

The Media Lawyers Association
Defending freedom of expression

Please respond to:
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Vivien Hepworth
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BY EMAIL: governancereview@pcc.org.uk

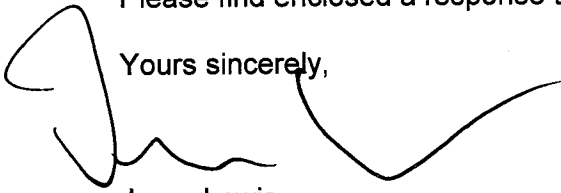
28 January 2010

Dear Ms Hepworth,

PCC Governance Review

Please find enclosed a response to this consultation on behalf of the MLA.

Yours sincerely,



Jaron Lewis

Enc

The Media Lawyers Association

Defending freedom of expression

PCC Governance Review

This paper is submitted on behalf of the Media Lawyers Association ("the MLA") which is an association of in-house media lawyers from newspapers, magazines, book publishers, broadcasters and news agencies. A list of the MLA's members in the newspaper and magazine sectors is set out in Annex 1. This submission is not made on behalf of the MLA's broadcasting members.

Introduction

In producing this paper, particular reference has been had to the Reports of the PCC and the Charter Commission for 2008 (the last published reports available to date), the Reports issued by the Media Standards Trust and finally the combined experience of the in-house lawyers who are members of the MLA.

1. The PCC Board

1.1 Does the Board have a clear mission?

The Articles of Association provide a very clear statement of the role of the PCC. Criticisms of the PCC do not appear to indicate confusion over the nature of the role of the organisation. They focus on the issue of self-regulation and therefore the nature of the body, alleged perceptions that it is controlled by the media, and the scope of its remit and powers (see for example, MediaWise Trust statement of 6th August 2009).

The mission of the PCC is, however, clear cut.

1.2 Is the size and composition of the Board appropriate?

When the Press Council was first set up in 1953 by the newspaper industry, it was composed exclusively of representatives from the industry. After the second Royal Commission in 1962 it contained an equal membership from the public. Under the Articles of Association, the Board now has to have a majority of lay members. The interests of the public and the media are well served by this balance.

It is axiomatic that Regulatory bodies must include representatives from the industry or profession concerned. The lay members of such bodies draw upon the experience of those representatives and it ensures, in the case of the press, that vital principles underpinning the freedom of the British press are respected. As Lord Devlin observed in 1966, *"To censure misconduct effectively, it needs the support and respect of the press and it will obtain that much more readily if, in the words of its constitution [at that point the Press Council], it seeks to preserve the established freedom of the British press and work as to maintain its character in accordance with the highest professional standards."*

The Articles currently provide for the Commission to be composed of between nine and seventeen members. This provides the Appointments Commission with sufficient flexibility to adjust the size of the Commission as appropriate.

1.3 How should the Board exercise its supervision of the Secretariat?

The current provisions, whereby the supervision of the Secretariat is undertaken by the Director of the PCC who reports to the Commission, provide a sensible and streamlined approach for the supervision of the Secretariat. In addition, the Commission effectively review the work of the Secretariat when reaching an adjudication on complaints and a final layer of supervision is provided by the Charter Commission in reviewing the handling of complaints.

1.4 Can the way in which it considers complaints be made more efficient?

The PCC's Report for 2008 confirmed that the average time for dealing with complaints in that year was 36 days. This is an extremely quick process by comparison with any other model that the MLA can think of and it is hard to envisage that much would be achieved by pressing for a shorter timescale. The PCC requires the media to respond to complaints within 7 days and failure to do so in a timely manner can itself lead to criticism by the Commission.

1.5 How should sub-committees be selected and chaired, what should they cover and how should they communicate with the main board?

No case has been made out for the appointment of sub-committees and it is not clear in what way an additional tier of decision making would assist rather than hinder the PCC's remit.

2. The Appointments Commission

The MLA has only one observation under this head. The work of the Commission is evident from its rulings. This, and the standing of the Commissioners in the community, is the best measure of its performance.

3. Transparency

3.1 Can more information be made public and how otherwise can the transparency of board meetings be improved?

A great deal of information is provided about the workings of the PCC, including the Code of Practice, Reports of the PCC and Charter Commission, adjudications and guidance notes which shed light on the work of the PCC and the stance taken on the range of issues with which it is engaged. It would not be appropriate to give access to copies of the papers in relation to complaints.

If the PCC held oral hearings, then, in common with many other regulatory bodies, those hearings could be held in public. The ramifications of this would need to be explored. However, the Commission meet to adjudicate and neither the parties nor the public are ever, in any tribunal, self regulatory or otherwise, given access to deliberations by a tribunal about its decision.

3.2 Can the PCC's confidentiality to complainants be reconciled with holding meetings, or part of meetings, in public?

Not if the meeting is to deliberate on the adjudication, but it could, if it was intended to be an oral hearing of the complaint, providing that the rules and guidance to complainants make this clear.

3.3 How else can transparency generally be improved?

The MLA does not consider that "transparency" is an issue.

4. Accountability

The MLA do not consider, based on the figures below, that a case is made out to introduce changes to either enhance the role of the Charter Commissioner and the Charter Compliance Panel or implement other means of ensuring the accountability of the PCC.

The Report of the Charter Commissioner for 2008 indicates that in that year he received 52 complaints. This is a small proportion of the total complaints received in that year, which numbered 4698, an increase of 8% from the previous year. Over half of these complaints were not taken forward by complainants or raised issues outside the remit of the PCC. It appears from the PCC's statistics that others included multiple complaints about the same article.

In addition to these figures, the Charter Commission survey everyone who receives a decision. In 2008, 228 people replied and the analysis of these figures is perhaps the best measure of the public's perception. It represents the views of those who have used the PCC, rather than the views of interest groups who may or may not have complained to the PCC.

The 2008 survey had 228 replies. Of those:

- 83% thought that their complaint had been dealt with thoroughly or very thoroughly;
- 79% considered the time taken to deal with their complaint was 'about right'; and
- 84%, when asked how good the PCC website was, gave it 7 or more out of 10.

5. Other issues:

The MLA does not support the introduction of fines or financial compensation. The PCC is not intended to be a vehicle which replicates the work of the Courts. If a complainant has suffered loss or damage as a result of publication, ample remedies exist for the recovery of compensation, alongside measures to ensure that any damages are appropriate and properly recoverable. These measures are not available to the PCC.

5.1 Is there a case for compensation?

The PCC's report for 2008 stated that 71.4% of the complaints related to possible breaches of clause 1, accuracy. The most appropriate remedy for inaccuracy is correction by the publisher and this is the outcome which complainants seek. In offering this service to the public, the PCC provides an efficient and accessible framework for making complaints. It is not legalistic and it does not require the intervention of lawyers to ensure that complaints are dealt with properly. The Secretariat provides guidance to complainants and the Charter Commissioner has, on occasion, ensured that issues raised by complainants are fully addressed. If inaccuracies are also defamatory of the complainant, or breach rights to privacy, claims for damages are best left to the Courts to administer.

It is not possible to introduce financial penalties and or compensation without proper procedures for the obtaining and disclosure of documents and the ability to test evidence. This would inevitably change the nature of the PCC. It would add a layer of complexity to the proceedings, which would slow down the process and distract the parties from the real purpose of the work of the PCC.

**Media Lawyers Association
28 January 2010**

ANNEX 1:

List of MLA members in the newspaper and magazine sectors:

1. **Associated Newspapers Limited**, publisher of the Daily Mail, the Mail on Sunday, Metro and related websites.
2. **The Economist Newspaper Limited**, publisher of the Economist magazine and related services.
3. **Express Newspapers**, publisher of the Daily Express, the Sunday Express, the Daily Star, the Daily Star Sunday and related websites.
4. **The Financial Times Limited**, publisher of the Financial Times newspaper, FT.com and a number of business magazines and websites, including Investors Chronicle, Investment Adviser, The Banker and Money Management.
5. **Guardian News & Media Limited**, publisher of the Guardian, the Observer and Guardian Unlimited website.
6. **Independent News and Media Limited**, publisher of the Independent, the Independent on Sunday and related websites.
7. **The National Magazine Company Limited**, publisher of consumer magazines including Cosmopolitan, Good Housekeeping, Harper's Bazaar and Reveal.
8. **News Group Newspapers Limited**, publisher of The Sun and the News of the World, and related magazines and websites, and part of News International.
9. **The Newspaper Society**, which represents the publishers of around 1300 regional and local newspapers, daily, weekly, paid for and free, 1500 websites, 600 niche/ultra local titles, 43 radio stations and 2 TV channels.
10. **PPA (The Periodical Publishers Association)**, which is the trade body for the UK magazine and business media industry. Its 250 members operate in print, online, and face to face, producing more than 2,500 titles and their related brands.
11. **The Press Association**, the national news agency for the UK and the Republic of Ireland.
12. **Telegraph Media Group Limited**, publisher of the Daily Telegraph, Sunday Telegraph and related websites.
13. **Times Newspapers Limited**, publisher of The Times and The Sunday Times and related websites, and part of News International.
14. **Trinity Mirror PLC (including MGN Limited)**, publisher of over 140 local and regional newspapers, 5 national newspapers including the Daily Mirror, Sunday Mirror and The People and over 400 websites.