

Towards a new system of self-regulation

Introduction

Recent events have illuminated certain weaknesses with the current system of self-regulation. The Press Complaints Commission has never been a regulator: it has never had any powers of investigation or enforcement and it has never been able to bind participants into long-term membership. The public and politicians have evidently lost confidence in the existing system and therefore the PCC must be replaced by a new, credible regulator armed with the powers that the PCC has lacked.

The proposal is that the new regulator should have **two arms**: one that deals with **complaints and mediation** and one that audits and, where necessary, enforces **standards and compliance with the Editors' Code**. Greater emphasis must be placed on internal self-regulation, with a named individual carrying personal responsibility for compliance at each publisher. This individual will be responsible for providing a simple but thoroughgoing audit of compliance on an annual basis. The system should be underpinned through a system of commercial contracts.

Structural Change

Administrative oversight within the new regulatory body will be vested in a small Management Board or Board of Trustees, which will deal all administrative aspects of the new system. The Board would have a lay majority, but it is proposed that there would also be senior involvement for the industry. The Independent Chairman would oversee both the standards and complaints arms of the new body.

The Complaints and Mediation Arm

This would maintain the mediation and arbitration services that the existing PCC provides. Its principal sanction will remain a critical adjudication. The complaints and mediation arm will encourage newspapers to resolve most complaints directly with the complainant. Adjudications would be undertaken by a slimmed down adjudicatory panel with a lay majority. The new body will not be able to award compensation.

A new Independent Assessor will be able to consider the substance of an adjudication and not only the processes by which it was arrived at; and could refer adjudications back to the panel, to be reviewed again, as and when this is deemed necessary.

The Standards/Compliance Arm

The standards arm would be activated when there was evidence of a serious or systemic breakdown in standards. There will be a panel of experts upon which the standards body can call to undertake an investigation. They would be paid as used.

If a publisher is found not to have complied with the standards of internal self-regulation expected, then it would have to pay for the work of the investigating panel on a 'polluter pays' basis and could be made to pay a proportionate fine. The fine would operate through the funding system.

Strengthening self-regulation

A named individual will become responsible for overseeing standards at each publisher. There will be an annual audit, through which each publisher will be required to show how each title is ensuring the Code is being followed and standards being maintained. In the majority of publications appropriate systems are already in place, so this should not be overly burdensome for the vast majority of publishers.

Commercial Contracts

The new system will be legally underpinned through a system of enforceable commercial contracts. Each publisher would sign a contract with the regulator, which would be enforceable through the civil law. This would bind publications into the system, equipping the new regulator with powers of enforcement, effectively compelling cooperation with the regulator, by enabling it to sue for any contractual breaches. This is another power that may – indeed should – never have to be used. The contracts might include the following commitments:

- To fund the regulator according to an agreed formula
- Undertaking to abide by the Code and relevant laws
- Responding positively to individual complaints that have been handled by the complaints arm
- Support for clearly defined compliance and standards mechanisms which could be audited by the regulator
- Accepting proportionate financial sanctions via the funding formula should serious standards breaches be found

Flexibility

This model would be very flexible. It could adapt to reform of the defamation and privacy laws and could also respond depending on the outcome of the Leveson Inquiry. Its reach could also be extended encouraging exclusively on-line publications to sign up to aspects of the system, using a “badging” system to incentivise this.

Summary

This proposed model would help to restore the good reputation of a free and responsible press. It would maintain the valuable mediation function that the PCC currently provides, whilst also responding to the popular criticism that the body lacks ‘teeth’. The proposed contract system would provide stability by preventing easy, unilateral opt-outs. The regulator would provide accountability, with entrenched independence from both government and also from the industry.

This is a draft proposal and the details are open to discussion and debate. Lord Hunt, the chairman of the PCC, looks forward to hearing any additional views and opinions.