

# **The PM Privacy Commission Report**

## PREFACE

When we began our work in early June this year no one could have anticipated just how rapidly the controversy about personal privacy and press intrusion would escalate to the point where it has become the issue of the moment with growing consensus on the need for more telling regulation of the press and serious questions about future conduct and ownership.

The debate about how, as a society, we balance our interest in protecting a free press and wider media, capable of challenging power, privilege and hypocrisy, against the rights of the individual is not new of course. It has been around since the arrival of the printing press and the ability to distribute opinion and allegation widely.

Our original focus was the flurry of concern about how the courts were seen to be striking a balance between the sometimes competing rights to personal privacy and freedom of expression - both enshrined in the Human Rights Act 1998. Of particular concern then was the use of injunctions to prohibit publication of exposes and the emergence of what were called "superinjunctions" which went so far as to conceal the very existence of the order.

The Privacy Commission was conceived as a way of probing more deeply, on behalf of the listeners, a complex and heated debate.

Our terms of reference were deliberately drawn widely to enable us to range across the whole subject. What became clear from early listener reaction was the widespread recognition of the connections between issues of media ownership, press regulation, data protection, the economic pressures facing newspapers, the various challenges associated with the arrival of social networking and the "citizen journalist", the role of the law and its interpretation by the courts (including access to protection and redress for the individual) and the confidence we can place in police and parliament to act courageously to protect the citizen.

These connections become particularly important in any discussion of how things might be improved for the future. There is unlikely to be a single "silver bullet" which solves the problems we now identify. The closure of a particular newspaper or the resignation or even prosecution of key individuals are unlikely to be an adequate response by themselves to what seems to be a veritable industry in the often illegal, pursuit of and trade in personal information and standards of conduct in some parts of publishing and possibly journalism which fundamentally threaten public trust and confidence in the freedoms they enjoy.

Our exercise has been modest in scale and depth. It was intended to be an experiment in public service broadcasting rather than an exhaustive examination of all the information available. Our ambition was to engage the audience in an extended exploration of the various issues. We have not had the time or resources to fully research any of the complex issues we have sought to explore. Nonetheless we have a body of evidence and informed opinion drawn from interviews with 17 knowledgeable witnesses with a wide range of views and it is all available for any one to explore ([bbc.co.uk/blogs/pm](http://bbc.co.uk/blogs/pm)). We were disappointed that no serving editor of the so called "tabloid press" responded to our invitation to give evidence but the arguments in favour of unfettered freedom of expression were ably extended by John Kampfner, Jimmy Wales and John Mullin although even amongst these there were concerns about journalistic standards and illegal intrusion.

Our work for the Commission has reinforced our view that the questions we have considered are of real concern for everyone and are not just matters for the rich and famous or politicians or those who work in the media. Confidence that we can all live our lives free from the threat of inappropriate intrusion and can rely on vigorous, principled journalists and publishers (including broadcasters) to challenge those with power and influence over our lives is part of the "social contract" which underpins an open, free society. Nowhere was the threat to this confidence clearer than in the seismic shift in public perceptions of newspapers following the allegations that Milly Dowler's mobile phone had been hacked into whilst she was being searched for by police and family. The horrified reaction of the country led to the closure of the 168 year old News of the World and the longer term consequences for the media are unfolding day by day.

We offer our conclusions as a contribution to the continuing debate and will ensure that they together with all the evidence submitted to us, along with the views of the PM listeners, is shared with Lord Justice Leveson's two part inquiry into the conduct and regulation of the press announced by the PM in the hope that it will help it with its important work.

We are clear that the restoration of public trust and confidence must be the over-riding concern and that there are questions about the independent regulation of the press; the future structure and ownership of the media industry in rapidly changing economic circumstances and the standards of conduct which we have a right to expect of journalists and more particularly publishers. Most important of all we need to be assured that those upon whom our freedoms depend, whether in Parliament or police have the courage and independence to stand up to the power and influence wielded by the big businesses which publishers and broadcasters most certainly are.

Sir Michael Lyons  
Lord Faulks QC  
Baroness Helen Liddell

22<sup>nd</sup> July 2011

## CONCLUSIONS

### 1. A Right to Privacy?

We are clear that Parliament intended to establish a right to personal privacy when it passed the Human Rights Act in 1998. The Act also enshrines the right to freedom of expression and reflects the tension between the two. We are satisfied that concern to protect personal privacy is not just a matter for the rich, famous and powerful but extends to all the citizens of an open democracy. The courts will inevitably have to strike the balance in individual cases. We are not convinced that the judges' interpretation of the law at the moment is unsatisfactory. However we believe that, in the light of public disquiet, Parliament should take further action to define and reinforce the rights of individuals. The necessary provisions could be included in the forthcoming Defamation Bill.

### 2. Freedom of Expression

We are clear about the importance of a free press able to challenge those with economic and political power and to expose deceit and hypocrisy. However we believe that the public does distinguish between journalism for these purposes and intrusion into the private lives of individuals for titillation even though we accept there is an appetite amongst many for the latter. We believe that parliament must keep this distinction firmly in mind in drafting any new legislation and seek to avoid any unintended constraints on investigative journalism.

### 3. Access to Protection and Redress

(a) We strongly support the suggestion that newspapers should as a matter of good practice disclose their intention to publish private matters relating to an individual. However we accept that a legal duty of prior notification as suggested by Max Mosley has the potential to have a chilling effect on investigative journalism. If a newspaper violates privacy without prior notification to the relevant individual in the absence of a public interest defence then there should be an award of aggravated damages and possibly some form of regulatory sanction.

(b) Injunctions will continue to have a part to play in protecting individuals' privacy but we are satisfied that following the conclusions of Lord Neuberger's committee there will be few if any super injunctions in the future. We are surprised that newspapers facing injunctions have not sought more often to argue a public interest defence. This has left the impression that that either there has been no such defence or that the publishers concerned have been content to collude in their own "gagging."

(c) Like the Culture Media and Sport Select Committee, who in February 2010 published a report entitled "Press Standards, privacy and libel", we are concerned by the prohibitive costs that are faced by the private individual seeking protection or redress from press intrusion. This has added to the impression that the right to privacy

is limited to those with the wealth or influence to defend it. We accept that the Press Complaints Commission offers help to the individual concerned about intrusion into their private lives and has had some success with its pre-publication intervention to prevent publication of stories affecting ordinary people, and in setting guidelines for press coverage during major incidents. Nonetheless we believe there is more to be done to ensure that ordinary members of the public are able to protect their privacy.

#### 4. The Public Interest

We are satisfied that the Editors' definition of the public interest as used by the Press Complaints Commission (see appendix H ) is robust and offers an adequate basis for distinguishing between what is in the public interest and what may be of interest to the public. In considering future injunctions the courts should continue to be open to the case that there is a public interest in question and that publishers should be more routinely prepared to argue at least the outline of their case in court.

#### 5. Regulation

Regulation of the press is a matter to be approached with great care. Nonetheless we welcome the Prime Minister's announcement of an enquiry to establish revised arrangements for the regulation of press behaviours in this country. We are satisfied that there is little public confidence in current arrangements and that the revelations of recent weeks suggest that some publishers have themselves demonstrated contempt for the principle of self regulation. The Select Committee on Culture Media and Sport's "Press Standards, privacy and libel" report recommended that the PCC should have less of a presence from the newspaper industry on its Code Committee and that it should be more proactive. We endorse these recommendations and in particular the desire to see the PCC – or any subsequent regulator – demonstrate a more energetic sense of curiosity. Independence from the ownership and editorial control of the newspapers is the key issue and this must be established to the satisfaction of both Parliament and public.

We believe that there may be lessons to learn from the regulation of broadcasting and the work of the Information Commissioner – especially in terms of the investigative capacity of the latter. The continuing economic and political power of newspaper publishers together with the rewards possible for some of their staff suggests that any future regulatory framework should include the scope for sanctions commensurate with the gains achieved by unwarranted intrusion especially where that involves possibly illegally obtained information. We believe there may be scope for a statutory framework establishing a new or revised regulatory body. However the relevant provisions should be couched in terms that do not lead to the charge that the state is in any way controlling press freedom.

#### 6. Social Media

It is self evident that the realities of a digital age bring new challenges. Social networking and the emergence of the "the citizen journalist" potentially challenge the

privacy of individuals and are not easily regulated. Both the Trafigura and Ryan Giggs cases also point to the significance of interaction between newspapers and social media. Nonetheless in reaching our conclusion about the future regulation of newspaper publishers we believe it is possible to distinguish between social media and newspaper publishing on grounds of both the concentration of power within and the economic rewards available to the latter. We believe that despite the difficulties of protecting individual privacy in the age of Twitter, Facebook and Wikipedia that is no reason to dismiss the role of the law in protecting the individual citizen.

## 7. The Behaviour of Individual Publishers and Journalists

Although the use of illegally obtained personal information by newspapers does appear to be widespread the evidence we have received suggests that it is not universal. It is important that the enquiry proposed by the Prime Minister goes well beyond the transgressions of the News International group which have been the understandable focus of much recent debate. The findings of the original Motorman enquiry by the Information Commissioner suggested other daily newspaper publishers were at least as energetic users of personal material obtained by apparently illegal means. In addition to careful consideration of a new regulatory framework with appropriate sanctions we believe that the enquiry should also address questions of good corporate governance within newspaper publishing and ethical and professional standards within journalism. The revelations of recent weeks suggest there is much to be done on both fronts.

## 8. The Future of Newspaper Publishing

There is no doubt that newspaper publishing faces a challenging future with competition from online news material which is free at the point of consumption, and the loss of advertising revenues to search engines and others. The future funding of good quality journalism is a challenge beyond the scope our modest exercise but we do wish to express our concern at the suggestion that the newspaper industry depends upon the uninhibited publication of scandal for its very survival. It is a matter of real public interest to ensure that professional investigative journalism conducted on a sound legal and ethical basis can continue and is not squeezed out by a furious competition in which greater and greater liberties are taken with personal rights and freedoms.

## 9. The Trade in Illegally Obtained Personal Information

Few people will not have been shocked by the revelations about the scale of the trade in illegally obtained personal information or the lengths that some will go to collect that information. The work of the Information Commissioner has been important to these revelations and the better understanding that we now have. There is more to be done to explore why it has taken so long since the original Motorman enquiry produced evidence of illegal gathering of personal information on a near industrial scale for the implications to be followed through. There are questions about the conduct of police investigations and parliamentary scrutiny which go well beyond

both our remit and our resources but we are satisfied that there is real public concern and an appetite for further explanation.

#### 10. Relations Between Government and Newspaper Publishers

In this area, more than most, the conclusions emerging from our enquiries have been overtaken by events. Many witnesses questioned what they saw as too close a relationship between senior politicians and newspaper publishers born out of a desire to win their support and influence with the public. Of greater concern perhaps was the suggestion that individual members of parliament may have been intimidated in their work of scrutiny and challenge by the prospect of becoming the focus of scandalous press coverage. Both sets of issues have been the subject of energetic discussion both within and without Parliament over the last 2 weeks. We welcome the apparent consensus that parliament needs to do more to uphold its own vital role in protecting the legitimate private affairs of its citizens and to demand higher standards of conduct in both publishing and journalism.

#### 11. The Police and the Press

Even before the recent allegations of payments by newspapers to police officers and the employment of former officers by newspaper publishers, the Commission was concerned about suggestions from witnesses that privacy matters raised with the police sometimes found their way into the press. We were even more concerned to hear the Information Commissioner's concern that matters relating to illegal trade in personal information were not always investigated as energetically as possible. All of this was considered against the backdrop of continuing public controversy about illegal phone hacking. We benefitted from a discussion with Chief Constable Andrew Trotter, Chair of the ACPO Media Advisory Group. He stressed that the police inevitably had close relationships with the press and other media as they were important in securing information to help police investigations and to inform the public about their work. These matters will now be the subject of further investigation by the Leveson enquiry which we welcome. Public confidence that the police will themselves always respect personal privacy and vigorously pursue criminal intrusion must be essential components of future arrangements.

## **TERMS OF REFERENCE**

1. To determine the circumstances and extent to which an individual's private life should be open to public scrutiny.
2. To establish whether there is public confidence in the current practices of the media with respect to the privacy of individuals and the extent to which new communications media represents a special challenge.
3. To assess the extent to which current legal measures restricting media reports are seen to be proportionate and have public confidence.
4. To consider if current regulatory regimes are seen to have sufficient powers to ensure good practice in media reporting.
5. To receive evidence from interested parties.
6. To recommend measures which may increase public confidence in media reporting in the UK and the protection of individual's privacy.

## EVIDENCE

### **A Right to Personal Privacy and the Role of the Courts**

Debate about the individual's right to privacy and the circumstances in which this might be breached by inquisitive newspapers and other media has a long history stretching back to the very earliest days of printing and journalism.

The European Convention on Human Rights was signed in 1951 protecting people against serious human rights infringements. It also protects individuals' rights to privacy, freedom of religion, expression, association and assembly, to marry and found a family. Article 8 of the European Convention on Human Rights provides a right to respect for one's "private and family life, his home and his correspondence", subject to certain restrictions that are "in accordance with law" and "necessary in a democratic society".

In 1998, partly in response to public argument in favour of an explicit privacy law, the European Convention on Human Rights was embedded in British law (The Human Rights Act) - creating a right to privacy enforceable by the courts under Article 8 and a competing right to freedom of speech to protect the legitimate work of the press and other media (Article 10).

Parliament explicitly recognised the tension between the two rights, included section 12 to underline its concern that the legislation should inhibit investigative journalism in the public interest, and paved the way for the courts to strike the balance in individual cases.

This is the background to the controversy over a series of injunctions, usually only temporary, designed to inhibit publication of personal details by the press.

The conduct of the judiciary in granting injunctions, and especially superinjunctions, to inhibit publication of argued that judges are imposing superinjunctions upon the public:

*"Why are the public so interested? I think it is they feel that when the press are trammelled something very fundamental in the British constitution is being trammelled, and whilst politicians are not, let us say, the most popular category of people, never the less they have the great benefit that you can fire your politician, after a general election you can chuck them out if you don't like them and get a new lot in. You can't do that with judges and that I think is the fundamental that people out there fear, they fear that a privacy law, a secrecy law is being imposed upon them by people they did not elect and who are completely unaccountable to them."*

Indeed there is concern that if left entirely to the courts the law may be seen as developing in a way that is less than transparent. The Commission believes that this should not be the case.

As Sir Charles Gray, formerly Mr Justice Gray noted in giving evidence:

*“I don't think that Parliament was very clear and the reason I say that is this, the articles 8 and 10 of the European Convention on Human Rights provide respectively for a right of privacy and the right of freedom of expression.... the difficulty that I think judges have experienced over the years in deciding how you pay particular regard to one right which according to convention laws to be given equal importance with another convention right, namely the right of privacy. And that's, I think, part of the difficulty that courts have been experiencing in recent months and years.”*

In addressing point 3 of the Terms of Reference the Commission feels that there is very little reason for supposing that judges are getting the decision on individual cases wrong- at least as far as defining the law of privacy is concerned. It may be slightly more questionable whether the judiciary has been a little too free in granting superinjunctions.

The Commission is not convinced that legislation would really clarify the law. Every case has to be decided on its own facts having regard to the conflicting principles embodied in the relevant Convention rights incorporated into the Human Rights Act. The decision whether to legislate would really be based on the notion of 'ownership' of the law of privacy by Parliament. Privacy law does in fact reflect the will of Parliament by the passing of the Human Rights Act. But this might be regarded as legislating through the back door and there is a general perception that the law of privacy is judge-made as opposed to being the creation of Parliament.

There is scope for Parliament to legislate specifically on questions of privacy. Relevant legislation could set down broad parameters accompanied by some form of code. The Commission believes that this is a matter which should be considered by the Joint Committee.

Marcus Partington said this:

*“I think one of the things that really needs to happen in this debate is the debate that took place in the House of Commons on the 2nd of July 1998 when it became Section 12 of the Human Rights Act was introduced, I think everyone in this debate would benefit from actually revisiting that debate. ... The courts have simply balanced Article 8 and Article 10 without doing it, without looking at Article 8 and Article 10 in the way that Parliament intended. And that's where I think we have gone wrong. And I think if you look at that debate, what Parliament said and what the minister said I think we would of ended up in a slightly different position than we are now.”*

The Commission does not believe that revisiting these debates would be a satisfactory way of clarifying the law. We are not convinced that there are any observations that are even admissible under the rule in *Pepper v Hart* which provides a very limited exception to the rule that courts should not look at debates when interpreting statutes. We do, however, consider that parliament should revisit the issue even if the conclusion is ultimately reached that the law is more or less satisfactory as it is.

## Defining Public Interest

Central to the Commission's remit was a desire to establish what is in the public's interest (see point 1 of the terms of reference). Listeners were keen to define this and as one listener wrote:

*“For serious matters public interest must be the driver, and irresponsibility ought to be revealed.”*

At the heart of the privacy debate is the difference between the Public Interest and the Interest of the Public. In 1997, the House of Lords made a landmark judgement after the former Irish PM Albert Reynolds had won an action against The Sunday Times following an article in 1994 that claimed he had misled the Irish Parliament. What has come to be known as the Reynolds Defence of public interest can be pleaded by the media if they print defamatory information but can prove that the information is in the public interest and that it was secured through responsible journalism.

The Commission found that the definition of 'public interest' in the Editors Code used by the PCC was perfectly adequate. The Editors Code defines public interest as:

- 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.

The Commission was however concerned to hear evidence that newspapers rarely cite a public interest defence in recent injunctions relating to the publication of personal information or defending their use of illegally obtained information.

Alan Rusbridger referred to research by the Guardian which suggested that in only 20% of recent injunctions have newspapers sought to argue in favour of publication on grounds of public interest:

*“From the reporting when you see all these headlines saying paper gagged, Sun gagged, Mail gagged, whatever, judge gags papers, the paper has gone along to say please don't gag us. But actually I can only find about 20% of the cases where anybody has actually gone along and argued the opposite. And the judges have now started commenting on it. They start saying isn't it odd that I'm being asked to judge on this case and the newspapers hear us in court and they're not even opposing it and you would never guess this from the reporting.”*

The commission heard different views on what is of interest to the Public. Many listeners stressed that they were not interested in the sex lives of footballers and celebrities:

*“It’s very important to emphasize the distinction (not always made) between ‘in the public interest’ and ‘of interest to the public’. Cases in the former category (e.g. MPs’ misbehaviour or public crimes on the part of celebrities) merit exposure in the media, but in the latter (e.g. footballers’ love lives), I would say definitely do not. That’s just gossip.”*

However evidence given to the Commission by publicist Max Clifford stressed that there is a real public appetite for stories about the private lives of the famous:

*“Faulks: Do you think editors are getting it right for example with their obsession with footballers’ sex lives, do you think the public is really interested in all that?”*

*Clifford: Oh they’re interested, God yeah – circulation proves it. And the kind of money they pay, I mean so..... there’s an interest, oh yeah, huge interest.”*

The commissioners were not convinced that a public appetite for personal details of celebrities’ lives was an adequate defence for their publication in all circumstances. We heard evidence which sought to argue that those who seek press attention for professional purposes (to promote their careers, films or simply in the search for a degree of celebrity) effectively make themselves legitimate targets for further coverage of their lives. We don’t accept this although we are clear there are examples of individuals commercialising their private lives to such an extent that they seriously impair their ability to protect any remaining privacy.

## **Access to Protection and Redress**

The Commission heard evidence from a number of individuals who felt their personal privacy had been the subject of unwarranted intrusion by the press and explored with them the means available to the individual to defend that privacy. The role of the courts in granting injunctions has been explored above.

The expense of injunctions was made clear in the evidence given by Zac Goldsmith MP, Max Mosley and Helen Wood. Mr Goldsmith explained that it was only through his own personal wealth he could pursue and obtain an injunction to protect illegally obtained details of family emails:

*“the whole episode cost an absolute fortune.”*

Max Mosley spoke of the impact on his family of personal details revealed in the News of the World’s now infamous story and explained that even after winning damages for privacy he is still out of pocket by thirty thousand pounds.

Helen Wood explained to the Commission that she could not afford to seek the protection of the courts:

*“If you’ve got enough money and you can behave exactly how you like because you’ve got the funds to protect it from ever being made public. Whereas I didn’t have a spare fifty grand going so because I was an escort they just put me out there because I couldn’t get this injunction.”*

Hugh Tomlinson QC confirmed the high costs associated with obtaining an injunction:

*“An ordinary privacy injunction costs probably ten thousand pounds but may be up to fifty or a hundred depending on the case.”*

He was also amongst those suggesting alternative arrangements for the future:

*“It seems to me it’s in everybody’s interest to have a press that is dynamic, free, interesting and active and keeps to the basic rules. And the question is how can you best do that at the least expense in the public interest and it seems to me that actually a system of tribunals away from the huge expense of the courts would be a positive outcome.”*

Sir Charles Gray suggested that Mr Tomlinson’s proposal might be worthy of further consideration.

Max Mosley argued from his own experience that the award of damages not only failed to measure up to the full costs of litigation and wider legal advice but could not possibly compensate for the damage which can be done to other family members and personal reputation. He was interested in stronger regulation to ensure that people have greater notice before private details are released in press stories. He explained

the efforts he has made to impose a legal duty of “prior notification” on the press and the arguments given by the European Court of Human Rights in its recent rejection of his proposal.

Listeners suggested that the PCC could have a stronger role in enforcing pre-notification of stories. The Editors’ Code of Practice used by the Commission is silent on the issue of prior notification although Mr Abell, Director of the PCC, argued that the commission does much of its most effective work in restraining publication of personal details and working with people who cannot afford to go to the courts for protection.

Louise Mensch MP put forward her ideas and concerns on the issue of pre-notification to the Commission:

*“It used to be the practice, as I understand of Fleet Street in general, to call up and say we’re going to print this, do you have any comment. This may be less so now because they fear, especially if the subject of their story is a big rich famous celebrity that they will be straight off to Mishcon de Reya to get an injunction to prevent the story from coming out. So if we were to make it legislatively more difficult to tighten up the conditions anonymised injunctions could be granted, one beneficial side of that would be that, one would hope, the press would be more open to allowing those who are the focus of such stories to be given a chance to rebuff and I don’t see why they shouldn’t go hand in hand. If the law were tightened up so it was more difficult to get an anonymised injunction the press could also be directed, whether by a new code of conduct enforceable through the Press Complaints Commission or other to give the subject of such stories the chance to send in the statement or put their side of the story or correct matters of fact, and if they do not give them that, give them that opportunity then they should be very sure of their facts.”*

The Commission was left with considerable concern about the barriers facing the individual person without the substantial economic means necessary to protect their privacy by recourse to the courts. This topic as much as any we have considered deserves further careful attention.

We were not convinced that a system of tribunals would necessarily prove either less costly or offer speedier protection and redress. Similarly we were not convinced that Conditional Fee Arrangements offer a useful general solution. The Government are taking steps to discourage the use of CFA in all circumstances after growing concern about the practice inflating legal costs.

We recognise that the PCC can demonstrate success in working with individuals who would otherwise have no support and believe this should be an important part of any new regulatory arrangement or other industry wide initiative. The availability of this support needs to be advertised more widely.

We are eager to see much more care taken to give advance warning of publication other than where there is a strong and demonstrable case that the public interest would be damaged. We conclude that if there is a Code attached to future privacy legislation

it should include clear guidance on prior notification and be supported by sanctions where it is not followed without good cause.

The Commission was not convinced that the imposition of a legal requirement for prior notification is the right way forward and can see that this might have a chilling effect on investigative journalism. In the age of social media, it might be regarded as yet another inhibition on the difficult task that newspapers are seeking to perform. The Commission is particularly wary of preventing or damaging real public interest stories on serious matters.

## Freedom of Expression and Regulation

We are eager to underline the importance of an independent and diverse press to an open democracy. It plays an important role in facilitating freedom of expression and still supports much of the heart of UK journalism with its ability to challenge economic and political power. Television, radio and "new media"(including social media) make important contributions but the newspapers are still responsible for a significant part of our information about the world we live in and the decisions made on our behalf. It is for these reasons that there will always be real and proper concerns about any attempt to regulate the press.

John Kampfner and Jimmy Wales both underlined the importance of free expression and warned against what they saw as the inevitably restrictive effects of any state regulation or over zealous restrictions by the courts. That position was also endorsed by both Alan Rusbridger and Marcus Partington on the grounds that it would impair important investigations. Mr Rusbridger gave as illustration the Trafifigura holdings case and Mr Partington cited Cream Holdings:

*“Cream Holdings is a case that went to the House of Lords. That was a case about a nightclub in Liverpool that was running a secret till and not declaring the takings to Revenue. Now you would have thought that you wouldn’t get an injunction for that... But that gives you a practical example of a case where we were enjoined by the court and it took two years and a considerable amount of money before we were allowed to run a story in which I would of thought everyone agrees is in the public interest.”*

However we also heard much testimony to the effect that the balance is currently wrong and the public are at risk from inadequately regulated press intrusion. The actor Hugh Grant underlined that newspapers are big businesses with their own agendas:

*“ I just occasionally like to pop my head out of the parapet and make the point that although its freedom of speech is very important and although if broadsheet newspapers were complaining about infringements on their freedom of speech I would d be applauding them. It is worth saying that when tabloid newspapers do it, then their motive is nothing to do with freedom of speech; their motive is to do with profit and money because their use of other people’s privacy, their.....what I describe as their theft of other people’s privacy which has been on in an industrial scale for a long time now and winked at by successive government who need the tabloids to get elected and waved through by some not entirely straight coppers, has I think infringed people’s privacy very badly and I think people just need to know that when tabloids are complaining about injunctions etc infringing freedom of speech, what they’re actually complaining about is loss of profit.”*

Many witnesses focused on the Press Complaints Commission (PCC) and the current arrangements by which the newspaper industry is largely self regulated, unlike broadcasting of television and radio which are regulated by Ofcom.

Publicist Max Clifford described the lack of public confidence in the body. He argued that the self-regulatory system does not currently work and that the system needs to be overhauled and replaced with a body that is:

*“totally free from any control by Fleet Street or influenced by Fleet Street or bullying by Fleet Street”.*

The Commission also heard from listeners who asserted that public confidence in the PCC has been damaged:

*“...[it is a] complete waste of space as a watchdog. They profess to be monitors and a source of protection for the individual who is wrong[ed] by the press, but they are apologists for their members who fund them.”*

Zac Goldsmith MP took a more generous view:

*“My experience of the PCC [is that] they operate relatively quickly. I’ve been to them myself, partly in order to be able to speak with a little bit more authority about this issue in circumstances such as this, and I’ve found that they’re good up to a point. But there’s a limit to how far they can go because they are toothless.”*

The question of inadequate sanctions was taken up by other witnesses, including Hugh Tomlinson and Zac Goldsmith MP who argued:

*“I think the PCC should be more independent and I think it should have greater sanctions and I think should be able to fine.”*

The work of the PCC and its recent efforts to strengthen its operational independence were described by its Director Stephen Abell who underlined the PCC’s success with its pre-publication work:

*“It’s a 24 hour day process, but people come to us with concerns, then we advocate on their behalf to editors or the industry as a whole and the idea is that we prevent intrusive information appearing by working with editors by explaining to them what the code says, what the PCC has said in the past and working on behalf of the complainants with an editor to ensure that intrusive material doesn’t appear.”*

Mr Abell highlighted the PCC’s complaints work explaining it receives:

*“about 7,000 complaints a year but of those about 1,800 to 2,000 are substantive complaints that fall within the terms of the code that the PCC enforces”.*

He also stressed the importance of their preventive work after major crimes and similar incidents and the support they provide to members of the public who could not afford to seek protection from the courts.

Marcus Partington similarly endorsed their contribution:

*“I think the PCC is available, obviously it’s a free system, it doesn’t involve any charge. It also operates with both pre and post-publication. I think many people don’t understand, or maybe don’t know, about the amount of work the PCC does behind the scenes before publication... That is a system where people if they need some advice, they can go to the PCC.”*

The evidence of Helen Wood and Avril Sanders-Royle underlined that despite its efforts the potential help the PCC can provide is not always recognised.

It trying to reach a balanced judgement we were much struck by the testimony of Alan Rusbridger, himself an editor and a proponent of self regulation by the press:

*“I have all kinds of doubts about the way its run, I think at the moment its credibility is shot to pieces through the way that it’s approached phone hacking”.*

We were impressed by the extensive report of the Culture Media and Sport Select Committee, ‘Press standards, privacy and libel’ February 2010 and its recommendations for there to be less of a presence from the newspaper industry on the Code Committee and for lay members to be appointed to the Committee. It also recommended further steps for the PCC to become more proactive.

We wrote to the PCC asking how it has reacted to the recommendations of the select committee and Mr Abell’s reply is included as appendix F.

Since we held our hearings the Prime Minister has responded to mounting public concern following allegations about the hacking of Milly Dowler’s mobile phone. He has announced a wide ranging two part inquiry under Lord Justice Leveson into the conduct of the press and has indicated the Government’s intention to change the regulatory arrangements for the newspapers. He spoke of finding a “new way of regulating the press that ensures press freedom and press responsibility.”

We are clear that whilst this must be approached with care there is an urgent need to restore public confidence in the integrity of the press. Newspaper publishers have demonstrated their own disdain for the process of self regulation. We believe there is room to define at least a statutory framework for regulation of the press with lessons to be drawn from the experience of Ofcom in broadcasting and the investigative work of the Information Commissioner. New regulatory arrangements must be able to demonstrate real independence from newspaper publishers; ensure an energetic sense of curiosity by the new regulator and provide effective sanctions to be deployed where there is good cause.

## **Theft of Information**

Although our original terms of reference made no explicit reference to continuing concerns about phone hacking, blagging and other ways of gaining access to private personal information this more than any other issue grew in significance during our work. It is at the heart of the public reaction focussed on News International and the News of the World in particular.

Listeners' initial responses urged us to pursue this strand. The evidence of Hugh Grant (particularly relating to his own covert recording of journalist Paul McMullan) and Alan Rusbridger focussed us on both the scale of what was involved as well how widespread is the use of this material across UK newspaper publishing. It was however the evidence of Christopher Graham, the Information Commissioner, which was the most telling. He outlined his twin public duties relating to data protection and freedom of information, his special independent status and the substantial investigative resources he has at his disposal. He summarised the findings of Operation Motorman, carried out by his office in 2003 which revealed the press were the main customers of an individual "who specialised in blagging information from databases phone companies". He underlined just how widespread was the purchase and use of this material by newspapers and magazines.

We were concerned to hear of Mr Graham's frustration that despite the publication of this material in 2006 in the report 'What price privacy?' and the follow up report later that year entitled 'What price privacy now?' there had still not been an adequate response from the police, government or the PCC. The Commissioner argued persuasively for the introduction of prison sentences for offences under section 55 of the Data Protection Act. This suggestion found support amongst listeners and we believe it should be considered further by the special inquiry proposed by the PM.

We are clear from the evidence of the Information Commissioner and others that the continuing trade in likely illegally and unethically obtained personal information is financed in part by the newspaper industry. Appendix G drawn from the report "What price privacy now?" on page 9 shows that many but not all UK newspapers and magazines have purchased such information and we note in particular that News Of The World was not the most prolific user nor were News International Group titles consistently amongst the worst offenders. We draw attention to this not to diminish public concern about the policies and practices of News Of The World but to underline that the problem extends across the newspaper industry and needs an industry wide response.

## **Government Oversight of Personal Privacy and the Conduct of the Press**

Individual citizens depend upon parliament to protect their rights and liberties. We became increasingly concerned at the evidence we received suggesting that successive governments have failed to tackle adequately press intrusion and particularly the theft of personal information.

Zac Goldsmith, a newly elected MP, argued:

*“[Politicians] absolutely depend on newspapers to get to the people on whom they depend on votes, and it’s very hard to get to all of your electors and therefore the newspapers provide a very handy shortcut and I think if we were to take this issue seriously then we would have to accept that the newspapers have behaved, on many, many occasions with huge irresponsibility and that requires us to point the finger at those newspapers and that’s something that politicians are often reluctant to do, for obvious reasons....I suspect you’ll find the people who are most critical on these newspapers are those who are at the end of their career and those who won’t seek re-election next time. Which is a sad reflection on Parliament, but never the less probably true”*

Several witnesses underlined that Government ministers (including Prime Ministers) have become too close to powerful publishers, although this is hardly a recent development.

Guardian editor Alan Rusbridger focussed on what several witnesses saw as the power of the press to intimidate individual MPs:

*“You’ve got MPs, who are the people who are supposed to immune from all these kind of pressures secretly thinking do I really want to get involved in this because some aspect of my private life might be turned over and how many of us are pure enough to withstand that kind of scrutiny that somebody is prepared to look into your whole life. So I think if you’ve got a situation where police regulator and Parliament are all a bit frightened of this it’s all a bit unhealthy.”*

The Information Commissioner Christopher Graham reflected on the media’s power over politicians and linked it with the apparent reluctance of Government to pursue Custodial Sentences for data protection offences:

*“Politicians are notoriously frightened by the media in full cry - it’s a great shame that politicians have backed away from this. I know, this government hasn’t until very recently been a fan of custodial sentences so I wasn’t pushing cause I thought this isn’t flavour of the month but perhaps it is flavour of the month again now in view of what we’ve heard. Certainly my view, the view of the Information Commissioner is that there should be a custodial penalty for section 55 offences but short of that there’s quite a lot that can be done and I believe is being done by the Ministry of Justice to raise the profile of the crime and to encourage the confiscation orders under the*

*Proceeds of Crime Act. We've really got to tackle this and the tabloid end of it is only a small part of it."*

Some listeners supported Christopher Graham's view:

*"The lack of custodial sentence for section 55 offences is totally unjustifiable. I think [C]G hits the nail on the head when he refers (a common theme in much of the evidence to date) to the power of the press and the resultant fear on behalf of politicians".*

Questions about close relations between Governments and newspaper publishers and whether such links have resulted in a lack of adequate scrutiny of press conduct have been conspicuous in much of the recent debate. We strongly welcome the Prime Minister's statement of the 2nd of July which underlines the need for a new relationship to restore public confidence. We believe there is an appetite for change across Parliament but that must be translated into different behaviours.

## **Parliamentary Privilege**

The Commission is clear that the use of Parliamentary Privilege to reveal the detail of court orders such as injunctions is something for Parliament itself to consider. Zac Goldsmith MP said:

*“Parliamentary privilege is a wonderful thing. I believe it goes back 350 years. It was born of a need to strengthen Parliament in the face of an over-bearing monarchy. It’s got origins that could not be more noble, and I think it’s a shame therefore that the most recent example of where parliamentary privilege was used was used in order to expose the sex life of a footballer. I think that’s not what Parliamentary Privilege was designed for it’s not what Parliament fought for.”*

The flouting of court orders by parliamentarians under the cloak of privilege is a reflection of a diminishing respect for the judiciary. This is a constitutional issue of considerable importance although not in the scope of the Terms of Reference.

## The Future Shape of the Newspaper Industry

All of the recent controversy about striking the right balance between the protection of personal privacy and ensuring freedom of expression for newspapers and others has been set against the backdrop of increasingly difficult economic prospects for newspaper publishing in general. Growth in the importance and use of the internet has seen both the diversion of advertising income away from the newspapers and the growth in online coverage of news event often free at the point of use (from the BBC itself but also a wide range of other organisations including some newspapers.) There is widespread concern about the survival of diverse, energetic journalism in the UK because it is still to a large extent is funded by newspaper publishers especially at a more local level.

Newspaper editors including Paul Dacre of the Daily Mail have warned that this squeeze on the profitability and even survival of newspapers could damage their collective ability to undertake scrutiny and challenge on behalf of the public. In a now much quoted speech to the Society of Editors in 2008 Mr Dacre explicitly argued that any attempts to inhibit the publication of scandalous material would further threaten the continuation of this important role.

*“All this has huge implications for newspapers and, I would argue, for society. Since time immemorial public shaming has been a vital element in defending the parameters of what are considered acceptable standards of social behaviour, helping ensure that citizens – rich and poor – adhere to them for the good of the greater community. For hundreds of years, the press has played a role in that process. It has the freedom to identify those who have offended public standards of decency – the very standards its readers believe in – and hold the transgressors up to public condemnation. If their readers don’t agree with the defence of such values, they would not buy those papers in such huge numbers.*

*Put another way, if mass-circulation newspapers, which also devote considerable space to reporting and analysis of public affairs, don’t have the freedom to write about scandal, I doubt whether they will retain their mass circulations with the obvious worrying implications for the democratic process”.*

The Commission was however interested in a potential countervailing argument - that in difficult economic circumstances too little concern for standards of conduct and too lax a view about intrusion into private lives might result in competitive disadvantage for those newspapers willing to invest in serious journalism. The investigation of public interest issues is inevitably expensive and often has an uncertain outcome. Compared with this under regulated pursuit of celebrity secrets almost certainly enjoys a cost advantage. We were unable to explore this matter more fully but believe it should be explored by the proposed enquiry into the future conduct and regulation of the newspaper industry.

## Social Media

The potential significance of new media developments and especially social media for the future protection of personal privacy was explicitly recognised in the second of our terms of reference:

*‘to analyse the extent to which new communications media represents a special challenge’*

It was a matter of real interest to listeners and raised by many of our witnesses. Jimmy Wales was clear about the revolutionary nature of social media and stressed that by its nature it is not amenable to regulation.

The significant contribution of social media to the shape of recent events was made clear in the part it played in breaching the injunction protecting details of the Ryan Giggs affair and Alan Rusbridger also outlined the part Twitter had played in exposing the Trafigura superinjunction:

*“Three years ago when it started I couldn’t imagine that it had anything to do with newspapers. And it was one of those things where you think oh God life’s too short and I’m not going to bother with Twitter. And of course now I think completely differently I think it’s absolutely tanks on our lawn. Not in an aggressive sense but it is absolutely, it does what we do in many respects, it does what we do better than we do it. It’s like all these things, it’s like Google and Facebook, it’s a frenemy, a horrible word but it’s friend and enemy. But it can be used, I mean I used it in the Trafigura case, I just tweeted saying you know there’s something we can’t tell you about in the Guardian for reasons we can’t tell you about the subject, we can’t tell you, I mean it was one of those sort of meat tweets, and it set the Twittersphere off and within a couple of hours they had found out what I was talking about.”*

However he was also clear that social media needs to be judged by different standards than the press:

*“ I’m not going to claim to be holier than anybody else in this, but I think, the point that the newspapers were making it the height at the time when Twitter was naming all the shagging footballers, I think the argument that says that’s unfair, Twitter’s allowed to that and we’re not, it’s quite a dangerous argument because I think actually newspapers ought to be saying we live in a different space, we are professionals bound by a professional code of ethics and standards and that’s the space we occupy. So I don’t think we should be chasing Twitter and saying there’s this unregulated space over there doing all these naming of people and we must be taken to the same level as Twitter because if you believe that then you’d have to abolish the Press Complaints Commission. There’s no point of having a code of conduct and a public interest definition if you’re going to say actually it doesn’t matter because we want to do what Twitter does.”*

The distinction was made by other witnesses including Hugh Grant who stressed the question of the profit motive:

*“Well two things, one is the difference between someone’s privacy being invaded on Twitter for instance – or being libeled on Twitter is that no one is actually making a profit out of it whereas in the Daily Mail, they’re making a profit – someone’s making money out of stealing your most basic human right. So that’s one point to be made and the other is that I do think that there is still quite a significant credibility gap in what’s published in a national newspaper and what’s scrawled on the internet which is rather - to me - much closer to graffiti on the loo wall,”*

And Hugh Tomlinson who detected different standards of conduct:

*“citizen journalists in general are not invading privacy. If you read the blogs, in general the bloggers are acting more responsibly and more seriously than the tabloid newspapers.”*

The Commission is clear that the emergence of social media and the citizen journalist are complicating factors in the debate about freedom of speech and the individual’s right to privacy but we incline toward the view expressed by Zac Goldsmith:

*“And whereas yes, it will make it harder to police it, it doesn’t mean that the law should be abandoned.”*

The rule of law must not be lightly dismissed. Whilst we are not unrealistic about the difficulties involved to seeking to control social media we are equally clear that this is not a reason to condone growing intrusion into the private lives of our citizens.

## **APPENDIX**

### **A. The Commission**

The Commissioners are three individuals with widely different professional backgrounds united by a shared belief in the importance of a free and responsible media for the well being of our democracy. Our biographies are contained in the appendix. The Commission includes Sir Michael Lyons as its chair, Baroness Helen Liddell and Lord Edward Faulks QC.

The witnesses were chosen in light of listener response. For example the Information Commission Christopher Graham was suggested by many listeners to give evidence. Please see Appendix for a full list of witnesses.

To listen to the hearings in full and to read the transcripts please go to the PM Blog at: <http://www.bbc.co.uk/blogs/pm/>

### **B. Listener Reaction**

The Commission produced these Terms of Reference and consulted PM listeners before beginning their work.

The response revealed particular interest in

1. Whether it is possible to distinguish between an individual's public and private lives and whether the protection of privacy should be less where a matter of public interest is involved

- *The terms of reference would usefully include a definition of the public interest. This needs to be identified separately from the desire of the media to publish sensational stories. The public may want to know details of people's lives, but the public may not need to know such things. We do need to know if an MP has been fiddling his expenses; we don't need to know who he sleeps with.*
- *Privacy should be preserved except where illegal activities are evident, or malicious activities have been observed. Or if consent to publish information is given first.*
- *The point of legitimacy varies for each case and can often only be determined once the full background of a 'story' is known (i.e.: once it was apparent that the woman John Profumo was sleeping with was also sleeping with a 'Soviet*

*spy', it was no longer simply a piece of domestic gossip but potentially a matter of national security).*

- *I take the view that one should be prepared to answer for one's actions. e.g. tax returns should be public documents; there is no such thing as private morality.*

2). The impact of social media and how this might be covered in any attempt to protect personal privacy more effectively.

- *In light of the challenges posed by the Internet and, more specifically, the role of citizen journalists through social networking and blogging I feel there should be some clarity as to the definition of the 'media'. Without this clarity it will be difficult to address the other terms of reference.*
- *The term 'media' - needs to be defined. Do we mean a formal type of media (which can include the so-called 'new' media) or also the 'unorganised' media.*

3). How personal and private data should be stored was a regular concern voiced by listeners. Christopher Graham, the Information Commissioner, was invited to give evidence so as to address these concerns.

- *Our main privacy concerns is concerning just how much information the government and private corporations can gather and hold on us. We need real penalties for those who trade in personal information.*

4). The role of the Police in investigating criminal intrusion and their relationship with the media. The Commission invited Chief Constable Andrew Trotter from Association of Chief Police Officers (ACPO) to give evidence.

- *Regarding large news corporations, which have a strong grip on politics and elsewhere, why has active intrusion into privacy (not always of celebrities) apparently been poorly investigated? Are the police up to the job?*
- *I recently heard it suggested that one reason for seeking injunctions/super-injunctions is that if you go to the police to report attempted blackmail, your story (if you are famous enough) will be all over the popular press within 24 hours. I wonder, therefore, whether it might not be a good idea to include the nature of the relationship between the police and the media in the terms of reference. If the leaking of information from the police to the media was less likely, the need for injunctions would surely diminish?*

The Terms of Reference were not changed but Commissioners took the above points (and other raised as in response PM broadcasts of the evidence sessions) into account in the questioning of witnesses and the preparation of this report.

### **C. Commissioner's biographies**

**Sir Michael Lyons** is an economist. He was Chairman of the BBC Trust 2007-2011. Previously a Professor of public policy and Chief Executive of 3 major local authorities including Birmingham City Council (1994-2001) he has led a number of investigations and enquiries most notably the Lyons Review into public sector relocation and the Lyons Inquiry into the role and funding of local government .

**Baroness Helen Liddell** was Secretary of State for Scotland 2001-2003, and British High Commissioner to Australia 2005-2009. A Labour MP 1994-2005, she was also Economic Secretary to the Treasury and a minister at the Department of Trade and Industry. She was Personnel and Public Affairs director for the Daily Record and Sunday Mail 1988-92, and was a member of the inquiry chaired by Lord Philip into the RAF Chinook helicopter crash on the Mull of Kintyre in 1994.

**Lord Faulks** has practised as a barrister in London since 1973. His practice, which is largely in the Appeal Court and the Supreme Court, includes cases of professional negligence, clinical negligence, personal injury, education, police claims and claims arising from the Human Rights Act. He took silk in 1996 and was for ten years head of chambers at 1, Chancery Lane. He became a Conservative peer in July 2010 and is Chairman of Research for the Society of Conservative Lawyers.

### **D) Witness list**

**Hugh Tomlinson QC**

**Zac Goldsmith MP**

**Max Mosley**

**Stephen Abell**

**Hugh Grant**

**Sir Charles Gray**

**Alan Rusbridger**

**Helen Wood**

**Max Clifford**

**Marcus Partington**

**John Kampfner**

**Christopher Graham**

**Louise Mensch MP**

**CC Andrew Trotter**

**John Mullin**

**Avril Sanders Royle**

**Jimmy Wales**

**E) Commissioner's letter to the PCC.**

Dear Mr Abell,

Firstly we would like to thank you for appearing before the commission and giving up your time to answer our questions last week.

As you are probably aware we have been hearing from a variety of people this week including Conservative MP Louise Mensch (formerly Bagshawe). Ms. Mensch is on the Culture, Media and Sport Select Committee and after hearing from her we would be keen to get some feedback from you on the committee's recommendations that were made in their report 'Press standards, privacy and libel' which was published in February 2010.

We would like to hear from you what action has been taken since the report? For example have lay members been appointed to the Code Committee and has one of those lay members been appointed Chair of the Committee? Has membership been rebalanced giving a two third majority to lay members? Have there been steps made for the PCC to become more proactive in some cases? Have you looked at making all journalists working for subscribing publications to adhere and sign up to the PCC code? Are you considering changing the name to The Press Complaints and Standards Commission? And will you be following their recommendations in appointing a deputy director for standards?

Also will you be amending the Code to include a requirement that journalists should normally notify the subject of their articles prior to publication? And are you considering imposing financial penalties on publications that seriously breach the code?

We are aware that you have responded to this report on your website however we felt that you might like to take the opportunity to supplement the very clear evidence you gave to us on the 14th June. It is our intention to publish both sides of this short correspondence on our website.

I do hope you will feel able to accept this invitation for there has, as you might expect, been very considerable interest in the role, shape and practices of your organisation.

Many thanks again for appearing before the Commission.

Kind regards,

Sir Michael Lyons- Chair

**F) Response from the Director of the PCC, Stephen Abell.**

Sir Michael Lyons,  
Thank you for your letter of 24<sup>th</sup> June.

I am, of course, very happy to offer further information about the Press Complaints Commission. As you know, I want to be as helpful as possible in informing members of your committee about the work of the PCC. I know that you will want to be as thorough as circumstances allow.

Of course, since your letter, events have moved on, which has rather delayed my response to you. Last week, the Commission issued a statement making clear its intention to review its own constitution and funding arrangements, the range of sanctions available to it, and its practical independence. The PCC remains committed to the establishment of a more effective system, one that supports appropriate freedoms, but demands the highest ethical standards. There is now a public inquiry into media ethics, which will look specifically at the regulatory regime for the press. We believe that this will become a channel for appropriate improvements to the PCC. There is already widespread consensus that the model for press regulation should be a non-statutory one.

In passing, I would like to set on record my hope that your report will follow the terms of your inquiry's own remit. It is not clear, for example, what "regulatory regimes" (such as broadcast regulation) you have examined other than the Press Complaints Commission. Nor what scrutiny has been placed on "media" other than the printed press, especially including the online world. It appears to be the case that people in the public eye, to whom you have spoken, have outnumbered representatives of the public by a considerable margin. I trust that your report will not be imbalanced as a result.

The PCC is an organisation constantly working, and evolving, in order to best serve the public. Since the CMS Committee reported, the Commission has had an independent Governance Review, a 9-month audit of our processes and structures. Its report can be found on our website:

[http://www.pcc.org.uk/assets/441/Independent\\_Governance\\_Review\\_Report.pdf](http://www.pcc.org.uk/assets/441/Independent_Governance_Review_Report.pdf).

It were 74 recommendations. The PCC published its response to the report (<http://www.pcc.org.uk/news/index.html?article=Njg1Nw>), in which it made publicly clear that it was able to accept almost all of the recommendations.

Clearly, there is (as there always has been) acceptance of the need for further reform. We will contribute to the public inquiry on this score, and hope to be able to provide solutions in the construction of a regulatory framework that retains the benefits of the current system, and the expertise of its staff.

It is within this context that I answer your specific points below:

- The PCC is not responsible for the membership of the Editors' Code of Practice Committee. The body responsible for the Code is separate to the body responsible for making decisions. That is the case for the PCC, as with the ASA. However, following a recommendation from the Governance Review, a greater public influence to the Committee was instituted. This means that two non-journalists (the Director and the Chairman of the PCC) are active members of the Code Committee. The PCC itself (with its public majority) is consulted on any changes to the Code, and must ratify them before they can be enforced.

- The PCC currently has the largest lay majority of any similar press council in Europe. Its structure is, in essence, the same as another self-regulatory body in the UK: the ASA. Public members outnumber editors by 10 to 7. The Governance Review recommended that membership not be increased further, saying it would not “improve the independence of the PCC in practical terms as it is already safeguarded”. The Commission is currently in the process of examining how its practical independence might be enhanced further.
- The PCC has increased its proactive work since the Select Committee report. It is impossible to outline every example for obvious reasons. However, there are three key areas:
  - contacting vulnerable people at the centre of stories, including in regard to whom concerns exist about standards of reporting, to ensure that they can come to the PCC. We did this 25 times in 2010.
  - intervening pre-publication to prevent physical harassment by journalists (including broadcasters) or the appearance of inaccurate or intrusive material. It is notable that, as Ofcom has no statutory powers pre-broadcast, the PCC has undertaken to handle concerns about the behaviour of broadcast, as well as print, journalists in terms of preventing media scrums.
  - issuing guidance and conducting training to the industry to improve standards. We hosted 60 seminars in 2010 across the newspaper and magazine industry.

All of this work must be continued in the public interest.

- Contractual reference to adherence to the Editors’ Code is now standard practice across the industry.
- The Governance Review said: “Its role in considering standards should be made apparent both in terms of its public statements and actions in the context of enforcing the Code”. The PCC now publishes precisely its role in the area of standards: <http://www.pcc.org.uk/AboutthePCC/WhatisthePCC.html>.

It seems to me that one area of practical improvement for the PCC in the future will rest on how to balance its complaints role (providing free redress for members of the public, who have no lawyers or representatives to speak for them) with a compliance role (dealing with broad issues of public concern). The latter must not come at the expense of the former.

- The PCC last year, following a further recommendation from the Governance Review, created the role of Deputy Chairman.
- The PCC, as stated above, is not responsible for the wording of the Code. The issue of incorporating prior notification into UK law was, as you know, recently rejected by the European courts. However, it is something that the Code Committee is examining, pending the conclusion of Max Mosley’s proceedings. The Commission has previously upheld a complaint against the News of the World for failing to contact an individual before publication:

<http://www.pcc.org.uk/news/index.html?article=NTQwNQ>.

- The Commission has undertaken recently to review its sanctions, and clearly this will be a matter for legitimate debate. Historically, there have been objections to the institution of a system of fines, which has the potential to slow down and antagonise the necessary mediation process. However, this will now be looked at again.

I hope you agree that the PCC has co-operated fully with your inquiry. I trust that any report will be fair-minded and factual, and coverage of it entirely impartial. With kind regards.

Stephen Abell

**G). An extract from the Information Commissioner’s report ‘What price privacy now?’ published in 2006 on page 9. This can be accessed here:**

[http://www.ico.gov.uk/news/current\\_topics/~media/documents/library/Corporate/Research\\_and\\_reports/WHAT\\_PRICE\\_PRIVACY\\_NOW.pdf](http://www.ico.gov.uk/news/current_topics/~media/documents/library/Corporate/Research_and_reports/WHAT_PRICE_PRIVACY_NOW.pdf)

“The following table shows the publications identified from documentation seized during the Operation Motorman investigation, how many transactions each publication was positively identified as being involved in and how many of their journalists (or clients acting on their behalf) were using these services. It should be noted that while the table is dominated by tabloid publications they are far from being alone. Certain magazines feature prominently and some broadsheets are also represented. The Commissioner recognises that some of these cases may have raised public interest or similar issues, but also notes that no such defences were raised by any of those interviewed and prosecuted in Operation Motorman.

The first number identifies the Number of transactions positively identified and the second number identifies the number of journalists using the service.

Publication	Number of transactions positively identified	Number of journalists / clients using services
Daily Mail	952	58
Sunday People	802	50

Daily Mirror	681	45
Mail on Sunday	266	33
News of the World	228	23
Sunday Mirror	143	25
Best Magazine	134	20
Evening Standard	130	1
The Observer	103	4
Daily Sport	62	4
The People	37	19
Daily Express	36	7
Weekend Magazine (Daily Mail)	30	4
Sunday Express	29	8
The Sun	24	4
Closer Magazine	22	5
Sunday Sport	15	1
Night and Day (Mail on Sunday)	9	2
Sunday Business News	8	1
Daily Record	7	2
Saturday (Express)	7	1
Sunday Mirror Magazine	6	1
Real Magazine	4	1
Woman's Own	4	2
The Sunday Times	4	1
Daily Mirror Magazine	3	2
Mail in Ireland	3	1
Daily Star	2	4
The Times	2	1
Marie Claire	2	1
Personal Magazine	1	1
Sunday World	1	1

**H). PCC's Editors' Code of Practice which can be accessed here:**

**<http://www.pcc.org.uk/cop/practice.html>**

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, 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.

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## 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.

## 2 **Opportunity to reply**

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**

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.

## 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.

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.

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.