



International Federation of Journalists

## Calling to Account

### *How the Telephone Hacking Row Makes the Case for Reform of the Press Complaints Commission*

A Report by **Jean-Paul Marthoz** on behalf of the International Federation of Journalists

In 2006 the *News of the World*, the Sunday newspaper flagship of Rupert Murdoch media in Britain, was thrown into the limelight. A private investigator Glenn Mulcaire and the tabloid's royal reporter, Clive Goodman, were caught illegally intercepting the telephone calls of celebrities, in particular members of the royal household, and arrested by the police.

No one really questioned that this was a crime and a crude violation of the most elemental principles of journalistic ethics. "It is a criminal offence," wrote *Guardian* reporter Nick Davies "to intercept phone calls unless it is done by a member of the police or intelligence agencies acting with a secretary of state's warrant, which can be granted only to protect national security, to prevent serious crime or to safeguard the economic wellbeing of the UK"<sup>1</sup>.

But Mulcaire and Goodman were not on a mission "to protect national security or prevent serious crime". They were chasing juicy stories about public figures to line their own pockets while feeding the apparently insatiable public appetite for celebrity journalism.

They were convicted in January 2007 and condemned to prison for offences under the Regulation of Investigatory Powers Act 2000 and Criminal Law Act. The *News of the World* editor-in-chief Andy Coulson resigned in

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<sup>1</sup> *The Guardian*, 8 July 2009.

order to “take ultimate responsibility for the events around the Clive Goodman case”. He later took up a post as Communications Director for the Conservative Party.

End of story? Not quite. Aware of the vulnerability of the profession in the face of public indignation and a Parliament recurrently tempted to regulate an unruly press the Press Complaints Commission (PCC), the profession’s “gendarme”, condemned such interception methods as “completely unacceptable” and talked conditionally of an “investigation” into the newspaper’s conduct.

However the ensuing PCC report, published in May 2007, did not live up to the billing that it had been given. It did not really dig deeply into the *News of the World* practices nor did it go beyond the boundaries of the police investigation. The affair, it found, seemed to involve just “two bad apples” in an otherwise virtuous Garden of Eden.

For its critics who had understood or interpreted the PCC “investigation” as a promise to foray into the *News of the World* practises and policies this inquiry appeared to exonerate the paper’s executives from the charge of running - or being aware of - a widespread and systemic phone hacking operation. In the tightly controlled work environment of the Murdoch media the scenario of two loose cannons did not appear to make much sense. A paper’s reputation, of course, is not reliable evidence, but it was inevitably a cause for suspicion.

In the first sentence of its report the PCC stated clearly that it “had conducted an investigation”. But was this really an “investigation”? Well, no, it was not, said the PCC later on, because “our intention was never to replicate or duplicate the police work”. No, it was not, said critics of the PCC, because for these sceptics the “self regulatory” body did not have the capacity or the will to investigate.

The scene was set for a muscular discussion on what self-regulation really means. And the scene was set on two different media planets in which two different dialects were spoken.

### **Too courteous?**

It is difficult to deny that the PCC chose an easy road. It did not engage into a no-holds barred investigation of the *News of the World* and accepted as the word of a gentleman the letter of the new editor Colin Myler emphasizing “his newspaper’s strong commitment to the Code of Practice” and outlining “the measures that the paper was taking to ensure that this commitment is reinforced”. The episode, wrote Mr. Myler, represented “an exceptional and unhappy event in the 163 year history of the *News of the World*, involving one journalist”. In short, the paper had been deceived by its two employees who alongside their legitimate work had been running a parallel, clandestine, operation to illegally tap the telephones of celebrities.

The words used in the 2007 PCC report testify to the courtesy of the investigation: the chairman of the PCC “discussed the matter” with the new editor in chief, Mr. Colin Myler, and the Chief Executive of News International, Mr. Les Hinton; the PCC “asked a number of questions”; “it invited the *News of the World* to make any points, based on its experience and understanding of what went wrong, that might be helpful in this context”.

Although initially focused on the *News of the World* case the PCC investigation turned into “a broad inquiry across the whole of the press to find out the extent of internal controls aimed at preventing similar abuses” and what was being done “to raise awareness of the Data Protection Act, including its reference to the notion of “public interest”.

In May 2007, echoing Bob Woodward’s famous phrase when President Nixon resigned from the US presidency, the PCC concluded that “the system did work” and that it had dutifully accomplished its role as a guardian of effective self-regulation. The curtain went down on a self-satisfied PCC and a sceptical or grumbling opposition.

### **Too gullible?**

Act II, two years later. On July 9, 2009, investigative journalist Nick Davies revealed in *The Guardian* that News International, the parent company of *News of the World*, had paid out £1.000.000 pounds in out-of-court

settlements to three persons who had been victims of the hacking system, including Gordon Taylor, Chief Executive of the Professional Footballers' Association.

The reporter also produced emails related to Taylor's telephone transcripts "indicating that at least two other *News of the World* (NoW) staff had been involved, a junior reporter and whoever directed them". *The Guardian's* reporter also relayed the claim by two police sources that they had uncovered "thousands of instances of phone message hacking by the same private investigators employed by the NoW".

These revelations were a major embarrassment for News International since their executives had repeatedly stated that the phone interception case had been limited to two "rogue figures", Clive Goodman and Glenn Mulcaire, and that no one else was complicit or even aware of the system they had put in place.

The revelation on the confidentiality clause attached to the financial settlement with Gordon Taylor and the other two victims opened a Pandora's Box of suspicions and allegations. Would such deals have been necessary if the company did not want to hide something? Did it not raise the suspicion that these practises were still in use? The *News of the World* remained adamant: its own internal investigation had failed to uncover any evidence of the emails mentioned by Nick Davies.

Although *The Guardian* article did not claim that hacking was still current practise at the *News of the World*, others drew their own conclusions. Key institutions that had addressed the 2007 hacking story expressed their dismay and their outrage at the sense of having been "misled".

The new story also raised intriguing questions on the role of the PCC. Had it been lied to by the *News of the World* when it carried out its investigation in 2007? Or had it refrained from asking the right and tough questions because it did not have the resources, the prerogatives or the courage to do so?

In other words had the PCC cosied up to the *News of the World*, a mass-circulation paper owned by one of the most powerful media groups in

the world and one of its key paymasters? More fundamentally was the PCC really able to properly regulate and discipline its own members? And at the end of the day was its form of self-regulation a fraud?

Incensed by the insinuations the PCC decided to review its own 2007 investigations and to respond to the revelations and allegations of *The Guardian*. Its report published in November 2009 created another furore, this time in the opposition camp.

It not only rejected the suggestion that it had been misled by News International but stated, again without the benefit of a full-scale investigation, that *The Guardian's* stories “did not quite live up to the dramatic billing they were initially given” and added with a tone of stern rebuke: “In presenting its story the *Guardian* too had obligations under the Code requiring it to take care not to publish distorted or misleading information”. This was a powerful assault on the reputation of not only *The Guardian*, but also upon that of one of its most distinguished and award-winning writers.

All the elements for a controversy were reunited. Two big media groups, each professing strong and opposing views on what journalism and media ethics mean, were judged by the Press Complaints Commission, the main “self-regulatory body” of the industry. And this guardian of the temple of journalistic ethics had adjudicated against *The Guardian*.

The author of the July 9 exposé snapped back that the PCC was “structurally corrupt” and the Guardian’s editor in chief, Alan Rusbridger, resigned from his position in the Editorial Code Committee. His statement in response to the PCC report was blunt: “The PCC does not have the ability, the budget or the procedures to conduct its own investigations”. He added that the PCC was a threat to self-regulation because “the only people to have seriously inquired into any of this (affair) have been the police, lawyers, MPs, the Information Commissioner and reporters...If the press wants self-regulation it cannot allow external bodies to do the real work of investigation and regulation”. The National Union of Journalists (NUJ) condemned the PCC for “its failure to mount a proper investigation into the evidence of widespread telephone tapping by the News of the World”.

Dozens of commentators jumped into the arena. Fiery words were exchanged. Courtesy was in short supply.

It was at this point of raging controversy that the IFJ commissioned this inquiry.

### **The scope of the inquiry**

The purpose of this inquiry has not been to look for new revelations in the story of the illegal phone hacking system put in place by Glenn Mulcaire on behalf of *News of the World*'s royal reporter or to establish whether or not this system went beyond "two bad apples" nor whether it had continued. It does not aim at judging the actions or inaction of official institutions like Scotland Yard, which was involved in investigating the case and took decisions that might appear limited and insufficient in relation to the seriousness of the allegations.

Such an ambition would have been beyond our remit, our resources, and our time constraints. And it is being pursued with doggedness and quite some success by Nick Davies, and others.

The focus of this report has been strictly limited to reviewing the two PCC inquiries (the first one that followed the *News of the World* 2007 hacking episode and the second that reacted to the *Guardian*'s revelations of July 2009) with a view to assessing the PCC's capacity to exert its expected and proclaimed role as the guarantor of an "effective system of self-regulation." In other words, does it reflect a system that promotes the highest press standards, protects the public's rights, limits litigation and deters the state or other institutions "outside of the profession" from adopting new and potentially chilling regulations of the media ?

Although the UK newspaper scene is renowned for its ebullient tabloid press that many abroad might consider as particularly "naughty", if not downright mischievous, these questions are meant to feed a global discussion on how to reinforce self-regulation by making it truly effective, that is guaranteeing journalists' ethical duties, protecting their rights from the state's inquisitors, and building public trust.

## **The importance and appearance of words**

“Journalists must not only be impartial but they have to appear impartial”. This rule drawn from classical ethics texts is highly relevant to an organisation that relies on its own credibility to assert its effectiveness.

Opponents of the PCC have a point when they highlight an apparent inconsistency in the Commission’s remit. On the one hand the PCC insists that it is first and foremost a complaints body and that it does not have the mandate, the prerogatives or the resources to carry out a real investigation. On the other hand it ventures into inquiries that attempt to give the appearance that they are serious investigations of the kind that require mandate, prerogatives and resources.

“The PCC constantly slips between describing itself as a mediator and a regulator”, notes Julian Petley, chair of the Campaign for Press and Broadcasting Freedom. It is particularly prone to stress its regulatory function at times of heightened and political concern over press standards”<sup>2</sup>.

The words are treacherous and they can take a life of their own. The 2007 PCC inquiry or investigation reminds us of the advertising for Alka Seltzer in the Prohibition era: it looked like alcohol, and to a distracted or complacent public, it might even taste like alcohol, but it was not alcohol.

If it were meant as an investigation it obviously did not conform to the most basic rules of the form. True, Sir Christopher Meyer, then chairman of the PCC, had been rather cautious and signalled limits to his investigative ambitions. “The commission,” he said on 9 August 2006, “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 current and new director of the PCC, Stephen Abell, backs up this interpretation. “The PCC investigation was not meant to replicate the police’s work, it was there to fill the ‘void in the market’,” he says. “The intention was to assess what we could do to go forward and raise standards across the industry. As it had received no complaint related to the case and following its own statute the PCC decided to initiate an investigation on what processes

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<sup>2</sup> CPBF submission to the PCC Governance Review, 26/1/2010.

the News of the World had put in place in order to eliminate these practises and to extend its review to the whole industry”.

By framing in these words its 2007 review the PCC underlines that it did not try to discover what had happened at the *News of the World* beyond what had already been established by the police and other sources and therefore that it was not misled by News International. “We never said that we had established what had happened nor that there was no one else involved in the *News of the World*”, said Stephen Abell, “because it was not the purpose of the investigation.”

So what was the point? In fact, what the PCC did was much closer to a “survey” than to an investigation. This survey went beyond the guilty newspaper to address the alleged use of “dirty tricks” industry-wide. Some critics suspected that the decision to start this broad survey was a way of deflecting the attention away from the *News of the World* and from its powerful proprietor.

But could it really be said that “at the end of the legal process”, there were no more doubts? Could it really be assumed that the executives of a paper benefiting from the information obtained through hacking would not wonder how these news nuggets had been found? These questions would have been an indictment of any editor-in-chief because even if he did not know his ignorance was the sign of a major news management breakdown or of a failing editorial judgment. This reality Andy Coulson acknowledged by submitting his resignation.

### **The questions that the PCC should have asked**

Was the PCC too complacent, as its critics claim? In a column in *The Guardian*, Roy Greenslade courteously tried to explain the PCC’s dilemmas. “The concept is fine, but the reality is flawed. In the end the PCC has to interpret contradictory allegations without any real method for discovering the truth. It cannot hold oral hearings. It cannot cross-examine witnesses. It cannot demand access to documents. It is not a court of law”<sup>3</sup>.

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<sup>3</sup> Roy Greenslade, “Phone-hacking scandal: why the PCC should have special powers”, *The Guardian*, Nov.9, 2009.



Despite the criticism and the doubts that were raised by its inquiry the PCC remains convinced to this day that its initiative was relevant and successful, including the response of the newspaper that was caught red-handed. “The *News of the World* changed its system, especially the way it paid its freelancers”, says Stephen Abell, “and the review led to a set of six recommendations that have been followed by the industry”.

Seen from across the Channel though, the PCC looks rather candid and too mild-mannered when one considers the particular culture of tabloid journalism in the UK. In his well-documented book *Flat Earth News*, particularly in its exposé of dirty tricks and of the subcontracting of key journalistic investigative duties to dubious private investigators, *Guardian* reporter Nick Davies documents a pattern of ethical failings, in particular an endemic disregard for the people’s right to privacy and cavalier use of the term the “public interest” in defence of sensational editorial coverage.

It is this context that should have led to a serious and thorough investigation because it is hard to believe - although everyone is innocent until proven guilty - that in such an environment the Mulcaire and Goodman case was just a momentary ethical lapse.

There were warnings that the final story had not been written. During the July 14 2009 hearing of the Commons Culture, Media and Sports Select Committee investigative reporter Nick Davies stated: “there is so much still to come out, so much that is still tucked away in Scotland Yard’s files and with the Information Commissioner and in the High Court file”. At this same hearing the former PCC director Tim Toulmin acknowledged that “they had not been told by the *News of the World* of the payments to Gordon Taylor”, which in itself reinforced the charge that the PCC at some point was “misled” by the paper

The systemic recourse to private investigators was well-known before the Mulcaire and Goodman case became public. It was not in itself the evidence of generalised bad manners but it was a “tip” that should have led the PCC to be much more suspicious and to start proactively an investigation or at the very least to sternly recall that there were limits that could not be trespassed. Training workshops, such as those the PCC

organises in newsrooms, are a positive initiative but they cannot effectively get at the core of the issue: a certain concept of journalism that feeds on exposing private matters at the risk of destroying people's reputations.

Let us imagine that the PCC would have carried out a real investigation. What should they have asked the *News of the World*? First, tough and embarrassing questions. They would have summoned Andy Coulson, the editor in chief that had been in charge at the time of the Mulcaire and Goodman breaches. They would have requested documentary evidence (invoices, email traffic, phone logs, fee payments, and much more). They would have interviewed a broad number of people, starting from informers and reporters up to the editors and the accountants. And they would have made cooperation from *News of the World* staff and management a condition for being part of the PCC and for being able to claim the veil of legitimacy that this participation implies in the eyes of the public.

However, the mere statement of these conditions only makes more evident the structural fault line in the notion of UK press "self-regulation"... Which UK newspaper would have agreed to submit itself willingly, even if it were innocent, to such an inquiry from a body created by the industry?

The second PCC inquiry raises another issue. In this case, it seems too eager to prove *The Guardian* wrong and comes to its conclusions - that it was not misled - with too much haste and without having carried out a more thorough investigation than in 2007. In fact the PCC inquiry seemed bent on minimizing the newness of *The Guardian's* revelations in July 2009 and the scope of the *News of the World* eavesdropping operation.

New revelations appear to contradict the PCC conclusions in its November report. In an article on 1 February 2010 Nick Davies revealed that the *News of the World* pair (Goodman and Mulcaire) had hacked into 100 mobile accounts, "directly contradicting the official version of events promoted by the newspaper and the police that there were "only a handful" of victims in the scandal". Besides it emerged from police files that many more celebrities had been hacked or targeted by the *News of the World*, sketching a picture of endemic transgression.

Undermining the thesis of “two bad apples” *The Guardian* journalist added in the same article that according to *News of the World* sources, “a group of journalists at the paper were fully aware of Mulcaire and other investigators being involved in illegal surveillance”.

On 23 February 2010 the House of Commons Culture, Media and Sports Select Committee released a damning report backing the view that the hacking has been more widespread than officially acknowledged and condemning the “collective amnesia” and “deliberate obfuscation” by the *News of the World* in giving evidence to the Select Committee inquiry into illegal phone hacking. The report also lambasted the PCC, qualifying its investigation into phone hacking as “simplistic, surprising, a further failure of self-regulation” and “an exoneration of the *News of the World*”. As John Kampfner, Chief Executive Director of *Index on Censorship* put it: “for *The Guardian*, which has doggedly pursued the story, the findings are a vindication”<sup>4</sup>.

And *The Guardian* did indeed “doggedly pursue the story”. The next day Nick Davies revealed that the *News of the World*, at the time Andy Coulson was at the helm, had hired private investigators that had been convicted for breaking the law and using illegal methods to gather information. One of these investigators was hired, writes Nick Davies, “even though he had just been released from a seven-year prison sentence for blackmail and his involvement in blackmail and police corruption had been the subject of national news reports”.

### **What would an effective self-regulation be?**

A well-functioning democracy needs a press that can assert its independence from established power. It needs a plural press – from elitist to popular, left and right -that reflects the legitimate expectations and opinions of the public. A democracy also needs a press that citizens can trust and that respects individual rights of privacy and dignity.

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<sup>4</sup> John Kampfner, “It is too early to celebrate, but today is a proud day for free expression”, *The Guardian*, February 24, 2010.

Although freedom of expression is meant, as Anthony Lewis puts it, “for the thought that we hate”,<sup>5</sup> democracy is ideally strengthened when media promote our rights and duties, nurture a democratic culture and avoid words and actions that feed discrimination or hatred.

However, as many others have documented, the role of journalism is not made easier in a radically changed media environment that has altered the nature of journalism, subjecting it to enormous competitive and financial pressure and in the process increasing the risks of inaccuracy or sensationalism<sup>6</sup>.

Ethical behaviour is a major element in the legitimacy and the credibility of media in their proclaimed role as key institutions of democracy. This ethical commitment is enforced by individual journalists, by the news media themselves and by media accountability systems, in particular by self-regulatory bodies.

For journalists self-regulation is their favoured and most effective way of resolving the dilemmas arising from their contradictory commitments to independence and accountability. The intrusion of the state or the “tyranny of lawyers” tend inevitably to chill the freedom of the press. They also dampen enthusiasm for investigative journalism and stories involving powerful figures or vested interests.

However, the credibility of self-regulation is weakened in the eyes of many journalists by the unethical behaviour of the most frivolous members of the press and the light sanctions they incur from their “self-regulation” system. Calls for legal restraint and statutory controls inevitably increase when media misbehaviour crosses red lines.

As the Media Standards Trust says, “though the PCC was created to prevent direct statutory control, it has not served as a safeguard against the emerging case law around privacy and the costs of libel have increased

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<sup>5</sup> Anthony Lewis, *Freedom for the Thought that We Hate. A Biography of the First Amendment*, Basic Books, 2010, 240 pages.

<sup>6</sup> Media Standards Trust, *A More Accountable Press*, February 2009.

dramatically. Combined, these have introduced further limits to the freedom of expression”<sup>7</sup>.

There is therefore a requirement, as *The Guardian* editor-in-chief Alan Rusbridger puts it, for an “effective system of self-regulation”. If the industry cannot prevent mistakes and abuses it must at least submit itself to meaningful and serious review of its behaviour and equip its self-regulator with the mandate and resources to carry out thorough “without fear no favour” investigation that would make outside regulation unnecessary. Meaningful self-regulation is not just “soft law”. It is the application by the profession of “hard norms” that make the calls for the police or the magistrate unnecessary.

Self-regulation as a concept however has got recently a very bad name even beyond the media scene. The Wall Street meltdown demonstrated that greedy bankers and reckless traders could not be trusted to regulate the activities of their industry. This general perception that self-regulation is primarily defensive and a self-protective mechanism that works against the public interest has made even more difficult the task facing the press in its efforts to exempt itself from statutory regulation.

Many supporters of media self regulation insist that self-regulation is not meant to shield the press against legitimate complaints and that it is especially not meant to protect those sections of the press that seem addicted to systemic and flagrant violation of their ethical duties.

Many outside of the media tribe but also increasingly from within its ranks, beg to differ. Relating a history of recurrent excesses and abuses they suspect the media of using self-regulation not to police themselves and improve standards but as an opportunistic way to blunt criticism, prevent state action, deflect civil lawsuits and reduce the potential financial damage.

Adversaries of the current system doubt that the actions of the PCC, although considered by some observers to be generally effective when it comes to evaluate the handling of its selected individual complaints, are sufficient incentive for higher standards and provide minimal deterrence

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<sup>7</sup> Media Standards Trust, *Can independent self-regulation keep standards high and preserve press freedom?* A submission by the Media Standards Trust to the PCC’s review of governance, January 2010.

against future serious breaches. And some of them advocate more binding and even statutory regulation, either through a framework of legally defined obligations or a system that includes a legal backstop for self-regulation, so-called co-regulation.

In such context where politicians or other authorities are tempted to express their doubts about the PCC in order to push for their own “press control” agenda, the PCC supporters fear that calls for “more effective self-regulation” provide a pretext for an intrusive form of statutory regulation with a consequent chilling effect on freedom of the press. “Some critics might not see the impact on freedom of expression,” declares PCC director Stephen Abell. “Of course, freedom of expression should not be used to justify hacking but some of these critics’ proposals might come at the cost of freedom of expression”.

Generally too much regulation bodes ill for a free press but too little can be just as harmful. Although no one in the press pretends to be perfect, there is a negative public perception about British media that leads to calls for more sanctions, and this is mostly due to the bad behaviour of the “red-tops”.

A 2008 survey<sup>8</sup> commissioned by the British Journalism Review gives a rather sobering assessment: the level of trust in tabloid newspapers fluctuated between 14% in 2003, 7% in 2007 (close to the time of the *News of the World* hacking scandal) and 15% in 2008. The current popular judgment on the behaviour of the media cannot be detached from this embarrassingly rich history of rogue and raw journalism.

Tastelessness, sensationalism and frivolity are not a crime nor necessarily an ethical issue. But to some extent these papers are commercially successful, even if their behaviour is often borderline or even at times cross the line.

To some extent their misbehaviour taints all the media. According to this survey journalists in upmarket papers also experienced a decline in their credibility over the same period of time, perhaps because of their own eroding standards, perhaps because of commercial pressures but perhaps

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<sup>8</sup> YouGov poll, commissioned by British Journalism Review, conducted March 27-28, 2008.

also because they suffer from an undeserved guilt by association with the tabloids. Their ratings went from 65% in 2003 down to 43% in 2008.

Because of this generally negative perception the public might not believe in the capacity of the media to regulate themselves and might be tempted to either take the litigation road or endorse politicised calls for “more responsibility and accountability” at the risk of reducing the freedom of the press. When this happens there will be no exceptions because restrictions imposed to combat the bad and the ugly tend to affect at some point the virtuous and the well-behaved.

That would be an insult and an injustice to these journalists that do not take part in the excesses of red-top tabloid journalism and strive, very often in very difficult conditions, to comply with the mission and the obligations of a free and responsible press.

Can or should the PCC enforce stricter standards? The PCC underlines its achievements and insists that its complaints system has contributed to an improvement in press standards. While the Media Standards Trust has recently recognized the good sides of the complaints system others strongly disagree. Nick Davies, for instance, highlights the fact that the PCC only accepts a minimum number of complaints. Assessing ten years of PCC records he concludes that “90% of those complaints were rejected on technical grounds without the PCC even investigating their content”.

Some might say that there are two sides to the coin. Sometimes the public completely misunderstands the role, the duties and the rights of journalists and they complain about attitudes and practices that are legitimate and even required from journalists. On the other hand the public does not know that it has rights, is not aware of the terms and conditions of the complaints system or is too shy to act.

The real question beyond the volume of the complaints and the way they are handled is whether this system has effectively improved the standards of journalism in general. On the answer to this question there is no consensus, but much bitter and strongly held opinion on either side of a widening debate.

## **Independence**

The credibility of a self-regulatory body depends on much more fundamental requirements than a more efficient, transparent or streamlined complaints system.

“The public expects considerably more from press self-regulation than they are currently getting”, writes Martin Moore, director of the Media Standards Trust. “People just don’t want a mediator, they want an independent self-regulator. The difference being that, in addition to mediating, an independent self-regulator would do things like monitor compliance with the code (i.e. keep a constant eye on newspapers) and conduct regular investigations into areas of public concern – without requiring a complaint”.

Therefore, one of the most important issues revolves around the power, the prerogatives and the independence of the PCC in relation to its sponsors in the industry.

“Despite its real will to be helpful the PCC staff suffers from a structural weakness,” says Nick Davies. “It is constantly pulled in two directions: the needs of the people complaining and the fear of losing the cooperation of news organizations”.

It requires an enormous leap of faith to imagine that newspaper owners (or journalists) with a record of brushing with the law or playing fast and loose with ethics will be open to serious criticism and will accept punitive sanctions to encourage them to change their ways.

This raises the question of the independence and ownership of the PCC. “It is a system established and paid for by the industry,” wrote Bob Satchwell, Executive Director of the Society of Editors, “and then left correctly in the control of the lay chairman, lay commissioners and their staff that do not have a background in the industry”<sup>9</sup>.

Martin Moore of the Media Standards Trust is more direct: “The PCC is not independent of the media that it is supposed to regulate. Although the composition of its complaints committee is a mix between representatives of

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<sup>9</sup> “What should be done with the PCC”, *The Guardian*, Nov. 27, 2009.



the industry and “lay persons” the funding comes essentially from the contributions of participating newspapers and magazines.”

Most of the appointments to key bodies like the Press Board of Finance or the Editorial Code Committee are made by the industry. Besides the Editorial Code Committee only includes editors some of whom, as the Campaign for Press and Broadcasting Freedom suggests, are part of the problem since “unacceptable journalism all too frequently results from intense pressure applied by editors to journalists, almost always in the interests of the bottom line. This is the equivalent of putting the fox in charge of the henhouse”<sup>10</sup>.

“The only professional view given to the Commissioners,” adds the NUJ, “is that of editors or senior executives, who, whilst being responsible for the journalism of their newspapers, are also responsible for the commercial side of publishing as well as management of editorial staff. It is clear in case after case that the PCC has dealt with editors who are unwilling or unable to recognise the pressures placed on journalists that have a detrimental effect on journalism in the UK”.

The PCC appears keenly aware of the limitations of its margins of manoeuvre. It also seems to fear that some of its constituent members might not accept new mandates, methods and practices, like the power to investigate, that would raise their level of accountability, or oblige them to be more transparent about the way the PCC is funded and operates.

“It is important not to lose what we have -- an effective complaints system which has the full cooperation of the industry,” argues Stephen Abell. “There is a danger that we would compromise this function if we move to investigation”.

But pressure for reform is growing. The governance review that was initiated by the PCC is recognition of the need for the PCC to take stock of the observations and criticism that have been made about its work. It is also a necessary and timely exercise as the media are going through a profound process of change, especially with the rise of online journalism and so-called “citizen” journalism and its prolific potential for unethical behaviour.

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<sup>10</sup> Julian Petley, *PCC Governance Review*, CPBF, 26/1/2010.

But will this governance review really address the allegedly more essential weaknesses and ambiguities of the PCC that are a matter of reproach in some quarters? For instance, “press self-regulation, as currently constituted,” writes the Media Standards Trust, “simply does not allow for the type of investigation necessary to reveal the sorts of privacy intrusion that *The Guardian* alleged”.

More questions stack up. Is the scope of reform limited by the need to ensure the cooperation of the industry? Should the parameters of self regulation be defined by the apparently limited capacity of the industry for self-criticism and self-control? Would another composition and funding base work? Are newspaper owners ready to accept that change is needed?

This is where the waters part and the going gets tough. Bob Satchwell, the executive director of the Society of Editors, rings the alarm: “The bottom line is that the system is not designed and should not set out to control, the press. It is a system that should make editors and journalists think twice”<sup>11</sup>.

Certainly, a revision of self regulation should not lead to what this system precisely wants to prevent: undue intrusion by the state or other actors in the media’s autonomy and its corollary, restriction of press freedom or of the capacity for free expression.

Any substantive change would require a serene approach to the definition of new prerogatives, one that would be acutely aware of potential collateral damage or unexpected results of change. But a critical moment has arrived and the case for reform of the PCC appears to be unanswerable.

### **A paradigm shift**

In a document submitted in January 2010 to the PCC governance review the Media Standards Trust has chosen a friendly approach to reform. After commending the PCC’s “valuable role as a mediation and conciliation body”, it makes recommendations that clearly imply a change of paradigm.

The main point, says the MST, is to have “a self-regulatory body which discharges effective regulatory functions without statutory backing”. Indeed, its first suggestion, renaming the PCC as the “Press Standards Commission”,

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<sup>11</sup> “What should be done with the PCC?” *The Guardian*, Nov. 27, 2009.

is not just “rebranding”. It is transformative since it would move the PCC from its rather passive role of mediator towards the status of an active guardian of the commitment to its proclaimed standards of journalism and to the public interest. The reformed PCC would therefore “act on behalf of the public, in the public interest, a wider role than its current efforts to work on behalf of complainants”<sup>12</sup>.

The Media Standards Trust proposes as a first step to reform, expand and improve the complaints system. A beginning would be to accept complaints by third parties, that is by individuals that have not been directly named or identified in a contentious article or by associations that represent or serve particular constituencies. That would be specifically relevant in the case of derogatory or inaccurate depiction of minorities.

Although the acceptance of third party complaints would increase workload and might invite a small number of frivolous and politicized complaints it would nevertheless confirm and reinforce the PCC’s status as the protector of high standards and of the public interest. “We are all equal members of an open democracy, writes Julian Petley, “so public misperceptions generated by inaccurate or sensational stories matter to us all”.

Also on the reform agenda are demands for the PCC to provide more transparency to the complaints procedure. Many complainants, writes the CPBF, find that “they are kept out of the loop” and “offered a deal on a take-it-or-leave-it basis”<sup>13</sup>.

More clarity of the complaints procedures might also help identify patterns of press violations and assist in the definition of more precise editorial guidelines and give early warning about new ethical challenges.

A reformed PCC should also be able to investigate breaches of the code without requiring a complaint. “The PCC should seek to expand its right to initiate enquiries and investigate issues relating to press behaviour of public significance,” says the NUJ, “if it is to play a more central role in the promotion and development of ethical journalism”. “If the PCC does not have

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<sup>12</sup> Media Standards Trust, *Can independent self-regulation keep standards high and preserve press freedom?* January 2010.

<sup>13</sup> Julian Petley, op.cit.

the mandate or the resources to do a real investigation,” adds Martin Moore of the Media Standards Trust, “they mislead the public when they refer to self-regulation”.

Members, for instance, might agree to be investigated by an independent body appointed by the Code committee of the PCC. They would have to provide all necessary assistance (opening files, allowing interviews with the staff, etc.) to the independent investigators in order to guarantee the thoroughness, the relevance and, consequently, the credibility of their mission.

The PCC should also strengthen its role as a standard-setter by regularly issuing briefing notes and guidelines based on the handling of complaints and its own monitoring of the press. Tracing patterns of ethical misbehaviour, especially drawing attention to new forms of abuse and elaborating ways of confronting and solving them would be obvious ways to improve quality in journalism.

These changes would require the PCC to become a “press council”. Its membership, as the MediaWise Trust suggests, should be changed and, taking its cue from other press councils, organised in some parts of Europe, for instance, might help it avoid becoming hostage to powerful, recalcitrant and sometimes the least “code-abiding” media. The PCC should, in particular, enhance its own transparency by revealing information on the amounts paid by each newspaper. It is astonishing to anyone interested in media accountability in Europe that the payments made by the British press to its own regulator remain a closely guarded secret.

All of this underpins the need for work to enhance credibility. The participation in a press council should not be tested only by an oral commitment to the ethical code or a regular payment of membership fees. It should also be measured by the will to seriously correct failings and to apply the highest standards of the profession by accepting measures that would make this commitment binding.

This depends largely on the reputation of its members as resolute defenders of the highest journalistic standards as well as on the

independence of the council from all pressures, from the industry or other quarters.

The media should also feel the heat of reprobation. Here also transparency and publicity should be instruments of redress. For instance, arrangements with aggrieved complainants should not be kept private except at the explicit request of the victims. Dissuasion can only work in the limelight of publicity.

A reformed PCC should push for the introduction in all media of a permanent corrections box and for respect of the right of reply, as it already exists in a few democratic countries. The two measures alone could greatly contribute to a press culture of accuracy and fairness.

The people most put upon by the public demand for credible and professional practice are journalists themselves and they must be able to resist attempts by editors or proprietors to flout the ethical rules in pursuit of exclusive coverage to boost ratings and circulation. A statute of “newsroom independence”, like the one developed and demanded by the NUJ, providing in particular for a clause of conscience and clearly endowing journalists with the right to refuse assignments if they believe they break ethical rules would be a step in the right direction and should be promoted by the reformed PCC.

Punitive actions are difficult to discuss and not unanimously endorsed. Some organisations, however, favour that approach. “The PCC could easily decide to operate a system of sanctions against newspapers or magazines where it can be shown that there has been a reckless or wilful breach of the Code of Practice”, suggests the NUJ.

The MediaWise Trust takes the same line and proposes a few benchmarks so that editors should be accountable and pay if they do not take corrective action to stop abuses. “There should be no impunity for editors whose publications repeatedly breach their Code, they argue. There have been few occasions when an executive has lost a job or been demoted after being found in breach of the Code. It is problematic that former editors appear to thrive on the notoriety of past errors (making fresh careers for

themselves as political pundits, TV celebrities or spin doctors for politicians)”).

MediaWise and others also call for financial penalties. “The public is more likely to trust the efficacy of the PCC if it were to “value” breaches of the Code according to a set range of financial sanctions, depending upon the severity of the breach. ...Proprietors would be unlikely to tolerate lackadaisical reporting or editing if it had an impact on profits”<sup>14</sup>.

But for these organizations punishment itself is not enough, the PCC should monitor future behaviour and guilty newspapers should provide the evidence that they have mended their ways by putting in place clear ethical guidelines, transparent authority procedures, an effective monitoring mechanism and dissuasive sanctions.

People outside the media “bubble” need to be convinced that the PCC is true to its guardianship of the “public interest. According to the PCC, journalists regularly consult them in order to test the “public interest” of a story they are pursuing. That is a positive role for the PCC indeed.

However the concept “of the public interest” should be more strictly defined in a way that obviously does not restrict the freedom of the press but enhances its sense of responsibility and accountability. It should in particular limit the practise of subcontracting key elements of the investigative work to outsiders and totally ban the recourse to private investigators with a dubious record.

In short, what is sought and envisaged are new responsibilities and a role for the PCC that will build public trust both inside and outside the media, but none of this has any hope of being realised without a significant rise in the financial resources made available to the PCC.

If all of this was not enough the media and media watching community also have on their plate the conundrum of how to bring coherence and a rational system of accountability to a converging information and media landscape which is currently fragmented with different forms of media

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<sup>14</sup> The MediaWise Trust, *Getting it right for now. A contribution to the Press Complaints Commission governance review*, January 2010.

subject to vastly different rules – some of them legally enforced, others self-regulating.

Online journalism is itself a challenge, but the problem is made greater by the transnational nature of the Internet which raises questions about how self-regulation and accountability can coherently operate across borders. More immediately, though is the issue of unifying regulation of media content in text, audio or video form which is increasingly provided through a continuous stream of journalism – often produced by the same journalist – and which is delivered by a single media company from different platforms.

“If media self-regulation is to be transparent and equitable, writes the MediaWise Trust, “there needs to be a single system, open to all, especially when there is a serious risk of unnecessary suffering or harm being done to innocent people by the online publication of words or images making it instantly accessible across the globe”<sup>15</sup>.

The existence of public service broadcasting introduces, of course, a unique element in the discussion. Their particular status has submitted them to stricter and statutory forms of regulation. In Britain terrestrial broadcast media, both public and private, are subject to tougher regulation than the press.

People might expect, rightly, that all media should be held to the same standards of ethical conduct, especially when it comes to core principles like the protection of privacy or the concept of the public interest.

## **Conclusion**

There is a growing constituency for effective self-regulation. Most quality news papers believe in it and appear ready to improve the system. They are aware that politicians and the public expect that something should be done and that, in the absence of a reform of the self-regulation system the alternative might be statutory regulation.

The key hurdle comes from the tabloid press. Their choice to position themselves “downmarket” is not an issue in the context of this inquiry. However this editorial option has consequences on their understanding of

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<sup>15</sup> The MediaWise Trust, op.cit.

journalistic standards. The weakness of ethics-based sanctions, apart from the risks of a crushing lawsuit, makes this constant “walk on the wild side” a commercially rational option.

In other words is it realistic to establish a system of self-regulation for the whole profession as if that profession were not made up of members that are separated by their respective and often antagonistic sets of values? As former *Le Monde*’s Editor-in-chief Edwy Plenel famously stated: “We are in the same profession, we don’t do the same job”.

The reflection on the PCC will not exempt the UK media from a more general consideration of what Roy Greenslade describes as “the ferociously and uniquely competitive environment of British national newspapers...Reporters do not routinely indulge in the darkest of dark arts, such as hacking into voicemail messages. But many certainly are prepared to go down the road that leads in that direction. This is particular true on popular papers”<sup>16</sup>.

The PCC has been seen, as Nick says, as “a safety valve to stop Parliament from introducing legislation”. The time has come to dispel the suspicion in some quarters that it is an alibi. The time has come for the partisans of self-regulation to demonstrate the value of journalism as a public good and media’s real commitment to the highest ethical standards in a profession that is a key pillar of a vibrant and principled democracy.

*Brussels*  
*1 March 2010*

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<sup>16</sup>Roy Greenslade, “Tough Calls to Make on Phone-Tapping”, London Evening Standard, 15.07.2009.