

**v) Editors must not use the fame, notoriety or position of a parent or guardian as sole justification for publishing details of a child's private life.**

The Code imposes tight restrictions to safeguard the interests of children. A ban on interviewing or photographing children on issues that relate to their welfare without appropriate consent has been stringently enforced by the Commission, which takes a broad view of what constitutes an "interview" and interprets the ban on "photographing" as covering the publication of photographs, regardless of when they were taken. (Not all pictures of children need consent – only those relating to issues connected to their welfare or the welfare of other children). All young people still at school (not just those under 16) are also covered by the requirement that they should be free of unnecessary intrusion, which the Commission has interpreted widely. The Code provides for a public interest exception in

cases involving children under 16, but it specifically raises the bar in such cases: editors must demonstrate an “exceptional public interest to over-ride the normally paramount interests of the child”.

### **Key Rulings**

*A couple v Press & Journal and Evening Express (Aberdeen) (2001)*<sup>180</sup>

**The identification of a child who had suspected tuberculosis was an unjustified intrusion into his time at school.**

The newspaper published a story about a boy who had suspected tuberculosis after failing to receive a job because of a “drug manufacturing problem”. The complainants, his parents, were concerned that he had been named, but other patients in a similar position were not identified. His school had alerted parents to his condition without naming him.

The Commission noted the newspaper’s argument that the boy’s name had been put into the public domain by other newspapers, and that readers needed to be informed of the identity of a child with a notifiable disease. However, editors must make their own judgements based on the Code and not rely on the behaviour of other media or editors, which may be the subject of other complaints. It noted that some other publications had not published the boy’s name. The Commission did not consider that the public interest in this case was so exceptional as to override the “paramount” interests of the child; it could have been served by writing about the case without naming him. The complaint was upheld.

*JK Rowling v OK! Magazine (2001)*<sup>181</sup>

**The Commission interprets the reference in Clause 6 to issues involving a child’s welfare broadly: an exceptional public interest will be required to justify the publication without consent of any material that might damage the welfare of a child, including by embarrassing or subjecting them to unwanted attention from peers.**

The writer JK Rowling and her 8-year-old daughter were photographed on a private beach in their swimwear. The complainant said that she had gone to considerable lengths to protect her daughter’s privacy since becoming a figure in the public eye; by their nature the photographs harmed her daughter’s welfare because they had subjected her to scrutiny that would not have existed had her mother not been famous. The newspaper apologised to the

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<sup>180</sup> PCC/N1/1/390-393

<sup>181</sup> PCC/N1/1/201-202

complainant for having caused her distress, but it denied a breach of the Code; it said that the photograph was innocuous and the beach was public by law.

The Commission noted that the photographs had been taken without the knowledge of the complainant or her child and had only been published because of the complainant's public profile. The child was of school age and therefore vulnerable to comments from her peers. The intrusion into a private family holiday was unnecessary, and the Commission took the opportunity to remind editors to take particular care to seek full and proper consent when publishing pictures of children which might embarrass them, intrude into their privacy or damage their welfare in some other way. There was no exceptional public interest justification for breaching the provisions of Clause 6 in this case. The complaint was upheld.

*Mrs S Granton v Liverpool Daily Post (Welsh edition) (2002)*<sup>182</sup>

**It is irrelevant whether or not children under the age of 16 agree to an interview; consent from a parent or legal guardian is required.**

The Commission reaffirmed that reporters must not approach schoolchildren under the age of 16 for interview without the appropriate consent from a parent or legal guardian, regardless of whether the child themselves has consented. In this case the complainant's 15-year-old daughter had consented to an interview about her former boyfriend, who had been convicted of murder – the topic of the discussion clearly related to her welfare in the broadest sense.

*Prime Minister and Mrs Blair v The Daily Telegraph (2002)*<sup>183</sup>

**The test that any newspaper should apply in writing about the children of public figures who are not famous in their own right is whether a newspaper would write such a story if it were about an ordinary person.**

The Prime Minister complained about an article which revealed that his son Euan had applied to Oxford. The newspaper said that it had learned of the application through a list of applicants posted in the Porters' Lodge of the college.

The Commission rejected the newspaper's argument that the story was about the choices that the Prime Minister and his wife had made about their children's educations, and as such a matter of legitimate debate: it had been a diary piece, which contained no reference to a wider public debate. Euan Blair's decision was not at odds with government policy or with

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<sup>182</sup> PCC/N1/1/397

<sup>183</sup> PCC/N1/1/394-6

any public statement made by the complainants. This was a critical time for his education, and the onus was on the newspaper to demonstrate that commenting upon it had been “necessary”. The college’s decision to post the list of applicants was insufficient to put the matter firmly into the public domain. The test that any newspaper should apply in writing about the children of public figures who are not famous in their own right is whether the story would be written if it were about an ordinary person. Academic achievement or successful entrance to a university might well fall into such a category; an application would not. The complaint was upheld.

*A woman v Sutton & Epsom Advertiser (2005)*<sup>184</sup>

**Journalists should take steps to verify the age of any young person before any interview is conducted.**

A woman complained that a reporter had interviewed her 15 year old son about a recent fight between two gangs at his college, and then published material from the interview, naming the boy. Responding to the complaint, the newspaper said it had understood that the college only taught students of 16 or over. The Commission made clear that more care should have been taken in researching and publishing the story, particularly given that the incident had, according to the article, left some pupils “too scared to give their full names for fear of reprisal attacks”. While the Commission was pleased that the editor had recognised the seriousness of the matter and taken steps to ensure that the problem would not be repeated, it upheld the complaint.

*Ms Sally Everitt and Mr Andy Brick v Welwyn & Hatfield Times (2006)*<sup>185</sup>

**The Commission may choose to censure publications for non-compliant practices even when the material obtained is not published.**

The newspaper had been informally told by the partner of the child’s mother, who was not the boy’s legal guardian, that his mother was likely to consent to his being interviewed. It had not awaited confirmation that consent had been given and called the school to speak to the boy. The newspaper accepted that there appeared to have been a misunderstanding about whether the journalist could telephone the boy at school and had agreed not to publish anything resulting from the interview. The Commission appreciated that nothing had been published, but the complaint was upheld.

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<sup>184</sup> PCC/N1/1/399

<sup>185</sup> PCC/N1/1/398



*A man v Northwich Guardian (2007)*<sup>186</sup>

**One consequence of anti-social or criminal activity is public scrutiny; the Commission will not use the terms of the Code to give children involved in such behaviour special protection.**

The newspaper's website published a video which had been uploaded onto YouTube showing youths throwing fire bombs at a freight train and setting it alight; its print edition had also carried still images from the video. The complainant, whose fifteen-year-old son had been involved in the incident, argued that the interests of the children who appeared in the video outweighed any public interest in showing it.

The Commission made clear that anti-social or criminal acts committed in a public place by individuals who were over the age of criminal responsibility are not private. Publishing the story was clearly a matter of public interest. It also noted that the video had been placed in the public domain by the complainant's son and his friends; the newspaper had simply referred to information that was freely available. Innocuous pictures taken of children in public places do not normally breach the Code, and it would be contrary to common sense or fairness for the Commission to afford greater protection to the youths in this case because of their behaviour than to law-abiding children. The complaint was not upheld.

*Gaddis v Hamilton Advertiser (2007)*<sup>187</sup>

**If a child takes photographs or video footage at school, editors must consider whether the parents of other children shown in the material have consented to its use.**

A schoolgirl had taken video footage of her class on a mobile phone to demonstrate the poor standard of her teaching. When her parents provided the footage to the newspaper it decided to publish the material on its website.

However, the school's Parent Teacher Association complained that no permission had been given by the school authorities, the children or their parents for the class to be filmed. Similarly, no consent had been given for the publication of the images and the video. No contact had been made with the school before publication to ascertain whether this was a genuine problem or a one-off incident.

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<sup>186</sup> PCC/N1/1/414-5

<sup>187</sup> PCC/N1/1/410-412

The newspaper said that there was a clear public interest in the lack of supervision in the class which may have had an impact on the performance of the pupils. The paper had not infiltrated the school, but had rather published footage taken by a pupil, and it argued that the footage did not intrude into the education of the children featured, all of whom were over 16.

The subject matter of the story was clearly one of considerable public interest, and to a large degree the video provided the evidence to support the girl's position about her teaching conditions. However, while the material could have been used to some degree, the newspaper did not have *carte blanche* to publish it however it saw fit. Rather, it had a responsibility to ensure that the material it published did not infringe the rights of the pupils appearing in the footage, some of whom were clearly identifiable. They had not known they were going to feature in the newspaper and on its website, and there had been no consent for publication.

This was a question of balance. Overall, the Commission considered that any public interest in identifying the pupils was not so great as to override their rights under the Code. Steps should have been taken to conceal their identity or to obtain proper consent and not doing so amounted to an unnecessary intrusion into the pupils' time at school in breach of Clause 6.

*Kelly v Daily Mirror (2007)*<sup>188</sup>

**The position of a parent, especially if they are in the public eye, may justify publication of some details about their child or children. But editors should consider how much information about the child is really necessary to the story.**

The newspaper reported that the complainant had decided to send one of her children to a private school that could provide assistance for a pupil with learning difficulties. Since the article named the complainant it effectively identified her child and, said the complainant, thereby constituted an unnecessary intrusion into the boy's ability to attend his new school.

While it did not appear to be in dispute that the complainant's actions were at odds with her public statements about her children's education, the newspaper argued that it was reasonable to highlight her situation in light of her position as former Education Secretary. The article had sought to highlight how the complainant had decided that there was "inadequate help in the East London schools near her home" and had therefore turned to the

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<sup>188</sup> PCC/N1/1/406-409

private sector. It contained the contrary position from the local council, which insisted that it provided "tailored support" to state schools to help pupils with learning difficulties. It quoted three Labour MPs who were critical of the complainant's decision.

The Commission had a high degree of sympathy for the complainant's view but did not doubt that "the subject highlighted in the article was a matter of considerable public interest. The fact that a Cabinet Minister – who had previously been Secretary of State for Education and Skills – had elected to remove her child from the state system to be enrolled in a private school raised important issues for public debate."

By not publishing details about the child or his learning difficulties the Commission judged that the newspaper had correctly balanced his rights against those of the public interest.

*Soames v The Argus (Brighton) (2008)*<sup>189</sup>

**There may be a public interest to justify use of a photograph because it illustrates a key point. But editors should consider whether the public interest extends to identifying all those in the photograph. When children are involved, pixellation may be necessary if identification is likely to compromise their welfare.**

The Hon. Nicholas Soames MP complained that a photograph of him driving a quad bike to which a trailer carrying his own and others' children had been hitched was intrusive. The picture was obviously about the welfare of the children because it was set in the context of a debate about the safety of driving quad bikes on public highways.

The newspaper argued that the photograph authenticated and illustrated an incident that was widely debated in the public interest and pointed out that the complainant was subsequently convicted for driving on a public highway with no insurance. In the court case, the footage from which the photograph was taken was shown in full and therefore placed in the public domain; the court did not order the pixellation of the children's faces.

Overall, however, the Commission was not convinced by the newspaper's arguments. While the complainant himself was a legitimate subject for scrutiny, the three children in the photograph were innocent bystanders in the matter. The Commission did not believe that the editor had demonstrated why it was necessary to publish the children's images, or

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<sup>189</sup> PCC/N1/1/418

established that consent had been implied because the photograph was taken on a public road. The substance of the story would not have been affected by obscuring the children's faces. While the footage may have been shown to the court several months after the article had been published, this subsequent use of the material did not – in the Commission's view – justify the decision to publish the image at the time.

*Mr Phil Adey v Liverpool Daily Post (Welsh edition) (2009)*<sup>190</sup>

**A brief exchange may constitute an “interview” under the terms of Clause 6 if the reporter is seeking substantive information from a child.**

The father of a 15-year-old girl complained that a reporter from the newspaper had interviewed his daughter at home following a serious road accident involving one of her school friends. The reporter had knocked at houses seeking information about the accident, including the complainant's, which had been answered by his daughter. The girl had confirmed where the accident had occurred and the name of the victim before the reporter noticed her school uniform and realised that she may have been under 16. He then immediately left as he understood he should not have been speaking to her without parental consent. The Commission concluded that the exchange could be considered an “interview” under the terms of the Code. It also found that the subject matter involved the girl's welfare: news of her friend's injuries had evidently distressed the girl. While the Commission noted that the reporter had left the property when he realised that she was likely to be under 16, and that nothing had been published, it upheld the complaint.

*A man v Scottish News of the World (2009)*<sup>191</sup>

**Pixellating an image of a child may be insufficient to obscure his identity; under such circumstances, the publication must be able to justify any intrusion posed by the publication of the photograph under the terms of the Code.**

The article said that the complainant's seven-year-old son had been ‘terrorising’ local residents in Aberdeen and had been expelled from several different schools. The complainant said these claims were inaccurate, and that publication of a pixellated photograph of his son would have identified him to people in the community, thereby invading his privacy.

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<sup>190</sup> PCC/N1/1/420

<sup>191</sup> PCC/N1/1/141

While the Commission accepted that the newspaper had had some grounds for the story, it was concerned that the most serious claims (allegations of violence and the assertion that the child had been expelled from a string of schools) could not be substantiated. This was significant in a story about such a young child. The newspaper's attempts to conceal the identity of the child had been insufficient, and (especially since the newspaper could not back up its claims as to the child's misbehaviour) there was not appropriate justification for running his picture, even though it was pixellated. The complaint was upheld.

*A woman v Nottingham Post/Leicester Mercury (2010)*<sup>192</sup>

**Pictures of children can, in some circumstances, be taken and published without consent. But editors should examine whether any public interest which may exist is so 'exceptional' that it can justify the use of specific images.**

Reporting on a road traffic accident involving a school bus, the newspapers both included a dramatic image of half a dozen children, their faces clearly shown, being comforted by a policeman. The mother of one child complained that, since the subject was clearly about her daughter's welfare, her consent for the taking and publication of the image should have been sought.

The newspaper disagreed, noting that the accident had occurred in a public place in full view of a number of onlookers and arguing that the publication of the photograph was in the public interest, given that that the story related to an important matter of public health and safety. In addition, the fact that there were no serious injuries or fatalities had been an important factor in deciding to move forward to publication.

It was clear to the Commission that the Code had been breached and the only question was whether there was an 'exceptional public interest', as required by the Code, to justify the use of this specific image. On balance, the Commission concluded that there was not, although it careful to point out that "there may be occasions where the scale and gravity of the circumstances can mean that pictures of children can be published in the public interest without consent".

*Mr Rabin Soobadoo v Wanstead & Woodford Guardian (2010)*<sup>193</sup>

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<sup>192</sup> PCC/N1/1/422-423

<sup>193</sup> PCC/N1/1/424-425

**Before publishing information submitted by readers online, publications should have regard for its content and context and consider whether it is necessary to obtain further information about its source to avoid breaching Clause 6.**

The article reported that a teacher had resigned after he had been found to be working in pornography. The newspaper had solicited comments on the story from pupils and parents, and it published information from an email apparently sent by the complainant's daughter (a 14-year-old girl), who was named in the piece. She was quoted as saying that the teacher, who taught sex education lessons, had spoken "openly and truthfully about sex" and that she would "more likely catch STIs without his lessons". The complainant denied that his daughter had written the email; he believed that her account had been used by someone else. The newspaper said it had assumed that the comment had been submitted by someone over 16, given that it understood the teacher to have only taught sex education to sixth form students. It had not specifically interviewed the child, and did not believe that publication of comments represented an intrusion.

The Commission expressed concern that the newspaper had not taken more care following receipt of the email, given its content and the context of the story. In particular, it said that the newspaper should have established the age of the complainant's daughter before publication. Given that the subject matter clearly related to the child's welfare, the result was a breach of Clause 6 of the Code. The complaint was upheld.

*Carmarthenshire County Council v South Wales Guardian (2011)*<sup>194</sup>

**The Code refers to the need for consent from a custodial parent or similarly responsible adult when interviewing or photographing a child on a subject involving their welfare. In cases involving adoption it is clearly the adoptive parents whose consent must be sought; that of a biological parent alone is highly unlikely to be sufficient.**

An article about the intention of a convicted murderer to launch an appeal made reference to the fact that her young daughter had been removed from her care by the local authority and adopted by new parents. The article, based on an interview with the woman's mother, was accompanied by a photograph of the child, taken almost a year before. The local authority complained on behalf of the child's adoptive parents, who had not consented to the use of the photograph and who had been caused distress by the article. They were concerned about the future effect of publication on the child.

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<sup>194</sup> PCC/N1/1/426

The newspaper said that the use of the photograph had been authorised by the child's biological mother and grandmother and argued that the consequences of the mother's crime and the actions of social services in the case were proper objects of public scrutiny.

However, while the Commission agreed that the newspaper had been entitled to present the views of the child's grandmother on the removal of the girl from the family's care, publication of the girl's photograph was a different matter. In the context of an article about the child's mother's conviction for murder and the impact of the adoption, the photo clearly involved her welfare and consent for its use should therefore have come from her adoptive parents, who clearly had legal, custodial responsibility for the girl. Lack of consent meant there was a straightforward breach of the Code.

\*Clause 7 (Children in sex cases)

**1. The press must not, even if legally free to do so, identify children under 16 who are victims or witnesses in cases involving sex offences.**

**2. In any press report of a case involving a sexual offence against a child -**

**i) The child must not be identified.**

**ii) The adult may be identified.**

**iii) The word "incest" must not be used where a child victim might be identified.**

**iv) Care must be taken that nothing in the report implies the relationship between the accused and the child.**

In addition to the general requirements of Clause 11 (Victims of sexual assault), Clause 7 specifically addresses the vulnerability of children under 16 who are victims of sex offences; it also covers children who are witnesses or defendants in such cases.

Where a detailed account in an adjudication of the reasons for the Commission's censure would pose the risk of repeating identification, the Commission will require publication of an adjudication written in broad terms and write to the publication directly to set out its specific concerns. For this reason, adjudications in this area tend not to provide detailed explanations of why a complaint has been upheld. To assist editors trying to ensure that future coverage

meets the Code's requirements, the Commission has recently published a guidance note<sup>195</sup> on its rulings in this area. In addition, editors regularly consult PCC staff in advance of publication for advice on how the requirements of the Code might apply in a particular case. Recent PCC training seminars have specifically discussed this topic.

The requirements of Clause 7 are stringent: "nothing" in the report should "imply" the relationship between the accused and a child victim. This applies particularly to cases where the victim and perpetrator are family members, but it can also be relevant where teachers commit offences against pupils. In its rulings, the Commission emphasises that identification can come about by the publication of information that might seem superficially to be of only minor significance. It can also result from the use of a combination of details that on their own would not imply the relationship. (See further information in relation to Clause 11; a Clause 7 complaint will often be considered under the terms of Clause 11 as well.)

#### Clause 8 (Hospitals)

- i) Journalists must identify themselves and obtain permission from a responsible executive before entering non-public areas of hospitals or similar institutions to pursue enquiries.**
- ii) The restrictions on intruding into privacy are particularly relevant to enquiries about individuals in hospitals or similar institutions.**

The Commission now is asked to consider relatively few complaints under Clause 8 of the Code; those that do arise often relate to misunderstandings or miscommunication. The case law demonstrates the strict standards the PCC expects of journalists and photographers in this area. The protection of vulnerable individuals is paramount in the Editors' Code, and the Code makes clear the need for identity and consent to be properly established at an early stage so that hospitals are able to protect all of their patients from unjustified intrusion.

#### **Key Rulings**

*Ms Emily Jennings v Eastbourne Gazette (2002)*<sup>196</sup>

**The terms of Clause 8 cover the news-gathering process; a complaint may be upheld even if nothing is published.**

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<sup>195</sup> PCC/k/1/3-36

<sup>196</sup> PCC/N1/1/433



A journalist visited a hospital to speak to a victim of a serious motorbike crash. The journalist had not identified himself to the relevant authorities. The editor had not published the information, had dismissed the journalist, and apologised to the complainant. However, the Commission had no hesitation in upholding the complaint.

*Stamp v Essex Chronicle (2011)*<sup>197</sup>

**Journalists must identify themselves and obtain permission from a responsible executive before entering a non-public area of a hospital to make enquiries; it is insufficient merely to obtain consent beforehand from an interview subject.**

The article concerned the condition of a man who had suffered serious head injuries following an assault, and was based on an interview with the patient and his parents. Although neither the patient nor his parents had complained to the PCC, the NHS Trust said that the reporter had not identified himself to a responsible executive before entering the non-public unit of the hospital where the patient was being treated. The newspaper said that it had been invited by the patient's parents to conduct the interview in the hospital, and that the reporter had made clear his status as a reporter to hospital staff.

The Commission recognised that there was a dispute about what had been said by the journalist, and to whom, at the hospital, which it was not in a position to resolve. Nonetheless, it decided that the reporter could have acted to ensure that there was no uncertainty about his identification, and that the necessary permission had been obtained before entering the unit where the patient was being treated. As the conversation in which the journalist had allegedly identified himself had been with staff in the stroke unit, he had already entered a "non-public" area of the hospital, when appropriate permission should have been sought well before entering this area. The complaint was upheld.

\*Clause 9 (Reporting of crime)

**(i) Relatives or friends of persons convicted or accused of crime should not generally be identified without their consent, unless they are genuinely relevant to the story.**

**(ii) Particular regard should be paid to the potentially vulnerable position of children who witness, or are victims of, crime. This should not restrict the right to report legal proceedings.**

A judgment about whether an individual is "genuinely relevant" to a crime story is at the core of any decision under Clause 9; however, the Commission also considers whether there is a

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<sup>197</sup> PCC/N1/1/439-440

public interest in the relationship being mentioned and the extent to which it has previously been established in the public domain. It may also take into account the tone and presentation of the story.

### **Key Rulings**

*Mr Andrew Hall v The Argus (Eastbourne) (2002)*<sup>198</sup>

**Whether or not a parent or guardian has consented (or is believed to have consented) to the publication of information, care must be taken to protect the safety of children who witness, or are victims of, crime.**

The complainant and his wife's young daughter had witnessed an attempted kidnap of the daughter's friend. The man who was responsible for the attempt had not been caught and had warned the girls that if they went to the police he would come and 'get them'. The newspaper had reported the incident, identifying the complainant's daughter by name and publishing her partial address. The complainant's wife had spoken to the reporter but said she had not realised that she was being 'interviewed' and had not been told that her family address would be included in any article. She would not have agreed to such details being published due to the seriousness of the situation.

Although the newspaper had acted properly in speaking to the complainant's wife, the Commission noted that it did not appear that she had been told what was to be published, and the inclusion of the child's full name and partial address had potentially put her in danger. The newspaper had not paid sufficient regard to the child's position as a witness. The complaint was upheld.

*Mr John Clare v Liverpool Daily Post (Welsh edition) (2003)*<sup>199</sup>

**The presence of family members at court proceedings may make them "relevant" to the story under the terms of the Code.**

The articles reported the trial and conviction of the complainant on charges of possessing and making indecent images of girls under the age of 16 on his computer. The complainant was concerned that the newspaper had identified his wife (on whose behalf the complaint was made), who was an innocent relative and who had had made strenuous efforts to avoid being connected to him during the trial. The newspaper said that she had supported her

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<sup>198</sup> PCC/N1/1/441

<sup>199</sup> PCC/N1/1/442-443

husband from the public gallery throughout the trial and had consoled her husband following his conviction.

In considering such complaints, the Commission will take into account the relative or friend's relationship with the accused, their involvement in court proceedings and their own public standing as well as the prominence of their appearance in the article. The Commission acknowledged that the couple had attempted to avoid being seen together and it sympathised with their efforts. It understood the presence of the complainant's wife in court, but it considered that her presence there made it inevitable that she and her husband would be identified as such. The complaint was not upheld.

*John Terry v The Sun (2009)*<sup>200</sup>

**The Commission will have regard for the extent to which the relationship between the parties has previously been established in the public domain and whether there is a public interest to justify publication.**

The story reported that the footballer John Terry's mother and mother-in-law had accepted formal cautions for shoplifting. The complainant (Mr Terry) said that the coverage was focussed on him when he was not genuinely relevant to the story and had not been involved in the incidents.

The Commission ruled that the newspaper had not revealed a "hitherto unknown connection between the parties"; it was not in dispute that that the complainant's relationship to both his mother and his mother-in-law had been placed in the public domain, including as part of the high-profile and consensual (and profitable, from the complainant's perspective) coverage of his wedding. It also considered that the complainant was genuinely relevant to the story and could legitimately be made its focus because the stores from which goods had been taken were major sponsors the England football team. The complainant, as captain at the time, could reasonably be said to be the public face of the team. He was also one of the highest-earning footballers in the world who, it was said, provided for his family financially. The fact that – despite such wealth – his mother and mother-in-law had been involved in claims of shoplifting was clearly relevant to the matter. The complaint was not upheld.

\*Clause 10 (Clandestine devices and subterfuge)

**i) The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile**

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<sup>200</sup> PCC/N1/1/452

**telephone calls, messages or emails; or by the unauthorised removal of documents or photographs; or by accessing digitally-held private information without consent.**

**ii) Engaging in misrepresentation or subterfuge, including by agents or intermediaries, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.**

As this clause is most relevant to the Inquiry's interest in "phone hacking, computer hacking, "blagging" or bribery", a summary of the PCC's key rulings appears in Part Two of this statement.

#### Clause 11 (Victims of sexual assault)

**The press must not identify victims of sexual assault or publish material likely to contribute to such identification unless there is adequate justification and [journalists] are legally free to do so.**

It is a fundamental principle of open justice that court proceedings are reported by the media. However, the Code places a number of restrictions on such reporting, particularly in relation to cases involving sexual offences, where protecting vulnerable victims is of paramount importance.

In any court case involving charges of sexual assault (including rape, sexual assault and other similar offences) the media can name the defendant and record the verdict of the trial. In fact, best practice will generally be to do so, although editors should take account of information about the case that is already in the public domain in order to avoid "jigsaw identification" of the victim.

However, victims must not be identified; nor must material be published that is "likely to contribute to such identification unless there is adequate justification and [journalists] are legally free to do so". The Commission has never examined a case in which "adequate justification" was shown to exist.

The requirement to avoid this kind of indirect identification places a considerable responsibility on editors. Any inessential piece of information must be scrutinised for its ability to identify a victim to those in a position to understand its significance. Information may seem trivial and yet, to people who know something about the accused, be sufficient to lead to the victim's identification and a breach of the Code. Even such apparently incidental details as

the precise dates on which offences were alleged to have taken place have contributed to identification.

As with Clause 7 cases, Commission rulings are necessarily broad to avoid contributing to identification themselves.

### **Key Rulings**

#### *A woman v Kidderminster Shuttle (2009)*<sup>201</sup>

Reference was made to a defendant (who was named) meeting his victim, whom he regarded as his “girlfriend”, at an unnamed church. Even though the newspaper had not named the church, to those who attended it and knew something about the defendant, identification of the victim became highly likely, especially as her age was given.

#### *A man v Barking & Dagenham Post (2004)*<sup>202</sup>

Reference was made to a victim of sexual assault having previously suffered a specific injury during a lesson given by the accused (a former teacher). Even though the case related to offences that had taken place some years before, the complainant (who had since grown up) was effectively identified to those who had been at the school when the injury occurred.

#### *Thames Valley Police v Metro (2002)*<sup>203</sup>

Reference was made to a teenage victim (whose age was given) having recently suffered from a specific form of cancer. Since the article also gave broad details about where the victim lived, it was likely to contribute to identification.

#### *Two Women v The Courier (Dundee) (2011)*<sup>204</sup>

There was an indication by road name of where the offences had taken place. Two of the partial addresses were those of the victims. Since both the roads in question had only a few houses, and since the victims’ ages had also been referred to in the report, identification became likely.

### Clause 12 (Discrimination)

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<sup>201</sup> PCC/N1/1/500

<sup>202</sup> PCC/N1/1/497

<sup>203</sup> PCC/N1/1/496

<sup>204</sup> PCC/N1/1/428-429

**i) The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.**

**ii) Details of an individual's race, colour, religion, sexual orientation, physical or mental illness or disability must be avoided unless genuinely relevant to the story.**

The purpose of Clause 12 is to protect individuals from discrimination. The PCC has always upheld the press's right to make robust, generalised remarks, when clearly presented as comment, in the name of free speech. Clause 12 does not cover generalised remarks about groups or categories of people, which would be difficult to adjudicate upon without infringing the freedom of expression of others. However, the same does not apply to pejorative or prejudicial attacks directed at individuals: the Commission upholds complaints under Clause 12 in such cases without hesitation.

### **Key Rulings**

*Clare Balding v The Sunday Times (2010)*<sup>205</sup> / *Ms Keira McCormack v Sunday Life (2010)*<sup>206</sup>

**Just because a term is commonly used by sections of the public does not mean it will not be regarded by the Commission as pejorative under the terms of the Code.**

A television review in the Sunday Times referred to the presenter Clare Balding as a 'dyke on a bike'. Miss Balding said that this was a pejorative reference to her sexuality and irrelevant to the programme. The hurt was compounded by a mock apology by the columnist in the same article for previously saying that she looked 'like a big lesbian'.

While the right to legitimate freedom of expression is a key part of an open society - and the columnist was entitled to his opinion about both the programme and the complainant - the Commission considered that the use of the word 'dyke' in the article, whatever its intention, was a pejorative synonym relating to the complainant's sexuality: the reviewer had not been seeking positively to 'reclaim' the term, but rather to use it to refer to the complainant's sexuality in a demeaning and gratuitous way. Making clear that the newspaper should have apologised at the earliest opportunity, the Commission upheld the complaint.

An article in the Sunday Life reported that a transsexual woman worked as a rape counsellor in Belfast and reported concerns about her suitability for the role, describing her as a "tranny" in the main text and in the headline. In the complainant's view, the term "tranny" was deeply

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<sup>205</sup> PCC/N1/1/515-6

<sup>206</sup> PCC/N1/1/507-8

insulting and represented a pejorative reference to her gender. The newspaper said that no offence had been intended in the use of the word which it considered to be “widely used” in articles about transsexuals and transvestites. The complainant said there was a significant difference between transvestites and transsexuals, arguing that the term tended to be used by the former and not the latter. The Commission upheld the complaint, ruling that the complainant’s “gender identity should not have been open to ridicule”. In the full context of the piece, the use of “tranny” was pejorative and breached the Code.

*Embassy of Israel and Ariel Sharon v The Independent (2003)*<sup>207</sup>

**Cartoons can often be open to a range of interpretations. Editors cannot reasonably be expected to predict in advance every interpretation that might be made.**

A cartoon, published shortly after an Israeli attack on Gaza depicted the Israeli Prime Minister Ariel Sharon eating an infant while saying the words “What’s wrong... You never seen a politician kissing babies before?” The complainants argued the cartoon was anti-Semitic, alluded to the ‘blood libel’ which held that Jews preyed on Christian children and thereby breached Clause 12 of the Code. The editor denied this interpretation and said the cartoon was making a political point about the closeness of the attack on Gaza to upcoming elections in Israel.

In its adjudication the Commission recognised that the cartoon had caused great offence to a significant number of people, including Mr Sharon. However, it noted that “prime ministers and presidents...frequently appear in cartoons as visual representatives of their countries”. The Commission was “reluctant to come to a decision that would in any way compromise the ability of newspapers to make critical or satirical comments about nations or governments”

Moreover, while the complainants – and some others who had contacted the PCC – had clearly believed the cartoon made a direct reference to the blood libel, the newspaper’s explanation of an alternative interpretation was no less convincing. Overall, the Commission considered that it would be “unreasonable to expect editors to take into account all possible interpretations of material that they intend to publish, no matter what their own motive for publishing it. That would be to interpret the Code in a manner that would impose burdens on newspapers that would arguably interfere with their rights to freedom of expression.” The complaint was not upheld.

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<sup>207</sup> PCC/N1/1/503-504

Clause 13 (Financial journalism)

**i) Even where the law does not prohibit it, journalists must not use for their own profit financial information they receive in advance of its general publication, nor should they pass such information to others.**

**ii) They must not write about shares or securities in whose performance they know that they or their close families have a significant financial interest without disclosing the interest to the editor or financial editor.**

**iii) They must not buy or sell, either directly or through nominees or agents, shares or securities about which they have written recently or about which they intend to write in the near future.**

The “City Slickers” case of 2000 exposed a serious breach of readers’ trust in relation to financial reporting at the Daily Mirror. In an internal inquiry, the company concluded that the journalists involved had breached the Editors’ Code; as their contracts of employment had Code compliance written into them, the journalists were dismissed. The company overhauled its internal procedures to address the problems highlighted by the investigation, and the Commission helped other newspaper groups to write their own internal guidelines on financial journalism. The PCC also worked with the industry to produce a guidance note, which was later updated to take account of relevant legislation deriving from an EU Directive in this area<sup>208</sup>. The Commission’s next adjudication in this area was not until 2010, and it was very different (*Lee v Daily Telegraph*; see below). However, the Commission remains committed to vigilance in this area; in October 2010, it wrote to relevant executives across the national newspaper industry reminding them of the obligations imposed by the Code of Practice (and the Investment Recommendation (Media) Regulations, as set out in the PCC’s guidance). It plans to host a seminar on this subject to ensure that journalists across the industry remain up to date with expected standards in this area.

### **Key Rulings**

*Keith Lee v Daily Telegraph (2010)*<sup>209</sup>

**Transparency is essential to maintain readers’ trust in the propriety of journalists writing about finances.**

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<sup>208</sup> PCC/K/1/17-21

<sup>209</sup> PCC/N1/1/517-520



A reader of the newspaper's Questor column had expressed concern that certain shares in which the column's editor had a stated financial interest were being tipped with excessive frequency. In particular, he had pointed to a particular investment trust which had been tipped on nine occasions in just over a year. The newspaper said that its journalist had acted properly at all times. However, following the complaint, it made a voluntary undertaking that the Questor editor would no longer buy or sell shares in the future.

The Commission noted that the Questor editor had disclosed the interest appropriately to executives and the public; the amounts involved were not especially high; the editor had not sold any shares about which he had written; the shortest gap between a recommendation and his purchase of the recommended stock was 29 days, and there was no evidence of short-term speculation. The Commission emphasised the importance of readers having confidence in the propriety of the actions of journalists in this area, and welcomed the response from the newspaper. It did not uphold the complaint.

Clause 14 (Confidential sources)

**Journalists have a moral obligation to protect confidential sources of information.**

The obligation on journalists to protect their confidential sources is a strongly held principle. The Commission is rarely asked to consider complaints under Clause 14, and when it does this is usually because of an error or miscommunication resulting in the identification of a whistle-blower. However, the consequences of such mistakes may be severe for the individuals involved.

**Key Rulings**

*A woman v Evening Chronicle (Newcastle Upon Tyne) (2006)*<sup>210</sup>

**A careless error can lead to a breach of the Code's requirements in relation to confidential sources.**

The complainant was a whistleblower, who had emailed the newspaper – requesting anonymity – with details of her concerns about the Rural Payment Agency, which had been the subject of recent coverage. The newspaper forwarded her email to the Agency for comment, without deleting her details. This was a clear breach of the Code, which violated a basic principle of journalism. The complaint was upheld.

*A man v Lancashire Telegraph (2007)*<sup>211</sup>

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<sup>210</sup> PCC/N1/1/521

**Newspapers should take care not to publish information that will indirectly identify a confidential source.**

The article reported on the proposed closure of a local mortuary and included a quote from the complainant (who had spoken on condition that he was not identified), describing him as “a worker at [the] mortuary”. Because he was one of only two people who worked at the mortuary – the other being his manager – his employers had been able to identify him as the source of the information. He had subsequently been dismissed on grounds of gross misconduct for making remarks to the newspaper about the mortuary’s closure. The newspaper said it did not consider the complainant to be a confidential source because he had not revealed confidential information; a number of health workers in the area had been informed of the proposed mortuary closure. It said that it had agreed not to identify the complainant by name, but had not been told that indirect identification was also to be avoided. The reporter had not known, and had no reason to know, that the man was one of only two employees at the mortuary. The editor offered to send the complainant a private letter of regret.

The Commission noted that the newspaper had gone some way to protecting the complainant as a source of information, and his identification appeared to have been unintentional. But given that the need for confidentiality had been established between the parties, the onus was on the newspaper to establish whether the form of words it proposed to use would have effectively identified the complainant in any case. The complainant’s exposure as a source of information was the result. The complaint was upheld.

*A man v Oxford Mail (2010)*<sup>212</sup>

**Identifying the author of a letter for publication, submitted following an agreement that its authorship be withheld, may constitute a breach of the Code, depending on the nature of the information contained in the letter.**

The complainant had sent the newspaper a letter for publication in which he criticised the management of the Royal Mail, where he was an employee. He had requested anonymity, and the letter had been published without his name. Following further correspondence on the subject, he had sent another letter for publication, again requesting anonymity. This time, the newspaper published his name and the fact that he worked for Royal Mail. The newspaper said that the inclusion of the complainant’s name had been a result of human error. It had apologised to him privately and had offered to publish an apology. However, it argued that

<sup>211</sup> PCC/N1/1/525

<sup>212</sup> PCC/N1/1/526

the complainant could not be considered to be a confidential source in the sense intended by the Code; his letter had not revealed any substantive matters or issues not previously published by the newspaper.

The Commission appreciated that the newspaper had sought to apologise promptly for its error; nonetheless, it had accepted the need to withhold the complainant's name from the first published letter, and it was on this understanding that he had written the second letter. The nature of the information was also important: highly critical comments about his employers, which came as a result of his position within the company. In these circumstances, his name should not have been published. The complaint was upheld.

Clause 15 (Witness payments in criminal trials)

**i) No payment or offer of payment to a witness - or any person who may reasonably be expected to be called as a witness - should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981.**

**This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.**

**\*ii) Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.**

**\*iii) Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.**

In 2002, the Lord Chancellor's department announced a plan to introduce laws covering witness payments in criminal trials that would have exposed the media and journalists to the criminal prosecution following the Amy Gehring case (see below). However, the Editors' Code Committee subsequently persuaded the Government that changes to the self-regulatory Code would be more effective, and the legislative threat was dropped. The resulting Code revisions, introduced in 2003, severely limited the circumstances in which

payments could be made. The Code now imposes a total ban on such payments once proceedings are deemed active, until the question of guilt ceases to be a legal issue — such as when the trial is over, or the suspect is either freed unconditionally or has entered a guilty plea. The qualified ban applies where proceedings may not yet be active — but are likely and foreseeable. Here no payments or offers can be made — unless there is a public interest in the information being published and an over-riding need to make a payment for this to be done. The result was a dramatic change of practices in this area. Although the Commission occasionally considers complaints under Clause 16, there has been no recurrence of situations like the one that led to the Government's 2002 action.

### **Key Rulings**

*PCC Investigation of Sunday Mirror, The People, Daily Mail, The Mail on Sunday, News of the World (2002)*<sup>213</sup>

The Commission investigated claims that five national newspapers had offered to pay witnesses in the trial of Amy Gehring, a supply teacher who had come to the UK from Canada who faced allegations that she had indecently assaulted underage pupils who attended a school where she taught. (She was acquitted.) There were a number of young witnesses in the case and concern was expressed that a number of newspapers had approached these witnesses before the end of the trial with offers of payment for their stories.

The Commission determined that the journalists had taken “every possible step” to ensure that any financial dealings did not interfere with the evidence and noted that the approaches had taken place after each of the witnesses had given evidence, that none had been conditional on conviction, and that the court had been made aware of all the offers when the judge recalled the witnesses to answer questions about their dealings with the newspapers. It also accepted that the publication of the material was in the public interest, bearing in mind the wider context of a serious shortage of teachers that had led to the recruitment of supply teachers from abroad to fill posts and that payment for the material had been necessary. It could not establish a breach of the Code.

*PCC Investigation of Full House Magazine (2008)*<sup>214</sup>

The Commission initiated an investigation into an offer of payment by Full House magazine to a witness during the trial of Kate Knight, who was subsequently jailed for 30 years for

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<sup>213</sup> PCC/N1/1/530533

<sup>214</sup> PCC/N1/1/542

poisoning her husband with anti-freeze. During an overnight break in the testimony of a prosecution witness, a feature writer from the magazine approached the witness by letter, offering a fee for an interview once the trial had finished. While the witness had received other requests for an interview, this was the only letter that referred to payment. The witness brought the matter to the court's attention and there was no effect on the course of proceedings. The newspaper had accepted that it had been wrong to approach the witness in this way, and there was fortunately no evidence that the trial had been affected by the offer. However, it was completely unacceptable for the witness to have been approached, and the journalist's actions could have had extremely serious consequences. The Commission upheld the complaint and asked the magazine to provide it with details of how it had changed its working practice following the incident.

\*Clause 16 (Payment to criminals)

**i) Payment or offers of payment for stories, pictures or information, which seek to exploit a particular crime or to glorify or glamorise crime in general, must not be made directly or via agents to convicted or confessed criminals or to their associates – who may include family, friends and colleagues.**

**ii) Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.**

Although this area of the Code has changed over the years, the Commission has never assumed that all payments to criminals are inherently undesirable. The law recognises that people can be rehabilitated and convictions, in some cases, spent. In addition, the Code should not be used to deprive convicted or confessed criminals of their right to freedom of expression, or to prevent them from using their unique perspective to write about prison policy and conditions. The critical consideration for the Commission has always been the nature of the material for which payment is made: does it serve the public interest? Does it exploit, glamorise or glorify crime?

### **Key Rulings**

*Ms Laura Moffatt MP v Chat (2006)*<sup>215</sup>

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<sup>215</sup> PCC/N1/1/560

**The Commission recognises that criminals retain rights to freedom of expression, but payments for material that seeks to exploit a particular crime must be justified in the public interest.**

A complaint from Laura Moffatt MP led to the Commission's first ruling under Clause 16 (Payment to Criminals) since the rules in this area were changed in 2004. The article in Chat magazine told the story of Sylvia Payne, who had been convicted of unlawful sex with a member of her own family. When the PCC launched an investigation it emerged that Ms Payne had been paid for the story and, since there was no conceivable public interest justification for the payment, the result was a breach of the Code of Practice. Clause 16 states clearly that payment should not be made to convicted criminals or their associates for stories that 'exploit a particular crime'. This article described and arguably allowed Ms Payne to offer a justification for her criminal act.

*Ms Christine Wishart v Take a Break (2009)*<sup>216</sup>

**A claim of innocence is insufficient to constitute a "public interest" defence for paying an associate of a convicted criminal for material that exploits a crime.**

The magazine had published the story of Christine Chivers, who had pleaded guilty to an arson attack on the home of the complainant. The article was based on information provided by Ms Chivers' daughter, who was paid £1,000, and it included Ms Chivers' claim that, in spite of her plea, she had not carried out the attack. The magazine argued that it was important to highlight a potential miscarriage of justice. The Commission found that the crime had been exploited for money in breach of the Code; there was nothing in the article of "sufficient public interest to justify the payment. The article did not point to any clear evidence of a miscarriage of justice, and it was not part of a campaign to have the conviction quashed." While the magazine was not prohibited from publishing Ms Chivers' story, the decision to offer payment was misguided. The complaint was upheld.

The Public Interest

**There may be exceptions to the clauses marked \* where they can be demonstrated to be in the public interest.**

**1. The public interest includes, but is not confined to:**

**i) Detecting or exposing crime or serious impropriety.**

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<sup>216</sup> PCC/N1/1/563-564

ii) **Protecting public health and safety.**

iii) **Preventing the public from being misled by an action or statement of an individual or organisation.**

**2. There is a public interest in freedom of expression itself.**

**3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.**

**4. The PCC will consider the extent to which material is already in the public domain, or will become so.**

**5. In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.**

The Commission has now had the experience of twenty years in seeking answers to the question of what constitutes the public interest. This is something that is impossible to define exhaustively. The Code of Practice does not seek to do so, and offers only broad areas that might be covered: exposing crime and misdemeanour; protecting the public; and exposing hypocrisy.

The Commission has a majority of public members, and therefore is placed to offer a sense of what serves the interest of the public (which has been alternatively described as the "public good"). Each ruling is set within that context, and it would not be possible to discuss every significant case where public interest has been a factor: every case involving privacy or newsgathering (discussed above) has led to an assessment of the public interest issue.

There are nevertheless some principles that underpin Commission rulings:

#### Proportionality

1. The greater the intrusion, the greater the public interest justification has to be. For example, the PCC has consistently ruled that "*there must be a powerful public interest justification for the use of undercover filming*"<sup>217</sup>, because the level of intrusion (caused by secret filming) is so high. Recently, the Commission upheld a complaint against the Daily Telegraph, for undercover recording of journalists posing as constituents in conversation with Liberal Democrat ministers<sup>218</sup>, making clear that

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<sup>217</sup> PCC/N1/1/485

<sup>218</sup> PCC/N1/1/492-495

*“secretly recording a public servant pursuing legitimate public business was without question a serious matter” and “the Commission was not convinced that the public interest was such as to justify proportionately this level of subterfuge”.*

### Editorial Responsibility

2. The PCC requires *“editors to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest”*. This means that editors must be able to explain the process by which they reached the decision that their actions would serve the public interest. It also means that this process must take place at an early stage of their consideration.
3. As a result, “fishing expeditions” have been outlawed by the PCC. In *Munro and Bancroft v Evening Standard (2000)*<sup>219</sup>, the Commission upheld a complaint, following the newspaper’s decision to ask a reporter to pose as a teaching assistant at a school selected at random. There were no *prima facie* grounds to investigate the particular school, and the Commission found that the newspaper’s *“retrospective justification – that the journalist had found some shortcomings once he was there which he was unaware about before – was not acceptable”*.
4. The onus is on the editor to show the PCC the steps that have been taken to assess the public interest during the whole process of an article being researched and published. There must be proper authority for decision making.
5. As part of the work of the Phone Hacking Review Committee<sup>220</sup>, the Commission is engaged in the process of establishing best practice for the industry in obtaining personal information. It has asked every national editor (and regional and magazine publishers) the following question in respect of the public interest:

*“If a decision is made to access information that may raise a breach of the Code or the Data Protection Act, what steps are taken to examine the public interest issues? What executives have to sign off before the information is accessed? What record is kept of the decision making process?”*

We will share with the Inquiry the outcomes of this exercise, and our proposed recommendations for ensuring best practice.

### Recognition of Freedom of Expression and Circulation of Information

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<sup>219</sup> PCC/N1/1/456-457

<sup>220</sup> See Part Two, paragraph 559



6. The public interest is served by a system that allows responsible freedom of expression. The Commission recognises (in common with the courts) the right of individuals to express themselves.
7. Clearly, this is not an absolute right, and many privacy cases rest on the need to balance the competing rights of an individual to a private life and another to free expression. The Commission does not consider free expression (of either an individual or a newspaper) to be an over-riding principle. Otherwise the "public interest" would simply equate to the free expression of what an editor believed the public was interested in.
8. However, the Commission has proper regard to freedom of expression in its considerations. In *A woman v News of the World*, the Commission judged that, while one partner in a sexual liaison had a right to talk about his experience, it did not extend to private and intimate detail. The level of intrusion was disproportionate and the complaint was upheld. The Daily Mail ran a story, based on an interview with the same person, without the intrusive detail, and the complaint was not upheld<sup>221</sup>. The Commission ruled:

*"The amount of information in the article was sufficient to enable the man's girlfriend to tell her story – as she was entitled to do – without including humiliating and gratuitously intrusive detail about the complainant's daughter."*

9. The PCC is also required to consider "*the extent to which material is already in the public domain, or will become so*". This is important in privacy cases where the question arises: at what point does information become publicly known and, therefore, not private?
10. The Commission starts from the principle that, just because something is accessible in the public domain, it does not mean that newspapers and magazines can publish it. To say otherwise would allow editors to publish anything that is available on the internet. In *Ms Mullan, Mr Weir & Ms Campbell v Scottish Sunday Express*<sup>222</sup>, the Commission criticised the newspaper for using material taken from freely-accessible social networking accounts, saying "the images appeared to have been taken out of context and presented in a way that was designed to humiliate or embarrass them".

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<sup>221</sup> PCC/N1/1/266

<sup>222</sup> PCC/N1/1/299-300

11. However, the Commission did rule that a magazine had not breached the Code by republishing photographs of a girl in circumstances where there were over a million pages came up in a Google search for her name<sup>223</sup>.
12. As always, the test will relate to the detail on the case, and full consideration of the relevant circumstances.

### Prominence

240. One of the key issues in the resolution of complaints is the prominence of the published remedy. The charge is often made that apologies are “buried at the back of the paper”, but this is without substance.
241. In 2005, 59% of corrections negotiated by the Commission were published on the same page or further forward than the material under complaint. In 2010, the figure was 69.7%. Looking only at corrections that contained an apology, the proportion rises to 81.1%.
242. Of course, due prominence does not mean necessarily that corrections must appear on a set page. An apology for a serious error might properly be published closer to the front of a newspaper than the original article appeared. A clarification of less significance might – on rare occasions – reasonably be published further back. And some people prefer to have a correction on a particular page, the letters page for example.
243. In 2010, 89.4% of PCC-negotiated corrections being published no later than two pages further back than the material complained of or in a dedicated corrections column.
244. Increased prominence for published remedies is an area where the PCC is committed to achieving further improvement. There remains, for example, the issue of front page apologies. The PCC has negotiated several front page corrections or apologies in the last five years<sup>224</sup>. However, there have been occasions where material originating on the front page has not been corrected on that location, as there is considerable reluctance on the part of the industry to publish corrections on the front page. The Commission also must consider relevant factors in assessing whether the front page might be appropriate, including: the scale of the breach of

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<sup>223</sup> PCC/N1/1/319-320

<sup>224</sup> PCC/H2/6/859-878

the Code, the time taken to remedy it, the reasons for the error. This area is one that requires further work.

245. The Code was amended in 2011<sup>225</sup> to require that the prominence of corrections and apologies be agreed by the Commission ahead of publication. This gives authority (greater than that granted to the courts) to the Commission have a major influence in the location of the published remedy.

246. The table below shows the location of the original article (where known) and the published remedy, for cases to the PCC in 2010 and 2011:

**Prominence in 2010**

Ref. No.	Complainant	Newspaper	Original page	Correction page	Apology?
093030	Coleman & Co	Sunday Mercury	1, 2	2	Yes
093042	Warren	Daily Mail	45	50	No
093950	Withell	Daily Mail	11	12	No
094297	Clarkson	Yorkshire Evening Post	12	7	Yes
094453	Mason	Scottish Daily Mail	13	21	No
094603	Smith MP	The Daily Telegraph	1	2	No
094845	Rowlands	Liverpool Daily Post	6	4	No
094883	High	Daily Sport	13	12	Yes
095126	Reed	South London Press	7	5	No
095128	Kilfoyle MP	Daily Mirror	5	Corrections Column (Letters page)	No
095129	Kilfoyle MP	The Daily Telegraph	4	2	Yes
095206	Morgan	Loaded	54	39	Yes

<sup>225</sup> See paragraph 356

095210	Geldof	Closer	46	44	Yes
095250	Restivo	Daily Echo (Bournemouth)	7	7	No
095296	Biddlecombe	Daily Express	32, 33	Corrections Column (Letters page)	No
095304	A woman	The Argus (Brighton)	38	6	No
095346	Hindle	Take a Break	4, 5	66 (Letters page)	No
095420	Ekins	The Daily Telegraph	11	11	No
095489	Ahmed	Daily Mail	Online only	Online only	No
095490	Ahmed	Evening Standard	Online only	Online only	No
095503	Allen MP	The Daily Telegraph	4	2	No
095531	Illman	The Sunday Times	6 (of Money Supplement)	Corrections Column (Letters page)	No
09553	Wallace	The Digger	9	2	No
095557	Angiolini	The Firm	Online only	Online only	No
095568	Cichy	Nottingham Post	15	9	No
095623	MacBeath	The Sun	31	30	No
095635	Allen MP	Daily Mirror	6	Corrections Column (Letters Page)	No
095677	Davison	Sunday World	40	20	Yes
095746	Fyfe	The Digger	3	2	No

095752	Lewis	Now	17	2	No
095764	Lord Morris	The Sunday Times	8	Corrections Column (Letters page)	No
095840	Clark	Surrey Comet	7	7	Yes
095910	Willoughby	Best	5	26 (Letters page)	No
095928	Swain	The Sun	15	15	No
095940	Cholmondeley	The Sunday Telegraph	17	11	Yes
096016	Crook	Liverpool Echo	7	7	No
096080	Mills	Daily Star	1, 7	2	Yes
					No
100001	Begum	Daily Mail	5	12	Yes
100032	Wilson	Daily Mirror	25	Corrections Column (Letters page)	Yes
100033	Wilson	Carmarthen Journal	5	2	Yes
100087	West London Mental Health Trust	News of the World	15	14	Yes
100098	West London Mental Health Trust	News of the World	3	3	No
100161	West London Mental Health Trust	Daily Mail	17	21	No
100172	Jones	Sunday Mail	1, 4, 5	7	Yes

100194	McGee	Daily Sport	6	12	Yes
100204	Vora	Time Out	101	4	Yes
100249	Penn	The Times	13	6	Yes
100270	Fawcett	Daily Mail	14, 15	10	No
100293	Baum	Daily Star	5	2	No
100302	Mzimba	Varsity	7	7	Yes
100369	MacLachlan	Daily Record	2	2	No
100387	Gracie	Scottish Sun	31	36	No
100451	Frankcom	The Sun	13	10	No
100465	Powell	Hexham Courant	5	3	Yes
100491	Roberts	Banbury Guardian	15	12	No
100496	Bartlett	Daily Express	19	Corrections Column (Letters page)	No
100499	Hudson	Sunday Sun	49	7	Yes
100573	Lord Martin	The Daily Telegraph	Various	2	Yes
100603	Price	Woman's Weekly	15	6	Yes
100614	Coleman	The People	8	2	Yes
100697	Baroness Hayman	The Daily Telegraph	1, 2	2	Yes
100767	Akhtar	Yorkshire Evening Post	1, 2	18	No
100817	Wilson	Daily Mail	14	12	No
100825	Norman	The Times	16	6	No

100829	Lyons	Daily Record	21	23	No
100843	Cole	The Sun	1, 4	7	Yes
100844	Cole	Daily Mail	7	7	Yes
100845	Cole	Daily Start	1, 4	2	Yes
100920	Sutherland	Highland News	2	2	Yes
101128	Tucker	Gloucestershire Echo	11	11	No
101177	Roberts	Hull Daily Mail	5	3	Yes
101203	Terry	The Daily Telegraph	12	10	Yes
101227	West London Mental Health Trust	The Citizen	3	3	Yes
101262	McElhone	The Northern Echo	14	3	No
101263	McElhone	Durham Times	4	3	No
101264	McElhone	The Journal (Newcastle)	15	8	No
101265	McElhone	EveningChronicle (Newcastle)	17	Corrections Column	No
101407	Mills	Daily Star	9	19	Yes
101436	Lyness	Newtownards Chronicle	Sports section	Sports section	No
101448	Richardson	Herald Express	16	6	No
101482	Cunliffe	Daily Mirror	27	Corrections Column (Letters page)	No

101565	Graham	News of the World	44	41	Yes
101625	Gervasi	The Mail on Sunday	15	9	No
101636	A woman	Metro	5	6	No
101650	Burke	Racing Post	7	7	No
101661	Russell	Metro	27	15	Yes
101679	Honeyball MEP	Daily Mail	1, 2	4	Yes
101734	West London Mental Health Trust	News of the World	14	10	No
101816	Sullivan	News of the World	9	4	Yes
102100	Phillips	Sunday Mirror	4, 5	2	Yes
102373	Grainger Plc	The Daily Telegraph	12	12	No
102925	Moore	Whitby Gazette	3	3	Yes
102977	Brand	Metro	Online only	Online only	No
103021	Albury	The Daily Telegraph	1, 4	2	No
103086	Munton	Birmingham Mail	12	8	Yes
103065	De Sousa	Northampton Chronicle & Echo	2	3	Yes
103119	Aylward	The Times	46	38	No
103125	A man	The Herald (Plymouth)	3	8	No
103137	Bates Hughes	South Wales Evening Post	11	3	No
103157	A woman	Salisbury Journal	7	8	No
103224	Ben	The Mail on Sunday	43	42	Yes



103232	A woman	Southern Daily Echo	6	7	No
103276	Salmon	Lancashire Telegraph	1, 2	2	No
103355	Al-Chamaa	The Sun	20	18	No
103346	McGiffin	Bella	8	41 (Letters page)	No
103390	Merrell	The Sun	10	4	No
103491	Morgan	The Times	22	27	No
103657	Medway Council	Your Medway	2	2	No
103799	Wallace	The Sun	27	22	Yes
103838	Cocking	Southern Daily Echo	1, 3	3	No
103869	Lord Martin	The Mail on Sunday	37	36	No
103872	Harper	The Sunday Post	10	10	No
103877	Strachan	Sunday Mail	51	Corrections Column (Letters page)	No
103900	Marsh	Daily Sport	1, 5	5	No
103965	Chapplow	Sunderland Echo	47 (racecard)	55 (racecard)	No
103967	Brennan	Metro	27	14	No
103974	Scott	The Mail on Sunday	Named column	Named column	No
104062	Allso	The Mail on Sunday	Named column	Named column	No
104063	Prudhoe	Hexham Courant	9	5	Yes
104141	Catney	Sunday Life	6	6	No

104170	Klein	The Times	8 (of Review supplement)	8 (of Review supplement)	No
104312	Charman	The Guardian	Corrections Column (Leader page)	Corrections Column (Leader page)	No
104325	Bicer	Middleton & North Manchester Guardian	1	3	No
104445	Goldring	Sunday Mirror	Named column	Named column	No
104470	Tonge	The Sunday Telegraph	13	2	No
104573	Bond	Manchester Evening News	1, 2	2	Yes
104597	Bolton	Clacton Gazette	8	2	Yes
104633	Dixon	Reading Evening Post	3	3	Yes
104649	Dhoju	Evening Standard	2	6	No
104977	Cowen	Daily Record	19	13	No
105041	Katona	The People	4, 5	2	No
105042	Sheldon	Selby Times	8	8	No
105043	Reeve	Southern Daily Echo	15	8	No
105411	Whitston	Telegraph & Argus	8	8	No
105778	Elliot	News of the World	18	18	No
105083	Mills	Sunday Mirror	11	8	No

## Prominence in 2011 (up to August)

Ref. No.	Complainant	Newspaper	Original page	Correction page	Apology?
104163	Northern Health & Social Care Trust	Daily Mirror	1	2	No
104430	Athinaios	Daily Mail	Online only	Online only	Yes
104725	Goeden	Surrey Mirror	15	11	Yes
104760	Collins	Sunday Express	8	8	No
104991	Dorrington	Newham Recorder	11	5	Yes
105236	Allen	Daily Mail	4	6	Yes
105269	Martin	Daily Telegraph	19	17	No
105380	Kerr	Sunday World	39	39	No
105422	Moy	Daily Mail	12	10	No
105442	A Woman	The Press (York)	Named column	Named column	Yes
105447	Moy	The Daily Telegraph	6	7	No
105448	Moy	The Independent	14	17	No
105475	Skinner	Grazia	128	117 (letters page)	Yes
105546	Cowell	Heat	6	13	No
105644	Wiggin MP	The Daily Telegraph	28	11	No
105689	Nonweiler	Times Education	4	4	No

		Supplement			
105707	Hogan	Croydon Advertiser	7	7	Yes
105752	Cichy	The Times	4	2	No
105774	Pritchard MP	Evening Standard	Named column	Named column	No
105830	Troup	The Sun	1	2	Yes
105853	A man	The People	26	2	Yes
105910	A woman	Sunday Life	18	18	No
105912	A man	East Anglian Daily Times	24	17	No
105942	Alan Davies	Willesden and Brent Times	1	2	No
105967	Harris	South Wales Evening Post	13	3	No
106019	Nyland	The Sun	9	6	No
110001	Amess MP	The Echo (Southend)	3	2	Yes
110035	Steer	Hartlepool Mail	6	16	No
110208	Rooney	Scottish Sun	19	37	No
110209	Cowen	Camden New Journal	2	4	No
110231	Bailey	Daily Mail	43	39	Yes
110235	Bull	Pontypridd & Llantrisant Observer	5	5	Yes
110264	Grant	Sunday Mail	19	18	Yes
110265	A man	Eastern Daily Press	13	2	Yes

110271	Hart	South Manchester Reporter	Sports section	Sports section	Yes
110315	Bull	South Wales Echo	2	2	Yes
110316	Bull	Western Mail	4	4	Yes
110477	Lord Martin	The Sunday Telegraph	12	6	No
110481	Motion	Daily Mail	42	24	No
110541	Langdon	Daily Telegraph	7	10	No
110590	A local resident	Evening Star (Ipswich)	Online only	Online only	Yes
110621	Ahmed	The Mail on Sunday	21	25	No
110622	Jananto	The Sun	28	20	No
110623	NHS Blackpool	Blackpool Gazette	8	8	Yes
110628	Hazel	Birmingham Mail	17	17	No
110629	Harris	The Daily Telegraph	13	19	No
110717	Perry	The Mail on Sunday	17	18	No
110719	Whittome	Epping Forest Guardian	12	6	Yes
110721	Chapman	The Observer	6	Corrections Column	Yes
110872	Baroness Greenfield	The Sunday Telegraph	11	6	No
110910	Cole	Look	37	5	No
110912	Croydon Council	Croydon Advertiser	32	32	Yes
110915	Adusei	Metro	Online only	Online only	Yes
110919	Brixton Mosque	The Daily Telegraph	Online only	Online only	No
110923	Shaw	The Daily Telegraph	Online only	Online only	No

110935	Iaccarino	The Citizen (Gloucester)	2	2	Yes
110978	Association of Leading Hungarian Dentists	Daily Mail	27	Corrections column (letters page)	No
110981	Mooney	Glossop Advertiser	2	2	Yes
110982	Casey	The Sun	2	2	No
110983	Full Fact	Daily Mail	32	4	No
110984	Full Fact	Daily Telegraph	2	2	No
111007	Landau	The Sun	Online only	Online only	No
111074	Full Fact	The Sun	23	16	No
111075	Full Fact	Daily Mirror	30	Corrections column (letters page)	No
111076	Full Fact	The Daily Telegraph	14	7	No
111077	Full Fact	Daily Mail	Online only	Online only	No
111107	Gardner	Angling Times	2	2	Yes
111142	Adusei	The Guardian	Online only	Online only	No
111143	Adusei	The Daily Telegraph	Online only	Online only	No
111145	Adusei	The Independent	20	14	Yes
111181	Farrell	Sunday World	8	6	No
111190	Cameron	Cambridge News	8	7	No
111200	English PEN	The Sun	30	30	No
111209	Vaughan	Herald Express (Torquay)	2	6	No

111210	Vaughan	Western Morning News	9	9	No
111224	Glancz	The Sunday Times	34	20	No
111255	West London Mental Health Trust	Daily Mirror	29	Corrections column (letters' page)	No
111260	Muir	Daily Mirror	44	Corrections column (letters' page)	No
111272	Wiggin MP	Sunday Mirror	28	Corrections column (letters' page)	No
111273	Wiggin MP	Ledbury Reporter	1	3	No
111284	Lord Prescott	The Sun	20	6	No
111289	Little	Belfast News Letter	7	4	No
111292	iEngage	Jewish Chronicle	1	4	No
111296	Brinkley	Luton News	7	7	Yes
111324	Wright	Bristol Evening Post	11	11	Yes
111336	Austin	Daily Mail	10	5	Yes
111355	Network Private Hire	Sunday Mail	23	22	No
111370	Strachan	Press & Journal (Aberdeen)	6	5	No
111387	Stocks	The Herald (Glasgow)	9	11	No
111618	Lennon	The Sun	21	18	Yes
111619	Goldsmith MP	The Sunday Times	9	Corrections column	No

111620	Murray	Daily Mail	Online only	Online only	Yes
111621	Handy	The Herald (Plymouth)	2	5	No
111709	Murray	Fishupdate.com	Online only	Online only	Yes
111728	Parkin	Northern Echo	12	4	No
111735	Elwell	Express & Star	33	5	Yes
111764	Pamphilj	The Sunday Times	33	Corrections column	Yes
111765	Goodale	Kent News	26	24	No
111786	London Borough of Croydon	News of the World	19	19	No
111846	Brighton & Hove City Council	The Argus (Brighton)	2	2 (first published on p20 then republished)	Yes
111865	Electoral Reform Services Ltd	The Daily Telegraph	2	2	No
111888	Davidson	Falkirk Herald	13	13	Yes
111895	Kamm	The Observer	25	Corrections column	Yes
111900	Shirres	The Daily Telegraph	4	2	No
111923	Lambeth Council	Daily Mail	25	22	No
111940	Rivers	The Spectator	Online only	Online only	No
111945	Eastenders	Daily Mirror	21	21	No
111981	Dispelling Breastfeeding Myths	The Guardian	113	Corrections column	No



112006	Clemens	Sunday Mercury	Online only	Online only	No
112024	Deslandes	Daily Mirror	9	6	Yes
112139	Shone	Chichester Observer	5	5	Yes
112151	Hellewell	Grazia	1	117 (Letters' page)	Yes
112217	Full Fact	The Times	37	4	No
112226	Samuel	Daily Mail	Online only	Online only	No
112228	Samuel	The Daily Telegraph	5	6	No
112301	Royal Hospital Chelsea	The Daily Telegraph	9	9	Yes
112393	Sedley	Daily Mail	19	12	No
112412	Pettigrew	Blackpool Gazette	6	5	Yes
112464	Hawkes	Britain's Energy Coast	7	3	Yes
112470	Luckhurst	Sunday Herald	33	Corrections column	No
112548	Stevenson	Daily Mail	Online only	Online only	Yes
112549	Lord Martin	Mail on Sunday	28	28	No
112590	Haringey Council	Evening Standard	7	6	Yes
112595	Mitford-Slade	Eventing	4	6	No
112637	Haringey Council	The Sun	14	12	No
112646	Robertson	Scottish Sun	23	16	No
112662	Reynolds	Herts & Essex Observer	Online only	Online only	No
112672	A woman	The Sun	Online only	Online only	No

112710	Collier	The Argus (Brighton)	13	13	Yes
112711	Hall	Tottenham & Wood Green Journal	5	2	Yes
112754	Brindley	The Daily Telegraph	9	9	No
112781	Yellop	The Daily Telegraph	17	14	Yes
112815	Davies MP	The Times	6	2	No
112841	Cleveland Police	Mail on Sunday	44	32	No
112855	University Hospitals Birmingham NHS Foundation Trust	Birmingham Mail	6	2	No
112861	Pickering	Western Morning News	23	25	Yes
112892	Yesufu	Nottingham Post	4	4	No
112898	Davies MP	Bedford Times & Citizen	4	4	No
112950	Shaw	The Sentinel	Named column	Named column	No
113046	Gharbaoui	Daily Mirror	25	Corrections column (letters' page)	No
113047	Coles	Daily Mail	Online only	Online only	Yes
113311	Davies	Yorkshire Post	2	6	No
113312	Davies	Western Mail	12	14	No
113314	Davies	Eastern Daily Press	5	5	No
113315	Davies	Metro	39	19	No

113317	Davies	South Wales Echo	2	4	No
113318	Davies	The Guardian	Online only	Online only	No
113319	Davies	Daily Mirror	14	Corrections column (letters' page)	No
113321	Davies	Belfast Telegraph	Online only	Online only	No
113322	Davies	South Wales Argus	Online only	Online only	No
113323	Davies	The Press (York)	Online only	Online only	No
113324	Davies	Newmarket Journal	Online only	Online only	No

Prepublication Intervention

247. The Press Complaints Commission operates a 24-hour helpline service, which enables it to perform three key functions<sup>226</sup>:

247.1 advocate on behalf of concerned individuals about material that is yet to be published;

247.2 request the attentions of journalists (including broadcasters) to desist, and to relieve the attentions of "media scrums"; and

247.3 give immediate advice on making a complaint about published material, and lodging that complaint with the editor without delay. This can be essential in a fast-moving news environment.

248. The third category means that the complaints process (described above) can be put into action with maximum speed. I will now describe how the first two categories work in practice.

Pre-publication Advocacy

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<sup>226</sup> PCC/1/5/79-81

249. The Commission can be contacted by individuals, with or without legal representation, who have been informed that a story relating to them personally is to be published, and object to it in terms (generally) of its accuracy or intrusiveness. They might be ordinary citizens caught up in a news event or be figures in the public eye.
250. Officers of the Commission then discuss the details of their concerns. Advice is given, which may provide useful information for the individual to use in direct conversation with the journalist. Alternatively, the PCC may be asked to pass on the concerns (on a not-for-publication basis) to a senior editorial figure. The PCC will then give advice to the editor, making clear relevant case law.
251. The PCC has no authority to compel non-publication. However, this system ensures that editors are making decisions with a full knowledge of the Code implications and of the potential consequences of their actions (a likely formal complaint). The effect is generally that non-compliant material does not appear. Editors retain control over publication, and are not constrained by the state as to freedom of expression.
252. The involvement of the PCC office pre-publication does not affect the consideration of any formal complaint later. The advice comes from the staff of the PCC, not the Commission. The Commission is not informed of the content of the advice. Should material be published, and a complaint be made, the Commission reaches a judgement on the merits of the case.
253. Here is a log of pre-publication work in 2010 and 2011:

**Pre-publication work by PCC 2010 to date**

**2010**

Contact	Issue	Action by PCC	Follow up
Celebrity / Family of a celebrity	A celebrity couple who were getting married were being approached by the media. They were concerned about possible breaches of their privacy and wanted advice.	Advised them on how best to deal with these approaches, explaining the terms of Clauses 3 & 4 of the Code.	No further concerns raised.
Celebrity / Family of a celebrity	2 newspapers gave details of a celebrity pregnancy prior to the 12-week scan. PCC was advised formal complaints would be forthcoming and was asked to ensure no other papers published details.	Emailed all editors outlining concerns under Clause 3 of the Code	Formal complaints resulted in upheld adjudications against the two specific publications; no other newspaper carried information following the PCC's intervention.

Celebrity / Family of a celebrity	A magazine published details of a celebrity's alleged pregnancy.	Emailed all editors outlining concerns under Clause 3 of the Code.	Complaint to the PCC under Clause 3 about published article; pre-publication work successful for other newspapers.
Victim of crime	A victim of violent crime many years previously was concerned about being identified as the convicted man was about to be released.	Emailed all editors to make them aware of the concerns.	The victim emailed the PCC to say they had not seen anything published and to express their gratitude.
Relatives of a criminal suspect	The family of a confessed murderer needed advice after approaches from journalists as they did not wish to speak.	Emailed editors to let them know the family's wishes.	No further concerns raised.
Celebrity / Family of a celebrity	A celebrity was concerned that a Sunday newspaper was going to published a private video which they claimed was not authentic	Contacted the newspaper directly to ensure it was aware of the celebrity's concerns.	Newspaper confirmed it would not run the pictures or story.
Relatives of criminal suspect	Members of the family of a criminal suspect needed advice about media approaches.	Emailed editors to let them know the family's wishes.	No further concerns raised.
Family of deceased	The family wanted the PCC to make newspapers aware of request that funeral be private	Passed on the family's wishes to editors.	No further concerns raised.
Family of deceased	A family wanted the media to be aware they had no wish to comment beyond a statement that had been given after the inquest.	Emailed all editors to make to make them aware of the family's request	No further concerns raised.
Celebrity / Family of a celebrity	A celebrity double act were concerned that pictures of their houses may be published in two national newspapers	Advised them on how best to deal with these issues explaining the terms of Clause 3 of the Code.	No further concerns raised.
Celebrity / Family of a celebrity	A celebrity was concerned about being identified in reporting of an impending court case involving a relative.	Emailed editors about the celebrity's concerns under Clause 9 of the Code	No further concerns raised.
Family of deceased	Follow up to previous contact made with the PCC; in advance of the funeral the family requested that no press attend	Emailed the request to all editors and legal departments.	No further concerns raised.
Family of deceased	The family requested privacy following a death.	Passed on a general request for privacy to all editors with a note that funeral would be	Further contact later in month before funeral

		private.	
Family of deceased	The family raised concerns in advance of a private, family-only funeral.	PCC copied into and circulated more widely a legal letter on behalf of the family about the forthcoming funeral.	Further contact later in year before inquest
Member of the public	The father of an individual pictured at football match making controversial gesture contacted the PCC with concerns over his family's safety if a national newspaper published the man's photograph.	Emailed the editor outlining the concerns.	The newspaper decided not to name or photograph the individual as a result of the PCC's intervention.
Family of deceased	The family of a young girl who took her own life wanted advice in regard to the forthcoming inquest; they had no wish to be approached for comments	Passed on the parents' wishes to editors.	No further concerns raised.
Public figure	A former leader of a local Council did not wish to be approached for comment following his resignation due to ill health.	The PCC circulated a letter from the Councillor expressing his concerns to editors.	Formal complaint received from complainant about some published articles; subsequently not pursued by complainant.
Family of deceased	The mother of a young girl whose death was linked to mephedrone (meow, meow) contacted the PCC about continued misreporting of her daughter's death	Emailed all editors to they were aware of her concerns.	No further concerns raised.
Organisation	Advice requested about the alleged secret recording of conversations between famous sports stars	Circulated to all editors a copy of a letter sent out directly by solicitors, with particular reference to Clause 10.	No further concerns raised.
Celebrity / Family of a celebrity	A celebrity concerned that a national newspaper had contacted them about a sensitive subject and private medical information which they thought may be published.	Emailed the newspaper outlining concerns under Clause 3 of the Code	No further concerns raised.

Member of the public	A young lady who had allegedly had a relationship with a celebrity contacted the PCC about a forthcoming story in a Sunday newspaper.	Emailed editor of the newspaper to ensure they were aware of the concerns.	No further concerns raised.
Family of deceased	A family, which had previously complained successfully to the PCC under Clause 5, had a prepared statement for a forthcoming inquest; did not wish to speak directly to press	Emailed all editors to make them aware of the concerns, and remind them of the previously upheld adjudication.	No further concerns raised.
Organisation	Concerned over alleged inaccuracies to be published in a Sunday newspaper article.	Emailed editor with the concerns raised	Formal complaint received about published story; complaint resolved between the parties.
Public figure	A celebrity concerned following publication of topless photographs in a Sunday newspaper; she did not want to comment or for her elderly parents to be harassed.	Emailed the newspaper outlining her concerns.	No further concerns raised.
Celebrity / Family of a celebrity	Concerned that nude photos would appear taken on a personal computer	Passed the concerns raised under Clause 3 on to editors	No further concerns raised.
Member of the public	The wife of a man seriously injured in accident requested not to be contacted further by a local newspaper.	Emailed the editor outlining the concerns.	The newspaper confirmed no further contact would be made and that the husband's name does not appear in print or online.
Family of deceased	Pre-publication contact from a local paper and the family's objections to method of death going into print.	Advised the family that it cannot prevent publication but passed on their concerns under Clause 5 of the Code	No further concerns raised.
Member of the public	Concerns raised about possible publication in national newspaper that the individual was working as an escort.	Passed on her concerns to the newspaper.	No article published.
Celebrity / Family of a celebrity	A celebrity was concerned that a photograph on a Sunday newspaper website could lead to identification of his home.	Emailed the editor outlining the concerns under Clause 3 of the Code and the request that the photograph to be removed.	No further concerns raised.

Member of Royal family	A Sunday newspaper published details of home address.	Copied into letter from solicitors which was disseminated for information.	No direct PCC action
Celebrity / Family of a celebrity	A celebrity couple requested for any photos of their baby son to be pixelated to protect his privacy during a visit to theme park.	Passed on the request to all editors.	No further concerns raised.
Family of deceased	The family wanted a reminder passed on to editors for the request for privacy in light of the beginning of the inquest.	Contacted all editors reiterating previous position.	No further concerns raised.
Family of deceased	A local police family liaison office requesting that the family of murdered man not be contacted for comments.	Passed on the request from the police to all editors.	No further concerns raised.
Member of the public	Lottery winner requested anonymity after big win.	Forwarded an email to all editors reminding them of the PCC Guidance Note and passing on the winner's request for anonymity	No further concerns raised.
Family of deceased	Privacy concerns following a death. The family did not wish to speak to the media, were concerned about possible coverage of the funeral and general sensitivity issues.	Emailed all editors with the family's concerns.	No further concerns raised.
Celebrity / Family of a celebrity	Concerned about photos of children being published and children being photographed generally	Emailed all editors outlining the concerns under Clause 6.	No further concerns raised.
Member of the public	A former boyfriend of a missing girl worried about approaches from the media	Emailed all editors outlining concerns about ongoing contact from media outlets	No further concerns raised.
Member of the public	Concerned about emails received from a Sunday newspaper journalist	Emailed newspaper making clear that the individual was unable to speak because of client confidentiality	No further concerns raised.
A serving policeman	Concerned about possible imminent publication of information regarding an employment claim in a national newspaper	PCC emailed newspaper outlining the concerns under Clause 3 of the Code	No article published.



Family of deceased	Privacy concerns before funeral	Emailed all editors to make clear they were aware that the funeral would be private affair.	No further concerns raised.
Family of deceased	Parents whose children had died abroad did not wish to speak to the press, and were concerned about media presence at the forthcoming funeral	Emailed all editors outlining their concerns.	No further concerns raised.
Victim of crime	Approaches made to the victim at on ongoing court case. Concerned about privacy and identification following crime.	Emailed all editors outlining the concerns under Clause 3 of the Code	No further concerns raised.
Celebrity / Family of a celebrity	A celebrity concerned that inaccurate and intrusive reports that she was 12 weeks pregnant would be published	Emailed all editors outlining concerns under Clauses 1 & 3 and forwarded message denying the claims.	No further concerns raised.
Family of deceased	Family concerned about inaccurate reports in some national newspapers	Emailed editors concerned outlining concerns of the family.	PCC received formal complaints about various newspapers; all complaints resolved.
Member of the public	Concerned about privacy issues and not wanting to be contacted by media.	Emailed all editors outlining concerns under Clause 3 of the Code.	No further concerns raised.
Member of the public	Concerned over comments attributed to his daughter in a Sunday newspaper.	Emailed all editors to make them aware of concerns.	No further concerns raised.
Member of the public	Concerned about repeated contact of elderly mother for comment	Emailed all editors outlining concerns under Clause 4 of Code and to make clear that none of the family wish to be contacted	No further concerns raised.
MP	Concerned about approaches to his daughter by a Sunday newspaper	Emailed the newspaper outlining concerns under Clause 6 of the Code	The paper confirmed it had no plans to publish any information.
Family of deceased	Concerned about possible media contact because of forthcoming inquest.	Emailed all editors to pass on concerns	No further concerns raised.
Family of deceased	Concerned in advance of a funeral of someone related to a celebrity - private, family-only	Emailed all editors to ensure they were aware of request for funeral to be a	Excellent feedback from police as the request helped the family to grieve

	occasion.	private affair	privately.
National organisation	Ongoing coverage of multiple suicides in London	Passed on emails and reminded editors of suicide reporting guidance note	No further concerns raised.
Solicitor	Concerned over publication of illegally obtained emails including personal information.	Emailed all editors outlining concerns under Clauses 3 and 10 of the Code	No further concerns raised.
Member of the public	Concerned about possible contact by media for comments about death of her husband who was a police officer.	Her statement sent out through PA, which the Commission also passed on; made clear she would not be commenting	No further concerns raised.
Member of the public	Pre-publication concerns regarding allegations against him, which he denied	Emailed the publication to pass on his concerns	No further concerns raised.
Member of the public	Concerned regarding protection of anonymity of a lottery winner	Emailed all editors reinforcing the lottery guidance note.	No further concerns raised.
Family of deceased	Family concerned about privacy at the forthcoming funeral.	Emailed all editors outlining concerns under Clause 3 of the Code and the request for funeral to be a private family occasion	No further concerns raised.
Celebrity / Family of a celebrity	A celebrity couple concerned in advance of their son's first birthday party about possible invasions of privacy.	Emailed all editors outlining concerns under Clauses 3 and 6 of the Code.	No further concerns raised.
Various authorities	Concerned about possible jigsaw identification of children who had been sexually abused.	Circulated email to all editors setting out the issues under Clause 7 of the Code.	No further concerns raised.
Student	Concerned about mis-quote in a national newspaper about the student protests. The student denied the quotes and did not wish to comment further.	Emailed all editors to pass on concerns.	Formal complaint received by PCC about quotes; resolved between the parties.
Member of the public	Concerned about forthcoming issue of a Sunday newspaper referring inaccurately to a charity	PCC passed on the correspondence to newspaper concerned.	Newspaper confirmed they had no intention of mentioning the charity

Family of criminal suspect	Concerned about media speculation about their son.	Emailed all main newspaper groups with a copy of a letter outlining concerns under Clauses 3 & 4 of the Code	No further concerns raised.
Various authorities	Concerns about jigsaw identification of children who had been sexually abused.	PCC reminded all editors of previously-circulated message, prior to the sentencing hearing.	No further concerns raised.
Family of deceased	Family had requests for comment from media when they did not wish to speak	Emailed all editors to make them aware of the position.	No further concerns raised.

2011

Contact	Issue	Action by PCC	Follow up
Celebrity / Family of a celebrity	A soap star was concerned about possible publication of an article containing inaccuracies.	Emailed the publication to ensure it was aware of concerns.	Newspaper made changes to story; celebrity declared he was happy with alterations.
Family of deceased	The family of a woman murdered abroad were concerned about a video being been released to the media. Concerned about possible publication of unseen footage.	Emailed all editors outlining concerns under Clauses 3 & 5 of the Code	No further concerns raised.
Member of the public	Concerned about approaches by a national newspaper.	Emailed newspaper outlining concerns under Clause 6 of the Code	No further concerns raised.
Celebrity / Family of a celebrity	Concerned about approach by journalist concerning her health	Emailed all editors outlining concerns under Clause 3 of the Code.	No further concerns raised.
Member of the public	Concerned about a Sunday and a national newspaper possibly printing inaccurate stories about her.	Emailed newspapers mentioned outlining concerns under Clause 1.	Email from the national newspaper confirming no intention to publish.
MEP	An MEP concerned about a former employee selling story to a Sunday newspaper using stolen documents as evidence.	Emailed newspaper directly outlining concerns under Clauses 1 and 10 of the Code.	No further concerns raised.
Celebrity / Family of a celebrity	A soap star concerned over private details which might appear in a national newspaper.	Emailed newspaper directly outlining concerns under Clause 3 & 6 of the Code.	No further concerns raised.

Celebrity / Family of a celebrity	A film actor concerned about a story appearing that he is looking for property with his partner.	Emailed newspaper directly making clear the position under Clause 3 of the Code.	No further concerns raised.
Family of deceased	The wife of a man who committed suicide concerned about a story that was appearing in a national newspaper that was inaccurate and intruded in her privacy.	Emailed newspaper directly to make clear concerns under Clauses 1 & 3 of the Code.	No further concerns raised.
Celebrity / Family of a celebrity	A young soap star concerned about the accuracy of a story to be published in a national newspaper.	Emailed newspaper directly making clear the position under Clauses 1 & 6 of the Code.	No further concerns raised.
Celebrity / Family of a celebrity	A Premier League footballer concerned about a proposed story giving details of an individual pregnant with his baby before 12 week scan.	Emailed newspaper directly making clear the position under Clause 3 of the Code.	No further concerns raised.
Member of the public	Concerned about re-publication of a photograph of her with her former partner who had been murdered.	Emailed specific editors making clear concerns.	Action taken by numerous newspapers to remove her images from archives.
Member of the public	A CEO of a company concerned about media speculation over state of his marriage by a newspaper.	Emailed newspaper directly outlining concerns under Clauses 4 & 10 of the Code.	Formal complaint received.
Celebrity / Family of a celebrity	A TV presenter concerned about possible press attention after birth of her son.	Emailed all editors outlining concerns under Clause 3 of the Code.	No further concerns raised.
Celebrity / Family of a celebrity	A sports presenter concerned about an approach by a newspaper over inaccurate speculation of an alleged injunction and an alleged affair.	Emailed newspaper directly making clear the position under Clause 1 and 3 of the Code.	No further concerns raised.
Celebrity / Family of a celebrity	A former Premier League footballer concerned about an approach by a newspaper over speculation of an alleged injunction about his alleged affair.	Emailed newspaper directly making clear the position under Clause 1 and 3 of the Code.	No further concerns raised.
Member of Royal Family	Member of the Royal Family concerned by a story due to be published about an alleged security breach.	Emailed newspaper directly making clear the position under Clause 3 of the Code.	Newspaper emailed back assurance on non-identification of property

Journalist	Journalist concerned about possible media interest after a story about an injunction involving an alleged affair with another journalist.	Emailed all editors outlining concerns under Clauses 3 & 4 of the Code.	No further concerns raised.
Organisation	Concerned about privacy of lottery winners and potential press stories.	Emailed all editors making clear concerns and reminding of PCC's Guidance Note about Lottery winners.	No further concerns raised.
Celebrity / Family of a celebrity	Sports presenter was contacted by national newspaper journalist at her house and contact with her son.	Emailed newspaper directly making clear the position under Clauses 3, 4 & 6 of the Code.	Newspaper sent immediate apology, which was accepted.
Member of the public	Concerned about contact by journalists from a Sunday newspaper.	Emailed newspaper directly outlining concerns under Clause 4 of the Code.	No further concerns raised.
Member of the public	Concerned about contact by journalists from a Sunday newspaper.	Emailed newspaper directly outlining concerns under Clause 4 of the Code.	No further concerns raised.
Member of the public	Concerned over possible accuracy of local newspaper stories after inaccurate national newspaper stories already published.	Emailed local editors making clear the position under Clause 1 of the Code.	Formal complaint received about national newspaper; no stories published locally.
Celebrity / Family of a celebrity	Actress concerned that photographs taken abroad of her & daughter by paparazzi would be used by UK publications.	Emailed all editors outlining concerns under Clause 3 & 6 of the Code.	No further concerns raised.
Member of the public	Concerned over contact by journalists from a national newspaper.	Emailed newspaper directly outlining concerns under Clause 4 of the Code.	No further concerns raised.
Member of Royal Family	Member of the Royal Family concerned about press intrusion.	PCC copied into letters sent to all editors making clear the position under Clauses 3 & 4 of the Code.	No direct PCC contact.
Family of deceased	Family concerned about publication of information about the father's health problems following her death.	Emailed all editors outlining concerns under Clause 3 of the Code.	No further concerns raised.
Member of the public	Concerned over potential story in national newspaper linking her	Emailed newspaper directly outlining concerns under	Newspaper agreed to remove personal details.

	with a TV personality.	Clauses 3 & 4 of the Code.	
TV Show/Member of the public	TV talent show and member of public who appeared on it concerned about possible newspaper stories after fix allegations appeared online and comments about sexuality.	Emailed all editors outlining concerns under Clause 6 of the Code.	No further concerns raised.
Member of the public	Concerned about possible press attention after daughter appeared on TV programme.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard..
Member of the public	Concerned about allegations appearing of a relationship with a Premier League footballer in a Sunday newspaper.	Emailed newspaper directly making clear the position under Clause 3 of the Code.	No further concerns raised.
Family of deceased	The family of a convicted murderer who committed suicide in prison were concerned about press attention at the inquest.	Letter drafted to be sent to all editors outlining concerns under Clauses 3, 4, 5 and 9 of the Code.	No further concerns raised.
Celebrity / Family of a celebrity	A writer about possible press attention.	PCC advice given on best way to handle issues.	Decided to take no action at present time.
Family of deceased	Family concerned about possible press attention on day of funeral of 13 year old daughter.	Emailed all editors in advance of the funeral taking place making clear concerns under Clause 4 and 5.	No further concerns raised.
Family of deceased	Family concerned about press attention during murder trial of daughter.	Emailed all editors outlining concerns under Clause 4 of the Code.	No further concerns raised.
Celebrity / Family of a celebrity	A celebrity concerned about a possible story in a Sunday newspaper about living arrangement of his in-laws.	Emailed newspaper directly making clear concerns under Clauses 1 and 3 of the Code.	Story modified following PCC involvement; inaccurate claims removed
National organisation	Concerned about reporting of multiple suicides.	Copied into email to newspapers organisation.	No direct PCC contact.
Member of the public	Concerns that witnesses in a murder trial have been distressed by approaches by press and broadcast journalists.	Emailed all editors making clear concerns and passing on the request that approaches be made via the MPS and CPS press offices.	No further concerns raised.

MP	An MP had been approached by a Sunday newspaper about her local constituency indicating that families may have been phone-hacked. Wanted advice on how to proceed to protect families.	PCC gave advice on options.	MP agreed that we should await any further contact. None was received.
Family of deceased	Wife of a serviceman killed in Iraq concerned after several attempts to contact her about whether or not her phone was hacked.	Emailed all editors making clear her concerns under Clause 4 and explaining that there was no indication from the police that it had.	No further concerns raised.
Family of deceased	The partner of a man who died saving his daughter from drowning concerned around photograph of the child with the father on two national newspaper websites.	Telephoned newspapers directly making clear the concerns about the photographs and Clause 6 issues. Concerns also passed to news desks to try to prevent publication the following day in the paper editions.	One newspaper removed photo from website and did not publish in print edition. The other cropped the photo on the website and used cropped image in print edition.
Member of the public	Wanted advice on possible media coverage of her famous parents. The identity of her mother was not in the public domain and she wished it to remain that way	Advice given on the telephone; no further action necessary.	No further contact.
Member of the public	Concerned about video of him drunk which appeared on two newspaper websites, and still images.	Emailed newspapers outlining concerns under Clause 3 of the Code.	Both newspapers removed the video, and some still images which might identify the complainant.
Family of deceased	Police on behalf of family concerned about significant contact by press following death of their son.	Emailed all editors outlining concerns under clauses 4 & 5 of the Code and making clear that the family did not wish to comment other than by means of a short statement.	No further concerns raised.
Family of deceased	Family concerned about contact by a Sunday newspaper concerning their son's death 4 years previously.	Emailed newspaper directly making clear the position under Clause 4 of the Code.	No further concerns raised.
Member of the public	Concerned about contact by a Sunday newspaper asking for comments	Emailed newspaper directly outlining concerns under	No further concerns raised.

	about the death of a friend.	Clause 3.	
Member of the public	A mother concerned about the use of a photograph of her child on a national newspaper front page in conjunction with story about hospital deaths.	Emailed newspaper directly outlining concerns under Clauses 3 & 6 of the Code.	Pictures cropped to remove child and instruction that the picture will not be used again in its original form. Paper requested that third party databases expunge the picture as well.
Member of the public	Concerned about contact by a Sunday newspaper asking for comments about the death of a friend.	Emailed newspaper directly outlining concerns under Clause 3 of the code.	Newspaper confirmed that the messages would be passed on to the journalist in question.
MP	Concerned about possible story about private life in Sunday newspaper after comments from blogger.	Emailed newspaper directly outlining concerns under Clause 3.	Newspaper confirmed that no story would be published.
Celebrity / Family of a celebrity	A TV celebrity concerned about privacy while he was on holiday in Europe during August.	PCC circulated an email to editors detailing concerns.	No further concerns raised.
Member of the public	General worries around press approaches to comment about her mother (a convicted murderer) including concerns around comments attributed to her which she denied making.	Emailed all editors making clear position under Clause 4 of the Code.	No further concerns raised.
Family of deceased	Press attention following death of boy killed by an animal.	MP, who is friend of family, given advice about PCC services and contact details.	Very positive and knowledgeable about PCC's pre-publication work, just wanted to check they could contact us anytime.
Celebrity / Family of a celebrity	A celebrity chef was concerned about media requests for comments following the announcement of the end of his marriage.	Email all editors outlining concerns under Clauses 3 & 4 of the Code and making clear the family would not comment further to what had already been released in the statement.	No further concerns raised.
Member of the public	Concern about Sunday newspaper story alleging fraud and an affair.	Emailed newspaper directly outlining concerns under Clauses 1 & 3 of the Code.	Story was published but no mention of affair; formal complaint received by PCC.



Public figure	Concerned about privacy issues following approach from a Sunday newspaper about a story related to his finances.	Emailed newspaper directly outlining concerns under Clause 3 of the Code.	Story was published and a formal complaint made. Further message sent to editors to pass on concerns about a possible follow-up article.
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Anti-harassment service

254. Clause 4 (Harassment) of the Editors' Code of Practice states that journalists:

*"must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. If requested, they must identify themselves and whom they represent."*

255. The key factor is, therefore, the communication of a desire for attention to desist. However, if someone is at the centre of a news story, they may be approached by a number of different newspapers and broadcasters. It can be distressing – especially at a time of grief or shock – to have repeatedly to request that a journalist stop their contact.

256. The PCC has developed a system by which it can communicate a person's request either specifically to interested newspapers or across the whole print and broadcast industry. Generally, the PCC is contacted (using its 24-hour helpline) and senior staff speak to the affected party or their representative. If possible, we request an email stating the concern clearly. The PCC then forwards this on to a list of senior editorial and legal representatives. The request is, therefore, widely circulated. Almost invariably, it is followed and the attention ceases.

257. This service can be used, as it were, prophylactically. A grieving family can contact the PCC ahead of an inquest or funeral to make their wishes known, and the PCC will act to disseminate their position immediately.

258. The PCC's work on grieving families is detailed below<sup>227</sup>. It has published specific guidance for the bereaved<sup>228</sup>, empowering them to use the anti-harassment service, which has been provided to every police force and coroners' court.

259. The anti-harassment service also has an application for figures in the public eye, as it acts as a check on the publication of paparazzi photographs obtained by

<sup>227</sup> Paragraph 274

<sup>228</sup> PCC/H2/3/845-850

harassment. The starting premise is that as soon as an editor publishes a photograph, he or she is taking responsibility for the conduct of the person providing it.

260. When a problem arises, the representative of the affected party contacts the PCC (in the manner outlined above). If there is legitimate concern about the behaviour of paparazzi either on a specific occasion or more generally, then the PCC will pass on information about that concern. This places the onus on the editor to take care over the publication of photographs of the affected individual. This in turn means that non-compliant photographs are not bought by newspapers or magazines, and the market for them dwindles. This in turn affects the behaviour of the paparazzi in regard to the individual.
261. This seems to the PCC to be the best available way to influence paparazzi behaviour. Paparazzi are not regulated in any way, and it is hard to see how they could be: anyone with a smartphone and zeal can become a paparazzo.

A log of the anti-harassment work in 2010 and 2011 is below.

**2010**

CONTACT	ISSUE	ACTION TAKEN BY PCC	FOLLOW UP
Member of the public	Alleged harassment by Sunday newspaper.	Passed on an email to newspaper outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful
Members of the public	Repeated contact from a national newspaper about a court case.	Passed on an email to newspaper's editorial team making clear they did not wish to speak.	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Wife of an international footballer pursued by journalists and photographers abroad.	Emailed all editors outlining concerns under Clause 4 of the Code	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Premier League footballer and his wife concerned about	Emailed all editors outlining concerns under Clause 4 of the Code	Nothing further heard: PCC action successful

	pursuit by journalists.		
Celebrity / Family of a celebrity	A celebrity concerned about privacy at his home and possible pursuit by journalists.	Emailed all editors outlining concerns under Clauses 3 and 4 of the Code.	Nothing further heard: PCC action successful.
Celebrity / Family of a celebrity	Premier League footballer and his wife concerned about pursuit by journalists and inaccurate information being published.	Emailed all editors outlining concerns under Clauses 1, 3 & 4 of the Code	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Mother of famous singer concerned about harassment by photographers.	Emailed all editors outlining concerns under Clause 4 of the Code	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Mother of celebrity concerned about repeated approaches from newspapers for comment about her son.	Emailed all editors making clear she had no comment to make.	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Wife of pop star concerned about media presence outside her home and pursuit by photographers while with her children.	Emailed all editors making clear her concerns under Clauses 3, 4 & 6 of the Code	Nothing further heard: PCC action successful
Member of the public	Former partner of pop star concerned about photographers and reporters at her home abroad.	Emailed all editors outlining her concerns under Clause 4 of the Code	Nothing further heard: PCC action successful
Member of the public	Victim of 7/7 bombs in London contacted repeatedly by a national newspaper.	Emailed the newspaper concerned making clear she did not wish to speak.	The newspaper took note of the position and did not contact her further.

Local councillor	Concerned about approaches made and photographs taken by a newspaper abroad.	Emailed the newspaper outlining concerns under Clause 4 of the Code	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Celebrity couple concerned about the presence of journalists at their home following news of their upcoming divorce. Did not wish to speak to the press aside from an official statement.	Emailed all newspapers to make clear the position.	Nothing further heard: PCC action successful
Member of the public	Alleged harassment by Scottish Sunday newspaper.	Emailed the newspaper outlining concerns under Clause 4.	The Commission received a formal complaint under Clause 4.
Celebrity / Family of a celebrity	A sportsman concerned about the presence of journalists and photographers outside church for family occasion.	Forwarded an email to all editors reiterating concerns under Clauses 3, 4 and 6 of the Code.	Nothing further heard: PCC action successful.
Public figure	A prominent public figure concerned about considerable presence of journalists outside his house.	Emailed all newspapers outlining concerns under Clauses 3 & 4	The Commission received a formal complaint about the story which prompted the interest.
Celebrity / Family of a celebrity	Alleged harassment by a journalist from a national newspaper.	Emailed newspaper concerned outlining concerns under Clause 4.	Nothing further heard: PCC action successful
Family of deceased	Family of a victim of shootings in Cumbria concerned about repeated contacts for comment.	Emailed all editors to make clear the concerns under Clause 4 in addition to general privacy concerns.	Nothing further heard: PCC action successful

Celebrity / Family of a celebrity	Family of a Premier League footballer concerned about repeated requests for comment following England World Cup match.	Emailed all editors outlining concerns under Clause 4 of Code and making clear the family had no wish to comment.	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Celebrity concerned about repeated approaches to her elderly mother for comment.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful
MP	Concerned over repeated requests for comments after personal difficulties.	Emailed all publications concerned outlining concerns under Clause 4 of the Code	Nothing further heard: PCC action successful
Member of the public	Concerned over repeated requests for comment	Emailed all editors making clear there was no wish to speak and outlining concerns under Clause 4 of the Code	Nothing further heard: PCC action successful
MP	Alleged harassment by Sunday newspaper.	Emailed newspaper outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful
Member of the public	Concerned over presence of Sunday newspaper at property.	Emailed newspaper outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful
Local councillor	Concerned about repeated approaches by newspaper and broadcast media. Did not wish to speak to the press aside from an official statement.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Celebrity couple who were new parents were concerned about media presence outside	Emailed all editors outlining concerns under Clauses 3, 4 and 6 of the Code.	Nothing further heard: PCC action successful

	their home.		
Celebrity / Family of a celebrity	Celebrity concerned about pursuit by photographers whilst abroad.	Emailed all editors outlining concerns under Clause 3 and 4 of the Code and reminding of similar request previously.	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Pop star concerned about being harassed after announcing her pregnancy.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Father of a Premier League footballer concerned about alleged harassment of his family on holiday.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful
Family of deceased	Alleged harassment of family on property by TV crews and reporters	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Heavily pregnant soap star concerned about pursuit by photographers.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Celebrity couple with a new baby concerned about being pursued by photographers.	Emailed all editors outlining concerns under Clause 4 of the Code	Nothing further heard: PCC action successful
MP	Partner of an MP concerned about being pursued by photographer while heavily pregnant.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful
Family of deceased	Family of a man who died in prison concerned about repeated media	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful

	contacts.		
Celebrity / Family of a celebrity	Relative of X-Factor contestant concerned about repeated contact by media.	Emailed all editors with message outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful
Member of the public	Alleged harassment by a local newspaper.	Emailed editor of newspaper outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Film star concerned by harassment abroad wished to prevent similar issues in UK before her return with her son.	Emailed all editors outlining concerns under Clauses 3 & 4 of the Code.	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	Pop star concerned about pursuit by photographers.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful
Celebrity / Family of a celebrity	A TV comic's wife concerned about the media presence at her home and the welfare of her children.	Emailed all editors outlining concerns under clauses 3, 4 & 6 of the Code.	Nothing further heard: PCC action successful
Relatives of criminal suspect	Alleged approaches by photographers and concerns over photographs taken of family members at family home.	Emailed all editors outlining concerns under Clause 4 and making clear their wishes.	Nothing further heard: PCC action successful
Member of the public	The former partner of a suspected murderer concerned about repeated approaches by press; did not wish to speak publicly	Emailed all editors to make clear the concerns under Clause 4.	Nothing further heard: PCC action successful
Family of deceased	Concerned about approaches by a	Emailed newspaper outlining concerns under Clause 4 of	Nothing further heard: PCC action successful.

	Sunday newspaper	the Code.	
Celebrity / Family of a celebrity	A celebrity concerned about being pursued by photographer while on holiday.	Emailed all editors outlining concerns under Clauses 3 & 4 of the Code	Nothing further heard: PCC action successful.

2011

CONTACT	ISSUE	ACTION BY PCC	FOLLOW UP
Celebrity / Family of a celebrity	Soap star concerned about alleged harassment by photographers	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Celebrity / Family of a celebrity	Film star concerned about alleged harassment by photographers	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Member of the public	Wife of police chief concerned about alleged harassment by journalists.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Family of deceased	Family of woman who committed suicide concerned about intrusion by media. Family did not wish to speak to press.	Emailed all editors outlining concerns under Clauses 4 & 5 of the Code.	Nothing further heard: PCC action successful.
MP	MP and his wife concerned about alleged harassment by journalists	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Family of criminal	Daughter of a convicted murderer concerned about alleged harassment by journalists and photographers.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.



Member of the public	Concerned about alleged harassment by Sunday newspaper.	Emailed newspaper outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Family of criminal	The wife of a convicted criminal concerned about journalists contacting parents at her children's school.	Emailed all editors outlining the concerns under Clauses 4 & 6 of the Code.	Nothing further heard: PCC action successful.
Member of the public	Former partner of deceased TV star concerned about excessive press attention.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Celebrity / Family of a celebrity	Premier League footballer concerned about alleged harassment by journalists.	Legal Notice issued to the media, copied to the PCC on consultation.	Nothing further heard: PCC action successful.
Celebrity / Family of a celebrity	Wife of a TV celebrity concerned about alleged harassment of her husband by journalists.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Celebrity / Family of a celebrity	Pop star concerned about alleged harassment by photographers.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Family of a suspected criminal	Family concerned about alleged harassment by journalists.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Member of the public	Daughter of one of the Cumbria shootings survivors concerned about media attention.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Family of deceased	Family of a boy who died abroad concerned media attention following the death.	Emailed all editors outlining concerns under Clauses 4 & 5 of the Code.	Nothing further heard: PCC action successful.

Celebrity / Family of a celebrity	Film star concerned about alleged harassment by photographers from a national and Sunday newspaper.	Emailed newspapers directly outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Celebrity / Family of a celebrity	TV celebrity concerned about photographer following his children.	Emailed all editors outlining concerns under Clauses 4 & 6 of the Code.	Nothing further heard: PCC action successful.
Member of the public	Concerned about repeated contacts from a Sunday newspaper.	Emailed newspaper outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Family of deceased	Family of a girl killed in a car crash abroad concerned over repeated contact by journalists following the funeral.	Emailed all editors outlining concerns under Clauses 4 & 5 of the Code.	Nothing further heard: PCC action successful.
Family of deceased	Family concerned about approaches by a national newspaper after the death of their baby son.	Emailed all editors outlining concerns under Clauses 4 & 5 of the Code	Nothing further heard: PCC action successful.
Celebrity / Family of a celebrity	TV comedian concerned about unwanted attention by paparazzi following birth of his son.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Member of the public	Alleged harassment by photographers	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Member of the public	Sister of a pop singer concerned about being followed by photographers.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Family of victim	Family concerned about repeated media approaches following	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.

	attack on their daughter outside school.		
Celebrity / Family of a celebrity	Wife of a celebrity concerned about photographers outside her home.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Celebrity / Family of a celebrity	Actor concerned over repeated contact by journalists following his wife's death.	Emailed all editors outlining concerns under Clauses 4 & 5 of the Code.	Nothing further heard: PCC action successful.
Celebrity / Family of a celebrity	Radio DJ concerned about alleged harassment by journalists.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Family of convicted criminal	Mother of a convicted man concerned about media approaches.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Member of the public	Wife of an MP concerned about alleged harassment by journalists from a national newspaper.	PCC copied into email to newspaper which outlined concerns under Clause 4.	Response received from newspaper setting out its version of events. Further contact on 25/5 in regard to other publications.
Celebrity / Family of a celebrity	Family of a Premier League footballer concerned about presence of journalists outside their home.	Emailed all editors (on two occasions) outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Member of the public	Wife of an MP concerned about alleged harassment by journalists	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Celebrity / Family of a celebrity	Pop star concerned about alleged harassment by journalists.	Received copies of legal notice from solicitors to newspapers outlining concerns under Clause 4.	No direct contact by PCC
Celebrity / Family of a celebrity	Mother of a Premier League footballer concerned about press	Emailed all editors outlining concerns under Clause 4 of	Nothing further heard: PCC action successful.

	harassment.	the Code.	
Celebrity / Family of a celebrity	Brother of a Premier League footballer concerned about press attention following stories about his brother.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Member of the public	A soon-to-be married young woman concerned about alleged harassment by photographers including on motorbikes.	Emailed all editors outlining concerns under Clauses 3 & 4 and requesting that pictures taken by paparazzi not be published.	Nothing further heard: PCC action successful.
Member of the public	Alleged harassment by photographers and persistent pursuit outside her home.	Emailed all editors outlining concerns under Clause 4 and requesting that pictures obtained in cases of possible harassment not be published.	Nothing further heard: PCC action successful.
Celebrity / Family of a celebrity	Family of a Premier League footballer concerned about photographers outside their home on their return from holiday.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Former journalist	Wife of a former journalist concerned about press outside the family home.	Emailed all editors outlining concerns under Clause 4 of the Code.	Dialogue with BBC and the representatives established. Some follow-up correspondence between BBC journalist and family solicitor.
Celebrity / Family of a celebrity	Hollywood couple concerned about alleged harassment by paparazzi and photographs being taken of their children.	Emailed all editors outlining concerns under Clauses 4 & 6 of the Code.	Nothing further heard; PCC action successful
Celebrity / Family of a celebrity	Celebrity couple concerned about approaches to them and the man's estranged wife, following the birth	Emailed all editors outlining concerns under clause 4 of the Code.	Further contact on 10/8

	of their child.		
Celebrity / Family of a celebrity	Celebrity couple concerned about unwanted approaches in the aftermath of the birth of their child.	Emailed second notice to all editors, with a reminder to editors about the previous email of 1/8 outlining ongoing concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Member of the public	Father of a girl who appeared in court following the riots concerned about media approaches to the family.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.
Family of deceased	Family of a man who died on honeymoon abroad concerned about media approaches.	Emailed all editors outlining concerns under Clause 4 of the Code.	Nothing further heard: PCC action successful.

## Editorial Guidance

### Guidance Notes

262. When the Commission becomes aware of significant issues relating to the Editors' Code, it is able to issue guidance to the industry, with the intention of raising standards. It currently publishes the following notes<sup>229</sup>:

262.1 Online Prominence (2011)

262.2 Identification of victims of sexual assault (2011)

262.3 On reporting of suicide (2009)

262.4 Payment to parents about material relating to their children (2009)

262.5 On reporting of mental health issues (2006)

262.6 Data Protection Act, Journalism and the PCC Code (2005)

<sup>229</sup> PCC/K/1/1-40

- 262.7 Editorial co-operation (2005)
- 262.8 Financial Journalism Best Practice (2005)
- 262.9 On reporting of people accused of crime (2004)
- 262.10 Lottery Winners (2004, updating note of 1995)
- 262.11 The Judiciary and harassment (2003)
- 262.12 Refugees and asylum seekers (2003)
- 262.13 Prince William and privacy (2000)
- 262.14 On reporting of cases involving paedophiles (2000)
- 262.15 Reporting of International Sporting Events (1998)
- 262.16 Court reporting (1994)

24-hour Advice Service

262.17 The PCC also offers a 24-hour confidential service for editors to call for advice ahead of taking newsroom decisions. It might relate to the content of a forthcoming article, or the decision to employ subterfuge by a journalist.

262.18 A log for the month of August 2011 appears below.

Type of publication	Type of Query	Advice	Outcome (if known)
Scottish	Whether newspaper can publish details of allegations - in regard to a schoolchild - which led to a resignation	Potential Clause 3 issue	The newspaper decided not to identify the girl
Scottish	Query about Clause 6 issue involving the republication of a photograph of a schoolchild	Potential Clause 6 issue, but could argue public interest (and the previous publication of the photograph)	The newspaper decided to publish the story with the photograph; two complaints subsequently received
Scottish	Query under Clause 1 about publishing a letter from a man under nom de plume suggesting it was a woman	Informal advice that this would probably not breach Clause 1	The newspaper simply wished for the matter to be discussed; no action taken
English regional	The newspaper wished for some advice about an inquest report of a soldier it had published which was completely wrong, having	There was a definite Clause 1 issue about which the PCC had received several complaints; the newspaper should	The newspaper published a 1,000 word front page apology with the widow's approval

	stemmed from an agency	rectify swiftly and prominently	
Northern Irish Sunday	Query about asylum seeker fired from care home, HIV positive status; can the newspaper refer to this?	Potential Clause 3 and Clause 12 issues; is there a legal requirement to inform the home of HIV status? What is the public interest?	The newspaper found out that it was a legal requirement, and was mentioned in court; story was published
Magazine	Query about story about man who pleaded guilty to GBH after knowingly infecting his girlfriend with herpes	Potential Clause 3 issue, but heard in court so brought into the public domain	
Magazine	Query about Clause 16 and payment to two women, both convicted of offences, relating to their friendship	There could be a public interest for one of the women involved, but the other payment may well be in breach of the Code	
National newspaper	Query about reports of suicides	The newspaper removed the reference to one of the suicides	
English regional	Query about Clause 16 and potential payment to a man originally arrested during riots but then released	There was an issue about glorification, but there could be a public interest defence	
Scottish	Query about the publication of information relating to a heart attack in prison of an infamous prisoner	Certainly a Clause 3 issue, but the information has stemmed from the prisoner's mother	
Magazine	Query about whether the PCC had received a complaint about photographs of a celebrity	The PCC had not received a complaint	
Scottish	Query about taking photographs of a councillor who had been convicted of offences, taken in his front garden	Potential Clause 3 issue, but the individual appeared to be clearly visible from the street	
Scottish	Query about whether an individual was entitled to waive his anonymity as a victim of sexual assault	Potential Clause 11 issue, advice to obtain written confirmation of position and to what the individual is consenting	
National newspaper	Query about whether an individual had contacted the PCC for advice, and whether contact could be made with them directly	Gave background on a strictly not for publication basis	The newspaper would not seek to contact the individual
Scottish	Query about a story involving a quad bike accident abroad	Potential Issues under Clauses 1,3 4 and 5	

English regional	Query about whether the newspaper could identify from where a van was stolen	Potential issue under Clause 3; advised removal of certain information to avoid a complaint	
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**Training**

263. The Commission has increased its training programme over the last two years, covering student journalists to senior executives. Training is undertaken by the following people at the PCC:

Stephen Abell  
Director

William Gore  
Public Affairs Director

Scott Langham  
Head of Complaints

Alison Hastings  
Former Editorial Commissioner  
Chair, Editorial Standards Committee, BBC Trust

Professor Ian Walden  
Public Commissioner

Professor Robert Pinker CBE  
Former Public Commissioner

Seminars for Working Journalists

264. The PCC's programme of update seminars for in-post journalists has expanded considerably in the last three years. Senior representatives of the Commission run sessions in-house at newspapers and magazines, with each seminar tailored to the particular requirements of the publication in question (i.e. an update session for a real-life magazine will not be identical to one for journalists at a regional newspaper). The general format of PCC seminars is as follows: a brief introduction



about the Commission's work and activities; presentation by PCC representatives of ten or so key cases from recent months, with seminar participants asked to consider the merits of each case and to decide for themselves whether they believe there has been a breach of the Code of Practice; revelation of the Commission's actual decision, including an explanation of the decision and a discussion of key learning points; further discussion during an informal question and answer session.<sup>230</sup>

265. In 2010, the PCC held 60 training seminars for working journalists, and has run 50 in 2011 so far. They have covered the following titles:

The Sunday Times  
Belfast Telegraph  
Newcastle Evening Chronicle  
Southern Daily Echo  
Cambridge Student  
The Guardian  
Daily Mail  
The Mail on Sunday  
Evening Standard  
Metro  
Press Association  
Daily Record  
Sunday Mail  
Dumfries & Galloway Standard  
Galloway News  
Ayrshire Post  
Irvine Herald  
Kilmarnock Standard  
Paisley Daily Express  
Lennox Herald  
Stirling Observer  
Perthshire Advertiser  
Strathearn Herald  
Blairgowrie Advertiser  
Airdrie & Coatbridge Advertiser  
Wishaw Press

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<sup>230</sup> PCC/K/2/41-82 and PCC/K/3/83-141

West Lothian Courier  
Hamilton Advertiser  
Rutherglen Reformer  
East Kilbride News  
Cumberland News  
News & Star (Carlisle)  
Times & Star  
Whitehaven News, Hexham Courant  
Take a Break  
Chat, Pick Me Up  
Southern Daily Echo  
Daily Echo (Bournemouth)  
Salisbury Journal  
Andover Advertiser  
Basingstoke Gazette Series  
Inverness Courier  
Highland News  
North Star  
Lochaber News  
Ross-Shire Journal  
John O'Groat Journal  
Caithness Courier  
Northern Times  
Northern Scot  
Banffshire Journal  
Forres Gazette  
Strathspey and Badenoch Herald.

Training for Student Journalists

266. The PCC realises how important it is to ensure that all new journalists know what is expected of them under the terms of the Editors' Code of Practice. It therefore offers seminars and talks to as many student journalists as possible. Here are some examples from 2010/2011:

Nottingham Trent University  
Chester University  
Ormiston Bushfield Academy

Priors Field School  
University of East London  
Carr Hill School  
Clydebank College  
Cardiff University  
Latymer Grammar School  
Glasgow Caledonian University  
Trinity Mirror Newcastle  
King Edward VI College, Stourbridge  
University of Central Lancashire  
Regent's College  
Darlington University  
Boston College (Lincs)  
Kent University  
PA NCTJ journalism course  
Westminster University  
The Centre for Law Justice and Journalism Annual Lecture at City University  
University College London  
Coventry University  
Newcastle PA course  
Leeds Trinity University  
Brighton College  
Cardiff University  
News Associates, Manchester  
News Associates, London  
Falmouth University  
Cornwall University  
Sheffield College  
City University  
News Associates London  
Kingston Grammar School  
Newcastle  
Bushfield College  
Southampton College  
Latymer School  
Plymouth City College  
Sheffield High School

Clydebank College

Christ of the King 6<sup>th</sup> Form

Rosebury School, Epsom

Sheffield University

Birkbeck College, Introduction to Journalism course

Regent's College, Journalism course

Birkbeck College, Freelance Journalism course

Westminster University

Bournemouth University

Up to Speed Media

## Outreach

267. One important function of the PCC is to enable people to use the system properly. The PCC makes direct contact with various organisations, charities, community groups, public sector workers and representatives of vulnerable people on a regular basis to offer advice, send literature and to see if we can offer help in any way.

## Engagement with interested parties

268. Here are some examples of organisations to whom we spoke, and events which we attended, in 2010 and 2011:

Derbyshire Constabulary

MOD's Defence Media Operations Centre (14 seminars)

Childhood Bereavement Network Conference, Birmingham

Media Diversity Institute

POLIS (the journalism think tank of the LSE) seminar discussing the rise of social media, such as Facebook and Twitter; Gloucestershire Local Resilience Forum

Annual Conference of the Organisation of News Ombudsmen (at Reuters Institute)

West Midlands NHS Communications Network

Royal College of Psychiatrists and Shift: 'An evening seminar on mental health reporting'

Westminster Legal Policy Forum on "Libel and privacy law - challenges for reform"

The future of services for bereaved children: best practice and reform conference

Westminster Media Forum, "Reflecting diversity - the LGBT community and the media"

National Citizens Advice Bureau Annual Conference

Samaritans Annual Conference

Digital Editors' Forum, Manchester

Westminster Media Forum 'Social Media, online privacy and the right to be forgotten'

Media Management Seminar, Lewis Silkin

UNESCO Conference

Seminar on suicide reporting, hosted by Samaritans and Diocese of Guildford

LexisNexis conference on 'Privacy, Defamation & the Media'

Cumbria Police

Samaritans, Cumbria branch

ACPO (Association of Chief Police Officers) annual conference, Harrogate

UNITE The Union Parliamentary Staff Branch  
 UNISON South East Retired Members' Section  
 BFI Popular Press Day for GCSE students

The intention is to improve standards in specific ethical areas, by engaging with people with the most experience of how newspaper and magazine behaviour can cause problems.

Proactive contact

269. The PCC also responds to specific news stories by proactively contacting those at their centre. This means that, should there be considerable media attention directed towards especially vulnerable people (following a tragedy, for example), then the PCC will get in touch, often via the police or health services, MPs or legal representatives. We did this 25 times in 2010.
270. For example, the PCC is currently considering its response to the Joanna Yeates case, where Chris Jefferies experienced a great deal of unwelcome media coverage. He subsequently won libel actions against several newspapers. Two newspapers were found to be in contempt of court.
271. At the time concerns first appeared about the coverage, the PCC twice sought to contact Mr Jefferies via his lawyers. At the end of libel proceedings, we contacted him once more, and received a response. The PCC is in the process of corresponding with the relevant newspapers to see what lessons should be learned. We will make this correspondence available to the Inquiry at its conclusion.
272. A record of our proactive approaches from May 2010 (when records began to be kept) to September 2011 appears below:

Issue	Proactive action taken by PCC	Notes
Bus crash in Cumbria causing two fatalities to students and the driver.	Proactive approach to Cumbria Police passing on our details should any issues arise.	No further contact at the time but see entry for 1/7/11 re: ensuing inquests.
Arrest of a man on suspicion of murdering three women.	Proactive approach to West Yorkshire Police passing on our details should any issues arise.	No further contact
Shootings by Derrick Bird in Cumbria.	Several proactive approaches during the ongoing incident to Cumbria Police and NHS Trusts passing on our details should any issues arise.  Also, approaches to family representatives of Derrick Bird and the Diocese of Carlisle to check up on how the family was coping with the media and give advice.	Number of further steps taken and ongoing contact with Cumbria Police (outlined in greater detail elsewhere in this Statement - see paragraph 291).

Fox attacks in east London on very young children.	Proactive approach to Great Ormond Street Hospital passing on our details should any issues arise.	Family made clear through GOSH press office that press contact was not causing problems.
Photographs of crying children at a military funeral published in a national newspaper	Proactive approach to Royal Air Force to see whether anyone wished to complain and provide information about the PCC.	No further contact.
Raoul Moat shootings	Proactive approach to Northumbria Police passing on our details should any issues arise.	Follow up call to Northumbria Police on 9 July.
Death of young woman which had caused some third party complaints about inquest reports.	Proactive approach to family (via an intermediary) outlining the provisions of Clause 5 of Code and supplying information about how to complain to the PCC.	5 subsequent formal complaints made; all complaints resolved to the satisfaction of the complainant.
Four young men apparently committed suicide in and around the Dundee area	Proactive approach to Tayside Police regarding Clause 5 of the Code and suicide reporting.	Good feedback from the police. Aware of guidance/Code and would contact should problems arise. Further contact from PCC office on 3 August after two more apparent suicides.
The Commission became aware of a blog published claiming that a family was being harassed following the death of a child.	Direct contact made with blogger to offer advice on making a complaint, how we could help practically in regard to harassment and to provide all necessary information.	Desist notice sent to the media making clear that the family did not wish to speak; arranged meeting with blogger to discuss media handling strategy in cases of bereavement; these comments fed into guidance issued by the PCC in June 2011; further note sent out at the time of the funeral in September 2010.
Media reports about the deaths of two parents and two toddlers.	Proactive approach to Hampshire Police passing on our details should any issues arise.	No further contact
Reports of a young boy who died in washing machine accident	Proactive approach to Derbyshire Police passing on our details should any issues arise.	No further contact
PCC informed that a well-known family was having problems with the press	Proactive approach to family to offer advice about harassment and other Code issues.	No further contact
Two woman had been found dead at their home	Proactive approach to Hertfordshire Police passing on our details should any issues arise.	The press officer already knew about the PCC having dealt positively following a death in the past; no further contact
Reports of an incident involving a woman who had placed a cat in a dustbin captured on CCTV	Proactive approach to West Midlands Police to check whether there had been any specific problems/harassment	No further contact
Reports of an alleged MI5 employee found dead	Proactive approach to the Metropolitan Police passing on our details should any issues arise.	No further contact

Death of child at a holiday camp in North Wales	Proactive approach to North Wales Police and authorities regarding ensuing media coverage	Police confirmed that there were no problems with press so far; no public statement from family
Death of a woman who had fallen from a building onto railings in Kensington	Proactive approach to Metropolitan Police passing on our details should any issues arise.	Police confirmed that Family Liaison Officers would be passed a copy of the relevant advisory booklets
The death of a British woman in Afghanistan.	Proactive approach to Foreign and Commonwealth Office and family given the high-profile reporting of the death, advising on our services.	The family confirmed that the media had responded sensitively to their wishes, and had no cause for complaint; grateful for the approach.
A number of reports of the death of a man killed on his farm.	PCC proactive approach to Sussex Police following 3rd party complaints under Clause 5. Offered details of the PCC's services including complaints work.	Police confirmed knowledge of PCC's services and had advised the family accordingly; no specific issues; Police requested more leaflets from PCC.
PCC aware of statement on a football club's website alleging misquotation.	Proactive approach regarding the statement offering advice under Clause 1 of the Code.	The club responded to thank the PCC for the information, and would consider making a complaint. No complaint eventually received.
PCC alerted, through Twitter, to possible Clause 11 issue in local newspaper.	Proactive approach to Lancashire Police to inform the family of the stipulations of the Code and determine whether they wished to complain.	No further contact but we updated the person who had originally drawn our attention to the issue about the action we had taken.
Impending return to UK of two hostages following their release by kidnappers in Somalia	Proactive approach to Foreign & Commonwealth Office regarding potential harassment concerns and other Code issues.	FCO confirmed that PCC details would be given to the family. (We had had previous contact with the family whilst the couple were still held hostage.
Reports that a family in Bristol in a high-profile national news story had requested privacy	Proactive approach to FCO to see whether there had been any media harassment and to give general advice.	No further contact
Media coverage of disappearance and death of Joanna Yeates	Proactive approach to Avon & Somerset Police passing on our details should any issues arise.	No further contact

2011

Issue	Proactive action taken by PCC	Notes
Media coverage of Joanna Yeates death	Proactive approach to local MP offering PCC services	No further contact
Media coverage of the arrest of a man in association with the death of Joanna Yeates	Proactive approach to the man's lawyer explaining our services.	Followed up with further email on 31 January and then on 7 & 8 March following release of client without charge.
PCC alerted to statement by pop star's management company about inaccuracies in the media.	Proactive approach to management company to pass on PCC details and contacts.	No further contact



PCC alerted to statement issued by family of man who died abroad about alleged harassment by journalists	Proactive approach to FCO to remind of PCC services.	No further contact
Media attention following barging incident on a female assistant referee at a football match.	Proactive approach to Referees' Association offering advice and contact details.	PCC informed that the referee is being supported and had no current concerns about media attention.
Media interest following Cumbria shootings.	Further approach to local police, authorities and family representatives. Sent copies of Editors' Code of Practice, and general advice about PCC services	Follow up PCC contact on 14/07/2011 revealed that inquests had gone well; no problems at all with media
Media attention after a TV star lost her baby	Proactive approach to TV star's agent to give contact details and explain PCC services.	Email of thanks received; will be in touch if necessary.
PCC alerted to a national newspaper report about a cricketer's unhappiness with accuracy of report about him	Proactive approach to cricketer's representatives offering advice and contact details.	No further contact.
PCC received numerous third party complaints about the accuracy of a report about the death of a rock star	Proactive approach to the man's widow (via an intermediary) to pass on contact details and advice of PCC services.	Several emails/calls and then no further contact
Cumbrian shootings inquests	Proactive approach to the solicitors acting for some of the families to make them aware of PCC's ongoing liaison with Cumbria Police and note sent out on behalf of the families.	The solicitors acknowledged the note and thanked the PCC for the information.
Reports that an international cricketer was returning home early from World Cup for health reasons.	Proactive approach to English Cricket Board (ECB) to pass on PCC details and advice.	No further contact.
Media attention following the death of a woman	Proactive approach to Wiltshire Police passing on contact details and offering advice.	No further contact.
Media attention following death of husband of an MP	Proactive approach to the individual's agent explaining PCC services in the aftermath of a death	Two formal complaints received; both resolved to the satisfaction of complainant.
Media reports of an attack on a girl outside her school.	Proactive approach to West Midlands Police and Birmingham Children's Hospital with information and explanation of PCC services.	Desist notice sent out on behalf of the family on 11 April making clear that the family did not wish to speak
Media attention on family of young child shot in London	Proactive approach to Metropolitan Police with information and explanation of PCC services.	No further contact.
Press attention following a Royal Navy officer who died on a submarine.	Proactive approach to MOD with information and explanation of PCC services.	No further contact.
Reports of the death of a stuntman.	Proactive approach to Kent Police with information and explanation of PCC services.	No further contact.
Press attention around 1st anniversary of shootings in Cumbria.	Emailed all editors about continued position of community.	Continued contact from PCC

Press attention following two deaths in Braintree.	Proactive approach to Essex Police with information and explanation of PCC services.	No further contact.
The death of a prominent political figure at Glastonbury festival	Proactive approaches to several Conservative Party representatives passing on contacts and details of PCC services.	Confirmed receipt; no further contact
Media reports of the death of girl who had been hit by a falling tree branch. A number of third party complaints received.	Proactive contact with Cambridgeshire police and victim's college giving contact details and information about PCC services.	Mail Online altered headline following PCC request.
PCC alerted to reports that world famous footballer had alleged inaccuracies in Sunday newspaper article.	Proactive approach to footballer's representatives passing our contact details and information about PCC services.	No further contact
PCC alerted to article in local newspaper about press attention following murder of a man's girlfriend.	Proactive contact with the woman, explaining PCC anti-harassment work and making her aware of our services.	No further contact
Possible press interest in hospital staff following the high-profile deaths of several patients.	Proactive contact with Hospital with information and explanation of PCC services.	Followed up in September 2011 following release of individual arrested in relation to the deaths; contacted her lawyers and media representative.
Possible press interest in families following the high-profile deaths of several patients.	Proactive contact with Police offering information and explanation of PCC services.	No further contact
Possible press interest following the sudden death of a singer.	Proactive approach to singer's solicitors offering information and explanation of PCC services.	Information passed to the family; no further contact
The deaths of 3 men in Birmingham killed during the August riots.	Proactive contact with West Midlands Police offering help and including a link to the new bereavement guidance.	Followed up on 15 August; no further contact
PCC alerted to a celebrity couple concerned about harassment after the birth of their child	Proactive approach to the couple explaining the PCC's work in this area and offering advice if necessary.	No further contact
Possible press interest following death of two women abroad.	Proactive approach to British Embassy in Turkey offering advice and information about the PCC services.	No further contact

Possible problems surrounding publication of photographs of the children of a celebrity couple on a newspaper website.	Proactive contact to the couple's lawyer and security contact offering assistance.	Representatives confirmed that they were very grateful for the contact and would be in touch with any future problems.
Possible press interest following the death of a man at a football match.	Proactive contact to South Wales Police offering assistance to the man's family.	Complaints received (including from the relevant Football Club and from the man's family) about coverage of the death.
Death of a British man in Kenya; assumed kidnap of his British wife.	Proactive contact to British Embassy in Nairobi offering assistance and link to relevant information.	No further contact.

Guidance notes for the public

273. Over the years, the PCC has put together a series of advice leaflets for members of the public on the following issues<sup>231</sup>:

273.1 Harassment

273.2 Pre-publication Advice

273.3 Reporting 'Off the Record' Information

273.4 Court and Inquest Hearings

273.5 Hospitals and similar institutions

273.6 Schools and Children

273.7 Discrimination

274. The latest guidance note in the series was issued in early 2011: 'Media attention following a death'<sup>232</sup>. This followed consultation with charities, MPs and Facebook. It provides plain-language advice for people about how to deal with media inquiries at the time of a death.

275. As usual with the release of new advice, the PCC contacted as many organisations as possible. This included sending over 2,000 copies to police forces and coroners

<sup>231</sup> PCC/H2/3/845-854

<sup>232</sup> PCC/H2/3/845-850

'offices. The note will also be included in new 'Charter for Bereaved People' being put together by Ministry of Justice.

Response to major incidents

276. The PCC has a protocol<sup>233</sup> for its proactive work in the event of a major incident (such as a natural disaster, accident or terrorist attack), in which media attention on those affected is likely to be intense.
277. As soon as it becomes clear that sustained media attention is likely to follow a news story, the PCC will act immediately, attempting to contact the subjects or victims of the incident.
278. Where appropriate, it makes contact directly. However, for practical reasons, in most cases it contacts an intermediary and requests that a message is passed on. Examples of intermediaries include:
- 278.1 the local police force (usually via the press office);
  - 278.2 the Coroner or Coroner's Officer (or the Procurator Fiscal in Scotland);
  - 278.3 the MP or other elected representative;
  - 278.4 the hospital(s) and/or NHS authorities dealing with the injured;
  - 278.5 a solicitor or agent, if one is named;
  - 278.6 the local religious or other community leader(s); and
  - 278.7 any other representative whose name has been made public.
279. In the case of particularly large-scale incidents which are likely to involve the full range of emergency services, the PCC contacts the regional COI (Central Office of Information) group, a government body which runs a series of Regional Media Emergency Forums coordinating the response to such incidents.
280. Generally speaking, initial contact is made on the telephone, confirmed by email. The PCC explains how it can help vulnerable individuals in the following ways.
- 280.1 **If someone does not wish to speak to the media:** the PCC can send a private advisory note to editors, making clear an individual does not wish to

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<sup>233</sup> PCC/H2/5/856-858

comment publicly on their situation. This can help to prevent any unwanted media approaches being made at all;

280.2 **If someone is being harassed by a journalist or photographer:** the PCC can issue a private 'desist notice' which requests journalists and photographers cease their approaches with immediate effect. This can be sent either to an individual publication if the concern relates to a specific title, or to the industry more widely if the concern is more general or appears to involve multiple publications<sup>234</sup>;

280.3 **If someone is concerned about a story that has already been published:** the PCC can deal with a formal complaint under the Editors' Code of Practice.

281. The PCC ensures that all of its contact details are made available at this time (including the 24-hour emergency number), and that the individual or their representative is aware of the relevant parts of the Code. It also points people in the direction of any relevant guidance notes which may be helpful, for example on dealing with media attention in the aftermath of a death (which has recently been revised), or the rules on reporting inquests.
282. An offer to send printed copies of literature will also be made at this stage.
283. A copy of a tailored briefing on how the Commission can help in major incidents is then sent.
284. The PCC representative always explains that, in sensitive situations, its advice is confidential.
285. If the incident or death has happened abroad and British nationals are affected, the Foreign and Commonwealth Office is responsible for co-ordinating the help they receive. If the incident involves a large number of people, or is otherwise significant, the PCC can contact the FCO to offer its assistance in managing any problems with media attention. We point out that journalists working for foreign titles do not fall under our remit, but that journalists working abroad for British titles are expected to abide by the terms of the Code. In some circumstances, the PCC can pass on concerns about journalists' behaviour to other press councils, if one operates in the country in question.

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<sup>234</sup> See paragraph 254

286. The PCC has worked with the FCO to arrange for information about its services to be included in the FCO's Guide for Bereaved Families, a copy of which is given to families who suffer the death of a family member outside the UK.
287. The PCC will continue to stay in contact with the officials involved throughout the duration of the incident and its aftermath. PCC staff are always willing to speak on an out-of-hours basis.
288. The PCC promptly responds to any concerns raised either by people directly affected by the incident or by third parties. It considers, as far as possible, comments about the incident made in the press or on social media by those involved.
289. The PCC regularly works with emergency service providers, so that those supporting the vulnerable know how it can help even before something happens. Some examples of this work (which the PCC is always looking to expand and improve) include:
- 289.1 liaising with DCMS to publish information in its "Humanitarian Assistance in Emergencies" guidance;
  - 289.2 liaising with the Ministry of Justice to publish information in its "Charter For Bereaved People";
  - 289.3 running training seminars for police press and family liaison officers throughout the UK;
  - 289.4 contacting the Association of Chief Police Officers (ACPO), the Association of Police Public Relations Officers (APPRO) and the National Executive Board for Family Liaison to offer information;
  - 289.5 maintaining contact with various parts of the NHS (for example, Strategic Health Authorities and specialist hospitals) in order to ensure that those representing vulnerable individuals understand the protection offered by the Code of Practice;
  - 289.6 sending targeted briefing notes and literature to key emergency service contacts; and
  - 289.7 offering talks to explain the PCC's work.

290. Gill Shearer, the Head of Communications for Cumbria Police, used her experience of how the PCC had sought to respond to the aftermath of the Derek Bird shootings to say<sup>235</sup>:

*"In such high-profile situations I would urge the public – and organisations which represent the public – to make early contact with the PCC to help in trying to balance the right of journalists to report and the right of the shocked and the bereaved to avoid intrusion."*

291. This was a high-profile incident in March 2010. Twelve individuals were shot and subsequently died; the killer, Derrick Bird, took his own life.
292. When the PCC became aware of the incident (after two shootings had been reported), we contacted local police and hospitals to make them aware of the PCC's services. Over the course of the next few days we had several conversations with police communicators. We assisted one individual who felt she did not wish to speak to the media and we dealt with a number of complaints about published articles.
293. The PCC visited Cumbria in July 2010 to see what lessons could be learned about how the press handle major incidents. It also wrote an open letter to local newspapers calling for responses.<sup>236</sup>
294. The PCC has been in regular contact with the police since the shootings, as well as the local Coroner. In the run-up to the inquests this year, we assisted with the drafting of a letter from Professor John Ashton, chair of the West Cumbria Shootings Recovery Group to the media (asking for restraint). We also worked with the police (and Coroner) to ascertain which families/individuals had decided not to speak to the media – we then circulated a desist request on their behalf. This worked effectively.
295. The PCC continued to work with police in regard to the first anniversary of the shootings. It held an Open Day in Carlisle in 2011.

### Case Studies

#### Suicide reporting

296. The Editors' Code of Practice has contained specific provisions relating to the reporting of suicide since 2006, when it was amended to make clear that coverage of such tragedies should not include excessive detail about the method used<sup>237</sup>.

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<sup>235</sup> PCC/E/8/8

<sup>236</sup> PCC/J3/1/865-868

297. It was not until 2008, however, that the issue came to prominence after the cluster of suicides in and around the town of Bridgend. There was a considerable amount of media interest in the unusually high number of deaths, which in turn caused a great deal of concern among the local community, police, Parliamentarians and suicide prevention groups.
298. The PCC initially contacted the local police and MP to establish how it might assist in easing the situation. Representatives of the Commission travelled to Bridgend to hold a private meeting with families of the deceased young people; we also hosted a public question and answer session.
299. Further steps were taken to relieve media attention and we continued to be in touch with representatives of the families in subsequent months.
300. Madeleine Moon MP wrote about the importance of this work<sup>238</sup>, based on her own experiences in Bridgend:

*"From experience I can say that the best insurance policy to have is the telephone number of the Press Complaints Commission. When disaster strikes and the media circus comes to town an impartial referee to help control the show is essential.*

*I found the PCC advice, support and guidance invaluable. Its staff helped weather the torrent of stories which varied from the inaccurate to the hurtful and distressing.*

*I have told colleagues that the PCC can support local families involved in stories when at their most vulnerable, and help protect them from some of the most excessive media practices.*

*They can help the local authority, police, fire and ambulance services to cope with myriad requests for interviews and statements.*

*Most importantly they are there to remind a media desperate for a new angle or an exclusive of the standards they must adhere to.*

*Once the story begins to die the media move on, but the PCC will help pick up the pieces. Public meetings and reflecting on and examining lessons learned are just part of the services available.*

*There is also the longer-term support available. Families can be contacted months and years later, just as wounds are beginning to heal, and asked to sell their story. For many this brings back memories of trauma and distress. The PCC can help here too.*

*I speak from experience. If disaster strikes and the media circus comes to town, contact the PCC and use their toolkit of help and support."*

301. Bridgend also led to a greater recognition that more needed to be done by the PCC to highlight the need for journalists to take particular care when reporting suicide, not

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<sup>237</sup> See paragraph 356

<sup>238</sup> PCC/E/8/7



only because of the impact on bereaved families and friends but also due to concerns about the contagion effect – the risk of so-called ‘copycat suicides’ resulting from media reports. As a consequence, the PCC sought to reaffirm and strengthen our links with those who had a particular interest in this area, including notably Samaritans, Choose Life, Papyrus, as well as with police press and family liaison officers. We fostered links with Madeleine Moon, who now chairs the All-Party Parliamentary Group on Suicide and Self-Harm Prevention.<sup>239</sup>

302. During the last three years the PCC has taken a number of key steps to encourage better reporting, including:

302.1 we worked with Samaritans, Choose Life and others to ensure that appropriate complaints about suicide reports were brought to our attention. We also initiated several own-volition investigations were initiated in order to create a body of case-law at the earliest opportunity.<sup>240</sup> By making rulings, the PCC was able to expand on the principles set out in the Code, determine boundaries of reporting and set standards for the future;

302.2 in conjunction with the LSE think tank Polis, we organised a public seminar to discuss suicide coverage across the media. Participants included representatives from newspapers and broadcasters, Ofcom, the charity academic sectors and Parliament. We also invited the Chairman of the Norwegian Press Complaints Commission to speak/to obtain an international perspective,<sup>241</sup>

302.3 on the back of the lessons learned from Bridgend, and taking into account the case law the Commission had established, we worked with the Editors’ Code of Practice Committee on a best practice note for inclusion in the Editors’ Codebook, as well on the PCC’s own website.<sup>242</sup> This went beyond the requirements of the Code in reminding editors of the need for care;

302.4 we worked with Samaritans when its own guidelines for journalists were revised in 2008, providing a clear endorsement of their aims and objectives. We also undertook a range of speaking opportunities at conferences of

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<sup>239</sup> PCC/E/7/9-10

<sup>240</sup> PCC/N1/369-80

<sup>241</sup> PCC/B/1/142

<sup>242</sup> PCC/M/2/23

suicide prevention experts to raise the profile of our work as well as our own understanding of the work of those experts;

302.5 the Commission's representatives have participated regularly in the meetings of the All-Party Parliamentary Group on Suicide and Self-Harm Prevention. Engaging with Parliamentarians and experts in the field has enabled the PCC's staff to improve their understanding of concerns in this area;

302.6 in the aftermath of the Bridgend tragedies, the Commission's expanded programme of update seminars for newspapers and magazines now included discussion of suicide reporting as a matter of course. Representatives of over 100 titles since January 2010 have had the benefit of in-house PCC training sessions;

302.7 additionally, and in light of particular concerns about coverage of an unusual method of suicide last year, the Commission hosted, in conjunction with Samaritans and academic experts, cross-industry seminars for senior editorial and legal executives in London, Belfast and Glasgow. All national newspaper groups participated in these sessions as well as key regional titles.

303. The Commission believes that its work – and the work of others with whom it has developed close links – has helped to improve press coverage of what are often deeply tragic events. In the PCC's Annual Review last year, Samaritans Head of Communications said:

*"Our relationship with the PCC means that we can pick up the phone to them on an informal basis and seek guidance on the best way to work with the press. PCC staff will always answer honestly, so we can avoid taking forward unnecessary complaints.*

*We value the experience the PCC has in dealing with complaints against newspapers, because it gives us access to their excellent judgement and sound advice.*<sup>243</sup>

#### Mental Health Reporting

304. In the first years of the PCC's existence, there was some concern at the way in which mental health issues were reported. In particular, certain terms were used inappropriately to describe those suffering from mental illness. As a result the

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<sup>243</sup> PCC/E/8/9

Commission produced – initially in 1992 – some guidelines on the subject. These were reissued in 1997 as a Guidance Note, following consultation with the charity MIND, and received considerable publicity.

305. The Guidance Note reminded editors “to ensure that their staff are aware of the terms of the Mental Health Act 1983 and to take care not to describe those who are mentally ill in a way which might raise a potential breach of Clause 1 (Accuracy) or Clause 12 (Discrimination) of the Code of Practice”. It also pointed to the distinction between those detained in mental health institutions and criminals in prison and asked editors to avoid the use of epithets such as “basket case” and “nutter”, which could in some circumstances raise a breach of Clause 12 (Discrimination).

306. In 2000, the then Chairman of the PCC, Lord Wakeham concluded that:

*“...it is my instinctive belief that on this important subject things have changed for the better over the last few years, and are continuing to change. Not just are there more positive stories. But also our own internal survey of the media shows that the use of the sort of pejorative phrases [referred to in the Guidance Note] has largely been eradicated.”<sup>244</sup>*

307. Four years later, the subject of mental health reporting was one considered by the newly-established Charter Compliance Panel in its first annual audit of complaints. Following discussion with PCC staff it was agreed that:

*“The Commission’s staff will research the complaints in this area over recent years and the Commission’s response to them, and will arrange a scan of the press for the use of discriminatory words.”<sup>245</sup>*

308. In January 2005, a press cuttings agency was therefore commissioned to search for all articles referring to ‘mental health’, ‘nutter’ and ‘basket case’. The first thousand examples (covering the first two months of the year) were analysed and it was found that 79 used the word ‘nutter’, while 17 employed ‘basket case’. Of those, only 3 (4%) related ‘nutter’ to mental illness and just 1 did so with ‘basket case’. The usage of these two terms in circumstances where there could be any potential breach of the Code was, therefore, low.

309. The Commission’s study also considered the references to mental health in a more subjective manner. The researcher considered whether the articles which referred to ‘mental health’ were ‘positive’, ‘neutral’ or ‘negative’. Of those in the national press (107) the vast majority, 78.5%, were ‘neutral’ while only 5% were considered

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<sup>244</sup> PCC/B/1/19

<sup>245</sup> PCC/C/2/24

'negative'. Figures for the regional press were broadly similar, although there was a greater proportion of 'positive' pieces. 'Negative' articles accounted for 4% of the total, which was 784.

310. The results chimed with recent work by other agencies, including the Department of Health programme Shift.
311. The study also uncovered a significant rise in the number of complaints about mental health reporting that the PCC was able to resolve amicably, albeit from a very low base. This largely reflected the fact that the Commission and its staff had been seeking more frequently to investigate complaints on this particular subject – even when they came from individuals not necessarily connected with the article directly but where a point of principle under the Code and the Guidance Note has been raised.
312. The Commission, having considered the outcome of this project, resolved to approach interested parties, including mental health charities, and to consider updating and reissuing the 1997 Guidance Note. Following discussions with several leading charities in the sector, a revised Note was published in November 2006<sup>246</sup>.
313. After publication of the new Note, the Commission increased its efforts to strengthen its relationship with those working in the mental health sector, and to raise awareness of the reporting requirements among editors and journalists. In particular, it took the following action:
  - 313.1 its staff worked with external organisations, notably Shift, to encourage the submission of appropriate complaints. Noting the difficulty of obtaining 1<sup>st</sup> party consent in many cases where reports related to individuals with serious mental health problems, the PCC sought informally to deal with third party complaints in order to bring ongoing concern about terminological issues to the attention of editors;
  - 313.2 established a close working relationship with Broadmoor Hospital. The Commission sought to liaise with its representatives in regard to possible complaints against newspapers which published inaccuracies about the institution or its patients and staff. In the PCC's Annual Review for 2010, Lucy McGee, the Director of Communications for the West London Mental Health NHS Trust said:

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<sup>246</sup> PCC/K/1/10-11

*“Challenging inaccurate or unfair reporting in the media is an aspect of the PCC’s role that we’ve valued. It has helped us secure redress many times for thoughtless, misinformed or sloppy coverage about Broadmoor Hospital and mental illness in general, and even for downright bigotry. PCC advice is always prompt, balanced and pragmatic.*

*More than this, what’s characterised the partnership that we at West London Mental Health Trust have experienced is proactivity. Recognising that language is just a symptom, the PCC has supported us in the long game of anti-stigma, too: educating journalists about the facts of mental health and the institutions that treat it.”<sup>247</sup>*

- 313.3 in June 2010, the PCC co-hosted a seminar with the Royal College of Psychiatrists (organised in conjunction with Shift) to bring together senior newspaper executives and those involved in the mental healthcare field (both charities and academics). Almost all national newspaper groups were represented and discussion centred around key issues such as: the appropriate use of terminology; the connection (and perceived connection) between mental illness and criminal behaviour; and the potential role of the media in reducing stigma. The event was successful not least in establishing direct links between the media and mental health charities, which have subsequently been built on;
- 313.4 in October 2011, the Commission is to co-host a meeting with the See Me Campaign (Scotland’s campaign to end mental health stigma) along the lines of its 2010 London seminar but with a particular focus on Scottish media;
- 313.5 the Commission continues to work with key contacts in the mental health sector, especially charities such as See Me, Rethink, MIND and the Time to Change initiative; and
- 313.6 the Commission’s expanded training programme, which has reached representatives of over 100 newspapers and magazines since the start of 2010, regularly includes discussion of mental health reporting, both in terms of the requirements of the Code and the Guidance Note, and other relevant best practice issues.
314. There is a widespread recognition that the coverage of mental health issues has improved and the Commission will continue to promote better reporting by its training programme, its outreach work and its complaints work.

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<sup>247</sup> PCC/E/8/9

Open days

315. Since 2003, the PCC has held Open Days<sup>248</sup> as another way of publicising its services as widely as possible. The PCC goes to towns and cities throughout the UK to meet local people about specific issues and to raise awareness of the PCC. We contact local charities, community groups, police, NHS, fire services, councillors, businesses and so on to explain the details of the day and to invite people to attend. The event is free of charge and open to everyone.
316. Previously we have held Open Days in Manchester, Edinburgh, Cardiff, Belfast, Newcastle, Liverpool, Glasgow, Birmingham, Oxford, Leeds, Ipswich and Nottingham.
317. In 2010 and 2011, we hosted days in Southampton and Carlisle and are planning the next in Leicester at the end of November 2011.

Advertising

318. In 2010, the PCC developed a new advertising campaign, designed to increase awareness and inform the public about how the PCC can serve them.<sup>249</sup> Space has been donated free of charge by the newspaper and magazine industry, and the adverts have regularly appeared across the national and regional press, and magazines.
319. This is an example of the message contained in the advertisement:

*"If you believe that something inaccurate or intrusive has been published about you, then you can come to the Press Complaints Commission for help. We'll listen to your concerns and deal with your complaint at no cost.*

*The PCC is the independent self-regulatory body for the UK newspaper and magazine industry. We enforce a Code of Practice and work to raise standards in the press. We offer a service that is fast, free and fair.*

*We can also advise on concerns about material that hasn't yet been published, or if you're feeling harassed by journalists. For emergencies, we can be contact at any time of the day or night.*

*Call us on 0845 800 2757 or visit [www.pcc.org.uk](http://www.pcc.org.uk) to find out more about the PCC and how we can help you."*

320. The differing taglines on the adverts are: "We will look into your concerns"; "We will ensure that your voice is heard"; "We will listen to your concerns".

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<sup>248</sup> PCC//2/43-61

<sup>249</sup> PCC//6/135-154

321. The PCC has worked with many organisations to arrange for information about its services to be included on websites and publications. This list contains examples of some of the numerous references to the PCC in the public domain.<sup>250</sup>

*Government websites and publications*

- 321.1 Foreign & Commonwealth Office, "Guide for bereaved families"
- 321.2 Ministry of Justice, "A guide to Coroners and Inquests"
- 321.3 DirectGov website, "Dealing with the media"
- 321.4 HM Government, Humanitarian Assistance in Emergencies: Non-statutory guidance on establishing Humanitarian Assistance Centres.

*Police and bereavement support organisations*

- 321.5 Metropolitan Police, "Dealing with the media following a death"
- 321.6 Greater Manchester Police, "Dealing with the media: information for bereaved families"
- 321.7 Which? "What to do when someone dies"
- 321.8 Bereavement Advice Centre, "Coping with the media"
- 321.9 Victim Support, "Other resources"
- 321.10 Childhood Bereavement Network, "FAQs"

*Charitable, consumer and specialist organisations*

- 321.11 Samaritans, "Media guidelines for reporting suicide and self-harm"
- 321.12 National AIDS Trust, "Guidelines for reporting HIV"
- 321.13 Citizens' Advice Bureau, "Complaints about the press"

Constituency posters

322. In October 2010, the Chairman of the PCC wrote to members of the UK Parliament and devolved institutions, enclosing a poster advertising the services of the PCC. She requested that this be displayed in constituency surgeries.<sup>251</sup>

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<sup>250</sup> PCC?/11-255-421

### Evaluating the effectiveness of the PCC

323. The PCC is committed to monitoring and evaluating its performance. The Audit Committee of the Commission is now charged with overseeing internal scrutiny<sup>252</sup>. This will build on the work of the Charter Commissioner and Charter Compliance Panel, now the Independent Reviewer and the Review Panel.
324. The Commission is also subject to regular external scrutiny from the Culture Media and Sport Select Committee. It also created its own panel for external scrutiny in the form of the 2010 Governance Review. This section is, therefore, split into two areas: external and internal evaluation.

#### External Evaluation

##### CMS Select Committees

325. In the last ten years there have been three Culture, Media and Sport Select Inquiries into self-regulation of newspapers and magazines.<sup>253</sup>
326. All have endorsed the principle of self-regulation and the continuing existence of the PCC. To varying degrees, they have also criticised aspects of the self-regulatory system and urged reform and improvement. They have identified specific areas of concern such as press harassment, large scale libel cases (like that involving the McCanns in 2007) and phone hacking at the News of the World.
327. Consistent themes have been to urge the PCC to upgrade its role in terms of standards and regulation and not confine itself to complaint resolution. The Select Committees have asked the PCC to enhance its pre-publication and pro-active role and not confine itself to responding to complaints about articles which have already appeared.
328. In terms of adjudications, apologies and corrections which appear, Select Committees have urged greater prominence in newspapers and magazines and greater publication by the PCC itself of complaints it has considered and resolved. The Reports have recommended the PCC improve its transparency, accountability and governance arrangements.

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<sup>251</sup> PCC/I/7/169-173

<sup>252</sup> See paragraph 142

<sup>253</sup> PCC/R1/1/1-310 and PCC/R2/1/693-707



329. In response, the PCC has consistently followed the intent of the Select Committee reports. It has significantly upgraded its pre-publication service, it has increased its proactive approaches in major news stories, published more information about complaints it has handled and relevant statistics and has significantly upgraded its education, training and guidance on a range of areas such as data protection, suicide reporting and mental health reporting.
330. The evolution of the PCC has been unquestionably accelerated by the input of the CMS Select Committee, and the PCC is grateful for the Committee's interest and observations over a number of years.

#### Governance Review 2010

331. In August 2009, Baroness Buscombe, Chairman of the Press Complaints Commission, announced an independent review into the governance of the Press Complaints Commission.

332. The stated aim was:

*"To review matters relating to the governance of the Press Complaints Commission, and to make recommendations in order further to build public confidence in the administration of independent press regulation in the UK."*

333. The members of the panel were:

333.1 Vivien Hepworth, UK Executive Chairman of Grayling (Chairman of the Review Group); and former public member of the Press Complaints Commission;

333.2 Stephen Haddrill, Chief Executive Officer, Financial Reporting Council;

333.3 Dr. Elizabeth Vallance, Chairman of the Institute of Education; Member of the Committee on Standards in Public Life; Member, PCC Appointments Commission; and

333.4 Eddie Young, former Group Legal Adviser of Associated Newspapers.

334. Written submissions were invited from members of the public and interested parties on key areas for consideration. The panel held a series of evidence sessions in 2010.

335. The background to the review was summarised in the following way:

*"The review takes place against the backdrop of the considerable technological and structural change in the newspaper and magazine industry that has taken place in recent years. The PCC Chairman - with the full support of the Press Standards Board of Finance (PressBoF) and the Appointments Commission - feels it is the right time to examine the Commission's governance to ensure it reflects public expectations and good practice in governance generally, and takes account of how media content is now produced and delivered".*

336. The Review Panel made clear that its remit did not extend to reviewing those areas which were the sole responsibility of the Code Committee or PressBoF.

337. The areas under review were categorised as follows:

***"1. The PCC board***

- *Does the board have a clear mission?*
- *Is the size and composition of the board appropriate?*
- *What sub-committee structure would best support the work of the board?*
- *What criteria should be used to evaluate the Commission's performance?*
- *How should the board exercise its supervision of the secretariat?*
- *Can the way in which it considers complaints be made more efficient?*
- *How should sub-committees be selected and chaired, what should they cover, and how should they communicate with the main board?*

***2. The Appointments Commission.***

- *Should the terms of membership of the Appointments Commission be set out in the Articles of Association?*
- *Should the PCC Chairman also chair the Appointments Commission?*
- *Does the current appointments procedure for lay Commissioners and editors require any change?*
- *How should the Appointments Commission best assess the performance of serving Commissioners?*

***3. Transparency***

- *Can more information be made public?*
- *How otherwise can the transparency of board meetings be improved?*
- *Can the PCC's confidentiality to complainants be reconciled with holding meetings, or part of meetings, in public?*
- *How else can transparency generally be improved?*

***4. Accountability***

- *Should the roles of the Charter Commissioner and Charter Compliance Panel, whose responsibilities are set out in paragraphs 55 and 56 of the Articles of Association - be enhanced or expanded?*
- *What are the arguments for and against formalising a system of appeals?*
- *How else can accountability be improved?*

#### **5. Articles of Association**

- *Whether the Articles need specifically to take account of the changes to the Commission's remit since 1991 (notably the 2007 extension to include editorial audio-visual material on publications' websites);*
- *Any other suggestions from the boards of the PCC and PressBoF or any other interested party for amendments.*

The panel<sup>254</sup> received 40 submissions,<sup>255</sup> which were made public. It held oral evidence sessions during the first half of 2010 with 29 individuals.<sup>256</sup>

In July 2010, the Governance Review was published. It produced five key tests of the quality of governance, which comprised the five main sections of the report: clarity of purpose; effectiveness; independence; transparency; and accountability. These are summarised below:

#### **Clarity of purpose**

- *The PCC should publicly define its purpose and the range of its activities. This includes when it will act proactively and when it will wait for a complaint.*
- *There should be greater clarity about how complaints are considered, and how rulings can be challenged.*
- *The Commission should also spell out what sanctions it has available and how they are deployed.*

#### **Effectiveness**

- *The existing Business Sub-Committee should be abolished and replaced by an Audit Committee with wider terms of reference to scrutinise the service received by complainants, overall performance, risk and financial management.*
- *Editorial service on the Commission should become more widespread, and be regarded as a duty of editors. PressBoF should take active steps to encourage this. Industry members should be encouraged to refer ethical issues themselves to the PCC for consideration.*

#### **Independence**

- *The PCC should draw more heavily on the experience of its Board, especially its lay (i.e. public) members. This should be reflected in the annual planning of activities; the routine engagement of the Board in considering what steps should be taken to deal with issues of public concern; and the use of Board working groups to develop thinking in challenging areas of policy. A new role of Deputy Chairman should be*

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<sup>254</sup> See paragraph 333

<sup>255</sup> PCC/F/3/74-215

<sup>256</sup> PCC/F/1/22

established to enhance the influence of the lay majority and support an improved scrutiny function.

- New rules are needed about consultation of the Commission by the Editors' Code of Practice
- Committee to ensure the lay voice is properly represented prior to the annual review of the Code.

#### **Transparency**

- The existing Appointments Commission should be abolished and replaced by a Nominations Committee operating consistent rules for the appointment of both lay and editorial Commissioners.
- There should be an increase in information about how the system is structured – including the relationship between the PCC, PressBof and the Code Committee – and the publication of consistent, accessible data that allows easier analysis and assessment of the PCC's work by the public.

#### **Accountability**

- The role of Independent Reviewer (formerly the Charter Commissioner) should be expanded to hear challenges to decisions based on substance as well as handling. The Board should establish annual objectives and publicly report whether it is achieving them. The Commission should evaluate its own performance, and that of its Chairman, on an annual basis."

338. In all, there were 75 specific recommendations<sup>257</sup>. The Commission published its response in December 2010<sup>258</sup>, saying:

*"It has responded individually to each of the 75 discrete recommendations, and has been able to accept almost all of the points raised by the review both in letter and in spirit. The result is an agreed framework within which the PCC can develop and improve its structures and processes.*

*The independent Governance review was the first in the history of the PCC. In its response, the Commission has set out what its role entails and makes clear the areas of activity against which it should be judged. A re-designed website in 2011 will present complaints information more consistently and in greater detail. An enhanced register, available on the PCC website, will declare not only relevant outside interests of all public Commissioners, but the rules guiding editorial Commissioners when titles in their groups are the subject of complaints. The PCC will publish a document outlining the potential outcomes and sanctions at its disposal and will demonstrate their effectiveness. It has introduced new means of ensuring that action is taken following serious breaches of the Code.*

*As part of the implementation of the recommendations, Baroness Buscombe, Chairman of the PCC, has appointed public Commissioner Ian Nichol as the Deputy Chairman of the PCC. He is a former partner of PricewaterhouseCoopers, and a Member of the Criminal Cases Review Commission. He joined the PCC in 2006.*

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<sup>257</sup> PCC/F/1/22-26

<sup>258</sup> PCC/F/2/29-53

*Baroness Buscombe, Chairman of the PCC, said: "Our response focuses on five key areas for the Commission: effectiveness, transparency, accountability, working independence and clarity about our function. We pledge that the work begun by the Governance Review will be continued by the Commission. I am delighted that Ian Nichol has accepted the position of Deputy Chairman. Both Ian and I are determined to ensure that the PCC operates at the optimal level of trust, performance and focus."*

*Ian Nichol said: "The publication of the Governance Review was a historic moment for the PCC, as it represented an opportunity for us to examine properly what we do, and how we can do it better. I am very happy to play my part in taking that opportunity."*

339. While there were some areas of disagreement (the Commission did not consider that the role of the Independent Reviewer should change; the Commission considered that the Chairman of the PCC should be the Chairman of the Nominations Committee, for example), there was widespread consensus about the path of reform.

#### Internal evaluation

340. The Governance Review recommended that the "PCC should agree a list of performance objectives every year and publicly report on whether they were achieved, and, if not, why not".

341. At the beginning of 2011, the PCC agreed to the following objectives:

*"We will ensure the information we provide (online, in printed literature and on our Helpline) is clear, accurate and accessible*

*MEASUREMENT: complainant survey statistics on quality of PCC information*

*We will aim to respond to a complaint within three working days, and deal with it as promptly as possible. We will aim to complete complaints, on average, within 20 days, and conclude formal investigations, on average, within 50 days*

*MEASUREMENT: annual publication of time taken to consider complaints*

*We will aim for complainant satisfaction in the handling of complaints and a high level of service to those who use the PCC*

*MEASUREMENT: complainant survey statistics on complainant satisfaction*

*We will aim to ensure members of the public – and representatives of the most vulnerable people in society – are aware of the PCC and its services*

*MEASUREMENT: annual account of PCC communications work*

*We will aim to be open about our work and accountable for it. We will use our website to publish as much relevant information as we can, including our quarterly performance statistics*

*MEASUREMENT: annual account of website activity*

*We will offer our training seminars to all newsrooms (national, regional and magazines), and provide pre-publication advice to journalists and editors*

*MEASUREMENT: annual account of training seminars*

#### Complainants' Survey

342. The PCC anonymously surveys complainants receiving a decision. Complainants in the past have been sent a survey form via the post with a prepaid envelope, and been prompted to respond. While the forms do not allow the PCC to identify the complainant, they are divided into categories to understand the nature of the decision received (i.e. the outcome of the complaint) by the complainant.
343. The survey asks complainants to judge different aspects of the complaints process<sup>259</sup>. It also allows them the chance to offer general comments<sup>260</sup>.
344. The Governance Review recommendation led to the form being changed in 2011<sup>261</sup>. The PCC has also experimented with providing the form via email, although this has led to fewer responses. We are likely to return to the hard copy approach in future.
345. We now have figures for the first half of 2011. Some notable items include:
- 345.1 three quarters (75%) of respondents said that their complaint had been dealt with by the PCC either very well, well or satisfactorily;
  - 345.2 92% of people who gave an opinion said our staff were either very helpful, helpful or satisfactory when dealing with them;
  - 345.3 79% of those people who expressed an opinion about the PCC's website rated it as either 4 or 5 out of 5 for helpfulness of information. 90% of people who gave an opinion rated the website as 3 or more out of 5 for ease of use and navigation;
  - 345.4 two thirds of people (66%) said that the length of time taken to deal with their complaint was 'about right'.

#### Opinion polling

346. The PCC has conducted several polls over the years<sup>262</sup>. Here is a brief summary of what they have shown:

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<sup>259</sup> PCC/H1/3/58-59

<sup>260</sup> PCC/H1/5/79-362

<sup>261</sup> A copy of the previous form is in PCC/H1/4/65-66

346.1 September 2006 (Ipsos MORI)

346.1.1 the research indicated a high level of support among the public for the current composition of the Commission. 45% of respondents said that the Board should include a mixture of members of the public and senior journalists. Of the six options given to respondents, this was by far the most popular answer;

346.1.2 when asked which outcome would be most important to them if a newspaper or magazine had been found to breach the Editors' Code of Practice in an article mentioning them, 68% of respondents said that the publication of a correction and apology would be important; whereas only 30% felt it would be important to impose a fine on the newspaper or magazine involved;

346.1.3 of all those respondents who felt it was important for a publication in breach of the Editors' Code of Practice to publish an apology or pay a fine, 68% would prefer a system which delivers swift apologies without fines to one which provides apologies and fines after a lengthy legal process; and

346.1.4 a quick resolution to complaints was seen as the most important characteristic of those shown for an organisation dealing with complaints about the media, with 41% of respondents citing this feature as important to them. The other highest-scoring features were an organisation that was free of charge to use (34%) and one that was independently run (33%).

346.2 Social Networking survey March 2008 (Ipsos MORI)

346.2.1 this survey of online users was conducted as part of an event organised by the PCC, which considered the use of social networking sites and its impact on journalism;

346.2.2 85% of this audience were aware of the PCC, with nearly a quarter saying they knew the PCC either 'very well' or a 'fair amount';

346.2.3 42% of web users aged 16-24 knew someone who has been embarrassed by information uploaded on to the internet without

their consent. 78% of the entire adult online population said they would change information they published about themselves online if they thought the material would later be reproduced in the mainstream media;

346.2.4 social networking sites were used by 83% of 16 to 24 year-olds who went online and half the total population of adult web users. Yet, only just over half of users (55%) said that they thought before posting information that it might later be used by third parties without their consent;

346.2.5 public concern was demonstrated by the fact that 89% of web users thought there should be clear guidelines about the type of personal information that could be published online so that they can complain if this material was wrong or intrusive; and

346.2.6 the PCC provides guidelines about the use of social networking sites by journalists. This formed the basis of a seminar for national newspaper executives hosted by the PCC in April 2011.

### 346.3 April 2010 (Toluna)

346.3.1 58% of the total sample claimed to know at least a little about the organisation;

346.3.2 unsolicited action (considering complaints without the involvement of the individual) was not in general thought to be proper: only 25% supported this type of proactivity;

346.3.3 there was some support for the effectiveness of the PCC: 14% feel it is ineffective;

346.3.4 over half of respondents felt the Press Complaints Commission should be made up of a mixture of public and journalists. No other option received any substantial support;

346.3.5 almost two third of respondents agreed that the current solution for applying and changing the code (by the Editors' Code of Practice Committee following consultation) was proper;



346.3.6 more than three quarters of people would choose a prompt apology over a fine after a lengthy legal wrangle; and

346.3.7 9 out of 10 respondents supported the PCC being paid for by the industry.

346.4 April 2011 (Toluna)

346.4.1 79% had no concerns about confidence with the PCC;

346.4.2 72% viewed the effectiveness of the PCC positively or neutrally;

346.4.3 86% regarded the helpline service positively or neutrally; and

346.4.4 Over half of the respondents knew something about the PCC and nearly 80% have heard of PCC.

#### Focus Groups

347. In November 2010, the PCC conducted three focus groups in the London area. Respondents were recruited from all over the city and the suburbs. One group was made up of 18 – 29 year olds, one group of 30 – 44 year olds, and one group of 45 – 65 year olds. All were recruited to represent a broad range of political views, occupations and life stages. Care was taken to ensure that respondents were articulate and opinionated but not extreme in their views.

348. The groups were watched by the Director, the Director of Communications, the Public Affairs Director, the Head of Complaints, and the Communications and Research Manager.

349. The purpose of the groups was to help the PCC communicate its message better. The conclusions were presented to the Commission<sup>263</sup> and can be summarised as follows:

349.1 awareness is not the core problem, it is understanding;

349.2 some of the facts behind the PCC are important to dispel perceptions of unlevel playing fields. Thus the composition of the PCC is important, how the members are chosen is important, and the role of the industry members is important;

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<sup>263</sup> PCC/19/197-219

- 349.3 the services the PCC offers – and the benefits to the regular public – need to be spelled out (in particular, the 24 hour helpline);
- 349.4 the volume of work carried out by the PCC, and the extent of its remit, are also important. Because most people don't need – and don't expect to need – the PCC to help them, they only think about "Bad Journalism" in the context of tabloid headlines and celebrities. Embracing the activity of the Commission in local and regional press - as well as national press - would demonstrate how it works for "real people" as a genuine public service;
- 349.5 the prominence of an apology may not be considered to be sufficient given the prominence of the original Code violation. Whatever can be done to ensure that the penalty fits the crime would be a good thing;
- 349.6 industry training also needs to have a higher profile. While we assume training can't go as far as to award licences – which could be revoked after "n" code violations – the value of this training, and the way in which it is provided, could provide significant evidence of the PCC's intention and independence.

## EDITORS' CODE OF PRACTICE COMMITTEE

350. A committee of editors (appointed by the relevant trade bodies of the newspaper and magazine industry: the Newspaper Publishers Association, the Newspaper Society, the Professional Publishers' Association, and the Scottish Newspaper Society) is responsible for the wording of the Editors' Code of Practice.

### Membership

The current membership is as follows:

Paul Dacre (Chairman), Associated Newspapers  
Ian Beales, Secretary to the Committee  
Damian Bates, Evening Express, Aberdeen  
Neil Benson, Trinity Mirror Plc  
Colin Grant, Iliffe News and Media East  
Geordie Greig, Evening Standard  
Jonathan Grun, Press Association  
Ian Murray, Southern Daily Echo  
Mike Sassi, Staffordshire Sentinel News and Media  
June Smith-Sheppard, Pick Me Up Magazine  
Hannah Walker, South London Press  
Richard Wallace, Daily Mirror  
Harriet Wilson, Condé Nast  
John Witherow, The Sunday Times

351. Copies of the Editors' Code, including in wallet-size, are sent to all major UK newsrooms by the Society of Editors, whose members comprise editors, managing editors, editorial directors, training editors, editors-in-chief and deputy editors in national, regional and local newspapers, magazines, radio, television and new media, media lawyers and academics in journalism education.
352. The Code is reviewed on an annual basis using public consultation (via a call for submissions) in order to take account of changes in public attitudes.

### Relationship with the PCC

353. The wording of the Code also reflects the experience of the Commission itself, which is conveyed to the Editors' Code Committee by the Chairman and Director.

The PCC is represented at all meetings of the Code Committee, and contributes directly to the discussion of all amendments.

- 354. The Press Complaints Commission must ratify any changes to the Code for them to become valid. The Director consults with the Commission ahead of each Code Committee meeting, and provides a report of proceedings<sup>264</sup>.
- 355. Code Committee members have no involvement with, or influence on, Commission decisions.

Developments since 1991

- 356. The Code has been subject to over thirty changes since it was first drawn up in 1991. Details appear below:

DATE	CHANGE
<b>January 1991</b>	A 16 Clause Code of Practice was established covering areas such as accuracy, privacy and discrimination under a committee chaired by Mrs Patsy Chapman (then editor of the News of the World).
<b>May 1992</b>	The following paragraph was inserted in the preamble relating to the obligation of editors to publish the Commission's critical adjudications.  <i>Any publication which is criticised by the PCC under one of the following clauses is duty bound to print the adjudication which follows in full and with due prominence.</i>
<b>March 1993</b>	Following concerns about the manner in which some material was being obtained by journalists a new clause was added which became Clause (5) Listening Devices. The Clause read:  <i>Unless justified by public interest, journalists should not obtain or publish material obtained by using clandestine listening devices or by intercepting private telephone conversations.</i>
<b>June 1993</b>	The preamble was again altered to enshrine in the Code the requirement for swift co-operation by editors with PCC. The preamble now included the words: <i>It is the responsibility of editors to co-operate as swiftly as possible in PCC enquiries</i>

<sup>264</sup> PCC/M/3/89-105

<p><b>October 1993</b></p>	<p>The following note defining private property was included at the foot of Clause 4 (Privacy):</p> <p><i>Private property is defined as any private residence, together with its garden and outbuildings, but excluding any adjacent fields or parkland. In addition, hotel bedrooms (but not other areas in a hotel) and those parts of a hospital or nursing home where patients are treated or accommodated.</i></p> <p>clause 8 (Harassment) was amended to refer to the above definition of private property with regard to the taking of long lens photographs.</p>
<p><b>April 1994</b></p>	<p>Clause 6 (Hospitals) was amended to clarify to whom journalists should identify themselves when making enquiries at hospitals. This was changed from a 'responsible official' to a 'responsible executive'.</p>
<p><b>May 1995</b></p>	<p>The definition of private property included in Clauses 4 (Privacy) and 8 (Harassment) was amended to make clear that privately-owned land which could easily be seen by passers-by would not be considered a private place. It now read:</p> <p><i>Note Private property is defined as (i) any private residence, together with its garden and outbuildings, but excluding any adjacent fields or parkland and the surrounding parts of the property within the unaided view of passers-by, (ii) hotel bedrooms (but not other areas in a hotel) and (iii) those parts of a hospital or nursing home where patients are treated or accommodated.</i></p>
<p><b>September 1995</b></p>	<p>Section (ii) of Clause 13 (Children in sex cases) was amended. Where it had previously read the term incest where applicable should not be used it now said the word incest should be avoided where a child victim might be identified. At the same time, after consultation with the Code Committee, the Codes of the Broadcasting Standards Commission and Independent Television Commission were similarly amended in order to ensure that the 'jigsaw identification' of such vulnerable children did not occur accidentally across the whole media.</p>
<p><b>December 1996</b></p>	<p>Following concerns expressed at the time of the trial of Rosemary West, when a number of witnesses sold their stories to newspapers, Clause 16 (Payment for articles) was amended. The Code now distinguished between payments to criminals and payments to witnesses, and introduced transparency into such payments by requiring that they be</p>

	<p>disclosed to both prosecution and defence. The Clause now read:</p> <p><i>i) Payment or offers of payment for stories or information must not be made directly or through agents to witnesses or potential witnesses in current criminal proceedings except where the material concerned ought to be published in the public interest and there is an overriding need to make or promise to make a payment for this to be done. Journalists must take every possible step to ensure that no financial dealings have influence on the evidence that those witnesses may give.</i></p> <p><i>(An editor authorising such a payment must be prepared to demonstrate that there is a legitimate public interest at stake involving matters that the public has a right to know. The payment or, where accepted, the offer of payment to any witness who is actually cited to give evidence should be disclosed to the prosecution and the defence and the witness should be advised of this).</i></p> <p><i>ii) Payment or offers of payment for stories, pictures or information, must not be made directly or through agents to convicted or confessed criminals or to their associates - who may include family, friends and colleagues - except where the material concerned ought to be published in the public interest and payment is necessary for this to be done.</i></p> <p>Following the death of Diana, Princess of Wales, in September 1997, there were numerous calls for revisions to be made to the Code particularly as it related to privacy and harassment. The most substantial rewriting of the Code in its six year history took place over the next three months and the new Code was ratified by the Commission in time for it to become operational from January 1998.</p>
<p><b>January 1998</b></p>	<p>Clause 1 (Accuracy) was extended to deal with photo manipulation. It also absorbed the clause relating to comment, conjecture and fact.</p> <p>The new wording for the privacy clause, which became Clause 3, was for the first time drawn largely from the European Convention on Human Rights, which the government had by this time pledged to incorporate into British law. It also significantly altered the definition of a private place, which now included both public and private places 'where there is a reasonable expectation of privacy'. There had been concern that the previous Code had been far too tight in its definition of privacy and would not have protected someone from intrusion who was, for example,</p>

	<p>in a church or at a discreet table in a restaurant.</p> <p>One of the chief concerns at the time of Princess Diana's death was about the role of the paparazzi and the manner in which some photographs were sought. To address this concern, the provisions on Harassment which became Clause 4 were revised to include a ban on information or pictures obtained through 'persistent pursuit'. The new Clause 4 also made explicit an editor's responsibility not to publish material that had been obtained in breach of this clause regardless of whether the material had been obtained by the newspaper's staff or by freelancers.</p> <p>One of the strictest clauses in the Code was introduced to protect the rights of children to privacy. The new clause number 6 in the revised Code extended the protection of the Code to children while they are at school. Previously it had referred only to the under 16s. It also added two new elements a ban on payments to minors or the parents or guardians of children for information involving the welfare of the child (unless demonstrably in the child's interest) and a requirement that there had to be a justification for the publication of information about the private life of a child other than the fame, notoriety or position of his or her parents or guardian.</p> <p>The clause on intrusion into grief and shock had previously related only to enquiries made by journalists at such times. The Code Committee took the opportunity to extend this to include publication. The following sentence was therefore added:</p> <p><i>Publication must be handled sensitively at such times, but this should not be interpreted as restricting the right to report judicial proceedings.</i></p> <p>Throughout the entire Code, the phrase 'should not' was replaced by 'must not'. In addition, the section on the public interest which details occasions when an editor might argue that a breach of the Code was justified in order to protect the public's right to know was turned into a separate section without a clause number. It included a key addition: that in cases involving children the editor must demonstrate an exceptional public interest to over-ride the normally paramount interests of the child.</p>
<p><b>December 1999</b></p>	<p>Following discussions with the government about the implementation of a new Youth Justice Act, Clause 10 was renamed 'Reporting of Crime'</p>

	<p>and contained the following addition:</p> <p><i>Particular regard should be paid to the potentially vulnerable position of children who are witnesses to, or victims of crime. This should not be interpreted as restricting the right to report judicial proceedings.</i></p> <p>At the same time the public interest defence was expanded, once again mirroring the Human Rights legislation. The following section on the right of freedom of expression was added:</p> <p><i>There is a public interest in freedom of expression itself. The Commission will therefore have regard to the extent to which material has, or is about to, become available to the public.</i></p>
<p><b>March 2003</b></p>	<p>Following consultation with the Lord Chancellor's Department important changes were made regarding payment for articles. Clause 16 was renamed 'Witness payments in criminal trials' and now reads as follows:</p> <p><i>16. Witness payments in criminal trials</i></p> <p><i>i) No payment or offer of payment to a witness - or any person who may reasonably be expected to be called as a witness - should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981.</i></p> <p><i>This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.</i></p> <p><i>*ii) Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.</i></p> <p><i>*iii) Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.</i></p>



	<p>A new Clause 17 'Payment to criminals' was also created:</p> <p><i>*17. Payment to criminals Payment or offers of payment for stories, pictures or information, must not be made directly or through agents to convicted or confessed criminals or to their associates - who may include family, friends and colleagues - except where the material concerned ought to be published in the public interest and payment is necessary for this to be done.</i></p>
<p><b>June 2004</b></p>	<p>In accordance with a proposal made by Sir Christopher Meyer, as part of his programme of 'permanent evolution' for the PCC, it was decided that the Code Committee should conduct an annual 'audit' or 'health check' of the Code. Following submissions made during the first part of 2004 by - amongst others - the industry, members of the public and the Commission itself, the Code Committee released its first annual revision of the Code to take effect on 1st June 2004.</p> <p>Throughout, the wording of the Code was comprehensively subbed in order to make it shorter, crisper and ultimately more accessible. At the same time its provisions were broadened in important areas.</p> <p>The preamble to the Code was expanded in order to re-emphasise that editors and publishers have the ultimate duty of care to implement the Code; to stress that its rules apply to all editorial contributors, including non-journalists; to make clear that it covers online versions of publications as well as printed copies; and to insist that publications which are criticised in adverse adjudications include a reference to the PCC in the headline. The preamble now read as follows:</p> <p><i>All members of the press have a duty to maintain the highest professional standards. This Code sets the benchmark for those ethical standards, protecting both the rights of the individual and the public's right to know. It is the cornerstone of the system of self-regulation to which the industry has made a binding commitment.</i></p> <p><i>It is essential that an agreed code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest.</i></p> <p><i>It is the responsibility of editors and publishers to implement the Code and they should take care to ensure it is observed rigorously by all</i></p>

*editorial staff and external contributors, including non-journalists, in printed and online versions of publications.*

*Editors should co-operate swiftly with the PCC in the resolution of complaints. Any publication judged to have breached the Code must print the adjudication in full and with due prominence, including headline reference to the PCC.*

Perhaps the most notable amendment to the Code itself reflected the need for it to respond to changes in technology. Clause 3 (Privacy) was amended to state that 'everyone is entitled to respect for his or her private...correspondence, including digital communications'. The Clause was further tightened to prevent all photography of people in private places, irrespective of whether a long-lens had been used.

Clause 8 (Listening Devices) of the previous Code was subsumed into the previous Clause 11 (Misrepresentation) and its provisions expanded to prevent the interception of 'private or mobile telephone calls, messages or emails'. The Clause - which became Clause 10 (Clandestine devices and subterfuge) - read:

10. \* *Clandestine devices and subterfuge*  
*i) The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs.*  
*ii) Engaging in misrepresentation or subterfuge, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.*

Other Clauses were tightened in order to allow them better to respond to the particular ethical issues at their heart. Clause 9 (Reporting of Crime) now made specific the central point that relatives or friends of persons convicted or accused of crime should not generally be identified, 'unless they are genuinely relevant to the story'. Clause 16 (Payment to criminals) was amended to make clear that payment was unacceptable to those convicted or accused of crime for material that seeks 'to exploit a particular crime or to glorify or glamorise crime in general'.

Clause 16 was further changed in order to respond to an issue raised by a complaint during 2003, regarding the fact that a newspaper had paid a convicted criminal for an interview during which it had hoped to elicit

	<p>information as to the previously-unknown whereabouts of the body of a victim of a notorious murder. The newspaper's public interest argument did not succeed as the interview had not revealed such information, but was published in any case. However, given that the previous Code gave no specific guidance regarding payment made in the belief that the public interest would be served, the Commission did not censure the newspaper on this occasion. A new sub-section to Clause 16 was incorporated to clarify the position for the future:</p> <p><i>ii) Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.</i></p> <p>In general, as the provisions of the Clauses were made more specific, the Code was intended to become more user-friendly both for complainants and editors. So, Clause 5 (Intrusion into grief or shock) now stated that the requirement for sensitive reporting should not restrict a newspaper's right to report 'legal proceedings, such as inquests'. Clause 12 (Discrimination) now emphasised that pejorative, prejudicial or irrelevant reference to 'an individual's race, colour, religion, sex, sexual orientation, physical or mental illness or disability' was unacceptable.</p> <p>Such changes ensured that both the rights of a complainant and the responsibility of a newspaper were now more apparent.</p>
<p><b>May 2005</b></p>	<p>Clause 12 (Discrimination) of the Code was expanded to cover discriminatory press reporting of transgender people. While the Commission had always considered that the Discrimination clause, in its previous form, gave protection to trans individuals, it was accepted that - following the Gender Recognition Act of 2004 - more specific cover should be given.</p> <p>It was decided that the word 'gender' would replace 'sex' in sub-clause 12i, thus widening its scope to include transgender individuals. It now read:</p> <p><i>12i) The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.</i></p> <p>No change was made to the accompanying sub-clause 12ii, which</p>

	covers publication of discriminatory details that aren't relevant to a story, because trans individuals would be covered under the existing rules.
<b>August 2006</b>	<p>Clause 5 (Intrusion into grief or shock) of the Code was expanded to cover the way in which suicide is reported. The new sub-clause reads:</p> <p><i>*ii) When reporting suicide, care should be taken to avoid excessive detail about the method used.</i></p>
<b>August 2007</b>	<p>The preamble's first paragraph has been revised to state:</p> <p><i>"All members of the press have a duty to maintain the highest professional standards. The Code, which includes this preamble and the public interest exceptions below, sets the benchmark for those ethical standards, protecting both the rights of the individual and the public's right to know..."</i></p> <p>Following guidance on online publications issued earlier this year by the Press Standards Board of Finance Ltd (PressBoF), which specifically excluded user-generated and non-edited material from the Code's remit in online publications. The preamble's third paragraph was revised to make clear that the Code applies only to editorial material. It will now say:</p> <p><i>"It is the responsibility of editors and publishers to <b>apply the Code to editorial material in both printed and online versions of publications</b>. They should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists."</i></p> <p>Clause 10 is revised to state:</p> <p>i ). The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; <b>or by the unauthorized removal of documents, or photographs; or by accessing digitally-held private information without consent.</b></p> <p>ii). Engaging in misrepresentation or subterfuge, <b>including by agents or intermediaries</b>, can generally be justified only in the public interest, and then only when the material cannot be obtained by other means.</p>
<b>October 2009</b>	Clause 3 (Privacy) was amended to make clear that the PCC will take into account relevant previous disclosures made by the complainant:

i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.

ii) Editors will be expected to justify intrusions into any individual's private life without consent. **Account will be taken of the complainant's own public disclosures of information.**

iii) It is unacceptable to photograph individuals in private places without their consent.

Clause 4 (Harassment) was revised to require journalists in situations where harassment could become an issue to identify themselves if requested to do so:

i) Journalists must not engage in intimidation, harassment or persistent pursuit.

ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. **If requested, they must identify themselves and whom they represent.**

iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

The public interest section has been amended to make clear that, when the public interest is invoked, editors will be required to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest:

#### **THE PUBLIC INTEREST**

There may be exceptions to the clauses marked\* where they can be demonstrated to be in the public interest

1. The public interest includes, but is not confined to:

i) Detecting or exposing crime or serious impropriety.

ii) Protecting public health and safety.

iii) Preventing the public from being misled by an action or statement of an individual or organisation.

	<p>2. There is a public interest in freedom of expression itself.</p> <p>3. Whenever the public interest is invoked, the PCC will require editors to demonstrate fully <b>that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.</b></p> <p>4. The PCC will consider the extent to which material is already in the public domain, or will become so.</p> <p>5. In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.</p>
<p><b>January 2011</b></p>	<p>Clause 1 (Accuracy) part ii is amended to read as follows (new section in bold):</p> <p>A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and - where appropriate - an apology published. <b>In cases involving the Commission, prominence should be agreed with the PCC in advance.</b></p>

The Committee's website is [www.editorscode.org.uk](http://www.editorscode.org.uk).

## PRESSBOF

357. PressBoF is the industry body which is responsible for the funding of the PCC. The PCC's income is collected via a levy on all subscribing newspapers and magazines<sup>265</sup>.
358. PressBoF also sets the overall remit and sanctions of the PCC (often in partnership with it).

## Membership

359. It comprises the following representatives, selected from the trade bodies of the newspaper and magazine industry (the Newspaper Publishers Association, the Newspaper Society, the Professional Publishers Association, and the Scottish Newspaper Society):

Lord Black of Brentwood (Chairman)

Jim Raeburn OBE (Secretary & Treasurer)

Clive Milner, Chairman, Newspaper Publishers Association

Robin Burgess OBE, Chief Executive, CN Group Ltd

David Newell, Director, The Newspaper Society

Nicholas Coleridge CBE, Managing Director, Condé Nast Publications (UK)

Barry McIlheney, Chief Executive, Periodical Publishers' Association (PPA)

Paul Dacre, Editor in Chief, Associated Newspapers plc

John Fry, Chief Executive, Johnston Press plc

Paul Vickers, Secretary and Group Legal Director, Trinity Mirror plc

## Jurisdiction of the PCC

360. The Commission can only consider formal complaints about titles whose publishers contribute to the funding of the PCC (and so subscribe to the terms of the Editors' Code of Practice).
361. This is the vast majority of the British press, but it excludes Private Eye magazine and some small titles that also do not contribute to the funding of the PCC.
362. Generally, the PCC considers complaints informally about non-funding titles, and seeks – where possible – to mediate a settlement between the parties. It is not able to enforce a sanction against non-funding title.

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<sup>265</sup> PCC/S/1/1-58

363. The Governance Review made the following recommendation (accepted by the PCC) in respect of non-contributing titles:

*"A publisher who persistently withholds funding for the PCC should be considered outside the self-regulatory process. In these circumstances, it would be a matter for the funding body to seek to restore relations with the publisher. It should give every reasonable opportunity for payment to be restored. Should this not happen, the Commission should be informed of the position. Following consultation with the Commission, and only as a last resort, PressBoF could then make clear to the publisher that defaulting on payment would mean it was no longer part of the system. The Commission would as a result formally decline to consider complaints about the relevant titles, or offer guidance to their editors".<sup>266</sup>*

364. In October 2010, Northern & Shell confirmed that it intended to withdraw its funding of the PCC in 2011<sup>267</sup>. On 8 December 2010, the PCC discussed, at its formal meeting, the issue with the Chairman of PressBoF. Efforts were still at that point being made by the industry to retain the co-operation of Northern & Shell. Northern & Shell had previously withdrawn funding (in 2009), and the PCC had continued to consider complaints during that period.<sup>268</sup>
365. The PCC was aware of the practical and philosophical consequences of the company's withdrawal of funding. Its decision, following the protocol set down by the Governance Review, that it would no longer consider complaints about the group was announced on 11 January 2011.<sup>269</sup>
366. This is, at heart, a funding issue. The PCC is, generally, not engaged in requesting funding from publishers. The responsibility for ensuring membership lies with PressBoF, which has been responsible for requesting the renewal of subscriptions by Northern & Shell. It has updated the PCC on its attempts in this area.<sup>270</sup>

#### Convergence

367. Technological and market developments are resulting in the convergence of previously discrete forms of media, especially television and the press. The primary driver for this phenomenon is the emergence of the internet as a common platform for the delivery of all forms of media. To respond to these challenges, the PCC has established an 'Online Working Group'<sup>271</sup>, which has had to the consideration of

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<sup>266</sup> PCC/F/1/14

<sup>267</sup> PCC/S/5/133

<sup>268</sup> PCC/S/5/121-132

<sup>269</sup> PCC/S/5/136-147

<sup>270</sup> PCC/S/5/123,127,128,132,148,1152,155

<sup>271</sup> See paragraph 155



what constitutes a 'newspaper' or 'magazine'? For example, a new co-regulatory scheme has recently been established, under the Authority for Television on Demand, distinct from that for traditional broadcasters. This regime has already raised difficult boundary issues for the press, with the need to determine whether audio-visual services linked to traditional press outlets, such as Sun TV and Elle TV, should be characterised as an evolution of traditional newspapers and magazines or more akin to television on demand. Clarification of this boundary issue is currently with Ofcom for determination.

368. Such regulatory boundary issues are likely to become more prevalent over the coming years and would need to be taken into account by any new regulatory settlement.

#### Relationship with the PCC

369. PressBoF appoints the PCC Chairman (with the involvement of lay members of the Commission itself), and nominates the editorial members of the Commission.
370. The PCC – following consideration by its Audit Committee – submits a budget to PressBoF on an annual basis<sup>272</sup>. In 2010, at the request of PressBoF, the Director submitted (following consideration by the then Business Sub-Committee) a review of the PCC's finances.<sup>273</sup> The Chairman of PressBoF corresponds with the Chairman of the PCC occasionally about financial matters.<sup>274</sup>
371. Any remit extension of the PCC is considered by PressBoF on behalf of the industry. This may be done in partnership with the Commission (as with the extension to cover audio-visual material in 2007).
372. PressBoF is consulted, and asked to approve, changes to the Articles of Association of the PCC. The Chairman and Secretary of PressBoF give oral reports to the Commission twice a year.

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<sup>272</sup> PCC/S/2/59-74

<sup>273</sup> PCC/S/3/75-82

<sup>274</sup> PCC/S/4/83-120

**PART 2**

373. As I note in paragraph 3 of this Witness Statement, the Notice requires me to provide evidence in relation to the PCC's experience of regulating the media, in particular in relation to phone hacking, computer hacking, "*blagging*", bribery and/or corruption. I have been asked to provide examples and evidence which conveys the scale on which these issues have come to my attention. I deal with these specific matters in this part of my Witness Statement, as follows:

373.1 the PCC's involvement in issues relating to phone message hacking in 2007;

373.2 the Commission's involvement in issues relating to phone message hacking in 2009;

373.3 the Commission's involvement in the Information Commissioner's Motorman enquiry and its reports 'What Price Privacy?' and 'What Price Privacy Now?' and data protection issues generally; and

373.4 the PCC's investigation of complaints received under Clause 10 of the Editors' Code of Practice which deals with clandestine devices and subterfuge. Such complaints would include, therefore, complaints in relation to the specific matters to which I refer, above (insofar as any have been received).

373.5 Bribery and corruption (although I make clear that this falls outside the remit of the PCC)

374. As I have confirmed in paragraph 15, above, I was not appointed Director of the PCC until 21 December 2009. The evidence I give, therefore, in relation to events prior to this date is taken largely from my review of the files of the PCC. In Part 3 of my Witness Statement, I explain the exercise which I have undertaken in order to locate files which may contain documents relating to matters which are the subject of the Notice.

**THE PCC'S INVOLVEMENT IN ISSUES RELATING TO PHONE MESSAGE HACKING IN 2007**

375. On 9 August 2006, the PCC published the following press release:

***Phone message tapping, the PCC and the Editors' Code of Practice***

*The Press Complaints Commission has received a number of enquiries following the news that the police are investigating allegations about a News of the World journalist and the interception of telephone messages. The Commission cannot of course comment on the specific matters that are being investigated by the police.*

*However, in addition to the general law, journalists are also bound by the terms of the press Code of Practice. Clause 10 (i) of the Code states that:*

*"The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs".*

*Sir Christopher Meyer, Chairman of the PCC, said:*

*"We make no comment about the current allegations for obvious legal reasons. But on the general issue, it is absolutely clear that intercepting private or mobile telephone messages is completely unacceptable under the Code, unless there is a compelling public interest reason for doing so. Even then journalists must also of course abide by the terms of the law. The Commission reserves the right to investigate the newspaper's conduct in this case, if, at the end of the legal process, it appears that there are unresolved questions about its application of the Code of Practice.*

*The PCC has also made it unambiguously clear in recent guidance to journalists on the Data Protection Act, and in a speech I made earlier this year, that offering money for confidential information, either directly or through third parties, may be illegal and that journalists must have regard to the terms of the Act".*

376. On 16 November 2006, the then Editor of the News of the World, Mr Andy Coulson, wrote to Sir Christopher, in advance of Clive Goodman's court appearance, to offer what he described as "*some information and reassurances*"<sup>275</sup>. He reassured Sir Christopher that the News of the World took the accusations against Mr Goodman "*extremely seriously*" and reassured him that journalists at News of the World had received regular in-house legal and PCC refresher courses. He also explained that the bulk of the newspaper's journalists had spent a further half day with the News of the World's legal manger, Tom Crone and the Executive Editor, Bob Warren, reviewing the newspaper's "*strict guidelines*" both in terms of the law and the PCC Code. He said he had spoken with senior members of staff at the newspaper, along with his executive team, and had reinforced these messages personally. He assured Sir Christopher that News of the World was "*fully committed*" to the PCC Code of Practice and that it had been a fundamental element of the contract of employment of the News of the World's journalists for a long time. He explained that where the higher standards of ethics had fallen below the level demanded, "*appropriate internal action*" had invariably followed.
377. Sir Christopher wrote to Andy Coulson, on 23 November 2006 acknowledging his letter of 16 November 2006<sup>276</sup>. Sir Christopher noted Mr Coulson's expressed strong commitment to the Code of Practice and the training initiatives which Mr Coulson had put in place for journalists at News of the World. Sir Christopher noted that it might be necessary to raise further matters with Mr Coulson at the end the conclusion of the trial of Goodman.
378. On 29 November 2006, on the day that Mr Goodman entered a guilty plea, Sir Christopher made a statement in the following terms:

*"The PCC and the Editor's Code of Practice are absolutely clear on the issue of phone message tapping: it is a totally unacceptable practice unless there is a compelling public interest reason for carrying it out. In this case, a crime has been committed as well – something which I deplore. The editor has now apologised to the parties concerned and made clear that steps will be taken to ensure that there will be no repeat. He has also already written to reassure me of his newspaper's strong commitments to the Code of Practice, and to outline the measures that the paper takes – including continuous professional training and writing compliance with the Code into its journalists' contracts of employment – to ensure that this commitment is reinforced. This reassurance is something which I welcome. The board of the Press Complaints Commission will now examine any material relevant to the industry's Code of Practice that has come to light as a result of the prosecution and will discuss the matter fully when it meets in December".*

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<sup>275</sup> PCC/U/1/3

<sup>276</sup> PCC/U/1/5

379. On 4 December 2006, Tim Toulmin, then PCC Director, produced a paper (PCC Paper No. 3856) entitled 'The Clive Goodman Phone Message Tapping Case'<sup>277</sup> which he circulated to the Commissioners. In the paper, he referred to the Press Statement which had been made by the PCC on 9 August 2006<sup>278</sup> and to the correspondence which had been exchanged between Sir Christopher and the News of the World Editor, Andy Coulson<sup>279</sup>. He also referred to the statement that had been released by News of the World on 29 November 2006<sup>280</sup> and the statement made by Sir Christopher on 29 November 2006<sup>281</sup> on the day that Clive Goodman entered a guilty plea. The paper then went on to consider what further steps should be taken by the PCC. Mr Toulmin noted:

*"the coverage of the case has arguably raised further questions. Clause 10 of the Code is of course relevant – and there can be little doubt that it has been breached – but the Commission may also derive authority from the first line of the Code which says 'all members of the press have a duty to maintain the highest professional standards'. Attention has been drawn to the allegation in the Daily Mail that Mr Goodman's co-defendant, Glenn Mulcaire, was paid around £200,000 a year by the News of the World. Should the Commission, for instance, be enquiring further about this?"*

*It is also likely that further information will come to light when the judge makes his sentencing remarks. One approach might be for the Commission to review the position following those remarks – expected in January – and decide at that point whether to write to the Editor with further questions based on what is known now and whatever comes to light later. Or we could make the first formal approach sooner than that – and explicitly reserve the position regarding the judge's comments. Another view may be that, regardless of what emerges, the matter has been dealt with by the court and the Commission should have no further role to play.*

*The Commission's decision on how to proceed will naturally be scrutinised by politicians – particularly the CMS Select Committee, which is known to have been interested in this and may hold a hearing – and by the press itself. We will therefore have to defend it publicly, at some point, perhaps before a Select Committee hearing".*

Mr Toulmin welcomed a discussion as to how the PCC should proceed.

380. At the Commission's meeting on 24 January 2007, the minutes<sup>282</sup> record that Mr Toulmin updated the Commission in relation to the Clive Goodman phone tapping case. It was agreed that the PCC would write to the Editor of the News of the World as soon as sentencing of Clive Goodman had been completed.

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<sup>277</sup> PCC/U/1/62

<sup>278</sup> PCC/U/1/1

<sup>279</sup> PCC/U/1/3-5

<sup>280</sup> PCC/U/1/68

<sup>281</sup> PCC/U/1/69

<sup>282</sup> PCC/U/1/87

381. On 26 January 2007, Andy Coulson resigned as the Editor of the News of the World after Clive Goodman received his jail sentence. The resignation was widely reported in the press over the following days<sup>283</sup>.
382. On 1 February 2007, the PCC published a press statement in relation to the PCC's intended action following the Goodman case in the following terms:

**PCC action following Clive Goodman case**

*Sir Christopher Meyer, Chairman of the Press Complaints Commission, has announced how the PCC will address the issues issued raised by the conviction of Clive Goodman for phone message tapping. He said:*

*"I have previously made clear that I deplore the breach of the Code and the law in this case. The Commission had announced that it would make specific inquiries of the editor of the newspaper, but as he has now resigned this is no longer appropriate.*

*There are now various steps that need to be taken. The public has a right to know that lessons have been learned from this episode, both at the newspaper and more generally. We are therefore doing three things. First, we are writing to the new editor of the News of the World with a number of questions, including what he will be doing to ensure that the situation involving Mr Goodman and Mr Mulcaire does not recur. Second, we will be writing to the editors of national and regional newspapers and magazines, with copies to their managements, to find out the extent of internal controls aimed at preventing intrusive fishing expeditions; and what is being done to instill understanding both of the Code of Practice and the law in this area and also of journalistic public interest exemptions. The Data Protection Act has an obvious relevance here. Third, the board of the Commission will consider these industry responses with a view to publishing a review of the current situation, with recommendations for best practice if necessary, in order to prevent a similar situation arising in the future. This is in line with its duty to promote high professional standards of journalism".*

383. Mr Colin Myler was appointed Editor of News of the World following Mr Coulson's resignation and Tim Toulmin wrote to him on 7 February 2007<sup>284</sup> explaining that the Board of the PCC had met and discussed the matter on two separate occasions. Mr Toulmin explained that the Board had asked him to raise a number of matters with Mr Myler before *"launching a wider exercise aimed at ensuring that such phone message tapping does not happen again"*. Mr Toulmin explained that *"the focus of our enquiries is on lessons to be learned"*. He explained that the PCC was especially concerned about whether the employment of Mr Glenn Mulcaire represented an attempt to circumvent the provisions of the Code of Practice by subcontracting investigative work to a third party and noted that the Code of Practice provided that *"Editors should take care to ensure [the Code of Practice] is observed*

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<sup>283</sup> PCC/U/1/8-61

<sup>284</sup> PCC/U/1/89

*rigorously by all editorial staff and external contributors, including non-journalists*". Mr Toulmin, therefore, asked Mr Myler a number of questions surrounding this subject:

- 383.1 whether external contributors were aware that, when using their material, the newspaper had to work within the terms of the Code of Practice and the law;
  - 383.2 what new guidance had or would be introduced at the newspaper for external contributors and what other steps would be taken to ensure that material complied with the Code of Practice; and
  - 383.3 what steps would be taken to ensure that all staff journalists understood that the use of third parties to circumvent the Code of Practice was unacceptable and may be illegal.
384. Mr Toulmin advised Mr Myler that the PCC required reassurance from him that News of the World made its staff journalists fully aware of the requirements of the Code of Practice and the law in terms of subterfuge, including when it can be justified. He noted that this requirement embraced the DPA, noting that there had been separate comment about data protection issues recently, and the extent to which it is respected by journalists. Mr Toulmin then asked Mr Myler a number of specific questions, as follows:
- 384.1 whether the newspaper's guidance to staff journalists had changed in light of Mr Goodman's conviction and, if so, what it said;
  - 384.2 whether Mr Myler was satisfied that staff fully understood all clauses of the Code of Practice and the consequences of breaching the Code and whether the circumstances which might justify exceptions to these rules (namely, the public interest) were made clear to staff;
  - 384.3 whether Mr Myler required the PCC's assistance to help with internal training or anything else (reminding him that the PCC ran regular workshops on the Code of Practice and how it was enforced); and
  - 384.4 notified Mr Myler that the PCC intended to widen its investigation with a view to establishing whether controls across the industry were adequate and asked him, with this in mind, whether there was anything that would be

helpful to the PCC from News of the World's experience of the Goodman case.

385. Mr Myler responded to Mr Toulmin, at some length, on 22 February 2007<sup>285</sup>, following a brief acknowledgment on 13 February 2007. In the letter, Mr Myler said that he was unable to say, with certainty, that Mr Mulcaire was aware that he had to work within the terms of the Code of Practice, explaining that he believed that "*Mr Mulcaire was operating in a confined environment run by Clive Goodman*". He said, however, that he had "*no reason to doubt that Mr Mulcaire was aware of the law*". He reassured Mr Toulmin that each News of the World journalist was conversant with the Code of Practice and fully appreciated the necessity of total compliance. By way of illustration, Mr Myler mentioned the termination of employment of a senior reporter at News of the World who wilfully disregarded Clause 8 of the Code of Practice relating to Hospitals (by making a direct approach to the family of a young patient on hospital premises). Mr Myler expressed the belief that it was "*important to draw a distinction between the aberrational Goodman/Mulcaire episode and the day to day contractual relationship with Mr Mulcaire for his legitimate services*". He referred to a comment which he said had been made by the Judge in the Goodman/Mulcaire trial that there had been "*no suggestion of any illegality under News of the Worlds contractual relationship with Mr Mulcaire*". He went on to explain the arrangements between Mr Mulcaire and News of the World as follows:

386. He explained that Mr Mulcaire worked for News of the World under two separate arrangements. The first was a long standing contract which he described as "*the retainer*" under which, he said, Mr Mulcaire supplied "*a research and information service*". He explained that the retainer with Mulcaire stipulated that he would provide a "*research and information service*" in return for a weekly retainer of £2,019 under which he would provide the following services:

386.1 gathering facts for stories and analysing the extent of the newspaper's proof before publication;

386.2 confirming facts and suggesting strategies;

386.3 credit status checks;

386.4 land registry checks;

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<sup>285</sup> PCC/U/1/91-99



- 386.5 directorship searches and analysis of businesses and individuals;
- 386.6 tracing individuals from virtually no biographical details including date of birth searches, electoral role searches and checks through databases;
- 386.7 County Court searches and analysis of court records;
- 386.8 surveillance;
- 386.9 specialist crime advice because Mr Myler said Mulcaire had detailed knowledge of criminal investigations and procedure in a number of high profile cases;
- 386.10 a vast professional football knowledge as a former footballer who had several key contacts who provided help with football related stories;
- 386.11 an extensive database of contact numbers in the sports and showbusiness world which Mr Myler said was useful for contact details and proof purposes on a number of different stories; and
- 386.12 analysis of documents and handwriting.
387. Mr Myler sought to justify Mr Mulcaire's weekly wage (which he acknowledged was "substantial") by explaining that the cost to News of the World would have been much greater had the work been spread amongst several investigation agencies. He added that there was nothing unusual about a newspaper employing outside investigators and noted that most newspapers did this, along with solicitors, insurance companies, banks and many other commercial organisations. Mr Myler explained that, at the sentencing hearing of Goodman and Mulcaire on 26 January 2007, it was made clear that, with the full co-operation of News of the World, the police had thoroughly investigated the retainer with Mr Mulcaire and that the Judge accepted the Prosecution's position that, following the completion of that investigation, the Prosecution was not suggesting that the retainer involved anything illegal. Mr Myler said that the result of that finding was that the Confiscation Order sought by the Prosecution against Mr Mulcaire was limited to the payments of £12,300 made to Clive Goodman.
388. Mr Myler went on to explain that there was a second arrangement under which Mr Mulcaire worked for News of the World which he described as a "direct and personal arrangement with Clive Goodman". He said that this involved cash payments amounting to £12,300 paid to a contact who Mr Goodman identified as "Alexander"

between November 2005 and August 2006. Mr Myler explained that, at the time, Mr Goodman claimed that those payments were for a confidential source on royal stories. He said that the identity of that source and the fact that the arrangement involved illegally accessing telephone voicemails was "*completely unknown*" and "*deliberately concealed from all at the News of the World*". Mr Myler said that "*it was made clear at the sentencing hearing that both the Prosecution and the Judge accepted that*". He explained that, despite a policy at the News of the World regarding the transparency of cash payments (which was reiterated in written form to editorial departmental heads and senior staff in 2005 and early 2006) Mr Goodman "*deceived in order to obtain cash with which to pay Mr Mulcaire while disguising Mr Mulcaire's identity and hiding the true origin of Mr Mulcaire's information*".

389. Mr Myler then turned to Mr Toulmin's question as to what steps would be taken to avoid a similar occurrence in the future. He outlined a number of steps which he said News of the World was in the process of taking in order to "*avoid repetition of this exceptional episode*". These steps included writing to external contributors emphasising the requirement that they abide by the Code of Practice and with the law. In answer to the question raised by Mr Toulmin as to the steps which would be taken by News of the World to ensure that all staff journalists understood that the use of third parties to circumvent the Code was unacceptable and may be illegal, Mr Myler explained that it had long been the practice of News of the World to make clear to staff the importance of observance of the Code, with emphasis on the fact that the use of third parties to circumvent the Code was unacceptable. In this context, Mr Myler wrote "*Although I take little comfort from it, and I am certainly not complacent, it is perhaps reassuring that the Goodman case appears to have been a rogue exception*".

390. Mr Myler then turned to what steps had been taken by the newspaper to remind staff journalists of their obligations which included writing emails and letters to them and providing further copies of the Code of Practice; and the revision of clause 5.7 in the staff contract requiring employees to observe the terms of the Code of Practice as a condition of employment in stronger terms. In response to Mr Toulmin's offer to provide assistance to help with internal training, Mr Myler reassured Mr Toulmin that "*the News of the World conducts an ongoing in-house training programme for its journalists, with PCC and legal issues at its core*". He reassured Mr Toulmin that these seminars were to recommence and that "*this time, more than ever before, the emphasis will be yet more strongly focused on legal, PCC and ethical matters*".

*applying to journalism at News of the World*". He explained that attendance would be mandatory and that *"the sessions will concentrate largely on how we ensure journalists, or anyone employed to gather information for the newspaper, fully observe the requirements of the Regulation of Investigatory Powers Act, the Data Protection Act, the Computer Misuse Act and the PCC Code of Practice"*. He explained that the sessions would be led by Robert Warren, the Editorial Consultant of the News of the World and Tom Crone, the Legal Manager of News International or his Deputy, Justin Walford. He explained, further, that renewed vigour would be placed on:

- 390.1 the PCC guidelines regarding privacy, intrusion and use of clandestine devices or subterfuge;
  - 390.2 the criminal and civil law provisions relating to privacy, to interception and eavesdropping (the Regulation of Investigatory Powers Act) and to Data Protection (the Data Protection Act);
  - 390.3 the disciplinary consequences for the News of the World reporters who were found to be in breach of those provisions.
391. Mr Myler noted that, in the past, the News of the World had benefited from the active support and involvement of the PCC with training sessions and noted that he had already asked Mr Toulmin to participate in a new series of seminars. Senior PCC staff subsequently (in both 2007 and 2009) ran seminars for all News of the World staff (including in Scotland).
392. Finally, with regard to Mr Toulmin's resolve to establish whether controls across the industry were adequate, Mr Myler replied *"I believe that it is very important to understand the Goodman/Mulcaire case in perspective"*. He described this as *"an exceptional and unhappy event in the 163 years of history of News of the World, involving one journalist"*. He said that the gravity of the affair had been recognised by the imprisonment of two people, the dismissal of Clive Goodman and the resignation of Mr Coulson and assured Mr Toulmin that the events had had *"a profound impact on the News of the World and its staff"*. Enclosed with his letter, Mr Myler produced examples of the correspondence sent to individuals to which he referred in his letter<sup>286</sup>.

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<sup>286</sup> PCC/U/1/100-111

393. At the meeting of the Commission on 14 March 2007, the minutes of the meeting<sup>287</sup> record that the Director confirmed that News of the World had been contacted as part of the PCC's investigation into the telephone message tapping matter.
394. In March/April 2007, Tim Toulmin wrote, in similar terms, to the Editor of the Sunday Express, Martin Townsend<sup>288</sup> (which was copied to the Joint Managing Director of Express Newspapers, Martin Ellice, the joint Managing Director of Express Newspapers, Stan Myerson and the Legal Adviser of Express Newspapers, Stephen Bacon); the Editor of the Independent, Simon Kelner<sup>289</sup> (which was copied to the Chief Executive of Independent Newspapers (UK) Limited, Ivan Fallon and Head of Legal Services of Independent Newspapers (UK) Limited, Louise Hayman); the Editor of the Daily Star, Dawn Neesom<sup>290</sup>; the Editor of the Sunday World, Jim McDowell<sup>291</sup>; the Editor of Marie Claire, Marie O'Riordan<sup>292</sup>; the Editor of Woman's Own, Karen Livermore<sup>293</sup>; the Editor of Closer, Emily Burrow<sup>294</sup>; the Chairman of Hachette Filipacchi, Kevin Hand<sup>295</sup>; the Managing Director of H Bauer UK, David Goodchild;<sup>296</sup> the Chief Executive of EMAP, Paul Keenan<sup>297</sup>; the Editor of the Sunday Telegraph, Patience Wheatcroft<sup>298</sup>; the Editor of The Daily Telegraph, William Lewis<sup>299</sup>; the Managing Director of Condé Nast, Nicholas Coleridge<sup>300</sup>; the Editor of The Observer, Roger Alton<sup>301</sup>; the Editor of The Independent on Sunday, Tristan Davies<sup>302</sup>; the Editor of The Guardian, Alan Rusbridger<sup>303</sup>; the Editor in Chief of the Daily Mail, Paul Dacre<sup>304</sup>; the Editor of The Sunday Times, John Witherow<sup>305</sup>;

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<sup>287</sup> PCC/U/1/112

<sup>288</sup> PCC/U/1/113

<sup>289</sup> PCC/U/1/114

<sup>290</sup> PCC/U/1/115

<sup>291</sup> PCC/U/1/116

<sup>292</sup> PCC/U/1/117

<sup>293</sup> PCC/U/1/118

<sup>294</sup> PCC/U/1/119

<sup>295</sup> PCC/U/1/120

<sup>296</sup> PCC/U/1/121

<sup>297</sup> PCC/U/1/122

<sup>298</sup> PCC/U/1/123

<sup>299</sup> PCC/U/1/124

<sup>300</sup> PCC/U/1/125

<sup>301</sup> PCC/U/1/126

<sup>302</sup> PCC/U/1/127

<sup>303</sup> PCC/U/1/128

<sup>304</sup> PCC/U/1/129

<sup>305</sup> PCC/U/1/130

the Editor of The Times, Robert Thompson<sup>306</sup>; the Editor of the Financial Times, Lionel Barber<sup>307</sup>; the Editor of the Daily Express, Peter Hill<sup>308</sup>; the Editor of the Daily Record, Bruce Waddell<sup>309</sup>; the Editor of The Sunday Mail, Allan Rennie<sup>310</sup>; the Editor of The Sun, Rebekah Wade<sup>311</sup>; the Editor of Best, Michelle Hather<sup>312</sup>; the Editor of The Mail on Sunday, Peter Wright<sup>313</sup>; the Editor of the Daily Mirror, Richard Wallace<sup>314</sup>; the Editor of the Sunday Mirror, Tina Weaver<sup>315</sup>; the Editor of The People, Mark Thomas<sup>316</sup>; and the Chief Executive of IPC Media, Sylvia Auton<sup>317</sup>. He also wrote to representatives of the regional and local press. Each of the letters advised the recipients that, following the conviction of Clive Goodman for phone message tapping, Sir Christopher Meyer had announced that the PCC would be making a number of enquiries to ensure that there were sufficient controls across the whole industry to prevent such a situation occurring elsewhere. He explained that the PCC deplored the actions of Goodman and that the PCC wanted to do what it could to ensure that the right lessons had been learned from the episode. Mr Toulmin, therefore, asked about the internal controls which existed within each publication and the current practices with regard to educating journalists about the requirements both of the Code and the law, including the DPA. He explained that the PCC would be reviewing the responses received from newspapers with a view to publishing a report, later in the year, which might include recommendations for best practice. With this in mind, Mr Toulmin asked whether there might be anything else on the subject which the addressees might regard as useful for the PCC to consider.

395. Mr Toulmin also wrote, again, on two occasions<sup>318</sup> to Mr Myler asking whether he had anything to add to his letter of 22 February 2007 and seeking additional

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<sup>306</sup> PCC/U/1/131

<sup>307</sup> PCC/U/1/132

<sup>308</sup> PCC/U/1/133

<sup>309</sup> PCC/U/1/134

<sup>310</sup> PCC/U/1/135

<sup>311</sup> PCC/U/1/136

<sup>312</sup> PCC/U/1/137

<sup>313</sup> PCC/U/1/138

<sup>314</sup> PCC/U/1/139

<sup>315</sup> PCC/U/1/140

<sup>316</sup> PCC/U/1/141

<sup>317</sup> PCC/U/1/142

<sup>318</sup> PCC/U/1/154-155

information about the further controls on cash payments which were being introduced by News of the World, to which Mr Myler replied on 10 May 2007<sup>319</sup>.

396. In March and April 2007, the PCC received responses to the letters sent by Tim Toulmin to which I refer at paragraph above, as follows:

#### **Essex Chronicle Media Group Limited**

397. In an email to Tim Toulmin dated 19 March 2007<sup>320</sup>, Matt Holder, Editor-in -Chief, expressed the view that "phone tapping and other similar tactics have no place in the local media". He explained that "*We educate all of our trainees as part of their NCE training about the Code, the law and how the two complement each other. When the Code is updated, we endeavour to let the whole newsroom know*".

#### **Scottish Daily Record & Sunday Mail Limited**

398. In a letter to Tim Toulmin dated 19 March 2007<sup>321</sup>, the Managing Editor, Derek Stewart-Brown, confirmed that he was obviously aware of the impact of the Clive Goodman case "*and the total unacceptability of phone message tapping*". He confirmed "*With regard to the Daily Record and Sunday Mail, it is not a practice that we have ever employed or indeed, many of us have probably heard of prior to this particular case*". He provided assurance that journalists on both titles within the organisation were aware of the Code and were subject to controls which, to a large extent, would disqualify anyone from employing such tactics. He also said that the newspaper group did not own or have access to the equipment that would be required to undertake phone hacking and that the hire or purchase of any such equipment would be subject to departmental authorisations. Nevertheless, Mr Stewart-Brown confirmed that he had contacted news heads and journalists within the group with regard to such practices.

#### **The Daily Express**

399. On 19 March 2007<sup>322</sup>, the Editor, Peter Hill, assured Mr Toulmin that "*there is no history of this practice ever happening among journalists at the Daily Express. We are all perfectly aware that it is improper and everyone is in no doubt that it's something we simply don't do*".

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<sup>319</sup> PCC/U/1/156-157

<sup>320</sup> PCC/U/1/231

<sup>321</sup> PCC/U/1/232

<sup>322</sup> PCC/U/1/233

**Mail News & Media Limited**

400. On 21 March 2007<sup>323</sup>, the Editor and Regional Editorial Director, John Meehan, responded as Editor of the Hull Daily Mail/East Riding Mail and Regional Editorial Director for Northcliffe Media North East Division, which covers the Grimsby Telegraph, Scunthorpe Telegraph, Lincolnshire Echo, Rexford Times and the South East Lincolnshire Target Series. He confirmed that the titles “*regard snooping of this kind as entirely unacceptable*” and assured Mr Toulmin “*categorically that such practices are not, and never have been, employed by our journalists*”. He explained that copies of the Code of Practice were issued to all editorial staff and that it was made clear at the time of appointment that the Code forms part of every journalist’s Contract of Employment and that any breach of its conditions may lead to disciplinary action including, in serious circumstances, dismissal. He also made clear that “*editors and staff on all of our titles are deeply conscious of their role and responsibilities at the heart of their local communities. Methods such as those used by Clive Goodman are incompatible with this community role*”.

**WH Times/Archant**

401. On 21 March 2007<sup>324</sup>, Dianne Fletcher confirmed “*we do not and never have engaged in phone tapping*”.

**Newsquest Media Group**

402. On 21 March 2007<sup>325</sup>, the Editorial Manager, Margaret Strayton, responded on behalf of Newsquest Media Group, the owners of more than 300 local and regional newspapers nationwide. She explained that Newsquest “*deplore and forbid any kind of intrusive snooping by any of our newspapers*”. She explained that Newsquest had a Code of Conduct – Ethics Policy which was designed to establish guidelines as to the behaviour and responsibilities of journalists employed by Newsquest Media Group and that every journalist joining the company was given a copy of the Code as part of their induction as well as being available to all staff on the company’s intranet. She confirmed, further, that all Newsquest journalists received regular law update training and all were expected to adhere to the Code of Practice which was provided to all journalists when they joined the company and that Editors were

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<sup>323</sup> PCC/U/1/234

<sup>324</sup> PCC/U/1/235

<sup>325</sup> PCC/U/1/236

expected to “ensure rigorously that not only their staff but anyone who contributes to their papers observe the Code”.

### The Daily Mail

403. On 22 March 2007<sup>326</sup>, the Executive Managing Editor, Robin Esser, confirmed that “Daily Mail journalists are expected to obey the law – including the law in respect of telephone tapping”. He explained that the provisions of the Code of Practice had long been a part of the contracts that Daily Mail journalists signed on joining and that adherence to the provisions of the Data Protection Act had also been added. He confirmed that any deliberate breach would risk instant dismissal. Mr Esser confirmed that all journalists were provided with a pocket size copy of the Code of Practice and the attention of all personnel was regularly drawn to the PCC guidance on the Data Protection Act. He explained that the Managing Editor’s department oversaw all such matters on behalf of the Editor.

### Eastern Daily Press

404. On 22 March 2007<sup>327</sup>, the Editor, Peter Franzen, confirmed that “I cannot say it is an issue that has ever raised its head here in Norfolk, and I find it difficult to think of circumstances when we would even contemplate it as appropriate even with the limited public interest justification”. He explained that all of their journalists were regularly reminded to measure their actions in pursuing a story against the criteria laid down in the Code of Practice, including Clause 10, and that any decision to invoke the public interest defence would be taken by him, as Editor, and would not be taken without very serious consideration. He confirmed that all of the reporters were trained and qualified in media law, including the Data Protection Act, and that regular law updates were arranged for senior members of staff. He also confirmed that the Code of Practice was enshrined in the Contracts of Employment given to all members of staff and that breach would be considered a serious disciplinary offence.

### The Sun

405. On 26 March 2007<sup>328</sup>, the Managing Editor, Graham Dudman, said that he wanted to make it “absolutely clear The Sun deplores the type of snooping revealed by the

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<sup>326</sup> PCC/U/1/237

<sup>327</sup> PCC/U/1/238

<sup>328</sup> PCC/U/1/239-240



*Goodman case and we have in the past made strenuous efforts to ensure that type of conduct does not happen at the Sun*". He explained that every Sun journalist was issued with the staff handbook, the first item of which was a letter from the Editor which made clear that every member of staff must abide by the Code of Practice, which was reproduced in the handbook in full. He explained that failure to abide by the Code could result in formal disciplinary action against an individual which could lead to instant dismissal for gross misconduct. He also explained that the Code of Practice was available on News International's intranet which was available to all staff in Wapping and Glasgow. He provided an assurance that any journalist working for The Sun who broke the law during their employment as a journalist would be in breach of their Contract of Employment and, as such, would be liable to be instantly dismissed for bringing the company into disrepute. He said that the Editor would be writing to all staff reminding them of their obligations to abide by the Code of Practice, particularly in relation to privacy, highlighting the public interest exemption and explaining how the Data Protection Act applied to their work. He resolved to provide a copy of the Editor's letter to the PCC once it was ready. He said that The Sun had also sent staff to each of the recent PCC's evening seminars on the Code of Practice which he felt had been an extremely useful exercise. With regard to the other issue raised by the Goodman case, namely, cash payments being made to contributors, Mr Dudman confirmed that no payments were made by The Sun without the personal written authorisation of the Editor or the Editor of the day. Once signed, each payment would have to be approved by him or the Deputy Managing Editor and a permanent paper record of all cash payments would be retained.

### **The Financial Times**

406. On 26 March 2007<sup>329</sup>, the Editor, Lionel Barber, explained that the Financial Times' Editorial Department issued a Code of Practice (the FT Code) that applies to all editorial staff. The FT Code was seen by the newspaper as an essential underpinning of the Financial Times' reputation for impartiality, honesty and integrity. A copy was sent to all journalists and it was available on the Editorial Department's intranet. Mr Barber explained that all Financial Times' journalists were required to follow the FT Code fully and that failure to abide by it might result in disciplinary action, including dismissal. He explained that the FT Code incorporated the Code of Practice which all journalists were instructed to read to ensure that they were familiar with its provisions. Mr Barber explained, further, that the Editorial

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<sup>329</sup> PCC/U/1/241

Department ran monthly training master classes which covered a range of subjects relevant to journalists and that the 2007 classes would include compliance with the FT Code and the Code of Practice, privacy and Data Protection. He explained that company wide data protection training was conducted on a regular basis for all employees at the Financial Times as part of the induction process. He also advised that *“Advice on compliance with the PCC Code, including the use of clandestine devices and subterfuge, privacy and the public interest exemptions and data protection are available through the FT in-house Legal and Company Secretariat teams. The Editorial department have a dedicated lawyer located within the department, and external legal advice is also available upon request”*.

### Johnston Press

407. On 27 March 2007<sup>330</sup>, the Chief Executive, Tim Bowdler outlined the safeguards and policy procedures that were in place at Johnston Press. Mr Bowdler explained that the company established an Editorial Review Group, which was made up of working editors, 5 years earlier. He explained that its members advised the company on matters of editorial policy, making recommendations to him, as Chief Executive. He explained that the Chairman of the group, then Peter Charlton, Editor of the Yorkshire Post, also updated the Plc main Board annually. He explained that the group served as a key driver in helping communications with fellow Editors and the spread of best practice, providing the example that every new Editor was assigned a mentoring Editor, who is not an immediate Manager, to offer practical guidance during the Editor's first 12 months. The results were then fed back to the review group who could identify any additional training needs. He explained that the Code of Practice had for some years been an integral part of Employment Contracts of journalists who joined Johnston Press and that it was enshrined in everything their journalists did and that, following the phone message tapping episode, a series of 'alerts' to all Editors and their journalists were being sent to remind them of their responsibilities under the Code. By way of example, he provided a note on listening devices<sup>331</sup> which made reference to the Data Protection Act and stated that any Johnston Press journalist who believed there was a public interest issue was required to gain approval from the appropriate individual before the gathering of such material began. He reassured the PCC that, immediately when the News of

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<sup>330</sup> PCC/U/1/242

<sup>331</sup> PCC/U/1/243

World issue became known, Johnston Press checked that no such activities were happening in any part of the organisation.

### **The Mail on Sunday**

408. On 28 March 2007<sup>332</sup>, the Managing Editor, John Wellington assured the PCC that *"All journalists working for the Mail on Sunday are required to obey the law in this regard [of telephone message tapping]] as well as the other stipulations of the PCC's Code of Practice and the Data Protection Act"*. He explained that the Employment Contracts of the Mail on Sunday included a clause requiring strict observance of the Code of Practice as a minimum standard. He explained that, in light of the information in the Commissioner's recent pronouncements, the Mail on Sunday had added a further explicit clause requiring adherence to the provisions of the Data Protection Act and that if any journalist was to break any of these rules, they would be in breach of their terms of employment, as well as, possibly, in breach of the law and would face disciplinary procedures, including possible dismissal. Mr Wellington explained that the newspaper had written, in the previous year, to department heads and also directly to all individual staff members to remind them of the newspaper's expectations. He explained that a further letter, which staff would be required to sign in agreement and return, would be sent in the next few days, along with a copy of the Code of Practice. He also confirmed that a link to the PCC's website was provided on the Mail on Sunday's intranet website for staff members.

### **Alloa Advertiser**

409. On 29 March 2007<sup>333</sup>, the Editorial Manager, Kevin McRoberts confirmed *"Everyone is well aware that using clandestine methods of obtain [sic] information or photographs is not acceptable"*. He explained that, with regard to using such practices in the public interest, he had never come across a situation where that had been contemplated and assumed that was likely to remain the case. In any event, he said that any such action would initially be referred to him by the reporter involved before any such practice was undertaken and that, in such circumstances, he would refer the matter to Bill Livingston/Leon Vyrva and to Tim Toulmin before going any further. He also confirmed that all reporters at the Alloa Advertiser were aware of and had a copy of the Code of Practice.

### **Herts & Essex Newspapers**

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<sup>332</sup> PCC/U/1/244

<sup>333</sup> PCC/U/1/245

410. On 2 April 2007<sup>334</sup>, the Group Editor in Chief, Colin Grant, confirmed “As a group of weekly newspaper titles serving Hertfordshire and Essex, we are aware of our role in those communities and we very much follow the PCC Code of Practice. All journalists joining our company are given a copy of the Code of Practice and are made aware of our stance in terms of matters which may or may not be in the public interest. If such issues arise, then the journalists are aware that they must first discuss the matter with one of the senior management team before any decisions are made”.

### **NatMag Magazines**

411. On 3 April 2007<sup>335</sup>, the Chief Executive Officer, Colin Morrison, confirmed “Our journalists receive annual legal training in all aspects of media and publishing law. The training includes investigative journalism and the implications of the PCC Code, RIPA and the Data Protection Act on recording telephone conversations with subjects under investigation, among other things”. He explained that, in addition to this annual training, shorter, more targeted training was offered throughout the year and that each Contract of Employment included a clause stating that adherence to the Code of Practice was a condition of employment. A copy of the Code of Practice was provided to each member of staff upon joining the company. He assured Mr Toulmin that the Code of Practice was treated seriously and with respect by the editorial staff who were very experienced and who provided close tutelage and guidance, from the outset, in relation to an investigative story.

### **MGN Limited**

412. On 5 April 2007<sup>336</sup>, the Group Managing Editor, Eugene Duffy, responded on behalf of the Daily Mirror, the Sunday Mirror and the People. He reminded Mr Toulmin of the evidence which he had given to the Culture, Media and Sport Select Committee the previous month that each individual journalist at MGN Limited had the Code of Practice contained within their Contract of Employment and that he had told the Select Committee that, during that year, the newspaper was arranging meetings between each journalist and their head of department, where the requirements of the Code of Practice and the Data Protection Act would be reinforced with them. He explained that the newspaper’s journalists’ attentions had been drawn to the advice

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<sup>334</sup> PCC/U/1/247

<sup>335</sup> PCC/U/1/248-249

<sup>336</sup> PCC/U/1/250-251

in relation to the Code of Practice which appeared on the PCC's website and, in the context of the issues raised by Mr Toulmin, he noted the relevance, in particular, of the guidance note entitled 'Data Protection Act, Journalism and the PCC Code'. He explained that he had recently taken steps to ensure that the guidance note was distributed to each journalist who worked for the Daily Mirror, the Sunday Mirror and the People. He reminded Mr Toulmin that each of the national newspapers had a dedicated in-house lawyer who was available to be consulted by Editors and journalists on subjects such as the Data Protection Act and the Code of Practice. He said that the lawyers regularly attended conferences on each newspaper so that they were aware of the stories which were being looked at and that they were regularly consulted about investigations and inquiries, including how they were to be conducted, before those investigations/inquiries were commenced. Mr Duffy said, therefore, that they felt that *"we already have internal controls in place to ensure that the Code and law are complied with"*, but that they would be raising the issues of the Code of Practice and the Data Protection Act with journalists, again, individually, that year. He said, further, that Marcus Partington Head of Legal at MGN, and he would be arranging meetings over the coming weeks with senior executives on each of the three newspapers to provide them with guidance on the matters referred to in Tim Toulmin's letter. Finally, with regard to Clive Goodman's conviction for phone message tapping, he confirmed that *"the three editors were, of course, already aware that the activities uncovered by the Clive Goodman case were completely unacceptable (being illegal) and have no place in newspapers. Since receipt of your letters that message has been reiterated to each of the editors by the company. Whilst obviously we as a company cannot stop people – if they are determined enough – breaking the law I am confident that no one who works for us should be under any misapprehension that such behaviour will not be tolerated by our company"*.

### **Kent Messenger Group**

413. On 11 April 2007<sup>337</sup>, the Editorial Director, Simon Irwin, confirmed *"I can assure you that the Kent Messenger Group does not engage in phone message tapping at all"*. He explained, further, that their journalists were told that they were required to follow the Code of Practice at all times and that it was written into the job description of the Editors. Copies of the Code of Practice were also issued to their reporters.

### **Times Newspapers**

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<sup>337</sup> PCC/U/1/252

414. On 13 April 2007<sup>338</sup>, the Legal Manager, Alistair Brett, responded on behalf of The Sunday Times and The Times. Mr Brett explained that there were three full time in-house lawyers at Times Newspapers and that it was their job to make sure journalists complied with the law and the Code of Practice. In addition, he said night lawyers were employed. It was the job of the lawyers to ensure that whatever was published was fully compliant with the law of libel, contempt, Data Protection Act, Protection from Harassment Act 1997, RIPA, the law of confidence, privacy and official secrets. He also explained that the Code of Practice was included in journalists' contracts and that any journalist who breached the Code of Practice would be summarily dismissed or, at the very least, be given an official warning in accordance with employment law. Mr Brett confirmed also that, as Head of Legal, he was expected to give refresher lectures to journalists, periodically, which would consist not only of bringing them up to date with changes in the law, but also with regard to the Code of Practice and how important it was to comply with the Code, particularly in the areas of privacy, children, subterfuge and listening devices and payments to criminals or witnesses. He confirmed that Times Newspapers *"takes its duties to abide by the law and PCC Code very seriously"*.

#### Telegraph Media Group

415. On 16 April 2007<sup>339</sup>, the Executive Director, Editorial, Richard Ellis confirmed that *"All reporters at the Telegraph Media Group are instructed to go about gathering journalistic material in accordance with the law, which obviously includes the Data Protection Act (DPA). Where journalists are unsure about any legal aspect of their work, they are told to consult with the newspapers' legal teams who will advise them"*. He also confirmed that, in addition, reporters were instructed to comply fully with the terms of the Code of Practice and any relevant PCC guidance notes. Copies of the PCC Code were provided to reporters. With regard to the specific issue of the Data Protection Act, Mr Ellis explained that they were *"currently working with the rest of the industry on plans to draw up a note for journalists updating them on how the DPA works and applies to them. On the back of that, we intend to hold an internal seminar on general data protection issues"*. He confirmed that all relevant internal training courses included education about the terms of the Act and the application of the public interest test.

#### The Guardian

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<sup>338</sup> PCC/U/1/254-255

<sup>339</sup> PCC/U/1/256

416. On 16 April 2007<sup>340</sup>, the Editor, Alan Rusbridger, wrote that “*We share the PCC’s profound aversion to illegal trawls for high-trade gossip*”. He explained that all journalists at the newspaper were told that they must work in accordance with the Code of Practice and that journalists were also issued with a Guardian Editorial Code which contained two clauses relevant to the matters raised by Mr Toulmin, as follows:

**Privacy:** *In keeping with both the PCC Code and Human Rights Act we believe in respecting people’s privacy. We should avoid intrusions into people’s privacy unless there is a clear public interest in doing so. Caution should be exercised about reporting and publishing identifying details, such as street names and numbers, that may enable others to intrude on the privacy or safety of people who have become the subject of media coverage.*

**Subterfuge:** *Journalists should generally identify themselves as Guardian employees when working on a story. There may be instances involving stories of exceptional public interest where this does not apply, but this needs the approval of head of department.*

417. Mr Rusbridger explained that both Codes were published on the newspaper’s intranet.
418. Mr Rusbridger confirmed that Commissioning Editors were told that The Guardian did not, in general, employ detective or inquiry agents or conduct “*fishing expeditions*” without any indication of malpractice or impropriety or in the absence of clear public interest. He explained that The Guardian had used subterfuge only in rare and exceptional circumstances such as their investigations into alleged bribes for BAE arms contracts, Jonathan Aitken, cash for questions or the drive to expand Central London membership of the BNP. He explained that, as Editor, he would send reminders to colleagues about policies in this respect. He explained that The Guardian’s legal department regularly provided refresher training programmes for journalists and that The Guardian would be providing one such programme covering, amongst other topics, privacy and the Data Protection Act, to heads of department the following month, with a roll out to all editorial staff over the course of the year. Mr Rusbridger also mentioned the employment by The Guardian of a

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<sup>340</sup> PCC/U/1/257-259

Readers' Editor which he described as a further step towards self-regulation and transparency at the newspaper.

#### **The Condé Nast Publications Limited**

419. On 18 April 2007<sup>341</sup>, the Managing Director, Nicholas Coleridge explained *"To be honest, this is not something that comes up very much with our magazines. To the best of my knowledge, there is very little scope for it on House & Garden, Brides, the World of Interiors, even Vogue, so we don't have any specific controls in place. However, we have a policy to abide by ethical standards, which I would have thought covered it"*.

#### **The Observer**

420. On 18 April 2007<sup>342</sup>, the Editor, Roger Alton, confirmed that since the report of the Information Commissioner on potential breaches of the Data Protection Act 1998 by media organisations (which had listed The Observer as one of the newspapers which had used an agency to obtain information), he had reviewed the newspaper's practices and made it clear to staff that no enquiries should be made through outside agencies unless there was a compelling public interest to do so. He said that the use of such agencies should be regarded as exceptional and that journalists should seek advice from a senior Editor before obtaining information in that way. He confirmed that the legal department of the newspaper provided refresher training courses for journalists on a range of issues and regular briefings for journalists on the Data Protection Act and related legal issues in connection with information gathering. He explained that part of that briefing would consider wider privacy issues and what constitutes public interest. Mr Alton confirmed that journalists at The Observer were aware of the Code of Practice and were advised to work according to that Code. He also mentioned that The Observer had an independent Readers' Editor whose role included acting as an ombudsman for readers who had complaints and concerns about the way in which the newspaper may have handled their personal information. He concluded *"It is important to note that the gathering of information is a legitimate activity for journalists. I expect Observer journalists to be mindful of people's privacy in the gathering of such information, as well as the Data Protection Act, and that any breaches of privacy are carefully weighed against the*

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<sup>341</sup> PCC/U/1/260

<sup>342</sup> PCC/U/1/261



*public interest in each particular case. The editorial team keeps these matters constantly under review”.*

#### **Independent News & Media (UK) Limited**

421. On 20 April 2007<sup>343</sup>, the Group General Counsel, Louise Hayman, stated *“this company’s interests are inextricably bound up with our aspiration to good and responsible journalism which these titles have always stood for. We do not want to break the law, either in what we publish or how we get the story. Both could lead to the payment of damages and legal costs in actions for breach of privacy or data protection, and to the possible jailing of employees or directors. In addition, we believe that the PCC Code is aimed at ensuring the highest standards of journalism and we set our sights on full adherence to the Code and to the law”.* She said that *“The journalists are regularly reminded that it is company policy that any potential breach of the law, as well as any payment of money or money’s worth for personal information about a third party, must be approved in advance by the Managing Editor or one of the Editors and myself or a member of the legal department”.* She emphasised the importance which was placed on education within the group and that journalists’ contracts included an obligation to comply with the Code of Practice, copies of which were regularly distributed to everyone working in editorial. In addition, she said that any legal and regulatory reminders and updates were sent round to all journalists including those working offsite, including important PCC decisions. She explained that they had included the implications for journalism of the Clive Goodman case and further strong reminders of the perils implicit in these areas. Workshops had also been held on specific issues of current concern. Ms Hayman welcomed the proposed PCC report and expressed a willingness to implement any recommendations which might be made.

#### **Evening Standard**

422. On 26 April 2007<sup>344</sup>, the Managing Editor, Doug Wills, confirmed *“that the Evening Standard requires its journalists to operate stringently within the law, including in respect of telephone tapping. All editorial staff were reminded of this in individual letters in December”* which said *“it is your responsibility not to do anything illegal yourself, nor commission anyone else to do so, nor knowingly process information that has been obtained illegally”.* Mr Wills confirmed that it was a condition of

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<sup>343</sup> PCC/U/1/262-263

<sup>344</sup> PCC/U/1/265

employment that journalists worked to the provisions of the Code of Practice and to the provisions of the Data Protection Act. He said that any deliberate breach would risk instant dismissal. Mr Wills also confirmed that journalists were provided with a copy of the Code of Practice and that the attention of all personnel was regularly drawn to PCC guidance. He said that he had been in contact with all agencies who had carried out research for the Evening Standard to ensure that they operated in full accordance with the Data Protection Act and that the Managing Editor's office would oversee all these matters on behalf of the Editor.

### IPC Media Limited

423. On 3 May 2007<sup>345</sup>, the Chief Executive, Sylvia Auton, confirmed *"Like the PCC, we do not condone in any way the type of gratuitous snooping the [Goodman] case revealed, and we believe that we have had in place for some time policies, practices and internal controls to ensure that all our journalists, and indeed all of our staff, conform to the highest standards of integrity and ethics"*.
424. She explained that the company's parent company, Time Inc., had introduced a comprehensive set of Standards of Business Conduct two years earlier which had not only ensured they complied with the demanding requirements of the Sarbanes Oxley legislation introduced in the US, but specifically set out how all staff in the Time Warner group were expected to behave, the processes that they must follow and the consequences of failure to do so. She explained that the standards were given to all staff when they started and that they received additional training about them at their induction. Recent training had also been undertaken. She identified, specifically, that there were the following requirements: *"You should not attempt to test, or attempt to compromise, the system security measures put in place for computers and communication systems, such as through hacking, password cracking, file decryption or copying software"*. She explained that this covered both tapping into phones and voicemail systems and also hacking into any other party's email systems. She explained that the standards also made clear that *"You may not use the Company's electronic information facilities to acquire... confidential information through unlawful means, such as theft, trespass, solicitations of leaks..."*. She also explained that a good practice and guidance document was in place called Legal and Ethical Standards for Editorial Staff which included the most recent version of the Code of Practice and that it was being revised specifically to include a reference to the Goodman phone tapping case in order to make it

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<sup>345</sup> PCC/U/1/266-267

absolutely clear to journalists that *"this behaviour or anything like it was totally unacceptable"*. Finally, Ms Auten confirmed that a number of training sessions were run for journalists on media law and related matters which were always well attended which provided journalists with an opportunity to talk through legal considerations that exist and the practical implications of them.

425. On 18 May 2007, the PCC published its Report on Subterfuge and Newsgathering<sup>346</sup>. This followed consideration of the draft report of a Commission meeting on 2 May 2007. On the same day, the PCC published a Press Release<sup>347</sup> announcing the publication of the report. The Press Release explained that the report contained six new recommendations to UK newspapers and magazines in relation to compliance with the Code of Practice and law in undercover news gathering. It explained that the report followed a wide ranging inquiry into the approach of the press in relation to subterfuge following the convictions for phone message tapping of Mr Mulcaire and Mr Goodman in January 2007. The press statement summarised the recommendations as follows:

425.1 contracts between newspapers and magazines and external contributors should contain an explicit requirement to abide by the Code of Practice;

425.2 a similar reference to the Data Protection Act should be included in Contracts of Employment for staff members and external contributors;

425.3 compliance with the Code of Practice for staff journalists should, without delay, become universal across the industry;

425.4 publications should review internal practice to ensure that they have an effective and fully understood *"subterfuge protocol"* for staff journalists which should include who should be consulted for advice about whether the public interest is sufficient to justify subterfuge;

425.5 there should be regular internal training and briefing on developments on privacy cases and compliance with the law; and

425.6 there should be rigorous audit controls for cash payments, where these are unavoidable.

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<sup>346</sup> PCC/U/1/174-184

<sup>347</sup> PCC/U/1/185-186

426. It was explained that the Commission had found numerous examples of good practice throughout the industry, both in relation to the Code of Practice and the Data Protection Act. The PCC, with regard to the DPA, recommended that the Government assess the impact of recent initiatives aimed at raising awareness of the DPA before proceeding with plans to increase penalties for journalists who were found to have breached it. The report also provided information in relation to the background to the events at the News of the World and provided information as to how Mr Myler, as the new Editor, had improved internal controls including more robust Contracts of Employment with staff members and external contributors.
427. On 17 May 2007, Tim Toulmin sent copies of the PCC's Report on Subterfuge and Newsgathering to the Editor of Eastern Daily Press, Peter Franzen<sup>348</sup>; the Editorial Director of Kent Messenger Group, Simon Irwin<sup>349</sup>; the Group Editorial Manager of Newsquest (London) Limited, Margaret Strayton<sup>350</sup>; the Executive Director, Editorial of the Telegraph Media Group, Richard Ellis<sup>351</sup>; the Managing Editor of the Condé Nast Publication Limited, Nicholas Coleridge<sup>352</sup>; the Editor of the Observer, Roger Alton<sup>353</sup>; the Group General Counsel of Independent News-Media (UK) Limited, Louise Hayman<sup>354</sup>; the Editor of the Guardian, Alan Rusbridger<sup>355</sup>; the Managing Editor of the Daily Mail, Robin Esser<sup>356</sup>; the Legal Manager of Times Newspapers Limited, Alistair Brett<sup>357</sup>; the Editor of the Financial Times, Lionel Barber<sup>358</sup>; the Editor of the Daily Express, Peter Hill<sup>359</sup>; the Managing Editor of Scottish Daily Record-Sunday Mail Limited, Derek Stewart-Brown<sup>360</sup>; the Editor in Chief of Essex Chronicle Media Group Limited, Matt Holder<sup>361</sup>; the Chief Executive of Johnston Press Plc, Tim Bowdler<sup>362</sup>; the Managing Editor of the Sun, Graham Dudman<sup>363</sup>; the

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<sup>348</sup> PCC/U/1/205

<sup>349</sup> PCC/U/1/206

<sup>350</sup> PCC/U/1/207

<sup>351</sup> PCC/U/1/208

<sup>352</sup> PCC/U/1/209

<sup>353</sup> PCC/U/1/210

<sup>354</sup> PCC/U/1/211

<sup>355</sup> PCC/U/1/212

<sup>356</sup> PCC/U/1/213

<sup>357</sup> PCC/U/1/214

<sup>358</sup> PCC/U/1/215

<sup>359</sup> PCC/U/1/216

<sup>360</sup> PCC/U/1/217

<sup>361</sup> PCC/U/1/218

<sup>362</sup> PCC/U/1/219

Editorial Manager of Alloa Advertiser, Kevin McRoberts;<sup>364</sup> the Managing Editor of the Mail on Sunday, John Wellington<sup>365</sup>; the Group Editor in Chief of Herts and Essex Newspaper Limited, Colin Grant<sup>366</sup>; the Chief Executive Officer of ACP Natmag Magazine, Colin Morrison<sup>367</sup>; the Group Managing Editor of MGN Limited, Eugene Duffy<sup>368</sup>; Dianne Fletcher of WH Times<sup>369</sup>; the Editor and Regional Editorial Director of Mail News-Media Limited, John Meehan<sup>370</sup>; the Managing Editor of the Evening Standard, Doug Wills<sup>371</sup>; and the Chief Executive of IPC Media Limited, Sylvia Auton<sup>372</sup>.

428. On 21 May 2007, Tim Toulmin wrote to Tim Bowdler, the Chairman of PressBoF, enclosing some press cuttings in relation to the report published by the PCC. He informed Mr Bowdler that the PCC had also had some good private feedback about the quality of the information contained in the report and that there was a feeling, within the PCC, that it was a worthwhile exercise which enabled the Commission to say something positive and new and which showed how the PCC could work well to complement the law rather than try and duplicate it.
429. On 21 May 2007<sup>373</sup>, Tim Toulmin sent some copy press cuttings about the PCC's Report on Subterfuge and Newsgathering to Kenneth Fox, Clerk to the Culture, Media and Sport Select Committee. He explained, in his covering letter, that the PCC had received some good feedback about the quality of the information contained in the report and that there was a feeling, within the PCC, that it was a worthwhile exercise which shed new light on the case and enabled the Commission to say something positive and new.

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<sup>363</sup> PCC/U/1/220

<sup>364</sup> PCC/U/1/221

<sup>365</sup> PCC/U/1/222

<sup>366</sup> PCC/U/1/223

<sup>367</sup> PCC/U/1/224

<sup>368</sup> PCC/U/1/225

<sup>369</sup> PCC/U/1/226

<sup>370</sup> PCC/U/1/227

<sup>371</sup> PCC/U/1/228

<sup>372</sup> PCC/U/1/229

<sup>373</sup> PCC/U/1/268-285

430. On 23 May 2007<sup>374</sup>, the Deputy Editor of The Sun, Fergus Shanahan confirmed receipt of a copy of the PCC's Report on Subterfuge and Newsgathering and confirmed that he would take into account its recommendations.
431. Sir David Clementi (then a member of the PCC Appointments Commission) wrote to Tim Toulmin on 29 May 2007<sup>375</sup> in response to the PCC's Report into Subterfuge and Newsgathering and commented as follows:

*"The Goodman case was fairly clear: he didn't just break the Code, his acts were criminal and he is now in jail. The issue of subterfuge, which falls short of criminal action, is more difficult. I take the word (you may interpret it differently) to be a euphemism for journalists lying and misrepresenting themselves in order to get at the truth. The Commission seems to support this when it is "in the public interest". But the public interest is a very inexact test, so I think that the Commission's position is a sensitive one. I don't pretend to know the answer in this difficult area so I would be interested to know where you get to in your seminar in July".*

432. Between 10-16 October 2007, Sir Christopher wrote, in similar terms, to the Chief Executive of Independent Newspapers (UK) Limited, Ivan Fallon<sup>376</sup>; the Joint Managing Director, Express Newspapers, Stan Myerson<sup>377</sup>; the Editor in Chief, Daily Mail, Paul Dacre<sup>378</sup>; the Group Managing Editor, Andersonstown News, Mairtin O'Mulleoir<sup>379</sup>; the Chief Executive of Archant, John Fry<sup>380</sup>; the Managing Director of Associated Newspapers, Kevin Beatty<sup>381</sup>; the Chairman and Managing Director of The Barnsley Chronicle, Sir Nicholas Hewitt<sup>382</sup>; the Chief Executive of C N Group Ltd, Robin Burgess<sup>383</sup>; the Group Chief Executive of Clyde & Forth Press Ltd, Deirdre Romanes<sup>384</sup>; the Chief Executive of Courier Newspapers, Mark Ashley<sup>385</sup>; the Chief Executive, Daily Mail & General Trust, Charles Sinclair<sup>386</sup>; the Managing Director, Daily Record & Sunday Mail Ltd, Mark Hollinshead<sup>387</sup>; the Director of D C

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<sup>374</sup> PCC/U/1/286

<sup>375</sup> PCC/U/1/288

<sup>376</sup> PCC/U/1/289 - 290

<sup>377</sup> PCC/U/1/291 - 292

<sup>378</sup> PCC/U/1/293 - 294

<sup>379</sup> PCC/U/1/295 - 296

<sup>380</sup> PCC/U/1/297 - 298

<sup>381</sup> PCC/U/1/299 - 300

<sup>382</sup> PCC/U/1/301-302

<sup>383</sup> PCC/U/1/303 - 304

<sup>384</sup> PCC/U/1/305 - 306

<sup>385</sup> PCC/U/1/307 - 308

<sup>386</sup> PCC/U/1/309 - 310

<sup>387</sup> PCC/U/1/311 - 312

Thomson & Co Ltd, Andrew Thomson<sup>388</sup>; the Managing Director of Dumfriesshire Newspaper Group, William Laidlaw<sup>389</sup>; the Joint Managing Director of Express Newspapers, Martin Ellice<sup>390</sup>; the Joint Managing Director of Express Newspapers, Stan Myerson<sup>391</sup>; the Chief Executive of The Financial Times, John Ridding<sup>392</sup>; the Chief Executive of Guardian Media Group, Carolyn McCall<sup>393</sup>; the Chief Executive of Guardian Media Group Regional Media, Mark Dodson<sup>394</sup>; the Chief Executive of Guiton Group, John Averty<sup>395</sup>; the Managing Director of Hirst Kidd & Rennie Ltd, Phillip Hirst<sup>396</sup>; the Chief Executive of Ilife News & Media Ltd, David Fordham<sup>397</sup>; the Chief Executive of Irish News Ltd, Dominic Fitzpatrick<sup>398</sup>; the Managing Director of Isle of Wight County Press, Robin Freeman<sup>399</sup>; the Chief Executive of Johnston Press plc, Tim Bowdler<sup>400</sup>; the Managing Director of Newbury Weekly News, Adrian Martin<sup>401</sup>; the Managing Director of News International, Clive Milner<sup>402</sup>; the Chairman and Chief Executive of Newsquest Media Group Ltd, Paul Davidson<sup>403</sup>; the Managing Director of Northcliffe Media Ltd, Michael Pelosi<sup>404</sup>; the Chairman and Managing Director of Northern Alpha Newspaper Group, Lord Kilclooney<sup>405</sup>; the Managing Director of NWN Media Ltd, Kevin McNulty<sup>406</sup>; the Managing Director of The Scotsman Publications Ltd, Michael Johnston<sup>407</sup>; the Chief Executive of Telegraph Media Group, Murdoch MacLennan<sup>408</sup>; the Managing Director of The

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<sup>388</sup> PCC/U/1/313 - 314

<sup>389</sup> PCC/U/1/315 - 316

<sup>390</sup> PCC/U/1/317 - 318

<sup>391</sup> PCC/U/1/319-320

<sup>392</sup> PCC/U/1/321-322

<sup>393</sup> PCC/U/1/323-324

<sup>394</sup> PCC/U/1/325-326

<sup>395</sup> PCC/U/1/327-328

<sup>396</sup> PCC/U/1/329-330

<sup>397</sup> PCC/U/1/331-332

<sup>398</sup> PCC/U/1/335-336

<sup>399</sup> PCC/U/1/337-338

<sup>400</sup> PCC/U/1/339-340

<sup>401</sup> PCC/U/1/341-342

<sup>402</sup> PCC/U/1/343-344

<sup>403</sup> PCC/U/1/345-346

<sup>404</sup> PCC/U/1/347-348

<sup>405</sup> PCC/U/1/349-350

<sup>406</sup> PCC/U/1/351-352

<sup>407</sup> PCC/U/1/353-354

<sup>408</sup> PCC/U/1/355-356

Midland News Association Ltd, Alan Harris<sup>409</sup>; the Chief Executive of Trinity Mirror PLC, Sly Bailey<sup>410</sup>; the Managing Director of Regional Newspapers, Georgina Harvey<sup>411</sup>; the Managing Director of Condé Nast, Nicholas Coleridge<sup>412</sup>; the Chief Executive of EMAP, Paul Keenan<sup>413</sup>; the Managing Director of H. Bauer UK, David Goodchild<sup>414</sup>; the Chairman of Hachette Filipacchi, Kevin Hand<sup>415</sup>; the Chief Executive of IPC Media, Sylvia Auten<sup>416</sup>; the Chief Executive of National Magazine Company, Duncan Edwards<sup>417</sup>. In the letters, Sir Christopher invited, at the request of the Board of PressBoF, responses in relation to the PCC's Report into Subterfuge and Newsgathering. He noted that the PCC's inquiry had been welcomed by the government and that the recommendations had been endorsed by the Culture, Media and Sport Select Committee. The following responses were received:

### **Belfast Media Group**

On 11 October 2007<sup>418</sup>, the Director, Martin O'Muilleoir responded:

*"Consider us supportful of any suggestions which come forward".*

### **Clyde & Forth**

433. On 12 October 2007, Deidre Romanes responded:

*"The titles in the Clyde & Forth staple neither routinely employ subterfuge as an editorial device, nor outsource any investigative functions to external contractors or contributors. In those exceptional instances where subterfuge could be justified as a legitimate ploy in the public interest, our editorial staff know how they could only engage in such undercover means with the prior sanction of their editors, in liaison with senior management."*

434. She explained that each journalistic staff member was supplied with the Code of Practice and that the company sponsored seminars to enable senior editorial staff to keep abreast of the PCC's developing case law which could then be cascaded to editorial teams. Ms Romanes resolved to revisit the newspaper's informal

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<sup>409</sup> PCC/U/1/357-358

<sup>410</sup> PCC/U/1/559-360

<sup>411</sup> PCC/U/1/361-362

<sup>412</sup> PCC/U/1/363-364

<sup>413</sup> PCC/U/1/365-366

<sup>414</sup> PCC/U/1/367-368

<sup>415</sup> PCC/U/1/369-370

<sup>416</sup> PCC/U/1/371-372

<sup>417</sup> PCC/U/1/373-374

<sup>418</sup> PCC/U/1/375



"subterfuge protocol" and to move to embody in their formal structures the specific recommendations made at paragraph 10.5 of the PCC's Report.

### Newbury Weekly News Group

435. On 17 October 2007<sup>419</sup>, the Editorial Director, Brien Beharrell responded:

*"Circumstances to which this might be relevant are highly unusual for the Newbury Weekly News Group. Procedures are nevertheless in place to deal with such circumstances, they have been made known to staff and have been acted upon on occasion. These procedures include immediate pre-referencing to senior executives such as a group's editorial director, or her deputy in her absence, and consultation with the firm's media lawyers – Farrer & Co – acting as pre-publication legal advisors. Matters fundamental to the publishing policy of the company are also referred to the chairman in his capacity as proprietor and representative of the family owners."*

436. Ms Beharrell continued by confirming that the Newbury Weekly Newsgroup supported the PCC's Report on Subterfuge and Newsgathering, but made one observation in relation to the role of the presiding Editor at the time, Mr Coulson. Ms Beharrell said that, whilst it was entirely understood why the Commission decided not to ask Mr Coulson to provide an account of what had gone wrong, the report's findings, as a result, inevitably concentrated on provisions for heightening the awareness of the Code and other relevant law and regulation among working journalists. As a consequence, he said that:

*"The question hangs in the air unanswered as to what the Commission's report might have to say, or recommend, to editors whose staff are working on such stories or using external 'researchers' in the course of their investigations".*

Ms Beharrell felt that:

*"The Commission's report would benefit from having something to say about the responsibility of editors, or those with editorial responsibility, rigorously to check and question the source of evidence, and any payments made to obtain evidence, as presented by their staff before such stories finally reached the point of publication".*

### Express & Star

437. On 18 October 2007<sup>420</sup>, the Managing Director, Alan Harris, confirmed:

*"The Express & Star and its associated weekly titles has never been involved with subterfuge of any sort and it is highly unlikely that our papers would ever resort to this sort of practice. We have never employed private detectives or monitored phone calls in order to obtain information and I can*

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<sup>419</sup> PCC/U/1/382-383

<sup>420</sup> PCC/U/1/384-385

*never imagine a situation where this would be considered. This company would have no objections to the recommendations contained within the PCC report on subterfuge and newsgathering. This is an area where we differ greatly from the national press. They may find it acceptable to use these sorts of methods but the bond of trust between a local newspaper and its readers would make it unacceptable other than in the most extreme of circumstances".*

#### **Condé Nast International Limited**

438. On 22 October 2007<sup>421</sup>, Vice President, Managing Director, Nicholas Coleridge, replied that issues relating to subterfuge were not particularly relevant to the twelve Condé Nast magazines, given their nature.

#### **Manchester Evening News**

439. On 29 October 2007<sup>422</sup>, the Chief Executive of GG Regional Media set out the position of the Manchester Evening News by stating *"In relation to your first point into undercover news gathering, we believe that the code is absolutely clear on clause 10, subterfuge. We must not engage in it unless there is a clear public interest motive and the material in question cannot be gained in any other way. We know that the bar is set at a high level of public interest given the issues of data protection. Within the MEN we do carry out a wide range of public interest investigations which, on occasion, might require the assistance of a tracing agency. This is not common practice within my organisation, however, we have made checks with the one agency which we have used to ensure that they abide by data protection law. Permission to use such an organisation has to be given by the Editor or a senior member of the editorial staff and we do not engage in trawling exercises. My view is that the code is already clear and we all understand it".*

#### **Newsquest Media Group**

440. On 30 October 2007<sup>423</sup> the Chairman & Chief Executive, Paul Davidson, wrote:

*"I fully endorse the Commission's conclusions and recommendations. As regional and local newspapers we take our community role very seriously, and the kinds of unnecessary snooping and subterfuge to which the report refers has no place in local journalism. Newsquest demands the highest journalistic standards from its staff and has in place a strict training regime where all staff receive regular law update training. On joining the company every journalist receives a copy of the PCC's Code of Practice. All staff are notified via our intranet of any amendments to that code. Likewise, there are regular internal training sessions and briefings on, for example,*

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<sup>421</sup> PCC/U/1/386

<sup>422</sup> PCC/U/1/391-392

<sup>423</sup> PCC/U/1/393

*developments in privacy cases and compliance with the law. Contracts with our external contributors do contain an explicit requirement to abide by the Code of Practice”.*

### **The Scotsman**

441. On 30 October 2007<sup>424</sup>, the Editor, Mike Gilson, replied in his capacity as Chairman of the Johnston Press Editorial Review Group which consists of ten weekly and daily editors and is the editorial voice for Johnston Press’ 160 editors. Mr Gilson explained:

*“On subterfuge and issues arising from the Clive Goodman case, I have to say there are not that many occasions in our group when such practice is ever deemed necessary. Nevertheless, JP Editors take their responsibilities not to go beyond the bounds of what is reasonable and in the public interest to get a story.”*

442. Mr Gilson then explained that the Review Group had sent a summation of the PCC’s report to all Editors and confirmed that journalists’ contracts contained clauses requiring adherence to both the Code of Practice and to the Data Protection Act. The Review Group had also recently sent to Editors a “two minute guide” to the Data Protection Act written by Scotsman lawyers, which was being circulated in newsrooms (a copy of which he provided)<sup>425</sup>. Mr Gilson went on to explain various checks and balances which were also in place.

### **Guiton Group**

443. On 31 October 2007<sup>426</sup>, the Chairman & Chief Executive, John Averty, noted that the group’s newspapers, The Jersey Evening Post and The Guernsey Press, were outside the legal jurisdiction of the United Kingdom but nevertheless were “willing members of the PCC”. Mr Averty confirmed:

*“Our titles do not in general use subterfuge and we endorse your findings on the subject. Where it is occasionally used (in a minor way) it is authorised by the editor as being in the public interest. We include adherence to the PCC Code as part of the terms and conditions of employment for all staff journalists. We do not have formal contracts with external contributors but are examining that question in order to comply with your recommendations that we have no actual history to suggest that it is necessary.”*

444. Mr Averty also advised that the group was considering whether to put a “catch all clause” in the terms of their employment, requiring compliance with all the laws of

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<sup>424</sup> PCC/U/1/394-395

<sup>425</sup> PCC/U/1/398

<sup>426</sup> PCC/U/1/400-401

the land, noting that the laws of Jersey are different to those of the UK and are different as between the Channel Islands.

445. In reply to Mr Averty's letter of 31 October, Mr Toulmin offered to give a seminar to the journalists of the Guiton Group which, in addition to dealing with subterfuge, he suggested could also deal with privacy, newsgathering methods and other issues that fall under the code of practice<sup>427</sup>.

#### **Iliffe News & Media Limited**

446. On 2 November 2007<sup>428</sup>, the Chief Executive, David Fordham, confirmed that, whilst its newspapers fell within the category of those that did not tend to rely on subterfuge in its news gathering processes, they were not complacent and would use Sir Christopher's letter as a reminder to reinforce the values of the group to retain an honesty in their professional dealings.

#### **Northcliffe Media**

447. On 2 November 2007<sup>429</sup>, the Managing Director, Michael Pelosi, confirmed that, with regard to undercover news gathering methods *"as highlighted by the Goodman episode is not an activity in which we engage. Indeed, the editors of some of our larger weekly titles because of the very local nature of their news, could not envisage any situation in which they would even contemplate such activities"*.

#### **D.C. Thomson & Co Limited**

448. On 2 November 2007<sup>430</sup>, A.F. Thomson responded *"we very much welcome the Report and note in particular Section 8 under current practices and Section 9 Data Protection, as we value highly the work done by the PCC and appreciate how important it to the newspaper industry in general"*. He confirmed that: *"In the light of the report we will review our practices in a bid to ensure all of our relevant employees are conversant with the code and realise the importance of abiding by it"* Mr Thomson confirmed that: *"We do not employ subterfuge as a normal means of uncovering information for newspaper reports. There would have to be an exceptional public interest for us to undertake such a course of action and we do not recall having ever done so."*

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<sup>427</sup> PCC/U/1/415

<sup>428</sup> PCC/U/1/402-403

<sup>429</sup> PCC/U/1/404

<sup>430</sup> PCC/U/1/405

## The Financial Times

449. On 5 November 2007, the Chief Executive Officer, John Ridding, confirmed:

*"The FT on the whole agrees with the main conclusions set out in the report, in particular that while practices like those uncovered at the News Of The World should not be repeated, it is nonetheless crucial that the industry not overreact. The legislation already in force (notably the Data Protection Act or DPA), the emerging common law right to privacy and regulation through the PCC code together provide, in our view, ample and sufficient remedies against wrongdoing by members of the press. I therefore also agree with the PCC that a prison sentence should not be introduced as a sanction for breach of the DPA".*

Mr Ridding continued:

*"The FT does not generally engage in the type of journalism, nor publish the type of story that gives rise to risk of infringement of either the DPA or the privacy provisions of the PCC code. Nonetheless, we have already adopted a number of the recommendations made by the PCC in its Report. Since the PCC code was amended to address subterfuge of the type engaged in by Clive Goodman, the FT has taken a number of steps to draw the attention of its staff to the relevant issues. For instance, discussion of the Goodman case and the PCC Code amendment have been added to our Data Protection training seminar, which is provided on a regular basis to members of the staff (both editorial and commercial). This seminar also covers the section 55 offence DPA and specifically how this might apply to newsgathering. Our journalists have been reminded that there are individuals within the Editorial Department and the larger organisation with expertise in the DPA and they know that these individuals are available to advise on compliance matters."*

450. Mr Ridding also confirmed that explicit reference to the Code of Practice had been added to the newspapers' freelance agreements and that the Code was the basis for their own internal editorial code of conduct with which their journalists were obligated to comply. He also confirmed that the newspapers' permanent employment contracts were also under review in light of the developments referred to in the report.

## Trinity Mirror PLC

451. On 5 November 2007<sup>431</sup>, the Chief Executive, Sly Bailey responded:

*"As you will know, Trinity Mirror and I have for a long time been firm supporters and advocates of a self-regulatory system generally, and the PCC in particular. A free press is vital to democracy and the self-regulatory system is key to maintaining that freedom."*

451.1 With regard to the PCC's report, Ms Bailey commented that many of the recommendations simply set out what is currently good practice. She

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<sup>431</sup> PCC/U/1/410-412

questioned however, whether it was necessary for the PCC to recommend that journalists' contracts of employment should include a reference to the Data Protection Act. Ms Bailey asserted:

*"Our journalists are well aware that they are to comply with the terms of that Act and that they are only to access confidential information in a way that would otherwise be in breach of the Act if they are confident that they can rely on public interest defences incorporated into the Act. They know that consideration of those public interest defences must be raised with senior editorial staff and, preferably, the legal department. We believe that this is the best and most we can do."*

She confirmed:

*"Trinity Mirror's Group policy is that all our employees will abide by the law. No one is to break the law unless there is sufficient justification for doing so that would provide a full defence. Journalists have it made clear to them that they have no special licence in this regard."*

452. Ms Bailey confirmed that Trinity Mirror had, for many years, incorporated an express term in journalists' contracts requiring them to comply with the Code of Practice. She said regular training was held for journalistic staff on all matters of law and regulation, including the Data Protection Act, privacy and confidentiality. She confirmed that each title within Trinity Mirror had an appropriate policy for use of cash payments and for advice and guidance on subterfuge. Finally, she asserted:

*"I can assure you that these are all areas that we take seriously and I believe that we have proper and robust systems in place."*

### **Express Newspapers**

453. On 9 November 2007<sup>432</sup>, Head of Legal, Stephen Bacon confirmed:

*"It is rare for any of the titles in the Express Group to use subterfuge and certainly never of the kind which prompted your report. If an occasion does arise, such as that referred to at 1.11 of your report, the greatest care is taken to act lawfully in all regards and to comply with the requirements of clause 10(ii) of the Code of Practice of the Press Complaints Commission. Particular regard is always had to 'The Public Interest'" as defined by law and as set out in the Code of Practice. In the event that the use of subterfuge is considered necessary, the Editor and the relevant senior journalist is aware of it. Before any such subterfuge is sanctioned, the circumstances are discussed fully with the legal department to ensure that the law and the code of practice will be complied with."*

### **NWN Media**

454. On 9 November 2007<sup>433</sup> the Managing Director, Kevin McNulty, responded:

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<sup>432</sup> PCC/U/1/416

<sup>433</sup> PCC/U/1/417-418

*"Subterfuge of this type is extremely rare in the regional press but it's proven existence elsewhere colours mass opinion in a way that affects all our publications and every editorial endeavour."*

He continued:

*"The Commission's report into undercover newsgathering methods is however a thorough analysis of these issues and the resulting recommendations I feel push home the specifics relating to privacy effectively."*

He expressed the view that:

*"The Code as it stands though is quite clear on the central issues of so-called 'snooping' journalism. Any self-regulatory system can be wilfully interpreted for advantage but the detail and the spirit of the code are already plain enough when viewed objectively."*

### **Independent News & Media (UK)**

455. On 12 November 2007<sup>434</sup>, the Chief Executive, Ivan Fallon, confirmed that the company subscribed to the Code of Practice and suggested that they may do so more faithfully than many others.

### **The Sunday World**

456. On 13 November 2007<sup>435</sup>, the Northern Editor, Jim McDowell, wrote to Sir Christopher with rather more general comments about the PCC process and the special circumstances which he believed applied to The Sunday World, to which Sir Christopher responded in a letter dated 20 November 2007<sup>436</sup>.

### **The National Magazine Company**

457. On 16 November 2007<sup>437</sup>, the Chief Executive, Duncan Edwards, confirmed:

*"Only a few of our magazines carry the sort of articles that might involve undercover journalism. However, our Head of Legal, Aimee Nisbett has briefed all of our editors on the PCC's recent report and, together with our Editorial Director Lindsay Nicholson, is following up with individual editors to ensure that they understand the full implications."*

458. John Harris of The Guardian wrote to Sir Christopher on 23 October 2007 explaining that he was working on a cover story for The Guardian's weekend magazine, which was to focus on the recent history of The News Of The World, the

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<sup>434</sup> PCC/U/1/419

<sup>435</sup> PCC/U/1/420-422

<sup>436</sup> PCC/U/1/424

<sup>437</sup> PCC/U/1/423

Goodman/Mulcaire case, the PCC's subsequent report and the report about press self-regulation issued by the House of Commons Select Committee on Culture, Media and Sport. Mr Harris invited Sir Christopher's response to the claim by the Committee that they found it "extraordinary that [sic] in their investigation into the case, the PCC did not feel it necessary to question Mr Coulson". The email is annotated with a note from Sir Christopher to Tim Toulmin which suggests that he spoke with Mr Harris because Sir Christopher informed Mr Toulmin that "*The focus will be more on the coup which brought Coulson into the Cameron inner circle, says Harris*"



**THE PCC'S INVOLVEMENT IN ISSUES RELATING TO PHONE MESSAGE HACKING IN 2009**

459. On 8 July 2009, The Guardian broke the story which alleged that News of the World had been engaged in widespread interception of mobile phone messages. The story spread quickly across the media<sup>438</sup>.
460. At the meeting of the Commission on 9 July 2009, the Commissioners considered the issue of phone message tapping and the minutes<sup>439</sup> record:

***Phone Message Tapping***

*The Chairman informed Commissioners that she had spoken to John Whittingdale MP, who had confirmed that the CMS select committee planned to continue its enquiries into this matter in the autumn. Members of the committee will attend the PCC for information discussions about the issue in October.*

*The Chairman indicated that she did not wish to focus solely on the News of the World, given that there have been no clear allegations about recent illegitimate activity and that newspaper. Nonetheless, it was important to be clear about whether the PCC had been misled during its previous investigation and she proposed that the director and deputy director would draft questions to put to the News of the World.*

*Commissioners agreed that this was a sensible approach. It was important that the PCC took the matter seriously, even though it acknowledged that the Guardian's way of presenting its allegations had been unhelpful and disappointing. As such, it was crucial to check three fundamental points:*

- (a) was the PCC misled by the News of the World during its previous investigation?*
- (b) is any phone message hacking ongoing?*
- (c) have newspapers made the kind of changes to staff contracts that many indicated they planned to after the last investigation?*

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<sup>438</sup> PCC/V3/1

<sup>439</sup> PCC/J2/1/629

*It was agreed that Chairman would write privately to publishers to inquire what internal measures had taken place since the Commission's original report.*

461. Later that day, the PCC released a statement<sup>440</sup> in the following terms:

***"PCC Statement on Phone Message Tapping Claims***

*In 2007, the PCC conducted an inquiry across the whole of the British press into the use of subterfuge by journalists. This followed the convictions of Clive Goodman and Glenn Mulcaire for offences under the Regulation of Investigatory Powers Act and the Criminal Law Act, which the PCC considered threatened to undermine public confidence in investigative journalism. While the specific allegations of criminal behaviour were matters for the police and the courts, the PCC made clear that there were outstanding questions about the application of the Code of Practice, Clause 10 of which bans the practice of intercepting phone calls and messages unless there is a strong public interest.*

*As a result of its inquiry, the PCC published 6 specific recommendations to publishers to ensure that phone message tapping - where it had taken place - was eliminated, and that steps were taken to familiarise journalists with the rules on using subterfuge in the law and the press Code of Practice. It also had a number of specific questions for the News of the World.*

*The PCC has previously made clear that it finds the practice of phone message tapping deplorable. Any suggestion that further transgressions have occurred since its report was published in 2007 will be investigated without delay. In the meantime, the PCC is contacting the Guardian newspaper and the Information Commissioner for any further specific information in relation to the claims, published today about the older cases, which suggest the Commission has been misled at any stage of its inquiries into these matters".*

462. On the same day, John Whittingdale, Chairman of the Parliamentary Select Committee on Culture, Media and Sport, wrote to the then Director, Tim Toulmin, referring to the media reports. He wrote:

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<sup>440</sup> PCC/V1/1/1

*"The Culture, Media and Sport Committee has been extremely concerned to see suggestions in the press that Clive Goodman's was not a one off case. If illegal phone tapping was in fact a widespread practice, and News International have settled cases amounting to £1m to prevent this from becoming public knowledge then that is very serious indeed.*

*As well as our own inquiry, I am aware that the PCC conducted its own investigation at the time. We would therefore be grateful if you could inform us of the outcome of that investigation and any relevant information which was obtained. We would also be keen to hear what further action the PCC proposes to take.*

*We plan to take oral evidence on this issue next Tuesday, and may wish to take further oral evidence from the PCC at a subsequent meeting".*

463. The following day, The Guardian also wrote to Mr Toulmin, noting his understanding that the PCC would be asking The Guardian and its journalist, Nick Davies, to give evidence in relation to the allegations that had been published. Mr Rusbridger expressed the view that he could not be of much use as he had no first hand knowledge of the matters published but said that he was sure that Nick Davis would be happy to talk to Mr Toulmin. However, he qualified this by stating:

*"You will understand that he has a duty to protect his sources, which means that he will not be at liberty to show you much of the evidence on which his stories have been based".*

464. Mr Rusbridger suggested an alternative approach, as follows:

464.1 that the PCC should write to the Information Commissioner to ask him to share all the material his office had gathered during its Motorman investigation;

464.2 the PCC should write to News International to ask them to share all the documentation relating to the use of private detectives which was in the possession of Scotland Yard;

464.3 the PCC should make direct inquiries of News Of The World executives and reporters around the time of the Gordon Taylor, Clive Goodman and Motorman exercises; and

464.4 the PCC should ask Andy Coulson to give evidence.

465. Mr Rusbridger said that he could not imagine that News International would resist sharing such material given their commitment to self-regulation and speculated that this would give the PCC a good picture of the extent of the activity and enable the PCC to form its own opinion, based on solid evidence, as to whether or not the PCC had been "misled".

466. Tim Toulmin replied to John Whittingdale in a letter dated 13 July 2009<sup>441</sup> and clarified the PCC's role:

*"It may be helpful to recall the PCC's role here. Although we had no complaints from the principals affected by the offences for which Clive Goodman and Glenn Mulcaire were convicted, we wanted to ensure that some wider lessons were learned from the episode. We do not have formal, investigatory powers – which would require a statutory basis that would undermine our main work – so there was no question of launching a broad inquiry to establish whether there had been further breaches of the law.*

*Instead, we wanted to complement the police inquiry, and to establish how the Mulcaire/Goodman arrangement could have been allowed to develop at the News Of The World; whether it reflected a more concerted attempt to bypass the Code; and what steps the editor proposed to take to ensure that there would be no repetition. In addition, we thought it important to check that other newspapers and magazines had adequate safeguards in place to prevent a similar situation arising elsewhere, so we broadened our inquiries to take in all major press outlets.*

*The result of this was publication of a report which shone a light on what had happened at The News Of The World, drawing on the evidence of the new editor Colin Myler, and included six specific recommendations to publishers. I attach a copy of the report which was published in May 2007.*

*There is no doubt that some of the recent Guardian allegations are concerning - but the priority for us now is to establish whether any of them relate to activity since the publication of our report in 2007, given that the purpose of that report was to eliminate the practice. We are also testing News International's 2007 submission to us against the claims made in The Guardian, to see whether there is any truth to the suggestion that we were misled. Obviously, this will involve approaching the company at some point. We have already approached The Guardian and the ICO, and Nick Davies has agreed to answer questions after he has given evidence to you. Mick Gorrill, the Assistant Information Commissioner, has responded to me, saying that he will be in touch with us later this week. Please find attached a copy of the statement that we issued on 9 July outlining what steps we are taking.*

*I would be very happy to come to the Committee at any point to answer any questions you might have about our role in this matter."*

467. Mr Toulmin circulated a paper<sup>442</sup> to the PCC Commissioners on 16 July 2009. In the paper he set out what he considered to be, for the Commissioners' approval, the role of the PCC in the matter:

***"Phone message tapping***

*The Commission is invited to consider its response to the allegations that have appeared in the Guardian about the criminal use of subterfuge at the News of the World.*

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<sup>441</sup> PCC/1/1/6-7

<sup>442</sup> PCC/1/1/39-304

*This issue goes back to 2006/7, when Clive Goodman and Glenn Mulcaire (News of the World journalist and freelancer) were arrested and tried for illegally hacking into the phone messages of a number of people. A complaint from the Royal Household had prompted the investigation.*

*Commissioners will recall that, following these convictions, we asked the News of the World a number of questions to ascertain how the situation could have arisen at the paper in the first place, and what was being done to prevent repetition. We did this to complement, rather than duplicate the criminal inquiry which had already acted on a complaint, obtained evidence, and prosecuted the individuals concerned.*

*We then widened the inquiry to make sure that safeguards were adequate at other publications, because we were concerned that the episode may have damaged public confidence in investigative journalism. We also looked at what awareness there was about the requirements of the Data Protection Act, given the Information Commissioner's campaign against 'blagging'. These two issues continue to be conflated in this latest controversy, as they were during the original coverage, but they are quite separate.*

*Although there is no suggestion in the latest Guardian allegations that such activities are ongoing - at the News of the World or anywhere else - the suggestion that the use of phone message hacking was far more widespread than previously believed has caused considerable controversy. The main allegation - that News International paid £1m to keep further evidence of the hacking secret - stems from the private settlement of a case brought by Gordon Taylor against the News of the World. It was known at the time of the Mulcaire/Goodman trial that Gordon Taylor's phone messages had been hacked. The new information was the fact of the settlement and the amount of money involved.*

*In addition, the Guardian journalist, Nick Davies, has said that he has spoken to a source who suggested that - far from the practice being isolated - Met officers had "found evidence of News Group staff using private investigators who hacked into 'thousands' of mobile phones. Another source with direct knowledge of the police findings put the figure at 'two or three thousand' mobiles".*

*Following the Guardian's story on 9<sup>th</sup> July, it seemed to the office that the areas of immediate concern were whether we were misled by the News of the World's statement during our 2007 inquiry that the episode involved 'one journalist', and whether there was any evidence that the 2007 report that we issued had been ignored (in other words, whether there was recent phone message tapping). Please see attached our press release making this clear.*

*I was also called at very short notice to appear before an emergency hearing of the Culture, Media and Sport Select Committee. I made clear to the MPs that our further inquiries were, at this stage, confined to these two areas, and that there was a division of responsibility between the PCC; criminal law; civil law; Information Commissioner; and Select Committee itself. Paul Farrelly MP asked me whether we would be asking a number of particular questions. I said that it was ultimately for the Commission to decide, but said I would draw his questions to Commissioners' attention. The extract from that exchange is attached in the bundle.*

*After I appeared, Nick Davies produced what he claimed was further evidence of a conspiracy at the newspaper to hack into phone messages. This was not evidence of recent activity, however. You will see from the e-*

*mail that we have sent him that we have asked for this information so that we may put this allegation to the News of the World.*

*I also had a meeting with the Information Commissioner's Office. The ICO officials indicated that newspapers' compliance with the Data Protection Act had improved demonstrably over the last two years, and praised the seminars that we conducted in 2007 as being particularly useful. I urged them to make these points to the Select Committee.*

*Any further direction from the Commission about how this matter should be pursued would be welcome. A decision about whether the Commission was misled during its inquiry two years ago will obviously have to wait until we have the material from Nick Davies and from the News of the World".*

468. Between 27 July and 3 September the PCC made inquiries of a number of different individuals and bodies in relation to the allegations made by The Guardian, as appears below.

#### **Correspondence with News of the World**

469. On 27 July 2009<sup>443</sup>, Mr Toulmin wrote to the then Editor of News of the World, Colin Myler. He asked Mr Myler to respond to the following:

- 469.1 whether it remained Colin Myler's position that the illegal behaviour of Clive Goodman was a "rogue exception" and that no other journalists or executives of the newspaper were aware of the practice of phone message tapping by anyone employed by the paper;
- 469.2 whether Mr Myler could provide the PCC with full details of the process undertaken by the newspaper – after the arrests of Goodman and Mulcaire in July 2006; to establish the extent to which phone message tapping was prevalent at News of the World;
- 469.3 whether Mr Myler could identify the individuals to whom the Judge in the Goodman/Mulcaire case referred when he spoke of Mulcaire dealing with "others at News International";
- 469.4 whether Mr Myler could clarify the relationship between Mr Mulcaire and Mr Neville Thurlbeck given the existence of an email to a Glenn Mulcaire that refers to transcripts of messages from Gordon Taylor's telephone being made "for Neville"; and
- 469.5 whether Mr Myler could make clear how Mulcaire was paid for information relating to Gordon Taylor.

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<sup>443</sup> PCC/V1/1/80-81

- 469.6 whether Mr Myler could provide details of the story connected to Greg Miskiwi/Paul Williams contract of 5 February 2005; and
- 469.7 whether Mr Myler could shed light on how the information in the story headlined "*Chelsea Tears A Strip Off Harry*" published in News of the World in April 2006 under the by-lines of Clive Goodman and Neville Thurlbeck had been obtained.
470. Mr Myler responded, at some length, to Mr Toulmin in a letter dated 5 August 2009<sup>444</sup>. Mr Myler began by taking issue with the allegations which had been made by The Guardian and, particularly, the allegations that "*one senior source at the Met*" had said that officers on the Goodman inquiry "*found evidence of Newsgroup's staff using private investigators who hacked into thousands of mobile phones*" and that "*another source with direct knowledge of the police findings put the figure at two or three thousand mobiles*". Mr Myler described these allegations as "*not just unsubstantiated and irresponsible, they were wholly false*". Mr Myler went on to assert that the officer in charge of the Goodman/Mulcaire investigation, former Assistant Commander, Andy Hayman, had stated in The Times on 10 July 2009 that The Guardian's estimates were wrong and that the number of mobile phones hacked into was in fact "*a small number – perhaps a handful*". Mr Myler said that on 9 July 2009, the Assistant Commissioner, John Yates, had issued a statement which made almost exactly the same points. Mr Myler enclosed, with his letter, the press statement from Andy Hayman dated 10 July 2009<sup>445</sup>; the Metropolitan Police statement from John Yates dated 9 July 2009<sup>446</sup>; News International's statement on The Guardian's article dated 10 July 2009<sup>447</sup>; and a copy of the article by-lined by Goodman and Thurlbeck to which Mr Toulmin had referred in his letter<sup>448</sup>.

471. Mr Myler then responded to Mr Toulmin specific questions:

*"In considering these [answers] please bear in mind that I joined the News of the World in January 2007 and therefore much of this information has been gathered in by those executives who were here during the relevant events."*

472. Turning to each of Mr Toulmin's questions Mr Myler responded as follows:

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<sup>444</sup> PCC/V1/1/82-87

<sup>445</sup> PCC/V1/1/21-22

<sup>446</sup> PCC/V1/1/23-24

<sup>447</sup> PCC/V1/1/25-27

<sup>448</sup> PCC/V1/1/28-30

**472.1 Does it remain your position that the illegal behaviour of Clive Goodman was a "rogue exception", and that no other journalists or executives of the newspaper were aware of the practice of phone message tapping by anyone employed by the paper?**

*Our internal enquiries have found no evidence of involvement by News of the World staff other than Clive Goodman in phone message interception beyond the email transcript which emerged in April 2008 during the Gordon Taylor litigation and which has since been revealed in the original Guardian report.*

*That email was dated June 29 2005 and consisted of a transcript of voicemails from the phone of Gordon Taylor and another person which had apparently been recorded by Glenn Mulcaire. The email and transcript were created by a junior reporter (who has since left the newspaper). When questioned after the email was supplied to us by Gordon Taylor's lawyers in April 2008, the junior reporter accepted that he had created the relevant email document but had no recollection of it beyond that. Since by the end of June 2005 he had been a reporter for only a week or so (having been promoted "off the floor" where he had been a messenger) and since the first months of his reporting career consisted largely of transcribing tapes for other people, his lack of recollection when questioned three years later is perhaps understandable.*

*Email searches of relevant people, particularly the junior reporter, Neville Thurlbeck and Greg Miskiw failed to show any trace of the email being sent to or received by any other News of the World staff member.*

*Those who might have been connected to the relevant story, particularly Neville Thurlbeck and Greg Miskiw, denied ever having seen or knowing about the relevant email and no evidence has been found which contradicts these assertions.*

**472.2 Can you provide the Commission with full details of the process undertaken by the newspaper - after the arrests of Goodman and Mulcaire in July 2006 - to establish the extent to which phone message tapping was prevalent at the News of the World?**



*Clive Goodman and Glenn Mulcaire were arrested on August 8 2006. Until late November 2006 when other charges were laid against Glenn Mulcaire, the only criminal activity we were aware of was the accessing by Goodman/Mulcaire of voicemails belonging to three members of the Royal Household. Not surprisingly our enquiries were focused on that area.*

*We quickly established that the system under which Goodman and Mulcaire operated involved cash payments ordered by Goodman to a "valuable" source he identified under the pseudonym "Alexander". These consisted of payments over a period of several months which, by the time of arrest amounted to £12,300. It is not unusual for confidential sources to remain unidentified except to the particular reporter. In this case nobody at the News of the World except Mr Goodman knew the identity of Alexander.*

*Departmental heads were questioned about what they knew of Mulcaire's dealings. All of them stated that they were unaware of any illegal activities conducted by Mr Mulcaire.*

*Almost immediately after the arrests News Group instructed Burton Copeland, an independent firm of solicitors (and one we had not used before), to deal with any further police enquiries of the News of the World and to ask for whatever documentary or other evidence they needed for that purpose. In the event Burton Copeland were given absolutely full cooperation by all departments of the News of the World and News International in their enquiries.*

*Among other things they asked for and were given every financial document which could possibly be relevant to our dealings with Mulcaire. In all they received and are still in possession of four large lever-arch files of such documents. They confirmed that they could find no evidence from these documents or their other enquiries which suggested complicity by the News of the World or other members of its staff beyond Clive Goodman in criminal activities.*

*Through Burton Copeland, News Group co-operated fully with every request from the police for further information or documents. This co-operation was acknowledged by the Prosecution at trial. All financial documentation which might have been relevant was provided to the police.*

*It is perhaps significant that during an intense and incredibly thorough investigation lasting from December 2005 to November 2006 the Police at no time considered it necessary to arrest or question any member of the News of the World staff other than Clive Goodman.*

*After I arrived at the News of the World in January 2007, an email search was conducted involving up to 2,500 separate email messages in order to discover whether other News of the World staff were aware of the Goodman/Mulcaire criminal activity. These email searches were conducted by our IT department under the supervision of News International's Director of Legal Affairs, the Director of Human Resources and an independent firm of solicitors.*

*No such evidence was discovered during this search.*

**472.3 *It has been pointed out that while Clive Goodman was a royal journalist, most of those names said to have had their phones tapped are non-royal figures (such as Gordon Taylor). And the judge in the Goodman/Mulcaire case apparently referred to Mulcaire dealing with "others at News International". Can you identify these individuals, and what the judge was referring to?***

*At trial the Prosecution neither produced nor referred to any evidence that others at News International apart from Clive Goodman knew of or were involved in Glenn Mulcaire's (or Clive Goodman's) illegal activities. We do not know what evidence, if any, there may have been to support the judge's reference to "others", nor do we know who he was referring to.*

**472.4 *We have seen the e-mail to Glenn Mulcaire that refers to transcripts of messages from Gordon Taylor's telephone being made "for Neville", Can you clarify the relationship between Mr Mulcaire and Mr Neville Thurlbeck?***

*From June 2001 to April 2003 Neville Thurlbeck was news editor at the News of the World, effectively number two to assistant editor Greg Miskiw, who ran the newsdesk.*

*During that time Glenn Mulcaire was hired to provide numerous services including land registry checks, credit status checks, electoral roll checks, directorship searches, court record checks, surveillance, and the provision*

of telephone numbers of sports stars from his vast database of personal contacts.

During this period, Neville Thurlbeck made use of Glenn Mulcaire for those services and occasionally, though seldom, afterwards as the new newsdesk regime preferred to confine Mulcaire's dealings with the newspaper to the newsdesk, to avoid an avalanche of requests from numerous staff.

**472.5 Can you make clear how Mulcaire was paid for information relating to Gordon Taylor?**

The information in the June 29<sup>th</sup> 2005 email was not published and did not result in any story being published. Glenn Mulcaire was not paid by the News of the World for any information relating to Gordon Taylor.

**472.6 Can you provide details of the story connected to the Greg Miskiw/Paul Williams contract of 5<sup>th</sup> February 2005?**

To identify or provide details of this story would put us in direct and serious breach of the Undertaking of Confidentiality we gave to Gordon Taylor as a fundamental term of the settlement agreement at the end of his litigation against us.

**472.7 In the paper of 9 April 2006 there was an article headlined "Chelsy tears a strip off Harry", under the bylines of Clive Goodman and Neville Thurlbeck. We appreciate that this was published some time ago, but are you able to shed light as to how the information for the story was obtained? It has been stated that this "could only have come from phone hacking".**

I enclose a copy of this story. Please note that:

it refers to a telephone conversation between Prince William and Prince Harry as opposed to a voicemail message which was left for the latter; there has never been any suggestion that live phone calls were accessed;

there has also never been a suggestion that the Goodman/Mulcaire case involved any accessing of the phone voicemails of Prince William or Prince Harry.

*The statement that "it could only have come from hacking" makes no sense at all if it is based upon the content of the article itself. There is nothing within the article which would lead anyone to believe it came about as a result of voicemail interception.*

*In terms of how the story was put together, Neville Thurlbeck handled the Spearmint Rhino investigations. He found and interviewed the dancer identified as Annabella who provided the information about what happened during Prince Harry's visit to the club. The rest of the article was the work of Clive Goodman who, through his counsel, told the court that the only part of the story which came from illegal activity was the information that Chelsy "is due to fly in on Tuesday for Harry's official passing-out celebrations"*

*On a more general note, please forgive me if I set out for the record that the Goodman and Mulcaire arrests took place three years ago and the relevant activities pre-date August 2006. As it happens, the email which caused us to settle with Gordon Taylor is now over four years old.*

*We have investigated these matters to the best of our ability and that of the outside lawyers we have brought in for that purpose and the results of our inquiries are set out above.*

*What I can say with clarity is that since I became editor in January 2007, I am as sure as I can be that the activities at the heart of the Goodman/Mulcaire case have had no place at the News of the World and that my newspaper and my journalists fully comply with the law and the requirements of the PCC Code.*

*We have now answered the outstanding questions raised by the Select Committee on Tuesday 21st July and dealt also with your own questions in this letter, we now trust that this brings to a close our involvement in your investigations.*

473. On 3 September 2009<sup>449</sup>, Mr Toulmin wrote a further, letter to Mr Myler asking him to clarify two further points. Mr Toulmin explained that he had obtained a copy of the Judge's sentencing remarks in the Mulcaire/Goodman case and that these included the reference to Mulcaire dealing with "others" at News International which

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<sup>449</sup> PCC/V1/1/31-32

was highlighted by Paul Farrelly MP during Mr Myler's appearance before the Select Committee. Mr Toulmin made reference to the evidence given by Assistant Commissioner, John Yates, to the Select Committee on 2 September 2009 in which he had said that it did not seem extraordinary for Mulcaire to have had dealings with the number of different people at the newspaper, given his role as a private investigator. Mr Toulmin expressed the view that the key point, therefore, was not whether Mulcaire had contact with other people, but whether those people were aware that the information that he passed to them had been obtained illegally. Mr Toulmin asked Mr Myler to clarify the point and asked him whether it would be correct to assume that the newspaper's internal inquiries were established to determine whether others at the paper were aware of Mulcaire's illegal activities.

474. The second point which Mr Toulmin raised with Mr Myler related to Clive Goodman being the Royal Editor of News of the World whereas most of the targets seemingly had nothing to do with the Royal Family. Mr Toulmin asked whether any of the charges to which Mr Goodman pleaded guilty related to individuals who were nothing to do with the Royal Family. Mr Toulmin also raised the possibility that, in any case, Mr Goodman would have been expected to suggest other stories in his capacity as editor of the Blackadder column. Mr Toulmin explained that he mentioned this because he noted that part of Mr Goodman's plea in mitigation was that he was under pressure at work and felt the need to impress his then superiors by coming up with stories.

#### **Correspondence with Nick Davies**

475. On 16 July 2009<sup>450</sup>, I sent an email to Nick Davies at the Guardian and invited his response to the following questions:

475.1 whether he was able to provide any evidence to the PCC that anyone at News of the World was aware of the illegal actions of Goodman or Mulcaire;

475.2 whether he was able to provide evidence that any individual at the newspaper other than Goodman and Mulcaire were involved in the practice of tapping phone messages;

475.3 whether it was his position that private investigators who were involved in hacking into "thousands" of mobile phones as reported in his article were working for – at the instigation and with the knowledge – of News of the

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<sup>450</sup> PCC/V1/1/33

World executives. I asked whether Mr Davies could provide the Commission with further details on this point; and

475.4 whether Mr Davies had any evidence of phone tapping taking place after May 2007 involving News of the World or any other publication? I also invited Mr Davies to let the PCC have copies of the evidence which he had submitted to the Parliamentary Select Committee on Culture, Media and Sport the previous Tuesday.

476. Mr Davies responded to my inquiries, by email, on 19 July 2009<sup>451</sup> which I simply forwarded to Mr Toulmin. Mr Davies suggested that the PCC obtain copies of the documents which he gave to the Select Committee by downloading them from The Guardian website. With regard to any other evidence, his position was as follows:

*"As I explained to the Committee, journalists working on a story about a powerful individual or organisation often find themselves in the position of having evidence of one kind or another which has been supplied on the basis that it will not be disclosed, and at the moment, I am not in a position to supply you with any other evidence."*

477. Mr Davies, in relation to the third of my questions, asked me to note that his story referred to Murdoch journalists using private investigators who hacked into the phones of "numerous" public figures and that the allegation of "thousands" had been made by two well-placed sources quoted in the articles.

478. Finally, in relation to the fourth of my questions, Mr Davies confirmed:

*"I have no evidence of phone hacking after May 2007 beyond the conversations which I have had with journalists from various titles who say that the practice continues although, they say, it has become more tightly controlled, largely for budgetary reasons."*

#### **Correspondence from the Information Commissioner**

479. On 7 August 2009<sup>452</sup>, Tim Toulmin sent an email to the Assistant Information Commissioner, Mick Gorrill, explaining that the PCC was looking at some of the allegations made in The Guardian about News of the World and noted that the stories seemed to take in aspects of the Information Commissioner's Motorman inquiry. In his email, Mr Toulmin confirmed that, when he had previously met with Mr Gorrill, Mr Gorrill had explained that the Information Commissioner did not feel able to give to the PCC any names of the News of the World journalists who had

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<sup>451</sup> PCC/V1/1/34

<sup>452</sup> PCC/V1/1/37

been identified during the Motorman investigation. Nevertheless, Mr Toulmin asked whether it would be appropriate for him to convey to the PCC Mr Gorrill's suggestion that, since the Information Commissioner's crackdown on the use of private investigators, and since the other initiatives aimed at raising awareness of journalist's obligations under the DPA (including the PCC's), the evidence seemed to point to an improvement in standards in this area.

480. Mr Gorrill replied to Mr Toulmin on 17 August 2009<sup>453</sup>, highlighting the position of the Information Commissioner, as follows:

*"As you are aware, Operation Motorman uncovered an illegal trade in personal information between a private investigator, Steve Whittamore and some 305 journalists. In the ledgers and workbooks that were seized from Whittamore's home there are references to the journalists requesting the information, the details of the request and the resulting information forwarded to the journalist. For example, a journalist may have come across an individual's ex. directory telephone number or mobile telephone number and may have requested that the address for that number was obtained. Some requests were headed 'hospital blag' or 'credit check' 'vehicle reg' etc. Checks were made with the credit references agencies and through DVLA for registered keeper details. There were more intrusive checks being asked for and completed for example criminal record checks but the majority of the checks, it would appear, were an attempt to find the current address of people who individual journalists were interested in (many were people in the public eye or associated with such individuals).*

*The reason why we are reluctant to provide the select committee or any other interested parties with the information contained in the workbook is because most of the information in the ledger is personal information. For example, names, addresses, vehicle registrations, telephone numbers etc., of the individuals subject to the requests and of course the names of the journalists.*

*Whittamore and his accomplices appeared in court in April 2005 when the matter was dealt with. The lenient sentences handed down to them led to the two parliamentary reports, What Price Privacy and What Price Privacy Now which called for a more substantial penalty (imprisonment) for those found guilty of the section 55 offence (unlawful obtaining etc of personal information).*

*Since the Motorman investigation we have not had any investigations where we have uncovered evidence of journalists using private investigators or other third parties to unlawfully obtain personal information. We have received one complaint since Motorman where a member of the public complained that details of her medical record appeared in a national newspaper and that the journalist had unlawfully obtained it. It was clear that details of her medical record had appeared in the newspaper but we were unable to show that it had been unlawfully obtained.*

*We are of the view that the threat of imprisonment and other high profile convictions of private investigators unlawfully obtaining information (not on behalf of journalists) have had an effect on this practice which has significantly reduced across the board. The PCC's own work will also have*

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<sup>453</sup> PCC/V1/1/38

*made a contribution so far as journalists are concerned. From our records there has been a marked reduction in complaints about journalists unlawfully obtaining personal information via third parties. This does suggest that unless journalists are now using other improper methods to obtain personal information there has been an improvement in standards".*

### **The Chairman's Correspondence**

481. On 23 July 2009, Baroness Buscombe wrote, in similar terms, to the Managing Editor of the Evening Standard, Alan Mullins; the Chief Executive of Trinity Mirror plc, Sly Bailey; the Editor in Chief of Associated Newspapers Limited, Paul Dacre; the Chief Executive Officer of News International, Rebekah Brooks; the Chief Executive of Telegraph Media Group, Murdoch MacLennan; the Managing Director of The Independent, Simon Kelner; and the Editorial Director of Northern & Shell Plc, Paul Ashford.
482. In her letter, Baroness Buscombe noted that the phone message tapping allegations which had appeared in The Guardian about News of the World had reignited interest at Westminster and beyond about the issue of use of subterfuge by journalists. Baroness Buscombe noted that, even though the allegations did not relate to recent incidents, the Parliamentary Select Committee on Culture, Media and Sport was taking the matter extremely seriously and had reopened hearings of its inquiry into privacy, libel and press standards. She explained that the PCC had discussed the issue and was conscious of doubts as to whether or not the PCC had played a sufficiently robust role in preventing snooping by journalists.
483. Baroness Buscombe explained that it was the PCC's intention, therefore, to provide the Select Committee with as much evidence as possible about the safeguards that were already in place across the industry. She referred to the PCC's 2007 Report on subterfuge which she said was designed to minimise the risk of snooping taking place again and which also highlighted the need for compliance with the Data Protection Act. She drew attention to the six key recommendations which had been made by the PCC in the report and invited confirmation as to whether the recommendations or any other steps, had been taken at each of the newspaper groups. She explained that she would like to demonstrate to the Select Committee that there had already been a record of activity in the industry and that further restrictions were not necessary. Responses to this letter were received, as follows:

### **Trinity Mirror Plc**



484. On 6 August 2009<sup>454</sup>, the Chief Executive, Sly Bailey, responded by letter, enclosing a copy of Trinity Mirror's letter to Sir Christopher Meyer dated 5 November 2007<sup>455</sup>. Ms Bailey identified a number of measures which were in place at Trinity Mirror Plc which she said should serve to prevent the sort of abuses that were being alleged at News of the World, as follows:

484.1 the inclusion of compliance with the Code of Practice as an express term in every journalist's contract of employment;

484.2 a clear policy that all staff, including journalists, would comply with the criminal law;

484.3 systems were in place that required journalists, if they anticipate relying on a public interest defence to a breach of the DPA, to seek senior editorial and legal advice before taking any steps towards that breach;

484.4 a clear and auditable process was in place for the authorisation of cash payments to sources/informants;

484.5 training was given to all journalists (which include sessions on the DPA and privacy generally) and a team of experienced in house lawyers worked closely with journalists on all of these issues.

484.6 Ms Bailey referred to a request received in November 2008 from PressBoF that letters should be sent to each of Trinity Mirror Plc's journalists to explain the importance of compliance with the DPA and she enclosed a copy of a sample of such a letter<sup>456</sup> which she noted not only circulated the guidance prepared by PressBoF but also enclosed a copy of the Code of Practice. Ms Bailey explained, further, that at the same time as sending those letters, Trinity Mirror Plc had posted a "news story" on its intranet with a guidance note from their most senior editorial lawyer and a link to a copy of the PressBoF guidance. She explained that the link remained available and that the intranet also had a link to a copy of the Code of Practice and a direct click-through link to the PCC's own website. Ms Bailey concluded that, as a result of these measures, it could be seen that Trinity Mirror Plc took its responsibilities in this area very seriously.

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<sup>454</sup> PCC/V1/1/275-290

<sup>455</sup> PCC/V1/1/277-279

<sup>456</sup> PCC/V1/1/282

### Associated Newspapers

485. On 3 August 2009<sup>457</sup>, the Editor in Chief, Paul Dacre, responded to Baroness Buscombe and began by what he described as putting the matter in context. He explained that, some years previously, some newspapers including, for example, The Observer and The Sunday Times, as well as law firms, banks, financial institutions, credit companies, etc. used enquiry agencies. He expressed a view that most requests to such agencies were for legitimate information and that, at that time, no journalists had been accused of breaches of the Data Protection Act as a result of the Information Commissioner's inquiries. He said that:

*"The Daily Mail's use was in line with other national newspapers in terms of the frequency of publication and the number of news stories carried."*

486. Mr Dacre, who was previously a Commissioner of the PCC (until March 2008) explained that, following the Information Commissioner's concerns about the use of enquiry agencies, as expressed in the report 'What Price Privacy?' which Mr Dacre referred to activities that had occurred four years previously, the industry agreed to tighten up on its understanding of and compliance with the DPA, and that the PCC, therefore, issued a guidance note in July 2006. He explained, further, that the Code of Practice had always included clauses about the DPA (clause 10(i)(ii)) and that these were strengthened by the Code Committee, which he had Chaired, to include such agencies and enquiry agents in August 2007. He explained that the Code Committee had since issued additional guidance in the Editor's Code Book.

487. In his letter, he reassured Baroness Buscombe that Associated Newspapers had been at the forefront of taking action which had reflected (and, he said, in some cases exceeded) the six key recommendations made by the PCC in its Report into Subterfuge and Newsgathering. He reassured Baroness Buscombe, further, that *"since this story from the past has been revived at the DCMS Select Committee recently after some highly exaggerated and imaginative allegations in the heavily subsidised Guardian newspaper, I can assure you that I am not aware of a single instance of anyone at Mail newspapers ever having engaged in the practice of phone message tapping"*. He set out the steps which had been taken at Associated Newspapers, as follows:

487.1 staff had been written to several times reinforcing the importance of abiding by the DPA in all journalistic enquiries;

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<sup>457</sup> PCC/V1/1/291-293

- 487.2 regular freelancers had been written to in similar terms;
- 487.3 compliance with the DPA had been introduced into the contracts of all journalists at Mail newspapers and contravention of the DPA had been made a sackable offence;
- 487.4 an ongoing programme of training seminars by the group's legal team for all journalists on the DPA and its requirements, with particular reference to s.55;
- 487.5 copies of the group's guidance on the DPA had been circulated to all members of the Newspaper Publishers Association via PressBoF;
- 487.6 the entire use of enquiry agents had been banned across Mail newspapers since April 2007; and
- 487.7 copies of the pocket version of the Code of Practice had been ordered for distribution to all staff.
488. Mr Dacre said that he had met with the Information Commissioner in June 2008 to update him on the situation and that the Information Commissioner had expressed satisfaction with the measures which had been taken at Associated Newspapers. Mr Dacre also mentioned meetings which he had had, together with other senior industry figures, with the Minister of Justice. Mr Dacre said that the Minister had been persuaded that they were taking such serious steps to reform the media industry that there was a good case to suspend the proposed imposition of jail sentences for breaches of the DPA and to introduce a new defence for journalists who contravene the Act in reasonable belief that the information being sought was in the public interest. He explained that these adjustments were in the pipeline. Mr Dacre concluded, *"We believe that these steps, the PCC's actions and the tightening of the PCC Code have led to a huge improvement in the industry's standards over the last 2 years. Certainly, at Associated, we treat this matter with extreme seriousness. We hope the Select Committee recognises this and does not dwell too long on the misdemeanours of a very few in the past"*.

### Evening Standard

489. On 31 July 2009<sup>458</sup>, the Managing Editor, Doug Wills, responded to Baroness Buscombe and reminded her that, up until earlier that year, the Evening Standard

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<sup>458</sup> PCC/V1/1/294-295

had been part of Associated Newspapers and, as such, the newspaper had been very closely involved in the group's initiatives to reinforce compliance with the Data Protection Act among all journalists. He explained that all individual journalists on the newspaper had been made fully aware of the *"absolute need to comply with the Data Protection Act and the advice of the Information Commissioner"*. He explained that all journalists had been written to reminding them that there was a total ban on the use of outside companies or individuals who had not provided a written commitment that they operated within the DPA and the Code of Practice. Mr Wills explained that, since the Evening Standard Company had been formed, the previous commitments had been strictly adhered to and that all staff contracts contained clauses requiring journalists to comply with their obligations under the DPA and, in particular, that they would not, during their period of employment, unlawfully obtain or disclose personal data or request any other person or company to do so. He explained that regular advice was given and seminars provided on the importance of adhering to the DPA and the PCC's guidelines.

#### **News International**

490. On 14 September 2009<sup>459</sup>, the Chief Executive Officer, Rebekah Brooks, responded to Baroness Buscombe. She confirmed *"News International's titles have always placed great emphasis on adherence to the PCC Code of Practice in all the work carried out by our editorial staff. Since the Goodman case in 2007, each of our titles has reviewed its procedures and put in place further measures to prevent such practices reoccurring and to ensure that our journalists always adhere to the Code of Practice and work within the law"*. Ms Brooks then dealt with a number of specific areas:

490.1 in relation to contracts with editorial staff and freelance journalists, Ms Brooks explained that specific reference was made to the Code of Practice and the importance for journalists to comply with its terms;

490.2 she explained that the News International Staff Handbook contained a full explanation of the DPA and how it applies to employees. She explained *"any journalist who breaks the law during their employment is in breach of their Contract of Employment and as such liable to be summarily dismissed"*. She explained that, following the Goodman case, letters sent to staff by editors of The Sun and the News of the World highlighted the issue

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<sup>459</sup> PCC/V1/1/296-300

of privacy and the public interest exemptions and explained how the DPA applied to their work;

490.3 she explained the group provided ongoing internal training for journalists which included internal seminars by in-house lawyers highlighting how the law applies to the work of the journalist. She explained that, following the Goodman case, the News of the World had increased its internal training for staff, focusing particularly on justification for the use of subterfuge, with the PCC and legal issues at its core. She explained that attendance by all staff was mandatory;

490.4 in relation to subterfuge, Ms Brooks explained that the news desks on each of the titles had clear procedures in place. She said that all journalists at their titles were aware that there must be a sufficient public interest to justify subterfuge and that any use of subterfuge must first be discussed and agreed with senior editorial staff. She said *"at the News of the World, every member of staff is well versed in the requirements of the PCC Code as they relate to subterfuge. I explained that this aspect of the Code of Practice formed a central part of in-house training and that any News of the World journalists considering using subterfuge must first discuss the matter with their departmental head. Usually there will be a clear public interest of defence (e.g. the exposure of crime such as drug peddling, arms dealing or child molestation). If the case is potentially contentious, it is referred to the in-house lawyers and brought to the attention of senior editorial staff such as the Deputy Editor, Managing Editor or the Editor for their views and guidance. In appropriate cases, senior editorial staff may discuss the case informally with the PCC"*. Ms Brooks explained the various procedures at The Sun, The Times and The Sunday Times;

490.5 in relation to cash payments, Ms Brooks explained that, since the Goodman case, strict protocols had been put in place in relation to cash payments. She said that no cash payments were made without written authorisation from editors or senior editorial staff. She said that *"cash payments are kept to a minimum and are the exception"*. In relation to News of the World, she explained that the protocol for cash payments had been reviewed and amended following the Goodman case and that the protocol, policy and process then in place (to which every member of staff was required to strictly adhere) was as follows:

- 490.5.1 cash payments were to be kept to a minimum and were the exception;
- 490.5.2 requests for cash payments had to be accompanied by compelling and detailed written justification signed off by the relevant department head;
- 490.5.3 information supplied on cash payment request documents had to be accurate and comprehensive;
- 490.5.4 in the exceptional event of a requirement for a cash payment to a confidential source, if the department head/staff member requesting the payment asserted that the identity of the source had to be withheld, he/she was required to demonstrate clear and convincing justification for such confidence and a memo dealing with the reason for making the payment to a confidential source had to be provided to the Managing Editor's office;
- 490.5.5 every cash payment request had to be signed off by the relevant department head;
- 490.5.6 details of the intended recipient's name and address were verified via the electoral register and/or via other checks to establish they were correct and genuine;
- 490.5.7 any journalist requesting a cash payment was required, after following the process detailed, to personally endorse his/her signature on each page of the relevant documentation;
- 490.5.8 every request for a cash payment must be accompanied by the appropriate supporting documentation with a copy of the relevant story attached.

491. She explained that, since introducing this new protocol, cash payments at News of the World had been reduced by up to 89%.

492. In conclusion, Ms Brooks expressed the view that each of News International's titles had introduced or improved measures appropriate to its own methods of working to minimise the risk of any breach to either the PCC Code or the law. She asserted *"there can be no journalist working for News International's title, either on staff or as an external contributor, who is not now aware and regularly reminded of their responsibilities under the PCC Code and the law, and the consequences of ignoring these responsibilities and directions"*.

### Telegraph Media Group

493. On 3 September 2009<sup>460</sup>, the Chief Executive, Murdoch MacLennan, responded to Baroness Buscombe expressing the view *"you are quite right to highlight the importance of data protection issues, which the Telegraph Media Group takes extremely seriously"*. Mr MacLennan said that, following the Information Commissioner's report 'What Price Privacy?', The Telegraph, which had not been mentioned in the report, had played a leading role in putting together an industry wide information campaign to raise the awareness of data protection among journalists. He explained that the group had distributed a copy of the industry information note to every journalist and that it remained on the company's intranet. Seminars had been held to underline the importance of all staff abiding strictly by the terms of the DPA. Furthermore, all journalists were required to abide by the Code of Practice, which he noted covered many of these issues, and he explained that it applied equally to contributors to the newspaper.

494. Finally, Mr MacLennan expressed the following view:

*"It is important that, as an industry, we fight against any further attempts to impose new privacy or data protection restrictions, and I am sure that the Commission's vigilance in this area will be a crucial part of that"*.

### Daily Express

495. On 16 September 2009<sup>461</sup>, the Editorial Director, Paul Ashford, responded by letter as follows:

*"We are entirely in accord with the position of the PCC on this, and committed to managing our newspapers in a manner consistent with the principles of self-regulation."*

*Regarding the specific recommendations in paragraph 10.5 of the PCC report, I shall answer them in order."*

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<sup>460</sup> PCC/V1/1/301

<sup>461</sup> PCC/V1/1/303-304

*On external contracts requiring adherence to the Code of Practice and the Data Protection Act, yes, we have put the report's recommendations into action.*

*In terms of reviewing internal practice and ensuring that a 'subterfuge protocol' exists and is understood, yes, we are complying with this recommendation.*

*Regarding contractual compliance with the Code, this is part of our staff handbook and we are reviewing contracts to ensure it forms part of the contractual relationship between staff and the company.*

*With regard to internal training and briefing, this is taking place in-house but we would also like to suggest occasional sessions being conducted for news journalists at our premises by experts suggested by the PCC, in order to reinforce the process.*

*With regard to cash payments, such rigorous controls already exist at Express Newspapers".*

## **The Independent**

496. On 31 July 2009, the Managing Editor, Imogen Haddon replied to Baroness Buscombe explaining that, in light of the fact that her letter had raised a number of issues, she would first like to discuss the details with her colleagues before responding. No further response is on the file.
497. At the meeting of the Commission on 9 September 2009, the Commissioners considered the issue of phone message tapping and the minutes<sup>462</sup> record:

### ***"Phone Message Tapping***

*The Commission considered PCC Paper no. 4614 and welcomed the tone and tenor of the office's approach to this case. It agreed that there was no evidence that the Commission had been misled, or that the practice was ongoing. The need for thoroughness was emphasised, and it was suggested that the office might seek confirmation from Detective Sergeant Maberly of his position (he had been said to have revealed that the Goodman case showed 6,000 people were involved in the message tapping)".*

498. On 16 September 2009<sup>463</sup>, Colin Myler responded to Tim Toulmin's letter of 3 September and answered the two points as follows:

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<sup>462</sup> PCC/J2/1/644

<sup>463</sup> PCC/V1/1/305



“1. Apart from Clive Goodman, Glenn Mulcaire had contact with several News of the World reporters during the years that he worked with us. You are correct to assume that the various internal inquiries conducted here since the arrests of Goodman and Mulcaire in August 2006 have sought to establish whether others at the paper were aware of Mulcaire’s illegal activities. All of the other reporters who, to our knowledge, had contact and/or dealings with Mulcaire maintain that they had no knowledge of those illegal activities.

2. Clive Goodman pleaded guilty to a single charge of conspiracy (with Mulcaire) to intercept communications, i.e. voicemail messages left for three members of the Royal Household. His Blackadder column appeared in the News of the World from March 2005 until 26 February 2006 and was by no means limited to stories connected to the Royal family. It covered the usual range of subjects that one might find in a newspaper “gossip” column. Between March 2006 and the time of his arrest most but not all of the stories published under Clive Goodman’s name concerned the Royals”.

499. On 24 September 2009, I received an email<sup>464</sup> from Gordon Taylor’s lawyer, Mark Lewis, following a conversation I had had with him asking him to identify the police officer with whom he had spoken and who had told him that 6,000 phones had been hacked. Mr Lewis identified DI Mark Maberly as the officer and advised me that the Metropolitan Police held the material that was taken from News of the World. I replied to Mr Lewis by email on 30 September 2009<sup>465</sup>. I told him that if he was able to submit any further material evidence to the PCC in regard to the involvement of News International employees in phone message tapping, the PCC would welcome receipt of it. I reminded him that the PCC was considering whether it was misled by the newspaper in 2007 about the extensive practice and whether there was any evidence of phone message tapping since 2007. On 7 October 2009, by email<sup>466</sup>, Mr Lewis replied and noted that the difficulty for the PCC was the retention by the Metropolitan Police and Information Commissioner of relevant files. Mr Lewis said that he would be happy to meet with me when he was next in London to see if there was anything more he could do to assist.

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<sup>464</sup> PCC/V1/1/307

<sup>465</sup> PCC/V1/1/307

<sup>466</sup> PCC/V1/1/311

500. On 30 September 2009<sup>467</sup> Tim Toulmin sent an email to DI Mark Maberly at the Metropolitan Police. He wrote:

*"You may be aware that the Press Complainants Commission is one of a number of agencies that has been looking into the allegations made in The Guardian about phone message tapping at the News of the World. During a recent appearance before the House of Commons Select Committee on culture, media and sport, Gordon Taylor's lawyer – Mark Lewis – said he had bumped into you during a court hearing and that you had said that 6,000 people were involved in the practice.*

*We also noted that John Yates and Andy Hayman had both said that only a handful of people were involved. I wonder whether you are in a position to give us any evidence about the extent of the phone message tapping – given that one of the areas that we are looking at is whether the News of the World misled us during a 2007 inquiry during which they said that the activities were confined to Glenn Mulcaire and Clive Goodman".*

501. On 6 October 2009<sup>468</sup>, Tim Toulmin sent a letter to DI Maberly, asking whether he had received his email of 30 September 2009 and invited his response.
502. On 29 October 2009, Tim Toulmin circulated to Commissioners PCC Paper no. 4647<sup>469</sup> entitled 'PCC Report on Phone Message Tapping Allegations'. He enclosed with the paper a draft final report for consideration by the Commissioners. Mr Toulmin also attached, as an appendix, the dossier which had been circulated to the Commissioners prior to the previous meeting (to which I refer at paragraph 497 above). Mr Toulmin expressed the view that the dossier would contain all the information which the Commissioners would need in order to consider the draft report.
503. Mr Toulmin explained that the only significant development which had occurred since the previous meeting of the Commissioners was that, despite three attempts to contact him, the PCC office had been unable to persuade PC Maberly to talk to the PCC. It was PC Mark Maberly who was the policeman named by Gordon Taylor's lawyer as having said that 6,000 phones were hacked. Mr Toulmin, enclosed, with the papers, an email which he sent to Mr Maberly on 30 September 2009<sup>470</sup> and a chasing letter to him dated 6 October 2009<sup>471</sup>, both of which remained unanswered.

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<sup>467</sup> PCC/V1/1/308

<sup>468</sup> PCC/V1/1/310

<sup>469</sup> PCC/V1/1/321-622

<sup>470</sup> PCC/V1/1/308

<sup>471</sup> PCC/V1/1/310

504. Mr Toulmin also enclosed with the paper a copy letter dated 16 September 2009<sup>472</sup> which he had received from Colin Myler in response to his letter to Mr Myler dated 3 September 2009, to which I refer in paragraph 473 above and a letter from The Daily Express dated 16 September 2009<sup>473</sup> to Baroness Buscombe in response to her letter dated 23 July 2009 to which I refer in paragraph 481 above.
505. At the meeting of the Commission on 4 November 2009, the Commissioners considered the issue of phone message tapping and the minutes<sup>474</sup> record:

***“Phone Message Tapping***

*News of the World phone message tapping allegations PCC Paper No. 4647.*

*The proposed PCC report was agreed, with some amendments suggested. The strong view of the Commission was that this was the only possible verdict the PCC could reach (in regard to whether it had been misled and whether the practice was ongoing)”.*

506. On 9 November 2009, the PCC published its ‘Report on Phone Message Tapping Allegations’<sup>475</sup>. The report summarised the steps which had been taken by the PCC and, at clause 13, made the following conclusions:

13.1 *“The Commission’s latest inquiry into this matter has been concerned with whether it was misled by the News of the World during its 2007 investigation, and whether there is any evidence that phone message hacking has taken place since 2007, when it published a list of recommendations to the industry about the use of subterfuge. The Commission has not lost sight of the fact that the genesis of all this activity was the deplorable, illegal and unethical behaviour of two people working for the News of the World in 2006. The Guardian newspaper was performing a perfectly legitimate function in further scrutinising activity at the paper, and it had produced one new significant fact in its revelation that the News of the World had privately settled a legal action brought by Gordon Taylor for a large amount of money. Indeed, such scrutiny by the media -*

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<sup>472</sup> PCC/V1/1/305

<sup>473</sup> PCC/V1/1/306

<sup>474</sup> PCC/J2/1/644-656

<sup>475</sup> PCC/V2/1/623-632

*taken with the activities of the PCC, Select Committee, Information Commissioner and others - will inevitably help prevent abuses by journalists. Neither should it be forgotten, however, that in presenting its story the Guardian too had obligations under the Code requiring it to take care not to publish distorted or misleading information.*

*Was the PCC misled?*

13.2 *The Commission has spoken to and obtained information from a number of people and sources. Set against the Guardian's anonymous sources are a significant number of on the record statements from those who have conducted inquiries, and have first-hand knowledge of events at the newspaper. While people may speculate about the email referencing 'Neville', the Taylor settlement, and the termination payments to Mulcaire and Goodman, the PCC can only deal with the facts that are available rather than make assumptions. The PCC has seen no new evidence to suggest that the practice of phone message tapping was undertaken by others beyond Goodman and Mulcaire, or evidence that News of the World executives knew about Goodman and Mulcaire's activities. It follows that there is nothing to suggest that the PCC was materially misled during its 2007 inquiry.*

13.3 *Indeed, having reviewed the matter, the Commission could not help but conclude that the Guardian's stories did not quite live up to the dramatic billing they were initially given. Perhaps this was because the sources could not be tested; or because Nick Davies was unable to shed further light on the suggestions of a broader conspiracy at the newspaper; or because there was significant evidence to the contrary from the police; or because so much of the information was old and had already appeared in the public domain (or a combination of these factors). Whatever the reason, there did not seem to be anything concrete to support the implication that there had been a hitherto concealed criminal conspiracy at the News of the World to intrude into people's privacy.*

*Is there evidence of ongoing phone message tapping by any journalists?*

13.4 *Even though the allegations against Mulcaire and Goodman had been dealt with by the police and the legal system in 2007, the PCC proactively took the initiative to conduct an inquiry aimed at minimising the risk of repetition*

*and at reassuring the public about the future integrity of undercover journalism. This work extended beyond the issue of phone message hacking, and has been endorsed by the Information Commissioner so far as it relates to the Data Protection Act. The industry willingly collaborated with it. The Commission was gratified to note the conclusion of the Information Commissioner's Office that there seemed to have been an improvement in journalists' compliance with the Data Protection Act.*

13.5 *Despite the manner in which the Guardian's allegations were treated in some quarters - as if they related to current or recent activity - there is no evidence that the practice of phone message tapping is ongoing. The Commission is satisfied that - so far as it is possible to tell - its work aimed at improving the integrity of undercover journalism has played its part in raising standards in this area.*

13.6 *It also further underlines the important role that a non-statutory, flexible body such as the PCC has in adding value to the work of the legal system to help eliminate bad practice, and it would be regrettable if the renewed controversy over the historical transgressions at the News of the World obscured this. While there is no room for complacency in the drive to improve standards and ensure compliance with the Code and the law, the Commission trusts that the value of its work in this area is something that others - notably the Select Committee, which is still examining these matters - will recognise”.*

507. In light of the events that followed, the report was withdrawn by the PCC on 6 July 2011, as I explain in paragraph 557, below.

508. On 9 November 2009, Mr Toulmin received a letter<sup>476</sup> from Emma Harraway of the Metropolitan Police. She wrote:

*“I represent the Commissioner of the Police in the above matter [News of the World Phone Tapping Inquiry] and have been provided with a copy of your email to DI Mark Maberly dated 30 September 2009. I have taken instructions in relation to comments DI Maberly is said to have made to Mark Lewis. DI Maberly has been wrongly quoted as stating that 6,000 people were involved in the unlawful practice. There was discussion about the extent of the telephone voicemail interception identified during the*

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<sup>476</sup> PCC/V2/1/633

*police investigation which led to the conviction of Mr Mulcaire and Mr Goodman, when Assistant Commissioner, John Yates and Detective Chief Superintendent Philip Williams gave evidence to the Culture, Media and Sport Committee on 2 September 2009. May I refer you to the transcript of that session (a copy of which is attached for your ease of reference)".*

509. On 15 November 2009, Baroness Buscombe gave a speech to the Annual Conference of the Society of Editors<sup>477</sup>. She also made a statement in relation to the new evidence in relation to phone message hacking<sup>478</sup>. She said:

*"I would like to use this opportunity to say something on a subject that I know has been of great interest to some in the media and politics.*

*Last week, the PCC published a report following allegations we were misled by the News of the World during an inquiry we conducted in 2007 into how the phone message hacking situation involving Glenn Mulcaire and Clive Goodman could have arisen.*

*Having reviewed all the information available, we concluded that we were not materially misled.*

*While most people seemed to understand our reasons, one or two were less sure. I have chosen not to debate these matters in public, because our report speaks for itself.*

*But new evidence has now come to light.*

*Those of you who are familiar with the case will recall the significance that was attached to the apparent evidence of a then Detective Sergeant from the Metropolitan Police called Mark Maberly. It was he who was alleged to have said that around 6,000 people had had their phone messages hacked or intercepted.*

*This allegation was made in oral evidence to the Select Committee on Culture, Media and Sport, and has also been published in the press. It was repeated just last Monday in some coverage questioning our report.*

*Since the publication of our report last Monday, the PCC has heard from Detective Inspector (as he now is) Maberly through lawyers for the Metropolitan Police.*

*This letter says that Mr Maberly has in fact been wrongly quoted on the 6,000 figure. The reliable evidence, we were told in an e-mail confirming the contents of the letter, is that given by Assistant Commissioner John Yates to the Select Committee, who referred to only a 'handful' of people being potential victims.*

*In light of this, I am doing two things.*

*First, I am of course putting this new evidence to my colleagues on the Press Complaints Commission, because they will want to update our report to take account of this development.*

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<sup>477</sup> PCC/V2/1/634-644

<sup>478</sup> PCC/V2/1/644-645

*Second, I have just spoken to the Chairman of the Select Committee on Culture, Media and Sport, John Whittingdale, to draw this to his attention. Any suggestion that a Parliamentary Inquiry has been misled is of course an extremely serious matter”.*

510. Following this statement, Mark Lewis wrote to Baroness Buscombe and there followed an exchange of correspondence between them<sup>479</sup>. Mr Lewis subsequently issued proceedings against Baroness Buscombe and the PCC, in relation to the statement she had made at the annual meeting of the Society of Editors. The proceedings were compromised by a statement being made in open court in the following terms and by a payment of damages of £20,000 to Mr Lewis:

*“Mr Lewis has brought this action against the Second and Third Defendants, Baroness Buscombe and the Press Complaints Commission, in relation to a statement made by Baroness Buscombe, as chairman of the Commission, to the Society of Editors Annual Conference on 15 November 2009. The statement included the following words [**Baroness Buscombe’s statement was repeated**]:*

*“Following publication of the statement, Mr Lewis expressed concern that Baroness Buscombe’s words would be understood to mean that he had lied to the Parliamentary Select Committee about what he had been told by Detective Inspector Maberly and that the statement was, therefore, defamatory of him. In light of Mr Lewis’ concern, the Press Complaints Commission clarified that the statement did not accuse him of any wrongdoing in a statement made by the Director which was subsequently published in The Guardian. In addition, in its response to the report of the Parliamentary Select Committee, the Commission included the following paragraph:*

*“Finally on this subject, the Commission wishes to take this opportunity to correct the record. Your report says that the Chairman of the PCC issued a statement in November 2009 which may have suggested that Gordon Taylor’s lawyer, Mr Lewis, misled the Committee. This is not the case, as the PCC made publicly clear at the time. Baroness Buscombe has never suggested – and does not believe – that Mr Lewis misled the Select Committee and her statement, which made no reference to Mr Lewis, was not intended as a criticism of him or the evidence which he gave to the Select Committee. Baroness Buscombe regrets that her statement may have been misunderstood and that this has been of concern to Mr Lewis. Baroness Buscombe and the Commission therefore wish to make the position entirely clear”.*

*The paragraph was also appended to Baroness Buscombe’s statement on the Commission’s website.*

*Despite these measures, Mr Lewis has remained concerned that the clarification provided by the Commission has not reached a sufficiently wide audience.*

*The second and third Defendants appear before you today to confirm that the statement was not intended as a criticism of Mr Lewis or the evidence which he gave to the Select Committee.*

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<sup>479</sup> PCC/T1/2/441-452

**Solicitor/ Counsel for the second and third Defendants:** My Lord, on behalf of the second and third Defendants I can confirm all that my friend has said.

*The Commission and Baroness Buscombe regret that the statement may have been misunderstood and that this has caused concern to Mr Lewis. They make this statement in Open Court to ensure that the position is entirely clear”.*

511. On 10 December 2009, Tim Toulmin circulated a paper to the Commissioners (PCC Paper No. 4678) entitled 'Phone Message Hacking Report Update'<sup>480</sup>. He noted that there had been a number of developments since the previous meeting of the Commission concerning the allegations of phone message hacking at News of the World. He explained that the PCC had heard from the Metropolitan Police's lawyers on behalf of Mark Maberly who had advised the PCC that DI Maberly had been wrongly quoted. Mr Toulmin explained that the Chairman had announced this new evidence after her speech to the Society of Editors and that Mark Lewis had objected to what she had said. He provided copies of the correspondence to which he referred. Mr Toulmin concluded:

*“The office sees no grounds to start another investigation into this matter. The truth is that there has been no further evidence that the PCC was misled by News International in 2007 – and Mark Lewis himself concedes that there is no evidence that the practice is ongoing. These were the two matters that we pledged to look into in July this year when the Guardian published its stories. Others (such as Mr Lewis) may wish the PCC to conduct a quasi-legal inquiry to seek further evidence, but we have never undertaken to do this and it would of course be completely outside the Commission's remit. The starting point for this activity was the Guardian's allegation that we were misled and it should be up to them (or their sources if they wish) to show why. It seems they have not done so.*

*The office therefore recommends that the Commission's report on the matter is just updated to include the new facts. There do not appear to be any grounds to revisit the conclusions. Nothing that has been produced suggests that there was phone message hacking beyond the Mulcaire/Goodman operation. Neither does there seem to be much merit in getting into the detail of the disputes between Mark Lewis and News International”.*

He therefore produced a revised draft of the report for the Commissioner's approval.

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<sup>480</sup> PCC/V2/1/646-685



**THE PCC'S INVOLVEMENT IN ISSUES RELATING TO PHONE MESSAGE HACKING IN**

**2010**

512. The revised report was subsequently not published, as further information was received by the Commission. On 6 January 2010, I received a letter<sup>481</sup> from the Managing Editor of News of the World, Bill Akass, following a conversation I had had with him in connection with the letter from News of the World to Tim Toulmin dated 5 August 2009, to which I refer at paragraph 470 above. Mr Akass gave further information about the individual responsible for transcribing the recordings of the voice messages in the "For Neville" email.

513. In January 2010, I produced a paper (PCC Paper No. 4690)<sup>482</sup> in which I reminded the Commissioners that, at the December meeting, agreement had been reached to amend the Commission's November 2009 report into the claims about phone message hacking at News of the World following the additional material supplied by the Metropolitan Police and by Gordon Taylor's lawyer, Mark Lewis. I noted that the Commission was due to publish, online, the amended text at the end of December but advised that there had been a number of developments:

513.1 the Select Committee had indicated an intention to call the CEO of News International, Rebekah Brooks, but had subsequently changed its mind and had entered into correspondence with News International, some of which had been published;

513.2 Private Eye had published an article, calling into question evidence which had been given to the PCC in 2009 by Colin Myler, the then Editor of News of the World;

513.3 the Managing Editor of News of the World had written to the PCC on 6 January 2010<sup>483</sup> seeking to clarify the evidence which News International had previously provided to the PCC.

I recommended that the Commission should take note of this additional material before any updated report was published.

Finally, I enclosed a further draft of the report with suggested revisions<sup>484</sup>. No revisions to the published report were, in the event, made.

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<sup>481</sup> PCC/N2/2/707-719

<sup>482</sup> PCC/N2/2/695-735

<sup>483</sup> PCC/N2/2/707-719

514. On 17 June 2010, I met with Tom Crone and Bill Akass of News International. They informed me<sup>485</sup> that a claim had been made that a News of the World journalist had made a failed attempt to access the voicemail of an individual in June 2009. They explained that the matter was currently the subject of an internal disciplinary action involving the journalist and that legal action involving the individual was likely. They expressed the view that the evidence, at that time, did not establish that an attempt to access the message had occurred. They explained, further, that they were still investigating and would be responding to the legal claim. They undertook to inform the PCC of the outcome of their investigation and the legal action and I explained that the Commission would, at that point, then examine the matter.
515. On 3 September 2010, I received a letter<sup>486</sup> from the Editor of The Guardian, Alan Rusbridger. He referred to a recent report in the New York Times, and the PCC's report on phone hacking (to which I refer at paragraph 506 above) and the central finding at paragraph 3.2 that *"the PCC has seen no new evidence to suggest that the practice of phone message tapping was undertaken by others beyond Goodman and Mulcaire or evidence that News of the World executives knew about Goodman and Mulcaire's activities"*. He noted that the report had been based largely on the word of current News International executives. He expressed the view that the findings, even at the time, were untenable and that the new evidence that emerged during the civil case brought by Gordon Taylor showed that other News of the World employees had knowledge of phone hacking including the chief reporter, Neville Thurlbeck and Ross Hindley, a reporter who Mr Rusbridger said had transcribed hacked voice messages in an email for Thurlbeck (the *"For Neville Email"*). He suggested that another News of the World executive may have been involved if had it not been Thurlbeck who asked Hindley to transcribe the tape and, additionally, expressed the view that it was highly likely that the same was true of Greg Miskiw, a Senior Executive at News of the World. Mr Rusbridger also referred to a report which had been published in the New York Times on 1 September 2010<sup>487</sup> and noted that the journalists who had written the report had arrived at a very different conclusion to the one contained in the PCC's report. Mr Rusbridger quoted the report at some length. Mr Rusbridger concluded *"the PCC cannot allow its verdict of*

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<sup>484</sup> PCC/N2/I/720-735

<sup>485</sup> PCC/N2/I/736

<sup>486</sup> PCC/N2/I/737-740

<sup>487</sup> PCC/N2/I/767-779

September 2009 to stand in the face of overwhelming evidence that you were, indeed, misled”.

516. In September 2010, I prepared a paper for the Commissioners entitled ‘New Allegations on Phone Message Hacking at the News of the World’<sup>488</sup> which I circulated on 6 September 2010. In the paper, I referred to the article which had been published in The New York Times and the subsequent news coverage in The Guardian, Financial Times, The Independent and the BBC<sup>489</sup>. I also referred to, and enclosed, the letter which I had received from Mr Rusbridger. In the paper, I sought to summarise the previous work of the PCC, the new evidence that had appeared and the possible next steps. I wrote:

*“At the heart of this is really a broader question (and one which has been raised in the Governance Review, and will be eventually dealt with in our response to it) about the role of the PCC. The function of the PCC is, primarily, to receive complaints under the terms of the Code of Practice. We have the constitutional ability to initiate our own investigations (relating to alleged breaches), but a clear limit to the powers with which we can do so (dealing only with serving editors; no powers of sub-poena; restricted resources). Because we are not clear about our function, we can be accused of failing to fulfil it. This seems to be a feature of this entire episode.*

#### **2007 PCC Report**

**([http://www.pcc.org.uk/assets/218/PCC\\_subterfuge\\_reprot.pdf](http://www.pcc.org.uk/assets/218/PCC_subterfuge_reprot.pdf))**

*In January 2007, News of the World journalist Clive Goodman and inquiry agent Glenn Mulcaire were convicted for offences under the Regulation of Investigatory Powers Act 2000 (RIPA) and Criminal Law Act (1977). They had speculatively tapped into private mobile phone messages and used the information they discovered for stories in the News of the World. Following their sentencing, Andy Coulson resigned as editor, saying that he had “decided that the time has come for me to take ultimate responsibility for the events around the Clive Goodman case”.*

*The Commission had received no complaints about this matter, but elected to write to the new editor of the News of the World for “detailed information on what had gone wrong and to find out what steps would be taken to ensure that the situation did not recur”, and to examine more broadly across the industry to determine the extent of internal controls in other newsrooms.*

*The News of the World gave details about how its practices had changed in light of Goodman / Mulcaire, which it said was “an exceptional and unhappy event in the 163 year history of the News of the World, involving one journalist”. It argued that Mulcaire and Goodman had an aberrational relationship (where the latter was complicit in the illegal activity of the former) and that “the fact that the arrangement involved illegally accessing*

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<sup>488</sup> PCC/N2/2/744-794

<sup>489</sup> PCC/N2/2/781-794

telephone voice mails was completely unknown and, indeed, deliberately concealed from all at the News of the World".

The PCC issued 6 recommendations for the industry to help ensure compliance with the Code and law on the issue of undercover news gathering.

The PCC report was broadly welcomed as a sensible and proportionate response to the issues raised by the court case, with a recognition of its intent to help shape - and improve - further practice.

The report did not follow a detailed investigation into what went on at the News of the World (indeed its title shows its general ambit: "PCC report on subterfuge and newsgathering"; and our press release its focus: <http://www.pcc.org.uk/news/index.html?article=NDUzNA>), and offered little consideration of the substantive evidence on the conduct of journalists in regard to phone message hacking. This was deliberate and sensible: the Commission saw its role as prospective, rather than seeking to re-consider what the police had found.

### **July 2009 Allegations**

In July, the Guardian published new information about the issue of phone message hacking. This - in essence - was that News International "had paid out more than £1m to settle legal cases that threatened to reveal evidence of his journalists' repeated involvement in the use of criminal methods to get stories".

The central case was that of Gordon Taylor, the Chief Executive of the FA.

He had obtained disclosure of information from Scotland Yard, which appeared to link the illegal practices of Glenn Mulcaire to the News of the World. As a result, the paper paid out a large sum to settle the action.

The article contained quotes from unnamed police sources about the scale of the alleged message hacking at the paper: "one senior source at the Met told the Guardian that during the Goodman inquiry, officers had found evidence of News Group staff using private investigators who hacked into 'thousands' of mobile phones. Another source with direct knowledge of the police findings put the figure at 'two or three thousand' mobiles". The newspaper has also referred to the fact that the judge at the Mulcaire trial referred to him working with "others at News International".

The Guardian produced the following documentary evidence (obtained from the Taylor case):

- an email from Glenn Mulcaire marked "for Neville". This email was at the head of the transcript of 35 answer phone messages relating to Gordon Taylor. It has been speculated (and is likely) that this email was intended for Neville Thurlbeck, the Chief Reporter of the News of the World. There is no evidence he received it, and police did not seek to interview him about the claim.
- the fact that the transcription was made by Ross Hindley, a junior figure at the paper. He was not interviewed by police, and was absent in July on a round-the-world trip. There is speculation, but no proof, that he knew he was transcribing illicitly-obtained messages. There is the assertion that either Thurlbeck or a News of the World executive asked Hindley to transcribe it.

- a contract for Mulcaire drawn up by executive Greg Miskiw, offering money for a story about Gordon Taylor. There is no reference to phone message hacking, and the story was not published.

The News of the World was subsequently criticised for not alerting the PCC to the existence of this evidence, which may have contradicted its 2007 claim that no executive at the paper was aware of illegal activity.

#### **2009 PCC Report**

(<http://www.pcc.org.uk/news/index.html?article=NjAyOA>)

The Commission responded to these new claims by undertaking to examine two discrete issues: whether it had been misled during its 2007 inquiry; and whether there was any evidence that its recommendations to the industry to help prevent a repetition of the illegal Mulcaire/Goodman situation had failed.

Looking back to the 2007 report, it was stated that it had not been the PCC's "intention - nor was it within its remit - to try to duplicate the police investigation by trying to establish whether there had been other transgressions". Our 2009 report did not seek to depart from this.

The PCC's report set out clearly the evidential basis for its conclusions: further correspondence with Colin Myler, editor of the News of the World; correspondence with Alan Rusbridger and Nick Davies; correspondence with the Information Commissioner; and evidence submitted to the ongoing DCMS Select Committee inquiry.

The Commission did not contact Andy Coulson or other former or serving News of the World journalist. It did not contact the Metropolitan Police, and so seek to obtain direct information from its inquiries.

The editor of the News of the World denied - and argued that there was no proof to show - that the number of alleged victims of the phone hacking ran to the thousands. He offered the suggestion that there were a "handful". He did not believe that the Guardian's documentary evidence established that Neville Thurlbeck or any other executive knew about the illegal activity of Glenn Mulcaire. It was accepted, as the judge said, that Mulcaire worked with others at the paper, but not that they were aware of his illegal activity.

The PCC concluded that it had seen "no new evidence to suggest that the practice of phone message tapping was undertaken by others beyond Goodman and Mulcaire, or evidence that News of the World executives knew about Goodman and Mulcaire's activities. It follows that there is nothing to suggest that the PCC was materially misled during its 2007 inquiry". It also questioned the quality of the Guardian's coverage of the matter, and stated "there did not seem to be anything concrete to support the implication that there had been a hitherto concealed criminal conspiracy at the News of the World to intrude into people's privacy".

We also concluded that there was, at the time, no evidence that the practice was ongoing.

This 2009 report was generally critically received, especially (as one might expect) by the Guardian itself. The editor has since referred to it as "feeble and wrong" and resigned from the Editors' Code Committee. The Guardian's position is that evidence was produced to suggest that involvement in the practice went further than Goodman / Mulcaire, but the PCC gave no weight to it, preferring to rely on the "official" version of the News of the World.

### **February 2010 Select Committee Report**

The 2009 report was also considered by the Select Committee in its inquiry into press standards that finally reported in February 2010. The Select Committee dubbed the report "simplistic and surprising", asserting that the PCC "has certainly not fully, or forensically, considered all the evidence to this inquiry". It came to its own conclusions as to the extent of phone message hacking, which - while falling short of saying there was categorical evidence - indicated a view that it was widespread. It said:

- *"it is likely that the number of victims of illegal phone-hacking by Glenn Mulcaire will never be known. Nevertheless, there is no doubt that there were a significant number of people whose voice messages were intercepted, most of whom would appear to have been of little interest to the Royal correspondent of the News of the World. This adds weight to suspicions that it was not just Clive Goodman who knew about these activities".*
- *"Evidence we have seen makes it inconceivable that no-one else at the News of the World, bar Clive Goodman, knew about the phone-hacking. It is unlikely, for instance, that Ross Hindley (later Hall) did not know the source of the material he was transcribing and was not acting on instruction from superiors. We cannot believe that the newspaper's newsroom was so out of control for this to be the case".*
- *"we are concerned at the readiness of all of those involved: News International, the police and the PCC to leave Mr Goodman as the sole scapegoat without carrying out a full investigation at the time. The newspaper's enquiries were far from 'full' or 'rigorous', as we - and the PCC - had been assured. Throughout our inquiry, too, we have been struck by the collective amnesia afflicting witnesses from the News of the World".*
- *"The Guardian articles did contain new information, in particular, concerning the payments to Gordon Taylor and others and the 'for Neville' email. This inquiry has subsequently revealed more facts, including the pay-offs made to Clive Goodman and Glenn Mulcaire and that they tapped the phones of the princes themselves. They also highlighted the fact that a culture undoubtedly did exist in the newsroom of News of the World and other newspapers at the time which at best turned a blind eye to illegal activities such as phone hacking and blagging and at worst actively condoned it. We condemn this without reservation and believe that it has done substantial damage to the newspaper industry as a whole"*

### **September 2010 New York Times article**

On 5<sup>th</sup> September, the New York Times published an article headlined "Tabloid hack on royals and beyond". It followed a five-month investigation by three Journalists into the full circumstances surrounding the phone message hacking scandal. One journalist spoke with the Director of the PCC, and a Commissioner, but no reference to the PCC was made in the article.

Subsequent to this article, other claims have appeared in the British press. The new allegations are summarised below:

### **Collusion between Met and NOTW**

- *One senior investigator on the case was approached by a Scotland Yard press officer who was "waving his arms in the air, saying: 'Wait a*

minute, let's talk about this," and who went on to stress the value of the Met's long-term relationship with News International, which owns the News of the World. "The investigator recalled becoming furious at the suggestion, responding: 'There's illegality here, and we'll pursue it like we do any other case.'" (NY Times)

- When they raided the offices of the News of the World, police limited their search warrant to the desk of Goodman. A journalist who was in the building at the time has given the Guardian the names of two senior staff members who that day removed black bin bags full of paperwork from their office desks. (Nick Davies, Guardian)
- When they wanted internal paperwork from the News of the World, police chose not to go to court to obtain a production order to require its disclosure, but instead simply wrote to the paper asking for a list of documents, all of which it refused to supply. (Davies)
- The paperwork seized from Mulcaire included an email that had been sent from the News of the World's office to the paper's chief reporter, Neville Thurlbeck, containing the transcript of 35 voicemail messages that had been left for the chief executive of the Professional Footballers' Association, Gordon Taylor, and his legal adviser, Jo Armstrong. Police did not pass the email to the Crown Prosecution Service, even though Taylor was one of only five non-royal victims who were to be named in court. (Davies)
- Although it is clear that police looked at the material they had seized from Goodman and Mulcaire, they have now conceded that they did not fully analyse it until two years later, after Guardian stories revived interest in the affair. It was only then, for example, that they found the 91 secret PINs. They chose not to warn the vast majority of those whose names and details had been collected by Goodman and Mulcaire, despite a formal agreement with the DPP that they would warn "all potential victims". (Davies)
- The former assistant commissioner who had headed the original inquiry, Andy Hayman, by now had left Scotland Yard and gone to work for the organisation that he had been investigating, News International. (Davies)
- In February, as the Met prepared for publication of the media select committee's report, which criticised its failure to investigate all leads, Yates's staff officer, Dean Haydon, wrote a briefing note for ministers in which he acknowledged that the material seized in police raids had not been properly examined: "Minimal work was done on the vast personal data where no criminal offences were apparent." (Davies)

#### **How many involved at NoTW and the industry**

- Scotland Yard's narrow focus has allowed News of the World and its parent company, News International, to continue to assert that the hacking was limited to one reporter. (NY Times)
- But interviews with more than a dozen former reporters and editors at News of the World present a different picture of the newsroom. They described a frantic, sometimes degrading atmosphere in which some reporters openly pursued hacking or other improper tactics to satisfy demanding editors. Andy Coulson, the top editor at the time, had imposed a hypercompetitive ethos, even by tabloid standards. One former reporter called it a "do whatever it takes" mentality. The

reporter was one of two people who said Coulson was present during discussions about phone hacking. (NY Times)

- Former reporters said both the news and features desks employed their own investigators to uncover medical records, unlisted addresses, phone bills and so on. (NY Times)
- Around the newsroom, some reporters were getting stories by surreptitiously accessing phone messages, according to former editors and reporters. (NY Times)
- A dozen former reporters said in interviews that hacking was pervasive at News of the World. "Everyone knew," one longtime reporter said. "The office cat knew." (NY Times)
- "One former editor said Coulson talked freely with colleagues about the dark arts, including hacking. "I've been to dozens if not hundreds of meetings with Andy" when the subject came up, said the former editor, who spoke on condition of anonymity. The editor added that when Coulson would ask where a story came from, editors would reply, "We've pulled the phone records" or "I've listened to the phone messages." (NY Times)
- "[police] investigators never questioned any other reporters or editors at News of the World about the hacking, interviews and records show." (NY Times)
- "The judge [in the Goodman/Muclaire case] concluded ... that Mulcaire had not just worked with Goodman, who wrote exclusively about the royal family, but also with "others at News International." (NY Times)
- Scotland Yard even had a recording of Mulcaire walking one journalist - who may have worked at yet another tabloid - step by step through the hacking of a soccer official's voice mail, according to a copy of the tape. (NY Times). This is the "Ryal" conversation (see point 29).
- News of the World was hardly alone in accessing messages to obtain salacious gossip. "It was an industry-wide thing," said Sharon Marshall, who witnessed hacking while working at News of the World and other tabloids. "Talk to any tabloid journalist in the United Kingdom, and they can tell you each phone company's four-digit codes. Every hack on every newspaper knew this was done." (NY Times)

#### **How many victims?**

- The detectives had analysed a mass of telephone data and, in a briefing paper dated 30 May 2006, they presented the results to prosecutors. They wrote: "A vast number of unique voicemail numbers belonging to high-profile individuals (politicians, celebrities) have been identified as being accessed without authority. These may be the subject of a wider investigation in due course. A number of the targets of this unauthorised access have been informed." (Nick Davies Guardian 6<sup>th</sup> September - Guardian has access to a CPS file on this issue)
- That day, there was a case conference between prosecutors and police, and a file note records an interesting suggestion: "The appropriate strategy is to ringfence the case to minimise the risk of extraneous matters being included". The file makes it clear that this was a reference to suppressing the names of particularly 'sensitive'



hacking victims, and that it was the police who were suggesting this unusual tactic.

- On 14 July 2006, the file again records the police pushing prosecutors to suppress the results of their analysis of mobile phone records: "The police have requested initial advice about the data produced and whether the case as it stands could be ringfenced to ensure that extraneous matters will not be dragged into the prosecution arena".
- By August, prosecutors had agreed not only to suppress the names of 'sensitive' victims but also to focus the court case on a limited sample of victims, including two members of the royal staff, Jamie Lee Pinkerton and Helen Asprey, who were later identified in court with one other colleague, Paddy Harverson. A file note dated 8 August 2006 says: "It was recognised early in this case that the investigation was likely to reveal a vast array of offending behaviour. However, the CPS and the police concluded that aspects of the investigation could be focused on a discrete area of offending relating to JLP and HA". The director of public prosecutions has since said this was done to make the case manageable. (Davies)
- On that same day, police arrested Goodman and Mulcaire. They seized a mass of paperwork, computer records and other material from the homes and offices of both men. The Guardian eventually established that this included the mobile phone numbers of 2,978 people as well as 30 audiotapes of voicemail messages and 91 secret PINs for accessing voicemail for the minority of people who change their factory-set PIN. (Davies)
- Yates conceded, Scotland Yard had not yet fully analysed the mass of material seized from Goodman and Mulcaire. Following his statement, Yates ordered officers to do so, and after several months of work they produced a spreadsheet listing more than 4,000 names or partial names, together with a summary of the material held on each one. (Davies)
- Met police briefing note, dated 18 February 2010, went on to repeat a new claim that Scotland Yard had started to use in press briefings. Attempting to explain the discrepancy between its claims about "a handful of victims" and the emerging evidence of "a vast number" of victims, it had started to claim that the Regulation of Investigatory Powers Act 2000 regarded someone as a victim only if it could be proved that he or she had not listened to their messages before they were hacked. Specialist lawyers say that this is a contentious interpretation, and that, in any event, the Computer Misuse Act 1990 states that it is an offence to intercept voicemail without authority, regardless of whether the intended recipient has listened to the message. (Davies)
- The truth remains unclear. Senior officers concede privately that they have evidence of "gross" and "systemic" interception of voicemail. They concede, too, that more could have been done to investigate at the time. However, they say their failure to follow all leads was simply caused by a shortage of resources at a time when their detectives were stretched to breaking point dealing with terrorism plots. (Davies)
- "Other detectives descended on Muleaire's modest home in Cheam, a south western suburb of London. Inside, the police found what one investigator called "a massive amount of evidence" - dozens of notebooks and two computers containing 2,978 complete or partial

mobile phone numbers and 91 PIN codes; at least three names of other News of the World journalists; and 30 tape recordings made by Mulcaire. (NY Times)

- As of this summer, five people have filed lawsuits accusing News Group Newspapers, a division of Rupert Murdoch's publishing empire that includes News of the World, of breaking into their voice mail. Additional cases are being prepared, including one seeking a judicial review of Scotland Yard's handling of the investigation. The litigation is beginning to expose just how far the hacking went, something that Scotland Yard did not do. In fact, an examination based on police records, court documents and interviews with investigators and reporters shows that Britain's revered police agency failed to pursue leads suggesting that one of the country's most powerful newspapers was routinely listening in on its citizens. (NY Times)
- "Getting a letter from Scotland Yard that your phone has been hacked is rather like getting a Willy Wonka golden ticket," declared Mark Lewis, a lawyer who won the first settlement. "Time to queue up at Murdoch Towers to get paid." (NY Times)
- Matt Driscoll, a former sports reporter, recalled chasing a story about the soccer star Rio Ferdinand. Ferdinand claimed he had inadvertently turned off his phone and missed a message alerting him to a drug test. Driscoll had hit a dead end, he said, when an editor showed up at his desk with the player's private phone records. They showed Ferdinand had made numerous calls during the time his phone was supposedly off.

#### **Targets**

- We still do not know which victims were to be concealed. (Davies)
- We do now know that Prince William and Prince Harry had their voicemail intercepted, and that this was never mentioned when the case came to court. (Davies)
- We now know that members of the military, the government and the police also were victims. None of those was mentioned in court. Scotland Yard has refused to name them, or even to say how many there were in each category.
- None of the military victims has been identified. Among government victims, we now know that Tessa Jowell, the minister then responsible for news media, had her voicemail intercepted; and, unofficially, it is said that David Blunkett, at the time the home secretary and directly responsible for the police, also had his messages compromised, although this has not been confirmed. Other ministers, including the then deputy prime minister, John Prescott and the former business secretary, Peter Mandelson, show up in Muleaire's paperwork without any clear evidence on whether their messages were hacked. (Davies)
- Among the police targets whose names were suppressed, we now know that the then commissioner of the Metropolitan police, Sir Ian Blair, and two other former senior officers, Brian Paddick and Mike Fuller, showed up as targets of the News of the World's private investigator, although it is not known whether their voicemail was accessed. And last week, one police source suggested that senior detectives who were involved in the hacking inquiry may have

discovered that they themselves had been targeted. That has not been confirmed.

### **Sean Hoare**

- *"Sean Hoare, a former reporter and one time close friend of Coulson's, also recalled discussing hacking. The two men first worked together at The Sun, where, Hoare said, he played tape recordings of hacked messages for Coulson. At News of the World, Hoare said he continued to inform Coulson of his pursuits. Coulson "actively encouraged me to do it," Hoare said. (NY Times)*
- *In an interview with the PM programme Sean Hoare said Mr Coulson's insistence that he didn't know about the practice was "a lie, it is simply a lie."*
- *Hoare said: "The culture Andy created was basically, do whatever you want, which is a metaphor to say if you get caught, that is your responsibility. But if you deliver a result, that is good news. Just get the story whatever it takes".*
- *"There is an expression called the culture of dark arts. You were given a remit: just get the story. Get the product, put it in the paper and then let the paper sell. Phone tapping hadn't just existed on the News of the World. It was endemic within the whole industry".*
- *"I have gone on the record in the New York Times and said I have stood by Andy and been requested to tap phones, OK, or hack into them and so on. He was well aware the practice exists. To deny it is simply a lie."*
- *"I cannot speak for other journalists. But I can speak for myself. But it was always done in the language of, why don't you practice some of your dark arts on this, which is a metaphor for saying, go and hack into the phone."*
- *"Such was the culture of intimidation and bullying that you would do it because you had to produce a result. To stand up in front of a Commons committee and say I was unaware of this under my watch was wrong."*
- *Asked whether Coulson had "explicitly" asked him to hack into phones at the News of the World, Hoare said: "Yes ... The main purpose of it was that you would get verification on the story so you could go to a PR and say: 'Look, we know this.' And they would be: 'How do you know this?' 'Well we just know it.' So you could meet them half way and then you could negotiate some form of a story. It may not be as hard-hitting as you wanted, but you could call their bluff."*

### **Latest case**

- *But in recent months, News of the World executives were notified of another suspicious episode. A phone company had alerted a television personality that someone called her mobile phone in a possible unauthorized attempt to access her voice mail, according to two people with knowledge of the incident. A court order ensued, compelling the phone company to divulge the source of the call. The number was traced to a reporter at News of the World. The paper said the journalist "has been suspended from reporting duties" while it conducts an investigation. (NY Times)*

- *The New York Times has also run the audio file of a conversation between Glenn Mulcaire and an unidentified journalist called "Ryal". In it, Mulcaire gives instructions about how to access Gordon Taylor's phone messages. It has not been established who "Ryal" is, and there is no suggestion that he worked for the News of the World. The Commission was aware of the existence of this conversation (due to correspondence with Mark Lewis in November 2009), but did not consider that they could reasonably act on it (as the PCC was not engaged in investigating all claims of illegal activity).*

#### **September 2010 Rusbridger letter**

*Alan Rusbridger has repeated his position that the 2009 report was "untenable". He has argued that "the PCC cannot allow its verdict of September 2009 (sic) to stand in the face of overwhelming evidence that you were, indeed, misled". His editorial on Saturday 4<sup>th</sup> September stated: "the NYT article - based on first-hand research - convincingly demonstrates that the September 2009 Press Complaints Commission report into phone hacking was both feeble and wrong. The PCC must find a way of clarifying and correcting the record if it is to command respect."*

*He has publicised the existence of his letter to the PCC and requested a response.*

#### **How should the PCC respond generally to the latest allegations?**

*Care will need to be taken about how the Commission formally responds on this matter. There seem to be three areas for consideration: the validity of the 2009 report, set against recent developments; the wide-ranging assertions about historical malfeasance at the News of the World, especially under the editorship of Andy Coulson; the most recent allegation of phone message hacking by a News of the World journalist. The latter is the most straightforward and can be taken first.*

#### **The new claim about Dan Evans**

*In June 2010, the News of the World confidentially approached the Director of the PCC to inform him of the existence of an ongoing legal action from a celebrity against one of the journalists at the paper.*

*The allegation appears to be that, in June 2009, telephone records show that there was a single failed voicemail access on the individual's telephone. This was traced to a News of the World journalist, using his company telephone. In the spring of 2010, the celebrity initiated legal proceedings against the newspaper for invasion of privacy. The newspaper's position, at this stage, is that the journalist did not seek to enter the pin number for the voicemail, and that that the claim is unfounded.*

*The Director of the PCC informed the Chairman, and together they spoke to the editor of the newspaper. It was agreed that, while the legal action was ongoing (and the internal employment matter following the suspension of the reporter), the newspaper would not be able to provide the Commission with any evidence or formal submission, and would not be able to cooperate with any inquiries. The Commission had not received a complaint on the matter, which would set in motion its standard procedures. However, it was clearly right for the newspaper to have notified the Chairman at an initial stage.*

*When the New York Times story appeared, the PCC released the following statement:*

*"The PCC was informed by the News of the World in June of the existence of the recent allegation of phone message hacking against the reporter. This is currently the subject of legal action, which has prevented the PCC from becoming formally involved at this stage.*

*However, once the legal action has been concluded, the Commission will consider the matter further. It was right that the News of the World disclosed the existence of this claim to the PCC, and we will address the issues when it is possible for us to do so.*

*The PCC has made publicly clear on a number of occasions that phone message hacking is deplorable and that view - of course - remains".*

*The Commission, at the cessation of the legal action, will be able to assess how it wishes to take the case forward. At that stage, we may wish to approach the celebrity's lawyers for their consent for us to examine the matter. We can make public what we discover, and treat this as - in effect - a formal complaint. This should enable us to be active in an area which is clearly defined.*

#### ***The validity of the 2009 report; reopening the "inquiry"***

*The Commission must consider whether the fresh material means that the 2009 report should be revisited (as suggested by Rusbridger). In 2009, the Commission was seeking to take a view on the material that it had seen, in relation specifically to the issue of whether it had been misled in 2007. It is, of course, wrong (and mischievous) to suggest that we instigated an "inquiry" into the practice itself (we will return to this issue below) and somehow exonerated the News of the World. That perception persists, however, as does the argument that we should have instigated such an inquiry (even if we didn't).*

*The 2009's report's conclusions were (deliberately) narrowly drawn: there was no evidence that "the practice of phone message tapping was undertaken by others beyond Goodman and Mulcaire, or evidence that News of the World executives knew about Goodman and Muleaire's activities". The report also said: "there did not seem to be anything concrete to support the implication that there had been a hitherto concealed criminal conspiracy at the News of the World to intrude into people's privacy".*

*This has always been disputed by the Guardian: the documentary evidence pointed to Neville Thurlbeck and Ross Hindley as being involved in material connected with phone message hacking; the police files suggest that the potential victims were so widespread as to point to something systemic at the paper. The New York Times piece asserts the knowledge of Andy Coulson of phone message hacking.*

*It is certainly possible to mount a strong defence of the report, based on its own terms: no-one could show definitively at the time journalists "undertaking" phone message hacking, or demonstrate that there was knowledge of "executives" at the paper. However, the PR effect of such a defence is questionable, and the danger of creating hostages to fortune considerable.*

*It is clear that the new material does not constitute a "smoking gun", showing criminal conspiracy at the paper, the involvement of further named journalists or the knowledge of executives. However, that does not mean it can be readily dismissed either, and it has been regarded as significant and damning in regard to the News of the World. One problem for the Commission is that the 2009 report is not a systematic investigation into possible evidence of phone message hacking, but does express a*

*qualitative view of the merits of certain specific pieces of evidence. The criticism of the Guardian is easily recast as the defence of the News of the World.*

*If we were to "reopen" the 2009 report, we would be left with the same problems as before, with still no obvious solution. The PCC ultimately does not have the power to determine - to a level of reasonable proof - the extent to which journalists were engaged in the practice or executives were aware of it. We may consider that the 2009 report was not sufficiently reflective of this fact.*

*The office does not recommend that the Commission should publicly say anything that is perceived as reopening the 2009 inquiry, as it is not clear what we might achieve. The DCMS Select Committee has today confirmed that it will not - at this point - be reopening its own inquiry.*

*However, the latest information perhaps suggests that we should examine internally how we came to the conclusions we did, and the extent to which we were clear enough about our remit and role from the beginning. This is still potentially perilous: would we commit to issuing a statement on the subject? We might actually consider this as part of our ongoing response to the Governance Review, which recommends that the Commission give consideration specifically to the clarity of its role in difficult areas such as this.*

#### *The widespread allegations of historical malfeasance*

*The new material falls into two areas: claims that the original police investigation threw up many more victims and potential victims than was previously revealed (and was wrongly circumscribed and so did not investigate all of the details); on-the-record assertions from two former News of the World journalists about what went on in the newsroom under Andy Coulson.*

*In particular, there is the now specific testimony of Sean Hoare, who has alleged that Andy Coulson was present when phone message hacking was discussed and actively asked him to undertake the practice.*

*The first question that must be asked is what is the function of the PCC here?*

*There are various points to bear in mind:*

- the central role of the PCC is considering complaints about recent allegations of breaches of the Code. There have been no complaints, and the allegations relate to before 2006.*
- the PCC has the ability to initiate investigations into any relevant Code issue, without a complaint. Should the PCC demonstrate further its curiosity in apparent Code breaches, by seeking to determine the extent of what happened?*
- the PCC is hampered in terms of its current powers. We can compel no individuals to provide evidence, or even respond to written questions. We are not in a position where we can readily and defensibly question the validity of conflicting witness accounts.*
- will the public lose confidence in the PCC if we are silent on this issue?*

*It is notable (and has been noted) that the Commission (for proper reasons) has not been in touch with the Metropolitan Police to ask for its evidence in this area. It is not clear that such evidence would be made available, but Commissioners may consider whether we should be seeking to unearth it.*

*The allegations from Sean Hoare are now to be examined by the police, and Andy Coulson has volunteered to speak to police investigators. So that matter is effectively sub judice for now.*

*It is not clear how the PCC can offer a public response at this time that will be of benefit. Our current strategy has been not to speak publicly or accept interview requests, because it is not clear what we can reasonably add to the story. There is no doubt that the breadth of the allegations is damaging to the PCC, in that it will suggest to people that a system that allows such behaviour to take place is no fit system at all.*

*However, we will need to respond to the letter from Alan Rusbridger, and we may perhaps use that as a means of setting out a position. A letter to him might also help us re-shape the relationship with his paper on this issue.*

*Clearly these are difficult issues for the PCC, and we may not be able to agree an answer to all of them immediately. A very provisional letter to Rusbridger is enclosed, which may provide a starting point for discussion."*

517. On 17 September 2010, I sent a response (on behalf of the Commission) to Mr Rusbridger. A copy of the letter was published on the PCC website. In it, I said:

*The Commission has been examining the material that has been published, and the comments that have been made, since the publication of the New York Times piece on 1<sup>st</sup> September. Your newspaper has, of course, taken a lead in covering the whole issue of phone message hacking.*

*The PCC is very concerned about the latest allegations (relating to allegedly criminal behaviour involving the News of the World prior to the convictions of Goodman and Mulcaire), which require investigation by the appropriate law enforcement agencies. The police have indicated that they are re-examining the matter, and it is right that they do so. It is not for the PCC to examine claims that are the subject of active police inquiry, or to comment publicly on them. There are also two committees in Parliament looking at the issue, alongside other live legal actions.*

*At this stage, we will be monitoring the outcome of the police deliberations, and those of the Parliamentary committees and others. At their conclusion, we will look further to establish what lessons can be learned for the industry, and the PCC, to prevent this from happening again.*

*It is important to establish more generally the role of the PCC in regard to phone message hacking. In 2007, we proactively responded to the convictions of Goodman and Mulcaire by looking to establish what lessons could be learned from the unacceptable episode, and what measures could be introduced, industry-wide, to help eliminate the practice as far as possible. In doing so, we deprecated the deplorable actions of those involved, and criticised the paper for its lack of internal controls. That position remains. However, this work did not, and could not, involve testing the extent to which the police investigation had been thorough.*

*Indeed, we must emphasise that it is not within the remit or the powers of the PCC to duplicate a police investigation; the PCC is not able to interview witnesses under oath or sub-poena documents. The central role of the Commission is to raise standards by enforcing an efficient system of complaints, and offering guidance as to newsroom practice. In 2007, we acted properly by issuing 6 recommendations for the whole industry, which we believe will continue to be pertinent and beneficial. As you know, Clause 10 (Clandestine devices and subterfuge) was also strengthened to clarify the prohibition in this area. We also conduct regular training seminars that deal with the ethics of subterfuge in journalism.*

*There has been one allegation, of which we are aware, against the News of the World since Goodman / Mulcaire. You will know that the News of the World rightly informed the PCC of this claim of recent phone message hacking. We have made public that this had taken place, and it has always been our intention to look at the circumstances of the case at the conclusion of the legal proceedings. This may involve contacting the party who has made the claim.*

*The Commission recognises that both Guardian articles, and the New York Times piece, have produced material giving rise to concern about behaviour at the News of the World prior to 2006. It is right that they have done so. In 2007, the Commission responded to the existence of a problem, and sought to raise standards; in 2010, we remain committed to achieving this aim within our proper remit.*

*In November 2009, the Commission came to a view – based on the information available at the time – as to whether it had been misled by the News of the World. Further information has, of course, since appeared. The Commission's position on this, together with other aspects of the case, will be assessed when we return to the matter at the conclusion of the enquiries which are currently being undertaken and following the end of any legal proceedings which are brought.*

*I know you are a supporter of effective self-regulation, and hope you will continue to help the PCC in achieving it.*



## THE WORK OF THE PCC'S PHONE HACKING REVIEW COMMITTEE

518. In January 2011, I produced a paper entitled 'Phone Hacking Update'. In the paper I identified the most significant recent development as follows:

*"Commissioners will be aware of recent developments in connection with phone message hacking and the News of the World. The most significant are:*

- *the Sienna Miller legal action, which has led to the disclosure of material held by police, potentially implicating Ian Edmondson, the paper's news editor (<http://www.guardian.co.uk/media/interactive/2010/dec/15/sienna-miller-phone-hacking-documents>);*
- *the suspension of Ian Edmondson by the paper, pending an internal inquiry (which has led to his papers, and computer, being examined by the paper);*
- *most significantly (and recently), the fact that Glenn Mulcaire has been said to have named Ian Edmondson as the person who asked him to hack Sky Andrews' phone (<http://www.guardian.co.uk/media/2011/jan/17/phone-hacking-news-of-the-world>). He has been forced to do this, because it relates to an offence for which he has already been convicted (and so cannot claim that he is being asked further to incriminate himself);*
- *the increasing number of legal actions against the newspaper, which are likely to lead to further disclosure from police files;*
- *the decision by the DPP to have a "comprehensive" review of all the evidence connected with the matter (<http://www.guardian.co.uk/media/2011/jan/14/dpp-news-of-the-world-phone-hacking>). This is a key development: it has been argued that the CPS were not presented with all of the relevant information at the time of the Goodman / Mulcaire prosecution, and so this is the first time that an independent eye will be cast over all of the material collected by police (including all of Muleaire's notebooks).*

*There is also at this time a pending judicial review of the Met's handling of the case, and two Parliamentary inquiries. Mark Lewis' litigation against the police (for its disclosure of information to the PCC in November 2009) is also outstanding. Finally, there is one pending case against a current News of the World member of staff: a civil action regarding alleged attempted phone message interception in 2009.*

*The PCC's current position has been clearly set out in our published letter to Alan Rusbridger ([http://www.pcc.org.uk/news/index.html?article=NIY\\_zMQ](http://www.pcc.org.uk/news/index.html?article=NIY_zMQ)). Thanks to the Commission taking a considered stance in September, this has the benefit of making clear that we are an interested party, but that we must wait for due legal process to be completed first.*

*There are, however, a couple of conclusions that can be drawn at this stage. First, the involvement of the CPS review demonstrates once more that a detailed investigation into the extent of phone hacking is a matter for the police, not the PCC. In some ways, we have faced the difficulty of properly defining what our role in this case should be*

*Second, further evidence is now emerging – and will continue to emerge – about the use of phone hacking at News of the World in the period before 2007. This will have implications for the PCC both in terms of practice (what we should do about it) and perception (how people will judge our credibility).*

*We would propose that the Commission agree in principle to establish a working group of three Commissioners (two lay; one editorial). This will only meet once the relevant legal action has been concluded. Set within the context of what the PCC has previously said and done, it can examine what steps need to be taken as a means of bringing our involvement to an effective conclusion. It can make recommendations to the Commission, which can then be debated further.*

*By establishing such a group now, we can be ready immediately to act when the legal position is established (which is something we undertook to do in the Rusbridger letter). The issue of phone hacking has undoubtedly raised legitimate ethical concerns that affect the work of the Commission. We have to be able to address those concerns, while at the same time acknowledging that our role is not to investigate and prosecute allegedly criminal behaviour.*

*The issue is set to be discussed at the next meeting, and we would welcome Commissioners' comments.*

519. At the meeting of the 16 January 2011, the minutes<sup>490</sup> record that the Chairman expressed a desire to ensure that the PCC was ready to examine developments as quickly as possible and to consider matters fully once relevant police and legal proceedings had shed more light on the subject of phone hacking. She, therefore, proposed the establishment of a Sub-Committee of the Commission to lead the examination of those matters and suggested that it comprised of two lay members and one editorial member. The Commissioners welcomed the proposal and, subsequently, the committee was established comprising of Ian Walden, Professional of Information and Communications Law at Queen Mary College, University of London; Julie Spence, former Chief Constable, Cambridgeshire Police; and John McLellan, the Editor of The Scotsman.
520. Following the establishment of the Committee, the PCC released a press statement in the following terms:

*"The PCC has remained concerned about the issue of phone hacking, which raises serious questions about journalistic ethics and past conduct by journalists. Of course, the Commission cannot comment about matters that are properly being considered by police at this time. Nor can it interfere with ongoing legal actions, based on information to which we are not currently privy. However, the PCC is resolute in its determination to ensure future good practice in the industry.*

*On 19th January, the Commission discussed, at length, the issue of phone hacking at its monthly meeting. The Commission undertook to institute a working group, with a lay majority, to consider the new information that becomes available, and make recommendations to the Commission (which will be published). The purpose of this will be to draw together lessons learned as a result of the outcomes of the relevant police inquiries and ongoing legal actions. It will also consider the outcome of the current internal inquiry of the News of the World.*

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<sup>490</sup> PCC/V2/2/797-798

*The Committee will review the PCC's own previous actions in regard to this matter.*

*The Phone Hacking Review Committee will comprise the two most recent lay Commissioners (who joined after December 2009), both of whom are experts in relevant legal fields:*

*Ian Walden, Professor of Information and Communications Law, Queen Mary University of London*

*Julie Spence, former Chief Constable, Cambridge shire Police*

*There will be one editorial Commissioner: John McLellan, the editor of the Scotsman.*

*It is important to make clear that phone hacking is a criminal offence, and the Commission has been consistent in its condemnation of it. It has also been consistently clear that it is not the role of the PCC (or with in its powers) to duplicate the investigations of the police, or to establish criminality. However, its role is to work to raise standards in the industry, and it is committed to take this opportunity (at the conclusion of the relevant processes) to do so in this area".*

521. The Phone Hacking Review Committee met, for the first time, on 1 February 2011 in order to agree points of reference. The Committee resolved:

521.1 to ask the right, and difficult, questions to the relevant people, acknowledging that it was a mistake not to speak to Andy Coulson in 2007; to take steps to ensure that the Committee was satisfied that editors across the national press had put procedures in place so as to be aware of the conduct of their journalists and to make sure that they were abiding by the Code of Practice and the law;

521.2 to speak to every editor, in person, about these issues;

521.3 to set out, in a report, the various legal responsibilities and Code of Practice issues in this area and to educate the industry about the need for compliance;

521.4 to write to Sue Akers of The Metropolitan Police to make clear the remit of the Committee and to request cooperation;

521.5 to write to Colin Myler to make it clear that the Committee would be asking him further questions;

521.6 to consider steps to improve practice, to perhaps include a 'whistleblowers' line', training, greater reference to contractual obligations;

- 521.7 to give consideration to the involvement of the Independent Reviewer to examine the past conduct of the PCC; to invite thoughts from Committee members in relation to the two previous reports of the PCC (in 2007 and 2009) in order to allow the Committee to consider whether mistakes were made in the past.
522. In pursuing these matters, the Committee acknowledged its remit and powers, but also recognised that the PCC's non-statutory status also provided a level of freedom. They noted, further, that it would be necessary to await the outcome of the police inquiry before finalising a report but that some steps could be taken in the meantime.
523. On 2 February 2011<sup>491</sup>, I circulated to the Committee draft letters<sup>492</sup> to Sue Akers and to Colin Myler, as discussed at the meeting the previous day. I also circulated an email which I had received, that morning, from the editor of The Guardian, Alan Rusbridger, who raised the issue of Clause 15 (Payments to Witnesses in Criminal Trials) in connection with the payment of Glen Mulcaire's legal fees. I suggested that the PCC should invite comments from Colin Myler on the issue.
524. The Deputy Chairman of the PCC, Ian Nichol, to whom I had also sent a copy of Mr Rusbridger's email, provided his comments on 2 February 2011<sup>493</sup>. He did not share Mr Rusbridger's view in relation to the application of Clause 15, but recognised that an ethical issue had been raised. The Committee members also expressed a preliminary view and it was decided, therefore, to raise the issue with Colin Myler.
525. Following comments from the Committee members, letters were sent to Sue Akers on 3 February 2011<sup>494</sup> and to Colin Myler on 8 February 2011<sup>495</sup>.
526. The Guardian journalist, Nick Davies, wrote to Professor Walden on 8 February 2011<sup>496</sup> enclosing his analysis of the PCC's 2009 report, which also made some reference to the PCC's report of 2007.
527. The Metropolitan Police, on 9 February 2011, released a formal statement announcing the recently formed Specialist Crime Directorate 'Operation Weeting'

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<sup>491</sup> PCC/W/1/5-7

<sup>492</sup> PCC/W/1/17-21

<sup>493</sup> PCC/W/1/8

<sup>494</sup> PCC/W/1/17-18

<sup>495</sup> PCC/W/1/19-21

<sup>496</sup> PCC/W/1/23-34

which was formed to conduct the “*new investigation into phone hacking whilst adopting a fresh approach towards informing victims and potential victims in this case*”. The press release explained that the new evidence which had been provided by News International was being considered alongside material already in the possession of The Metropolitan Police to determine which lines of inquiry should be pursued as priorities. It was explained that all actions and decisions taken by the previous investigation were to be reviewed and that all the evidence gathered, up until that time, was being checked to ensure it was catalogued correctly and accurately.

528. On 19 February 2011<sup>497</sup>, Colin Myler replied to my letter to him of 8 February 2011 saying:

*“I very much welcome the creation of a working group on phone message hacking and The News of the World will of course cooperate fully. To that end, I will be glad to answer any questions you may have, subject to legal constraints, and would also be happy to discuss our position in person with Committee members.”*

529. He explained that, in mid-December, a senior member of staff had been suspended and a disciplinary inquiry had been launched after new allegations of phone hacking had been made in civil proceedings. He confirmed that evidence discovered in connection with those proceedings had been provided by News of the World to The Metropolitan Police and that the employment contract of the suspended member of staff had been terminated. He advised that, in late January, The Metropolitan Police had requested that News of the World desist from pursuing its own investigations for operational reasons. Against this background, Mr Myler agreed: *“I will endeavour to share any new information as it arises as long as there is no risk of undermining police operations or prejudicing potential criminal, civil or disciplinary proceedings in so doing”*. I circulated a copy of the letter to the Committee members on 21 February 2011<sup>498</sup>.

530. On 2 March and 3 March 2011, respectively, Ian Walden and Julie Spence provided their comments on the previous reports published by the PCC on phone hacking<sup>499</sup>.

531. The Committee and I attended a meeting with Sue Akers on 23 March 2011<sup>500</sup>. At the meeting, it was agreed that The Metropolitan Police would share information

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<sup>497</sup> PCC/W/1/39

<sup>498</sup> PCC/W/1/40

<sup>499</sup> PCC/W/1/42-45

with the Committee, where possible, about unethical practices and that a debrief would be provided to the Committee at the end of the police investigation.

532. On 5 April 2011<sup>501</sup>, I sent an email to the Committee advising of developments that had occurred that day. I notified them that Ian Edmondson and Neville Thurlbeck had been arrested. I also explained that the Director of Public Prosecutions, Keir Starmer, had given evidence to the Home Affairs Select Committee which appeared to contradict the evidence given previously by Assistant Commissioner John Yates in relation to whether or not the previous inquiry by the police was based on a narrow or broad interpretation of the Regulation of Investigatory Powers Act 2000.
533. The following day, I circulated to the Committee a copy of the sentencing remarks which had been made by the judge in the Goodman and Mulcaire trial of 2007. I explained that the Commission had previously been aware of some of the points, but had not had sight of the full text. I drew particular attention to the comments made by the judge, in relation to Glenn Mulcaire:

*"You had not dealt with Goodman but with others at News International.  
You had not been paid anything because no stories had resulted"*

534. I raised the issue as to whether this meant that "others" at News of the World (in addition to Clive Goodman) were aware of, or active agents in, the criminal activity of Mulcaire. I noted that this question had been put to Colin Myler, by the PCC, in 2009 and that his reply had been summarised in the PCC's report as *"Glenn Mulcaire had contact with a number of reporters on The News of the World other than Clive Goodman. But that did not mean to say that they were aware of his illegal activities"*.

535. On 7 April 2011<sup>502</sup>, Ian Walden noted that the government had implied, the previous day, that there may be a public inquiry following the conclusion of the latest police investigation and suggested that the Committee discuss this development at its next meeting and decide what action to take in the circumstances, i.e. whether to proceed or await further developments.

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<sup>500</sup> PCC/W/1/61

<sup>501</sup> PCC/W/1/64

<sup>502</sup> PCC/W/1/92

536. News of the World released a statement on 8 April 2011<sup>503</sup> in which they announced that they had decided to approach some civil litigants with an unreserved apology and an admission of liability in certain cases relating to voicemail interception. The establishment of a compensation scheme to deal with justifiable claims was also announced.
537. News of the World conceded that "*past behaviour at The News of the World in relation to voicemail interception is a matter of genuine regret. It is now apparent that our previous inquiries failed to uncover important evidence and we acknowledge our actions then were not sufficiently robust*". I provided a copy of the statement to the Committee<sup>504</sup> and to the full PCC and a press statement was released by the PCC, later that day, in the following terms:

*The PCC's Phone Hacking Review Committee has noted today's statement by News International.*

*The newspaper has now admitted its own internal investigations have not been sufficiently robust. This raises serious questions about its previous conduct in regard to this issue. Our Committee will need a detailed explanation for this, along with other answers we will be seeking from executives. We have already made clear that we require and expect full co-operation from News International.*

*The PCC, through this Committee, is committed to holding the News of the World properly to account regarding concerns about phone hacking. It will also work to ensure that situations such as this do not arise in the future. Our findings will be made public.*

*Phone hacking among journalists, even in the past, raises clear issues about journalistic ethics. The PCC will play its part in acting vigorously to deal with it, in regard to both the News of the World and the industry as a whole.*

*The Committee is conscious that there is an ongoing police investigation, as well as active legal proceedings. Its own review process must not interfere with them. It will not be commenting further at this stage*

538. The Committee met with representatives of Everything Everywhere (the newly created company formed by the merger of Orange UK and T Mobile UK) on 13 April

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<sup>503</sup> PCC/W/1/97

<sup>504</sup> PCC/W/1/94

2011<sup>505</sup>. At the meeting, Everything Everywhere informed the Committee that possessed little further evidence of phone hacking. The Committee also resolved<sup>506</sup> to speak to O2 and to Vodafone.

539. On 13 April 2011<sup>507</sup>, I wrote to the Editor of The Guardian, Alan Rusbridger seeking a meeting with him and the Review Committee in order to discuss the evidence which The Guardian and its journalists had seen in regard to the practice of phone hacking and to receive his thoughts on the issue generally, as well as his perspective on how previous reports by the PCC had been handled. I explained that the focus of the review was in three principal areas: how the PCC had dealt with the issue; what had emerged about practices at News of the World (and any other papers) and its own handling of the matter; and what could be done across the industry to ensure that controls were tightened to prevent recurrence. On the same day, I sent an email<sup>508</sup> to Bill Akass at News International seeking a preliminary meeting with him to discuss how best to obtain information from News of the World without compromising the ongoing police investigation and any other related legal process.
540. Alan Rusbridger replied to me on 14 April 2011<sup>509</sup> and raised the possibility that the PCC might consider undertaking an independent analysis of the material that News International had handed over in the course of Civil Proceedings and that the cost of doing so might be paid by News International itself. These proposals were debated among the Committee, by email<sup>510</sup>, during the course of that day. Also on that day, Baroness Buscombe wrote<sup>511</sup> to Will Lewis, Group General Manager of News International in relation to the proposal that News International might provide relevant material to the PCC including evidence disclosed by News International to claimant lawyers and that this material would then be subject to independent analysis by an external legal firm or barristers' Chambers. Baroness Buscombe invited News International to agree to meet the costs of the analysis which she said would be indicative of News of the World's willingness to be open and accountable.

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<sup>505</sup> PCC/W/1/111

<sup>506</sup> PCC/W/1/111

<sup>507</sup> PCC/W/1/113

<sup>508</sup> PCC/W/1/114

<sup>509</sup> PCC/W/1/116-117

<sup>510</sup> PCC/W/1/115-121

<sup>511</sup> PCC/W/1/127



541. On 14 April 2011<sup>512</sup>, Baroness Buscombe wrote to Paul Dacre, Chairman of the Editors' Code of Practice Committee. She wrote in relation to the consideration which was being given by the Committee to set up a Sub Committee in relation to phone hacking. She welcomed the intent of the Committee to deal with the issue and any constructive work which could be done to reinforce the system. Baroness Buscombe explained that the PCC had set up its own Review Committee and that it was vital that the Committee was free to pursue its inquiries. She explained that concern had been expressed by the Commission about the unintended consequences of the Code Committee setting up a working Committee at that time. She explained that it was felt that there could be confusion about the relationship between the two Committees and the work being undertaken.
542. On 14 April 2011<sup>513</sup> Baroness Buscombe wrote, in similar terms, to the Chief Executive of News Corporation, James Murdoch<sup>514</sup> (which she copied to Rebekah Brookes and to Will Lewis); to the Chairman of Associated Newspapers, The Viscount Rothermere (which she copied to Paul Dacre); to the Chairman of Telegraph Media Group, Aidan Barclay (which she copied to Murdoch MacLennan); to the Chairman of The Guardian Media Group (which she copied to Alan Rusbridger); to the Chairman of Trinity Mirror, Sir Ian Gibson (which she copied to Sly Bailey); to the Chairman of Independent Print Limited, Evgeny Lebedev; to the Group Chairman of the Financial Times, Rona Fairhead; to the Chairman of CEO of IPC Media, Sylvia Auton; to the Chief Executive of Bauer Media, Paul Keenan; to the Managing Director of H Bauer Publishing, David Goodchild; to the Managing Director of Conde Nast UK, Nicholas Coleridge and to the Chief Executive of National Magazine Company, Arnaud de Puyfontaine. In the letter, Baroness Buscombe expressed the view that the most important element of self-regulation was at stake, that of trust in the system. She explained the purpose behind the Review Committee and its membership and that it would be meeting with senior executives of each newspaper. She explained: *"As Chairman of the PCC, I am determined that all industry members are entirely committed to high standards of journalism, and support for the self-regulatory system overseen by the PCC. In advance of those meetings with the Review Committee, I therefore wish to meet with senior executives of every national newspaper to ask for your unqualified*

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<sup>512</sup> PCC/W/1/125-126

<sup>513</sup> PCC/W/1/300-312

<sup>514</sup> PCC/W/1/300

*commitment to this exercise and to explain in more detail the process that will follow”.*

543. Baroness Buscombe and I, over the course of the next three months, had meetings with the following executives as a result of her letter: Murdoch MacLennan and Guy Black (Telegraph Media Group); Rebekah Brooks and Will Lewis (News International); John Ridding (Financial Times); Geordie Greig, Simon Kelner and Andrew Mullins (Independent Newspapers); Sly Bailey and Paul Vickers (Trinity Mirror); Sylvia Auton (IPC Media); Andrew Miller (Guardian Media Group); Evgeny Lebedev (Independent Newspapers); Sir Ian Gibson (Trinity Mirror); Kevin Beatty (Associated Newspapers). Baroness Buscombe met with Nicholas Coleridge (Conde Nast) on her own.
544. We received support for the work of the Phone Hacking Review Committee, and a willingness to work with it.
545. On 14 April 2011<sup>515</sup>, Baroness Buscombe replied to a letter which she had received from Mark Lewis on 11 April 2011<sup>516</sup>. In his letter, Mr Lewis had made a number of criticisms about Baroness Buscombe and the PCC's previous reports on phone hacking. In her letter, Baroness Buscombe explained the remit of the Review Committee and what the Committee hoped to achieve.
546. On 27 April 2011<sup>517</sup>, I wrote to O2 and Vodafone asking them to meet with the Review Committee to discuss issues further.
547. On 16 May 2011<sup>518</sup>, I wrote to Colin Myler asking him to meet with the Review Committee on 26 May 2011 and I raised, with him, the issue as to whether or not News of the World was in breach of Clause 15 (Witness Payments in Criminal Trials) by making ongoing payments to Glen Mulcaire, especially in respect of his legal fees. I invited his comments.
548. I met with Will Lewis on 19 May 2011<sup>519</sup> and, the following day, I sent an email to the Review Committee<sup>520</sup> proposing that the Committee meet with him on 26 May 2011 to establish the process by which information could be obtained from News

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<sup>515</sup> PCCW/1/128-129

<sup>516</sup> PCCW/1/104-105

<sup>517</sup> PCCW/1/131-132

<sup>518</sup> PCCW/1/136-137

<sup>519</sup> PCCW/1/139

<sup>520</sup> PCCW/1/139

International. On 25 May 2011, the Committee met with Alan Rusbridger and Nick Davies of The Guardian in order to elicit their views about the previous investigations by the PCC and the practice of phone hacking at News of the World. They expressed the view that the PCC's 2009 Report should be withdrawn. Mr Davies said that he would have been willing, in 2009, to talk through the evidence which he had seen and to provide an 'off the record' briefing about the information which he could not publish. He said that he remained willing to do so with the Review Committee, although he noted that the police were now accessing this information. He also expressed views about the extent to which phone hacking had been prevalent.

549. On 26 May 2011, I met with Will Lewis and Bill Akass to consider the process and timings for disclosure of information from News of the World. Following the meeting, Mr Lewis confirmed News of the World's position in an email<sup>521</sup>. He wrote "*As we discussed at length, there is currently a police investigation taking place with which we are fully cooperating. While we are fully committed to also assisting your Committee with its inquiry, at this stage our priority has to be helping the progress of the criminal inquiry and making sure that we do not in any way prejudice it. This means that over the next few months we will have to be more limited in the disclosures which we may make to you than would otherwise be the case. When the police's inquiry has followed its course, we will be able to alter this approach. In the meantime, be assured we remain committed to cooperating to the fullest extent possible with the Committee and its inquiries*".

550. Also on that day, Colin Myler wrote to me<sup>522</sup> in relation to the issue which I had raised regarding a possible breach of Clause 15, which he felt did not apply in the circumstances. He asserted "*we are not making any payments to or for the benefit of Clive Goodman, nor have we done so since his employment action was settled in 2007 when I become editor*". He also asserted "*we are not making payment to Glenn Mulcaire, and again nor have we done so since his employment claim was settled in 2007*". He said that he was not in a position to give details in relation to News of the World's position regarding Mulcaire's legal costs in relation to civil litigation and resolved to clarify that. He ensured me that News of the World had made full disclosure to police in relation to the payment of any legal fees.

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<sup>521</sup> PCC/W/1/145

<sup>522</sup> PCC/W/1/146-147

551. On 26 May 2011<sup>523</sup>, I sent an email to the former Director of the PCC, Tim Toulmin, asking if he would meet with the Committee, which he subsequently did in order to assist them in understanding what had occurred in 2007 and in 2009.

552. On 27 May 2011<sup>524</sup>, I circulated the correspondence received from Colin Myler and Will Lewis to which I refer in paragraph 549. On 13 June 2011<sup>525</sup>, I sent an email to the Committee providing an update on certain matters as follows:-

552.1 I noted that the police were examining whether to investigate the activities of a private investigator named Jonathan Rees and noted that the allegations against him went beyond phone hacking and included interference with bank accounts. I suggested that the Committee discuss this development at the next meeting because the Committee was committed to examining the whole process of information access;

552.2 following a review of previous emails, over the relevant period, I attached an email sent by Tim Toulmin to News International and noted that it suggested that correspondence between the PCC and News International, over that period, had been conducted by letter;

552.3 I advised the Committee that we had been contacted by a representative of a celebrity who had discovered that an electronic tracking device had been placed on his car over the previous few months. The police were investigating and there was no evidence that journalists were responsible. However, given the broad ambit of the Review Committee, I suggested that the question of electronic surveillance might be addressed when the Committee met with editors and that protocols could be developed for overall improved practice;

552.4 I also enclosed a memo from Will Gore<sup>526</sup> in relation to a prepublication issue involving News of the World in which the complainant had raised concerns that her text and voice messages may have been accessed. I explained that further information had been sought from the complainant and proposed that, if it was forthcoming, the Committee should then write to News of the World.

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<sup>523</sup> PCC/W/1/148

<sup>524</sup> PCC/W/1/150

<sup>525</sup> PCC/W/1/160

<sup>526</sup> PCC/W/1/165-166

553. On 20 June 2011,<sup>527</sup> I met with a representative from O2, together with Julie Spence and Ian Walden in order to obtain further information from the company in relation to issues which the Committee were considering. On the same day I met with Cathy James from the charity Public Concern At Work, to discuss how a whistleblowing culture at newspapers might be fostered.
554. On 30 June 2011<sup>528</sup>, I sent an email to the Committee noting that News International had set up a Management and Standards Committee comprising William Lewis (General Manger, News International), Simon Greenberg (Director of Corporate Affairs, News International) and Jeff Palker (News Corporations General Counsel, Europe and Asia) to handle phone hacking issues on a day to day basis and that Olswang had been appointed by News International to recommend a series of policies, practices and systems to create a more robust governance, compliance and legal structure for the News International titles. I noted the overlap with what was being proposed by News International with the work of the Review Committee and suggested that we meet with Olswang.
555. On 4 July 2011, The Guardian published the allegations regarding the interception of phone messages from Milly Dowler's phone and noted that the key aspects of these developments was that the allegations related to victims of crime rather than celebrities; that there was claims that the actions interfered with the Dowler police inquiry; and that the actions dated back to 2002, when Rebekah Brooks was Editor of News of the World.
556. On 5 July 2011, the Committee met with Vodafone in order to obtain their perspective in relation to phone hacking issues. I also sent an email<sup>529</sup> (i) to Nick Davies at The Guardian seeking a further meeting to discuss the allegations regarding the interception of messages from Milly Dowler's telephone; to the ICO seeking a further meeting for a full debrief on the position relating to 'blagging' post Motorman; to the Attorney General's office explaining the purpose of the Review Committee and noting that the PCC had to wait for the conclusion of the live police investigation before reporting on the issue. I summarised the work of the Committee, at that time, as being *"The Committee has already met with police, representatives of all of the major phone companies and journalists, as well as dealing with News International. The Chairman of the PCC has seen every*

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<sup>527</sup> PCC/W/1/198

<sup>528</sup> PCC/W/1/205

<sup>529</sup> PCC/W/1/220

*publisher in person to require their support for the work of the Committee and the PCC. There is real appetite to ensure that this shameful issue will provide the PCC with more force and weight in the future". I explained, further, that we were also in the process of examining, with the industry, the PCC sanctions to see whether they could be improved.*

557. On 6 July 2011, the full Commission met. It received an oral report from Professor Walden, recommending – based on the agreed view of the Committee – that the PCC should now withdraw its report of November 2009 on the grounds that it could not stand by some of its conclusions. The Commission published a Press Statement in the following terms:

*At its regular meeting today, the Press Complaints Commission discussed the admissions of the News of the World of its involvement in the hacking of the telephone of murdered schoolgirl Milly Dowler in 2002. There have been similar claims made in regard to other victims of crime and tragedy.*

*The Commission's members, both public and editorial, were unanimous in their condemnation.*

*The Commission was very clear that this conduct was unacceptable and self-evidently undermined assurances given to the PCC by News International in the past. It, therefore, recognises that it can no longer stand by its 2009 report on phone hacking and the assertions made in it.*

*At the beginning of this year, the PCC established a Phone Hacking Review Committee. It will continue to work actively, and will establish protocols across the industry to improve standards in the future.*

*The PCC readily accepts its responsibility, shared with others, to ensure that events of this sort should never happen again. To that end, it agreed that public members of the Commission will lead a review of all aspects of press regulation in its current form, which will be designed to ensure that public confidence is enhanced. The Commission will wish to review its own constitution and funding arrangements, the range of sanctions available to it, and its practical independence.*

*The Chairman of the PCC today said:*

*"We welcome the announcement by the Prime Minister of his proposed inquiries. The PCC is determined to identify necessary reforms that will*

*guarantee public confidence in press regulation. Already, the PCC provides a free public service that helps thousands of people every year.*

*There is currently a major police investigation, which has the necessary powers of investigation and resources to identify the perpetrators of these criminal acts. However, the Commission is determined to play its part in bringing to a conclusion this shocking chapter, which has stained British journalism, and to ensure that good comes out of it."*

*As regard to the debate in Parliament today, the Chairman added:*

*"The status quo is clearly not an option, and we need to identify how the model of an independent PCC can be enhanced best to meet these challenges. Hence the action we have taken today".*

558. On 26 July 2010, I wrote, in similar terms to Paul Dacre (Editor of the Daily Mail), Peter Wright (editor of the Mail on Sunday), Geordie Greig (Editor of the Evening Standard), Tony Gallagher (Editor of the Daily Telegraph), Ian MacGregor (Editor of the Sunday Telegraph), Dominic Mohan (Editor of the Sun), Alan Rusbridger (Editor of the Guardian), John Mulholland (Editor of the Observer), Richard Wallace (Editor of the Daily Mirror), Tina Weaver (Editor of the Sunday Mirror) Lloyd Embley (Editor of the People), James Harding (Editor of the Times), John Witherow (Editor of the Sunday Times), Chris Blackhurst (Editor of the Independent), John Mullin (Editor of the Independent on Sunday), Lionel Barber (Editor of the Financial Times), Georgina Harvey (Managing Director of Trinity Mirror, Regional Division), John Fry (Chief Executive of Johnson Press), Steve Auckland (Managing Director of Northcliffe Media), Adrian Jeakings (Chief Executive of Archant), Andrew Thomson (Chairman of DC Thomson), Robin Burgess (Chief Executive of CN Group), Geraldine Allison (Chairman of KM Group), Robert Walshe (Managing Director of Northern Media Group), Paul Keenan (Chief Executive of Bauer Media), Nicholas Coleridge (Managing Director of Conde Nast), Sylvia Auton (Chairman and CEO of IPC Media), David Goodchild (Managing Director of H. Bauer Publishing), and Arnaud de Puyfontaine of National Magazine Company.

559. In the letter, I asked the following questions:- "(1) *What processes do you have in place for establishing whether material being used by journalists has been obtained in accordance with the Terms of Editors' Code and the law?*; (2) *Do you use external inquiry agents?* (3) *If so, what processes do you employ to establish the methods by which they obtain information, and ensure that they are ethical?* (4) *If information comes unsolicited from an outside source, what processes do you employ to*

*consider the provenance of the information (and how it has been obtained?) (5) If a decision is made to access information that may raise a breach of The Code or the Data Protection Act, what steps are taken to examine the public interest issues? What executives have to sign off before the information is accessed? What record is kept of the decision making process?"*

560. On 24 August 2011<sup>530</sup>, I met with Will Lewis and Simon Greenburg of News Corp Management and Standards Committee and with Dan Tench, Partner at Olswang, solicitors. Following my meeting, on 25 August 2011<sup>531</sup>, I circulated a short memo to the Committee Members explaining that the Management and Standards Committee had been established to be responsible for ethical and legal matters relating to news room practice at News International and that Olswang had been tasked with making recommendations (by the end of September) about internal protocols within the existing titles. Following the meeting, I also wrote to Will Lewis on 26 August 2011<sup>532</sup> and welcomed any response that the MSC might wish to make in response to my letters to Editors to which I refer above.
561. The Phone Hacking Review Committee will examine all of the responses to our inquiries (some of which have been already received), and continue its work on establishing best practice in this area. It will share its conclusions with the Inquiry, which I will enclose with our second submission.

#### **COMPLAINTS RECEIVED RELATING TO PHONE MESSAGE HACKING**

562. From a review of the files, and to the best of my recollection, the PCC has investigated only one complaint from a complainant who has alleged unlawful interception of phone messages against a newspaper. I deal with that complaint, below, and have anonymised the name of the complainant because the complaint also concerned private information. No article about the complainant was ultimately published by the newspaper and the complaint was not pursued.
563. On 15 April 2010, solicitors for the complainant wrote to the PCC Commission<sup>533</sup> in relation to an article which The Sun was threatening to publish about the complainant's alleged affair with an MP. The complaint was made under Clause 3

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<sup>530</sup> PCC/W/1/316

<sup>531</sup> PCC/W/1/318-319

<sup>532</sup> PCC/W/1/324-325

<sup>533</sup> PCC/V2/3/802-805



(Privacy), Clause 4 (Harassment) and Clause 10 (Clandestine Devices and Subterfuge). I will deal only with the complaint advanced under Clause 10.

564. The complainant expressed the view that information about her "... may have been obtained through the illegal interception of her mobile telephone voicemail messages". The allegation was put to The Sun by the PCC. The Sun responded<sup>534</sup>.

*"The complainant makes a very serious allegation The Sun has used information obtained through illegal interception of her mobile phone voicemail messages. I can give the Commission an assurance this is completely untrue. No one connected to The Sun in any way has been involved in this kind of activity, nor have we paid a third party to do so. For the avoidance of doubt: The Sun has not in any shape or form hacked the mobile voicemails of [the complainant]."*

565. The Sun explained that the source of the story had been an email received to its news desk from a source who was aware of the situation and felt that it should be made public. The Sun subsequently provided a redacted copy of the email<sup>535</sup> to the PCC (in order to preserve the anonymity of the source), which the PCC forwarded to the complainant's solicitors. The complainant's solicitors raised a number of questions in relation to the email (and other emails sent by the source to The Sun)<sup>536</sup> which The Sun responded to<sup>537</sup>.

566. The complainant also provided the PCC with a report<sup>538</sup> prepared by a company which was engaged to forensically analyse the complainant's phone. The company concluded that the complainant's telephone had been fully wiped of all its settings and had been reset to the factory settings. The newspaper, which was provided with a copy of the report, argued that, even if that had been the position, there was no evidence that a journalist from The Sun, or a third party retained by The Sun, was responsible<sup>539</sup>.

567. During the course of the investigation, it also transpired that the phone in respect of which the complainant was making allegations belonged to her estranged husband and that she had also contacted the police in relation to the allegations.

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<sup>534</sup> PCC/V2/3/812-813

<sup>535</sup> PCC/V2/3/852-854

<sup>536</sup> PCC/V2/3/858-859

<sup>537</sup> PCC/V2/3/861-862

<sup>538</sup> PCC/V2/3/834-847

<sup>539</sup> PCC/V2/3/849-850

568. The PCC's secretariat considered that it would be helpful to obtain the comments of the complainant's mobile phone service provider and initially volunteered to contact the service provider, on the complainant's behalf, in order to obtain the information. Before doing so, the secretariat sought the views of the Commissioners<sup>540</sup>, many of whom believed that, in the circumstances (including that there was no evidence that The Sun was responsible for any unusual activity on the phone; that the police had been contacted; that the phone did not belong to the complainant; that there were difficulties in pursuing the proposed course because of the Data Protection Act; and the Commission's lack of powers to investigate such a matter) it would be more appropriate for the complainant to contact her mobile phone service provider, direct, and to pass the results of her inquiries to the PCC for further consideration. The complainant was informed of this decision<sup>541</sup> and was invited to make inquiries of her mobile phone service provider. However, after a period of approximately eight months, the complainant's solicitors confirmed that she did not intend to pursue the complaint further.
569. In light of all of the circumstances, and due to the lack of any probative evidence against the newspaper, the PCC decided that it would not be appropriate to take any further action.

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<sup>540</sup> PCC/V2/3/882

<sup>541</sup> PCC/V2/3/900

**THE PCC'S INVOLVEMENT IN THE INFORMATION COMMISSIONER'S MOTORMAN ENQUIRY AND DATA PROTECTION ISSUES GENERALLY**

570. I have reviewed the existing files on this subject. From my review, it is clear that the issue arose, at an early stage of correspondence with the Information Commissioner, of how the concerns he had raised could be suitably addressed by the PCC, given existing views about its remit and jurisdiction. It was decided to produce guidance and training on the ethical applications of the Data Protection Act, where it coincides with the terms of the Editors' Code. As this related to a matter extending beyond the terms of the Editors' Code, there was greater industry consultation than would have occurred in respect of other PCC Guidance Notes.
571. It does not appear that the Information Commissioner ever disclosed to the PCC specific details about the journalists who featured in Motorman, or their alleged breaches of the Data Protection Act (although this may have been considered). I believe that it was decided by the Information Commissioner that it was not appropriate to disclose that material.
572. On 17 October 2003<sup>542</sup>, Teacher Stern Selby wrote to the then Director, Guy Black, alleging that journalists had made telephone calls to the family and friends of their client, a well-known footballer, attempting to gain personal and private details about him. The solicitors speculated that the only way that the journalists could have obtained these numbers was by obtaining their client's mobile phone records. When telephoning, the journalists had been falsely claiming to be a member of their client's "defence team". They claimed, further, that a person impersonating their client had approached his football club direct to obtain pay role information in relation to their client on the pretext of obtaining a loan. The solicitors said that their inquiries had revealed that a number of journalists may have been employed or were working freelance for News of the World. They said they had been trying to discuss these matters with the then News of the World Editor, Andy Coulson, and the Head of Legal, Tom Crone, but they had not been returning their telephone calls. They enclosed copies of their letters dated 16 and 17 October 2003 to Tom Crone, for information. The letters set out, in more detail, the allegations being made. The solicitors sought the PCC's "*urgent intervention...to help, if nothing more, there to be a sensible dialog between us on behalf of our client and [The News of the World] so that these matters can be resolved without recourse to the Courts*". The then Deputy Director, Mr Toulmin, wrote to Andy Coulson on 17 October 2003 in relation

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<sup>542</sup> PCC/X/1/1-2

to the matter and noted that the complainant's solicitors appeared to be requesting a dialog with the newspaper. Mr Toulmin invited Mr Coulson to look into the matter and then to either get in touch with the solicitors, directly, or to respond through the PCC. No further documents are on file.

573. The Information Commissioner, Richard Thomas, contacted Sir Christopher, by letter, on 4 November 2003<sup>543</sup> and suggested that it would be to their mutual advantage to meet in order to discuss a number of matters and, more generally, their respective roles and the relationship between the Information Commissioner's Office ("the ICO") and the PCC.
574. Mr Thomas referred to the report published by the Parliamentary Select Committee on Culture, Media and Sport entitled 'Privacy and Media Intrusion' which had addressed the issue of journalists obtaining personal information about individuals by illegitimate means. He made express reference to one of the recommendations of the Committee that the PCC Code "*should explicitly ban payments to the police for information and there should also be a ban on the use and payment of intermediaries, such as private detectives, to extract or otherwise obtain private information about individuals from public and private sources..*".
575. Mr Thomas noted that newspapers, and their employees, are subject to the Data Protection Act 1998 ("the DPA") and, in particular, to s.55 of the DPA which he noted created various offences relating to the unlawful procuring, obtaining and disclosure of personal information. Mr Thomas made reference to an investigation which the ICO had been undertaking for several months into the activities of various enquiry agents and advised that he anticipated prosecuting a number of individuals for the offence of recklessly or knowingly obtaining personal information without the consent of the data controller (the legitimate holder of the information). He advised, further, that he was waiting while the Metropolitan Police investigated serious offences relating to corruption in public office arising from the same activities. His belief was that, from the material which his investigators had collected, journalists from most national newspapers, and many periodicals, were "*significant customers*" of the enquiry agents concerned. He said that records showed that numerous journalists routinely obtained confidential information they should have no access to and that the information had been obtained in order to produce articles on the personal lives of celebrities, and other individuals in the public eye, where there appeared to be no suggestion of using it to expose wrongdoing. He referred to

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<sup>543</sup> PCC/X/2/10-11

records which he said had been obtained by the ICO which showed that payments had been made by newspapers for the confidential information which had been obtained through those channels. He speculated that, given the sums involved and the nature of the documentation, it was difficult to believe that senior managers were not aware of what was going on. He commented:

*"In short, the material which has already been collected by my office indicates widespread reliance by the press on information which is obtained by deception or by bribe and corrupt employees. I share the view of the Select Committee that these practices are deplorable". Mr Thomas went on to make a proposal as to how the matter should be dealt with, as follows "I am considering whether to take action under the Data Protection Act against individual journalists and/or newspapers. My provisional conclusion, however, is that it would be appropriate first to give the Press Complaints Commission and its Code Committee the prior opportunity to deal with this issue in a way which would put an end to these unacceptable practices across the media as a whole. This could involve, subject to suitable safeguards, providing you with some of the evidence that our investigations have revealed. Following your review of any such material, I anticipate that this would lead to at least revision of the Code. The approach I have in mind would be consistent with the recommendations of the Select Committee which were addressed to our respective organisations and could provide a more satisfactory outcome than legal proceedings. I believe that the approach would also be consistent with your expressed wish to demonstrate the PCC's effectiveness".*

576. The letter is annotated with a manuscript note dated 10 November 2003 which indicates that Kim Baxter (PA to the PCC Chairman and Director) spoke with the ICO to propose a meeting at the offices of the PCC between Sir Christopher and Mr Thomas on 27 November 2000.
577. On 12 December 2003<sup>544</sup>, Santha Rasaiah of the Newspaper Society sent to the then Director of the PCC, Guy Black, a copy of a 1997 case in which a Rachel Barry, a former private investigator, had been convicted at Harrow Magistrates Court on 28 October 1997 of a total of 12 offences of procuring the disclosure of personal data and of selling the information procured, in contravention of s.5(6) and s.5(7) of the Data Protection Act. The report of the case in the Data Protection Registrar claimed that the clients of Ms Barry had included the proprietors of the News of the World, the People, the Sunday Express and the Mail on Sunday.
578. On 23 December 2003<sup>545</sup>, Sir Christopher wrote to David Blunkett MP expressing concerns about issues relating to the Data Protection Act and informing him that the PCC and the Editors' Code Committee were working on a Data Protection Protocol which would spell out to journalists exactly what was required of them under the

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<sup>544</sup> PCC/X/2/12-13

<sup>545</sup> PCC/X/1/8-9

1998 Act so that there could be no misunderstanding as to what their rights and responsibilities were. He explained that the PCC was working on this with the Information Commissioner and told Mr Blunkett that he would keep him informed of progress. Sir Christopher sent copies of his letter to Tessa Jowell and to Lords Falconer and Goldsmith.

579. In April 2004, Tim Toulmin was in the process of preparing a note entitled 'Data Protection Act, Journalism and the PCC Code' which went through a number of drafts<sup>546</sup> The then Assistant Information Commissioner, Phillip Jones, provided his comments on the draft note in a letter to Mr Toulmin dated 6 April 2004<sup>547</sup> in which he endorsed the Q&A approach which Mr Toulmin had adopted. Mr Jones made a number of observations in relation to the draft, but his focus was on the question of when newsgathering techniques could be considered to be in the public interest, which he acknowledged was a difficult issue. He observed:

*"The point is that you are usually (perhaps always) weighing two competing public interests. When considering whether the public interest defence applies you are weighing on the one hand the public interest in journalists obeying a law designed to ensure personal information is not obtained without the authority of the organisation holding the information against the public interest in exposing something of obvious public importance such as venality by a politician etc.*

*Given the importance of freedom of expression it is fair enough that when deciding whether publication is in the public interest for the purposes of s.32(1)(c), the assumption is that the publication of much that is not of great importance will nevertheless be in the public interest. However, it is our view that in order to demonstrate that procuring private information by paying a private investigator or by bribing an employee, that is actions which would normally be criminal offences, are justified in the public interest, the publisher would have to convince a court that the information concerned was of such vital importance that using underhand methods was, exceptionally, justified. This defence has not yet been tested in the courts. I hope it will be shortly. However, we are confident that the courts will be reluctant to accept it as a defence, for example, for paying for a celebrity's phone records where there is no question this will reveal significant wrong doing. In summary, my concern is lest your note gives the impression that as long as a journalist considers there is a public interest in the story he/she is researching, there is little risk of committing an offence even if information is obtained by bribery". He concluded "In summary I wonder if there is an argument for more unequivocally urging caution before obtaining information by deception or by paying for it whilst flagging that in exceptional circumstances a defence might apply. You could advise that journalist should not lightly assume such defences are likely to apply and may be well advised to seek legal advice".*

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<sup>546</sup> PCC/X/2/14-32

<sup>547</sup> PCC/X/2/33-34

580. Mr Toulmin responded to Mr Jones by email on 20 April 2004<sup>548</sup> and thanked him for his helpful suggestions. He attached a further draft of the guidance note and asked Mr Jones whether it addressed the points he had raised, noting that he needed to strike a balance between urging caution and sounding too restrictive.
581. Mr Jones responded to the redraft and confirmed, in an email to Mr Toulmin later that day<sup>549</sup>, that it *“very largely addresses the points that I made and I welcome, in particular, the fact that you are seeking legal advice before assuming that any of the s.55 defences will apply”*. Mr Jones identified two reservations which he said he still had in relation to the draft. First, he said that s.32 of the DPA could only be relied upon where there was a reasonable belief that compliance with particular provision(s) would be incompatible with the special purposes. He, therefore, made a suggestion with regard to how the matter might be addressed. Second, he expressed a reservation about the sentence *“A court would have to decide..... afforded by the Act”*. He explained that it was not just the importance of the information that would be relevant, but also, for example, whether the information could be obtained legally and whether it would be made publicly available shortly etc. He noted that a court would have to decide whether, in the circumstances, obtaining the information dishonestly/without the agreement of the organisation concerned, was justified/warranted.
582. Mr Toulmin responded to Mr Thomas in an email dated 23 April 2004<sup>550</sup>. Mr Toulmin explained that he was putting the finishing touches to the draft of the guidance note and sought Mr Jones’ advice in relation to the sentence in the draft note to which Mr Jones had expressly made reference. Mr Jones replied, the following day<sup>551</sup>, describing the issue which Mr Toulmin had raised as being *“a very good point if a slightly tricky one”*. Mr Jones went on to provide some further advice.
583. Mr Thomas wrote to Sir Christopher on 8 December 2004<sup>552</sup> following a lunch which he had had with Sir Christopher and Tim Toulmin the previous week. Mr Thomas expressed concern that the guidance note which Mr Toulmin had been drafting in April had, by that time, not been finalised because Sir Christopher had explained to him that media lawyers had thought that the guidance note had over simplified the

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<sup>548</sup> PCC/X/2/35-36

<sup>549</sup> PCC/X/2/35

<sup>550</sup> PCC/X/2/36

<sup>551</sup> PCC/X/2/37

<sup>552</sup> PCC/X/2/38-39

position. Mr Thomas clearly thought that this was an over cautious response given that the note made clear that it was “*by way of straightforward guidance only and should not be relied [sic] as legal advice*”. Mr Thomas expressed a strong view that the PCC should publish a clear public statement warning journalists and editors of the risks of committing criminal offences under the DPA by the practice of making payments in return for confidential information. Mr Thomas explained that the ICO had been “*broadly content with the draft*”, although he noted that Phillip Jones (of the ICO) had made a couple of suggested revisions in April. Mr Thomas identified his principal concern to be that journalists and editors might take unwarranted comfort from the defence that, in certain circumstances, the obtaining of evidence was justified in the public interest. He said that he feared that it might be assumed that simply because a journalist subjectively considered a particular story to be in the public interest, the prohibitions on obtaining personal information without consent could safely be ignored. He said that he was satisfied that the courts would not accept this defence lightly and felt that they would consider that the public interest in obtaining (and publishing) the information would have to be extremely strong in order to justify obtaining the information dishonestly. He expressed the hope that the draft guidance note could be revised and that the issue of the public interest defence could be addressed further.

584. Following receipt of the letter from Mr Thomas dated 8 December 2004<sup>553</sup> on 10 December 2004, Mr Toulmin wrote, in similar terms, to the Executive Managing Editor of the Daily Mail, Robin Esser (who was an active member of the Society of Editors); to the Director of the Society of Editors, Bob Satchwell<sup>554</sup>; and to the Senior Head of Legal Affairs at the Newspaper Society, Santha Rasaiah<sup>555</sup> enclosing a copy of the letter and expressed the view that it was clear that the PCC must resurrect the data protection guidance note that he had drafted earlier in the year. Mr Toulmin commented:

*“Christopher and I are persuaded of the real need to get a note ratified by the Commission as soon as possible, and will therefore be submitting a draft to the Commission meeting which will take place on 2 February. I will be in touch soon with a revised note, the terms of which I very much hope we can agree in light of Richard Thomas’ letter”.*

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<sup>553</sup> PCC/X/2/38-39

<sup>554</sup> PCC/X/2/42

<sup>555</sup> PCC/X/2/43



Mr Toulmin confirmed that he was sending a copy of the letter to Bob Satchwell, the Executive Director of the Society of Editors and to Santha Rasaiah of the Newspaper Society

585. Sir Christopher replied to Richard Thomas on 15 December 2004<sup>556</sup> and informed him that he had asked Tim Toulmin to resurrect the guidance note, to consult further with Philip Jones and to take final comments from the industry in advance of a draft being placed before the Commission for approval the following February. Sir Christopher confirmed *"It goes without saying that the Commission cannot condone criminal behaviour and if the note raises awareness about what journalists must do to comply with the Act then that will be most welcome"*.
586. On 7 January 2005<sup>557</sup>, Mr Jones wrote to Mr Toulmin and acknowledged receipt of the latest draft of the guidance note. In this letter, Mr Jones repeated the observations which had been made, previously, by the ICO.
587. On 11 January 2005<sup>558</sup>, Mr Toulmin wrote to Bob Satchwell, the Director of Society of Editors, providing a final version of the Data Protection Act Guidance Note, together with a copy of the letter which he had received from Philip Jones dated 7 January 2005. He explained that the PCC intended to endorse the note at its meeting on 2 February 2006, noting that the PCC had already consulted exhaustively on the matter the previous year and that the note was considered to be accurate by the Information Commissioner.
588. The meeting of the Commission on 2 February 2005 ratified PCC Paper No. 3545, being the PCC's guidance note entitled 'Data Protection Act, Journalism and PCC Code'.
589. Following ratification, Tim Toulmin wrote to Santha Rasaiah at the Newspaper Society on 15 February 2005<sup>559</sup> enclosing a copy of the note. In the letter, Mr Toulmin noted that the note had *"...the general agreement of the industry, the approval of the PCC, and the endorsement of the Information Commissioner"* and expressed the hope that the note would not, therefore prove to be too controversial.

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<sup>556</sup> PCC/X/2/44

<sup>557</sup> PCC/X/2/45-46

<sup>558</sup> PCC/X/2/47-53

<sup>559</sup> PCC/X/2/54-57

590. On 4 March 2005<sup>560</sup>, the guidance note was uploaded to the PCC's website. It was advertised, as follows:

*"Data Protection Act, Journalism and PCC Code: The Guidance Note was compiled with the help of the Information Commissioner to provide general guidance about the provisions of the Act and its impact on journalist. It includes details of the journalistic exemptions and the public interest defence, that makes clear that there is a specific criminal offence of unlawfully obtaining, and selling, personal data. To read the note click [here](#)."*

591. The following month, in April 2005<sup>561</sup>, The Guardian published an article headed 'Police Data Sold to Newspapers'. The article reported a court case against two former police employees and two private investigators who had been charged with offences involving the sale of police information to the press. The former police employees both pleaded guilty to conspiracy to commit misconduct in a public office and the two private investigators pleaded guilty to breaching the DPA. All four defendants were given a 2 year conditional discharge. It was claimed in the article that two national newspapers had paid to receive confidential information from the police national computer and that articles from the Sunday Mirror and the Mail on Sunday had been used in evidence.

592. In August 2005, Mr Toulmin wrote to the Editor of the Press Gazette taking issue with a claim that had been published in the Gazette<sup>562</sup> that the PCC had been pressured by the Information Commissioner for a year to stop newspapers using private detectives to obtain confidential information illegally. Mr Toulmin clarified:

*"The Information Commissioner was pushing at an open door so far as the PCC was concerned regarding his request for us to issue guidance about the Data Protection Act. We have made clear many times that the Commission cannot condone criminal behaviour. In this case, the dull truth that the guidance was somewhat delayed by detailed queries from one of the trade bodies. It's hardly fair to ask the Information Commissioner to say that he pressured us: when this hurdle arose we heard nothing from his office for 8 months until the matter was considered further".*

593. In May 2006, the ICO published its report 'What Price Privacy? The Unlawful Trade in Confidential Personal Information'<sup>563</sup>. A copy of the report was sent by the Information Commissioner, Richard Thomas, to Sir Christopher under cover of a letter dated 10 May 2006<sup>564</sup>. Mr Thomas noted that the report documented the

<sup>560</sup> PCC/X/2/58-62

<sup>561</sup> PCC/X/2/63

<sup>562</sup> PCC/X/2/64-66

<sup>563</sup> PCC/X/2/67-114

<sup>564</sup> PCC/X/2/115-116

participation of the media in the illegal trade in personal information. He said, in particular, "As you are aware the offence of unlawfully obtaining personal data is one which is from time to time committed by journalists and the report highlights this with reference to the Motorman investigations in s.5.7-5.11. It is my firm view that increasing the penalties for s.55 should not in any way fetter the press in the lawful pursuit of its stories. He noted further that, (in s.7.1(7)-7.2(1)) the ICO was "recommending that the PCC and the Code of Practice Committee of Editors should take a much stronger line to tackle any involvement by the press in the illegal trade in personal information". Mr Thomas advised that the ICO would be producing a follow up report, in 6 months' time, and invited the PCC to submit recommendations in advance. He concluded his letter by informing Sir Christopher in unequivocal terms:

*"You should also be aware that I will not hesitate [sic] pursue the matter if we receive evidence that any of the 305 named journalists identified during the Motorman investigations may be committing further offences after production of this report".*

594. Sir Christopher wrote to Mr Thomas on 31 May 2006<sup>565</sup> thanking him for a copy of 'What Price Privacy?' which he described as "an interesting read". Under cover of the letter, he sent to Mr Thomas a copy of the PCC's recently published annual report<sup>566</sup>, together with the text of a speech<sup>567</sup> which Sir Christopher had given the previous week in which he referred to the remarks made by Mr Thomas about the PCC. Sir Christopher proposed that, as a next step, they should organise a meeting in order to explore what more Mr Thomas thought the PCC could do. He noted that Mr Thomas' call for the PCC to act had come "rather out of the blue" and that the PCC had no material to work with other than what had been placed in the public domain by the report.
595. On 13 June 2006<sup>568</sup>, Mr Toulmin wrote to Richard Thomas and provided contact details for the Code Committee. He explained that he had informed the secretary, Ian Beales, to expect to receive a call from the ICO to organise a meeting
596. Sir Christopher and Tim Toulmin met with Richard Thomas and Lee Taylor of the ICO on 13 July 2006. The minutes of the meeting (prepared by the ICO and sent to the PCC under cover of a letter dated 19 July 2006) confirm that the purpose of the

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<sup>565</sup> PCC/X/2/135

<sup>566</sup> PCC/X/2/117-128

<sup>567</sup> PCC/X/2/129-134

<sup>568</sup> PCC/X/2/136

meeting was *"to discuss the PCC's response to recommendations in the 'What Price Privacy?' report and, in particular the call for firm proposals from the PCC about how it would take a stronger line to tackle press involvement in the illegal trade"*. For the purposes of this Witness Statement I shall assume that the Minutes are an accurate record of the meeting.

597. According to the minutes, at the meeting, Sir Christopher explained that the PCC's stance had consistently been that reporters must stay within the law and that he had made this point, regularly, on public platforms. He explained, however, that the PCC was not able to act as a general regulator. Sir Christopher expressed the view that what was needed was a strong stance from the ICO, including prosecutions, and he queried what more the PCC could do in relation to DPA issues. In response, Richard Thomas said that he would like to see the PCC raise awareness on the press side, including increasing the prominence of guidance already produced and of the offences which might be committed under the DPA. The minutes record that Mr Thomas explained that action by the ICO against journalists associated with illegal activity had been hampered by the precedent set in the parallel cases described in the 'What Price Privacy?' report. In reply, Sir Christopher explained that the PCC's website was focused at individuals, rather than at journalists, which was consistent with the PCC's role (which was not that of a general regulator). He reminded Mr Thomas that he (Sir Christopher) had drawn attention to the report of the ICO and to the PCC's DPA Guidance Note in his annual report speech where he had stated that *"bribery has no place in journalism"*. Sir Christopher encouraged the ICO to engage directly with the industry with a view to raising awareness.
598. Tim Toulmin echoed the sentiments expressed by Sir Christopher and recommended that the ICO engage with the industry directly to secure support for further guidance to raise the profile of DPA offences which Mr Thomas was advocating. Mr Toulmin explained to Mr Thomas the separate responsibilities of the PCC and the Editors' Code of Practice Committee in response to Mr Thomas' suggestion that the Code of Practice might be revised, to include specific reference to obtaining personal information by improper payments. Sir Christopher and Mr Toulmin confirmed that it was the Code Committee which had the ultimate say on what changes might be made to the Code of Practice (although the PCC could make recommendations). Mr Thomas stressed that the ICO did not expect the PCC to take on an investigatory function in respect of criminal offences and accepted that the PCC could only deal with breaches of the Code of Practice. Further action was agreed, as follows:

- 598.1 the Editors' Code of Practice Committee was to be engaged by the ICO and by the PCC to discuss the possibility of changes to the Code of Practice and with regard to the production of further guidance;
- 598.2 the PCC was to give thought to the production of further 'Q&A' style guidance;
- 598.3 the PCC was to continue to condemn the illegal obtaining of confidential personal information by journalists; and
- 598.4 the PCC would provide a formal response to the 'What Price Privacy?' report.
599. Further 'Q&A' Guidance was subsequently published by the Editors' Code Committee, and appears in the Codebook.<sup>569</sup>
600. At the Commission meeting on 26 July 2006<sup>570</sup>, Sir Christopher updated the Commissioners about his meeting with the Information Commissioner and also noted the DCA constitution with regard to the possibility of imposing greater penalties for journalists who breached the DPA.
601. On 6 September 2006<sup>571</sup>, Lee Taylor, the Guidance and Promotions Officer at the ICO, wrote to Mr Toulmin confirming that the ICO was preparing a follow up report to 'What Price Privacy?' which would detail the responses of organisations identified in the report and invited the PCC to provide a formal response by the end of September. Mr Taylor also confirmed that Richard Thomas would be meeting with Ian Beales, Chairman of the Code Committee, later that month to discuss the possibility of additions being made to the Code of Practice and the possibility of the Code Committee sanctioning/producing further guidance specifically focusing on the illegal obtaining of personal data.
602. Sir Christopher wrote to Mr Thomas on 12 September 2006 in relation to the formal response which the ICO had invited the PCC to provide in relation to 'What Price Privacy?'. Sir Christopher clarified:

*"On the general issue, our position is unambiguous. I reiterated publicly last month<sup>572</sup> that offering money for confidential information, either directly or*

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<sup>569</sup> PCC/M/2/31

<sup>570</sup> PCC/X/2/141

<sup>571</sup> PCC/X/2/142

<sup>572</sup> PCC/X/2/134

*through third parties, may be illegal and that journalists must have regard to the terms of the Act"*

603. In terms of the ICO report and the next steps, in his letter Sir Christopher reminded Mr Thomas that, at their meeting on 13 July 2006, they had discussed the possibility of amendments being made to the Code of Practice to include a ban on paying for certain types of information. He reminded Mr Thomas that the Editors' Code of Practice Committee was a separate body from the PCC and noted that Mr Thomas was to meet with the secretary of the Code Committee shortly. Sir Christopher also referred to the discussions at the meeting about whether the PCC could introduce some 'plain English' guidance in relation to the DPA and explained that the PCC's guidance notes generally expanded on the provisions of the Code of Practice and, therefore, suggested that the Commission should await the outcome of the October meeting of the Code Committee. Sir Christopher mentioned that the Committee itself might wish to publish guidance on the subject.
604. At the meeting of the Commission on 20 September 2006<sup>573</sup>, Sir Christopher introduced a paper (PCC Paper No. 3792)<sup>574</sup> entitled 'Information Commissioner/DCA Consultation on Penalties for Misuse of Personal Data'. The paper had been circulated to the Commissioners in advance. Sir Christopher emphasised that any change to the Code of Practice, in light of the Information Commissioner's concerns, would have to be initiated by the newspaper and magazine industry. According to the minutes of the Commission meeting<sup>575</sup>, Sir Christopher notified the Commissioners that, if the industry decided it wished to revise the Code, the Code changes, or other guidance would then be considered by the Commission. Sir Christopher questioned whether the Information Commissioner understood the distinction between the Commission and the Code of Practice Committee and indicated, further, that the Commission could only comment on proposals made by the Information Commissioner if they were relevant to the PCC and that it was not appropriate, for example, for the Commission to comment specifically on the proposals for increasing the penalties for breaches of the DPA.

Finally, Sir Christopher noted that any response from the PCC to the 'What Price Privacy?' report was complicated by the Department of Constitutional Affairs' consultation on increasing penalties for breaches of the DPA. He noted that if the penalties were increased, it might make enforcing rules duplicated in the Code more

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<sup>573</sup> PCC/X/2/145

<sup>574</sup> PCC/X/2/146-147

<sup>575</sup> PCC/X/2/145

difficult and he suggested, therefore, that the PCC should wait to see how the DCA would take things forward.

605. Following the publication of 'What Price Privacy Now?', Lord Soley of Hammersmith wrote a letter to Sir Christopher<sup>576</sup> asking him whether it was his intention to make a strong public statement calling on the relevant editors to inform the people in respect of whom information had been collected that they had been targeted in the way indicated in the report. Lord Soley indicated that it was his intention to raise this issue in the House of Lords. In reply, in his letter dated 19 December 2006<sup>577</sup>, Sir Christopher suggested that a number of points needed to be borne in mind. He wrote:

*"The first is that I have – as the report makes clear – repeatedly condemned breaches of the Data Protection Act by journalists when there is no public interest. I will continue to do so publicly and robustly. The second is that the material that the Information Commissioner has gathered for this report, so far as it relates to journalists, is over four years old and precedes my time chairing the PCC. The third is that, from what I can tell, there is no indication in the report that all or any of the newspapers cited had breached the Data Protection Act, let alone whether they might be able to evoke any public interest defence. The use of enquiry agencies is not in itself in breach either of the law or the Code of Practice. The fourth is that the PCC enforces the terms of the Press Code of Practice and not the law. There are already legal remedies available for alleged breaches of the DPA. My own suggestion would be to use them in such circumstances".*

606. In February 2007<sup>578</sup>, the Information Commissioner corrected the information contained in the report 'What Price Privacy Now?' in relation to statistics contained in the report. He conceded that figures for The Sunday Times and for the News of the World had been incorrectly published. He clarified that the true figures were that there were only four cases linked with The Sunday Times, all of which involved one journalist and that the figures for the News of the World increased to 228 and to 23 respectively. He also noted that two cases involving one journalist should have been listed for The Times.
607. In March/April 2007 Tim Toulmin wrote, in similar terms, to the Editor of the Sunday Express, Martin Townsend<sup>579</sup> (which was copied to the Joint Managing Director of Express Newspapers, Martin Ellice, the joint Managing Director of Express Newspapers, Stan Myerson and the Legal Adviser of Express Newspapers, Stephen

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<sup>576</sup> PCC/X/2/179

<sup>577</sup> PCC/X/2/180

<sup>578</sup> PCC/X/2/182-183

<sup>579</sup> PCC/U/1/113

Bacon); the Editor of the Independent, Simon Kelner<sup>580</sup> (which was copied to the Chief Executive of Independent Newspapers (UK) Limited, Ivan Fallon and Head of Legal Services of Independent Newspapers (UK) Limited, Louise Hayman); the Editor of the Daily Star, Dawn Neesom<sup>581</sup>; the Editor of the Sunday World, Jim McDowell<sup>582</sup>; the Editor of Marie Claire, Marie O'Riordan<sup>583</sup>; the Editor of Woman's Own, Karen Livermore<sup>584</sup>; the Editor of Closer, Emily Burrow<sup>585</sup>; the Chairman of Hachette Filipacchi, Kevin Hand<sup>586</sup>; the Managing Director of H Bauer UK, David Goodchild;<sup>587</sup> the Chief Executive of EMAP, Paul Keenan<sup>588</sup>; the Editor of the Sunday Telegraph, Patience Wheatcroft<sup>589</sup>; the Editor of The Daily Telegraph, William Lewis<sup>590</sup>; the Managing Director of Condé Nast, Nicholas Coleridge<sup>591</sup>; the Editor of The Observer, Robert Alton<sup>592</sup>; the Editor of The Independent on Sunday, Tristan Davies<sup>593</sup>; the Editor of The Guardian, Alan Rusbridger<sup>594</sup>; the Editor in Chief of the Daily Mail, Paul Dacre<sup>595</sup>; the Editor of The Sunday Times, John Witherow<sup>596</sup>; the Editor of The Times, Robert Thompson<sup>597</sup>; the Editor of the Financial Times, Lionel Barber<sup>598</sup>; the Editor of the Daily Express, Peter Hill<sup>599</sup>; the Editor of the Daily Record, Bruce Waddell<sup>600</sup>; the Editor of The Sunday Mail, Allan Rennie<sup>601</sup>; the Editor of The Sun, Rebekah Wade<sup>602</sup>; the Editor of Best, Michelle Hather<sup>603</sup>; the Editor of

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- 580 PCC/U/1/114
  - 581 PCC/U/1/115
  - 582 PCC/U/1/116
  - 583 PCC/U/1/117
  - 584 PCC/U/1/118
  - 585 PCC/U/1/119
  - 586 PCC/U/1/120
  - 587 PCC/U/1/121
  - 588 PCC/U/1/122
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The Mail on Sunday, Peter Wright<sup>604</sup>; the Editor of Daily Mirror, Richard Wallace<sup>605</sup>; the Editor of the Sunday Mirror, Tina Weaver<sup>606</sup>; the Editor of The People, Mark Thomas<sup>607</sup>; and the Chief Executive of IPC Media, Sylvia Auton.

608. In the letter Mr Toulmin explained that he was writing to inquire about the *"internal controls in your newspaper and what your current practice is with regard to educating journalists about the requirements both on the Code and the law including the public interest exemptions. The DPA has an obvious relevance here as well"*. I detail the responses from each of the newspapers in paragraphs 397-423 of my Witness Statement.

609. On 14 March 2007, Sir Christopher and Mr Toulmin attended a meeting of the Editors' Code of Practice Committee, the minutes<sup>608</sup> for which were circulated by the Secretary of the Committee, by email, on 4 April 2007<sup>609</sup>. Attached to the minutes were correspondence<sup>610</sup> passing between the ICO and the Committee regarding potential revisions to the Code in relation to data protection issues.

610. In the PCC's Report on Subterfuge and Newsgathering which it published in May 2007<sup>611</sup> (to which I refer in paragraphs 425 of this Witness Statement), the PCC stated the following in relation to DPA issues:

610.1 *"the Commission had specifically highlighted the DPA in its letter to the industry following the publication by the Information Commissioner of two reports titled What price privacy? and What price privacy now?"*

610.2 *in those reports, the Information Commissioner published details of newspapers and magazines that had been paying inquiry agents for information. There was a suspicion that some of the information may have been obtained in breach of the Data Protection Act. The Information Commissioner called on the industry to bring forward proposals to clamp down on the illegal trade in information. He also called on the government to*

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<sup>604</sup> PCC/U/1/138

<sup>605</sup> PCC/U/1/139

<sup>606</sup> PCC/U/1/140

<sup>607</sup> PCC/U/1/141

<sup>608</sup> PCC/X/2/185-192

<sup>609</sup> PCC/X/2/184

<sup>610</sup> PCC/X/2/193-195

<sup>611</sup> PCC/U/1/174-184

*increase penalties for breaching the Act to two years' imprisonment. There would be no exemption from such a penalty for journalists.*

610.3 *the Commission condemns breaches of the DPA – or any law – when there are no grounds in the public interest for committing them. However, it has said before that it does not consider that the case for stronger penalties has been made out. Jailing – or threatening to jail – journalists for gathering information in the course of their professional duties is not a step to be taken lightly, and would send out a worrying message about the status of press freedom in the United Kingdom.*

610.4 *it seems to the Commission from the exercise it has just carried out that the DPA is taken seriously across the industry. As highlighted above, some companies have rewritten their journalists' contracts specifically to make reference to the DPA. Others had specific training on the Act. There were numerous references to the Information Commissioner's work.*

610.5 *the industry has also been working together to draw up a practical note for journalists on how the DPA works and applies to them”.*

611. Further, one of the PCC's six key proposals in the report was that Contracts of Employment should include a specific reference to the DPA.

612. On 31 May 2007<sup>612</sup>, Tim Toulmin wrote to Richard Thomas explaining that he was hosting an evening seminar on subterfuge and newsgathering for national newspaper journalists on 3 July 2007 which was part of the PCC's follow up to the report published on the subject following the Goodman/Mulcaire convictions. Mr Toulmin invited somebody from the ICO to attend the seminar.

613. On 6 June 2007, Mr Toulmin circulated a 'Subterfuge Report Follow Up' paper (PCC Paper No. 3986) in which he referred:

*“Commissioners will have seen the press reports and commentary following the report into subterfuge and news gathering that was published after the last Commission meeting. The feeling within the office was that it was covered in a serious and straightforward manner. In addition, we have received a positive response from many in the industry, where the view seems to be that the report struck the right balance between casting light on events at the News of the World and managing to say something constructive for the industry at large.*

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<sup>612</sup> PCC/X/2/197

*Commissioners may recall that the report included an undertaking by the Commission to host a seminar on undercover newsgathering for national newspaper journalists. This will take place on 3<sup>rd</sup> July at the Crown Plaza in Blackfriars. We have invited someone from the Information Commissioner's office to be on hand to answer any questions about the Data Protection Act.*

*In terms of monitoring compliance with the report's recommendations, there was some discussion at the last meeting about whether the Commission should make clear that it would following up the matter with the industry at a certain point to assess the level of implementation. After discussion, it was decided that this would not be the most appropriate way forward given the type of regulation overseen by the Commission. The dim view that the Commission would take of something similar happening at any publication which turned out not to have heeded its recommendations is implicit in the report. That said, Commissioners may wish to review whether anything further needs to be done. Where it is necessary, industry trade bodies may, for example, have a role in helping individual companies or publications frame amendments to contracts. This is something that we could follow up with them to help ensure that the issue does not fall by the wayside.*

*If Commissioners have any other views on this, or any comments about how the report was received, we would be grateful to hear them".*

614. On 3 July 2007, the Parliamentary Select Committee on Culture, Media and Sport published its report entitled "Press Standards, Privacy and Libel".
615. Tim Toulmin had given evidence to the Select Committee on behalf of the PCC<sup>613</sup>. At paragraph 26 of the report, the Select Committee endorsed the recommendations made by the PCC in its Report on Subterfuge and Newsgathering and said:

*"We welcome the steps that we have now been taken by the News of the World to introduce more stringent controls over cash payments by its staff. The recommendations on newsgathering methods issued in May 2007 by the Press Complainants Commission should be adopted as a matter of course by all newspaper and magazine publishers".*

616. The Select Committee was, however, more critical of the industry and said, at paragraph 33:

*"We are not convinced that the Information Commissioner should feel debarred from releasing to their own employers the names of individual journalists identified in invoices obtained under Operation Motorman. In any case, we do not see the Information Commissioner's decision as a valid defence for newspaper editors, some of whom seem to have made minimal effort to establish whether their employees had obtained information illegally (or whether they had done so ostensibly in the public interest but without having secured the necessary authority). The fact that an agency which was regularly accessing databases illegally was being used by journalists throughout the industry, without any apparent questioning from editors, is very worrying. We find claims that all of the transactions involving journalists were for the obtaining of information through legal means to be incredible and it is a matter of great concern that the industry has not taken this more seriously. The lack of any prosecutions or convictions of journalists is no defence. One of the principal arguments for self regulation*

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<sup>613</sup> STIG, PLEASE PROVIDE

*is that it is more effective than statutory controls. If the industry is not prepared to act unless a breach of the law is shown to have occurred already then the whole justification for self-regulation is seriously undermined. If self-regulation is to continue to command confidence and support, editors will need to be seen to be pro-active in investigating any potential breach of the Code of Practice”.*

617. On 11 October 2007, Sir Christopher and Tim Toulmin attended a meeting of the Editors’ Code of Practice Committee, the minutes<sup>614</sup> for which indicate that data protection issues were considered.
618. The PCC hosted a seminar on 3 July 2007 specifically on subterfuge and data protection issues, at which a representative of the Information Commissioner spoke. The following organisations were represented: Daily Mail, the Mail on Sunday, the Evening Standard, the Sun, the Daily Mirror, the Sunday Mirror, the People, the Daily Express, Independent Newspapers, the Daily Telegraph, the Times, the Sunday Times, the Guardian, the Observer, and the National Magazine Company
619. On 15 March 2011, I held another seminar along with national newspaper executives, again with a representative of the Information Commissioner as speaker. Executives from the following organisations attended: the News of the World, the Sun, Telegraph Group, Mirror Group, the Times, Press Association, Society of Editors, Daily Mail, Evening Standard, Independent Newspapers, the Guardian, and the Observer.

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<sup>614</sup> PCC/X/2/206-209

**THE PCC'S INVESTIGATION OF COMPLAINTS RECEIVED UNDER CLAUSE 10 OF THE CODE OF PRACTICE (CLANDESTINE DEVICES AND SUBTERFUGE)**

620. Considerations of the public interest are central to the Commission's evaluation of complaints made under the terms of Clause 10 (Clandestine devices and subterfuge) of the Editors' Code.
621. In evaluating complaints under Clause 10, the Commission generally asks the following questions:
- 621.1.1 Did the publication use prohibited investigatory methods?
  - 621.1.2 Was the publication able to demonstrate that it had *prima facie* evidence before using such methods that they would yield information that would serve the public interest?
  - 621.1.3 Was the nature and extent of any subterfuge or use of a clandestine device appropriate and proportionate to the public interest served?
  - 621.1.4 Could the material have been obtained by other (non-clandestine) means?
622. The Code's rules apply to pre-publication news gathering as much as to publication itself. The Commission could uphold a complaint, even if nothing were published as a result of the inquiries, unless the publication were able to demonstrate that it had acted on a reasonable expectation that the methods used would yield material in the public interest proportionate to the intrusion.
623. Some acts of misrepresentation or "blagging" are invisible (such as impersonating someone to obtain contact details, for example) in the sense that the results of the activity do not appear in the published story. Neither the potential complainant nor the Commission may be aware that such a breach of the Code might have taken place.
624. It may only be from the examination of data relating to the targets (such as a telephone company). This would be outside of the jurisdiction of the PCC. There is considerable crossover here between Clause 10 of the Code and the Data Protection Act, which is enforced by the Information Commissioner.<sup>615</sup> The work of

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<sup>615</sup> See paragraph 570

the Information Commissioner has sought to prohibit illegal activity by inquiry agents in this area.

625. One answer to the issue of invisibility of the potential offences is ensuring that newspapers have proper systems in place to minimise the likelihood of any material being obtained in a non-compliant way. Establishing best practice in this area is currently the work of the Phone Hacking Review Committee, which is inquiring what safeguards are in place across the industry.<sup>616</sup>
626. The Commission also now, in privacy cases, more regularly asks editors to give assurances about the manner in which information has been obtained in the preparation of the story. Editors are expected to be responsible for the actions of all journalists and contributors.
627. The formal work of the Commission, in enforcing Clause 10 of the Code, tends to relate to more over acts of subterfuge and misrepresentation.<sup>617</sup> I have disclosed separately a bare summary of every case under Clause 10 since 2005. Listed below are full summaries of key decisions under the Code<sup>618</sup> in this area.

*A man v The Observer (1998)*<sup>619</sup>

**Regardless of the level of subterfuge employed, a key consideration for the Commission will be whether the information could have been obtained by other means.**

628. The article revealed that the complainant was developing a new type of firearm which would not fall under the terms of the 1997 Firearms Act. The complainant said that the journalist had telephoned him pretending to be a shooting enthusiast; the article quoted from this conversation. The journalist had subsequently revealed his identity. The complainant accepted that there was a legitimate public interest in the story but said that subterfuge was unnecessary; he had previously given an interview to another newspaper on the subject, and would have spoken to the journalist had he been approached in the normal way. The newspaper said that the previous coverage had not revealed the complainant's name; the initial telephone call, which it described as "light subterfuge", had been intended to determine –

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<sup>616</sup> See paragraph 559

<sup>617</sup> A bare summary of all cases since 2005, and their outcomes, is reproduced in file PCC/X/3/210-225

<sup>618</sup> See paragraph 184

<sup>619</sup> PCC/N1/1/453-495

before the journalist asked him in person to justify his activities – whether he was the same gunsmith; the journalist had not believed that the complainant would have identified himself otherwise.

629. The Commission agreed that the subject was one of legitimate public interest. However, no efforts had been made to obtain the material without the use of subterfuge, however “light” it was considered to be. The Commission was not persuaded by the newspaper’s argument that its use was necessary. The complaint was upheld.

*Mrs Gill Faldo v The Sun (2001)*<sup>620</sup>

**Even in the absence of an active attempt to deceive, a journalist’s failure to correct a misleading impression about her identity may constitute misrepresentation.**

630. The complainant said that a journalist had turned up at her new home and pretended to the housekeeper that she was a friend who was desperate to contact the complainant, who was abroad at the time. The journalist was invited in and spoke to the housekeeper about the house. Shortly after, an article appeared describing the house, including details of its interior, which the complainant found intrusive. The newspaper said that, while the journalist had not said that she was a journalist, she had not claimed to be a friend and had not been asked whether she was a journalist. Her name would have been familiar to the complainant, so there was no question of her impersonating somebody else in order to gain information.

631. It was clear to the Commission that the journalist had allowed a misleading impression of who she was to develop. The housekeeper had been given no reason to believe that she was a journalist and consequently she discussed the complainant and allowed the journalist access to her house, something she would not have done had she known the journalist’s identity. The complaint was upheld.

*Ms Carol Munro and Ms Doris Bancroft v Evening Standard (2001)*<sup>621</sup>

**Editors must exercise particular caution in employing intrusive investigatory practices where children are involved. Editors must also avoid “fishing expeditions”, where there are no prima facie grounds to investigate.**

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<sup>620</sup> PCC/N1/1/454

<sup>621</sup> PCC/N1/1/456-457

632. The headteacher and chair of the board of governors of a London primary school complained about an article reporting on the experiences of a journalist who had spent a week at the school pretending that he was interested in becoming a teacher. The complainants said that there was no public interest to justify this reporting, let alone an "exceptional" one, necessary because the case involved children under 16. Parents and staff were angry at the deceit, and the children could not understand why a trusted adult had lied to them. (The complainants said the article had also contained inaccuracies and that it had indirectly identified a suspected victim of sexual assault.)
633. The newspaper said that the school had been chosen to illustrate the problems facing the teaching profession; its discussion of concerns over security, health and government claims over improvements in teachers' pay and conditions gave a public interest justification to the necessary subterfuge. Indeed, that the journalist could obtain a placement at the school without a police check was in itself a security issue. The journalist had not asked any question of a child that could not have been asked as an assistant teacher. The newspaper stood by the accuracy of the piece, although it accepted that it may have erred in relation to the child who was a suspected victim of sexual assault.
634. The Commission made clear that the retrospective justification – that the journalist had found some shortcomings when at the school – was unacceptable. The newspaper had not suggested that it had had advance information indicating that anything occurring at the school needed to be investigated in the public interest. To have accepted its argument would effectively entitle any journalist at any point to gain access to any school using subterfuge. There was no public interest in engaging in this serious misrepresentation. The Commission noted the newspaper's contention that the reporter was able to gain access to the school without a police check. However, this fact – which was not mentioned in the article – could have been reported without pursuing the subterfuge.
635. Both the intrusiveness of the investigatory methods, and the resulting article, breached the Code. The Commission upheld the complaint and asked the editor to review the application of the Code on his newspaper and to report his findings back to the Commission. (It also decided that the article had breached the Code's requirements in relation to the protection of children and victims of sexual assault).



*Ms Sallie Ryle, Head of Media Relations North for Granada Media v News of the World (2001)*<sup>622</sup>

**The mere possibility that undercover filming might uncover behaviour that would justify publication in the public interest is insufficient to justify the use of such an intrusive technique.**

636. The complainant was concerned that journalists from the newspaper had taken undercover video footage of a party at a hotel for employees of a television programme. The newspaper maintained that the area was not private: the journalists had walked, unchallenged, into the party, which was held in a hotel where – along with other members of the public they were perfectly entitled to be. It had been told that there had been ‘wild behaviour’ at previous parties, and it was in the public interest to explore whether this would be the case. The journalists left when their presence was detected.
637. The Commission was persuaded that the place was one where there was a reasonable expectation of privacy; if it were not private, it would not have made sense for the journalists to have used concealed cameras in order to obtain the material. Such a breach of the Code could only be excusable in the public interest. The PCC rejected the newspaper’s defence that the journalists might have discovered people behaving in a way which would have justified publication in the public interest. That would have given newspapers carte blanche to intrude on any private gathering of high-profile figures. The complaint was upheld.

*Mr Peter Foster v The Sun (2003)*<sup>623</sup>

**Eavesdropping into private telephone conversations is among the most serious forms of physical intrusion into privacy.**

638. In late 2002 a number of newspapers had reported that the complainant had been involved in negotiating the purchase of property in Bristol by Tony Blair, then Prime Minister, and his wife. As part of its investigations into the affair, the newspaper had intercepted and published details of telephone conversations between the complainant and his mother. The complainant said that publication of the conversations was not in the public interest: it did not contradict anything he had said which might have misled the public, and indeed, he had made no public

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<sup>622</sup> PCC/N1/1/455

<sup>623</sup> PCC/N1/1/458-459

statement. The fact that the story was high-profile did not justify the intrusion into his privacy.

639. The newspaper did not deny that private conversations had been intercepted and then published. It argued, however, that their publication was in the public interest because they helped to ensure that the public was not misled further by those involved in the saga, and because they established a clearer picture of events surrounding the incident.

640. The Commission started from the premise that eavesdropping into private telephone conversations – and then publishing transcripts of them – is one of the most serious forms of physical intrusion into privacy. Publication can only be justified under the Code of Practice where there is a high level of public interest in the material. In this case, the information revealed as a result of the activity was not significant enough to justify a serious breach of the strict terms of the Code. The complaint was upheld.

*The Hon. Christopher Monckton v Evening Standard (2003)*<sup>624</sup>

**The Commission is able to adjudicate on a publication's decision to use prohibited investigatory methods even in a case where the information obtained is not published.**

641. The complainant, acting on behalf of Consistent Hotel Staff Ltd, said that a reporter from the newspaper had gained employment with the company by misrepresenting herself and failing to identify herself as a journalist. The company accepted that there was a public interest in the question of illegal working, but said that the subterfuge could not be justified in this case: the newspaper was under a duty to bear in mind the possibility that the company was innocent; as such, it should have sought information directly before and not after it resorted to subterfuge. The company had made it clear to the newspaper that it was happy to answer any questions; when asked, it had provided the newspaper with compelling and independently-verified evidence that the claims were unfounded. The newspaper said that it was justified in using subterfuge to establish the truth of specific allegations it had received from several sources that the company was employing and exploiting illegal workers.

642. In the event, the newspaper had not published the allegations at the heart of the complaint; as such the Commission's task was not to determine their accuracy or

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<sup>624</sup> PCC/N1/1/460-462

otherwise. It had to determine solely whether the means by which the newspaper had sought to test the allegations were justified.

643. The Commission noted the complainant's concerns that the newspaper's sources (who had raised concerns about the company) had been anonymous, but they could not be discounted simply on that basis; it found that the allegations of impropriety made to the newspaper about the company were sufficiently serious and detailed to justify further investigation. The Commission also accepted the newspaper's argument that, given the nature of the allegations, it was appropriate to use subterfuge at the outset, before approaching the company directly; it was not unreasonable to assert that a company involved in wrongdoing might seek to suppress relevant evidence were it to be questioned openly.

*Controlled Events Solutions Limited v Sunday Mirror and The People (2004)*<sup>625</sup>

**The Commission will have regard for the nature of the information being sought by a publication in coming to a conclusion about whether it could have been obtained through other (non-clandestine) means.**

644. The complaint concerned two articles reporting on successful attempts to infiltrate Manchester United Football Club's Old Trafford stadium – at the time of heightened concern about terrorism – by journalists posing as stewards. The complainant's solicitors said the reporters had assisted each other in the misrepresentation of their true identities; the reporter from the Sunday Mirror – who was questioned by members of staff and the police – was alleged to have distracted officials in order to facilitate the entry of the reporters from The People.
645. The complainant's solicitors admitted there may have been a public interest in the story but said that the alleged faults found in the vetting systems of the company had not compromised security. The journalists were not allowed to bring any bags into the ground; it was difficult to ascertain what harm they could have achieved if intent on a terrorist act, and in any case no feasible screening would prevent a determined journalist from gaining entry by deception. The newspapers said that the purpose of the investigations was to test how easy it was for an individual posing as a steward to gain access to Old Trafford without detection. All the attempts to enter the ground were successful, and this fact alone justified the allegation that the security checks for stewards were inadequate. The editors of the newspapers

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<sup>625</sup> PCC/N1/1/469-472

provided signed statements denying that they had colluded in their attempts to infiltrate the stadium.

646. The newspapers had admitted that they had used subterfuge; the Commission's task was to determine whether this was justified and whether the information could have been obtained by other means. The Code states that the public interest includes "*protecting public health and safety*". Public allegations had been made that terrorists were planning an attack at the match. It was clearly in the public interest for newspapers to test whether members of the public were being sufficiently protected, and as the aim was to determine whether it was possible for terrorists to penetrate security at the game, the use of subterfuge was the only realistic way to obtain the information. The complaint was not upheld.

*Miss Elizabeth Noble v News of the World (2004)*<sup>626</sup>

**The ban on misrepresentation prohibits journalists from engaging in deception about the nature of the publication or publications for which they work. It also covers external contributors to the newspaper, even if they are not acting under the instructions of the editor.**

647. The article reported that a man had admitted in court to defrauding several women, including the complainant. The complainant raised a number of concerns under Clause 1 (Accuracy) and Clause 3 (Privacy) of the Code, and in addition complained that the freelance reporter had also misled her by presenting himself as a freelancer working for magazines. She said she had deliberately not responded to his requests for information. The newspaper provided a statement from the freelance reporter denying that he had approached the complainant under false pretences.
648. The Commission acknowledged the newspaper's claim that it had accepted material for the story from a freelance journalist in good faith. Nevertheless, the preamble to the Code of Practice makes clear that editors and publishers must ensure that the Code is observed rigorously not only by their staff but also by anyone who contributes to their publications. It was clear that the freelancer had sought to obtain information by misrepresenting the precise nature of his work, describing himself as "*a true life feature writer for the women's weekly magazines and...not a journalist*". His deception had continued even after the article in the newspaper was published and there seemed to be no public interest defence for his behaviour. The complaint

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<sup>626</sup> PCC/N1/1/463-464

was upheld; the Commission also found breaches of Clause 1 (Accuracy) and Clause 3 (Privacy).

*Mr Stan Collymore v The Sun (2004)*<sup>627</sup>

**Hoaxes that are perpetrated by the use of misrepresentation and subterfuge are unlikely to be justifiable on that grounds that they were intended to be harmless.**

649. The complainant, a well-known football player, had made public allegations that he had been assaulted in Dublin by several rugby players. Several days later, the newspaper published an article, trailed on the front page with the headline "*I lied: Stan Collymore's sensational signed confession to the Sun*". In reality he had been duped into signing a "confession" that the newspaper had invented by agreeing to give an autograph to someone posing as a fan. The true nature of the "confession" had been revealed in the text of the article – which appeared on an inside page – and the complainant maintained that many readers would not have realised it was bogus. The newspaper acknowledged that it had carried out a stunt, but argued that readers would not have been misled because the article made plain how the 'confession' had been obtained. It suggested that, since the nature of the scam was made clear in the article, no subterfuge had taken place.
650. The Code says misrepresentation and subterfuge can *generally* only be justified in the public interest, which means that harmless journalistic spoofs — such as April Fool stories — may hypothetically be permissible even if misrepresentation or subterfuge have been used. However, this was not such a case. The newspaper had obtained the complainant's signature as a result of subterfuge in order to use it in a manifestly misleading and damaging way, with no public interest defence. The complaint was upheld.

*Detective Constable Linda Daniels v The Sunday Telegraph (2004)*<sup>628</sup>

**A newspaper's use of subterfuge to gain access to the home of a serving police officer that contained Nazi memorabilia was justified in the public interest.**

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<sup>627</sup> PCC/N1/1/43

<sup>628</sup> PCC/N1/1/465-466

651. Journalists working for the newspaper had used subterfuge to gain access to the home of a Metropolitan Police officer, explaining to a relative that they were writing a book about military history and wished to speak to the complainant's husband, who was not at home. According to the complainant, when one reporter expressed a wish to use the lavatory, she was directed and accompanied upstairs by the relative, at which point another journalist entered the house and took photographs that subsequently appeared in the article. The newspaper denied that the second journalist had entered the home uninvited, but it acknowledged that both reporters had used subterfuge, arguing that their actions were in the public interest since the complainant was a police officer with particular responsibility for investigating racially motivated crimes, whose home contained Nazi memorabilia.

652. The Commission concluded that there was a legitimate public interest defence for the journalists' behaviour. The complainant was a police officer and had specific responsibilities for investigating racially motivated crimes – the question of whether her job was compatible with living in a home containing Nazi memorabilia was a justifiable one to bring into the public domain. The Commission also accepted the newspaper's argument that a police officer with the complainant's responsibilities would not have allowed a photographer to take pictures of Nazi memorabilia in her home. It noted that her husband, the owner of the memorabilia, had apparently determined never to speak to reporters after a previous experience. In such circumstances, the Commission concluded that it was reasonable for the newspaper to employ subterfuge as the only means of obtaining the relevant information about the complainant's house. The complaint was not upheld.

*Carole Caplin through Bates Wells and Braithwaite solicitors v News of the World (2005)*<sup>629</sup>

**In considering the level of public interest required to justify the use of clandestine methods, the Commission will consider the extent of any intrusion into an individual's private life.**

653. The newspaper articles followed an undercover investigation into the complainant's professional activities. Two journalists posed as clients of the complainant's health and fitness organisation using false names: one attended exercise classes run by the complainant and was given lifestyle instruction by her for two months before

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<sup>629</sup>PCC/N1/1/ 477-479

recommending his associate – the other journalist – as a client. The articles contained details of conversations that the complainant had had with the journalists.

654. The complainant said that the newspaper had engaged in subterfuge in a way that could not be justified in the public interest. There was no evidence that she had committed a crime, misled anyone or jeopardised public health and safety that might justify breaching the Code, and there was no evidence that other, more transparent means had been pursued to obtain the information. (The complainant also raised concerns under Clause 4 (Harassment) and Clause 3 (Privacy). The newspaper said that there was an overwhelming public interest in the articles. The complainant was known to have an extraordinary relationship with Tony Blair, who was then Prime Minister, and Cherie Blair, and its journalists had received information that the complainant was willing to exploit that relationship to promote her business. Its investigation showed that the claims were true; it supplied the Commission with a partial transcript of the recorded conversations.
655. The Commission determined on this occasion there was a sufficient public interest to justify the admitted subterfuge. The complainant had a well-known and contentious relationship with the Prime Minister and his wife. The newspaper's investigation concerned the complainant's professional role – which was a subject of controversy – not her private life. There was a public interest in testing claims that the complainant had exploited her relationship with the Blairs, and the Commission was satisfied that it would not have been possible to do so satisfactorily without posing as a client. It was clear that the complainant had referred repeatedly to the Blairs in conversations with the journalists. This included comments about the Prime Minister's health and claims that the complainant had spoken to him specifically in order to influence the government's position in respect of a European Directive.
656. The complaint was not upheld.

*HH Saudi Research & Marketing (UK) Limited and its associated company Satellite Graphics Limited v The Sunday Telegraph (2005)*<sup>630</sup>

**In some specific, limited circumstances, the use of subterfuge to obtain material that might potentially have been obtained by other means may not breach the Code. The Commission will have regard to the extent of the intrusion, and how proportionate it was to the public interest being served.**

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<sup>630</sup> PCC/N1/1/475-476

657. The complainants were the publisher and the printer of the Pan-Arabic newspaper, Asharq Al-Awsat. The article reported that a journalist posing as a potential client had visited the printing company Satellite Graphics Limited, where staff confirmed that it printed the British National Party publication, 'The Voice of Freedom'. The reporter had subsequently (and openly, as a journalist,) telephoned a spokesman for Asharq al-Awsat to ask whether it was true that the BNP's publication was also printed by Satellite Graphics. That the spokesman later confirmed this demonstrated that subterfuge had not been necessary to obtain the information, they said, and that the Code had therefore been breached.
658. The newspaper said that its reporter was not asked to identify himself when he visited the premises of Satellite Graphics Limited. An employee had confirmed to him that the company printed 'The Voice of Freedom'. The reporter then suggested that he might place work with the company, and the employee had volunteered to show him the other magazines published by the company. If this was subterfuge then it was – in the newspaper's view – of a limited nature. It pointed out the information was potentially commercially embarrassing, and that there were therefore grounds to suspect that the company would not willingly have volunteered it. In these circumstances, subterfuge was necessary; to approach the organisation openly in the first instance would be to alert it about the newspaper's interest in the story, and therefore undermine the effectiveness of any subsequent subterfuge. In this case, the spokesman's confirmation had occurred after the journalist said that he had proof of the allegation. There was nothing to say that he would have confirmed it had the newspaper not had the evidence it had obtained through subterfuge.
659. The wording of Clause 10 (and particularly the use of the word 'generally') allows the Commission to find no breach of the Code in some limited circumstances when material obtained by subterfuge is otherwise potentially available, and it decided that this was one such case. First, the journalist had not physically intruded into anyone's private life by his presence; he had turned up at a company and asked questions about its other clients, on a subject that was of some public interest. He had not gained entry into an individual's home under false pretences, nor to an establishment where potentially vulnerable members of the public might congregate. The material sought was commercial information; while it was not well-known that one of the company's clients was the BNP, this was not private and did not relate to anyone's private life. This meant that the subterfuge was of a less serious order than it otherwise may have been. The Commission also noted that the reporter had been



following up specific information about the company. Finally, while the Commission was clearly in no position to decide whether the company would have divulged the information if it had only been approached openly by the newspaper, it noted that the paper did have a reason when deciding to embark on the subterfuge for supposing that the company might not have made it public, because it was potentially commercially embarrassing. The complaint was not upheld.

*Mr M J Bretherick v County Times (2007)*<sup>631</sup>

**A newspaper's decision to obtain a photograph of a serving police officer charged with a serious crime from a social network did not raise a breach of the Code, even though a degree of misrepresentation had been employed.**

660. The complainant was a serving police officer who had been charged with possessing indecent images of children. He said that a reporter from the newspaper had signed up to a medieval roleplay website – of which he was a member – and had engaged other members in conversation about him under a false identity and taken a photograph of him from the website without his consent for publication in the newspaper. The complainant said that the removal of his photograph breached Clause 10.
661. The newspaper said that any member of the public could access the website concerned merely by logging on and joining as a member. The reporter had done this, albeit using a fake name, and downloaded the picture of the complainant. In any case, the publication of the photograph was in the public interest in the circumstances.
662. Clause 10 states that the press must not seek to obtain or publish material acquired by the unauthorised removal of documents or photographs. On this occasion, the reporter had not physically removed the photograph, but rather accessed it from a website which could be joined by any member of the public. A serving policeman charged with a serious offence was a legitimate subject of public scrutiny, and there was a public interest in the identification of individuals who have been charged with criminal offences. On the more general issue of subterfuge, it was not in dispute that the reporter had concealed his identity when joining the website. However, this amounted to little more than signing up to a website using a different name. The public interest was sufficient to justify both the manner in which the photograph had

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<sup>631</sup> PCC/N1/1/483-484

been obtained and the general level of subterfuge, which was not of a particularly serious order. The complaint was not upheld.

*A woman v The Sun (2008)*<sup>632</sup>

**Even where there is a strong justification for a publication's coverage as a whole, editors must consider whether the public interest can justify the full extent of any subterfuge employed in obtaining material.**

663. The journalist had secretly filmed the complainant's son – who had been convicted the year before of downloading sexual images of children – working in a supermarket, and had obtained a photograph of him making a delivery to a nursery school kitchen. The newspaper published an article on the subject, and placed the video footage on its website; the complainant said the way the footage had been obtained and published raised a breach of Clause 10. The newspaper said that there was a clear public interest in the story; the use of subterfuge in obtaining the footage was acceptable, as it was the only way of showing readers the complainant's son at work in the store. Nonetheless, the newspaper removed the footage from its website and undertook not to reuse it, unless there was a clear public interest to do so.
664. The Commission agreed that there was a considerable public interest in the story as a whole; the newspaper was entitled to highlight, and comment robustly on, this situation. However, there must be a powerful public interest justification for the use of undercover filming. The footage was not necessary to prove that the complainant worked for the supermarket; this was not in dispute. There was therefore insufficient justification for the subterfuge. The complaint was upheld.

*Mrs Jean Bellfield v Daily Mirror (2009)*<sup>633</sup>

**A journalist's decision to misrepresent his motives in seeking an interview was justified by his expectation of obtaining material of very significant public interest.**

665. The complainant was the mother of Levi Bellfield, who was at the time serving life in prison for two murders. (In 2011 he was convicted of the 2002 murder of Milly Dowler.) The complainant said that the newspaper's reporter had obtained an

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<sup>632</sup> PCC/N1/1/485

<sup>633</sup> PCC/N1/1/486-7

interview with her son through subterfuge, having offered to help in her son's appeal. She submitted a statement signed by the reporter, stating that he was "*only acting in Bellfield's best interest*" to help him answer "false allegations within the media". Having obtained an interview on this basis, the reporter had asked her son a number of questions which had not been agreed in advance. The result was an article reporting that Levi Bellfield had admitted that he was driving a red car which had been linked to the murder of Milly Dowler.

666. The newspaper said that after Levi Bellfield had answered several questions through correspondence about his movements on 21 March 2002 – the day that Milly Dowler disappeared – the reporter had sought a telephone interview with him. This was arranged through Levi Bellfield's brother; the family and Bellfield had been informed that he would ask about the Dowler case. It had been necessary for the reporter to sign the piece of paper in order to interview Bellfield, who had not spoken publicly since his arrest. During their conversation Bellfield had admitted for the first time – having refused to answer police questions on the matter – that he had been driving a red car captured on CCTV around the time Milly Dowler had disappeared. This confession was a matter of great significance and public interest, which justified the method by which the newspaper had obtained it.
667. It was clear that the journalist had used some subterfuge to obtain the interview with Levi Bellfield. However, the journalist had not misrepresented his identity, only how the article would be presented. The interview would not have occurred without the use of subterfuge, and it had yielded significant and new information. This fully justified the investigatory method employed. The complaint was not upheld.

*A man v Sunday World (2010)*<sup>634</sup>

**The Code's public interest exception makes specific reference to protecting public health and safety, but the extent to which such a goal would be served by the material obtained must be balanced against the intrusiveness of any methods used.**

668. A journalist from the newspaper had used a hidden camera to film the complainant, without his consent, in a private place in which a number of participants were about to be involved in consensual, legal sexual activity as part of an investigation into a

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<sup>634</sup> PCC/N1/1/490-491

"new group sex craze" in Ulster. The newspaper had used stills from its footage in its articles.

669. The newspaper said that the public availability of footage taken from such events (which was intended for sale by some participants) meant that they could not be considered to be private. It had been justified in exposing the event on grounds of protecting public health: a senior medical officer had said that the participants were at risk from sexually transmitted diseases. The complainant said that there was no public health issue: the female professional performers involved were certified to industry standards, while the male performers were either certified or practised safe sex.
670. While the newspaper was entitled to report on the sex industry in its local area, and offer its own robust comment about some of the associated practices, it was not free to pursue any journalistic approach to do so. The Commission decided that the newspaper's public interest defence did not reach the level required to justify the serious intrusion posed by the undercover filming and the publication of the images. In addition, it noted that the newspaper had been in a position to expose the existence of the complainant's activities, and the attendant health risks, without using such undercover footage. The Commission upheld the complaint and criticised the newspaper for delays during the investigation.

*St Andrew's Healthcare v Daily Gazette and The Echo (Basildon) (2010)*<sup>635</sup>

**There is a distinction to be drawn between instances in which a publication has sought the unauthorised removal of documents or photographs and instances in which it been the recipient of such information, genuinely unsolicited.**

671. The complainant was a mental healthcare charity that runs a residential facility. The article reported that a patient who had previously absconded from the facility for eight days after a supervised shopping trip, had been described in confidential police and medical documents as "*dangerous*" and an "*intelligent, devious, uncontrollable, absconding sexual predator*" with a "*long history of sexual violence*". An earlier article (published at the time of the escape) had reported that the police did not have any information to suggest he was a danger to the public.

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<sup>635</sup> PCC/N1/1/488-489

672. The complainant said that the newspapers had obtained the information through the unauthorised removal of documents relating to the patient. There had been no possible risk to the public at the time of publication (since by that time he was back at the residential facility) and, as such, it could not be justified in the public interest. The newspapers said that they had not removed any documents from the hospital; rather, they had received the information from an anonymous informant following the publication of the original story. Given that they had unknowingly misled their own readers by publishing an assurance that the patient had posed no danger to the public, they had a duty to inform their readers of the position accordingly, which could only be done with reference to the contents of the documents. The public was entitled to know the views of doctors and the police as to the potential danger posed by the patient, regardless of whether he had returned to the hospital, especially as those views were at odds with public police assurances. The fact that the patient had gone missing was a serious concern locally, and three MPs had commented critically about what had happened.

673. The Commission drew a distinction between a newspaper seeking to obtain confidential information using subterfuge and it being provided with unsolicited material. It noted that the newspaper had not actively sought the information in relation to the patient, which had been leaked anonymously. Nonetheless, it had been provided without appropriate authorisation; in such an instance, a sufficient public interest justification was required for publication. The Commission was strongly of the view that the unsupervised presence in the community of an individual who had been described in the terms outlined in the documents, and had been compulsorily admitted into care, was a legitimate subject to be reported. It did not cease to be relevant simply because the patient had been readmitted; he had absconded on numerous occasions and his absence raised serious concerns about practice at the facility. The complaint was not upheld.

*Liberal Democrat Party v The Daily Telegraph (2011)*<sup>636</sup>

**The means used to pursue a story must be proportionate to the public interest involved; a particularly intrusive enquiry will require a particularly strong public interest defence, and any such enquiries should be carefully tailored to obtain the relevant material. Publications should be prepared to provide evidence to demonstrate that they had *prima facie* grounds to justify such an investigation before undertaking it.**

<sup>636</sup> PCC/N1/1/492-495

674. A series of articles quoted comments made by senior Liberal Democrat MPs in their constituency surgeries, who had been secretly recorded by the newspaper's journalists, posing as constituents. The newspaper denied the claims of the complainant – the party's president, who was acting on behalf of the MPs, with their consent – that it had undertaken a "fishing expedition"; rather, it had acted upon specific information it had received from parliamentarians and members of the public showing the emergence of private dissatisfaction among Liberal Democrat members of the coalition Government. The newspaper said that its enquiry was undertaken in the public interest and that its investigation had proved that these Liberal Democrat MPs were not consistent in their private and public statements, which it rightly brought to the attention of its readers and the wider public.
675. The Commission considered that there were two relevant considerations: had the newspaper demonstrated that it had sufficient *prima facie* grounds for investigation before its reporters were asked to go undercover, such that would justify the recording of numerous MPs at their surgeries without their knowledge; and was such an investigation (using hidden listening devices) justified in the public interest? While there was a broad public interest in the subject matter, the level of subterfuge was high; secretly reporting a public servant pursuing legitimate public business was a serious matter. The Commission felt that the newspaper had focused what amounted to disproportionately intrusive attention on a number of MPs (who had been selected purely on the basis of their ministerial position). Ministers were being asked to comment on a series of policy issues with the evident intent of establishing on which subject they might say something newsworthy.
676. For the Commission to have sanctioned this method, it would have had to be convinced that a proportionate public interest could reasonably have been postulated in advance. It did not believe that the newspaper had sufficient grounds, at the time, to justify the decision to send the reporters in. The complaint was upheld.

**BRIBERY**

677. The Editors' Code of Practice prohibits payments in three areas: to parents for material about their children; to witnesses in criminal trials; and to criminals and their associates.
678. Bribery is a criminal offence, and therefore a matter for the police and the courts. It is not specifically covered by the terms of the Code. From my review of the files, I am aware that consideration was given by the Editors' Code Committee in 2004 to incorporating the prohibition of payments to police. This followed a recommendation from the Culture, Media and Sport Select Committee<sup>637</sup>.
679. The Code was not changed. I presume that this was due to a desire not to duplicate the criminal law. The PCC, in its response to the Select Committee (which made clear that the matter would be considered by the Code Committee) stated that it was "axiomatic that the Press Complaints Commission condemns lawbreaking".
680. From my review of the files, I see that this issue was raised in 2003 by an individual, who wrote to the PCC, PressBoF, the members of the Select Committee, and the charity PressWise. The then Deputy Director, Tim Toulmin, set out the PCC's position in a letter to the individual dated 12 May 2003. He said:
681. "the matter of payments to police officers is something for the police themselves to investigate. It is not something that is covered by the Code at the moment".

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<sup>637</sup> PCC/122/1/317

**DOCUMENTS**

682. Within the time-scale for our response to the inquiry, I have sought to disclose relevant documents. I have searched (or have caused to be searched) the following files, which I list below in the manner they are described:

- 682.1 Chairman's correspondence 2003-2011
- 682.2 Director's correspondence 2003-2011
- 682.3 Articles of Association
- 682.4 Annual Report
- 682.5 Audio Visual
- 682.6 Briefing Notes
- 682.7 British Association of Journalists
- 682.8 Business Committee
- 682.9 Bye Laws
- 682.10 Children
- 682.11 Charter Commissioner
- 682.12 Code of Practice
- 682.13 Code of Practice sub-committee
- 682.14 Conflict of Interest
- 682.15 Coroners Bill
- 682.16 Cumbria (Derrick Bird shooting)
- 682.17 DCMS
- 682.18 Information Commissioner / Data Protection Act
- 682.19 Department for Constitutional Affairs
- 682.20 Financial Journalism
- 682.21 Financial Services Authority
- 682.22 Freedom of Expression
- 682.23 Freedom of Information
- 682.24 General – correspondence
- 682.25 General – legal



- 682.26 Government Affairs
- 682.27 Governance Review
- 682.28 Human Rights
- 682.29 Internet
- 682.30 Injunctions
- 682.31 Journalists' contracts
- 682.32 Judiciary and the media
- 682.33 Legal / law
- 682.34 NPA
- 682.35 NUJ
- 682.36 Paparazzi
- 682.37 Parliament
- 682.38 Payment for articles
- 682.39 Payment to witnesses
- 682.40 PressBoF
- 682.41 Privacy
- 682.42 Regulation of the Communication Industries
- 682.43 Scotland Yard
- 682.44 SNPA
- 682.45 Society of Editors
- 682.46 Social Networking
- 682.47 Stalking
- 682.48 Subterfuge

- 683. I have examined the minutes of Commission meetings between 2003 and 2011, and disclosed any relevant document. I have disclosed the minutes for the last two years.
- 684. I have provided full copies of our correspondence files relating to phone hacking, and the PCC's role in looking at that matter.

685. I have provided every decision issued by the PCC in 2010, and every published ruling since 2003. I have disclosed log summaries of our proactive, pre-publication and anti-harassment work.
686. I have not, at this stage, disclosed material from ongoing complaints investigation by the PCC. Should ongoing investigations produce relevant material, I will seek to disclose this at a later date.
687. I shall of course co-operate with the Inquiry to the extent I am able in relation to any documentary requests.

### PART 3

#### INTERNATIONAL PRESS COUNCILS

688. The PCC was a founding member of the Alliance of Independent Press Councils of Europe (AIPCE) and has been referred to as the 'Mother of Press Councils' by the former president of the Swiss Press Council, Peter Studer.

#### European comparison

689. A recent examination by Full Fact (a fact-checking campaign group; [www.fullfact.org](http://www.fullfact.org)) found that only two of the 25 highest-rated countries for press freedom had a system of media regulation that was based on legislation (Denmark and Hungary).

690. UNESCO, the European Commission and the Organisation for Security & Co-operation in Europe (OSCE) have all extensively supported the development of media self-regulation, especially in countries with low levels of media freedom. The PCC, along with other well-established press councils, has often been asked to advise younger non-statutory bodies.

#### Independence

691. There are over twenty PCC-like organisations in Europe, which can reasonably be described as working 'independently'. (I shall hereafter refer to them for convenience as press councils). Most are like the PCC: essentially voluntary in nature. A few have a basis in legislation (Denmark being the best example) but operate without obvious government interference.

692. In terms of Board membership, it is usual for press councils to be composed of a mixture of public representatives and media representatives. Most councils distinguish furthermore between publisher representatives and journalist representatives.

693. With the exception of the Slovakian Press Council (which has no media representatives on its board), the PCC has the highest ratio of public to media members of any similar body in Europe, including those which have a legislative basis. Most councils have a majority of media representatives; some (such as the German Press Council) have no public members at all. Indeed, some press

councils do not regard the PCC system as 'self-regulation' because of the preponderance of lay members on the Commission's board.

### **Funding**

694. The longer-established press councils in Europe are generally funded in full by the media industries they regulate. Some receive indirect funding from the state in the sense that participating bodies (usually journalist associations), which assist in the financing of the system, themselves receive government grants.
695. The German Press Council is unusual in that it receives a direct grant from the state. The award of the grant is enshrined in legislation, which requires that funding be used by the Council's complaints committee. The support is otherwise unrestricted. The Council is not obliged to report to government on the use of the grant but government can at any time request information about the manner in which it is being spent (it has not done so for fifteen years). The grant cannot (by law) exceed 49% of the total financing of the Council, a measure designed to ensure independence from government.
696. Some of the newer press councils (particularly in the Balkans) receive funding from NGOs, foreign embassies and governmental departments, usually on a project-by-project basis but also – on occasion – to cover running costs for set periods of time. This reflects the fact that in such countries media outlets are not profitable and cannot afford to provide funding for the operation of regulatory bodies.
697. Of the statutory press councils, those in Luxembourg and Lithuania are largely funded by the state. The Danish Press Council, while established by legislation, is entirely funded by the media.

### **Membership**

698. Most press councils deal with complaints about press and broadcast outlets. Some also deal with online-only publications. Most only deal with (and rule on) complaints against publishers that formally agree to adhere to the system but there are some which will make rulings (insofar as it is possible without input from both sides) against non-subscribing publications. The Dutch and Belgian (Flemish) Councils have both done this, although the Belgian Council is currently seeking to overturn a court ruling that it is not at liberty to act in such a way.

699. None of the non-statutory press councils in Europe (or elsewhere for that matter) can compel membership and there are very few which have not, at one time or another, experienced problems of non-compliance in this respect.
700. The Danish Press Council, founded by statute, may rule on complaints against any print publication (provided that it publishes two or more editions in a year) and can direct an offending outlet to publish an adverse ruling. Failure to publish the Council's decision can (in theory) lead to a jail term for the editor (although it is understood that this has never happened) or a (relatively small) financial penalty (which has happened from time to time).

### **Remit**

701. The primary work of all press councils is the investigation of complaints. Most (but not all) have the discretion to initiate their own investigations, even in the absence of a complaint, though few councils do this with regularity. The PCC deals with the highest volume of complaints by a significant margin. In 2010 the German Press Council was next on the list, receiving approximately 1500 complaints, which itself was significantly more than any other equivalent body.
702. Most press councils have the ability to make pronouncements on general matters of concern, although some are more reluctant to do so than others. The personality of key individuals within each system tends to have a bearing on whether they also perform the role of expert commentators but most press councils remain wary of making pronouncements on general matters.
703. It is common (though by no means universal) for press councils to involve themselves in educational work and promotional campaigns. (It is estimated that 40% of the Swedish Press Ombudsman's role relates to such activities.)
704. Some press councils have a stated mandate to promote and protect press freedom. The PCC does not, unlike its predecessor, the British Press Council. However, the reality is that all press councils regard themselves as protectors of freedom of expression by virtue of dealing with complaints which necessarily involve account being taken of press freedom and public interest considerations.

### **Powers**

705. The PCC's sanction of requiring publication of an adverse adjudication is the same sanction available to almost every other press council. To my knowledge, no non-

statutory press council in the world can issue fines or obtain monetary compensation. The Swedish system comes close, in that any publication against which a complaint is upheld must pay a 'service charge' of one to two thousand pounds (depending on the circulation of the publication). This is not regarded as a fine but as a means by which the system is partially financed.

706. No press council to my knowledge has the power to close down a publication.
707. The German Press Council operates a three-tier scale of critical rulings; only the most serious criticisms must be published by the offending publication.
708. No press council can, I understand, bar the publication of contentious material in advance of its appearance. The PCC does more pre-publication work than any other press council and is the only one to operate a 'desist notice' system to deal with harassment.

#### **Right of reply**

709. Some countries have a legally-enforced 'right of reply' and it has been mooted as an option for the UK. Notable examples include Germany and Hungary. The PCC already oversees what is effectively a right to reply to inaccuracies and it is striking that the idea of a right-to-reply regime has little of the salience it attracted some years ago.

#### **Ombudsmen**

710. Ombudsmen can represent the public interest, although it is clear that the office of Ombudsman can denote different functions in different countries and does not necessarily refer to a statutory position.
711. In Sweden there is an Ombudsman and a Press Council but both are part of an entirely self-regulatory regime (as is the Irish system, which is modelled on Sweden's). The Swedish Ombudsman (who always has a journalistic background) carries out educational work and comments on general press matters, as well as investigating and ruling on complaints. Any complaint he believes should be upheld is automatically referred to the Press Council. The Council will also hear appeals against decisions by the Ombudsman to reject complaints.
712. In some other systems the head of the press council's secretariat has been given the title of ombudsman because of the mediation work they conduct.

### Convergence

713. The majority of press councils have a cross-media mandate, some dealing with online-only news sites as well as broadcasters and the press.
714. The regime in the UK mirrors closely that in Sweden, Ireland and Germany and reflects the long-standing distinction between print and broadcast media in this country.

### Third party complaints

715. The German Press Council is unusual in that any person can complain to it about any matter (though this issue is currently, I understand, under review). But most press councils only allow complaints from individuals with a direct personal interest. The PCC's current practice allows general matters of concern to be the subject of complaint by any individual (because in cases involving general matters of fact any person may be regarded as a principal) but also ensures that, in cases where a particular individual is the subject of press scrutiny conceivably giving rise to a Code issue, it remains the right of that individual to decide whether an investigation should be initiated. The PCC regularly contacts individuals who find themselves at the centre of a story to enable them to make an informed decision about whether to pursue a complaint. Many decide not to do so.

### Oral hearings

716. The majority of press councils do not hold oral hearings. Those that do are generally found in smaller countries (e.g. Netherlands and Belgium (Flanders)).

### A summary of the European situation

717. My understanding is that press councils in the following European countries operate effectively on a voluntary, non-statutory basis (there may be others of which I am not aware):

Austria

Belgium (two separate councils for Flanders and Wallonia)

Bosnia & Herzegovina

Bulgaria

Cyprus

Estonia

Finland

Germany

Macedonia

Malta

Netherlands

Norway

Republic of Ireland

Serbia

Slovakia

Spain (Catalunya only)

Sweden

Switzerland

Ukraine

United Kingdom

718. Press councils in the following countries operate independently of (and their boards are not controlled by) government, although they have a basis in legislation:

Denmark

Lithuania

Luxembourg

719. Attempts by journalists in some other countries to establish systems of self-regulation have proved unsuccessful.



**PART 4**

**STRENGTHS AND WEAKNESSES: LOOKING AHEAD TO REFORM**

720. The PCC recognises that its incremental process of reform, most obviously manifested in something like its 2010 Governance Review, has not satisfied public and political concern about press standards (specifically in light of the phone hacking scandal). It recognises (and has done very publicly before the announcement of this Inquiry<sup>638</sup>) that there is a need for wide-ranging consideration of the whole system.
721. The PCC is committed to such a consideration. Its Reform Committee, led by Michael Smyth CBE, a former Clifford Chance senior partner, is in the process of establishing a blueprint for a reformed non-statutory system. The Reform Committee will continue its work co-incident with the work of the Inquiry. The PCC will share its findings with the Inquiry.
722. I will now offer a summary of the strengths and weaknesses of the current system.
723. In doing so, I wish to make clear my view that it should not be taken as proven that the regulatory framework around the press has failed. The regulation of the press is a patchwork of a number of organisations with overlapping remits, including: the police, the Information Commissioner, the courts, the Advertising Standards Authority, and the Press Complaints Commission. Clearly, the PCC must (and does) accept responsibility for its part in ensuring ethical standards in the press. Certainly, it accepts that there have been occasions where these standards have lapsed terribly. But that does not mean that the whole regulatory structure has failed. The PCC has made, and continues to make, a real and measurable contribution to improving the behaviour of the press, and to providing redress to members of the public who need it. Sight of that should not be lost.

**Strengths**

- 723.1 The PCC offers a complaints service that is free, and accessible to all. There is no financial burden on complainants or tax-payers. There is no need to retain a lawyer to make a PCC complaint, and only a small minority of complainants do so.

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<sup>638</sup> PCC/B/1/294

- 723.2 The service is fast. Investigations take an average of 33 working days. Some complaints are resolved within hours of receipt. Complainants, especially those with concerns about inaccuracy, want swift and public redress. Corrections, apologies and rights of reply are promptly negotiated on their behalf. The prominence of correction and apologies is now a matter agreed in advance with the PCC and the complainant, something not available to those who issue High Court proceedings.
- 723.3 The system aims so far as possible to be non-adversarial, and can be used by vulnerable or distressed people without exacerbating the possible harm to them. It can allow the building of relationships between interest groups (such as in the area of mental health) and journalists, which in my experience leads to improved standards in reporting.
- 723.4 The PCC actively reaches out to the public and interest groups, to involve them in the process of self-regulation. It has strong relationships with the police, health care authorities, charities, MPs and community organisations. It has a well-functioning protocol for dealing with the media fallout of major incidents.
- 723.5 The system is non-bureaucratic. It is designed to be personal and human, and user-friendly. The PCC has a greater public membership than other analogous bodies. It has the highest ratio of public to press members of any comparable press council in the world.
- 723.6 People are aware of the PCC. It has a high recognition rate (although this could always be improved). Recent suggestions by politicians that the PCC should be abolished have led to no reduction in complaints. Indeed, the last three months have seen an increase in the office's workload.
- 723.7 People who use the PCC (either for pre-publication advice or formal complaints) value its work, as shown in our complainants' surveys. It is to be hoped that those (including many prominent in public life) who have privately thanked the PCC for its work will feel able to submit their views to the Inquiry.
- 723.8 The PCC has established a large body of case law (the largest in Europe). This case law has led to changes in industry practice. It is reinforced by continual training programmes.

- 723.9 The PCC is more proactive than analogous bodies. The PCC seeks to contact those in need, and makes itself available to them often at times of maximum vulnerability.
- 723.10 The PCC is flexible, and can accommodate cultural or technological change. The PCC's remit has expanded first to include newspaper and magazine websites, then their blogs, and then audio-visual material. It is seeking to expand its remit into some Twitter accounts, where appropriate. No statutory regulator could readily grow by accretion in this way.
- 723.11 The PCC runs a 24-hour service to help ordinary members of the public. At any time of the day or night, a complainant can speak to a senior member of staff.
- 723.12 The Commission prevents harassment by journalists (including broadcasters) by circulating requests on behalf of concerned individuals. This has led to media scrums being dispersed in a matter of minutes.
- 723.13 The PCC regularly can intervene pre-publication, without compromising freedom of expression or generating legal or public expense. The Commission's pre-publication work often results in the non-appearance of inaccurate or intrusive material.
- 723.14 The PCC receives co-operation from editors, because it is part of a system that broadly enjoys industry confidence. Every critical ruling has been published by the publication concerned. Editors call the PCC for advice, and accept guidance, which helps to promote consistent standards and protocols.
- 723.15 The PCC provides a non-statutory framework across the full breadth of the industry, covering national and regional press, and magazines.
- 723.16 The PCC has a UK-wide remit. Its ability to operate across all three of the legal jurisdictions in the country means that it can set consistent British standards.
- 723.17 The Editors' Code of Practice is well-regarded as a concise collation of ethical principles.

Weaknesses

724. I list specific areas of possible weakness below, but in general terms the PCC has one significant problem, albeit an existential one: what is it? The PCC is not a “regulator” in the classical sense, even if it has in its own published material been apt to describe itself in relation to the self-regulatory system (as I have done in this statement). It is, at heart, a complaints and pre-publication body, which uses its work in specific areas to seek to raise standards in the British press. It is part of the overall patchwork of regulatory supervision for the press, which includes the civil courts and the criminal law.
725. The PCC is not – and should not hold itself out to be – akin to a statutory regulator, because it does not possess the requisite powers, status or resources. There is, of course, a philosophical question about whether an industry with freedom of expression at its centre should be subject to more formal (statutory) regulation. In any event, the PCC should be clear about its status in the future. Its uncertainty on this score has not leant itself to political confidence. Other areas of weakness include:
- 725.1 concerns about independence. This is true regarding the involvement of the industry in any self-regulatory system. The existence of an industry funding body, an industry Code body, and industry membership of the PCC can appear to people to restrict the practical independence of the PCC;
- 725.2 as the press industry does not have a public face, the PCC is (wrongly) perceived by some to be an industry body, responsible for all industry decisions and behaviour. This leads to further concerns about its independence;
- 725.3 some observers question whether the sanctions of the PCC are sufficiently punitive. Some feel that only monetary penalty, or even the power to suspend publication, would be sufficiently serious;
- 725.4 there is a limit to the available funding to be expected from an industry undergoing severe economic pressure. The PCC’s budget of nearly £2 million impacts on its remit and the size of its operations. Its small staff is fully stretched at all times;
- 725.5 the practical consequences of the remit and role of the PCC have not always been clearly defined. The PCC is also dependent on views of the industry on

what its remit should be, which are made clear through PressBof. The PCC can have a lack of clarity about its jurisdiction when problems arise that engage both the Code of Practice and the criminal law. There is a legitimate question about the proper role of the PCC when evidence emerges of potential breaches of the Data Protection Act, for example, or the Computer Misuse Act. The same is true of the Contempt of Court Act. It is clear that the PCC has acted insufficiently to address this issue.

725.6 the PCC has no legal powers of investigation, and cannot compel evidence from interested parties. While a related strength is speed and efficiency, this can lead to it being limited in reaching findings of fact in relation to published material, or newsgathering practices;

725.7 the PCC's membership is voluntary. While this offers a related strength (in the form of willing co-operation), the PCC cannot compel adherence to the system. It is possible for a group like Northern & Shell to withdraw from the funding mechanism, and for groups to threaten to withdraw;

725.8 the Commission does not have a fully-defined compliance role. While it is proactive to a considerable extent, it has insufficient resources for considering broad compliance issues across the board;

725.9 specific active steps to adhere to the Code by publications cannot be compelled by the PCC, but only requested. For example, reference to the Code of Practice in contracts is encouraged, but not a compulsory part of membership of the system;

725.10 the industry could do more, in a more organised and consistent fashion, to inform their readers about the existence and work of the PCC. The carrying of advertising, or public reference to how to make a complaint, is not mandatory. Not all newspaper and magazine websites carry a visible mark of their adherence to the Code.

725.11 the PCC has sometimes failed to give a good account of itself. The fact that certain commentators persist in the view that the PCC has no, or no majority, lay membership speaks volumes.

## Reform

726. The Reform Committee of the PCC, in this context, will be focussing on the following five areas, asking some of the following questions (and the list is not exhaustive):

726.1 Independence

726.1.1 Editors on the Commission. Should there be any? Should they become consultants, rotated annually, with no voting powers? Should they be reduced to three (national, regional, magazine)? Should they be retired editors / journalism academics / less senior journalists? Is the very essence of non-statutory regulation lost without editorial involvement?

726.1.2 Editors' Code of Practice Committee. Should it have lay membership? Should there be a lay Committee more active in scrutinising the work of the Committee (building on the current framework, by which the Chairman and Director represent the Commission at Code Committee meetings)? Do rules written by the industry itself carry more weight with editors?

726.1.3 Appointment of PCC Chairman. Should this be independent, with less or no industry involvement?

726.2 Powers

726.2.1 Improved sanctions. Is there a place for financial sanctions in serious cases (based on percentage of turnover)? Should more be done to enhance existing sanctions: all corrections mandated to appear on the same page as the original; all adjudications to be trailed on the front page; all corrections and adjudications to carry PCC brand; all accepted breaches of the Code to be followed up to ensure disciplinary action? Should adherence to the Code for all journalists be a mandated part of the system? All this without losing the advantages of the current system: fast, non-legalistic, non-adversarial.

726.2.2 Should sanctions (incorporating the above) be on a sliding scale, including a final financial sanction for gross misconduct?

726.3 Remit

726.3.1 Should the PCC have a separate arm to examine standards issues? This could publish reports on practices, encourage changes, and impose sanctions. Should this have "legal" investigative powers (and how would that work inside a non-statutory framework)? Could this be an avenue to channel Third Party complaints?

726.3.2 Should the PCC default to being primarily a complaints handling and proactive body, with the possibility of a separate regulatory body charged with investigating general standards issues? This could be called in by the PCC as required, and with the powers to investigate major issues. Should the PCC have the ability to call in journalists for questioning; or have oral hearings?

726.3.3 How should the PCC deal with Twitter / Facebook for journalists and titles?

726.3.4 Should the PCC oversee compulsory training for working journalists?

#### 726.4 Funding

726.4.1 Should the industry fund the PCC? Could it be, like in Germany, industry-funded but topped-up by government grant?

726.4.2 How does the PCC guarantee sufficient funding to guarantee effectiveness, especially in a body with increased range? How do you ensure that the PCC is not constrained by the availability of funds from the industry (which is suffering a downturn in economic fortunes)?

726.4.3 How should a funding body be best structured to guarantee independence?

#### 726.5 Membership

726.5.1 How is membership of a system (one of the strengths of which is voluntary co-operation) to be enforced? Should the Government be responsible for incentivising membership, for example: by including in an amended Defamation Bill benefits for compliant titles in defending libel claims; by requiring membership of a self-

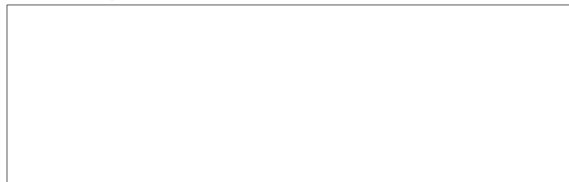
regulatory system before granting VAT breaks to newspapers and magazines; by introducing a "fit and proper test" for newspaper and magazine ownership, which has a self-regulatory compliance aspect?

726.5.2 How does compulsory membership work in an online world? If improved regulation is needed, should this cover blogs and Twitter accounts, and other news-like online products? How would that be enforced? How would this allow proper freedom of expression?

726.5.3 Is it possible for there to be a statutory framework for self-regulation, to guarantee its membership?

727. The Reform Committee will share its thinking with the Inquiry when it is in a position to do so, and will co-operate with any request to that effect. It will be apparent from the above that the Committee – which has a lay majority – has a very broad remit and is considering the PCC's future in the widest possible terms.

This statement is true to the best of my knowledge and belief.



STEPHEN ABELL

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16 SEPTEMBER 2011