



# Getting it right for now

*A contribution to  
the Press Complaints Commission  
governance review*

January 2010

## CONTENTS

- |    |                            |             |
|----|----------------------------|-------------|
| 1. | The MediaWise Trust        | <i>p.2</i>  |
| 2. | A pattern of improvement   | <i>p.3</i>  |
| 3. | Things can only get better | <i>p.5</i>  |
| 4. | Satisfactory sanctions     | <i>p.12</i> |
| 5. | Regulating for the future  | <i>p.16</i> |

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## **1. The MediaWise Trust**

1.01 The journalism ethics charity MediaWise (originally PressWise) was set up by 'victims of media abuse' in 1993 to provide free, professional advice for complainants. We also conduct research and training for media professionals and the voluntary sector in the UK and internationally.

1.02 The Board of MediaWise includes journalists, academics and concerned citizens. The current Chair is Charles Fletcher MBE (Director, Caledonia Media).

Board members include:

- Bob Borzello (former journalist & publisher)
- Prof Roy Greenslade (City University & *The Guardian*)
- Jocelyn Hay CBE (Founder & President, Voice of the Listener & Viewer)
- Pat Healy (Freelance Journalist & founder chair NUJ Ethics Council)
- Nick Jones (author & former BBC political correspondent)
- Stephen Jukes (Head of Bournemouth School of Journalism, formerly Reuter's head of Global News)
- Jim Latham (Secretary, Broadcast Journalism Training Council)
- Desiree Ntolo (Essene Rabbi)

1.03 MediaWise has achieved an international reputation for its training programmes for journalists and NGOs especially around coverage of asylum-seekers & refugees, children, diversity & governance issues, health, human rights, media ethics and regulation, mental health, sexual minorities, and suicide. We have worked in more than 40 countries with the BBC World Service Trust, British Council, the European Commission, the International Federation of Journalists, the International Labour Organisation, the Media Diversity Institute, UNICEF, and the World Health Organization, among others.

1.04 MediaWise publications include:

- *SENSITIVE COVERAGE SAVES LIVES: Improving suicide coverage (2008)*
- *EXILED JOURNALISTS IN EUROPE (2006)*
- *SATISFACTION GUARANTEED? Press complaints systems under scrutiny (2004)*
- *FROM MARGINS TO MAINSTREAM: Putting public health in the spotlight (WHO 2003)*
- *DIRECTORY OF EXILED JOURNALISTS (2003)*
- *SPOT ON! A handbook for health communicators (2000)*
- *THE MEDIA & CHILDRENS RIGHTS (UNICEF, 1999/2005)*
- *INFORMATION & CHILD RIGHTS: The challenge of media engagement (IFJ, 1998)*
- *TELLING IT LIKE IT IS: Ethnic Minorities and the Media (1997)*
- *CHILDREN IN THE PICTURE (IFJ, 1997)*
- *CHILD EXPLOITATION AND THE MEDIA (1997)*

1.05 The Trust's Honorary Director, Mike Jempson, is a journalist, author and trainer, with more than 35 years experience in print, broadcasting, public relations, including parliamentary work and use-of-the-media training. Currently a senior lecturer in Journalism at the University of the West of England, since 2006 he has been Visiting Professor in Media Ethics at the University of Lincoln. He is Vice-Chair of the NUJ Ethics Council, and serves on the Editorial Board of *Ethical Space*, international journal of the Institute of Communication Ethics. He was a founder member of the Exiled Journalists' Network, the Frontline Club and the Campaign for Press & Broadcasting Freedom.

## **2. A pattern of improvement**

2.01 MediaWise is pleased that many of the reforms we have argued for over the years have been implemented by the PCC.

2.02 For example the PressBof Code Committee and the PCC have taken up some of our recommendations to the 2003 Culture, Media & Sport Select Committee Inquiry into Privacy and Media Intrusion.<sup>1</sup> We suggested that media professionals and members of the general public should regularly be consulted about the content of the Code of Practice, and that there should be more opportunities for the public and media professionals to discuss their concerns about media practices.

2.03 In our 2004 Report *Satisfaction Guaranteed?*<sup>2</sup> we recommended that the PCC provide a hotline for members of the public via the regulator as a means of advising editors where there may be a serious risk of unnecessary suffering or harm being done to innocent people by the printing or broadcasting of words or images.

2.04 We also called for an extension of the one month time limitation on complaints; it is now two months. The PCC has also demonstrated more flexibility about time constraints over complainants' responses to correspondence, a latitude previously only granted to newspapers.

2.05 On behalf of complainants we had regularly called for the PCC to take more of a stand about media scums, and about persistent harassment by journalists. It is good to see that the advice we used to issue now appears on the Commission's own website.

2.06 Our criticisms of the PCC's website also seem to have been taken on board. It is vastly improved, and more user-friendly. The Commission's promotion of *The Editor's Code Book* is also a welcome contribution to media literacy.

2.07 We are also gratified that our advocacy, often in conjunction with special interest groups, on behalf of children, the mentally ill, victims of crime, relatives of suicides, asylum-seekers and refugees, and other minority groups and in opposition to chequebook journalism have resulted in the issuing of guidance and in some cases significant changes to the Editors' Code of Practice.

2.08 The Commission's adoption of an internal review process is also something MediaWise had called for, although we believe the Complaint's Commissioner should function as a first line of appeal from either party over PCC decisions and adjudications rather than merely review issues of process.

2.09 However it is clear that these improvements alone have been insufficient to reverse the scepticism of journalists and members of the public alike about the independence and effectiveness of the PCC. At every new crisis of confidence about press misbehaviour the public are assured *ad nauseam* about editors' commitment to self-regulation and the Code of Practice. It is touted as if it were a last bastion

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<sup>1</sup> *Stop the Rot!* <http://tinyurl.com/ycn7fby>

<sup>2</sup> R Cookson & M Jempson, *Satisfaction Guaranteed? Press complaints procedures under scrutiny*, ISBN 0-9547620-1-0 <http://tinyurl.com/ycn7fby>

against the risk of state control and as a vital guarantor of a healthy, open democracy.

2.10 Of course, we are all against sin, but the road to hell (in this instance being punitive state intervention) is surrounded by mellifluous assurances of good behaviour and this mantra has now worn thin. MediaWise has never proposed that route, but we do acknowledge that the laws of the land, with which all citizens must comply, may have to be modified to ensure that citizens are protected from abuses of press and broadcast media power.

2.12 Unless and until 'self regulation' offers adequate remedies to those who suffer unwarranted intrusion or disruption of their lives by inaccurate, sensationalist press coverage, all UK citizens would benefit from a statutory right of reply of the kind commended by the Council of Europe and offered in other perfectly healthy democracies (France, Germany, Belgium, Norway, Sweden, Greece, Austria and Switzerland).

2.13 Since the Information Commissioner's revelations in 2006 and subsequently about the illicit means by which some newspapers and their agents obtain information, newspapers have forfeited the right automatically to invoke 'protection of sources' to avoid explaining the provenance of published information.

2.14 Members of the public can no longer take on trust that the credence they may once have given to the printed word. As incident after incident has demonstrated (from Madeleine McCann to Max Mosley from MMR to avian and swine flu) cheap headlines and sensational claims, often fed by the public relations industry, take precedence over well-researched and properly verified stories.

2.15 As the recession deepens, newsrooms suffer staffing cuts, readers quit buying newspapers, and advertising shifts to the internet, the interests of shareholders and advertisers clearly rank higher than concerns of readers and journalists. It is often hard to distinguish between news content and editorial comment (indeed the PCC has even ruled<sup>3</sup> that a headline should be regarded as a comment and so not subject to the Clause 1 (Accuracy) of the Editors' Code).

2.16 In this submission we shall focus on improvements to PCC procedures which might improve its effectiveness and integrity in the eyes of the public. Only more systemic change in attitudes within commercial publishing will guarantee genuine improvements in the quality and integrity of print journalism.

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<sup>3</sup> PCC ruling on 'Bombers are all spongeing asylum-seekers', *Daily Express*, 27/7/2005

### **3. Things can only get better**

3.01 The PCC has a lot of catching up to do if it is to retrieve the credibility it has lost in recent years. Its lacklustre efforts to 'investigate' unlawful activities by newspapers following the revelations of the Information Commissioner and the jailing of the *News of the World* royal reporter, and its inept response to accusations from the *Guardian* did little to convince observers that it is truly independent of the industry it regulates. It will be fascinating to see what emerges from that newspaper's efforts to uncover exactly how many people's phones were being hacked in to, and how Max Clifford fares in his efforts to get to the truth of the matter. Both have shown the PCC what is possible if an investigation is genuine and thorough.

3.02 One ostensible purpose of the PCC is to provide guarantees to the public that the Fourth Estate operates within agreed terms of reference and will not overstep its boundaries. However, as indicated by the PCC's unilateral decision (first mooted by Lord Wakeham in 1998) to extend its remit to cover the internet, that Estate has long since expanded beyond print and broadcasting to the ubiquitous world wide web. As a result, members of the public need even more reassurance that their supposed champion will not become society's unchallenged *de facto* moral arbiter, lawmaker, judge, jury and self regulator.

3.03 The PCC's efforts to wriggle clear of the obligations of 'public bodies' under the Freedom of Information Act has added to the cynicism of those who believe the Commission is more of a poodle than a watchdog. Its failure to intervene when newspapers were crucifying the parents of Madeleine McCann and others associated with the investigation into her disappearance, also weakened perceptions of the role the PCC could play in upholding standards of journalism.

3.04 It took the Editors' Code Committee almost ten years to acknowledge the valid concerns of relatives of suicides that newspapers should taken care when reporting suicide methods, and the tragic events around Bridgend in 2007-08 to wake the PCC to its responsibilities over suicide coverage.

3.05 It follows that one of the most significant moves the PCC can make to assert its independence is to distance itself further from the industry that funds it.

3.06 MediaWise believes that a more open and accountable system of self-regulation such as that represented by the Press Council of Ireland<sup>4</sup> and the Irish Press Ombudsman<sup>5</sup> would be more likely to satisfy concerns about the independence of the PCC. Modelled on the much longer-established and respected Swedish system, the Irish Press Council was created by a Steering Group formed from all sectors of the Irish print media, including the National Union of Journalists (NUJ, UK & Ireland).

3.07 To ensure as great a degree of separation as possible between the institution and the industry, this Steering Group set up a separate independent Appointments Panel which chose the seven non-industry members (the majority) of the Press

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<sup>4</sup> <http://tinyurl.com/yfxxj8r>

<sup>5</sup> <http://tinyurl.com/ya9bd8z>

Council; the remaining six places are held by nominees from the main print industry sectors (national and local newspapers, magazines, and the NUJ). Although, like the PCC, the Irish Press Council is funded by the industry, it operates in effect as a membership body, and publishes a full list of its 210 contributing members.

3.08 The original Steering Group also advertised and short-listed for the post of Press Ombudsman, the first port of call for complainants who fail to get satisfaction from a publication's editor. The Press Council itself appoints the Ombudsman, and then acts as an appeal body for any party dissatisfied by his findings. The Ombudsman's primary task, like that of the PCC, is to resolve complaints through mediation or adjudication.

3.09 We commend this model as an alternative structure for the PCC in the short term, while it concerns itself primarily with print publications and their online versions. However convergence, in terms of media ownership outlets and platforms, makes separate regulators for print and broadcast media increasingly untenable in the longer-term.

3.10 While the necessary negotiations take place to effect these structural changes, as part of its reform package the PCC should be seeking agreement from Editors to:

- establish a regular spot within the news pages for a 'Corrections & Apologies' column;
- indicate on the front page where inside reader can find a PCC adjudication about the publication;
- give equivalent prominence to corrections where the original headline and article were substantial;
- reach written agreement with successful complainants about the wording of corrections and/or apologies, or offer a right of reply;
- properly tag all cuttings and electronic records of articles where corrections have had to be made or apologies published, and;
- offer compensation should the publication repeat the same breach.

3.11 In addition the PCC should be seeking agreement on in-house policies about:

- acknowledging the right of individual journalists to obey their conscience in the gathering and the presentation of information;
- the use and identification of digitally manipulated images;
- indicating when and how payment has been made to individuals or organisations in the gathering of images or information (so-called 'chequebook journalism').

### **Third party complaints**

3.13 MediaWise has long argued that the PCC should be more flexible about third-party complaints. There is a certain irony to claims that the PCC, like the press, operates in the public interest yet when members of the public are fed information that turns out to be inaccurate there is no immediate obligation to set the record straight unless an individual directly concerned manages to make a complaint. Some inaccuracies can have severe consequences - notably when newspapers purvey stereotypes or pass on unchecked and unreliable stories about particular social groups (asylum-seekers, gypsies, lesbian, gay, bisexual or transgender folk,

people with disabilities, Muslims, single parents, etc.) which can engender prejudice and even influence public policy. Such coverage undermines the notion of an open democratic society in which **everyone** has equal rights. Everyone IS directly affected, and so should not be excluded from the complaints process.

3.14 There is additional irony about the fact that the news media are only too keen to use the contacts and quotes of special interest group when it suits their purpose, but object when the same groups advocate on behalf of minority groups when the media get things wrong. The PCC has shown itself willing to take note of the concerns expressed by 'special interest groups', as has the PressBof Editors' Code Committee (witness changes re suicide coverage and transgender issues, and guidance issued about reporting mental health and asylum-seekers), yet 'class action' complaints on behalf of minority groups are still formally excluded from the complaints process. The PCC insists that it cannot initiate complaints itself even when it is clear that the Code may have been breached; allowing 'class actions' would help to resolve its dilemma.

3.15 Refusals to 'entertain' third party complaints should always be accompanied by a clear and precise explanation. As MediaWise has pointed out on numerous occasions, **any** member of a social group that is pilloried or inaccurately represented in the media is likely to bear the brunt of any public hostility that may be generated by such coverage. The threadbare argument of the industry, worn out by repetition, that the press do not influence public opinion merely reflect it, is risible. Tell it to minority groups who have experienced the backlash. There is plenty of evidence, for example, of public rage in response to negative coverage.

3.16 Meanwhile it is perfectly reasonable for any member of the public to complain if they feel that inaccurate or prejudicial material about any group is likely to distort perceptions, cause harm to others, or skew the responses of policy-makers. We are all equal members of an open democracy, so public misperceptions generated by inaccurate or sensational stories matter to us all.

### **Photography**

3.17 The Editors' Code has no specific clause on photography, although references are made to the difference between acceptable and unacceptable circumstances under which pictures can be obtained. There have been complaints about some papers using 'stock' pictures as illustrations. There have been complaints about personal photographs being used without proper consents, and of newspapers copying and keeping images supplied for single usage. It is an area of journalistic practice to which the Code Committee should be turning its attention, especially given the increasing reliance upon so-called 'citizen journalists' to supply pictures.

3.18 It is high time the Code acknowledged the existence of digital cameras and Photoshop and included some guidance about the circumstances under which manipulated images may (or may not) be published. Meanwhile the PCC should consider offering guidance to editors that the use of manipulated images should be clearly marked as such, and should not be used to illustrate hard news stories other than in truly exceptional circumstances.

3.19 While editors may rely upon the belief that any member of the public willing to speak to a journalist is sufficiently 'media savvy' to know how to handle the

situation, the PCC should be insisting that there are clear guidelines about ensuring that 'informed consent' has been obtained. The exposure to obloquy is no less severe if the story appears in print rather than on screen. Informed consent is recognised as an essential when broadcasters wish to represent people's lives in documentaries or 'reality' programmes. It is a concept apparently foreign to the burgeoning 'human interest' magazines genre.

3.20 Investigative journalists may need to sail close to the wind to obtain the co-operation of their sources, but they should always be able to rely on a strong public interest defence if their efforts are designed, for example, to uncover wrongdoing or otherwise protect the well being of the public.

### **Privacy and informed consent**

3.21 Problems still remain over interpretations of what is considered to be 'a reasonable expectation of privacy'. By accident of economic circumstance, for many people the entry to their home is in a very public place – on a public highway or exposed to public view. The wealthy can afford to buy their privacy through protection by high walls, long drives, security devices and expensive lawyers.

3.22 If everyone is 'entitled to respect for his or her private and family life, home, health and correspondence', and intrusions into an individual's private life require the person's consent, there would be a lot of blank pages in the popular press. Editors feel at liberty to determine who is and who is not a celebrity (indeed, some celebrities owe their status to the arbitrary choices of the newsroom, showbiz and sports pages) and there now seems to be no limit to levels of intrusion. The Mephistophelian pact that so-called celebrities make the moment they respond to media interest is constantly used against them to justify gross intrusions. Even those whose function (TV presenters, for example) puts them in the public eye are expected to tolerate press scrutiny that most people would find unbearable.

3.23 People who enter the public sphere as a result of a tragedy feel that their right to privacy is ignored in perpetuity, especially when they are revisited for comments on anniversaries or when similar events occur. These provide cheap stories but at the cost of peace of mind and their ability simply to get on with life. The sickening intrusion by the Scottish Sunday Express into the Facebook entries of Dunblane survivors is a particular example of cavalier attitude shown by some journalists and editors towards people's legitimate expectations of privacy.

3.24 Since the PCC claims responsibility for regulating online publications it needs to develop policies and recommendations for editors covering the extraction of personal information which may have been placed unconsciously in the public domain, especially by young people making use of social network sites.

3.25 The PCC should also be prepared to challenge editors about the extent to which people have been persuaded under false pretences to contribute to features designed to shock or titillate readers. When human interest stories are 'sexed up' to make them more sensational, it should not be enough of a defence to say that the publication had the willing co-operation of the protagonists.

3.26 It should not be automatically assumed that people 'caught in the news' know how the media operates and have their own strategy for dealing with

unwelcome approaches. Those who do not realise that simply refusing to co-operate with a journalists is no guarantee that stories about them will not appear are even less likely to know what to do when the stories appear.

3.27 Newspapers and magazines are reluctant to offer copy-approval to their subjects – as if their assurances should be guarantee enough that a story will not be distorted. Too often the finished product bears little resemblance to what had been promised; tweaks and twists are added to pander to the prurience or prejudices of the readers, and sell more copies. That is no excuse for abusing the trust of an informant. Checking final copy for factual accuracy with key contributors does not mean handing them editorial control – it should be regarded as a courtesy to them and the readers, as a way of making sure that the facts are accurate.

3.28 The PCC should seek to ensure that members of the public have not been bamboozled into contributing to a fiction. The dubious contracts some are expected to sign should be scrutinised by the PCC, especially when complaints are made about the final product. Having signed contracts in order to obtain a miserly fee, some feel they have lost the right to complain.

3.29 Unauthorised intrusions in private lives is perhaps a more common complaint. Few ordinary citizens can afford to seek a court ruling to define the limits of press intrusion, and the press are quick to deride those who can afford the legal route to try to clarify what is acceptable intrusion. Until the tabloids abandon their relentless pursuit of trivia to add glamour and gossip to their pages, or until the Equalities and Human Rights Commission decides to take a test case, the best option is for the PCC to assert its right to intervene and seek an accommodation with its paymasters about what is an is not acceptable.

### **Taste & decency**

3.30 Taste and decency may not be the direct concern to the PCC, but the Commission should be prepared to remind editors of their responsibilities to avoid causing unnecessary harm to the vulnerable. Everyone passing a public display case for newspapers, beside bus stops and in shopping centres for example, may be exposed to graphic images especially in time of war. Splashing images of violence and death or explicit sexual images across front pages is inappropriate if there is a chance they might traumatise an unwitting passerby, particularly young children or the elderly. Flagging up the fact that explicit imagery is contained within, is easily done on a front page with as much if not more 'sales appeal' than the imagery itself.

### **Conscience clause**

3.31 Those journalists who are required to collect stories under circumstances which they regard as unethical must have the right to refuse. Operating in a hostile employment environment with no formal career structure, and fierce competition for jobs, few are likely to say 'No' unless and until there is a 'conscience clause' in their contracts that allows them to refuse to act unethically. Indeed, it would appear from recent pronouncements that editors seem to think that they are the only ones with the right to say what a journalist's conscience will or will not allow. And if editors and news editors are to be the consciences of their staff and freelancers, journalists must assume that 'anything goes' in pursuit of a good story, and operate on the assumption that their personal interests are best served by

satisfying the demands of editors merely to improve the commercial prospects of their titles.

3.32 To protect both journalists and the wider public interest, the governance review should recommend that the Commissioners at very least issue a statement in support of the notion of a 'conscience clause', otherwise they will continue to be regarded by working journalists as agents of their employers rather than friends of good journalism.

### **Freedom of Information**

3.33 Much has been said about the importance of the PCC complying with demands under the Freedom of Information Act, since it seeks to be regarded in some senses as a public body. MediaWise acknowledges the necessity for the correspondence between complainants, editors and the PCC to be covered by privilege, especially as sometimes complainants are required to reveal confidential information. However, the PCC should be willing to acknowledge electronic, telephone and postal contacts between the PCC and newspapers and magazines. This should not mean the detailed content of such contact, but dates, times and summaries of content in relation to particular complaints or stories. This would have the dual effect of demonstrating the truth or otherwise of PCC claims that its mediation role is effective, and assuaging the doubts of those sceptical of or scandalised by the PCC's claims that it has been able to prevent publication of 'sensitive stories'.

### **Oral hearings**

3.34 The PCC and the industry has long been resistant to oral hearing for individual complainants, even though for some this would be a more preferable route than seeking redress in writing. Some complainants express their objections to stories in emotional terms, leaving it to PCC officials and editors to decide how to interpret the complaint and to which clause it should be ascribed.

3.35 Relatively few people have confidence in their writing skills, and complainants are likely to feel at a major disadvantage against the publishing industry. Faced with a procedure they might not understand, and a Code designed by editors for editors, it is not surprising if complainants do not trust their own judgement. Some feel they are manipulated into wording complaints to fit the PCC's preferred system of operation, rather than being allowed to pursue complaints on their own terms. This is an inevitable consequence of dealing with complaints solely on paper.

3.36 Many complainants would prefer to meet face to face with the regulator or the editor and point out precisely where the problems lie. It would be impractical to handle all complaints in this way, but there should be an opportunity for oral hearings – at least in those problematic cases where the PCC believes adjudication may be necessary. This procedure it might assist editors and the PCC to appreciate the damage that inept journalism can cause.

3.37 Mediation hearings where a complainant and the journalist involved (rather than the editor) can discuss a problem calmly, in the presence of a neutral third party proved to be a useful 'conflict resolution' technique when used by the NUJ Ethics Council. The PCC might like to consider this approach in particular cases.

3.38 Oral hearings would certainly be a good way to debate the pros and cons of third party complaints. Oral hearings in these cases would be most effective if they were held in public, since the recorded proceedings could be used to promote newsroom debate and improve training for journalists.

### **Market research**

3.39 As we have urged before, the governance review should recommend that the PCC commission some qualitative market research about public attitudes towards the way minority and apparently 'unpopular' social groups are dealt with in the news media. The views of special interest groups should also be canvassed. Their opinions are likely to be well-informed and focussed and, together with the results of the public consultation, would open up some challenging areas of debate about the language and imagery used in media representation of minorities, and the consequences for minority rights. The results would be not only instructive to both editors and the Commission but also helpful in determining how and when third party complaints should be considered.

### **Satisfaction studies**

3.40 The PCC should be willing to distribute independent, academic questionnaires to those who make use of its services, in order properly to assess satisfaction levels. The real test is whether the PCC is providing a genuine public service is the extent to which people and publishers are satisfied with both process and outcome. That also means that reasons for dissatisfaction need to be thoroughly understood. At present the PCC merely checks that complainants are aware that the proper administrative procedures have been adhered to - a satisfaction survey as meaningless as the call-back surveys conducted by operators like BT and rail companies which are simply keen to churn out apparently positive statistics, without allowing their service-users real opportunities to express their views.

#### **4. Satisfactory sanctions**

4.01 If editors were not free to make mistakes, we would not have a free Press. However, while journalism is not a profession in the conventional sense, it carries with it enormous responsibilities from which editors are not exempt. Few people would want regulation to rein in the tenacity and inquisitiveness of journalists – we want them to investigate on our behalf, and to apply their scepticism to those who seek to lead, control, or otherwise influence us. But we also want them to get things right to the best of their abilities, otherwise we are all the poorer. The public should have a reasonable expectation that material published by newspapers, magazines and websites will stand up to scrutiny.

4.02 It may not be appropriate to apply direct punitive measures to an individual editor as a matter of course for breaches of the industry code, especially as time pressures and the complexity of the production and distribution process may make the apportioning of precise liability problematic. Nonetheless there should be no impunity for editors whose publications repeatedly breach their Code.

4.03 The public has been expected to believe that public admissions of error are sufficient to ensure that peer pressure will prevent further breaches of the editor's Code. This is manifestly not the case. The public might be more convinced if there was some evidence that persistent offenders do not prosper. There have been few occasions when an executive has lost a job or been demoted after being found in breach of the Code.

4.04 Indeed it is as problematic that former editors appear to thrive on the notoriety of past errors (making fresh careers for themselves as political pundits, TV celebrities or spin doctors for politicians), as it is bewildering to members of the public that even those complained about or found wanting continue to serve on the PCC and the Editors' Code Committee.

#### **League tables**

4.05 Were the PCC to publish AND publicise annual 'league tables' and publishers to adopt a 'three strikes and you are out' approach to breaches, perhaps public cynicism about the current system of self-regulation might be assuaged.

#### **Prompt and prominent corrections**

4.06 Most complainants want prompt corrections given equal prominence to the original story, and few with whom MediaWise has had contact find the location and prominence offered sufficient either as redress or deterrent.

4.07 The discreet mention of a mistake, in a form and on a page and at a time chosen by the editor of the offending publication, is an insufficient remedy. Natural justice requires that the louder the original assertion, the more prominent the correction needs to be. If readers believed the original story they need to be disabused in a form that is AT LEAST as prominent as the offending item.

4.08 At the very least publications should agree to share a common, standard format to identify PCC adjudications. However, serious Code breaches, and the correction of errors originally blazoned across a front page requires more prominent positioning. It is almost forty years since the Younger Committee quite properly

recommended (in 1973!), that adjudications, apologies and corrections should be given prominence equal to that of the offending article. Editors may have found, and continue to find, such a remedy unacceptable, but it may have encouraged them to make more strenuous efforts to supervise their content, and halted falling public confidence in the provenance of newspaper content.

4.09 Of course this approach would not be appropriate when dealing with issues of privacy and media intrusion. They are more likely to want swift acknowledgement that wrong has been done to them, and a say about the extent to which the remedy is made public.

### **Tagging the archives**

4.10 Indeed complainants should have a say in what sort of correction they will get if their complaint is upheld, and confidence that a successful complaint will result in appropriate tagging of cuttings files and electronic archives and agreement that any other publication that has repeated the offence content will automatically amend the record once the PCC has ruled upheld the complaint.

4.11 The existing industry code contains no specific requirement to ensure that cuttings files and archives are tagged with corrections to ensure that inaccurate information is not constantly regurgitated. It is particularly galling for complainants to return repeatedly to an editor or the PCC when this happens – although in at least one case it has meant a newspaper having to pay out damages several times over for repeating a libel.

4.12 It is not uncommon for the disputed facts to be recycled from the cuttings file long after a correction has appeared. The internet has become the conduit along which false information is spread around the world, prompting a new generation of libel actions which threaten to engulf the news media, reducing London's role as a publishing centre but enhancing its role as the world's libel capital.

4.13 It is important that the PCC not only insist that cuttings files and archives are 'tagged' with corrections, to avoid repeated errors over many years, especially since international archives are now so easily accessible, but that they carry out periodic checks. In that way it would be possible to guard against the perennial risk of legal action over archive material. There should be automatic reprimands when cuttings files are found not to have been tagged, and this too could be a part of the monitoring role of the Complaints Commissioner.

### **The right of reply**

4.14 In our view the PCC should be able to insist that newspapers offer an appropriate right of reply to genuinely aggrieved parties - a chance to present, unmediated, their side of the story or point of view when the public has been presented with an inaccurate version. This would satisfy most complainants, rather than having to spend time and energy persuading a third party to demand a (usually incomplete and insignificant) correction or apology.

4.15 The right of reply is a very practical way of demonstrating a commitment to accuracy. Unfairness and errors in coverage are usually the consequence of inadequate journalistic skills or sloppy sub-editing. The pages of publications would only be full of people exercising this right were editors consistently to allow stories

to appear without sources having been checked and protagonists approached to verify their position.

### **Fining failures**

4.16 The public is more likely to trust the efficacy of the PCC if it were to 'value' breaches of the Code according to a set range of financial sanctions – say from £1,000 to £10,000 depending upon the severity of the breach. This would offer the assurance that self-regulation is a serious business which is able to hit commercial concerns where it hurts. Proprietors would be unlikely to tolerate lackadaisical reporting or editing if it had an impact on profits.

4.17 Indeed, were the PCC to levy fines, newspapers would have a stronger case for using the 'double jeopardy' argument to gain protection against the threat of litigation from successful complainants.

4.18 The Press Board of Finance should levy a 'goodwill bond' from publishers from which fines would be paid. The bond would be held by PressBof and released to the PCC in payment of a 'fine' only once a formal adjudication had been made against a publication and appeal procedure had been exhausted.

### **The case for compensation**

4.18 Breaches of the Editors' Code of Practice should be dealt with like any other violation of human rights or professional standards – with appropriate sanctions, including compensation for the victim. Although the PCC claims that its services are free, obtaining evidence to support a complaint (which may even include, on occasion, purchasing transcripts of inquests or court cases) can be costly in comparison to a person's means. The time and worry involved also comes with a potential price tag - for time off work, for example.

4.19 It is entirely unreasonable that innocent victims of unwarranted and/or inaccurate media coverage should be expected to cover the cost of putting right the failings of a material published with commercial intent. Advertisers expect to be compensated when errors appear in their copy, or publishers fail to honour their contractual obligations in other ways.

4.20 Although the PCC claims that its services obviate the need for lawyers to become involved, it is disingenuous to claim that the publishers do not rely upon their legal departments or advisors in countering complaints. Complainants should not be denied the option of seeking and paying for advice from a lawyer or advocate, and should have the right to reimbursement if they are successful.

4.21 The annual stipend paid to the PCC by PressBof should include a sufficient amount to establish a Compensation Fund built with modest contributions from publications based upon their circulation figures or advertising revenue. This Fund would be administered solely by the PCC, from which it could award reimbursement to those who have incurred genuine costs while successfully demonstrating breaches of the Editors' Code.

4.22 Where genuine costs and hardship are incurred, a successful complainant should be entitled to claim compensation at the discretion of the Complaints Commissioner, who could be empowered to assess the actual costs to a

complainant, or to devise and implement a graded system of nominal compensation based on the gravity and consequences of the breach.

4.23 There should be a cap upon the upper limit, certainly no more than £2-3,000, to limit the likelihood of people complaining simply to access the compensation.

4.24 Publications that failed to set right breaches of the Code in advance of a PCC adjudication would be expected to replenish the fund at the level of the compensation awarded. In this way publications that comply with the spirit and the letter of the Code would not have to subsidise the errors of those who do not.

### **Research to improve editorial practice**

4.25 The levying of modest 'fines' would enable the PCC to sponsor market and academic research which might help to improve both the standards and standing of journalism. One of the futilities of much academic research in the field of journalism is that it fails to 'hit the mark'; removed from the rough and tumble of the real world of the news rooms it can seem too abstruse to be of practical benefit. Were the PCC to commission practice-related research it might provide a very useful function in bridging the gap between the academy and the industry, much as studies commissioned by Ofcom and before it the Broadcasting Standards Council helped to influence broadcasters.

4.26 Among the many issues that would merit research is the way in which print journalists and especially new agencies, collect information from witnesses and participants in newsworthy events, for 'human interest' stories and magazines.

## **5. Regulating for the future**

5.01 Convergence, not just in terms of technology, outlets and platforms but also in terms of media ownership, makes separate regulators for print and broadcast media increasingly untenable.

5.02 MediaWise rejects the notion that such convergence strengthens the argument for the lifting of all forms of regulation. Quite the reverse.

5.03 Rather technological convergence, increased concentration of cross-media ownership, and multi-skilling among media professional across delivery platforms makes stronger the case for common standards of conduct and regulation to apply to the print, broadcast and online media. Regulation is after all, for the benefit of the public rather than the convenience of an industry and its investors.

5.04 The ownership of media outlets gives these firms extraordinary influence over public discourse and culture. They are accountable only to those with a vested interest in their commercial success. Few of their readers/users have any idea who the owners are, what their financial interests are, or the extent to which their other business or political interests shape media content.

5.05 As MediaWise trustee Nick Jones has already pointed out<sup>6</sup> online versions of national newspapers are now broadcasting material on the web free of the impartiality requirements of mainstream broadcasters regulated by Ofcom. Allowing powerful corporations, including those with only tangential interests in UK-based news media, to call in aid freedom of the press (by which they really mean protecting their investment from any form of statutory regulation) to justify broadcasting party political programmes is inimical to the maintenance of open democracy.

5.06 It may be the task of the Competition Commission, the Department of Business, Innovation and Skills, and Ofcom, to check that individual companies do not have control of an inordinate share of the market, but it is not unreasonable to expect the media regulators of the future to alert readers and users to any potential or perceived conflicts of interest between news purveyors and their other business interests.

5.07 The old dispensations no longer apply. Members of the public cannot be expected to take it on trust that notions of editorial freedom and independence still separate news content from public relations and advertising, and the vested interests of stockholders. Product placement is not merely an issue for broadcasters - it dominates the thinking of web design and access to web content.

5.07 Nor is it appropriate for editors to simply assume that readers can decipher which information they are supposed to believe and which to take with a pinch of salt. As the Cardiff University study<sup>7</sup> quoted in Nick Davies' *Flat Earth News* has

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<sup>6</sup> N. Jones, *Online Television: A threat to balanced political reporting*, Ch. 21 in *Web Journalism: A new form of citizenship*, S. Tunney & G. Monaghan

<sup>7</sup> *The Quality and Independence of British Journalism* (MediaWise, Feb 2008, <http://tinyurl.com/dcpmzu>) also cited in *Flat Earth News* by Nick Davies.

indicated, an increasing proportion of newspaper content originates in material supplied by the public relations industry, so editors can no longer rely upon a compact of trust between readers and journalists.

5.08 As desperation to attract revenue from advertisers increases, especially on web-based versions of publications and around user-generated copy, so the terms of the relationships between readers and producers must change. They must at least rely upon the assurance that journalists working across a variety of delivery platforms are operating to the same standards of conduct and within a unified regulatory framework.

5.09 If media self-regulation is to be transparent and equitable, there needs to be a single system, open to all, especially when there is a serious risk of unnecessary suffering or harm being done to innocent people by the online publication of words or images making it instantly accessible across the globe. A single system would ultimately be beneficial for the general public and media professionals alike. They would then all know where they stood in an increasingly crowded media marketplace.

### **A Media Ombudsman**

5.10 In the new communications environment, cross-media ownership has reached a level that makes it difficult to measure the extent to which a company's involvement in one medium ends and its involvement in another begins. Frequent takeovers, mergers and rebranding mean that few of those who work in the media, and even fewer consumers of media products, know who owns or controls what.

5.11 The new generation of media workers are expected to be adept with the latest technology in every medium, making a nonsense of the idea that journalists should abide by different standards as they switch between media. It would be far more appropriate if they were to operate to a single basic code of conduct across all media.

5.12 These new circumstances strengthen the argument for a genuinely independent regulatory system that protects everyone's rights – including the freedom of the press – with power residing neither with government nor the industry. A single Office of Media Ombudsman could act as a bulwark against erosions of press freedom and well as holding producers of journalism to account.

5.13 An Advisory Panel drawn from print, broadcasting and online communications supplemented by representatives of the general public (following the model of the Irish Press Council) could also deal with appeals from members of the public or publishers when disputes arise about the Ombudsman's adjudications. This would bolster public confidence in the accountability of the print and broadcasting industries.

5.14 Working with this Panel the Media Ombudsman could also play a useful role in developing and overseeing the validation of training courses, in the absence of a unified National Council for the training of print and broadcast and online journalists. In particular, the Ombudsman could be given responsibility for ensuring that those entering the media industries are given a thorough grounding in regulation and codes of conduct, and that those already at work receive

opportunities to update awareness of their responsibilities through accredited industry-wide in-service and mid-career training on regulatory and ethical issues.

5.15 The office of Media Ombudsman should be also be empowered to commission research into public attitudes towards media products and standards and to encourage dialogue between producers and consumers, particularly around ethical issues and reviews of Codes of Practice.

5.15 Financing for such a post could follow the model currently used in broadcasting, with a mix of public funds to protect the democratic agenda, and contributions from the print and broadcast companies.