The Leveson Inquiry

culture, practices and ethics of the press

AN INQUIRY INTO THE CULTURE, PRACTICES AND ETHICS OF THE PRESS

EXECUTIVE SUMMARY

The Right Honourable Lord Justice Leveson

November 2012

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EXECUTIVE SUMMARY

Introduction

1. For the seventh time in less than 70 years, a report has been commissioned by the Government which has dealt with concerns about the press.[1] It was sparked by public revulsion about a single action – the hacking of the mobile phone of a murdered teenager. From that beginning, the scope of the Inquiry was expanded to cover the culture, practices and ethics of the press in its relations with the public, with the police, with politicians and, as to the police and politicians, the conduct of each. It carries with it authority provided personally by the Prime Minister. It requires me to consider the extent to which there was a failure to act on previous warnings as to the conduct of the press, the way in which the press has been regulated (if it has) and, in any event, how regulation should work in the future.

2. The inclusion of the relationship between the press and the police came about because of public concern that the police had become too close to the press in general, and News International in particular, with the result that the investigation of phone hacking had not been conducted with the rigour that it deserved and calls for re-consideration of the allegations were ignored. Inclusion of the press and politicians followed not only because of the political consensus from the Government and Opposition parties that politicians had been too close to the press but also because of concerns about the bid by News Corporation for the remaining shares in BSkyB plc. The operation of the wider regulatory framework in relation to data protection, together with consideration of issues of plurality of ownership and its effect on competition came to be included as wider consideration was given to the all embracing nature of the Terms of Reference for Part 1.

3. It took three months to start receiving the evidence (although the process continued for a year). In nearly nine months of oral hearings, 337 witnesses gave evidence in person and the statements of nearly 300 others (individuals or groups) were read into the evidence without them being called. Almost all of the evidence is and has been available to watch and daily transcripts have also been published online. Statements and exhibits can be examined on the Inquiry website: it has become the most public and the most concentrated look at the press that this country has seen.

4. The task set by the Prime Minister is that I should make recommendations, based firmly on the evidence that I have heard and read, about the way in which things should be done differently in the future. This has meant reaching broad conclusions as to the narrative of events sufficient to explain and justify my recommendations, all the while being mindful of an ever expanding police investigation which has already led to over 90 arrests.[2] Every single one of those arrested is presumed and remains innocent unless and until the contrary is

[1] There were Royal Commissions in 1947, 1962 and 1973, the Younger Commission on Privacy and two Calcutt Reviews: these are discussed in Part D Chapter 1.

[2] Information current at 31 October 2012 is as follows. Operation Weeting concerned with interception of mobile phone messages has led to 17 arrests; 8 have been charged; 7 are also charged with conspiracy to pervert the course of justice. Operation Elveden (payments to public officials) has led to 52 arrests involving 27 current or former journalists (over three newspaper groups) and 12 current or former public officials: 5 have been charged. Operation Tuleta (dealing with other complaints of data intrusion such as computer hacking and access to personal records) has, to date, led to 17 arrests and one further person interviewed under caution. See the final statement of DAC Sue Akers dated 31 October 2012 at http://www.levesoninquiry.org.uk/wp-content/uploads/2012/07/Fourth-Witness-Statement-of-DAC-Sue-Akers.pdf together with the public statement of the CPS on 20 November 2012 at http://cps.gov.uk/news/press_statements/charging_announcement_in_relation_to_operation_elveden/.

proved in court. It has thus been a core principle of the Inquiry that the investigation and any prosecution should not be prejudiced by its work: that has inevitably led to serious restrictions around the evidence that could be called or investigated in areas that are obviously key to the Terms of Reference.

5. By appointing a judge to conduct an Inquiry of this nature, the intention was that it would proceed along judicial lines. In other words, the Inquiry would be a process of obtaining evidence and reaching conclusions based on objective appraisal of evidence, independence and political neutrality. Furthermore, for over 40 years as a barrister and a judge, I have watched the press in action, day after day, in the courts in which I have practised. I have seen how the press have assisted the investigation of crime and seen the way that the public have been informed about the operation of the justice system. I know how vital the press is – all of it – as the guardian of the interests of the public, as a critical witness to events, as the standard bearer for those who have no one else to speak up for them. Nothing in the evidence that I have heard or read has changed that. The press, operating properly and in the public interest is one of the true safeguards of our democracy. As Thomas Jefferson put it:[3]

"Where the press is free and every man able to read, all is safe."

6. As a result of this principle which operates as one of the cornerstones of our democracy, the press is given significant and special rights in this country which I recognise and have freely supported both as barrister and judge. With these rights, however, come responsibilities to the public interest: to respect the truth, to obey the law[4] and to uphold the rights and liberties of individuals. In short, to honour the very principles proclaimed and articulated by the industry itself (and to a large degree reflected in the Editors' Code of Practice).

7. The evidence placed before the Inquiry has demonstrated, beyond any doubt, that there have been far too many occasions over the last decade and more (itself said to have been better than previous decades) when these responsibilities, on which the public so heavily rely, have simply been ignored. There have been too many times when, chasing the story, parts of the press have acted as if its own code, which it wrote, simply did not exist. This has caused real hardship and, on occasion, wreaked havoc with the lives of innocent people whose rights and liberties have been disdained. This is not just the famous but ordinary members of the public, caught up in events (many of them, truly tragic) far larger than they could cope with but made much, much worse by press behaviour that, at times, can only be described as outrageous.

8. That is not to conclude that the British press is somehow so devoid of merit that press freedom, hard won over 300 years ago, should be jeopardised or that the press should be delivered into the arms of the state. Although the Inquiry has been reported as having that aim, or likely to have that result, even to suggest it is grossly to misrepresent what has been happening over the last 16 months. I remain (as I started) firmly of the belief that the British press – all of it – serves the country very well for the vast majority of the time. There are truly countless examples of great journalism, great investigations and great campaigns. The exposure of thalidomide, the campaign to bring the killers of Stephen Lawrence to justice,

[3] Thomas Jefferson (1743 – 1826) was one of the Founding Fathers of the USA, the principal author of the Declaration of Independence (1776) and the third President of the United States (1801-1809). It is, however, worth adding that he is also quoted as having said: "I do not take a single newspaper, nor read one a month, and I feel myself infinitely the happier for it."

[4] Although in some places the criminal law itself recognises the important place that the press occupies and not only provides specific defences to certain criminal offences but also ensures that the public interest engaged in the proper pursuit of stories is fully taken into account when decisions are made about whether or not to prosecute for offences which carry no special defence: this is discussed at length in Part J Chapter 2 of the Report.

the exposure of abuse in the operation of MPs expenses are but the best known in a long list. The press describes world and local events, illuminates political issues and politics generally, holds power to account, challenges authority, investigates and provides a forum for debate.

9. It is not necessary or appropriate for the press always to be pursuing serious stories for it to be working in the public interest. Some of its most important functions are to inform, educate and entertain and, when doing so, to be irreverent, unruly and opinionated. It adds a diversity of perspective. It explains complex concepts that matter in today's world in language that can be understood by everyone. In no particular order, it covers sports, entertainment, fashion, culture, personal finance, property, TV and radio listings and many other topics. It provides help lines and advice; it supports its readers in a wide variety of ways. It provides diversion in the form of crosswords, games, and cartoons. In short, it is a very important part of our national culture.

10. But that does not mean that it is beyond challenge. Neither does it mean that the price of press freedom should be paid by those who suffer, unfairly and egregiously, at the hands of the press and have no sufficient mechanism for obtaining redress. There is no organised profession, trade or industry in which the serious failings of the few are overlooked because of the good done by the many. Indeed, the press would be the very first to expose such practices, to challenge and campaign in support of those whose legitimate rights and interests are being ignored and who are left with no real recourse. That is, indeed, the function of the press: to hold those with power to account. It is, in fact, what the Guardian did in relation to the News of the World,[5] and what first ITV and then Panorama did in relation to the BBC.[6]

11. The purpose of this Inquiry has been two fold. First, it has been to expose precisely what has been happening by publicly testing the evidence of those who are able to speak about different aspects of the Terms of Reference: the public has been able to see and read what has been said and can make up its own mind. Second, it is to make recommendations for change. As to that, there is no argument but that changes do need to be made. For example, it is almost universally accepted that the body presently charged with the responsibility of dealing with complaints against the press is neither a regulator nor fit for purpose to fulfil that responsibility.[7]

12. Although the contrary is often asserted, not a single witness has proposed that the Government or that Parliament should be able to step in to prevent the publication of anything whatsoever. Not a single witness has proposed that the Government or Parliament should themselves be involved in the regulation of the press. I have not contemplated and do not make any such proposal.

13. The Report has been written to build up the evidence in relation to the public, the police, data protection and the politicians before going on to consider the law and regulation. In the light of my findings, it is possible to deal with the press and the public, the police and politicians entirely separately. Accordingly, this summary deals first with background, and then turns to the press and the public followed by the Press Complaints Commission and regulation of the press (including references to the law). It then deals with the police (both as regards Operation Caryatid and the relationship between the press and the police) before going on to the press and data protection. The main section ends with press and politicians and the issue of plurality.

[5] In relation to Milly Dowler and the phone hacking saga more generally.
[6] In relation to the proposed programme outlining allegations concerning Jimmy Savile.
[7] In March 2012, the Press Complaints Commission announced that it had unanimously agreed in principle to the proposal that it would move into a transitional phase, transferring its assets, liabilities and staff to a new regulatory body.

The commercial background

14. Before identifying the structure of the Report and the focus of my recommendations, it is worth recognising the background to the world in which the press are presently operating. This is relevant across the Inquiry and not solely to one aspect of the areas which I have had to consider – the public, the police or the politicians – which, in any event, cannot be considered in isolation. They inter-relate so that resolution of them must work across all three while, at the same time, addressing the other aspects on which the Inquiry has had to focus.

15. Save for radio, until the post-War period, newspapers were the only way in which most members of the public could access the news, current affairs or the myriad other pieces of information that go to make up events in the world around us. Rivalry came from competing titles, each of which provided its own snapshot picture from its own inevitably partisan perspective. The owners of newspapers – not inaccurately described as 'press barons' – exercised very real influence on public affairs. Then came the competition of television, limited by bandwidth and the requirement of impartiality.

16. Competition (with its consequent pressures) has increased very dramatically since then. The accelerating speed of technological change, leading to the explosion of television channels, 24/7 news coverage (not least on the BBC, a rival also online), the internet with its many sources of news and information (usually free), blogs, and social media such as Twitter have all contributed to a dramatic change to the cost base and economic model on which newspapers are based. In turn, this has increased the pressure for exclusive stories. Most titles produce editions online, accessible on a PC, tablet or smartphone, many of which are free to the user. Although the larger selling newspapers remain profitable (even in some cases extremely profitable), there is a very real challenge because of the competitive pressure, the blurring of old distinctions (such as between video content and print) and the need to find ways of making money from publishing on the internet. In this context, I am required to address issues of cross-media ownership and the necessary regulatory regime that will support plurality in the media in this country.

17. The problem, however, is not simply what is happening in this country: news and information comes from everywhere around the world. Although Mail Online boasts one of the largest online newspaper readerships, the UK has few world class players to rival great global American information businesses and nothing like the economic muscle. All of this provides competition and, in particular, raises profound questions about the ability of any single jurisdiction to set standards which, in a free and open society, can be breached online with the click of a mouse. The upshot, therefore, is the need to recognise that burdensome or insensitive regulation would make it even harder for British newspaper groups to survive.

18. On the other hand, that is not a reason to race to the bottom and accept lower standards which do not respect the rights and liberties of individuals. To be fair, nobody has argued that it should. But it is indisputably the case that newspapers in this country cannot be viewed as once they were, as being uniquely responsible for the delivery of news. They are not. Control over information which might have been possible in an earlier age can be defeated instantly on Twitter or any one of many other social media sites, based out of the UK and not answerable to its laws. The result is the need to find different ways to add value. Responding to the pressures in different ways, this can lead to more comment and more 'celebrity' reporting.

19. As to the commercial problems facing newspapers, I must make a special point about Britain's regional newspapers. In one sense, they are less affected by the global availability of the biggest news stories but their contribution to local life is truly without parallel. Supported

by advertisements (and, in particular, local property, employment, motor and personal), this source of income is increasingly migrating to the internet; local councils are producing local newsletters and therefore making less use of their local papers. Many are no longer financially viable and they are all under enormous pressure as they strive to re-write the business model necessary for survival. Yet their demise would be a huge setback for communities (where they report on local politics, occurrences in the local courts, local events, local sports and the like) and would be a real loss for our democracy. Although accuracy and similar complaints are made against local newspapers, the criticisms of culture, practices and ethics of the press that have been raised in this Inquiry do not affect them: on the contrary, they have been much praised. The problem surrounding their preservation is not within the Terms of Reference of the Inquiry but I am very conscious of the need to be mindful of their position as I consider the wider picture.

The factual background

20. For many years, there have been complaints that certain parts of the press ride roughshod over others, both individuals and the public at large, without any justifiable public interest. Attempts to take them to task have not been successful. Promises follow other promises. Even changes made following the death of Diana, Princess of Wales, have hardly been enduring. Practices discovered by the Information Commissioner, during Operation Motorman, which led to the publication of two reports to Parliament,[8] revealed that large parts of the press had been engaged in a widespread trade in private and confidential information, apparently with little regard to the public interest. A private detective, Steve Whittamore, had certainly been engaged in wholesale criminal breaches of data protection legislation and, *prima facie*, journalists who engaged his services or used his products (and paid substantial sums for the privilege) must or should have appreciated that the information could not have been obtained lawfully.

21. None of these revelations led to any newspaper conducting an investigation either into its own practices or into those of other titles. No newspaper sought to discover (let alone expose) whether its journalists had complied with data protection legislation. Some titles promptly forbad the further use of private detectives for data searching; many took some time to take that step and others did not do so at all. When the Information Commissioner sought the support of the Government and then Parliament to increase the penalties available to the courts for criminal breaches of the law, he was met with intense lobbying by the press (and by the Press Complaints Commission) challenging the proposition that breach of the criminal law by journalists, even on a wholesale, industrial basis should ever be capable of being visited with a custodial penalty.

22. When Clive Goodman, a journalist employed by the News of the World and Glenn Mulcaire, a private detective, were convicted of hacking into the telephone messages of members of the Royal Household and others, it was implicit during the course of the criminal prosecution that others must have been involved, whether knowingly or not, in using information that was the product of phone hacking. Most responsible corporate entities would be appalled that employees were or could be involved in the commission of crime in order to further their business. Not so at the News of the World. When the police had sought to execute a warrant, they were confronted and driven off by the staff at the newspaper. Cooperation, if provided, was minimal. The two that were sentenced to terms of imprisonment were paid very substantial sums as compensation for loss of employment when they were released.

[8] *What Price Privacy?* http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/RJT-Exhibit-12.pdf, and *What Price Privacy Now?* http://www.levesoninquiry.org.uk/wp-content/uploads/2011/12/Exhibit-2.pdf

23. Once again, neither the News of the World nor any of the other titles at News International, nor anyone else, then sought to undertake the type of investigative journalism (this time, into phone hacking) of a type that has been so praised during the course of the Inquiry. Rather, 'one rogue reporter' was the explanation provided to the Press Complaints Commission, to Parliament and to everyone else and, for years, that is where it was left: that was so even though the most senior lawyer employed by the News of the World did not believe it to be true. Nobody went further. There were what are now said to be rumours and jokes about the extent to which phone hacking was rife throughout the industry, but (with one sole exception) the press did nothing to investigate itself or to expose conduct which, if it had involved the Government, Parliament, any other national institution or indeed any other organisation of significance, would have been subject to the most intense spotlight that journalists could bring to bear upon it.

24. Complex civil proceedings were undertaken by those whose identity as victims of phone hacking had been exposed by the prosecution of Goodman and Mulcaire; 2½ years were to pass while as a sole investigative journalist, Nick Davies, started to uncover the truth, either alerted or reassured as to in the accuracy of what he was learning by the incredible settlement that one of the victims had negotiated. On 9 July 2009, an article was published in the Guardian which alleged cover up. The police (who had perfectly reasonably decided to limit the prosecutions in 2006 not least because of their incredible workload that was a consequence of terrorism) decided that there was no new evidence contained within the article even to justify a review. This has given rise to allegations of partiality on the part of the Metropolitan Police Service. The Press Complaints Commission not only accepted the assurances of the News of the World but, in a rare foray into investigation of standards rather than resolution of complaints, condemned the Guardian for publishing the results of the investigation: its report to that effect has since been withdrawn.

25. A further – and lengthier – report in the New York Times, published on 1 September 2010, was no more effective. Once again, the Metropolitan Police decided that there was not enough to justify a review and, once again, attempts to uncover what had happened were thwarted; not the least important were the valiant efforts of the Culture, Media and Sports Select Committee. The next steps required the persistence of civil litigants who secured significant admissions, and, in particular, Sienna Miller who pursued the litigation both systematically and thoroughly; as a result, far greater wrongdoing was exposed than had hitherto been uncovered.

26. Encouraged by the Director of Public Prosecutions, the investigation into phone hacking was re-opened and Operation Weeting was born. Understanding the enormity of what had happened, News International then provided extensive cooperation. Within the material seized from Glenn Mulcaire, 4,375 names are linked to phone numbers.[9] Of those, 829 people are regarded by the police as being likely victims of phone hacking.[10] The material led to evidence of payments to public officials, computer hacking, mobile phone theft and other potentially unlawful activities: this led to Operations Elveden and Tuleta along with other subsidiary investigations.

27. There were many other examples of egregious behaviour on the part of the press each one seen, at the time, as free-standing. The most serious were the treatment of Drs Kate and Gerry McCann following the disappearance on 3 May 2007 of their daughter, Madeleine, in Praia da Luz, Portugal and that of Mr Christopher Jefferies in December 2010, when he was caught up in the investigation of the murder of Joanna Yeates.

[9] p5, lines 21-25, Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf

[10] p6, lines 14-23, Sue Akers, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/02/Transcript-of-Morning-Hearing-6-February-2012.pdf

28. Then came exposure of the fact, albeit as long ago as March 2002, that the mobile phone of Milly Dowler had been hacked by someone at the News of the World. The information obtained had led the paper to publish false leads as a result of its misunderstanding of a message which had simply been left on the wrong phone in error. It was also believed that a message or messages had been deleted (thereby giving rise to a false moment of hope in her family). On 5 July 2011, these facts were reported by the Guardian.[11] The outcry was immediate; Two days later it was announced that the News of the World would close. On 13 July, this Inquiry was set up. As I have explained, the remit was subsequently expanded.

The press and the public[12]

29. It has been argued that while there may have been a very real problem with the approach to obtaining and reporting some (but by no means all) stories at the News of the World, there is no justification for concluding that other titles were behaving unlawfully or unethically. As for the high profile examples of obviously unethical press practice that suggest otherwise, it is argued that these are aberrations and do not reflect on the culture, practices or ethics of the press as a whole. I wholly reject this analysis. Of course, most stories do not generate issues around libel, privacy or the rights of others and most of those that do have been written with high (if not very high) standards of integrity and propriety. But the significant number of stories that fail to meet those standards cannot be ignored and I have no doubt that they do reflect a culture (or, perhaps more accurately, a sub-culture) within some parts of some titles. What follows is not intended to be exhaustive.[13]

30. First, take phone hacking as an example. While the police investigation is underway, it is not possible to descend into detail, still less to consider (as alleged by a witness and in threatened civil proceedings) the extent to which it may have extended into another newspaper publisher. What can be noted is the way in which editors from different titles talked and joked about information which must have come from phone hacking; furthermore, the jokes must have been understood by those who heard them. I emphasise that this does not make whoever mentioned the topic necessarily guilty of anything. However, at the very least, it demonstrates that the attitude of these editors was not one of embarrassment that this type of intrusion was going on; it was not such as to make them examine their title's attitude to compliance in this area. No national title mounted a campaign about the slack security surrounding mobile phone messages.

31. Phone hacking in itself, even if it were only in one title, would justify a reconsideration of the corporate governance surrounding the way in which newspapers operate and the regulatory regime that is required. Without making findings against anyone individually, the evidence drives me to conclude that this was far more than a covert, secret activity, known to nobody save one or two practitioners of the 'dark arts'. Yet it was illegal. And after the prosecution, at more than one title and more than one publisher, there was no in-depth look to examine who had been paid for what and why or to review compliance requirements.

[11] On the issue of deletion of messages, during the course of the Inquiry, considerable further work by the Surrey Police has revealed that it is unlikely that the News of the World had, in fact, caused a moment of false hope: I proceed on that basis. I entirely reject the suggestions that this error has undermined the basis for the Inquiry which, in the light of all the evidence I have heard, was and remains more than amply justified.

[12] In the space of a few paragraphs it is impossible to do justice to the evidence in this area: Part F identifies what is splendid in our journalism but also what is less than worthy and, in some cases, unsatisfactory or worse.

[13] The detail is set out in Part F, especially at Chapters 3-7.

32. Second, and in any event, phone hacking is most decidedly not all that is amiss with the way in which some parts of the press have operated some of the time. Based on all the evidence that I have heard, I have no doubt that, to a greater or lesser extent with a wider range of titles, there has been a recklessness in prioritising sensational stories, almost irrespective of the harm that the stories may cause and the rights of those who would be affected (perhaps in a way that can never be remedied), all the while heedless of the public interest. In the determination to get the story, this involved those (like the Dowlers, the McCanns and Abigail Witchell) thrust into the public eye through circumstances beyond their control; it involved those who were simply connected to someone famous (like HJK, who was permitted to give evidence anonymously, and Mary-Ellen Field who certainly suffered the consequences when it was thought that she had been leaking details relating to her principal). In each case, the impact has been real and, in some cases, devastating.

33. It also involved the famous, for whom press attention is an expected consequence of celebrity. Where fame is expressly courted to the extent that celebrities may be said to 'invade their own privacy' (as the press describe it), obviously the way in which the issues fall to be considered may well be different depending on the circumstances. But there is ample evidence that parts of the press have taken the view that actors, footballers, writers, pop stars – anyone in whom the public might take an interest – are fair game, public property with little, if any, entitlement to any sort of private life or respect for dignity, whether or not there is a true public interest in knowing how they spend their lives. Their families, including their children, are pursued and important personal moments are destroyed. Where there is a genuine public interest in what they are doing, that is one thing; too often, there is not.

34. Third, quite apart from this type of approach to the gathering of stories, there has been a willingness to deploy covert surveillance, blagging and deception in circumstances where it is extremely difficult to see any public interest justification. The News of the World was not only prepared to conduct surveillance on solicitors acting for claimants in phone hacking litigation; even more seriously, at least one MP on the Culture Media and Sports Select Committee was also targeted. These techniques were deployed against or in spite of the public interest.

35. Fourth, I recognise that journalists sometimes have to be persistent when pursuing an important story that the target may not want to be investigated or the subject of a press report. Unfortunately, the virtue of persistence has sometimes been pursued – whether by door-stepping, chase by photographers, persistent telephone calls and the like – to the point of vice, where it has become (or, at the very least, verges on) harassment. There has been extensive evidence of the publication of private information without consent and, again, without discernible legitimate public interest: many such stories will not cause harm or distress and no-one will complain but some stories do. This does not involve all the papers all the time, or many of the papers most of the time, but some of the papers some of the time. This is to an extent that demonstrates that, when a story is regarded as big enough, the provisions of the law and the code count for little and, in relation to the code, its specific provisions are also manipulated or broken (to say nothing of its spirit).[14]

36. Fifth, at the News of the World, quite apart from phone hacking, there was a failure of systems of management and compliance. None of the witnesses were able to identify who was responsible for ensuring compliance with an ethical approach to journalism and there was a general lack of respect for individual privacy and dignity. Few would subscribe to the view of Paul McMullan that *"privacy is for paedos ... privacy is evil"* but it is clear from the

[14] In addition to the precise terms of the Code, it is worth noting that the document makes clear that "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."

story concerning Max Mosley that the paper was not even prepared to review or reconsider its approach, which had gone so far as to involve possible blackmail, notwithstanding the trenchant views expressed by the High Court. It was said that the News of the World had "*lost its way"* in relation to phone hacking; its casual attitude to privacy and the lip service it paid to consent demonstrated a far more general loss of direction.[15]

37. Neither is this charge to be levied only against the News of the World. Too many stories in too many newspapers were the subject of complaints from too many people, with too little in the way of titles taking responsibility, or considering the consequences for the individuals involved. Although code compliance is written into many journalists' contracts, there seem to be few internal consequences for breach whether that breach was established as an inevitable conclusion following litigation or after criticism by the Press Complaints Commission. Too much has been written about the 'dark arts' to dismiss the concept as 'rumour' or 'top-spin' or the activities at a single rogue newspaper. There is insufficient clarity about what is acceptable and what is not: that is also what the PCC was, or at least should have been, championing.

38. Sixth, although errors and inaccuracies will always follow in a fast moving and healthy press, when the story is just too big and the public appetite too great, there has been significant and reckless disregard for accuracy. Similarly, as evidenced from a range of stories in different titles, it is clear that misrepresentation and embellishment takes place to a degree far greater than could ever be thought of as legitimate or fair comment. In an industry that purports to inform, all misinformation should be a matter of concern and distortion far more so. Where that strays into sustained misrepresentation of groups in society, hidden conflicts of interest, and irresponsible science scares, the risk to the public interest is obvious.

39. Finally, for the purposes of this summary, there is a cultural tendency within parts of the press vigorously to resist or dismiss complainants almost as a matter of course. Securing an apology, a correction or other appropriate redress, even when there can be no argument, becomes drawn out and difficult. When an apology or correction is forthcoming, there is then an argument as to prominence which, again, can be prolonged. Meanwhile, a general defensive approach has led to some newspapers resorting to high volume, extremely personal attacks on those who challenge them: it is not enough simply to disagree.[16] Given the audience enjoyed by newspaper titles, these personal attacks can be particularly damaging. The result is that potential critics sometimes do not complain, not because they do not have a valid complaint but because they do not have the energy for the inevitable fight, or because they are unwilling to expose their friends and families to hurt. This can hardly be described as a healthy state of affairs.

40. These conclusions relate to the criticisms to be made of the culture practices and ethics of the press and which I have no doubt are fully justified albeit only in relation to some titles for some of the time. It is in the nature of this type of analysis that the focus is on poor rather than good practice. I repeat my view that the majority of editors, journalists and others who work for both the national and regional press do good work in the public interest, as well as entertaining their readers. I have no doubt that the press can take pride in most of its work. However, good practices do not require a public inquiry and do not require regulation and the other side of the coin requires a focus on those aspects of the culture, practices and ethics of the press which need to be addressed. In the end, the purpose of the Inquiry and of the criticisms made is to identify where the previous regulator has failed or fallen short, and where the new regulator must focus.

[15] As evidenced, for example, by the approach to the publication of Dr Kate McCann's very private diary.

[16] It is for this reason that I am particularly grateful to those witnesses who were prepared to come forward to give evidence of their experiences with the press during the course of Module One: I recognise the personal courage that was required of each of them.

The Press Complaints Commission

41. Turning to the Press Complaints Commission (PCC), I unhesitatingly agree with the Prime Minister, the Deputy Prime Minister and the Leader of the Opposition who all believe that the PCC has failed and that a new body is required. Mr Cameron described it as "*ineffective and lacking in rigour*" whilst Mr Miliband called it a "*toothless poodle*". The Commission itself unanimously and realistically agreed in March 2012 to enter a transitional phase in preparation for its own abolition and replacement.

42. The fundamental problem is that the PCC, despite having held itself out as a regulator, and thereby raising expectations, is not actually a regulator at all. In reality it is a complaints handling body. Scarcely any less profound are the numerous structural deficiencies which have hamstrung the organisation. It lacks independence. The Editors' Code Committee which sets the rules is wholly made up of serving editors and is separate from the PCC. Its members are appointed by the Press Standards Board of Finance ('PressBoF'), itself entirely made up of senior industry figures, which also controls the PCC's finances and the appointment of the PCC Chair. Financially, the PCC has been run on a tight budget and without the resources to do all that is needed.

43. Voluntary membership and the concentration of power in relatively few hands has resulted in less than universal coverage. Whatever the reasons and whether or not justified, the departure of Northern & Shell was a major blow to the purpose and credibility of the PCC. The absence of Private Eye from membership, however, is the understandable consequence of the organisation's lack of independence from those so often held to account by that publication. Furthermore, in reality, its powers are inadequate, especially regarding the right to conduct an effective investigation: the PCC is at the mercy of what it is told by those against whom complaint was made.

44. In any event such powers as the PCC has appear to have been under-utilised. Further, even when complaints are upheld, the remedies at its disposal are woefully inadequate and enforceable only by persuasion. In the light of all that I heard during Module One, I do not consider that the power to issue adverse adjudications holds quite the fear that the editors suggest (save, perhaps, only to their pride). I have already referred to the lack of disciplinary action against journalists following criticism by the PCC but neither is there any comeback or criticism of the editors who are ultimately responsible for what is published.

45. In practice, the PCC has proved itself to be aligned with the interests of the press, effectively championing its interests on issues such as s12 Human Rights Act 1998 and the penalty for breach of s55 Data Protection Act 1998. When it did investigate major issues it sought to head off or minimise criticism of the press. It did little in response to Operation Motorman; its attempts to investigate phone hacking allegations, which provided support for the News of the World, lacked any credibility: save for inviting answers to questions, no serious investigation was undertaken at all. It may be that no serious investigation could be undertaken: if that was right, it was of critical importance that the PCC said so.

46. The PCC has not monitored press compliance with the Code and the statistics which it has published lack transparency. Even what the organisation undoubtedly was able to do well, namely complaints handling and anti-harassment work, was restricted by a lack of profile and a reluctance to deal with matters that were the subject of civil litigation. That latterly high profile complainants almost invariably turned to the courts instead of using the PCC speaks volumes.

The future: press regulation

47. Before considering how the press might be regulated, I must deal shortly with the allegation that this Inquiry has been caused by a failure in the operation of the criminal law. I recognise, of course, that present police operations have led to many arrests and that, in a theoretical sense, this work could have been done years earlier. It is theoretical because the assistance which has since been offered by News International was simply not then available and the law relating to search and seizure of journalistic material put many hurdles in the way of the police.

48. In any event, the seizure of the Mulcaire material was entirely fortuitous and consequent upon a complaint by the Royal Household in 2006; had Mr Mulcaire been less assiduous with record keeping, what has now been uncovered would have remained unknown. Suffice to say that in the absence of a complaint, luck, or, for the most serious crime, intelligence-led policing, possible offending of this type will not be detected. In the circumstances, the police have submitted that there should be amendments to parts of the Police and Criminal Evidence Act 1984 (which I have recommended that the Home Office consider). More rigorous application of the criminal law, however, does not and will not provide the solution.[17]

49. There is, however, already one beneficial outcome of the Inquiry which should serve to reassure journalists seeking to expose wrongdoing. Following his initial evidence, the DPP has clarified the public interest test which he will apply before prosecuting journalists; having undertaken a full consultation, he has issued guidance in this area which clarifies his approach and, indeed, the important concept of the public interest generally; it is to be commended to all.[18]

50. As for measures short of the criminal law, in addressing the part of the Terms of the Reference that requires me to recommend a new more effective policy and regulatory regime for the future, I started by identifying the key criteria that such a regime would have to meet. In May 2012, I published, and invited comments on, draft criteria covering: effectiveness, in terms of credibility and durability with both press and the public; fairness and objectivity of standards; independence, transparency of enforcement and compliance; effective and credible powers together with remedies; and the need for sufficient funding taking into account the market constraints. Those criteria were not challenged and, with the additional point that any regulatory regime must itself be accountable, I concluded that this provided an appropriate framework against which to test proposals for a regulatory regime.

51. I should make it clear at the outset that I consider that what is needed is a genuinely independent and effective system of self-regulation. At the very start of the Inquiry, and throughout, I have encouraged the industry to work together to find a mechanism for independent self-regulation that would work for them and would work for the public, by which I essentially meant a mechanism that would meet the criteria I articulated. Lord Hunt, the Chair of the PCC, came forward in the autumn of 2011 with a proposal to base a new self-regulatory system on contracts between the regulator and publishers. Lord Black of Brentwood, as Chair of the Press Standards Board of Finance (PressBoF), subsequently developed that idea, in consultation with the industry, and submitted a detailed proposal to the Inquiry. I examine that proposal in the Report,[19] in particular considering the extent to which it would meet the criteria that I have set out.

[17] This proposition is fully analysed in Part J Chapter 2
[18] http://cps.gov.uk/consultations/media_guidelines.pdf
[19] Part K, Chapters 2 and 3

52. Lord Black's proposal involves the creation of a new self-regulatory body, under an independent Trust Board, with what is said to be a degree of greater independence from the industry than the PCC currently has. It is based on a contractual relationship between the regulated body and each of the publishers to provide for medium term commitment to the system. It would involve continuation of the complaints handling role of the PCC but place it alongside the creation of a separate arm of the regulator with powers to investigate serious or systemic failures and levy proportionate fines where appropriate. It would also require the establishment of a new industry funding body to set and collect membership fees, which would have a role in the appointment process for the Chair of the body, discretion over who can join the body and responsibility for the Editors' Code.

53. This proposal certainly represents an improvement on the PCC as currently constituted and contains within it some aspects of a system that can be commended. I recognise the efforts that Lord Black and others have made in order to be able to present this proposal in such detail to the Inquiry. However, unfortunately, in its current form, it does not meet the criteria that I set out in May. In short, the new body must represent the interests of the public as well as the press and the proposed model does not go anything like far enough to demonstrate sufficient independence from the industry (and, in particular, serving editors) or sufficient security of high and unalienable standards for the public; neither does it appear to have sufficient support from all the major participants within the industry.

54. The proposed contractual basis is an innovation, and would bind publishers into the system for five years (which is an idea that could be of value, albeit limited in reach). There is, however, no guarantee that all major newspaper publishers would sign such a contract, and the incentives proposed by Lord Black to attract publishers to the system do not offer a compelling case for membership. There must be real doubts about the genuine effectiveness of the enforcement mechanisms such a contract would provide. Nor is there any guarantee that the system would continue to operate, or (more significantly) to operate to the standards currently proposed, beyond the first five year period, assuming the contract held for that time. This does not provide sufficient long term stability or durability.

55. Even more fundamentally, this proposal fails to meet the test of independence. The arrangements for appointment of the Chair of the proposed Trust Board give too high a degree of influence to the industry funding body, which looks remarkably like PressBoF with a different name and may, indeed, have more power than PressBoF. That body also has responsibility for the contents of the standards code, albeit requiring the agreement of the Trust Board. Furthermore, the body making decisions on complaints would include serving editors and this does not provide the required degree of independence of enforcement.

56. These are real and significant issues and mean that I cannot recommend adoption of the approach proposed by Lord Black as a way forward. This will obviously be highly disappointing to the industry, as it is to me. The goal must be a genuinely independent and effective self-regulatory system. I have therefore set out, and recommend a model for independent self-regulation that I am confident would protect both the freedom of the press and freedom of speech along with the rights and interests of individuals; it should therefore command public confidence.

57. My model draws where it can from Lord Black's proposal. Specifically, the basic functions and structures I recommend are not dissimilar to those proposed by the industry and, although I have not costed Lord Black's model, there is no reason why the cost of this proposal should be different. An independent regulatory body should be established, with the dual roles of promoting high standards of journalism and protecting the rights of individuals. That body should set standards, both through a code and in relation to governance and compliance. The

body should: hear individual complaints against its members about breach of its standards and order appropriate redress while encouraging individual newspapers to embrace a more rigorous process for dealing with complaints internally; take an active role in promoting high standards, including having the power to investigate serious or systemic breaches and impose appropriate sanctions; and provide a fair, quick and inexpensive arbitration service to deal with any civil law claims based upon its members' publications.

58. The appointment of the Chair, and other members, of the body must be independent. In the Report I recommend that this should be achieved through the establishment of an independent appointments panel (which could include one current editor but with a substantial majority demonstrably independent of the press), and I provide detailed criteria for ensuring sufficient independence from both the Government and the industry. This high degree of demonstrable independence from both political and commercial interests is crucial to a self-regulatory system achieving the public trust that is required.

59. The critical feature of the body which I propose is that its Board and Chair should all be appointed by fair and open process, comprise a majority that are independent of the press, include a sufficient number of people with experience of the industry who may include former editors and senior or academic journalists, but shall not include any serving editor or member of the House of Commons or Government. Funding would have to be agreed between the new body and the industry with security of funding over a reasonable planning period. Funding should take account of the cost of fulfilling the obligations of the regulator and the commercial pressures on the industry which are not as great for a number of the larger publishers as they are for the smaller, regional press.

60. It is not my role to seek to establish a new press standards code or to seek to be determinative about the way in which the independent self-regulatory body goes about its business. There are, however, a number of recommendations that I make to that body. First, a Code Committee would have to be established on which, I believe serving editors have an important part to play although not one that is decisive. The Code Committee should advise the new body which itself would take ultimate responsibility for its content and promulgation.[20] In that regard, I recommend that the new body (through its Committee) engage with the public in an early review of the code.

61. Second, I encourage the new body to be open to being able to deal with complaints even where legal action is a possibility, and to equip itself to be able to deal with complaints alleging discrimination. I urge it to continue to provide warning notifications to the press in respect of those who are the subject of unwanted press intrusion, and to ensure that newspapers are held accountable for all material they print wherever it is sourced from.

62. Third, bearing in mind the concerns that have been raised about the different interpretations of the public interest that different editors have, I encourage the new independent self-regulatory body to issue guidance on interpretation of the public interest in the context of the code and to be clear that it would expect to see an assessment of the public interest, where relevant, being recorded as decisions are made. I also suggest that it considers offering a purely voluntary pre-publication advice service to editors who want support on how the public interest might be interpreted in a specific case before a decision is reached on publication without notice to the subject of the story.

63. Fourth, I suggest that the body should consider encouraging the press to be as transparent as possible in relation to sources and source material for its stories. This is not in any way to undermine the importance of protecting journalists sources, but where information is in

[20] The content of the code is discussed at length in Part K Chapter 7 paragraphs 4.18-4.24

the public domain there is no reason why the press should not actively help their readers to find it if they want to; neither is there any reason not to be as clear as is consistent with the protection of sources about where a story comes from.

64. Finally, I was struck by the evidence of journalists who felt that they might be put under pressure to do things that were unethical or against the code. I therefore suggest that the new independent self-regulatory body should establish a whistle-blowing hotline and encourage its members to ensure that journalists' contracts include a conscience clause protecting them if they refuse.

65. I now turn to the very difficult question of participation and underline that it is almost universally accepted that all major newspapers should be covered by a new regulatory regime. I have had to address the question of how that can be achieved. By far the best option would be for all publishers to choose to sign up to a satisfactory self-regulatory regime and, in order to persuade them to do so, convincing incentives are required. The incentives proposed by Lord Black could be adopted but I am not satisfied that they would be sufficient or, in some cases (such as the proposal to limit press cards to members of the body) even desirable.

66. The need for incentives, however, coupled with the equally important imperative of providing an improved route to justice for individuals, has led me to recommend the provision of an arbitration service that is recognised and could be taken into account by the courts as an essential component of the system, not (as suggested by Lord Black) simply something that could be added at a later date. The service could be administered comparatively easily within the regulator and be staffed by retired judges or senior lawyers with specialist knowledge of media law whose fee would be met by the publisher but who would resolve disputes on an inquisitorial model, striking out unmeritorious claims and quickly resolving the others.

67. Such a system (if recognised by the court) would then make it possible to provide an incentive in relation to the costs of civil litigation. The normal rule is that the loser pays the legal costs incurred by the winner but costs recovered are never all the costs incurred and litigation is expensive not only for the loser but frequently for the winner as well. If, by declining to be a part of a regulatory system, a publisher has deprived a claimant of access to a quick, fair, low cost arbitration of the type I have proposed, the Civil Procedure Rules (governing civil litigation) could permit the court to deprive that publisher of its costs of litigation in privacy, defamation and other media cases, even if it had been successful.[21] After all, its success could have been achieved far more cheaply for everyone.

68. Similarly, if a newspaper publisher who chose not to subscribe to the regulatory body was found to have infringed the civil law rights of a claimant, it could be considered to have shown wilful disregard of standards and thereby potentially lead to a claim for exemplary damages (which I recommend should be extended to these types of case).[22] I believe that these proposals in relation to costs should provide a powerful incentive for all publishers to want to be a part of such a self-regulatory system.[23]

[21] I recommend that the Civil Procedure Rules should be amended to require the court, when considering the appropriate order for costs at the conclusion of proceedings, to take into account the availability of an arbitral system set up by an independent regulator itself recognised by law.

[22] As well as a change in the law to permit the award of exemplary damages in defamation, breach of privacy, breach of confidence and other media torts, I also recommend that the Civil Justice Council consider an increase in the level of damages in privacy, breach of confidence and data protection cases: see Part J Chapter 3 Section 5

[23] So that the significance of this proposal is understood, in the absence of a provision of an alternative mechanism for dispute resolution, available through an independent regulator without cost to the complainant, together with an adjustment to the CPR to require or permit the court to take account of the availability of cost free arbitration as an alternative to court proceedings when considering orders for costs at the conclusion of proceedings, I recommend that qualified one way costs shifting be introduced for defamation, privacy, breach of confidence and similar media related litigation as proposed by Lord Justice Jackson: see Part J Chapter 3 Section 6.

69. Such a system would also work the other way round. If an extremely wealthy claimant wished to force a newspaper publisher that was a member of the regulatory body into litigation (in the hope that the financial risk would compel settlement), it would be open to the publisher to argue that having provided a recognised low cost arbitral route, that claimant, even if successful, should be deprived of costs, simply because there was another, reasonable and cheap route to justice which could have been followed.

70. These incentives form an integral part of the recommendation, as without them it is difficult, given past practice and statements that have been made as recently as this summer, to see what would lead some in the industry to be willing to become part of what would be genuinely independent regulation. It also leads to what some will describe as the most controversial part of my recommendations. In order to give effect to the incentives that I have outlined, it is essential that there should be legislation to underpin the independent self-regulatory system and facilitate its recognition in legal processes.

71. It is worth being clear what this legislation would not do. The legislation would not establish a body to regulate the press: it would be up to the press to come forward with their own body that meets the criteria laid down. The legislation would not give any rights to Parliament, to the Government, or to any regulatory (or other) body to prevent newspapers from publishing any material whatsoever. Nor would it give any rights to these entities to require newspapers to publish any material except insofar as it would require the recognised self-regulatory body to have the power to direct the placement and prominence of corrections and apologies in respect of information found, by that body, to require them.

72. What would the legislation achieve? Three things. First, it would enshrine, for the first time, a legal duty on the Government to protect the freedom of the press. Second, it would provide an independent process to recognise the new self-regulatory body and reassure the public that the basic requirements of independence and effectiveness were met and continue to be met; in the Report, I recommend that this is done by Ofcom. Third, by recognising the new body, it would validate its standards code and the arbitral system sufficient to justify the benefits in law that would flow to those who subscribed; these could relate to data protection and the approach of the court to various issues concerning acceptable practice, in addition to costs consequences if appropriate alternative dispute resolution is available.

73. Despite what will be said about these recommendations by those who oppose them, this is not, and cannot be characterised as, statutory regulation of the press. What is proposed here is independent regulation of the press organised by the press, with a statutory verification process to ensure that the required levels of independence and effectiveness are met by the system in order for publishers to take advantage of the benefits arising as a result of membership.

74. In the light of all that has been said, I must recognise the possibility that the industry could fail to rise to this challenge and be unable or unwilling to establish a system of independent self-regulation that meets the criteria. I have made it clear that I firmly believe it to be in the best interest of the public and the industry that it should indeed accept the challenge. What is more, given the public entitlement to some accountability of the press, I do not think that either the victims or the public would accept the outcome if the industry did not grasp this opportunity. Neither do I think the public would find it acceptable if I were to overlook the consequences of the industry doing so.

75. For the sake of completeness I have therefore set out in the Report the options that I believe would be open to the Government to pursue, and some views on the potential way forward, in that regrettable event: these include requiring Ofcom to act as a backstop regulator for those not prepared to join such a scheme. I have made no recommendation in relation to this situation, nor do any of the options in this paragraph amount to an outcome that I want to see.

76. It would be a great pity if last-ditch resistance to the case for a measure of genuine independence in oversight of standards or behaviour by the press, or the intransigence of a few resulted in the imposition of a system which everyone in the industry has said they do not want, and which, in all probability, very few others would actually want to see in place. I would very much prefer that the focus of all concerned should be on attempting to deliver the effective self regulation that I have set out – organised by the industry to a standard that the public can accept. In my judgment, this provides the least burdensome method of ensuring some form of adequate independent regulatory oversight of press standards for the future. Possibly for the first time in our history, it provides real incentives for the press to organise and thus deliver genuine effective independent regulation in the public interest.

The press and the police: Operation Caryatid

77. For some time before January 2011, there was a concern that a number of senior officers within the Metropolitan Police Service had become too close to News International and its staff and that this has led, perhaps intuitively, to a rather greater reluctance fully to investigate what had happened at the News of the World. The failure to ensure that those who might have been the subject of phone tapping were informed, the incredibly swift dismissal of the allegations in the Guardian article of 9 July 2009, the continued defensive mindset over the months and the dismissal of the New York Times (without ever scoping the exercise of re-considering the material seized from Glenn Mulcaire) and, subsequently, the evidence of the friendship between Assistant Commissioner John Yates and Neil Wallis, at the relevant time deputy editor of the paper all contributed to that concern. It is entirely understandable.

78. Because of its importance to the reputation of the Metropolitan Police, each step of the way in which Operation Caryatid was executed and later reviewed has been analysed in great detail.[24] In reality, I am satisfied that I have seen no basis for challenging at any stage the integrity of the police, or that of the senior police officers concerned. What is, however, equally clear is that a series of poor decisions, poorly executed, all came together to contribute to the perception that I have recognised.

79. First, as was obvious at the time that the evidence was being heard, the decision to restrict the investigation into the material seized from Glenn Mulcaire was fully justified and, indeed, inevitable, given the enormous pressures caused by counter-terrorism activities at the time. The threat to life was very much (if not infinitely) more compelling. Unfortunately, a misunderstanding both as to what had to be proved to establish an offence under the Regulation of Investigatory Powers Act 2000 and what other offences might have been committed led to an inadequate strategy to inform those who could be classed as victims or targets of phone hacking; in any event, that strategy was not properly implemented. Neither was anything done to distance the police from the 'one rogue reporter' defence.

[24] See Part E, Chapter 4

80. Although he was a very experienced police officer, I regret that Assistant Commissioner Yates did not reflect on whether he should be involved in an investigation into the newspaper at which he had friends, including one who was the deputy editor (in circumstances in which decisions by the Metropolitan Police and the Crown Prosecution Service were coming under scrutiny). He would have been better advised to arrange for a different officer to conduct it. That is even more so when he decided, within hours and before the case papers had been recovered and could be properly reviewed, that there were no grounds for reviewing the decision: errors of recollection were inevitable and they were made. Furthermore, publicly to announce that conclusion, on camera, on the same day meant that there was no turning back. A defensive mindset was then established which affected all that followed.

81. As for the victim notification strategy put in place, focus remained on how to identify who was a victim without reference to the range of potential offences that might have been committed. Neither was consideration given to the fact that being targeted as a potential victim would give rise to identical concerns and an identical need for that person to take precautionary measures. In any event, even by November 2010, effective steps had not been taken to inform potential victims. Lord Prescott, who had been targeted through others, was not recognised as a victim as a result of the narrow approach which was taken.

82. In the exhaustive analysis of this police operation, it has also been necessary to consider the position of the Crown Prosecution Service (CPS). Although initially viewing the proper interpretation of the law somewhat cautiously, there is no suggestion that, in 2006, the police sought specific advice on charging other than in relation to three men (one of whom was not prosecuted); files of evidence were not prepared in relation to anyone else. A review by the CPS and counsel was undertaken of the material held by the police that was not being used for the specific purposes of the prosecution of Clive Goodman and Glenn Mulcaire: this was to consider disclosing to the defendants evidence that undermined the case for the Crown or assisted them; this review could not later reasonably be used by the police to support a decision that there was no evidence against anyone else. In any event, the decisions made at that time by the CPS were entirely reasonable.

83. In 2009, the CPS decision, taken in 2006, not to prosecute others was questioned in the Guardian article and accurately answered by the CPS then referring to the files put forward to the CPS at the time. Although there remained some confusion about the law, the issue was further considered after the article in the New York Times when the confusion was clarified. It is sufficient to summarise that, at the end of 2010, effectively at the insistence of the DPP, the police commenced a review: whether because of the disclosure of new material or otherwise, Operation Weeting followed quickly thereafter.

84. In 2006, the decision to limit the prosecutions at that time was clearly justifiable. Unfortunately, the approach of the police and some of the decisions made in the period 2006-2010 can be characterised as insufficiently thought through (and, in any event, not followed up or taken forward), wrong and unduly defensive (and not merely with the benefit of hindsight). Accepting, however, the relationship between Mr Yates and Mr Wallis (which was not in issue), there is no evidence to suggest that anyone was influenced either directly or indirectly in the conduct of the investigation by any fear or wish for favour from News International. The mistakes were neither more nor less than that: the integrity of the officers who gave evidence and were directly involved in the investigation shone through what they said and I do not doubt it.

The press and the police: the relationship

85. In our mature democracy, policing must be with the consent of the public not least because it has to involve the public in the reporting and detection of crime. The public must be kept aware of policing concerns and must engage in the debate. Therefore the press also has a vital role: it must encourage the public to engage in the criminal justice system by coming forward with evidence; it must facilitate that assistance and it must applaud when criminals are brought to justice as a result. The press must also hold the police to account, acting as the eyes and ears of the public. It is not, therefore, surprising that these different roles and responsibilities that the police and the press have are capable of pulling in opposite directions: there needs to be a constructive tension and absolutely not a self-serving cosiness.

86. As with the politicians, the public concern which was the seed of the requirement that the Terms of Reference include the *"contacts and the relationship between the press and the police, and the conduct of each"* can be translated into the simple question: did the relationship become too close? It arises, in particular, because of the nature of contacts between senior police officers within the Metropolitan Police Service (MPS) and News International and, in particular, what I have described as the understandable concern about the adequacy of the police investigation into phone hacking at the News of the World up to January 2011 and the commencement of Operation Weeting.

87. From the specific concern, it has been necessary to deal with the wider picture. Although the particular issues that the Inquiry has had to address have largely been confined to London, the context has been provided by considering what happens around the country. Outside the MPS, the relationship between the press and the police has usually worked well, with the right balance being struck between professional civility and excessive proximity. This may be a reflection of the fact that the regional press does not generate the same issues of culture or practice that I have been considering in some of the nationals. Where there is a problem it is because an event of national newsworthiness arises in a regional area, prompting the national press to descend en masse. When this happens, the evidence has been that parts of the national press have betrayed a tendency not to follow the rules in terms of the reporting of events and the treatment of suspects and witnesses. The best example relates to Christopher Jefferies but there are others.

88. Of course, the MPS and the regional forces are different. The most senior police officers working in London (and, in particular, the Commissioner) are expected to have a public profile on the national stage: their work regularly places them in the public eye speaking on issues of national importance and concern. To do this requires that they have good relationships with the national press. Chief Constables will also need to form professional relationships but mainly with their local titles, and the pressures and expectations are not quite the same.

89. A number of Commissioners have deliberately courted working relationships with the press, no doubt partly in an attempt to enhance the standing of the service in the minds of the public; others have adopted a more remote style. There are similarities and differences and no single approach that can be said to be correct but the arrival of news on a never ending 24 hour basis, with the ever increasing pressure, makes this problem more important and probably more intractable. The management of reputation is obviously important to the police service, but a balance has to be struck. There are risks inherent in a laissez-faire approach (with the suggestion of lack of engagement with the issues as well as distance) as much as there are different risks in an overly proactive one (being the suggestion of an attempt at news management). Furthermore, in a hierarchical organisation such as the police, the tone

is set from the top, and how leaders behave will have an obvious filtering effect right through the force. In the circumstances, senior officers need professional advice and support: press departments continue to play an invaluable role in managing the orderly flow of information into the public domain, all in the public interest.

90. In addition to general issues of the relationship between the press and the police, I have also considered how close the relationship has been by reference to a number of discrete issues such as 'tip offs', 'taking media on operations', 'off-the-record' briefings, leaks, whistle-blowing, entertainment. The list of topics is lengthy but the issues underlying each of these matters have been similar. The words 'integrity' and 'perception' are common refrains. Putting the matter at its lowest, if a police officer tips off a member of the press, the perception may well be that he or she has done so in exchange for past favours or the expectation of some future benefit. At its highest, the issue becomes one of integrity for the police officer: his or her professional standing may be put under scrutiny. Although there are matters of detail that are different for each example, the essential issue is exactly the same.

91. Taking the subject of 'leaks' generally, I must start by making it clear that although Operation Elveden (concerned with bribery of public officials) is proceeding, the Inquiry has not unearthed extensive evidence of police corruption nor is there evidence satisfying the standard of proof that I have adopted, namely the balance of probabilities, that significant numbers of police officers lack integrity in one or more of the respects I have examined. Speculation, suspicion and legitimate perceptions may abound and troubling evidence has been identified in a limited number of cases (with journalists tenaciously protecting their sources), but the notion, as a matter of established fact, that this may be a widespread problem is not borne out. The scale of the problem needs to be kept in proportion.

92. Turning to specific topics, tip offs are but one aspect of the wider problem of leaks, that is to say the seepage of confidential information into the public domain. Frequently, a suspected leak will not be a leak at all; the information will have entered the public domain through any one of a number of possible legitimate channels or been passed on not by a police officer or member of police staff but by someone else who has seen or heard what appears to be interesting information. However, such benign explanations are not always convincing and, at various times, the MPS has been more susceptible to high-level leaks than at others. In my view, the robustness of systems is important, but managing the risk of leaks down to its lowest possible level is also to be found in inculcating the right sense of professional pride and responsibility in police officers and staff at all levels of the service.

93. 'Off-the-record' briefings have been another cause for public concern, not least owing to the perception that certain journalists were favoured with information in exchange for hospitality or other tangible benefits. Everybody agrees that such briefings can operate in the public interest, particularly in the context of a relationship of trust between individual journalists and police officers: even-handedness is, however, critical. However, in the light of evidence I have heard I am concerned about the lack of clarity inherent in the use of the term and in the precise information to which it refers: I have therefore recommended that briefings should be designated as open, embargoed (in time), non-reportable or, where a combination, clear so as to be beyond doubt.

94. There is also concern about who may speak to the press and in what circumstances it is necessary for press support to be available. For officers of the rank of Commander or Assistant Chief Constable and above, dealing with policy or significant organisational or operational matters, formality and record keeping should be required. More junior ranks should follow the Guidance issued by the Association of Chief Police Officers (ACPO) which includes only

speaking to the press on topics for which they have responsibility for communicating and a policing purpose for doing so. I have also made recommendations designed to reduce the risk of abuse.

95. Taking the press on operations should be controlled more tightly both to avoid the perception of favouritism and the risk of violating the private rights of individuals. There is a need for current guidance in this area to be strengthened; for example, I think that it should be made clear that save in exceptional and clearly identified circumstances (for example, where there may be an immediate risk to the public), the names or identifying details of those who are arrested or suspected of a crime should not be released to the press or the public.

96. Gifts, hospitality and entertainment are topics which I address together. Unsurprisingly, these attracted attention when the relevant evidence was called, with mention of expensive restaurants and bottles of champagne which did nothing to enhance the reputation in the public mind of the MPS or the officers involved. Here again, however, it is necessary to place this issue in its proper context. Most of the senior officers in the MPS who gave evidence receive, or have received, entirely appropriate forms of hospitality and entertainment from journalists in the context of the right sort of wider relationship. No one could reasonably conclude that inappropriately lavish entertainment is or has been rife in the MPS, or that the officers involved in what may be described as the most damaging evidence were corrupt. The issue is about perception, more than integrity. In relation to the scale of hospitality which may be appropriate, consumption of alcohol, and similar issues, it is a question of leading by example; what has happened in London is very different from what has happened elsewhere. The Chief Constable of Avon and Somerset, Colin Port, spoke of the 'blush test' which works perfectly well for most police officers and the majority of situations, but high-level national guidance consistently applied in all forces would provide further direction and set the appropriate example.

97. I devoted much attention to the related issues of whistleblowing and corruption. Although ultimately, going to the press is both legitimate and justifiable, the principal concern is to reduce as far as possible the need for police officers to feel it necessary to do so by encouraging greater confidence in appropriate and confidential channels both internal and external. I have recognised that there is at least a perception that the Professional Standards Departments of police forces, typically headed by an officer of the rank of Detective Chief Superintendent, may not be best placed to deal with complaints in relation to more senior officers. On account of this, and having regard to the need generally to tighten up existing structures and systems, I have made a series of recommendations, as signposts to a series of pragmatic solutions which, subject to consultation with a range of interested bodies, including ACPO, the Independent Police Complaints Commission and the newly-elected Police and Crime Commissioners, would amongst other things accord an enhanced role to a designated one of the Inspectors within HM Inspectorate Constabulary (who must have served at Chief Officer level) as being the first port of call for 'whistleblowing' in relation to the conduct of senior officers within the police service.

98. Finally, in the context of relations with News International but also more broadly, concern was expressed about the 'revolving door' phenomenon, in particular the employment or other engagement of former police officers by the press. In my judgment, this is an issue for ACPO ranking officers but not others: I have concluded that serious consideration should be given to the insertion into contracts of employment of terms which stipulate a 12 month 'cooling off' period, subject to the permission of the relevant authority.

99. Overall, in devising the series of recommendations relating to the Police Service as a whole in response to the range of issues which generated the need for what became Module Two of the Inquiry, I have had regard to the need for balance and common sense. A factor that I must I bear in mind is the risk of over-reaction. Lord Condon spoke of twenty year cycles, being something akin to "*scandal, inquiry, remedial action, relaxation, complacency, scandal, inquiry.*"[25] What he did not state expressly is that the 'remedial action' has the potential of going too far in the direction of disengagement or, speaking more colloquially, battening down the hatches. Again, this is no more and no less than human nature, but one needs to identify the potential risk in order to guard against it.

100. It is clear that the Police Service as a whole has responded positively and proactively in the wake of the public concerns which led to the setting up of this Inquiry in July 2011. I welcome the thoroughness and good sense of the changes which have been recommended to date, and the spirit in which the Police Service has demonstrated willingness for implementing appropriate and judicious enhancements of the existing regimes. Ultimately, the Police Service in general and the MPS in particular have understood the importance of such a positive response in terms of allaying public concerns and correcting legitimate perceptions.

101. In taking its existing work forward, as supplemented by the recommendations I have made in my Report, I fully endorse the judicious contribution made by the Home Secretary to the Inquiry and, in particular, her emphasis on the need for a country-wide series of policies coordinated through or by ACPO. The majority of the issues at stake here are of universal application. The 'blush test' will continue to work as a sound guide for the vast majority but clear leadership and the setting of the tone from the top is vital. In addition, clear and direct policy guidance is necessary to reinforce these common sense messages.

The press and data protection

102. One of the areas that I am required to consider is 'the extent to which the current policy and regulatory framework has failed, including in relation to data protection'. This is because of the light that Operation Motorman can shine on the culture, practices and ethics of the press. It is also because the response of the Office of the Information Commissioner (ICO), and its role and functions in relation to the press more generally, is relevant to the adequacy of the regulatory framework.

103. The Operation Motorman 'treasure trove' constituted evidence of serious and systemic illegality and poor practice in the acquisition and use of personal information which could have spread across the press as a whole. There was a pressing need for a commensurate response from the ICO dealing with all aspects of the personal information problem. It appears that the ICO did not adopt and pursue a sufficiently clear operational strategy to deal with the systemic and practical issues which arose.

104. None of the journalists named in the Whittamore notebooks was ever investigated or prosecuted for breaches of section 55 of the Data Protection Act 1998 (DPA). This was notwithstanding the strength of the *prima facie* case across the board; not even the strongest cases were taken forward for criminal investigation, and not a single journalist was so much as interviewed. The ICO did not undertake regulatory investigation or enforcement action of any kind against the press, whether formal or informal, despite the evidence that the press was likely to be holding or using the Motorman information either unlawfully or contrary

[25] p47, lines 18-21, Lord Condon, http://www.levesoninquiry.org.uk/wp-content/uploads/2012/03/Transcript-of-Morning-Hearing-6-March-20122.pdf

to standards of good practice. In the circumstances, an opportunity was missed to address problems in the culture, practices and ethics of the press, and to safeguard the position of victims.

105. The ICO did take significant steps to raise the profile of the issue politically. Two reports were laid before Parliament under section 52 of the DPA, which served an important function of drawing attention to the problem generally. The Information Commissioner also pursued a high-profile strategy: this was to seek to engage with the PCC and to campaign vigorously for legislative change which would broaden the sentencing powers of the criminal courts in relation to data protection breaches. The response to both was unsatisfactory.

106. The dialogue with the PCC was long drawn out and ultimately produced disappointing results. The political campaign (which was not principally addressed to the behaviour of the press), stoutly and resolutely championed by successive Information Commissioners, faced a persistent and well-organised press counter-offensive lobbying effort. Six years on, the change of the law that was achieved (complete with an enhanced defence for public interest journalism) has still not been brought into force, and I have recommended that there should be no further delay in doing so.[26] The experience of the previous 50 years had endowed the press with a considerable degree of expertise in fighting battles of this sort (which it still manifests), and the eventual outcome was not entirely unforeseeable.

107. The hostile attitude of the press to attempts at law enforcement and improvement of standards goes some way to account for the evident difficulty of the ICO, both past and present, in engaging operationally with the culture, practices and ethics of the press. Further explanation lies in the legal framework of the DPA, which puts unnecessary and inappropriate barriers in the way of regulatory law enforcement and the protection of victims' rights. I have recommended changes in the law to remove unnecessary procedural red tape and provide for a fairer balance between the public interest in freedom of expression and the public interest in personal information privacy. I have also recommended some extension to the ICO's powers of prosecution.

108. I have recommended that the ICO in the meantime issue practical guidance designed to support the press in improving standards and practice in the handling of personal information, with which I expect the industry to engage speedily and constructively. I have further recommended the ICO issue advice and guidance to the public and to people who are concerned about being the victims of unlawful or unethical media practice. I have finally recommended consideration be given, both internally by the ICO and in terms of legal structure by the Ministry of Justice, to strengthening the constitution and capability of the ICO to perform its regulatory functions in relation to the press.

The press and politicians

109. At the time the Inquiry was set up, the Leaders of all three main UK political parties were saying that politicians in recent years had become 'too close' to the press. The key questions for an Inquiry into the culture practices and ethics of the press were therefore, first, whether there were aspects of this close relationship which were relevant to the current state of press standards; second, whether previous opportunities to address legitimate public concerns

[26] In addition to recommending the commencement of the provisions in s 77-78 of the Criminal Justice and Immigration Act 2008 increasing the penalties for offences under s 55 of the Data Protection Act 1998 (see Part H Chapter 5), I have also recommended that the Secretary of State for Justice use the power vested in him by s124(1)(a)(i) of the Coroners and Justice Act 2009 to invite the Sentencing Council of England and Wales to prepare guidelines in relation to data protection offences (including computer misuse): see Part J Chapter 2 Section 9.

about press standards had been missed as a result; and third, whether, in short, in the very places the public were democratically entitled to turn with their concerns there were in fact further aspects of the problem to be found.

110. In relation to the evidence concerned with the press and the public, there were many examples that created a narrative and allowed general conclusions to be drawn. For the police, Operation Caryatid required its own analysis along with specific topics that were illustrative. For data protection, Operation Motorman and its consequences provided the facts. In relation to the politicians, detailed examination across a range of different areas, at different times, is neither necessary nor possible, particularly bearing in mind the pitfalls of appearing to any degree partisan. This summary is, therefore, much more general, and cannot do justice to the range of concrete examples considered.[27] I can do no more here than paint the general picture and identify the recommendations that I have made.

111. Module Three was not in the main concerned with the routine interactions between politicians and the press; broadly, that relationship does not operate so as to give rise to any legitimate public concern. On the contrary, the overwhelming evidence is that relations between politicians and the press on a day to day basis are in robust good health and performing the vital public interest functions of a free press in a vigorous democracy, providing an open forum for public debate, enabling a free flow of information and challenge, and holding power to account. In these circumstances, close relationships, including personal friendships, are very much part and parcel of all of this and not in themselves any cause for surprise or concern.

112. This part of the Report has focused on a very different aspect of the closeness of the relationship between press and politicians. That is, the question of whether it may have, or may appear to have, impacted on the willingness or ability of politicians to decide matters of public policy about the media, and specifically of policy about press standards, fairly and impartially in the public interest.

113. This Inquiry takes its place in responding to the latest in a long sequence of spikes in public concern about press standards; this time it is phone hacking. That history has also been described as one of repeated missed opportunities, in which the political response has not been commensurate with the public concern. With the assistance of many of those directly involved, the Inquiry has considered the long-term pattern of these events, some other examples of decision-making about media policy, and at the sorts of relationships between press and politicians within which they took place.

114. The evidence has ranged through the most recent five UK Premierships, considering each administration's press relationships at the highest level and, whether, from the sequence of key events, any patterns could be said to emerge. First, the Inquiry considered in particular the acquisition of The Times by Rupert Murdoch in the time of Prime Minister Thatcher. Second, it reflected on the response of Prime Minister Major's Government to the reports provided by Sir David Calcutt QC (and what Stephen Dorrell, then Secretary of State for National Heritage, described as the 'do nothing' option on press standards).

115. Third, it looked at the lessons to be drawn from the approach to news management of Prime Minister Blair, and at the media policies of his Government, including the specific legislative proposals relating to the Human Rights Act 1998 and the Communications Act 2003. Fourth, it considered Prime Minister Brown's approach to the DPA (in particular, the amendment of the DPA in 2008 following the reports of the Information Commissioner).

[27] The Report ranges across the administrations of five Prime Ministers, specific media policy issues and individual examples over a period of 40 years, although they also include much more recent example: see Part I.

More generally, it reflected on why successive Labour administrations, in power for 13 years, and notwithstanding the acute public concern about press behaviour following the tragic death of Diana, Princess of Wales, had made no more progress than their predecessors in addressing problems in the culture, practices and ethics of the press (noting also that Lord Mandelson observed in July 2011 that *'we were cowed'*).

116. Fifth, the Inquiry considered a range of aspects of the relationship between contemporary politics and the press, about which public concern has been strongly expressed, including a particularly detailed consideration of the bid by News Corp to increase its holding in BSkyB, as explained more fully below.

117. Taken as a whole, the evidence clearly demonstrates that, over the last 30-35 years and probably much longer, the political parties of UK national Government and of UK official Opposition, have had or developed too close a relationship with the press in a way which has not been in the public interest. In part, this has simply been a matter of spending a disproportionate amount of time, attention and resource on this relationship in comparison to, and at the expense of, other legitimate claims in relation to the conduct of public affairs. In part, it has been a matter of going too far in trying to control the supply of news and information to the public in return for the hope of favourable treatment by sections of the press, to a degree and by means beyond what might be considered to be the fair and reasonable (albeit partisan) conduct of public debate.

118. On the other hand, politicians (supported by some academic commentators) have argued that this has been necessary to counteract the attempts of some sections of the press to discredit their motives and distort the policies that they seek to promote. I have concluded that in these kinds of respect, growing public awareness and impatience is simply making this kind of conduct counter-productive for politicians (if not for the press) in the critically important attempt to seek public trust and confidence. I need do no more than draw attention to that fact.

119. There are other respects, however, in which the evidence suggests that politicians have conducted themselves in relation to the press in ways which have not served the public interest. They have placed themselves in positions in which they risked becoming vulnerable to influences which are neither known about nor transparent. There is thus no mechanism for holding them to account (which is, of course, the usual responsibility of the press itself). The result has been to create what was, at least potentially, a perception of conflict with their responsibilities in relation to the conduct of public affairs. A number of clear opportunities to address this perception have been missed and there has been a persistent failure to respond more generally to public concern about the culture practices and ethics of the press.

120. I have concluded that a combination of these factors has contributed to a lessening of public confidence in the conduct of public affairs, by giving rise to legitimate perceptions and concerns that politicians and the press have traded power and influence in ways which are contrary to the public interest and out of public sight. These perceptions and concerns are inevitably particularly acute in relation to the conduct by politicians of public policy issues in relation to the press itself.

121. In reaching these views, my focus has been not on particular parties or particular politicians, but on patterns of behaviour. Inevitably, some examples stand out, and I have particularly in mind the lessons which can be drawn from the political response to the Calcutt reports in the early 1990s and to the Information Commissioner's *What Price Privacy?* reports. I have also spent more time on some recent examples, because they formed prominent parts of the context to the setting up of the Inquiry.

122. One of those recent examples was the handling by two successive Secretaries of State and their departments of the bid by News Corp to increase its holding in BSkyB.[28] This bid was launched in June 2010, one month after the General Election. In his capacity as Secretary of State for BIS, the Rt Hon Dr Vince Cable MP took responsibility for handling the bid under European and domestic law.

123. Despite strong attempts to lobby him behind the scenes, Dr Cable acted with scrupulous care and impartiality until he was interviewed by two journalists posing as his constituents in early December 2010. He was fully entitled to hold strong views about the press in general and News International in particular, but his quasi-judicial role in relation to the bid meant that he had to put them to one side. Unfortunately, his unguarded remarks to these journalists about Rupert Murdoch and News International entered the public domain, thus creating an appearance of bias, and the Prime Minister was forced to transfer responsibility for the handling of the bid elsewhere.

124. The Rt Hon Jeremy Hunt MP also had strong views as to the merits of the bid. He too was entitled to have these, if for no other reason that media policy fell within his DCMS portfolio. The transfer to Mr Hunt was a decision the Prime Minister was fully entitled to make. In these circumstances the bid came to DCMS and its Secretary of State in a crisis not of their making.

125. Mr Hunt immediately put in place robust systems to ensure that the remaining stages of the bid would be handled with fairness, impartiality and transparency, all in line with his quasi-judicial obligations. His extensive reliance on external advice, above and beyond the minimum required, was a wise and effective means of helping him to keep to the statutory test and to engender confidence that an objective decision would be taken.

126. In every respect bar one, the bid was commendably handled. Unfortunately, there was a serious hidden problem which, had the bid ultimately gone through and that problem come out, would have had the potential to jeopardise it altogether. Mr Hunt's Special Adviser, Adam Smith, was the known point of contact between DCMS and News Corp's professional lobbyist, Frédéric Michel. Mr Smith already knew Mr Michel, and, when faced with the intimacy, charm, volume and persistence of Mr Michel's approaches, he was put in an extremely difficult position. The processes that were put in place to manage the bid did not prove to be robust enough in this particular respect. Best practice of the kind subsequently encapsulated in the Cabinet Office guidance on quasi-judicial decision-making was not followed.

127. I have concluded that the seeds of this problem were sown at an early stage, and that the risks were, or should have been, obvious from the outset. I doubt the wisdom of appointing Mr Smith to this role. The consequential risks were then compounded by the cumulative effects of the lack of explicit clarity in Mr Smith's role, the lack of express instruction that it was clear that he fully understood, and a lack of supervision by Mr Hunt.

128. I have concluded that there is no credible evidence of actual bias on the part of Mr Hunt. However, the voluminous exchanges between Mr Michel and Mr Smith, in the circumstances, give rise to a perception of bias. The fact that they were conducted informally, and off the departmental record, are an additional cause for concern.

129. The history of decision-taking on matters of media policy, including the history of the BSkyB bid, illustrates a significant issue which seems to me to lie at the heart of the problematic dimension to the relationship between the press and the politicians. That is that there

[28] No attempt has been made to seek to summarise the complex facts that are comprised by the way in which it was handled by News Corp and by the relevant Secretaries of State: they are fully set out in Part I Chapter 6

have been those in positions of leadership of the press who have shown themselves to be exceptionally dedicated, powerful and effective political lobbyists in the cause of their own (predominantly commercial, but also wider) interests. That lobbying has been conducted in part overtly and editorially, and in part covertly and through the medium of personal relationships with politicians.

130. I should say that I do not consider the self-interested lobbying of the press to be an appropriate matter for press regulation. Media companies should not be criticised for, or restrained from, lawfully advocating their private interests with all the considerable skill and resource at their command, and at the highest levels to which they can (and do) secure access. The only exception I make relates to the measure of openness and formality required in the context of quasi-judicial decision-making.

131. On the other hand, I consider it to be entirely the responsibility of politicians who are the object of press lobbying to judge how far and in what way they consider it to be in the public interest for them to respond. And one of the chief aspects of that responsibility is to bear in mind that while a free and healthy press is certainly in the public interest, that does not mean that everything which is in the (commercial or wider) interests of any individual press organisation, or even the industry as a whole, will itself necessarily be in the public interest. The matter must be looked at in the round.

132. Politicians are in a difficult position in relation to lobbying from the press. Not only are the press powerful lobbyists in their own interests, but they wield a powerful megaphone with considerable influence over the personal and political reputation of politicians. They are also highly skilled, at the level of some proprietors, editors and senior executives, at subtle and intuitive lobbying in the context of personal relationships and friendships. Politicians are further rendered vulnerable by the extent to which they may compromise their privacy, often to an ambiguous degree, in the cause of presenting an 'authentic view' of themselves to the public, a necessity in a more personal age of politics; this risks inviting further intrusion in the name of 'exposing hypocrisy'.

133. The relationships within which lobbying can take place are not the everyday relationships of journalism and politics. They are the relationships of policy makers (actual or potential) and those who stand to benefit directly from those policies. That is a limited category, comprising (on the one hand) a small number of relevant Government decision-makers and those who credibly aspire to those positions in the future whether from within governing parties or their rivals in opposition, and (on the other) the proprietors, title editors and executive decision-makers of the press. In these relationships the boundaries between the conduct of Government business with its formalities and accountabilities on the one hand, and informal 'political' or 'personal' interactions on the other, are not clear, and inevitably so. There is accordingly a legitimate concern about lack of transparency and accountability. That is unsatisfactory from the public point of view, and at the same time exposes politicians to a degree of unfair speculation and innuendo.

134. In this limited category of relationships, I have concluded that positive steps are needed to address a genuine and legitimate problem of public perception, and hence of trust and confidence. I have recommended as a first step that political leaders reflect constructively on the merits of publishing on behalf of their party a statement setting out, for the public, an explanation of the approach they propose to take as a matter of party policy in conducting relationships with the press.

135. I have also recommended that the most senior Front Bench politicians, whether in Government or Opposition, should give very serious consideration to accepting the case for public transparency at least to some degree beyond the strict requirements of current law and practice. I have only very limited steps in mind. They relate to the publication of the fact of meetings between very senior politicians and the executive decision-makers of the press (but, importantly, whether conducted in person or through agents) and some indication of when matters of media policy are discussed. This would apply to all such meetings, whether Governmental, or capable of being designated 'political' or 'personal', because of the degree to which those classifications do not appear to hold good.

136. I also recommend periodic disclosure, by way of general estimate only, of some basic information about the frequency or density of other communications (such as correspondence, phone, text and email). A little more transparency by way of these very simple, plain facts about the kinds of relationships within which powerful press lobbying takes place are designed to suggest directions for improvement in public understanding and confidence in the political process.

137. The response to this Report will itself open a new chapter in the history of the relations between politicians and the press. The open forum which the Inquiry has sought to provide for consideration of the way forward for press standards has inevitably taken place against a background of a continuing conversation between press and politicians to which the Inquiry and the public have not been party. This has not happened under the sort of conditions of transparency which I have concluded to be an essential component for restoration of public trust and confidence in the determination of media policy. I am therefore encouraging politicians to reflect on the legitimate public interest in understanding at least something about the interactions they have had with the press (whether direct or indirect) on the subject matter of the Inquiry and this Report. The opportunity for transparency is obvious.

Plurality

138. The bid by NewsCorp to buy those shares in BSkyB that it did not already own led to widespread concern about whether the current rules in place to protect media plurality in the UK were sufficient, with a particular concern on the role played by politicians in key decisions.

139. There is no question about the importance of maintaining a plural media. The requirement of the broadcasting code for broadcast news to be impartial provides some degree of assurance that the public will have access to unbiased news coverage, but it remains vital to ensure that there are many different sources of news, controlled by many different people, and reaching the public by many different routes. It is only through this plurality, specifically in relation to news and current affairs, that we can ensure that the public is able to be well informed on matters of local, national and international news and policy and able to play their full part in a democratic society.

140. There are very few existing mechanisms to protect that plurality. Obviously competition law applies in media markets, which should prevent any abuse of a monopoly position. But it must be the case that a problematic loss of plurality could occur without necessarily giving rise to competition concerns. Under the current provisions of the Enterprise Act 2002 and the Communications Act 2003 the relevant Secretary of State has the power to intervene in a proposed media merger if he believes that media plurality concerns arise. This means that action can be taken to protect plurality only at the point that a transaction threatens to reduce it. There is no current option for the Government or regulators to step in to protect plurality if it is threatened by organic change in the market.

141. This was signalled as a concern by Ofcom when it provided advice to the Secretary of State in relation to the BSkyB bid and that concern has been widely echoed by others. It is, in my view, important that the Government should find some way of ensuring that there is a mechanism for protecting media plurality in relation to organic change. Ofcom proposed conducting regular plurality reviews. An alternative approach would be to consider changes to the competition markets regime. It is important that the Government adopts a solution likely to provide timely warning of, and response to, plurality concerns that develop as a result of organic growth.

142. I also believe that there should be clarity on what is meant by plurality and how it should be measured. My view is that the focus of plurality concerns should be on news and current affairs reporting, but this is something that should be kept under review. Media markets have developed significantly since the Communications Act 2003 was passed and it is now clear that online news provision should be taken into account in any plurality measure. No compelling evidence was put forward to support arguments for any fixed cap on media market share, but it will be important for the regulatory authorities to be able to impose structural remedies and remedies which will change behaviour which can relate, if appropriate, to editorial independence and journalistic standards.

143. The experience of both Dr Cable and Mr Hunt in respect of handling the BSkyB bid has brought into focus the question of the role of politicians in making decisions relating to plurality. The dangers of bias, or the perception of bias, are all too obvious. However, I do not consider that the answer to that is to take politicians out of the process. Decisions about what is in the public interest in relation to plurality of the media are fundamentally decisions which should be taken by democratically accountable Ministers, who must be capable of putting any irrelevant considerations to one side. This does not mean that the current process is satisfactory: clearly it is not. The best solution to the problem of bias or perception of bias is transparency. I therefore recommend in the Report that there should be greater transparency at each stage of political decision making in relation to media mergers. In particular I am suggesting that Ministers should consult relevant parties before deciding to refer a transaction to the competition authorities on plurality grounds and publish the reasons for this decision. Further, the Secretary of State should be required to accept the advice of the independent regulators or explain why that advice has been rejected. I have also suggested that the nature and extent of any submissions or lobbying to which the Secretary of State and his officials and advisors have been subject should be published. This will ensure that the basis for Ministerial decisions, is open to public scrutiny.

Concluding remarks

144. The work of the Inquiry has ranged over a very large area, collecting evidence from many different people, coming from very different walks of life. It has been provided in different ways – orally, in writing and by submission. The purpose of the Report has been to try to collect that material together and present it in an orderly way so that everyone is free to judge the evidence for themselves and come to their own views about it. At all times, I have endeavoured to make transparent the workings of the Inquiry so that the objectivity of the process is clear for all to see.

145. My recommendations are intended to be clear and unambiguous. They have not been affected or influenced by any political or other agenda. I have not been deflected from my path by any extraneous commentary I have read or heard over the past 16 months; which has

only served to confirm my conclusions; I am doing what I believe is fair and right for everyone, not least the public. I am confident that my recommendations, and the reasons underlying them, will be seen by the public in that spirit.

146. I end where I started this Summary. This is the seventh time in less than 70 years that the issues which have occupied my life since I was appointed in July 2011 have been addressed. No-one can think it makes any sense to contemplate an eighth. The ball is now in the court of the politicians. I expect my recommendations to be treated in exactly the same cross-party spirit which led to the setting up of this Inquiry. The Rt Hon Sir John Major put it graphically:

> *"I have no idea what this Inquiry will recommend, but if it makes recommendations that require action, then I think it is infinitely more likely that that action will be carried into legislation if it has the support of the major parties. If it does not, if one party breaks off and decides it's going to seek future favour with powerful proprietors and press barons by opposing it, then it will be very difficult for it to be carried into law, and I think that is something that is very important. So I think there is an especial responsibility on the leaders of the three major parties. 20-odd years ago – 23 years ago, I think – a senior minister said the press were drinking in the last-chance saloon. I think on this occasion it's the politicians who are in the last-chance saloon. If, at the end of this Inquiry, with the recommendations that may be made – and I don't seek to forecast what they may be, but if the recommendations that are made are not enacted and nothing is done, it is difficult to see how this matter could be returned to in any reasonable period of time, and those parts of the press which have behaved badly will continue to behave badly and put at a disadvantage those parts of the press that do not behave badly.*
>
> *I reiterate: I think the underlying purpose is to eliminate the bad behaviour and bring the bad up to the level of the good, and the bad is just a cancer in the journalistic body. It isn't the journalistic body as a whole. And I think in the interests of the best form of journalism, it is important that whatever is recommended is taken seriously by Parliament, and it is infinitely more likely to be enacted if neither of the major parties decides to play partisan short-term party politics with it by seeking to court the favour of an important media baron who may not like what is proposed."*[29]

[29] page 61 line 22 – page 62 line 21: https://www.levesoninquiry.org.uk/wp-content/uploads/2012/06/Transcript-of-Morning-Hearing-12-June-2012.pdf

SUMMARY OF RECOMMENDATIONS

Regulatory Models for the Future

Establishing an independent self-regulatory regime

Independence: appointments

1. An independent self regulatory body should be governed by an independent Board. In order to ensure the independence of the body, the Chair and members of the Board must be appointed in a genuinely open, transparent and independent way, without any influence from industry or Government.[1]

2. The appointment of the Chair of the Board should be made by an appointment panel. The selection of that panel must itself be conducted in an appropriately independent way and must, itself, be independent of the industry and of Government.[2]

3. The appointment panel:

(a) should be appointed in an independent, fair and open way;

(b) should contain a substantial majority of members who are demonstrably independent of the press;

(c) should include at least one person with a current understanding and experience of the press;

(d) should include no more than one current editor of a publication that could be a member of the body.[3]

4. The appointment of the Board should also be an independent process, and the composition of the Board should include people with relevant expertise. The requirement for independence means that there should be no serving editors on the Board.[4]

5. The members of the Board should be appointed by the same appointment panel that appoints the Chair, together with the Chair (once appointed), and should:

(a) be appointed by a fair and open process;

(b) comprise a majority of people who are independent of the press;

(c) include a sufficient number of people with experience of the industry who may include former editors and senior or academic journalists;

(d) not include any serving editor; and

(e) not include any serving member of the House of Commons or any member of the Government.[5]

[1] Part K, Chapter 7, para 4.5
[2] Part K, Chapter 7, para 4.7
[3] Part K, Chapter 7, para 4.8
[4] Part K, Chapter 7, para 4.10
[5] Part K, Chapter 7, para 4.10

Independence: funding

6. Funding for the system should be settled in agreement between the industry and the Board, taking into account the cost of fulfilling the obligations of the regulator and the commercial pressures on the industry. There should be an indicative budget which the Board certifies is adequate for the purpose. Funding settlements should cover a four or five year period and should be negotiated well in advance.[6]

Functions

Standards Code and Governance Requirements

7. The standards code must ultimately be the responsibility of, and adopted by, the Board, advised by a Code Committee which may comprise both independent members of the Board and serving editors.[7]

8. The code must take into account the importance of freedom of speech, the interests of the public (including the public interest in detecting or exposing crime or serous impropriety, protecting public health and safety and preventing the public from being seriously misled) and the rights of individuals. Specifically, it must cover standards of:

(a) conduct, especially in relation to the treatment of other people in the process of obtaining material;

(b) appropriate respect for privacy where there is no sufficient public interest justification for breach and

(c) accuracy, and the need to avoid misrepresentation.[8]

9. The Board should require, of those who subscribe, appropriate internal governance processes, transparency on what governance processes they have in place, and notice of any failures in compliance, together with details of steps taken to deal with failures in compliance.[9]

Complaints

10. The Board should require all those who subscribe to have an adequate and speedy complaint handling mechanism; it should encourage those who wish to complain to do so through that mechanism and should not receive complaints directly unless or until the internal complaints system has been engaged without the complaint being resolved in an appropriate time.[10]

11. The Board should have the power to hear and decide on complaints about breach of the standards code by those who subscribe. The Board should have the power (but not necessarily in all cases depending on the circumstances the duty) to hear complaints whoever they come from, whether personally and directly affected by the alleged breach, or a representative group affected by the alleged breach, or a third party seeking to ensure accuracy of published information. In the case of third party complaints the views of the party most closely involved should be taken into account.[11]

[6] Part K, Chapter 7, para 4.16
[7] Part K, Chapter 7, para 4.21
[8] Part K, Chapter 7, para 4.23
[9] Part K, Chapter 7, para 4.25
[10] Part K, Chapter 7, para 4.26
[11] Part K, Chapter 7, para 4.30

12. Decisions on complaints should be the ultimate responsibility of the Board, advised by complaints handling officials to whom appropriate delegations may be made.[12]

13. Serving editors should not be members of any Committee advising the Board on complaints and any such Committee should have a composition broadly reflecting that of the main Board, with a majority of people who are independent of the press.[13]

14. It should continue to be the case that complainants are able to bring complaints free of charge.[14]

Powers, Remedies and Sanctions

15. In relation to complaints, the Board should have the power to direct appropriate remedial action for breach of standards and the publication of corrections and apologies. Although remedies are essentially about correcting the record for individuals, the power to require a correction and an apology must apply equally in relation to individual standards breaches (which the Board has accepted) and to groups of people (or matters of fact) where there is no single identifiable individual who has been affected.[15]

16. The power to direct the nature, extent and placement of apologies should lie with the Board.[16]

17. The Board should **not** have the power to prevent publication of any material, by anyone, at any time although (in its discretion) it should be able to offer a service of advice to editors of subscribing publications relating to code compliance which editors, in their discretion, can deploy in civil proceedings arising out of publication.[17]

18. The Board, being an independent self-regulatory body, should have authority to examine issues on its own initiative and have sufficient powers to carry out investigations both into suspected serious or systemic breaches of the code and failures to comply with directions of the Board. Those who subscribe must be required to cooperate with any such investigation.[18]

19. The Board should have the power to impose appropriate and proportionate sanctions, (including financial sanctions up to 1% of turnover with a maximum of £1m), on any subscriber found to be responsible for serious or systemic breaches of the standards code or governance requirements of the body. The sanctions that should be available should include power to require publication of corrections, if the breaches relate to accuracy, or apologies if the breaches relate to other provisions of the code.[19]

20. The Board should have both the power and a duty to ensure that all breaches of the standards code that it considers are recorded as such and that proper data is kept that records the extent to which complaints have been made and their outcome; this information should be made available to the public in a way that allows understanding of the compliance record of each title.[20]

[12] Part K, Chapter 7, para 4.31
[13] Part K, Chapter 7, para 4.32
[14] Part K, Chapter 7, para 4.33
[15] Part K, Chapter 7, para 4.37
[16] Part K, Chapter 7, para 4.37
[17] Part K, Chapter 7, para 4.40
[18] Part K, Chapter 7, para 4.36
[19] Part K, Chapter 7, para 4.38
[20] Part K, Chapter 7, para 4.36

Reporting

21. The Board should publish an Annual Report identifying:

(a) the body's subscribers, identifying any significant changes in subscriber numbers;

(b) the number of complaints it has handled and the outcomes reached, both in aggregate for the all subscribers and individually in relation to each subscriber;

(c) a summary of any investigations carried out and the result of them;

(d) a report on the adequacy and effectiveness of compliance processes and procedures adopted by subscribers; and

(e) information about the extent to which the arbitration service had been used.[21]

Arbitration Service

22. The Board should provide an arbitral process in relation to civil legal claims against subscribers, drawing on independent legal experts of high reputation and ability on a cost-only basis to the subscribing member. The process should be fair, quick and inexpensive, inquisitorial and free for complainants to use (save for a power to make an adverse order for the costs of the arbitrator if proceedings are frivolous or vexatious). The arbitrator must have the power to hold hearings where necessary but, equally, to dispense with them where it is not necessary. The process must have a system to allow frivolous or vexatious claims to be struck out at an early stage.[22]

Encouraging membership

23. A new system of regulation should not be considered sufficiently effective if it does not cover all significant news publishers.[23]

24. The membership of a regulatory body should be open to all publishers on fair, reasonable and non-discriminatory terms, including making membership potentially available on different terms for different types of publisher.[24]

25. In any reconsideration of the powers of the Information Commissioner (or replacement body), power should be given to that body to determine that membership of a satisfactory regulatory body, which required appropriate governance and transparency standards from its members in relation to compliance with data protection legislation and good practice, should be taken into account when considering whether it is necessary or proportionate to take any steps in relation to a subscriber to that body.[25]

26. It should be open any subscriber to a recognised regulatory body to rely on the fact of such membership and on the opportunity it provides for the claimant to use a fair, fast and inexpensive arbitration service. It could request the court to encourage the use of that system of arbitration and, equally, to have regard to the availability of the arbitration system when considering claims for costs incurred by a claimant who could have used the arbitration service. On the issue of costs, it should equally be open to a claimant to rely on failure by a newspaper to subscribe to the regulator thereby depriving him or her of access to a fair, fast

[21] Part K, Chapter 7, para 4.42
[22] Part K, Chapter 7, para 4.46
[23] Part K, Chapter 7, para 3.14
[24] Part K, Chapter 7, para 4.13
[25] Part K, Chapter 7, para 5.2

and inexpensive arbitration service. Where that is the case, in the exercise of its discretion, the court could take the view that, even where the defendant is successful, absent unreasonable or vexatious conduct on the part of the claimant, it would be inappropriate for the claimant to be expected to pay the costs incurred in defending the action.[26]

Recognition

27. In order to meet the public concern that the organisation by the press of its regulation is by a body which is independent of the press, independent of Parliament and independent of the Government, that fulfils the legitimate requirements of such a body and can provide, by way of benefit to its subscribers, recognition of involvement in the maintenance of high standards of journalism, the law must identify those legitimate requirements and provide a mechanism to recognise and certify that a new body meets them.[27]

28. The responsibility for recognition and certification of a regulator shall rest with a recognition body. In its capacity as the recognition body, it will not be involved in regulation of any subscriber.[28]

29. The requirements for recognition should be those set out the recommendations set out above numbered 1 to 24 inclusive and more fully described in Part K, Chapter 7, Section 4 of the Report.[29]

30. The operation of any certified body should be reviewed by the recognition body after two years and thereafter at three yearly intervals.[30]

31. The role of recognition body, that is to say, to recognise and certify that any particular body satisfies (and, on review, continues to satisfy) the requirements set out in law should fall on Ofcom. A less attractive alternative (on the basis that any individual will not have the requisite authority or experience and will only be occasionally be required to fulfil these functions) is for the appointment of an independent Recognition Commissioner supported by officials at Ofcom.[31]

32. It should be possible for the recognition body to recognise more than one regulatory body, should more than one seek recognition and meet the criteria, although this is not an outcome to be advocated and, should it be necessary for that step to be taken, would represent a failure on the part of the industry.[32]

33. In passing legislation to identify the legitimate requirements to be met by an independent regulator organised by the press, and to provide for a process of recognition and review of whether those requirements are and continue to be met, the law should also place an explicit duty on the Government to uphold and protect the freedom of the press.[33]

[26] Part K, Chapter 7, para 5.5
[27] Part K, Chapter 7, para 6.4
[28] Part K, Chapter 7, para 6.5
[29] Part K, Chapter 7, para 6.5
[30] Part K, Chapter 7, para 6.10
[31] Part K, Chapter 7, para 6.23
[32] Part K, Chapter 7, para 6.37
[33] Part K, Chapter 7, para 6.41

Recommendations for a self-regulatory body

Internal Governance

34. In addition to Recommendation 10 above, a new regulatory body should consider requiring:

(a) that newspapers publish compliance reports in their own pages to ensure that their readers have easy access to the information;[34] and

(b) as proposed by Lord Black, that a named senior individual within each title should have responsibility for compliance and standards.[35]

Incentives to membership

35. A new regulatory body should consider establishing a kite mark for use by members to establish a recognised brand of trusted journalism.[36]

The Code

36. A regulatory body should consider engaging in an early thorough review of the Code (on which the public should be engaged and consulted) with the aim of developing a clearer statement of the standards expected of editors and journalists.[37]

Powers and sanctions

37. A regulatory body should be prepared to allow a complaint to be brought prior to commencing legal proceedings if so advised. Challenges to that approach (and applications to stay) can be decided on the merits.[38]

38. In conjunction with Recommendation 11 above, consideration should also be given to Code amendments which, while fully protecting freedom of speech and the freedom of the press, would equip that body with the power to intervene in cases of allegedly discriminatory reporting, and in so doing reflect the spirit of equalities legislation.[39]

39. A new regulatory body should establish a ring-fenced enforcement fund, into which receipts from fines could be paid, for the purpose of funding investigations.[40]

Protecting the public

40. A new regulatory body should continue to provide advice to the public in relation to issues concerning the press and the Code along with a service to warn the press, and other relevant parties such as broadcasters and press photographers, when an individual has made it clear that they do not welcome press intrusion.[41]

[34] Part K, Chapter 3, para 4.26
[35] Part K, Chapter 7, para 4.28
[36] Part K, Chapter 4, para 5.41
[37] Part K, Chapter 7, para 4.20
[38] Part K, Chapter 3, Para 5.14
[39] Part F, Chapter 6, Para 8.22
[40] Part K, Chapter 7, para 4.39
[41] Part K, Chapter 7, Para 4.35

41. A new regulatory body should make it clear that newspapers will be held strictly accountable, under their standards code, for any material that they publish, including photographs (however sourced).[42]

The public interest

42. A regulatory body should provide guidance on the interpretation of the public interest that justifies what would otherwise constitute a breach of the Code. This must be framed in the context of the different provisions of the Code relating to the public interest, so as to make it easier to justify what might otherwise be considered as contrary to standards of propriety.[43]

43. A new regulatory body should consider being explicit that where a public interest justification is to be relied upon, a record should be available of the factors weighing against and in favour of publication, along with a record of the reasons for the conclusion reached.[44]

44. A new regulatory body should consider whether it might provide an advisory service to editors in relation to consideration of the public interest in taking particular actions.[45]

Access to information

45. A new regulatory body should consider encouraging the press to be as transparent as possible in relation to the sources used for stories, including providing any information that would help readers to assess the reliability of information from a source and providing easy access, such as web links, to publicly available sources of information such as scientific studies or poll results. This should include putting the names of photographers alongside images. This is not in any way intended to undermine the existing provisions on protecting journalists' sources, only to encourage transparency where it is both possible and appropriate to do so.[46]

Protecting journalists

46. A regulatory body should establish a whistleblowing hotline for those who feel that they are being asked to do things which are contrary to the code.[47]

47. The industry generally and a regulatory body in particular should consider requiring its members to include in the employment or service contracts with journalists a clause to the effect that no disciplinary action would be taken against a journalist as a result of a refusal to act in a manner which is contrary to the code of practice.[48]

[42] Part F, Chapter 6, paragraphs 4.6 and 5.19
[43] Part K, Chapter 7, Para 4.24
[44] Part F, Chapter 6, para 2.74
[45] Part K, Chapter 7, para 4.35
[46] Part F, Chapter 6, para 9.75
[47] Part K, Chapter 3, para 4.28
[48] Part K, Chapter 4, para 16.4

The Press and Data Protection

Recommendations to the Ministry of Justice

48. The exemption in section 32 of the Data Protection Act 1998 should be amended so as to make it available only where:[49]

(a) the processing of data is necessary for publication, rather than simply being in fact undertaken with a view to publication;

(b) the data controller reasonably believes that the relevant publication would be or is in the public interest, with no special weighting of the balance between the public interest in freedom of expression and in privacy; and

(c) objectively, that the likely interference with privacy resulting from the processing of the data is outweighed by the public interest in publication.

49. The exemption in section 32 of the Data Protection Act 1998 should be narrowed in scope, so that it no longer allows, by itself, for exemption from:[50]

(a) the requirement of the first data protection principle to process personal data fairly (except in relation to the provision of information to the data subject under paragraph 2(1)(a) of Part II Schedule 1 to the 1998 Act) and in accordance with statute law;

(b) the second data protection principle (personal data to be obtained only for specific purposes and not processed incompatibly with those purposes);

(c) the fourth data protection principle (personal data to be accurate and kept up to date);

(d) the sixth data protection principle (personal data to be processed in accordance with the rights of individuals under the Act);

(e) the eighth data protection principle (restrictions on exporting personal data); and

(f) the right of subject access.

The recommendation on the removal of the right of subject access from the scope of section 32 is subject to any necessary clarification that the law relating to the protection of journalists' sources is not affected by the Act.

50. It should be made clear that the right to compensation for distress conferred by section 13 of the Data Protection Act 1998 is not restricted to cases of pecuniary loss, but should include compensation for pure distress.[51]

51. The procedural provisions of the Data Protection Act 1998 with special application to journalism in:

(a) section 32(4) and (5)

(b) sections 44 to 46 inclusive

should be repealed.[52]

[49] Part H, Chapter 5, para 2.59
[50] Part H, Chapter 5, para 2.59
[51] Part H, Chapter 5, para 2.61
[52] Part H, Chapter 5, para 2.45

52. In conjunction with the repeal of those procedural provisions, consideration should be given to the desirability of including in the Data Protection Act 1998 a provision to the effect that, in considering the exercise of any powers in relation to the media or other publishers, the Information Commissioner's Office should have special regard to the obligation in law to balance the public interest in freedom of expression alongside the public interest in upholding the data protection regime.[53]

53. Specific provision should be made to the effect that, in considering the exercise of any of its powers in relation to the media or other publishers, the Information Commissioner's Office must have regard to the application to a data controller of any relevant system of regulation or standards enforcement which is contained in or recognised by statute.[54]

54. The necessary steps should be taken to bring into force the amendments made to section 55 of the Data Protection Act 1998 by section 77 of the Criminal Justice and Immigration Act 2008 (increase of sentence maxima) to the extent of the maximum specified period; and by section 78 of the 2008 Act (enhanced defence for public interest journalism).[55]

55. The prosecution powers of the Information Commissioner should be extended to include any offence which also constitutes a breach of the data protection principles.[56]

56. A new duty should be introduced (whether formal or informal) for the Information Commissioner's Office to consult with the Crown Prosecution Service in relation to the exercise of its powers to undertake criminal proceedings.[57]

57. The opportunity should be taken to consider amending the Data Protection Act 1998 formally to reconstitute the Information Commissioner's Office as an Information Commission, led by a Board of Commissioners with suitable expertise drawn from the worlds of regulation, public administration, law and business, and active consideration should be given in that context to the desirability of including on the Board a Commissioner from the media sector.[58]

Recommendations to the Information Commissioner

58. The Information Commissioner's Office should take immediate steps to prepare, adopt and publish a policy on the exercise of its formal regulatory functions in order to ensure that the press complies with the legal requirements of the data protection regime.[59]

59. In discharge of its functions and duties to promote good practice in areas of public concern, the Information Commissioner's Office should take immediate steps, in consultation with the industry, to prepare and issue comprehensive good practice guidelines and advice on appropriate principles and standards to be observed by the press in the processing of personal data. This should be prepared and implemented within six months from the date of this Report.[60]

[53] Part H, Chapter 5, para 2.56
[54] Part H, Chapter 5, para 2.63
[55] Part H, Chapter 5, paras 2.93-2.94
[56] Part H, Chapter 5, para 2.106
[57] Part H, Chapter 5, para 1.106
[58] Part H, Chapter 6, para 4.9
[59] Part H, Chapter 5, para 2.63
[60] Part H, Chapter 5, para 2.71

60. The Information Commissioner's Office should take steps to prepare and issue guidance to the public on their individual rights in relation to the obtaining and use by the press of their personal data, and how to exercise those rights.[61]

61. In particular, the Information Commissioner's Office should take immediate steps to publish advice aimed at individuals (data subjects) concerned that their data have or may have been processed by the press unlawfully or otherwise than in accordance with good practice.[62]

62. The Information Commissioner's Office, in the Annual Report to Parliament which it is required to make by virtue of section 52(1) of the Act, should include regular updates on the effectiveness of the foregoing measures, and on the culture, practices and ethics of the press in relation to the processing of personal data.[63]

63. The Information Commissioner's Office should immediately adopt the Guidelines for Prosecutors on assessing the public interest in cases affecting the media, issued by the Director of Public Prosecutions in September 2012.[64]

64. The Information Commissioner's Office should take immediate steps to engage with the Metropolitan Police on the preparation of a long-term strategy in relation to alleged media crime with a view to ensuring that the Office is well placed to fulfil any necessary role in this respect in the future, and in particular in the aftermath of Operations Weeting, Tuleta and Elveden.[65]

65. The Information Commissioner's Office should take the opportunity to review the availability to it of specialist legal and practical knowledge of the application of the data protection regime to the press, and to any extent necessary address it.[66]

66. The Information Commissioner's Office should take the opportunity to review its organisation and decision-making processes to ensure that large-scale issues, with both strategic and operational dimensions (including the relationship between the culture, practices and ethics of the press in relation to personal information on the one hand, and the application of the data protection regime to the press on the other) can be satisfactorily considered and addressed in the round.[67]

Regulation by Law

The Criminal Law

67. On the basis that the provisions of s77-78 of the Criminal Justice and Immigration Act 2008 are brought into effect, so that increased sentencing powers are available for breaches of s55 of the Data Protection Act 1998,[68] the Secretary of State for Justice should use the power vested in him by s124(1)(a)(i) of the Coroners and Justice Act 2009 to invite the Sentencing Council of England and Wales to prepare guidelines in relation to data protection offences (including computer misuse).[69]

[61] Part H, Chapter 5, para 2.72
[62] Part H, Chapter 5, para 2.64
[63] Part H, Chapter 5, para 2.72
[64] Part H, Chapter 5, para 2.106
[65] Part H, Chapter 5, para 2.107
[66] Part H, Chapter 6, para 4.3
[67] Part H, Chapter 6, para 4.4
[68] Part H, Chapter 5, paras 2.94-2.95
[69] Part J, Chapter 2, para 9.1

68. The Home Office should consider and, if necessary, consult upon:[70]

(a) whether paragraph 2(b) of Schedule 1 to the Police and Criminal Evidence Act 1984 (PACE) should be repealed;

(b) whether PACE should be amended to provide a definition of the phrase "for the purposes of journalism" in s13(2); and

(c) whether s11(3) of PACE should be amended by providing that journalistic material is only held in confidence for the PACE provisions if it is held or has continuously been held since it was first acquired or created subject to an enforceable or lawful undertaking, restriction or obligation.

The Civil Law

Damages

69. There should be a review of damages generally available for breach of data protection, privacy, breach of confidence or any other media-related torts, to ensure proportionate compensation including for non-pecuniary loss (all referable to the duration, extent and gravity of the contravention).[71]

70. The Civil Justice Council should consider the level of damages in privacy, breach of confidence and data protection cases, being prepared to take evidence (from the Information Commissioner, the media and others) and thereafter to make recommendations on the appropriate level of damages for distress in such cases. How the matter is then taken forward will ultimately be for the courts to consider.[72]

71. The Report of the Law Commission on Aggravated, Exemplary and Restitutionary Damages should be adopted in relation to its recommendations that legislation should provide that:

(a) aggravated damages should only be awarded to compensate for mental distress and should have no punitive element;

(b) exemplary damages should be retained (although re-titled as punitive damages).[73]

72. Exemplary damages (whether so described or renamed as punitive damages) should be available for actions for breach of privacy, breach of confidence and similar media torts, as well as for libel and slander. The application to a defendant of any relevant system of regulation of standards enforcement which is contained in or recognised by statute and good internal governance in relation to the sourcing of stories should be relevant to the decisions reached in relation to such damages.[74]

Costs

73. The Civil Procedure Rules should be amended to require the court, when considering the appropriate order for costs at the conclusion of proceedings, to take into account the availability of an arbitral system set up by an independent regulator itself recognised by law. The purpose of this recommendation is to provide an important incentive for every publisher

[70] Part J, Chapter 2, para 9.11
[71] Part J, chapter 3, para 5.6
[72] Part J, Chapter 3, para 5.7
[73] Part J, Chapter 3, para 5.8
[74] Part J, Chapter 3, para 5.10

to join the new system and encourage those who complain that their rights have been infringed to use it as a speedy, effective and comparatively inexpensive method of resolving disputes.[75]

74. In the absence of the provision of an approved mechanism for dispute resolution, available through an independent regulator without cost to the complainant, together with an adjustment to the Civil Procedure Rules to require or permit the court take account of the availability of cost free arbitration as an alternative to court proceedings, qualified one way costs shifting should be introduced for defamation, privacy, breach of confidence and similar media related litigation as proposed by Lord Justice Jackson.[76]

The Press and the Police

Off-the-record briefings

75. The term 'off-the-record briefing' should be discontinued. The term 'non-reportable briefing' should be used to cover a background briefing which is not to be reported, and the term 'embargoed briefing' should be used to cover a situation where the content of the briefing may be reported but not until a specified event or time. These terms more neutrally describe what are legitimate police and media interactions.[77]

76. It should be mandatory for ACPO rank officers to record all of their contact with the media, and for that record to be available publicly for transparency and audit purposes. This record need be no more than a very brief note to the effect that a conversation has taken place and the subject matter of that conversation. Where the discussion involves a more significant operational or organisational matter, then it may be sensible for a more detailed note to be retained. Finally, in circumstances where policy or organisation matters may be on the agenda for discussion, it is good practice for a press officer also to be present.[78]

77. The simple rule included within the 'Interim ACPO Guidance for Relationships with the Media' should be adopted as good practice.[79] This is:

> *"Police officers and staff should ask: 'am I the person responsible for communicating about this issue and is there a policing purpose for doing so?' If the answer to both parts of this question is 'yes', they should go ahead."*

Leaks of information

78. The Police Service should re-examine the rigour of the auditing process and the frequency of the conduct of audits in relation to access to the Police National Computer (PNC). Additional consideration should also be given to the number of people given access to the PNC and the associated rules which govern its usage.[80]

[75] Part J, Chapter 3, para 6.9
[76] Part J, Chapter 3, para 6.11
[77] Part G, Chapter 4, para 4.5
[78] Part G, Chapter 4, para 4.8
[79] Part G, Chapter 4, para 4.10
[80] Part G, Chapter 4, para 5.6

Gifts, hospitality and entertainment

79. The recent ACPO Guidance should more specifically spell out the dangers of consuming alcohol in a setting of casual hospitality (without necessarily specifying a blanket ban).[81]

Media employment

80. Consideration should be given to the terms upon which ACPO rank officers are appointed and, in particular, whether these terms should include some limitation upon the nature of any employment within or by the media that can be undertaken without the approval of the relevant authority for a period of 12 months following the cessation of the appointment.[82]

Corruption, whistleblowing and related matters

81. An enhanced system for protection of whistleblowers and for providing assistance for the Police Service on general ethical issues should at least comprise the following:[83]

(a) greater prominence should be given to the Public Interest Disclosure Act (PIDA) telephone line operated by the Independent Police Complaints Commission (IPCC);

(b) there should be an 'ethics line' to the IPCC, available for all serving Police Officers, providing general ethical guidance;

(c) to avail those at rank of Chief Constable (Assistant Commissioner level within the Metropolitan Police Service), Her Majesty's Inspectorate of Constabulary should identify one of its members, a former Chief Constable, as the designated point of contact for confidential ethics guidance. The Chief Officer seeking and obtaining that advice would be able to refer to it should any issue subsequently arise on a complaint to a Professional Standards Department, a Police and Crime Commissioner, or indeed the IPCC itself. The advice would not be determinative of the complaint, but the fact that it was sought and received, as well as its content, would be a matter to be taken into account;

(d) within the IPCC itself, there is a need for an enhanced 'filter system' whereby the nature of complaints are appropriately addressed at an early stage so that (a) they can be investigated at the right level, and (b) sufficient structures are put in place to maintain confidentiality of the complaint, and differentiate as soon as is appropriate between genuine whistleblowers and those who are merely ventilating a personal grievance;

(e) the former Chief Constable referred to under sub-paragraph (c) above should also be the recipient of complaints about Chief Constables made to the IPCC. In the event that he or she may already have given informal advice in relation to the subject-matter of the complaint, as per sub-paragraph (c) above, a substitute HMI would be deputed to act; and

(f) Chief Officers should also be the subject of regular independent scrutiny by HMIC, including through unannounced inspections.

[81] Part G, Chapter 4, para 6.4
[82] Part G, Chapter 4, para 7.6
[83] Part G, Chapter 4, para 8.14

The Press and Politicians

82. As a first step, political leaders should reflect constructively on the merits of publishing on behalf of their party a statement setting out, for the public, an explanation of the approach they propose to take as a matter of party policy in conducting relationships with the press.[84]

83. Party Leaders, Ministers and Front Bench Opposition spokesmen should consider publishing:[85]

(a) the simple fact of long term relationships with media proprietors, newspaper editors or senior executives which might be thought to be relevant to their responsibilities and,

(b) on a quarterly basis:

i. details of all meetings with media proprietors, newspaper editors or senior executives, whether in person or through agents on either side, and the fact and general nature of any discussion of media policy issues at those meetings; and

ii. a fair and reasonably complete picture, by way of general estimate only, of the frequency or density of other interaction (including correspondence, phone, text and email) but not necessarily including content.

84. The suggestions that I have made in the direction of greater transparency about meetings and contacts should be considered not just as a future project but as an immediate need, not least in relation to interactions relevant to any consideration of this Report.[86]

Plurality and Media Ownership

85. The particular public policy goals of ensuring that citizens are informed and preventing too much influence in any one pair of hands over the political process are most directly served by concentrating on plurality in news and current affairs. This focus should be kept under review.[87]

86. Online publication should be included in any market assessment for consideration of plurality.[88]

87. Ofcom and the Government should work, with the industry, on the measurement framework, in order to achieve as great a measure of consensus as is possible on the theory of how media plurality should be measured before the measuring system is deployed, with all the likely commercial tensions that will emerge.[89]

88. The levels of influence that would give rise to concerns in relation to plurality must be lower, and probably considerably lower, than the levels of concentration that would give rise to competition concerns.[90]

89. Ofcom has presented the Inquiry and the Government with a full menu of potential remedies, and it has not been argued or suggested that any of them are inappropriate in principle. Each of them might be appropriate in a given set of circumstances and the relevant regulatory authority should have all of them in its armoury.[91]

[84] Part I, Chapter 8, para 5.9
[85] Part I, Chapter 8, para 5.31
[86] Part I, Chapter 9, para 5,37
[87] Part I, Chapter 9, para 2.8
[88] Part I, Chapter 9, para 2.11
[89] Part I, Chapter 9, para 3.9
[90] Part I, Chapter 9, para 4.19
[91] Part I, Chapter 9, para 4.20

90. The Government should consider whether periodic plurality reviews or an extension to the public interest test within the markets regime in competition law is most likely to provide a timely warning of, and response to, plurality concerns that develop as the result of organic growth, recognising that the proposal for a regular plurality review is more closely focussed on plurality issues.[92]

91. Before making a decision to refer a media merger to the competition authorities on public interest grounds, the Secretary of State should consult relevant parties as to the arguments for and against a referral, and should be required to make public his reasons for reaching a decision one way or the other.[93]

92. The Secretary of State should remain responsible for public interest decisions in relation to media mergers. The Secretary of State should be required either to accept the advice provided by the independent regulators, or to explain why that advice has been rejected. At the same time, whichever way the Secretary of State decides the matter, the nature and extent of any submissions or lobbying to which the Secretary of State and his officials and advisors had been subject should be recorded and published.[94]

[92] Part I, Chapter 9, para 5.14
[93] Part I, Chapter 9, para 6.10
[94] Part I, Chapter 9, para 6.11

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