



## **Co-ordinating Committee for Media Reform**

The Coordinating Committee for Media Reform has prepared two policy documents in consultation with a range of civil society organisations over the past year. These are merged and shortened in this submission.

The proposals outlined here are achievable and entirely appropriate to the current political and economic climate; they broadly reflect an emerging consensus among organisations committed to media reform; and they offer an overall approach that addresses both the symptoms and root causes of the problems addressed by the Leveson Inquiry.

James Curran  
Chair of the Coordinating Committee for Media Reform

### **PART 1: REGENERATING PUBLIC INTEREST JOURNALISM**

#### **A two-fold problem**

The traditional business models for delivering news are in crisis. Faced with a slow but steady decline in readers and viewers, the migration of advertising online, only limited success in ‘monetising’ new online audiences and now a crisis of legitimacy caused by the phone hacking scandal, the economics of news are looking increasingly grim. At the same time, unchecked media concentration over several decades has allowed some media groups to accumulate vast amounts of revenue and influence with adverse consequences for ethical journalism and democracy. These two problems are intimately linked and any solution must take account of both the structure and funding of media that best serves their democratic and social purposes. This view has attracted broad consensual support and was underlined in the recent Lords Select Committee report into the Future of Investigative Journalism (House of Lords 2012).

It is investigative and local journalism that has faced the sharp end of resource cuts across the sector for some time. The evidence to the House of Lords inquiry strongly suggested that the former needs additional financial support to survive whether by cross-subsidy, philanthropy, or some form of state funding. The economic situation is especially acute in regional and local news where loss of classified advertising and leveraged takeovers have weakened local news provision in a number of well documented ways (Media Trust 2010).

We have a growing democratic deficit because the areas of journalism left most vulnerable—investigative and local journalism—are central to the ability of news to serve democracy: to hold power to account and to produce well resourced, innovative and relevant news stories.

#### **A three-fold solution: obligations, caps, levies**

##### **1 Obligations**

There is a long-established policy principle in the UK that public responsibilities should be attached to significant media power. To date, this principle has been invoked in respect of broadcasting but as media markets and services converge it is increasingly applicable to other platforms. There is a need to ensure that dominant media groups which are not subject to public service regulation are nevertheless committed to maintaining a degree of internal plurality and democracy, and offer positive support for greater diversity.

This does not mean that newspapers or websites should be subjected to forms of intervention that threaten their independence or free speech rights. In addition, obligations should only be imposed on those groups with a 15% share of a given audience and should be restricted to 1) bolstering the autonomy of journalists and editors within the organisation and 2) making a contribution to supporting public interest media outside of their organisation. The rationale behind the latter proposal reflects the principle of cross-subsidy that has underpinned media policy from the formation of Channel Four to the prospective establishment of local television.

One of the historical stumbling blocks in media ownership regulation has been the inherent difficulties in measuring media power. Our approach is based on the principle that concerns over media concentration are about the 'share of voice' commanded by a single or group of companies, rather than just significant market power defined in purely economic terms. By delineating markets along the lines of radio, television, press and internet, it is possible to use a measure of audience share that is appropriate to each medium.

For the threshold triggering public media obligations, we therefore propose an adapted measure of audience shares within the national newspaper, television, radio and online markets based on the following sources:

- National newspaper circulation
- Multichannel television audience ratings
- Radio listening shares\*
- Traffic shares of top 20 UK-based news websites

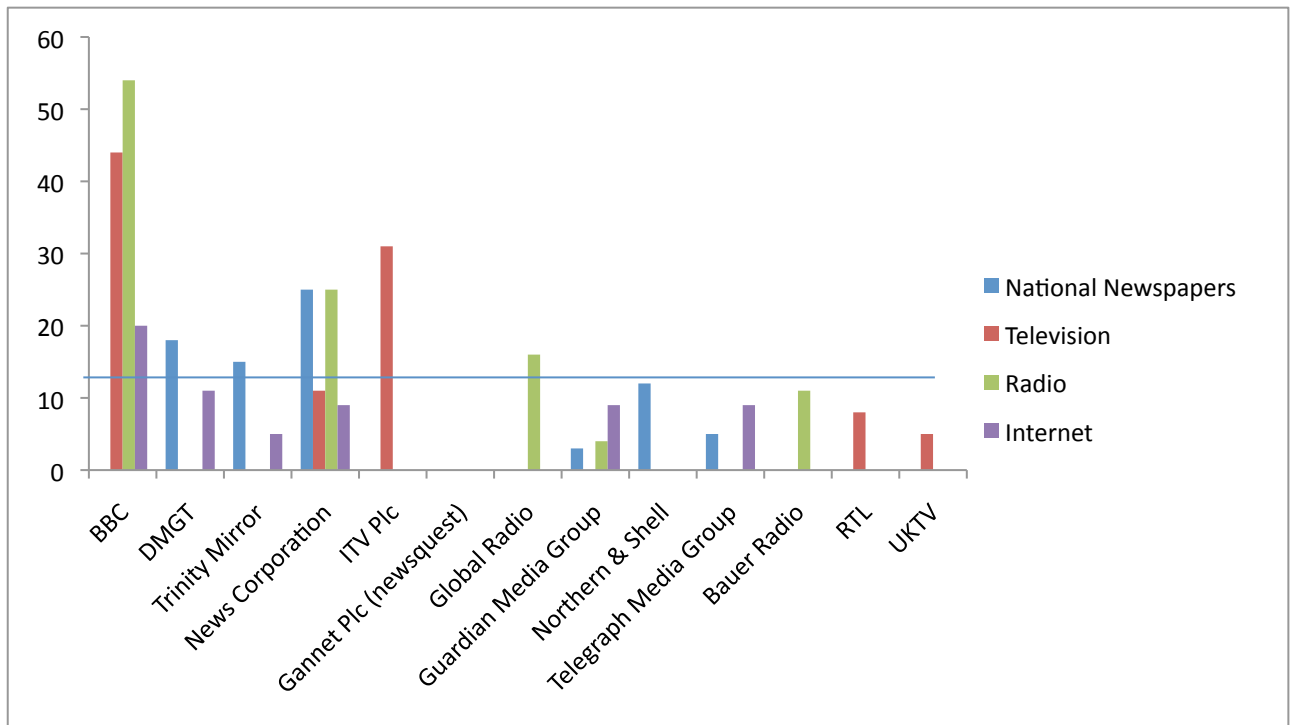
(\*Where radio news services are outsourced, market share is attributed to news provider rather than station).

This captures both the special significance attributed to news providers by plurality concerns, as well as the broader cultural power wielded by media. Any entity whose combined outlets command 15% or more of any of the above must ensure that public interest obligations are adhered to. Based on the latest market data available from Ofcom amongst others, the chart below illustrates the audience share of the dominant providers across these sectors.

### **Figure 1. Audience share of dominant news providers<sup>1</sup>**

---

<sup>1</sup> Sources: Ofcom (2011), Press Gazette (2011), The Guardian (2011)



Based on the threshold line in the above chart, and excluding public service broadcasters which are already subject to public duties, the following providers would be subject to public interest obligations under these proposals:

| National Newspapers   | Television | Radio                           | Internet |
|---|------------|---------------------------------|----------|
| News Corporation ( <i>The Sun, Sun on Sunday, The Times, Sunday Times</i> ) |            | Global Radio                    |          |
| Trinity Mirror ( <i>The People, The Sunday Mirror, The Sunday Mail</i> )    |            | BskyB ( <i>Sky News Radio</i> ) |          |
| DMGT ( <i>Daily Mail, Mail on Sunday</i> )                                  |            |                                 |          |

Although no entity currently reaches the threshold for online news, many of the most popular news sites would be subject to public interest obligations by default given that they are controlled by groups that reach the threshold in national newspapers (e.g. TheSun.co.uk, DailyMail.co.uk etc.).

It should be stressed that the exclusion of public service broadcasters is not to confer favour on these providers over purely commercial groups. However, we do not think that commercial media groups should be subject to the same onerous form of regulation as PSBs and it is for this reason that we are advocating a distinct regime based on market share.

Another crucial area excluded from this measurement is local news. Although our overall proposals are designed to revitalise this sector via a Public Media Trust, Ofcom should have

powers to intervene on public interest issues at the local level. Given the added complexities in measuring local news concentration, intervention should be triggered by public concern via the Sustainable Communities Act which is uniquely fit for this purpose, based on “the principle that local people know best what needs to be done to promote the sustainability of their area.”<sup>2</sup>

### Recommendations:

- *Protecting editorial autonomy*

One of the chief concerns emerging from the hacking scandal is the extent to which both the autonomy and integrity of journalists can be compromised by a chain of command and institutional culture fostered by senior management. One way of addressing this issue is to introduce institutional arrangements that limit the absolute prerogative power of proprietors and senior management. As a minimum requirement, this should ensure that qualifying news organisations set up an editorial panel, including a minimum of five staff journalists, which is empowered to oversee key decisions affecting editorial policy as follows:

- The appointment and dismissal of the editor-in-chief, or equivalent, by management or proprietors must be approved by the editorial panel on the basis of majority vote.
- The panel must be consulted on decisions taken by management or proprietors which affect the definition or direction of editorial policy and content, including editorial codes and guidelines.
- The panel must have the ability to pass a motion of no confidence in an editor-in-chief, or equivalent, by majority vote.
- The panel must have the capacity to both hear and air grievances of staff journalists in relation to particular assignments, and to consult the National Union of Journalists or the News Publishing Commission where applicable.<sup>3</sup>

- *Promoting Public Interest Media*

Qualifying entities enjoy a significant public subsidy through VAT exemption so in addition to the above, it is entirely appropriate that they make a financial contribution to support fledgling sectors of public interest media. A percentage of annual net profits should therefore be allocated to a Public Media Trust, to be distributed along the lines set out below. It is important to stress at the outset that meaningful support for these fledgling sectors of the media will not necessarily require significant injections of public funds. Based on 2011 accounts returned to Companies House for the qualifying outlets identified above, a 10 per cent profit levy would have raised in the region of £30 million. The Bureau of

---

<sup>2</sup> <http://www.communities.gov.uk/publications/localgovernment/sustainablecommunitiesact>

<sup>3</sup> For details on Media Reform’s proposals for the News Publishing Commission (to replace the PCC), see part 2 of this document.

Investigative Journalism was established in 2010 with a start-up grant of £2million from the Potter Foundation. In the 21 months since its launch, the agency has secured over thirty-four front-page stories and produced a number of award-winning web, radio and TV reports.

## **2 Caps**

No single company should control more than 20 per cent of a given media market or more than 15 per cent of the revenue of the core media industry. Companies exceeding these thresholds should be forced to divest accordingly.

The 15 per cent threshold finds justification in the argument that no less than six owners across the media is a suitable benchmark for pluralism. The higher 20 per cent cap in submarkets takes account of the fact that companies that control more than 15 per cent will be making a positive contribution to pluralism through public interest obligations, as outlined above. Under current market conditions only News Corporation would be affected by these caps, and the divestment required would affect only a small proportion of its assets.

### Recommendations:

- *Current ownership rules should be amended to prohibit a single entity controlling more than 20 per cent of a given media audience based on the above measuring criteria.*
- *Current ownership rules should be amended to prohibit a single entity controlling more than 15 per cent of cross-media market revenues.<sup>4</sup>*

## **3 Levies**

The burden of supporting public interest media should not fall exclusively on the shoulders of the dominant commercial media groups. There are now larger and considerably more profitable companies operating in the online domain that have attracted revenue away from conventional media and public interest journalism. Some of these companies (namely Facebook and Google) avoid paying corporation tax on their UK businesses. A system of levies should be introduced to redistribute funds in a manner that has longstanding precedent in some European countries. What is more, such levies can be instituted in such a way that they do not deter investment in new services, or restrain the competitiveness of UK businesses. Indeed Eric Schmidt, Chairman of Google, recently conceded that the company would be willing to contribute more to the UK purse (Daily Telegraph 2011).

Internet advertising expenditure during the first six months of 2011 outstripped that of television, with a year-on-year growth of 13.5%. A total of £2.26 billion was spent online, a large proportion of which went on targeted and dynamic pay-per-click models offered by major search engines and social media platforms.

---

<sup>4</sup> When it comes to measuring cross-media power we clearly need a single, one size fits all approach. To this end, we support proposals put forward by Enders Analysis to base the measure on a share of total cross-media revenues. This is the simplest and most effective indicator of overall dominance.

There is established precedent in Europe for funding press subsidies through a tax on media advertising that acts as a cross-subsidy between the most profitable sections of the media and public interest journalism. Sweden and the Netherlands have been operating such a tax (10% and 4% respectively) on commercial television advertising, among other sectors, since the early 1970s. The proceeds have been used, directly or indirectly, to subsidise the press with a view to maximising plurality within the sector.

Google circumvents paying VAT on its UK ad sales by providing the service through Google Ireland. Facebook similarly avoids VAT by providing its services from a US-based branch of the company. The greatest beneficiaries of migration to online by UK advertisers have therefore been hugely profitable international companies that have been afforded, in effect, a subsidy through a tax loophole.

A 1% levy on search engine and social media advertising sales in the UK would not pose any threat to the viability of this rapidly growing industry, nor is it likely to deter investment in marketing services. In 2011 alone, such a tax would have generated over £50 million of funds for reinvestment in public interest media. This levy would be distinct from the contribution proposed above in respect of dominant commercial media groups. The latter would be contingent on profits whilst the former will be akin to a gross sales tax along the lines of VAT.

The compelling rationale of imposing a levy on online search and social media advertising is not just based on the sector's spectacular growth and success in recent years, contributing significantly to Silicon Valley profits. The cross-subsidy may also ease the crisis facing local newspaper businesses that have lost substantial advertising revenue to the new giants of the internet.

#### Recommendation:

- *A small levy should be applied to UK internet advertising sales of dominant providers with funds to be collected and managed by an independent trust as outlined below.*

#### **The Public Media Trust**

The next question is what should be funded and how. Our proposals cover a broad range of public interest media from individual blogs to a system of public commissioning for investigative journalism. Key areas of investment include seed funding for co-operative local newspaper ventures; community radio stations with a local or investigative news focus; and local and national newsgathering hubs that operate along the lines of the Bureau for Investigative Journalism. Full details of these are contained within an extended policy document available for download at [www.mediareform.org/evidence](http://www.mediareform.org/evidence). They acknowledge the blurred boundaries of news in the digital era and the contribution to democracy made by various branches of the media, both old and new. The aim is to build on a nascent third sector of media services that functions exclusively in the public interest and not for profit as well as to support those areas of for-profit journalism that are being squeezed in the current crisis.

The funding targets will be those areas of the media under-served by the market. This will not require direct support by the Treasury which would be difficult to justify under austerity conditions but would be funded through redistribution within the media industries. This approach does not threaten the independence of the media. As the authors of a recent Reuters Institute report on comparable schemes elsewhere conclude, these have the ‘clear advantage of being able to be instituted in a viewpoint-neutral fashion that does not give politicians or government bureaucrats ways of discriminating against particular publishers.’ (Nielsen and Linnebank 2011)

The guiding rationale for creating the Trust is that neither markets nor existing legislation has delivered and sustained the media we need, and that new funds for public interest media should be raised and invested by an independent and publicly accountable body. Accordingly, the Trust must be properly transparent, open to effective challenge and operate in line with the EC state aid framework. In particular, the composition of the Trust’s board should include individuals with different views and from diverse backgrounds, recruited through open tenders. Current bodies such as the Arts Council offer an appropriate model for how the Trust could be structured and operated and how grantee organisations could benefit from using the Trust’s brand to indicate their status as a public media outlet.

Above all, the Trust should be charged with ensuring that it fosters diversity of expression and the production of news that operates without fear or favour. Its progeny should promote media diversity vital to the democratic health of society, and contribute to growth and employment within the industry, especially at a local level.

## **PART 2 - ETHICAL PRACTICE: A NEW SETTLEMENT FOR BRITISH NEWS PUBLISHING**

The cycle of ethical crises which regularly engulf the British press arises not from a deficiency in the law or ethical codes, which already cover most eventualities, but from a culture of risk-taking in a highly competitive news market. Journalism is sharply divided between those editors and journalists who have the freedom of action and conscience to operate ethically and those who operate in a highly structured and competitive environment in which they are under heavy pressure to deliver stories by any means possible.

For too long the editors themselves have refused to acknowledge this difference and have allowed the ethical excess of the popular press to hide behind the more respectable skirts of serious journalism. Whereas the latter require protection from pressures that might prevent them from investigating abuses of power, the former require firmer rules to prevent them from using their power (and desperation to grab market share) to traduce innocent people. Those individuals working for highly competitive news organisations also need protection—of their right to exercise their conscience.

### **A News Publishing Commission**

***We suggest that a new body should be established for news produced both on and off line. The News Publishing Commission (NPC) would remain voluntary and independent but staying outside it would open publications to the risk of expensive court action against which they would have no special defence. Staying in, on the other hand, would require adherence to the ethical rules laid down in a Code of Conduct. It would finally be clear that the privileges of journalism require an equal and balancing responsibility on the part of editors.***

The new organisation would represent the interests of ordinary working journalists as well as editors and members of the public. It would be established by statute but membership would be voluntary. It would replace the PCC but would also provide an alternative to the courts, offering a straightforward system of redress for ordinary people.

All publishers (on or off line), who consider themselves to be news publishers, would be eligible for membership. In joining they would acquire the right to use the defence of “public interest” in respect of prosecution for a wide number of offences relating to investigative work. In return for the protection of this defence, members would agree to maintain certain ethical standards.

We now turn in more detail to the practical changes that would be required to foster a new ethical professional practice in British journalism. We have grouped our concerns into these main areas:

1. A public interest defence
2. A statutory Right of Reply
3. A new regulator combining a two-track approach to conciliation and arbitration via an Ombudsman and a Tribunal system
4. Fostering an ethical environment at work

(A fuller version of this document with additional recommendations for harnessing new technology, fostering trust, making transparent relationships with sources and protecting privacy is available at [www.mediareform.org.uk/evidence](http://www.mediareform.org.uk/evidence)).

## **1 The Public Interest**

We take the need for press freedom every bit as seriously as the editors. This is why we welcome a new Defamation Act (proposed in the Queens Speech in May 2012). We would like to see the concept of ‘the public interest’ clearly defined and enshrined in law because there will always be a ‘grey area’ in journalism in which editors encourage journalists to ‘dig a little deeper’. That may involve intrusion into places where those who wish to cover up wrongdoing would rather journalists didn’t go.

Both the NUJ Code of Conduct and the Editors’ Code allow the use of surreptitious means, if there is no alternative, to dig out stories in the public interest. The Libel Reform Campaign has been campaigning on this issue and we endorse their fight for:



- A public interest defence so people can defend themselves unless the claimant can show they have been malicious or reckless.
- A strong test of harm that strikes out claims unless the claimant can demonstrate serious and substantial harm and they have a real prospect of vindication.
- A restriction on corporations' ability to use the libel laws to silence criticism

A clearly defined 'public interest' defence in law is vital to any attempt at reform because it helps us to deal with the central contradiction of journalism—the fact that ethical journalists may require defence for rule breaking if they are to do their job, whereas unethical journalists may attempt to use a 'public interest defence' to protect themselves against criticism. The Human Rights Act already embodies the concept as a reasonable defence for intrusion and if there is to be any extension of the defence then that concept needs to be clarified. The BBC (2011: 7.1) has framed guidance of its own which helps us in this respect.

- Promoting accountability and transparency: gathering and presenting information to enable public scrutiny of government and those with authority or influence over audiences' lives
- Informing public debate: gathering, providing and testing information on key issues to help the public understand and debate decisions made on their behalf
- Preventing deception, fraud and corruption - providing audiences with the means to avert being misled by some statement or action, especially when public money is involved
- Crime and anti-social behavior: exposing criminal or significant anti-social behaviour, particularly by public figures
- The world - reporting from parts of the world where there are conflicts, where issues of major significance (e.g. climate change, human rights) require understanding, or where the policies of the UK and its allies are having significant effects.

With a clear public interest defence in place to protect responsible journalism, it should be possible to ensure that codes of ethical conduct are upheld and that those who choose willfully to ignore them will face some form of legal censure. We discuss this below in recommendations about enforcement.

#### Recommendation:

- *A public interest defense should be drafted to protect serious journalism.*

## **2 The right of reply**

When information is inaccurate, unfair, or just 'made up', real people are affected and they should have a right to correct misleading statements. The right of reply should be available to any person named, in print or online, wishing to correct a clear factual inaccuracy or wishing to complain about a breach of the ethical code that has personally affected them for example: a breach of privacy, racism, gender bias etc. Where organisations or groups of people are impugned by member organisations of the NPC, it should be possible for the complaint to be taken up on their behalf.

By insisting on a qualified, enforceable right of reply, the British news media would be immediately opened up to alternative points of view, with a minimum of disruption to existing practices. And we should not underestimate the size of this problem or the distress it causes. The PCC's statistics show that in 2009, 87.2% of the complaints it received concerned accuracy and opportunity to reply, and only 23.7% were about privacy.

A right of reply has to be carefully drafted to ensure that it is not misused to prevent the press from doing its job. There are some examples (for example in Slovenia) where such a right has been used by powerful organisations to prevent criticism (Milosavljevic 2012) but there are also exemplary models that could be used as a starting point.

Such a right has been 'commended' by the Council of Europe and is provided in France, Germany, Belgium, Norway, Sweden, Finland, Greece, Austria, Ireland and Switzerland (MediaWise 2010: 4). The Finnish Freedom of Expression Act is a particularly apposite example. By enshrining the right of reply in a law that positively upholds freedom of expression, it demonstrates that the freedom of expression afforded to the press does not trump the freedom of expression afforded to the individual. The Irish Broadcasting Act also includes a right of reply with the following very simple explanation:

A Right of Reply is about the correction of incorrect facts or information; it **does not** provide for the broadcast of an alternative or contrary opinion. In other words, a person may not be satisfied with the manner in which a broadcaster has relayed information about him/her, but a Right of Reply will not be granted unless the facts or information are factually incorrect such that their honour or reputation have been impugned. (BAI, n.d.)

There have been a number of attempts to establish a right of reply in this country. All of them have been vehemently opposed by editors who think that offering such a right would take up too much space and introduce badly written and boring 'legal-ese' into their carefully planned publications.

Fortunately many of the concerns about space restrictions no longer apply. Online space is unlimited and most news publishers now provide some opportunity for people to respond but few publishers distinguish between general comments by people with an interest in the article and people or organisations referred to within the piece who may wish to correct a factual inaccuracy.

A more ethical practice would give a right of reply to those who have been misrepresented, in a special designated slot immediately below the relevant article. This should become normal practice but it should also be legally enforced.

A mistakes and clarifications column should be provided in every newspaper and magazine and linked to every home page. It should point out what items have been corrected and where they can be viewed in full online.

This way corrections can be made very fast, with minimal fuss and without damaging the look and feel of the publication. The advantage of using the web version for the full-length correction is that it can be done within hours of publication and be immediately available to those reading the offending article. At present it can take weeks or months to negotiate a right of reply and then it will read entirely out of context.

The hope is that this would become an automatic practice but, where there is a dispute, there should be a means of resolving that dispute and publishing an agreed statement online, and in serious cases in print too.

#### Recommendations:

- *A statutory right of reply should be introduced applying to any person who has been directly mentioned in an article.*
- *The right of reply should be enforceable in the event of dispute by a tribunal or court (see below).*
- *Publications should have a corrections and clarifications page where all replies are recorded, with basic details and a link to the on-line reply. Online publications should provide a similar page, clearly and prominently flagged on the home page of the publication and tagged so that it is easy to find via search.*
- *In particularly serious cases (as decided by a tribunal or a court), the right of reply should be offered with the same prominence, and in the same position, as the original article.*
- *Where a reply has been offered speedily and without dispute it should be taken into consideration as a defence in any further legal action.*

### **3 A new regulator: the News Publishing Commission**

We recommend the establishment of a new organisation: The News Publishing Commission. The NPC would be a voluntary membership organisation, open to any publisher, on or off line, which would incorporate much of the better work and practice offered by the PCC, but have a wider remit and be capable of enforcing judgements.

Its board will be composed of members of the public, ordinary working journalists and editors, who must be nominated by their trade body, union, or by relevant civil society organisations. This composition would work along similar lines to that successfully established by the Irish Press Council. The board would be responsible for: establishing and updating the code of conduct, establishing standards for the re-use of material on line, establishing a whistle-blowers code, investigating abuse of ethical standards and for monitoring and championing Press Freedom.

By joining the NPC, members would agree to abide by its code of ethics, be bound by decisions of its arbitration tribunal and, in return, would enjoy its protection. All complaints against publications would be directed through a two-track conciliation or arbitration system (see below for details) but, in return, members would be protected against further (and more onerous) court action (Tomlinson 2011). This would be similar to the system available to the construction industry (Brett 2011) and to the protections offered by

membership of the Irish Press Council, which may be used in mounting a public interest defence against prosecution.

It may also be useful (as the Media Trust has suggested), to make VAT exemption for print publications contingent on signing up to the News Publishing Commission as this would provide an additional incentive to sign up to the Commission and the Code.

There are serious arguments for abandoning any form of voluntary organisation. Some suggest that, if the law were more rigorously enforced, there should be no need of any special organisation for journalists; others argue for compulsory membership of any new body; yet others recommend bringing all news under the control of Ofcom, which successfully regulates broadcast news.

The CCMR, as an umbrella body of different organisations, has come down in favour of co-regulation in which an independent body is established by statute in order that it can have enforceable powers. Licensing, (as Ofcom requires) and therefore the possibility of license removal, of text –based sites and newspapers could potentially be used to silence dissent and would create artificial barriers to entry in what is currently a very fluid market, with small innovative websites emerging and disappearing fairly rapidly. It would be hard to administer and probably tend to make the market a lot less diverse.

While there are arguments for imposing public interest obligations on dominant commercial media groups operating outside of broadcasting (see part 1 of this document), the convergent media environment is such that arguments over the regulation of broadcast news would probably go the other way. In particular, there is every likelihood that we would see a relaxing of the current regulatory regime for broadcasting so that a strict interpretation of due impartiality would no longer be required.

The advantage of the system we envisage is that it makes it worthwhile for the vast majority of publications (on or off line) to be directly involved with upholding press ethics. In belonging to the commission they are offered its protection, but the protection requires them to abide by the code. This would immediately undermine the claim often made by the editors that the internet is unregulated and that it is unfair to force them to abide by even the most basic regulations because they will be undercut by the competition. The best rejoinder to this argument is to spread the rule of law, not to restrict it. An ethical news media and a statutory right of reply should be a basic right in a democracy and it is fair that every publisher, rich or poor, small or large, should be required to play by the same rules.

#### How complaints would be handled

*A News Ombudsman.* The commission board would appoint an independent ombudsman who operates as a first port of call for members of the public. The Ombudsman would mediate on complaints from the public for all organisations affiliated to the NPC.

*A News Adjudication Tribunal,* constituted along similar lines to an employment tribunal, would be established (as suggested by Brett 2011 and Tomlinson 2012). The tribunal would be drawn from panels representing journalists and the public, and would sit with a legally

trained chairperson. Complainants would have the right to ask for a full adjudication and sanctions would involve the removal of offending material, a statement that must be linked to the original article and published in a prominent position.

All cases relating to media law (including defamation and privacy cases) should, where the publication complained against is a member of the NPC, be taken before a tribunal in the first instance.

The tribunal would take any public interest defence into consideration in making a ruling. The rulings of the Tribunal would be taken into account in any further court cases just as they are currently taken into account in relation to Privacy under Section 12.4 of the Human Rights Act.

*Fines and compensation:* the Tribunal should have power to impose a graduated system of limited fines. The object would not be to price small organisations out of the marketplace, so fines would be ruled out where clear and serious attempts have been made to correct erroneous or unfair statements. Where compensation was set, it would be limited to covering the reasonable cost of expenses incurred in pursuing a complaint.

*Courts:* would be obliged to take account of actions taken in tribunals in making a judgement. In the case of serious and persistent breaches, or in instances where the publication was not a member of the NPC, the courts should have the right to impose significant fines related to the turnover of the organisation involved.

### Funding

The PCC is currently paid for via subscription and has a turnover of approximately £2 million whereas Ofcom is funded to the tune of £100 million (of which approximately £5 million is devoted to regulation of broadcasting). As the tribunals would be relieving the courts of a considerable amount of media related work it is right that they should be funded in the same way that other tribunals are funded via the Courts and Tribunal Service. A mixed funding regime is commonplace in other countries for example: Finland and Germany.

### Recommendation:

- *A News Publishing Commission should be established along with an independent Ombudsman and an arbitration tribunal*

## **4 A Conscience Clause and a Whistle Blowers Code**

The protection of freedom of expression should include a presumption of freedom of conscience. If journalists feel unable to make ethical decisions at work this is a matter that needs to be considered by any organisation established to protect press freedom and journalistic ethics. All news organisations should spell out publicly, their commitment to supporting ethical journalism and the ethical judgements of journalists working for them

and where journalists feel coerced into unethical behaviour they should be protected by the NPC.

### Recommendations:

- *The News Publishing Commission should include working journalists who would be appointed by their own trade body and not by their editors.*
- *As part of its remit, the body would have the job of establishing a whistle blowers code and interceding on behalf of journalists who are concerned about unethical practices.*
- *The new ethical code would include a 'conscience clause' supporting journalists who refuse to work in ways that breach the code of practice.*

### **References**

Audit Bureau of Circulation (2011)

BAI (Broadcasting Authority of Ireland) (n.d.) *Broadcasting Complaints*. Available at: [http://www.bai.ie/broadcasting\\_complaints.html](http://www.bai.ie/broadcasting_complaints.html)

BBC (2011) *Editorial Guidelines*. Available at: <http://www.bbc.co.uk/editorialguidelines/page/guidelines-privacy-introduction/#the-public-interest>

Brett, A. (2011) *OPRA, a sabre-toothed PCC for press complaints and libel actions?* Available at: <http://www.earlyresolution.co.uk/opra-a-sabre-toothed-pcc-for-press-complaints-and-libel-actions>

Daily Telegraph (2011) *Google says it will pay more tax in the UK*. Available at: <http://www.telegraph.co.uk/technology/google/8727503/Google-says-it-would-pay-more-tax-in-UK.html#>

The Guardian (2011) *ABC's at a glance*. Available at <http://www.guardian.co.uk/media/table/2012/jan/13/abcs-national-newspapers>

House of Lords (2012) *Communications Select Committee – Third Report: The future of investigative journalism*. Available at: <http://www.publications.parliament.uk/pa/ld201012/ldselect/ldcomuni/256/25602.htm>

Media Trust (2010) *Meeting the news needs of local communities*. Available at: [www.mediatrust.org/uploads/128255497549240/original.pdf](http://www.mediatrust.org/uploads/128255497549240/original.pdf)

MediaWise (2010) *Getting it right for now*, January. Available at: <http://www.pcc.org.uk/assets/441/Mediawise.pdf>

Milosavljevic, M. (2012) *The Right of Reply and Correction: The Slovenian Experience*, LSE Media Policy Project. Available at: <http://blogs.lse.ac.uk/mediapolicyproject/2012/04/18/the-right-of-reply-and-correction-the-slovenian-experience> ]

Nielsen, R.K. & Linnebank, G. (2011) *Public Support for the Media: A six-country overview of direct and indirect subsidies*. Available at: <http://reutersinstitute.politics.ox.ac.uk/publications/risj-reports.html>

Ofcom (2011), *Communications Market Report*. Available at <http://stakeholders.ofcom.org.uk/market-data-research/market-data/communications-market-reports/cmr11/>

Press Gazette (2011), *Top 40 UK News Websites*. Available at <http://www.pressgazette.co.uk/story.asp?storycode=47827>

Tomlinson, H. (2011) *Media Regulation: A Radical New Proposal, Part 3: The Media Regulation Tribunal*, 4 October. Available at: <http://inform.wordpress.com/2011/10/04/media-regulation-a-radical-new-proposal-part-3-a-media-regulation-tribunal-hugh-tomlinson-qc/>.