

## Regulating the Press

### A Comparative Study of International Press Councils

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This paper represents the views of the author rather than a statement of a collective view of the Reuters Institute

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## **The Author**

Lara Fielden is a Visiting Fellow at the Reuters Institute for the Study of Journalism. In November 2011 the RISJ, in association with the Department of Journalism at City University London, published her book *Regulating for Trust in Journalism: Standards regulation in the age of blended media*. It argues that the current regulatory framework for UK media – separating broadcast, newspaper and online content - has run its course and sets out proposals for a new regulatory settlement across the media. Lara Fielden's publications are informed by her experience in both journalism and regulation. Between 2005 and 2010 she was with Ofcom where she managed fairness and privacy adjudications and reviews of Ofcom's Broadcasting Code. Prior to Ofcom, Lara spent ten years as a news and current affairs producer with BBC television.

## **Acknowledgements**

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All mistakes are of course my own, and given the current rapid developments in press regulation (in particular in relation to the UK and Australia where at the time of writing reviews of regulation are taking place) information provided may be overtaken by new arrangements. However, I hope that the broad principles considered and developed in this report will provide a useful contribution to current debate and future reform.



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## Foreword

Much of the reaction prompted by the widespread concern about press ethics following the News of the World Scandal of 2011 has focused on questions of regulation. But that raises two problems. First, press ethics and culture are often far more deep rooted than any particular regulatory arrangements. Second, the debate on the future of press regulation in the UK has, so far, been largely inward looking and focused on domestic experience.

Lara Fielden's report provides the most up to date and wide ranging comparative study of press councils overseas. As such it is designed to meet multiple goals: to inform the Leveson Inquiry into the Culture, Practices and Ethics of the press; to stimulate the wider debate on press reform, in Britain and elsewhere; and to provide a reference document about key developments and trends in a range of countries (primarily in Australia, Denmark, Finland, Germany, Ireland and Sweden) that share in common a free press and a tradition of press councils.

The report speaks to one of the key goals of the Reuters Institute in offering rigorous comparative research to inform a key issue in journalism practice and policy. In terms of the UK Leveson-related debate it offers hard analysis and insight in an area often marked by entrenched positions and emotion. Its aim is not to provide a blue print for a new UK model, but there are many positive lessons from international experience. Overseas press councils differ greatly, as might be expected, reflecting their diverse press and political cultures. But many share a common genesis, as an industry response to the threat of statutory regulation.

There is much to learn from this report and I expect that it will become a reference document for those seeking to learn more about approaches to press regulation. Lara Fielden has managed a remarkable achievement in producing such a thorough analysis in a very limited amount of time. All those who read and benefit from this report will be in her debt as well as to the report's sponsor David Ure, whose generosity in supporting this report made its production possible.

David A L Levy  
Director, Reuters Institute for the Study of Journalism  
April 2012



## Executive Summary

In March 2012 the UK's Press Complaints Commission announced its 'transition to a new regulatory body'.<sup>1</sup> In doing so it recognised that the 'public and politicians have evidently lost confidence in the existing system and therefore the PCC must be replaced by a new, credible regulator' and set out proposals for a new regulatory model.<sup>2</sup> It also acknowledged that its future is dependent on the outcome of the Leveson Inquiry into media culture, practices and ethics which opened on 14 November 2011 and will result in 'recommendations on the future of press regulation and governance consistent with maintaining freedom of the press and ensuring the highest ethical and professional standards'.<sup>3</sup>

The purpose of this report is to contribute to the developing debate on UK press regulation through an examination of the ways in which press regulators in other countries approach key issues. It does not seek to provide an exhaustive account of international<sup>4</sup> press regulation nor a definitive evaluation of successes and failures overseas. Nor is its intention to identify, or formulate, a blueprint for reformed press regulation in the UK. Rather it seeks to consider a range of perspectives from international regulation and to examine where there are useful common values and purposes, and where there are equally instructive differences of approaches. This report also recognises that foreign Press Councils are all facing their own challenges in relation to, for example, new media and debates over the role and status of 'professional' and 'amateur' journalists. Their responses to these issues also provide interesting and developing lessons for the UK.

The study draws on the regulatory systems in six countries – **Sweden, Germany, Finland, Denmark, Ireland, and Australia** – each is a mature democracy, whose press is recognised as 'free' on a range of indices of press freedom, where freedoms to impart and receive information are recognised and valued, and each has a press (or media) council.

The staff of the Press Councils in each country have assisted the preparation of this report by providing an invaluable range of comparative information. Each of their chairmen and ombudsmen (where this function exists) have contributed interviews and journalist fellows from the Reuters Institute for the Study of Journalism have contributed journalist perspectives.<sup>5</sup> In addition, specific issues in **Canada, New Zealand, and Norway** are raised where they usefully illustrate or extend an area of press regulation under debate.

**Chapter 1 provides a thumbnail account of press regulation in each country** and this is supplemented by summaries of press regulation in each country which are annexed to this report for ease of reference. A table relating to the UK is also annexed, together with a broad overview for the purposes of 'at a glance' comparison.<sup>6</sup> The information provides a current understanding of press regulation but in relation to the UK and Australia may be subject to significant change following the outcome of current reviews of media regulation in these countries.

**Chapter 2 considers Press Council origins, budgets and funding, governance structures, membership, and independence.** An examination of

<sup>1</sup> <http://www.pcc.org.uk/news/index.html?article=NzcyNA==>.

<sup>2</sup> [http://www.pcc.org.uk/assets/0/Draft\\_proposal.pdf](http://www.pcc.org.uk/assets/0/Draft_proposal.pdf).

<sup>3</sup> <http://www.levesoninquiry.org.uk>.

<sup>4</sup> For the purposes of this report the words 'international' and 'overseas' are used interchangeably.

<sup>5</sup> Interviews conducted between late Dec. 2011 and early Mar. 2012.

<sup>6</sup> An overview grid is provided in Annex 1 and country grids in Annexes 2–8.

the origins of the Press Councils considered here finds that the decisive trigger to the establishing, or reform, of a Press Council is commonly a proposal for statutory regulation that results in a determined, pragmatic alternative response from the industry. Sources of funding are found to range from industry-only to industry combined with a state contribution. The difference between Press Councils that view state funding as an alarming opportunity for potential state influence, and those that see it as providing greater independence than reliance on industry alone, is explored.

The most common governance model for organisations considered here is to include a mixture of industry and independent representatives on the Press Council, although some also specifically include members of the judiciary. One, Germany, has a Press Council whose board is composed entirely of industry figures. However, it is noted that the simple arithmetic of a Press Council's board composition tells only part of the story. In some countries an additional industry-only, or industry majority, management board or panel is responsible for the Press Council's funding, constitution, code of practice and/or appointments to the Press Council itself. All the Press Councils operate a system of voluntary regulation except in Denmark where Press Council regulation is mandatory for Danish print and broadcast journalism. As online-only members join the Press Councils the report considers how far they are being given a seat at the governance and funding tables and how far current print-led models are sustainable in the longer term.

**Chapter 3 considers Press Council approaches to broadcasting and new media.** Two Press Councils, in Finland<sup>7</sup> and Denmark, regulate journalism across broadcast as well as print and online media, while the Australian government's convergence review is consulting on proposals for a cross-platform news regulator. In the interests of consistency Sweden is found to operate the same code of standards for both print and broadcasting but it is implemented by different bodies for each medium. Meanwhile, the explosion in new media on websites and blogs, and via Twitter and Facebook accounts, has thrown up enormous questions for Press Councils over whether and how far their regulation should extend in this area. Norway offers the example of press regulation extended to journalists' private accounts when content is connected to coverage in member publications. Rapid technological developments have also brought with them debates over distinctions between 'professional' and 'amateur' journalists and New Zealand is offered as an example of current debate on how far the privileges accorded to traditional media should be extended to new media.

**Chapter 4 examines whether Press Councils' jurisdiction is voluntary or mandatory and how far a more nuanced web of incentives and penalties may be developed.** The PCC's Chairman Lord Hunt, in the proposals referred to above, notably argued that 'The Press Complaints Commission has never been a regulator: it has never had any powers of investigation or enforcement and it has never been able to bind participants into long-term membership.' This report considers the presence or absence of such powers across the Press Councils examined here and identifies a spectrum of approaches to regulation. It first addresses models of voluntary self-regulation exemplified by Finland, Germany, and Sweden. Next it considers voluntary 'independent' regulation incentivised in statute and exemplified in Ireland and in reforms proposed by the Australian Press Council. Thirdly, it examines models of co-regulation, where statutes set out a combination of mandatory and self-

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<sup>7</sup> Finland's Council for Mass Media is referred to as a Press Council for the purposes of this report.

regulatory requirements, as illustrated in Denmark and in recent recommendations from the Australian Independent Inquiry into the Media and Media Regulation.

**Chapter 5 looks at the day-to-day work of Press Councils and Press Ombudsmen, including complaints, codes, adjudications, and sanctions.** Stated primary purposes may include defending the freedom of the press, promoting accountability, and, in some cases, promoting access to information for the public. In practice, councils may focus on complaint-handling as distinct from an active involvement in promoting wider standards.

The issue of who can complain to a Press Council is found to be central not only to the complaint-handling functions of the council but also to its wider relationship with the public. In the case of Sweden, Denmark, and Ireland, only a 'person affected' by the material can bring a complaint and the focus is therefore on issues of privacy and reputation. In Finland, Germany, and Australia the councils will accept a complaint from any member of the public, for example, in relation to misleading content or the failure to separate fact from opinion.

This chapter looks at the codes of standards of each country and how far these are simply consistent with the law and the extent to which they go beyond it. The roles of formal mediation and alternative resolutions are considered as well as the issuing of formal adjudications. For all Press Councils the chief sanction in the case of a code breach is to require publication of its decision, though in Sweden publications breaching the code must also pay an administrative fee. In Denmark enforcement can, in principle, involve a fine or prison term in the event of failure to publish an adjudication. In Ireland, however, the emphasis is on incentives for active compliance rather than sanctions. Finally, this chapter weighs Press Councils' credibility with the public and journalists, how they sit in the context of wider accountability mechanisms, and how far they offer transparency so that regulated content is readily recognisable by consumers.

**Chapter 6 considers Press Council approaches to the public interest in relation to privacy and defamation.** It finds that only the Australian and Irish Press Councils set out a definition, or principle, in relation to the public interest, though all of the codes considered here refer to the public interest within their rules, and it is weighed in deliberations over whether standards have been breached. In relation to privacy the starting point in the Swedish, Danish, and Finnish codes is to refrain from any publicity that could infringe privacy unless justified in the public interest; while in Germany, Ireland, and Australia privacy rights are recognised together with a caution against such rights preventing publication that is in the public interest. In relation to defamation the Irish Defamation Act sets out a particular link to accountable journalism and its demonstration through membership of the Press Council, while other countries also set out general defences in legislation relating to defamation.

**Chapter 7 draws together principles from the countries examined, in order to inform future considerations in the UK.** It highlights a democratic imperative for press regulation and suggests there are instructive cautionary lessons from some international Press Council experiences and, in others, approaches that usefully merit further consideration or development in the context of UK regulation.

- **A democratic imperative:** this report suggests that the cycle of threats of statutory intervention, followed by pragmatic industry accommodation (illustrated in the origins of each Press Council and of the UK's PCC), should be broken and the public interest in press regulation debated. It argues that press freedoms are not an end in themselves but serve a democratic function in the public interest.
- **Clarity over the purpose of press regulation and the status of a press regulator,** it is suggested, are essential to the UK debate.
  - **Distinguishing between ethical and legal regulation:** This report notes that in each of the countries considered, primary statutory regulation of the press, under the civil and criminal law, is separated from ethical regulation (whether voluntary or mandatory). Even in Denmark, where Press Council membership is mandatory, press regulation is an *alternative* to litigation. The report notes that the press regulators interviewed here caution against 'mixing and matching' between the two systems.
  - **Mandatory versus voluntary regulation, and an incentivised middle way:** The spectrum of press regulation is reviewed. None of the Press Councils considered is a statutory body with powers to impose fines or suspend a publication as is the case with a broadcasting regulator. This report notes that even in Denmark (where the co-regulatory combination of mandatory requirements and self-regulatory elements are backed by the sanction of a fine or imprisonment if a publisher or broadcaster fails to publish a decision) the Press Council has faced recent criticism in relation to press standards and the prominence of published adjudications, and the council will be subject to parliamentary scrutiny this year. At the opposite, and purely voluntary, end of the regulatory spectrum Canada demonstrates the spectre of wholesale withdrawal of publishers from the Press Council system, and Germany reveals failures to comply with sanctions, in a context where such lack of compliance is without consequence. Between these extremes Ireland offers a useful example of incentivised, active compliance recognised in statute but not subject to it. It is a system that is accountable to the industry and parliament but independent of both. In addition Australia and New Zealand offer examples of ways in which extended incentives are being explored. Meanwhile Sweden provides a model of financial sanction on a 'polluter pays' basis, although arguably the most significant sanction in relation to non-compliance within incentivised regulation is suspension or expulsion from the system and its associated benefits.
  - **Standards and complaint-handling:** The issue of whether Press Councils are chiefly engaged in complaint-handling or wider standards and compliance auditing and promotion is a live debate. Press Councils considered here may be actively involved in debates about press freedom and in journalism training and public discussion. However their chief function, together with Press Ombudsmen responsibilities, is related to complaint-handling and adjudication. Notably in Sweden, Denmark, and Ireland, only those 'personally affected' by content can bring a complaint while the German, Australian, and Finnish systems demonstrate a wider

relationship with the public on which a new press regulator in the UK may wish to build. Australia is interesting in taking the most significant steps towards the promotion of wider ethical standards and practices through impact monitoring and community dialogue and developments may merit future consideration and evaluation in the UK.

- **Independence:** This report finds that approaches to independence among Press Councils considered here vary widely. Germany and Finland offer examples of self-regulation which include funding from, but independence of, the state. The Swedish and Danish systems secure independence, in part, through judicial appointments. Ireland, unusually, has an independent member chairing the committee responsible for funding, independent members in the majority on its board, and an independent appointments committee. In Australia responsibility for its code of standards lies with the council which includes independent members rather than an industry-only panel. Reform in the UK may wish to take account of this range of approaches to securing the independence, and therefore the credibility, of a new regulatory body.
- **Transparency,** through kite-marking or badging, is a requirement being introduced by both the Australian and Irish Press Councils and would merit consideration in the UK under a system of voluntary incentives, both in order to differentiate regulated from unregulated journalism for consumers and to represent the commercial, legal, and ethical value of membership of the regulatory body for providers.
- **Territorial jurisdiction and convergence readiness:** Finally it is suggested, in the context of the challenges faced by each of the Press Councils considered here in relation to new media, that UK regulatory reform should ensure that it is prepared to meet the challenges of global providers and cross-platform convergence. In relation to territorial jurisdiction it is noted that each of the Press Councils faces this challenge in an increasingly global media environment, although some, for example Sweden and Denmark, rely on a system of registration of publications which provide basic criteria for, respectively, voluntary and mandatory regulation. The Irish example is found to offer a flexible solution which offers certain protections under its Defamation Act, links these to Press Council membership as a demonstration of responsible journalism, but is not prescriptive and recognises adherence to equivalent standards which might apply in the case of an overseas provider. In relation to convergence, it is argued that any future governance framework, funding structure, incentives, and sanctions would need to provide equitable arrangements for providers seeking the benefits, privileges, and opportunities of regulation irrespective of media platforms and traditions, and be able to accommodate existing, emerging, and future providers. In this context of rapid technological change the chief distinction under a reformed regulator, it is suggested, would not be between old and new media, nor professional and amateur journalists, but between regulated and unregulated content and the associated commercial and ethical value of active regulatory compliance.

## 1. Introduction

### 1.1 *A comparative study of Press Councils: purposes and approach*

July 2011 was a pivotal month for the UK press and its regulation. With the revelation that the voicemail of murdered schoolgirl Milly Dowler had been intercepted by the *News of the World*, the full 'Hackgate' scandal exploded. The subsequent days saw the closure of *News of the World* and withdrawal of News Corporation's bid for BSkyB; resignations at the top of both the Metropolitan Police and News International; the Commons Culture, Media and Sport Committee hearings including the appearances of Rupert and James Murdoch; and the Prime Minister's announcement of a two-part inquiry under Lord Justice Leveson.<sup>8</sup> The inquiry was charged with 'making recommendations for a new, more effective way of regulating the press', and secondly with a full investigation into 'wrongdoing in the press and the police'.<sup>9</sup>

Time was called on the body hitherto responsible for UK press self-regulation, the Press Complaints Commission (PCC), and its chairman Baroness Buscombe announced her departure following a storm of criticism over the PCC's handling of the 'phone-hacking' scandal over a number of years.<sup>10</sup> Vigorous debate on the rival merits of voluntary self-regulation and statutory alternatives ensued.

Lord Justice Leveson opened the inquiry hearings in November 2011 by observing 'The press provides an essential check on all aspects of public life. That is why any failure within the media affects all of us. At the heart of this Inquiry, therefore, may be one simple question: who guards the guardians?'

**The basic purpose of this report is to ask the simple question 'who guards the guardians elsewhere?'** It answers that question by considering the ways in which other models of press regulation may inform debate in the UK. How do different approaches to Press Council purposes, membership, funding, codes of ethics, and complaints-handling provide interesting ideas and points of comparison and contrast? Are Press Councils statutory or voluntary? What sanctions do they have at their disposal and how do they view 'the public interest'? What impact do they have on press standards and what have been their successes and failures?

However, this approach brings with it the suggestion that frameworks for press regulation overseas are static models from which we may draw straightforward lessons. The reality is that Press Councils around the world are grappling with profound challenges. The role and status of new media; the privileges and responsibilities of 'professional' and 'amateur' journalists; converging content across print, broadcasting and online platforms; financial austerity; the withdrawal of significant publications from voluntary regulatory systems; and debates over punitive sanctions – these are just some of the issues testing Press Councils around the globe. And while the phone-hacking scandal triggered the current scrutiny of domestic press regulation, beneath the surface this same range of challenges has been ripening in the UK. Exploration of press regulation in the range of countries considered here

<sup>8</sup> <http://www.publications.parliament.uk/pa/cm201011/cmhansrd/cm110713/debtext/110713-0001.htm>.

<sup>9</sup> The full terms of reference subsequently set out can be found at: <http://www.levesoninquiry.org.uk/terms-of-reference-for-judge-led-inquiry>.

<sup>10</sup> <http://www.pcc.org.uk/news/index.html?article=NzI4Mw==>.

provides not so much a window on a foreign world, as a mirror in which an array of common problems are reflected back at us.

**A second and complementary purpose for this study is therefore to identify the challenges facing press regulation overseas and to look at the ways in which Press Councils have been addressing these and how they are preparing to meet them in the future.** In this way the report seeks to inform debate in the UK, both in relation to ethical regulation, as a response to the phone-hacking scandal, and in relation to wider and longer-term trends and developments.

The purpose of this study is not to set out an exhaustive account of overseas regulatory systems, nor to identify a 'blueprint' of perfect regulatory structures, rules, or proposals. It readily recognises that systems of regulation cannot be uprooted from their political, historical, and cultural contexts which may include, for example, different degrees of competition between the press, wider frameworks of journalistic accountability, and issues of media ownership and plurality.<sup>11</sup> Consideration of other regulatory frameworks can, however, usefully point up common principles around which different democracies coalesce as well as the different ways in which they seek to realise them.

**My third purpose, therefore, is to set out, in light of the practices and challenges illustrated overseas, some reflections on potential future developments in the UK.** These are found in section 7.

By way of final introduction it is worth noting the elasticity with which the term 'press regulation' is used within the current debate in the UK, and in different national contexts.

First, there is a challenge in defining 'the press' before going on to address its regulation. Most Press Councils, notably the oldest considered here, established in Sweden in 1916, began life regulating the printed publications from which they took their name. More recently regulation has extended to online versions of newspapers and magazines, and all the councils considered here have now extended the offer of membership to purely online providers. Some however go further and regulate 'the press' in the wider sense of 'journalism' or 'news and current affairs' across media platforms including broadcasting. All are grappling with definitions of journalism and editorial control across electronic media and some are now regulating Twitter and Facebook accounts as well as blogs.

Second, the term 'regulation' is used in various ways in relation to the Press Councils considered here. 'Regulation' by a Press Council is generally an ethical complement to the legal requirements, but may be mandatory or voluntary. It may have a range of sanctions at its disposal. It may be largely limited to complaint-handling or actively concerned with press standards more widely. It may lie anywhere on a spectrum ranging from 'self-regulation' by industry; through 'independent regulation' where representatives of the public provide a significant presence; through incentivised regulation where voluntary press council membership is recognised in statute; through to 'co-regulation' which includes elements of statutory compulsion; with many shades of regulation between and beyond. This report does not attempt to harden these definitions but rather it seeks to reflect how the Press Councils view themselves, and to illustrate the

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<sup>11</sup> The European Journalism Centre, a non-profit journalism institute, provides profiles on media ownership and plurality, and regulatory frameworks, in each of the European countries considered here [http://www.ejc.net/media\\_landscape](http://www.ejc.net/media_landscape).

resourcefulness with which they combine different elements along this spectrum to suit their particular contexts.

The report draws on a series of interviews conducted between late December 2011 and early March 2012 with each of the Press Council chairmen, and Press Ombudsmen where this function exists, of the countries under examination. In addition current or former journalist fellows from the Reuters Institute for the Study of Journalism<sup>12</sup> have also provided journalists' perspectives. Each of these interviews has been invaluable in providing an understanding not just of complex regulatory structures, but also how regulation works in practice and insights into where the most significant challenges arise. For each of the countries under consideration a range of background information has generously been provided by staff in each Press Council. The interviews are supplemented by a range of case studies to illustrate examples of regulatory challenges and complaint adjudications.

## *1.2. Criteria for the selection of countries and issues*

This research draws on the regulatory systems of six countries, Sweden, Germany, Finland, Denmark, Ireland, and Australia,<sup>13</sup> and compares them in relation to a range of characteristics and issues. The criteria used in the selection of countries are as follows. Each country is a mature democracy, with a 'free press' according to press freedom indices.<sup>14</sup> Each recognises the importance of the freedom to impart and receive information; of balancing competing rights for example in relation to privacy and reputation; and of wider standards and accountability. Each has a national Press Council (and in the case of Sweden and Ireland a Press Ombudsman working in conjunction with the Press Council). Each, however, reveals a different approach to press regulation, for example, in relation to statutory or non-statutory powers; the balancing of industry and independent board members; funding; sanctions; and, whether its remit encompasses broadcasting as well as print and online content.

In addition to the six countries referred to above, the report refers to particular issues in other countries, namely Canada, New Zealand, and Norway, as and where these are relevant. It is confined to consideration of countries that follow the Press Council model. This is not the case in the United States, for example, where Press Councils have been held to provide a potential restriction to the First Amendment guarantee against any law 'abridging the freedom of speech or of the press'.<sup>15</sup> Although a few individual American states have established Press Councils,<sup>16</sup> the general model is for individual newspaper complaints mechanisms or ombudsmen.<sup>17</sup> In France the press is subject to the law and no Press Council currently exists, though there are proposals to establish one in the future.<sup>18</sup>

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<sup>12</sup> <http://reutersinstitute.politics.ox.ac.uk/index.php?id=384>.

<sup>13</sup> Annex 1 provides an 'at a glance' summary of press regulation in these countries plus the UK.

<sup>14</sup> The Reporters Without Borders Press Freedom Index <http://en.rsf.org/press-freedom-index-2011-2012,1043.html> provides an annual world ranking based on questions around physical violence or threats or harassment of journalists (old and new media); censorship and self-censorship; media ownership and control; judicial, business and other pressures. The specific ranking for each country is provided in the relevant Annex though all are in the range of countries with a 'free press'. Similarly the Freedom House index ranks press freedom: <http://www.freedomhouse.org>.

<sup>15</sup> <http://www.house.gov/house/Constitution/Amend.html>

<sup>16</sup> E.g. Washington News Council in Seattle <http://wanewscouncil.org>. Minnesota News Council operated for 41 years but closed in Feb. 2011 for lack of funding <http://news-council.org>.

<sup>17</sup> E.g. the *New York Times* public editor <http://topics.nytimes.com/top/opinion/thepubliceditor/index.html>.

<sup>18</sup> <http://apcp.unblog.fr>.

It is not the purpose of this study to discuss in detail the regulatory arrangements for the press in the UK. However these are broadly set out, together with an appraisal of the recent history of UK press regulation and the wider context of media regulation in the UK, in the RISJ publication *Regulating for Trust in Journalism: Standards Regulation in the Age of Blended Media*.<sup>19</sup> The detail of the governance and complaint-handling functions of the PCC were also comprehensively set out in its then director's submission to the Leveson Inquiry.<sup>20</sup> Subsequent transitional arrangements towards a new regulatory body were also set out by the PCC in its statement published in March 2012.<sup>21</sup> A table summarising key features of the UK system (as they apply at the time of writing) is provided in Annex 8 to aid comparison with the six countries under consideration.

### 1.3. Press Council country sketches<sup>22</sup>

The following sketches provide thumbnail accounts of regulation in each of the six countries under consideration and particular areas of interest. Annexes 2–7 provide a range of individual country information including when and why their Press Councils were set up, how much they cost to run and who pays for them, whether they are voluntary or statutory bodies, their purposes, governance structures, powers, and complaint-handling functions. As noted, Annex 8 provides relevant information on the UK for comparison.

#### 1.3.1. SWEDEN: A CENTURY OF EXPERIENCE AND A FINANCIAL PENALTY<sup>23</sup>

Established in 1916, the Swedish Press Council is notable as one of the oldest systems of press regulation. The system is self-regulatory but sits within a detailed legal framework. The first Freedom of the Press Act dated back to 1766 and the current Act contains a number of protections for journalists. The Press Council is funded by industry with an annual budget of around £500,000<sup>24</sup> and employs around five members of staff. The council includes a combination of judicial board members (the chair and vice chairs must all be judges), as well as industry and independent members, and has jurisdiction over print and online journalism. Only those personally affected by a publication can bring a complaint.

Sweden's Press Council is complemented by the Press Ombudsman who is the public face of the regulatory system and a first filter for complaints. The ombudsman cannot uphold a complaint and instead has powers to dismiss it as out of remit or without merit, take steps in order to resolve it, or send it to the council with a recommendation to uphold.

Sweden is unique among the countries under examination in that there is a financial cost imposed on an upheld complaint. Sometimes referred to as a fine, it is an administrative fee that is imposed as a contribution to the funding of the Press Council and is tiered depending on the circulation of the publication (around £3,000 is the maximum imposed). Recent debate in Sweden has considered whether to make fines more punitive, though there is concern that such moves could result in the tabloid press leaving the system

<sup>19</sup> <http://reutersinstitute.politics.ox.ac.uk/publications/risj-books/regulating-for-trust-in-journalism-standards-regulation-in-the-age-of-blended-media.html>.

<sup>20</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2012/01/Witness-Statement-of-Stephen-Abell.pdf>.

<sup>21</sup> <http://www.pcc.org.uk/news/index.html?article=NzcyNA==>.

<sup>22</sup> [http://www.ejc.net/media\\_landscape](http://www.ejc.net/media_landscape) provides an overview of the media landscape, including media ownership and dominant publications, in the European countries considered here.

<sup>23</sup> Annex 2 summarises press regulation in Sweden.

<sup>24</sup> Approximate sterling equivalents are provided in this report. Figures in individual currencies are provided in each annex.

or seeking to circumvent it by offering complainants financial settlements to get them to drop complaints.

### 1.3.2. GERMANY: PEER REGULATION<sup>25</sup>

Germany could claim to be closest to ‘self’ regulation of all the countries considered here, in that the industry regulates itself with only publishers and journalists sitting on the Press Council board and no independent representatives. However, whilst the majority of its budget is met by industry, up to 49% can come from the government on a ‘no strings attached’ basis (currently 30% state funding is accepted).

Despite the industry-only composition of the council, its relations with the publications it regulates have at times been turbulent. In 2007 the German Press Council was taken to court by one magazine following a public reprimand, on the basis that the council had harmed the magazine’s reputation. In the same year a Press Council decision published in an offending newspaper was referred to in the accompanying headline as ‘Mad!’. In addition there has been public criticism that decisions are made behind closed doors and without the input of independent perspectives.

Germany does not restrict the criteria of complainants, anyone can complain about any aspect of press ethics. This freedom has been seized by ‘watchblogs’ set up to monitor the German press and hold it to account. These have succeeded in bringing complaints to the Press Council and illustrate a vibrant context of wider media accountability.

### 1.3.3. FINLAND: VOLUNTARY CROSS-MEDIA REGULATION<sup>26</sup>

Finland offers another model of a voluntary system of press self-regulation, this time across media platforms. The Council for Mass Media (CMM) has regulated news and current affairs in print and in broadcasting since it was established in 1968, and has more recently added regulation of related online media and online-only providers. The Council consists of a majority of representatives from the media, together with those from academia and the public. For broadcasting it provides an ‘ethical complement’ to licensing requirements.

As in Germany, the Council accepts state funding to cover 30% of its budget and its chief sanction, common to the other Press Councils considered in this report, is the requirement to publish a decision to uphold a breach of its code (in the Finnish context this is in print, broadcast, or online).

### 1.3.4. DENMARK: STATUTORY COMPULSION AND INCENTIVES<sup>27</sup>

Denmark provides the closest to a statutory model in this study, although ‘co-regulation’ is a more accurate term since the system also includes key self-regulatory elements. The regulation of print and broadcast journalists is mandatory. All publications circulated more than twice a year, and all broadcasters holding a Danish licence, are subject to Press Council regulation. However, while the legislation requiring regulation refers to the requirement for ‘sound press ethics’, it does not specify what these are to be. The code of rules is the responsibility of the Press Council, as is the administering of a right to reply / correction. In addition there are strong incentives for online providers voluntarily to register with the Press Council. In exchange for submitting to its regulation, and compliance with its rules and decisions,

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<sup>25</sup> Annex 3 summarises press regulation in Germany.

<sup>26</sup> Annex 4 summarises press regulation in Finland.

<sup>27</sup> Annex 5 summarises press regulation in Denmark.

online media gain the rights of traditional journalism, for example, in relation to the protection of sources.

The chair of the Danish Press Council must be a lawyer, and in practice is a judge. However, while the basis for the Press Council's authority is statutory, and failure to comply with the requirement to publish its decisions could in principle result in a fine or prison sentence of up to four months, its remit is narrow. Only the person affected by the material can make a complaint and the grounds for complaint are limited to issues of press ethics affecting them personally (for example, privacy) or to the legal right to correct factual inaccuracies if they cause significant damage.

Convergence issues have prompted Danish debate around whether further privileges afforded to traditional journalism, for example, press subsidies, should be extended to new media. There has also been discussion on whether a system of certification should be introduced in order clearly to identify those providers that have, and have not, volunteered for regulation. The parliamentary Committee on Legal Affairs and Culture has expressed concerns about the impact of the Press Council<sup>28</sup> and in 2012 will consider its future.

#### 1.3.5. IRELAND: STATUTORY RECOGNITION AND INCENTIVES<sup>29</sup>

Ireland has the most recently established Press Council of those considered in this report. It was set up in 2007, with the Press Ombudsman following in 2008. Ireland is a print and online regulator, regulating both online versions of newspapers and magazines and stand-alone 'pure players'.

Ireland's is a purely voluntary system with a twist. The Irish Defamation Act recognises the existence of the Press Council and sets out how the courts may take that membership into account when considering public interest defences in defamation cases. The framework under which the Irish Press Council has been established thus identifies certain privileges accorded to the press and then recognises Press Council membership as a demonstration that a publication is worthy of those privileges. If a publication wishes to mount a public interest defence based on the responsibility and accountability of their journalism, they may use membership of the Press Council to demonstrate that ethical approach.

Also recognised in the Defamation Act is the Press Ombudsman who is tasked with conciliating or (unlike Sweden) adjudicating on complaints. The Press Council is responsible for hearing appeals of ombudsman decisions, oversight of the professional principles embodied in the Code of Practice and with upholding freedom of the press. As with Denmark and Sweden, only the person affected by a publication may bring a complaint, though this criteria is interpreted with a fair degree of latitude in Ireland.

#### 1.3.6. AUSTRALIA: RADICAL RETHINKING<sup>30</sup>

Australia offers a radical vision of the future. Its government has established a Convergence Review<sup>31</sup> to consider policy and regulation across media and communications in Australia. It has engaged in widespread consultation and has proposed a single converged regulator for news and current affairs across all electronic media, alongside a number of fundamental cross-media reforms including proposals to dismantle the current licensing model for broadcast

<sup>28</sup> <http://www.ft.dk/samling/20111/almdel/kuu/bilag/130/1085696/index.htm>.

<sup>29</sup> Annex 6 summarises press regulation in Ireland.

<sup>30</sup> Annex 7 summarises press regulation in Australia.

<sup>31</sup> [http://www.dbcde.gov.au/digital\\_economy/independent\\_media\\_inquiry/convergence\\_review](http://www.dbcde.gov.au/digital_economy/independent_media_inquiry/convergence_review).

channels. As part of the review it established an independent inquiry<sup>32</sup> to look specifically at current media codes of practice in Australia, the impact of technological change on news media, and ways of substantially strengthening the Australian Press Council. The independent inquiry's report was published in February 2012<sup>33</sup> and recommended an 'independent statutory body' to oversee the enforcement of standards of the news media across print, broadcast, and online platforms (discussed in section 4.3). The new body would replace the Australian Press Council and the news and current affairs standards functions of the Australian broadcasting regulator (the Australian Communications and Media Authority, ACMA). The recommendations are to be considered by the Convergence Review which reports to the Australian government at the end of March 2012.

At present the Australian Press Council implements voluntary regulation for print and online journalism with a mix of publisher, independent, and 'independent journalist' members on its board. It is currently engaged in a number of reforms which it sees as laying the foundations of a potential future transformation into a cross-platform media standards council. It has introduced reforms including safeguarding its funding by placing this on a new, rolling biennial basis in order to reduce its vulnerability to withdrawal from the Press Council of disaffected publishers. It proposes strengthening its authority on a contractual basis and has floated the suggestion of the possible introduction of a referrals panel to consider fines (albeit with reservations that the power to fine could make the complaints process unduly adversarial). It has plans to increase transparency for consumers, with a 'kite-mark' system to denote membership and is considering how to incentivise membership. For example, its proposals seek to make the exemption from Australia's Privacy Act (currently a privilege extended to all professional journalists in relation to data protection exemptions) conditional on Press Council membership. Overall it proposes eventual transition to a unified system in which the principal responsibilities for journalism across all media are vested in an Independent Council.

#### 1.3.7. INFORMING THE DEBATE: CANADA, NEW ZEALAND, AND NORWAY

Although not considered in detail, live issues in the self-regulatory Press Councils of Canada, New Zealand, and Norway are considered where they illuminate wider debate. Canada, which has had a system of separate Press Councils in individual territories, is grappling with a haemorrhaging of publications from the regulatory fold, and associated closure of Press Councils. New Zealand's Law Commission is engaged in a public consultation in order to consider whether to extend the legal privileges and exemptions which currently apply to traditional news media to some new publishers; and whether to require new publishers to be held accountable, via a regulatory regime, to the types of journalistic standards that have traditionally applied to news media. Norway, whose Press Council dates back to 1910, is finding new ways to include new media membership and using a video-on-demand service to open observation of its meetings to the wider public.

<sup>32</sup> [http://www.dbcde.gov.au/digital\\_economy/independent\\_media\\_inquiry](http://www.dbcde.gov.au/digital_economy/independent_media_inquiry).

<sup>33</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0006/146994/Report-of-the-Independent-Inquiry-into-the-Media-and-Media-Regulation-web.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0006/146994/Report-of-the-Independent-Inquiry-into-the-Media-and-Media-Regulation-web.pdf).

## 2. Origins, Funding, and Governance

### 2.1. Press Council origins

While, as we shall discover, the Press Councils considered here adopt many highly distinct approaches to their functions, frameworks, and powers, and while each has been established against a very different historical, political, and cultural backdrop, a common theme emerges in the form of the galvanising effect of the threat of statutory intervention. A recognition of the importance of ethics and accountability, and debates between publishers and journalists, may be significant. However the decisive trigger to the establishing, or reform, of a Press Council is commonly a proposal for statutory regulation that is held to threaten press freedom and results in a determined, pragmatic alternative response from the industry. The following accounts consider the establishing of each Press Council chronologically.

The oldest Press Council considered here was established in 1916 in **Sweden**. It was originally set up as a forum to adjudicate on conflicts within the industry, namely between publishers and editors about the presentation of news. Consideration of public complaints came gradually, and they were initially admitted only on payment of a considerable fee. Debate over the introduction of statutory limits to press freedom led to reforms in 1969. Accountability to the public was prioritised, charges to complainants were removed, and a Press Ombudsman and lay council members introduced. For the Swedish Press Ombudsman Ola Sigvardsson,<sup>34</sup> the starting point for consideration of Swedish press regulation was that ‘Among the Swedish publishers there is a desire to behave decently, to behave in an ethical way. I think many publishers just think it’s a good thing to do.’ However, an interplay between the state flexing its muscles and the Press Council developing its functions is also an important and recurrent backdrop to debates on ethics, as Sigvardsson noted:

*We have had a discussion among publishers for more than 150 years and this discussion has been stimulated you might call it from the fact that politicians have discussed many times to reduce the freedom of the press in different ways. So it was in the 1860s and 1910 and the 1960s and so on. And every time the publishers have got together and discussed [this] and said ‘OK, we must sort this ourselves’. I think it’s been very, very grounded in the Swedish tradition for a long, long time . . . The last time we had that kind of situation I think it was in the ‘60s . . . and the newspaper publishers association as it was then acted and proposed this system with the Press Ombudsman. They also changed the people who are sitting in the Press Council from being press members to a mix . . . and there was no legislation at that time.’<sup>35</sup>*

In post-war **Germany** the Press Council was the product of a reaction against censorship in order to safeguard freedom of speech. It too represented an industry answer to the threat of statutory regulation. Established in 1956, and modelled on the UK’s then Press Council, it was a response by journalists and publishers to proposals for a Federal press regulator.<sup>36</sup> Between 1982 and 1985 its activities were suspended after the *Kölner Express* refused to publish an adjudication. However, following a revived commitment by industry to its

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<sup>34</sup> <http://po.se>.

<sup>35</sup> Interview, Jan. 2012.

<sup>36</sup> The draft 1952 Federal Press Act set out plans for a federal press regulator.

authority, it was reconstituted in 1985 with new articles of association and guidelines for journalists.

**Finland's** model of press regulation emerged from a period of post-war domination by the Soviet Union and self-censorship practised by journalists in relation to any criticism of their dominant neighbour. The 1950s saw a gradual shift away from a party-political press and towards a more news-based commercial press. The 1960s and 1970s also saw the advent of the 'yellow press' specialising in sensational gossip about the lives (often the sex lives) of Finnish celebrities. *Hymy* (Smile), launched in 1959, went furthest in raising controversy over intimate coverage of private lives. This resulted in the introduction of a privacy provision into the Finnish Criminal Code, known as Lex [Law] *Hymy*, in 1974. It was against the backdrop of concern about standards in the press, and moves towards legislation, that in 1968 a council was established by publishers and journalists across media.

The Council for Mass Media (CMM) is a self-regulatory framework responsible for ethical principles in relation to news and current affairs across print, television, radio, and, more recently, online content. According to CMM chairman Risto Uimonen,<sup>37</sup> the moves towards a privacy law had a galvanising effect in bringing together the media to push for self-regulation as a defence against further statutory measures. In a small country, he argued, economies of scale and a desire for consistent regulation across media drove the establishing of a cross-platform body:

*The journalistic culture in this country is very developed, in the sense that the newspaper readership is very high. And in 1968, we only had the Finnish Broadcasting Corporation, and . . . one commercial company, that hired airtime from the Finnish Broadcasting Corporation . . . it was easy to agree on the principles because the National Union of Journalists and the Publishers Organisations, they wanted to start the self regulation system. So, it was very easy for the YLE (the Finnish Broadcasting Corporation) to join them. And there existed a consensus that we should do it together, because the good standard of the press cannot differ from one medium to another.<sup>38</sup>*

**Danish** press regulation emerged from tensions between journalists and publishers and, like Finland, its answer was to regulate across both the printed press and broadcasting. The model it developed, however, was very different. 1960 saw the first code for journalists, established by the association of newspaper publishers, on court reporting. In 1964 the association set up a voluntary self-regulating Press Council for print in order to monitor compliance with the code. However the Council was not supported by Danish journalists' associations which wanted a code that would secure protection for freedom of the press and safeguards for journalists in relation to duties that might conflict with their consciences or convictions. The journalists' associations also rejected publishers' insistence on majority representation on the council.

In 1990 the Danish Media Liability Committee, chaired by a justice of the Supreme Court and representing all areas of the media, proposed ethical guidelines incorporating these freedoms and safeguards as well as a complaints authority for the media. The Media Liability Act the following year created the legal basis for the cross-media Press Council, supported by industry. The Act provides for mandatory regulation of print and broadcast

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<sup>37</sup> <http://www.jsn.fi/jsn/jsn-jasenet>.

<sup>38</sup> Interview, Feb. 2012.

media, but only in relation to specific areas of press ethics and a right to 'reply to information of a factual nature' which might cause significant damage, and in return for significant protections. As its chairman Jytte Scharlin<sup>39</sup> explained, the framing of the Act was viewed as an alternative to wider statutory intervention:

*Before the adoption of the Media Liability Act, the Association of Danish Journalists was not part of the press ethical system, and not all of the printed media had joined the system. This was considered a weakness to the system. . . It was assessed that the existence of a press ethical system would probably reduce the need for the use of general legislation in relation to the mass media.*

The most recent Press Council to be set up among the countries considered here is **Ireland's**. The Press Council was established in 2007 and the Irish Press Ombudsman the following year. Just as in Germany, it was opposition to the threat of statutory regulation that brought both bodies into being. The Minister for Justice established a legal advisory group on defamation which in 2003 recommended that the defamation laws be reformed and a statutory Press Council established. The Irish Press Council explains that 'While the newspaper and magazine industry welcomed news that the defamation laws would be reformed, there was significant opposition to the concept of a statutory Press Council. Instead the industry agreed a model for an independent press complaints mechanism.'<sup>40</sup>

**Australia's** Press Council (the APC) was established in 1976, again prompted by suggestions of a statutory intervention. The first moves for a Press Council had come in the 1940s when a branch of the Australian Journalists' Association (AJA) drafted a code and proposed a standing committee on newspaper ethics able to require the publication of decisions, in order to make press proprietors as accountable as journalists. In 1945 the Australian Newspaper Publishers Association began negotiations with the AJA which resulted in the Australian Newspaper Board (a precursor to the Press Council) being established, although in the next eight years it met only once.

Debate on a Press Council continued in the 1950s and 1960s, rejected by such proprietors as Rupert Murdoch, but pushed for by the AJA. In 1975 the Minister for Media, Dr Moss Cass, circulated a report on options for reform which suggested that a voluntary press council would be 'desirable' and included a wider range of options for debate, including a system of newspaper licences. Reference to the latter created a furore in the press and he was forced to issue a press release two days later to counter an 'hysterical over reaction',<sup>41</sup> as he recalled in 2011.<sup>42</sup> Faced with this potential, or perceived, threat of statutory intervention the response from the industry was a rapid move to revive the suggestion of a National Press Council, which was established the following year.

Australia is currently in the throes of significant debate on radical reform across the Australian media landscape which is considered further in Chapter 4. As part of this process the Australian Press Council is taking a root-and-branch look at its primary purposes and how it serves the public.

<sup>39</sup> <http://www.pressnaevnet.dk/Om-Pressen%C3%A6vnet/N%C3%A6vnets-medlemmer.aspx>.

<sup>40</sup> <http://www.presscouncil.ie/about-the-press-council/sub-sub-1.19.html>.

<sup>41</sup> A history of the Australian Press Council is provided in Deborah A. Kirkman, *Whither the Australian Press Council? Its Formation, Function and Future* (1996): <http://www.presscouncil.org.au/uploads/52321/ufiles/press-files/whither-the-australian-press-council.pdf>.

<sup>42</sup> <http://www.abc.net.au/unleashed/3026076.html>.

## 2.2. Budgets and funding

The issue of Press Council funding goes to the heart of related questions about independence and credibility. The examples of sources of funding illustrated here offer intriguing insights into how Press Councils view their functions, and how divergent solutions have emerged as they wrestle with the issue of dependence on funders. Where state funding is accepted, questions of possible state influence arise; where industry funds the Press Council, questions arise over industry influence and regulatory vulnerability to publishers withdrawing funds.

On the face of it, the clearest divide is between those countries that accept state funding, namely Germany and Finland, and the rest that do not; however there are no easy relationships between state funding and state leverage. Germany and Finland offer the models closest to self-regulation, with decision-making on their boards by industry-only, or an industry-majority, members respectively and ensure that the state contribution to funding is on a 'no-strings' basis. Meanwhile the Australian Press Council is currently floating the idea of accepting a proportion of state funding precisely in order to increase its independence of industry, and reduce its dependence on publishers as the sole source of funding. In Denmark where Press Council regulation has a statutory footing and is mandatory for the print and broadcast media, it is the media that provide the funding not the state.

There are a range of Press Council budgets demonstrated in the countries considered here, some more generous than others in relation to their populations and numbers of complaints dealt with. Figures for each country's most recent budgets are provided in the country annexes attached to this report. However, any easy comparisons between budgets (and numbers of complaints) should be avoided. Australia's annual budget is, on the face of it, highest of the Press Councils considered here, at around £660,000 (though still less than a third that of the UK's PCC). Yet, as we shall see, it argues that this needs to be doubled if its ambitions in relation to press standards (as opposed to only a complaint-handling function) are to be achieved. Germany's population is the highest (82 million), as is the number of complaints it receives each year (around 1,200) and a glance at its annual budget might suggest that it is proportionately least generous at around £635,000. However, the German Press Council's eight staff members (double the number in most other Press Councils) are provided by publisher and journalist organisations and do not therefore impose a cost on the Press Council.<sup>43</sup>

Also noteworthy is that the impact of economic austerity can already be identified in the Press Council budgets. For example, Sweden's funding has not increased since 2008. Ireland's has fallen in the last year. Australia has only recently remedied a significant fall in funding in recent years. Meanwhile Finland has seen a fall in the proportion of funding contributed by the state, and the introduction of 9% VAT on newspaper subscriptions.

**Sweden** is the only country considered here where there is a financial penalty attached to an upheld complaint and this is built into the funding structure. Nominally journalists and publishers together fund the Press Council and Press Ombudsman; however, contributions from journalist organisations are symbolic rather than onerous. Funding is divided between the Swedish Newspaper Publishers' Association (75%); the Magazine

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<sup>43</sup> Numbers of complaints and their outcomes should also be compared with particular caution, as discussed in the introduction to section 5.4 below.

Publishers' Association (5%); the Swedish Union of Journalists (under 1%); and the National Press Club (under 1%). Each of the four organisations nominate two representatives who sit on the Committee for Media Cooperation which is responsible for funding the Press Council (and as we shall see has wider responsibilities including Press Council appointments and standing instructions).

It is the balance of the budget, around 20%, which is funded by a unique model. This is provided by the 'administrative fees', sometimes referred to as administrative fines, levied on publications that are subject to upheld complaints (and explored further below in relation to sanctions in section 5.4).

The German and Finnish models both currently accept 30% state funding though within different regulatory models. The **German** Press Council is a not-for-profit association and its budget is co-financed by industry, with publisher organisations contributing 55% and journalist organisations 15%, and the government providing the remaining 30%. Funding from the government was established in 1976 but, due to acute awareness of the potential for state interference, it is provided on a 'no strings' basis under the Law for Guaranteeing the Independence of the Complaints Committee of the Press Council 1976<sup>44</sup> and state funding cannot exceed 49% of the Press Council's income. As former RISJ fellow Cornelia Fuchs<sup>45</sup> observed, this should be seen in the context of a strong tradition of state funding for cultural organisations in Germany which makes such a contribution commonplace and is structured so as to ensure that 'there's no political influence on any post [within the Press Council]'.<sup>46</sup> Guaranteeing the independence of the Press Council, its chairman Bernd Hilder<sup>47</sup> explained, is in the interests of the state:

*The state wants to secure independence from the industry and fear that without a grant the publishing houses or their associations would dominate the decisions in the Complaints Committees. They also support the German Press Council because they regard our work as a 'pre-judicial mediation' that diminishes the amount of complaints [that go] before court.<sup>48</sup>*

Even with state funding the Press Council is struggling to meet the demands of increasing numbers of complaints (discussed below in section 5.4). Bernd Hilder observed: 'At the moment the budget is our main challenge. We do have more complaints and more work but money is tight and we need to discuss additional financial sources.'

**Finland** also operates a regulatory model which includes state assistance. The council is funded through annual fees from its management group. This group is made up of professional organisations of print publishers and journalists, and of broadcasters including the Finnish Broadcasting Corporation YLE. These organisations are 'co-signers', and have committed to observe the Council for Mass Media's Agreement, detailing its functions and jurisdiction, and have agreed to influence their members to do so. The agreement states that 'The Management Group may accept state assistance in support of the functions of the Council.'<sup>49</sup> When the Council was

<sup>44</sup> [http://www.presserat.info/index.php?id=224&no\\_cache=1&type=98](http://www.presserat.info/index.php?id=224&no_cache=1&type=98).

<sup>45</sup> <http://www.stern.de/politik/ausland/die-woechentliche-kolumne-von-cornelia-fuchs-very-british-1503354.html>.

<sup>46</sup> Interview, Jan. 2012.

<sup>47</sup> <http://www.presserat.info/inhalt/der-presserat/mitglieder.html>.

<sup>48</sup> Email interview, Feb. 2012.

<sup>49</sup> [http://www.jsn.fi/en/Council\\_for\\_Mass\\_Media/basic-agreement](http://www.jsn.fi/en/Council_for_Mass_Media/basic-agreement).

set up in 1968 this accounted for 50% of the budget and Chairman Risto Uimonen saw it as a quid pro quo for saving money that might otherwise have to be found within the court system:

*On the part of the state or government, they see that if we did not have this system of self regulation, the alternative to that would be [for complainants] to go to the court. And if ordinary people would go to the court, and they don't have money to pay their bills, they will come back to the state and apply for some kind of assistance. And in the end, the state would have to pay those court bills. That's why the Minister of Justice is financing us to avoid larger payments.<sup>50</sup>*

More recently state funding in Finland has reduced to 30% of the budget as part of austerity measures. Long-term, the current chairman is not averse to the Council becoming entirely self-funding because of the inevitable suggestion (one he denies) 'that this state funding has an impact on our decisions'. Notably in Finland, while the state gives with one hand in contributing to the funding of the CMM, it has taken with the other. First it levied VAT on single newspaper sales and now has introduced 9% VAT on subscription sales from January 2012. This is significant, Risto Uimonen observed, because the culture in Finland is to subscribe to newspapers rather than to buy single copies and the effect on subscriptions, and newspapers' incomes, has yet to be seen. Finnish media have linked the VAT increase to extensive recent media coverage about politicians, their probity, and issues relating to potential corruption and sexual impropriety. According to Uimonen this is virtually impossible to prove, but he observed: 'I'm tempted to think that this VAT introduction was part of the backlash, or the strike back, on behalf of the politicians.'

The issue of state funding as a safeguard against over-dependence on industry is a debate which is currently live in **Australia**. The Australian Press Council has until now been funded by its constituent bodies, i.e. publisher signatories which include trade associations and large publishers.<sup>51</sup> Until 2010, in reality more than 50% of the total funding was provided by News Limited. The APC is acutely aware that the Council is vulnerable to withdrawal by disaffected publishers. Indeed between 1980 and 1987 News Limited withdrew from the Council after several adverse adjudications and more recently *The Australian* (a News Limited publication) withdrew for some months following a critical adjudication.<sup>52</sup> In 2010 the funding formula was changed to take account of online readership and to reduce News Limited's contribution below 50%. In addition, and in order to reduce this vulnerability to funding withdrawal, the Australian Press Council is reforming the levies on publishers so that funds are provided on a rolling biennial, or even quadrennial, 'forward commitment'. It has also raised the option of obtaining up to one-third of its funding from government and up to one-third from non-media sources such as charitable foundations. Press Council chairman Professor Julian Disney<sup>53</sup> sought to counter fears in relation to these proposals at a public hearing for the Australian Inquiry into Media and Media Regulation:

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<sup>50</sup> Interview, Feb. 2012.

<sup>51</sup> <http://www.presscouncil.org.au/constituent-bodies>.

<sup>52</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0011/143687/Transcript\\_of\\_Melbourne\\_hearings\\_9\\_November\\_2011.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0011/143687/Transcript_of_Melbourne_hearings_9_November_2011.pdf).

<sup>53</sup> <http://www.presscouncil.org.au/uploads/52321/nov09.pdf>.

*I think it is completely misplaced to think that this level of government funding leads to government control. If one does think that 25 per cent of government funding is fatal, then one has to ask, 'Well, what does that say about the Council's independence when funded 25 per cent from Fairfax [Media Limited] and 45 per cent from News [Limited]?' The best route to independence is diversity in sources of funding.<sup>54</sup>*

The APC argues this would help expand membership amongst online publishers; strengthen its capacity to reduce court expenditure by informally resolving defamation or privacy claims; and reduce over-reliance on funding from publishers.<sup>55</sup> It has already experimented with alternative sources of income. It introduced a Standards Project, and Director of Standards position, in 2011 (with the 'challenges and opportunities relating to online publishing' one of its highest priorities), with 15% of the funding provided by the philanthropic Myer Foundation.<sup>56</sup>

The APC argues that it requires double its current budget (which would amount to around \$2million AUD or £1.3 million) to meet its responsibilities and ambitions for the future. So far it has recently succeeded in reversing a 20% funding cut made by publishers in 2009. The cut predated Professor Disney's term as chair of the Press Council but its reversal may owe something to the fallout from the UK's phone-hacking scandal: 'News Limited, who led the charge, I understand, to cut us, have also led the charge in supporting my requests for more funding, more energy, more commitment.'<sup>57</sup>

As we shall see in section 4.2, Professor Disney's wider strategy is to so highly incentivise APC membership (or disincentivise departures from it) that funding will be securely underpinned by the commercial and other advantages of a range of benefits and privileges. An alternative proposal from the Australian Independent Inquiry into the Media and Media regulation, under which an 'independent statutory body' would be entirely funded by the Australian government, is also set out in section 4.3).

In **Denmark** mandatory regulation of print media, as well as broadcasting, is enshrined in statute and funding is provided by the industry, although the mechanism is an interesting one. The Ministry of Justice pays for the Press Council's budget and is then reimbursed by industry.<sup>58</sup> As it is a cross-media regulator, 50% of the budget is met by public service broadcasters (Danmarks Radio, the Danish Broadcasting Corporation, 29% and TV2 21%). The other 50% is provided by print publishers (the association of newspaper publishers 41%, the association of magazine publishers 3%, representatives of regional and local papers 3%, and the trade press 3%).

Non-public service television stations do not contribute to funding as they were not a significant presence when the Media Liability Act, which sets up the funding mechanism, came into force (and as we shall see, two significant channels broadcast out of the UK and are therefore exempt from Press Council regulation). Online media only contribute if they are members of one of the four funding associations. The Danish Press Council says that in

<sup>54</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0004/145759/Transcript\\_of\\_Sydney\\_hearings\\_18\\_November\\_2011.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0004/145759/Transcript_of_Sydney_hearings_18_November_2011.pdf).

<sup>55</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0019/142237/Australian-Press-Council-Part-1.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0019/142237/Australian-Press-Council-Part-1.pdf).

<sup>56</sup> <http://www.myerfoundation.org.au>.

<sup>57</sup> Interview, Feb. 2012.

<sup>58</sup> Denmark's Media Liability Act gives the Minister of Justice responsibility for the Council's rules of procedure and funding <http://www.pressnaevnet.dk/Information-in-English/The-Media-Liability-Act.aspx>.

2007 it reviewed complaints and found that only 12.8% resulted from media outside the four associations, but it will keep this under review.

As we shall see in section 4.3 there is a complex mix of rights and responsibilities enshrined in the Danish system, and a mix of statutory and self-regulatory elements, with print and broadcast media funding a system which provides benefits as well as obligations.

In **Ireland** funding is set out in the Irish Defamation Act and again there is no state element. The Act establishes that the Press Council is to be funded by subscriptions paid by its (voluntary) members. Under the council's Articles of Association the funding, premises, and staffing are provided by an administrative committee of industry nominees though, unlike equivalent industry committees in other Press Councils considered here, it is chaired by an independent member of the council. Around 80% of the funding is provided by the industry body, the National Newspapers of Ireland,<sup>59</sup> around 15% is contributed by regional newspapers and magazines and online-only provision pay a flat rate of around £200. Its funding has recently fallen as the impact of economic austerity has been felt, though the Press Council says this has led it to review its processes and function more efficiently rather than constrained its work.

### *2.3. Governance, membership, and independence*

The governance structure of a Press Council, including the composition of its board, is central to the question of whether it considers itself an 'independent' regulator. However, the simple arithmetic of whether Council board members are independent public representatives or industry appointees tells only part of the story. The composition of related panels, including management boards, appointment panels, funding bodies, and code committees is also revealing in any consideration of the issue of independence.

The most common governance model for organisations considered here is to include a mixture of industry and independent or public representatives on the Press Council, and on subcommittees that decide on complaints (if the full council does not adjudicate). However, some also specifically include judges, some include academic voices, while one (Germany) has a Press Council composed entirely of industry figures and argues that this is true 'self-regulation'. In some of the countries considered here an industry-only, or industry-majority, management board sits alongside the more public-facing council and is responsible for the Press Council's funding, constitution, code of practice, and/or appointments to the Press Council itself.

As online-only members join the Press Councils, debate is arising over whether and how they are to be offered seats at the governance (and funding) tables. The scope of content regulated by Press Councils varies and whether it is based on a largely print-based or cross-media framework will be significant in facing these future challenges. While most councils considered here regulate the printed press, associated online publications, and online-only providers, the Danish and Finnish Councils also regulate journalism across broadcast services. Approaches to new media and to broadcasting are discussed further below in Chapter 3 but are mentioned here in relation to governance.

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<sup>59</sup> <http://www.nni.ie/v2/broad/index.php>.

Only the Press Councils in Sweden and Denmark include members of the judiciary and in both countries the Press Council chairmen are judges. In **Sweden** the Press Council regulates the printed press, associated internet publications, and, since the beginning of 2011, purely online publications. Its charter, Code of Ethics, and funding are all the responsibility of an eight-member management board, called the Committee for Media Cooperation, which represents the four industry bodies discussed above in relation to funding.<sup>60</sup> The committee's chair is the chair of the National Press Club (similar to the UK's Society of Editors) and decisions can only be made by consensus as each of the four organisations has veto rights in order to ensure accommodation is reached between them, for example, over the budget and appointments. Through these organisations around 90% of the commercial market is represented and around 95% of journalists (around 18,000 Swedish Union of Journalists members).<sup>61</sup>

The Press Council itself has 18 members: a chair and three vice chairmen (all of whom are judges), eight industry members, and six independent members. The eight industry members are appointed by the Committee for Media Cooperation, with two appointments from each funding organisation. The Committee for Media Cooperation also appoints the chair and vice chairs. The Chief Parliamentary Ombudsman and Chairman of the Swedish Bar Association appoint the six independent members (who might be lawyers, entrepreneurs, civil servants, doctors, former politicians, or union representatives).

The industry and independent members are appointed for six years and only their expenses are paid. The judicial members are appointed for eight years and paid for their duties. For complaint adjudications the council is divided into two groups (each including the chair or a vice chair, four industry members, and three independent members). Deputies are also appointed to cover absences. In the interests of independence the same individuals cannot be members of both the Committee for Media Cooperation (management board) and of the Press Council.

In addition, Sweden has a Press Ombudsman who is appointed by a committee composed of the Chief Parliamentary Ombudsman, chair of the Swedish Bar Association, and the chair of the National Press Club. The Standing Instructions for the role of the Press Ombudsman are the responsibility of the Committee for Media Cooperation and thus, as with the Press Council's charter, are framed by the industry. Since the office of the ombudsman was established in 1969 there have been seven ombudsmen: the first three were lawyers, the next four journalists. The current ombudsman Ola Sigvardsson was a journalist for 35 years, the last 12 of which were spent in editor or editor-in-chief roles. As we shall see, the ombudsman is the first port of call for complaints and also has a very important function as the 'public face' to the system, as Mr Sigvardsson explained:

*I've had this job since 1 of April [2011] so for ten months only, but still I've been out giving around 40 lectures and I've written 20 debate articles and I've been interviewed 50 times or something like that so it is obviously a very public position . . . The judges, the chairmen of the press council, they're not*

<sup>60</sup> The four organisations are the Swedish Newspaper Publishers' Association, the Magazine Publishers' Association, the Swedish Union of Journalists, and the National Press Club.

<sup>61</sup> Daphne C. Koene, *Press Councils in Western Europe*: <http://www.rvdj.nl/rvdj-archive//docs/Research%20report.pdf>.

*interested in fronting this system. They would not go to television debates or comment in newspapers or write debate articles. They are judges, that's their job. They do this on the side you might say and therefore the Press Ombudsman is the front of the system.*<sup>62</sup>

The **Danish** Press Council, with statutory responsibility for the regulation of both print and broadcast media, has eight panel members, each on a four-year term. By contrast to industry roles outlined above in relation to Sweden, the composition and remit of the Danish Press Council are set out in statute, in Denmark's Media Liability Act.<sup>63</sup> The chair of the Press Council must be a lawyer, in practice a member of the Supreme Court, and is appointed by the President of the Supreme Court. The vice chair must also be a lawyer. The six members are two journalists nominated by journalists' organisations, two from editorial management nominated by the media, and two 'public members' nominated by the Danish Association for Adult Education, with final appointments made by the Minister of Justice. There are eight deputies who substitute, for example, in the event of a conflict of interest in relation to a complaint. The judicial appointments are significant, in the Danish setting, in securing independence, as RISJ Research Fellow Rasmus Kleis Nielsen<sup>64</sup> explained: 'part of that independence lies in the role of the judiciary . . . it lends a lot of credibility to the Press Council in Denmark that it does not appear to be fully in cahoots with the industry and in particular not with publishers'.<sup>65</sup>

Complaints are dealt with in a 'complaints chamber' made up of chair or deputy chair and one member of each of the other three groups above. In practice one of the editorial members is always from the public broadcasters Danmarks Radio or TV2 (if the editorial member is from Danmarks Radio, the deputy is from TV2 and vice versa). No industry member would participate in cases involving their own media due to a conflict of interest. Overall the balance on the Press Council and its complaints chambers seeks to provide independence in decision-making.

The Danish Press Council's jurisdiction applies differently to different elements of the media. It operates *mandatory* regulation first for all print media (published twice a year or more) and secondly for all broadcasting services that hold a Danish licence (which does not include those Danish services operating, for example, from the UK under an Ofcom licence). Neither print media nor broadcasting services are registered, rather if they meet the circulation or licence criteria they are automatically covered by the Media Liability Act.

In addition, Denmark operates a system of *voluntary* regulation for online providers. Such providers can notify the Press Council of registration if they satisfy criteria such as that they provide a one-way communication from the media to the recipient; they provide news coverage, i.e. content composed of a plurality of information from different sources; the content is distributed to the public (whether behind a paywall or not) on a regular basis. Incentives for registration include, as we shall see below, protection of sources and exemptions in relation to data protection. Discussion websites that are not subject to editorial control would not be eligible for voluntary regulation and therefore do not benefit from such privileges.

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<sup>62</sup> Interview Jan. 2012.

<sup>63</sup> <http://www.pressnaevnet.dk/Information-in-English/The-Media-Liability-Act.aspx>.

<sup>64</sup> <http://reutersinstitute.politics.ox.ac.uk/about/institute-staff/dr-rasmus-kleis-nielsen.html>.

<sup>65</sup> Interview, Dec. 2011.

Denmark is interesting in combining statutory and self-regulatory elements. The Media Liability Act states that the content and conduct of the mass media shall conform to sound press ethics but does not specify those ethics nor a code of rules. The advisory rules on press ethics have not been amended since being framed in 1991 but are the responsibility of the Press Council not the state. The Act also sets out a right to correct factual information in the media that might 'cause anyone significant financial or other damage', but beyond enforcing a correction does not apply a fine or damages. Its scope is very specific and essentially provides an alternative to complainants seeking remedy through the courts that is cost-effective for all sides.

The **Finnish** Council for Mass Media also regulates the print media, radio, television, and online content on a self-regulatory basis. Its management group (representing those organisations that have accepted the Council for Mass Media's agreement and therefore fund the council) includes the Finnish Associations of Magazines, Periodicals, and Newspapers, the Union of Journalists, and broadcasters including the public broadcaster YLE, commercial television companies MTV3, Nelonen, and Suomi TV (owned by News Corporation), and Radiomedia representing Finnish commercial radio. The CMM reports that only a few small independent papers and magazines, and most of the trade union publications, sit outside the regulated system. In addition to responsibilities for funding, the management group also appoints the media members of the council who form a majority. The council, which adjudicates on complaints, has 12 members. Eight including the chair have 'media expertise', including journalists, editors, and academics. The council's current chair, Risto Uimonen, is a writer and columnist and has held senior editorial posts. Four independent members represent the public and are appointed by the council after an open advertisement.

The Finnish management group also draws up the Guidelines for Journalists (the Finnish equivalent of a Press Code). There are no rules separating funding from adjudication. However, in the view of chairman Risto Uimonen, far from undermining the council's independence, the funding, appointments, and balance of council members which place industry at the heart of decision-making, and complaint adjudication, are crucial to its integrity:

*That [self-regulation] is the whole idea and that is why it's very important that the majority in the council belongs to the media's representatives. Otherwise it would not be self-regulation but regulation by others.<sup>66</sup>*

In a recent blog<sup>67</sup> Uimonen pointed out the enormous freedoms of the Finnish media (Finland regularly tops indices of press freedom, as set out in Annex 4) and that it has a majority of industry figures on its board. He contrasted this with the UK's Press Complaints Commission in which industry representatives are in the minority and yet 'the PCC is still plunged into the worst crisis in its history' through criminal activity amongst members. It is the buy-in by the Finnish media, and the fact that it is in all their interests to make the system work, that Uimonen sees as the key strength to regulation that he says would otherwise be resisted by the Finnish media if imposed from the outside.

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<sup>66</sup> Interview, Feb. 2012.

<sup>67</sup> <http://www.jsn.fi/blog/karu-totuus-itsesaantelyn-ideasta>.

While the Finnish media may support the regulatory system, the council itself has recently seen a fairly turbulent succession of chairmen, with three resignations in four years. One resigned when his proposal that there should be a full-time chairman or ombudsman position was rejected; another resigned following what he saw as unjust criticism by a current affairs programme about his connections with the East German secret police, the Stasi, while formerly a party leader. And in December 2009 the then chairman resigned in protest against a council decision not to uphold a complaint against a programme that alleged the then Prime Minister, Matti Vanhanen, had received free timber from a wood supplier as a member of parliament. Current chairman Risto Uimonen observed, on the basis of newspaper coverage of the council, that criticism has quietened and confidence in the council appears to have been restored.<sup>68</sup>

In **Australia** the Press Council's authority does not extend to broadcasters (although as we shall see in Chapter 4 there is debate over a future converged regulator). It does however include online-only as well as print, and related online, publications in its scope. The APC is an 'incorporated association' which has a constitution that sets out its administrative framework. It has two categories of members: first, publisher and other media organisations that have agreed to fund the association (the 'constituent bodies'); second, independent members. Australia's council consists of 22 members: nine independent members including the chair, nine nominees of the 'constituent bodies', and four 'independent journalist' members. The chair has always been a judge or university professor and is chosen by the council. The independent members are appointed after public advertisement and are nominated by the chairman. Future consideration is being given to the balance of the council in relation to online members.

While only 40% of the Australian Press Council's board members are publishers, the additional independent journalist members give it an 'industry' majority. However, the majority of members on the subcommittee that handles complaint adjudications must be non-industry. Until now the subcommittee's decisions could be changed by the council. Consideration is being given to providing the adjudication subcommittee with further independence so that complaints are 'uncoupled' from the council and adjudicated on by a committee which harnesses industry experience but has a non-industry majority.<sup>69</sup> Significantly, the APC drew up (and is actively involved in revisions to) the Standards of Practice code which means that independent as well as industry members have a voice in framing these.<sup>70</sup>

The **Irish** Press Council and Ombudsman regulate the printed and online press on a voluntary basis. Unlike the Media Liability Act in Denmark which establishes its Press Council, the 2009 Irish Defamation Act<sup>71</sup> sets out a range of criteria which the Press Council must meet in order to be recognised for the purposes of the Act. It sets out that the Press Council shall be a company limited by guarantee (non-profit organisation) and also the composition of its board, its purposes, and functions.

In order to meet the Act's criteria, the Irish Press Council's Board has 13 members, with the seven independent members including the chair (currently, a former Irish ambassador) in the majority. There are six industry

<sup>68</sup> Interview, Feb. 2012.

<sup>69</sup> Interview with Professor Julian Disney, APC chairman, Feb. 2012.

<sup>70</sup> In principle the Danish Press Council would be responsible for revising its Code but has not done so since the Code was framed at the time of the Media Accountability Act in 1991.

<sup>71</sup> <http://www.irishstatutebook.ie/pdf/2009/en.act.2009.0031.pdf>.

members (five representing owners and publishers and one representing the interests of journalists). In practice two represent the Irish national press, with one member representing each of the following: UK-owned titles, the regional press, magazines, and the NUJ.

An independent appointments committee, appointed by the Press Council, is responsible for recruiting the independent members including the chair and ratifies the industry nominations. It is chaired by the (independent) chairman of the Press Council and its other members are independent, with no connections to industry or to the Press Council.

The administrative committee referred to in the previous section in relation to funding is, in the Irish context (by contrast to equivalent management committees in other Press Council structures), largely concerned with agreeing the annual budget. The core functions and responsibilities of the Press Council are not its responsibility and are set out independently in the Irish Defamation Act. In principle an industry member nominated to the administrative committee could also be nominated to the Press Council itself, though this has never arisen. Overall, Professor John Horgan<sup>72</sup> the Press Ombudsman argued: 'We would not have been formally recognised by Parliament on the basis of two resolutions, one in each House, if the Houses had not been satisfied that we were sufficiently independent of the industry.'

There is an Irish Press Ombudsman, though his functions (as we shall see in Chapter 5) are very different to those of the Swedish Press Ombudsman. He is appointed by the Press Council, at arm's length through the appointments committee, and is independent of it. The current Press Ombudsman is a former journalist and politician. As in Sweden and Finland an industry panel is responsible for drawing up the Code, but in Ireland's case this is the responsibility of a separate code committee, comprising representatives from across the industry. In addition the council could initiate consultation with the committee on changes to the Code if appropriate.

Interestingly, as a company and a body recognised under the Irish Defamation Act, the Irish Press Council is accountable in different ways to a range of constituents. It explains its primary accountability is 'self-referential' in that the members appointed to the council are the members of the board of the company. It is also accountable to all its member publications and to its funding bodies which are represented on its administrative committee and receive reports on expenditure and agree the budget. It is accountable to Parliament in that the Irish Minister of Justice has made an order recognising the Press Council of Ireland as 'the Press Council' referred to in the Act and can revoke that order if he or she is of the opinion that the council no longer complies with the provisions of the Act.<sup>73</sup> The council is also subject to parliamentary scrutiny as part of a five-year review process built into the Defamation Act and its record will be scrutinised in 2014–15. Finally, as a company limited by guarantee, the Irish Press Council is subject to all the ordinary requirements of company law including an annual audit and the filing of statutory records with the Irish Companies Office.<sup>74</sup>

The **German** governance structure is unique amongst the countries considered here in that only industry is represented on the council with no independent members. It has an association of sponsors which is responsible for legal, financial, and personnel matters and is composed of two members

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<sup>72</sup> <http://www.presscouncil.ie/office-of-the-press-ombudsman/the-press-ombudsman-.407.html>.

<sup>73</sup> Such a revocation order would have to be confirmed by a resolution of both Houses of the Irish Parliament.

<sup>74</sup> Irish Press Ombudsman, email information, Mar. 2012.

each from the two journalist unions and the two publisher organisations.<sup>75</sup> The Press Council itself has 28 members. The industry organisations that make up the association of sponsors each nominate seven council members each year. The chair rotates between these four organisations every two years. The council elects two subcommittees, one for complaints and appeals, and one concerned with editorial data protection. Its authority began with regulation of the printed press (excluding free newspapers) and from 2009 it has handled complaints about 'journalistic and editorial content from the internet' outside broadcasting.<sup>76</sup> This is restricted to complaints about 'pre-moderated platforms'. Those platforms that offer comments without any moderation or with 'post-moderation' only are not considered to be under journalistic control but rather 'a pin board where no journalistic activity is involved'.<sup>77</sup>

Given the German Press Council's interpretation of self-regulation as industry-only regulation, it is the industry that draws up the code and administrative rules and industry that executes them. There is nothing to prevent members of the association of sponsors which is responsible for funding also being members of the Press Council from which the complaints committees are drawn. The question of independent members is recognised as an alternative model but is not one that is being explored by the Press Council as its chairman Bernd Hilder, a journalist and former editor-in-chief across a range of German media, explained:

*Once in a while there have been discussions on inviting independent persons to the Press Council. But the general position of the members is that those who work in the industry know best what standards there are and how the daily work of a journalist or publisher is being done.*<sup>78</sup>

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<sup>75</sup> Deutscher Journalisten-Verband; Deutsche Journalistinnen- und Journalisten-Union; Bundesverband Deutscher Zeitungsverleger and Verband Deutscher Zeitschriftenverleger.

<sup>76</sup> <http://www.presserat.info/inhalt/beschwerde/anleitung.html>.

<sup>77</sup> <http://www.rvdj.nl/rvdj-archive/docs/AIPCE%202010%20-%20report.pdf?PHPSESSID=326570a71c1de177462c20dd48dab797>.

<sup>78</sup> Email interview, Feb. 2012.

### 3. Scope across Platforms

#### 3.1. Press Council approaches to broadcasting

The coherence of regulation of journalism content is becoming an increasingly pressing issue as content from print and broadcast origins sit side by side online and (as each combines text and audiovisual content) become increasingly indistinguishable. Some Press Councils grappled with the issue of consistently regulating print and broadcast journalism decades ago, others are seeing current debate.

Two Press Councils considered here, Finland and Denmark, regulate journalism across broadcast as well as print (and more recently online media) and have always done so. Sweden operates the same Code for both print and broadcasting but it is implemented by different bodies in the case of each. Australia is currently involved in a convergence review that has surfaced proposals for a 'converged' regulator for news and current affairs across platforms.

Although **Sweden** does not have a cross-platform regulator, its Press Council does operate a cross-platform ethical Code (examined in section 5.2 below). Its full title is the 'Code of Ethics for Press, Radio and Television in Sweden'.<sup>79</sup> The Swedish Press Council and Ombudsman have authority to apply the Code to print and online journalism. Meanwhile the Code is separately regulated (by the Swedish Radio and Television Authority) in relation to broadcast journalism.

The **Finnish** Council for Mass Media takes a different approach. In the interests of consistency, since it was established in 1968 it has regulated broadcast, as well as print and now online, journalism. In the case of the public broadcaster YLE, the council's Guidelines provide an 'ethical complement' to statutory regulation which also applies. The CMM's chairman noted that 'statutory regulation does not go deep into the journalistic ethics. Commercial broadcasting companies are free from statutory content regulation and public service duties.'<sup>80</sup> It is therefore the council that provides regulatory oversight in relation to journalistic ethics across broadcasting.

In **Denmark** the Press Council similarly regulates journalism across broadcasters holding a Danish licence (as well as print) but, unlike Finland, regulation under its Press Council is mandatory. However, two significant Danish commercial television stations (TV3 Danmark and SBS TV) are satellite providers, broadcast out of the UK under an Ofcom licence, and therefore sit outside Danish regulation even though they provide for Danish audiences.

The **German** and **Irish** Press Councils have no authority over broadcasting. However, the German Press Council explained that 'the regulatory agency for broadcasting often asks the Press Council for help' and is informed by the Press Council's Code when dealing with complaints about broadcast journalism.<sup>81</sup>

In **Australia** too the Press Council does not have authority over broadcasting, though this could be up for discussion if plans for a new converged regulator across media are introduced. Australian ambitions, expressed in the current review of the future of media regulation, extend beyond print and online. These include proposals that over time, one body

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<sup>79</sup> <http://www.po.se/english/code-of-ethics>.

<sup>80</sup> Email interview, Jan. 2012.

<sup>81</sup> German Press Council information provided for this report.

should become principally responsible for setting and monitoring standards of practice for news and comment across all media, and for handling complaints about breaches of those standards (discussed further below in Chapter 4).

### 3.2. *Press Council approaches to new media and convergence*

The explosion in new media on websites and blogs, and via Twitter and Facebook accounts, has thrown up challenges for Press Councils over whether and how far their regulation should extend in this area. It has brought with it debates over distinctions between ‘professional’ and ‘amateur’ journalists and how far the privileges accorded to traditional media should be extended to new media. All the Press Councils considered here have extended their jurisdiction from print publications (and in some cases broadcast journalism) to associated online media including ‘pure player’, i.e. online-only, providers. This extension of the scope of regulation raises questions over whether the funding and governance models (considered above) will be fit for purpose in relation to digital media.

In 2011 **Sweden** extended its Press Council membership from print publications and associated online provision to online-only ‘pure players’. So far seven have joined, an example being Realtid.se, a newspaper for the financial industry which advertises on its website that it joined the Press Council in October 2011 and provides a link to the Press Ombudsman’s home page for anyone wishing to submit a complaint.<sup>82</sup> This extension of the Press Council’s jurisdiction includes online television provision. Comments on members’ websites are only covered if they are moderated (i.e. subject to editorial control). In this way links to ‘journalism’ are distinguished from what have been referred to above as ‘pinboard’ comments.

Online-only publishers are eligible to join the Swedish Press Council system if they have registered for a certificate of publication and have appointed a legally responsible publisher (editor). This is an obligation for print media (providing four or more issues a year) and entitles publications to a range of protections under the Freedom of the Press Act (discussed below in section 4.1). Online-only publications do not pay a fee but are subject to the administrative penalty levied by the Press Council if they are found to have breached the Code. This is a convenient short-term solution to the issue of levying a fee on new media, since offending publications pay the charge and thus contribute to the Press Council’s budget. However, it may not be a sustainable model in the future as the Swedish Press Ombudsman pointed out:

*Some of the online operations who have [voluntarily] got into this system have also said they would like to be on the Committee of Media Cooperation [that decides the Press Council’s charter, code, and funding] and I think it’s something they should discuss in the future. If you let someone into the room where the decisions are made about the system as a whole, then I think they should also be paying into the system. But today they have no influence over the system and that’s why they don’t have to pay a fee to get into it.<sup>83</sup>*

A further issue is raised by other electronic media and, although it is not a focus of consideration here, Norway provides an interesting example. In 2011

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<sup>82</sup> [http://realtid.se/ArticlePages/200405/27/20040527210941\\_public628/20040527210941\\_public628.dbp.asp](http://realtid.se/ArticlePages/200405/27/20040527210941_public628/20040527210941_public628.dbp.asp).

<sup>83</sup> Interview, Jan. 2011.

the Norwegian Press Council (a voluntary body that already accepted complaints in relation to printed, broadcast, and online media) took the decision to extend its regulation to associated Twitter, Facebook, and other accounts. Its Press Council's website explains:

*The Press Council can deal with complaints against the media's own Twitter accounts, Facebook profiles and corresponding accounts and profiles on other social platforms. It may also deal with complaints against journalists' and editors' private profiles or accounts when it is obvious that the views or content have been published as part of the editorial operations.*<sup>84</sup>

In this way material provided by journalists on social media, including private accounts, does not sit outside the regulatory framework and it is an extension that the Swedish Press Ombudsman is interested in exploring. Under such a system a reporter's private Twitter account could be held in breach of the press code if it was used in connection with his or her journalism, for example, to provide additional information about a story that has been excluded from the published version. The registered editor-in-chief could be held responsible for the associated material made available on the journalist's private Twitter, Facebook, or other account, just as s/he is responsible for print or online publications.

As noted above, from 2009 the **German** Press Council has had a wider jurisdiction and handled complaints about any 'journalistic and editorial content from the internet' outside broadcasting. This has led to an increase in complaints about newspaper websites but the Press Council has not yet begun to invite online-only providers to join the Press Council, as chairman Bernd Hilder explained:

*We have not started yet to do this actively, but have already been asked by several online publications who would like to become a member of the system. So far we have not worked out a schedule on how much they would have to pay as a membership fee and how to include them – but it is one task for the upcoming year.*<sup>85</sup>

Online media in Germany have also surfaced questions over whether new media can bring complaints to the Press Council as well as be subject to its authority. An example is *BildBlog*,<sup>86</sup> which began as a 'watchblog' following, criticising, and challenging the German tabloid *Bild*, and since 2009 has widened its scope to include the wider German media. The Press Council has accepted a series of complaints from *BildBlog* about *Bild*, but following counter-complaints from *Bild*'s publisher Axel Springer, clarified that it will not take on 'cases of misuse', explaining: 'An abuse may occur when complaints are brought through organised campaigns against individual media.'<sup>87</sup>

Like *BildBlog*, an online network of investigative journalists *Netzwerk Recherche*<sup>88</sup> which sits outside traditional publishing, says it works to counter the economic and technological pressures that it sees as threatening

<sup>84</sup> <http://presse.no/Aktuelt/Facebook-og-twittermeldinger-kan-klages-inn> (Google Translate).

<sup>85</sup> Email interview, Feb. 2012.

<sup>86</sup> <http://www.bildblog.de>.

<sup>87</sup> German Press Council press release, 12 Mar. 2008:

<http://www.presserat.info/inhalt/dokumentation/pressemitteilungen/pm/article/beschwerderecht-nicht-missbraucht.html>.

<sup>88</sup> <http://www.netzwerkrecherche.de/nr-Positionen--Positionen-des-netzwerk-recherche/Medienkodex-des-netzwerk-recherche>.

journalism, and has formulated its own media code. Such organisations are unlikely to see any merit in joining the Press Council which is associated with established print publishing, the very medium they seek to call to account. They can also be highly critical of the Press Council. *BildBlog*'s founder, journalist Stefan Niggemeier has argued: 'The German Press Council is not a body that ensures compliance with minimum standards of journalism. The German Press Council is a body that serves to give the impression that there is a body that ensures compliance with minimum standards of journalism.'<sup>89</sup> The Press Council however is rather more favourably disposed towards such wider mechanisms for accountability, as its chairman Bernd Hilder commented: 'We regard *BildBlog* and others as very useful tools for the discussion on press ethics. *Bildblog* also sometimes complains about articles at the Press Council and they also publish our decisions and discussions.'

**Finland** has recently extended its online regulation from the web-based services of existing print, broadcasting, and news agency members to online-only providers. So far two have joined. *Uusi Suomi* (New Finland)<sup>90</sup> is a reincarnation of one of Finland's oldest newspapers which folded in the 1990s. In 2007 it was established as an online-only provider. The other is a student online publication which has joined on a trial basis to ensure there is no dilution of standards, and with the hope that it will promote the importance of ethical standards in a training ground for Finland's future journalists.

The Finnish Council for Mass Media has recently extended its code by adding an annex of rules in relation to media websites.<sup>91</sup> These rules were subject to broad discussion among journalists and wider organisations, as Chairman Risto Uimonen observed: 'The preparation of the short new annexe took one year and included 160 different people'.<sup>92</sup> The rules deal with user-generated material on media websites, which Uimonen foresees will become an ever increasing problem and a burden on editorial offices which struggle to find the resources to monitor user-generated traffic.

In **Denmark**, as discussed above, while print and broadcast media are subject to mandatory Press Council regulation, any internet medium subject to editorial control can notify the Press Council that it wishes to register. 350 have done so,<sup>93</sup> including all major print newspaper and broadcasting services websites, as well as online-only providers. It is an indication that the incentives for membership (discussed below in section 4.3) are clearly strong. The Press Council has registered blogs and Twitter accounts as members. For example, the Danish Shareholders Association<sup>94</sup> has registered its Twitter account as well as its Facebook and LinkedIn profiles in order to benefit from a cheap alternative to court processes for the resolution of complaints.<sup>95</sup> Danish MPs are set to discuss the future of the Danish Press Council in 2012, including potential further development of its approach to the regulation of online content.

As a new regulator the **Irish** Press Council and Press Ombudsman have welcomed online-only publications from the start. So far a sports news website created by the Gaelic Athletic Association (a major voluntary sporting

<sup>89</sup> <http://www.stefan-niggemeier.de/blog/tag/presserat/page/2>.

<sup>90</sup> <http://www.uusisuomi.fi>.

<sup>91</sup> [http://www.jsn.fi/en/journalists\\_instructions](http://www.jsn.fi/en/journalists_instructions).

<sup>92</sup> Email interview, Feb. 2012.

<sup>93</sup> These are listed at <http://www.pressnaevnet.dk/Klagevejledning/Hvem-kan-man-klage-over.aspx>.

<sup>94</sup> <http://www.shareholders.dk>.

<sup>95</sup> Email information, Feb. 2012.

association) has joined<sup>96</sup> and application for membership by another online provider is being considered. It is an area that is currently being developed as Press Ombudsman Professor John Horgan explained:

*We're at the moment investigating, or examining, what criteria might usefully be adopted that web-based publications might measure themselves against to see if they want to apply to join and for membership. We're at that stage, and we feel that the kind of activities that we're involved in are in many respects platform neutral, and there seems to be little obvious reason why there should be a different accountability or regulatory mechanism for the kind of work that we do in relation to web-based publications.*<sup>97</sup>

Professor Horgan recognised that a growth in online membership will bring with it issues over representation on decision-making and governance panels:

*The membership of the Council on the industry side is actually effectively confined to the industry associations and organisations which helped set up the Council. Mainly, national newspapers, regional newspapers, magazines, and National Union of Journalists. Now, if sufficient numbers of web-based publications met with the criteria and joined, probably the best way to move that forward would be for them to form their own industry association and then negotiate participation of the Council on whatever basis could be mutually agreed.*

**Australia** also welcomes online journalism into the fold of the Australian Press Council. It reports that one online-only publisher, [propertyreview.com.au](http://propertyreview.com.au), has agreed to be subject to the APC's jurisdiction. Another, *Crikey*,<sup>98</sup> which describes itself as 'a showcase for information that might otherwise remain suppressed' and 'part of the so-called fourth estate that acts as a vital check and balance on the activities of government, the political system and the judiciary', agreed to do so in relation to a particular complaint. Other online providers have expressed interest in joining and the council has agreed a special 'low fee schedule' in order to facilitate online-only publishers including bloggers. However, it says it is finalising this schedule before directly seeking additional online membership. The new funding incentives for online-only publishers have yet to be fully implemented and therefore their success in attracting members has yet to be tested.

Emphasis on editorial control is one way for Press Councils to define publications' eligibility to join the regulated sphere of journalism, but this masks a broader, more basic question about what it means to be a journalist. The Australian Press Council has proposed clarifying the extent to which online-only publishers who join the council are eligible for the same statutory rights and privileges as print publishers. In this regard the APC has looked at the New Zealand Law Commission consultation which opened in December 2011.

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<sup>96</sup> <http://www.gaa.ie>.

<sup>97</sup> Interview, Feb. 2012.

<sup>98</sup> <http://www.crikey.com.au>.

## Traditional journalism's privileges and the role of new media: a consultation in New Zealand

The New Zealand Law Commission's consultation, *The News Media Meets New Media: Rights, Responsibilities and Regulation in the Digital Age*<sup>99</sup> considers whether to extend the legal privileges and exemptions which currently apply to traditional news media to some new publishers; and whether to encourage or require new publishers to be held accountable, via some sort of regulatory regime, to the types of journalistic standards that have traditionally applied to news media.

It considers the privileges accorded to traditional media including: rights of attendance in court (including family and youth courts and disciplinary tribunals) and parliament; exemptions from obligations in relation to data protection; rights under the New Zealand Copyright Act and its Defamation Act which accords fair reporting privileges; protection of sources; and informal protocols with the police and emergency services. It also considers the context of online publishing and concludes that:

*there are a number of new web-based entities taking on some of the democratic functions traditionally assigned to 'the press': providing a public watchdog on corporate and state power and facilitating the free flow of information and ideas among citizens. As a matter of principle we believe the legal and regulatory environment should encourage diversity in the news media market . . . These new publishers should, in principle, enjoy the same media protections and privileges accorded traditional news media . . . The quid pro quo, in our view, is that new players in this market who wish to position themselves as credible and reliable sources of news and current affairs should also be held accountable to professional standards. Like their counterparts in the traditional news media, web publishers who seek to reach wide public audiences and influence debate on public affairs can exert significant power. Some form of accountability is a healthy check on the abuse of that power.*

The consultation includes proposals for a new independent regulator for all news media, regardless of the format or delivery platform, recognised by statute and funded by contributions from members and subsidised by the state. It considers whether membership should be compulsory for some categories of news publishers (for example, commercial enterprises) and voluntary for others, or voluntary for all.

It also floats alternative ideas including a 'Communications Tribunal that would operate at a level lower than the court system and which could administer speedy, efficient and relatively cheap justice to those who have been significantly damaged by unlawful communications' and with the power to award damages, order publication of an apology or right of reply, and make take-down orders in relation to an internet service provider.

In Australia the APC has viewed the New Zealand Law Commission's exploration of traditional media privileges with interest and is floating proposals (discussed in section 4.2) of extending eligibility for those privileges to new media, and making them conditional (for both old and new media) on adherence to Press Council regulation.

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<sup>99</sup> <http://www.lawcom.govt.nz/sites/default/files/publications/2011/12/ip27-all-web-v2.pdf>.

#### 4. Status: Voluntary, Incentivised, and Mandatory Models of Regulation

At the heart of debates on press council regulation, both in the UK and in the countries considered here, is the issue of whether regulation is voluntary or mandatory. Where the system is voluntary, questions follow about whether, in practice, providers submit to it, whether they can be highly incentivised to do so, or whether they may choose to withdraw from it. The latter issue has become known as ‘the Desmond problem’ (the withdrawal from the UK’s Press Complaints Commission’s jurisdiction of Richard Desmond’s Northern and Shell titles, including the *Daily Express*, *Sunday Express*, *Daily Star*, *Daily Star Sunday*, and *OK!* following the non-payment of fees in 2011). However, as we shall see, this is by no means a problem unique to the UK. There is also increasing recognition that significant gaps in press regulation are now to be found not only where traditional players have withdrawn, but among new providers who have so far remained outside the regulated framework.

Where the system is mandatory, questions follow about the potential for compromising press and public freedoms and how far a mandatory framework opens the door to a ‘licensing’ of the press and therefore the power to close a newspaper or suspend an online service. Whether a voluntary or mandatory approach is taken, both raise questions of whether and how to extend traditional press privileges to new media, including debate over whether press subsidies should be platform-neutral in encouraging quality publications across media.

Overall, it appears from the countries considered here, that the crude pitting of statutory against self-regulatory, or mandatory against voluntary, models of press regulation fail to recognise the potential impact of a far more nuanced web of rewards and penalties. It is perhaps more helpful to see the models of press regulation considered here as sitting on a spectrum, in which different aspects bleed into each other and attempts at categorisation are less than straightforward. In this context broad distinctions are drawn between the following positions on that spectrum:

- (a) Voluntary self-regulation: exemplified by Finland, Germany and Sweden (albeit incorporating state funding in Finland and Germany, and judicial roles in the Swedish system)
- (b) Voluntary ‘independent’ regulation with statutory incentives: exemplified in Ireland (where statute recognises the Press Council model and membership) and Australia (illustrated in the Australian Press Council’s proposed reforms)
- (c) Co-regulation: exemplified by Denmark (where statute establishes a combination of mandatory regulation, together with self-regulatory elements and benefits for some providers ; and incentivises voluntary regulation for others). Another proposal to combine statutory and self-regulatory elements is recommended by the Australian Independent Inquiry into the Media and Media Regulation through an ‘independent statutory body’ and is considered here.

Whether or not there is a statutory element to press regulation, each of the systems inevitably sits within a wider statutory framework, aspects of which are also explored here.

#### 4.1. Voluntary self-regulation: Germany, Finland, Sweden

Press Council membership is not required of publications in **Sweden**, nor are there formal incentives, rather, Press Ombudsman Olga Sigvardsson commented: 'It is a matter of trustworthiness. You show the public that you respect the ethical code.'<sup>100</sup> However, and as is also the case elsewhere, pressure is exerted by the strength of membership of trade associations and journalists' unions which are in turn key players in the funding and functioning of the Press Council. As we have seen, the four core organisations responsible for the Swedish Press Council's funding, charter, and code represent the vast majority of the market.

In addition legal requirements provide the wider context for voluntary membership of the Press Council. All publications that appear at least four times a year are subject to a requirement to register with the Swedish Patent and Registration Office, and must at the same time register a designated 'responsible editor' or 'publisher' (usually the editor-in-chief). These requirements are set out in the Freedom of the Press Act<sup>101</sup> which (together with Acts on Government, Succession, and the Fundamental Law on Freedom of Expression which contains provisions for electronic media) forms part of the Swedish Constitution. The Freedom of the Press Act<sup>102</sup> sets out legal responsibilities for the 'responsible editor' in relation to liability for published content. The present Press Ombudsman Ola Sigvardsson was previously the registered responsible editor or 'publisher' for daily newspaper *Östgöta Correspondenten* or *Corren* where he was editor-in-chief:

*When I was the publisher of Corren my person was admitted to the authorities. Being the legally responsible publisher it was me who was going to court if anyone was going to court, never the individual journalist.*<sup>103</sup>

However, he also observed that with responsibilities came protections:

*If you have a certificate of publication and a legally responsible publisher, then you get all the protections that the law gives you . . . It's very hard to sue a newspaper which has this [certificate]. The Chancellor of Justice is the only person that can bring a newspaper to court . . . [under] the Act of Freedom of the Press.*<sup>104</sup>

An example where the Chancellor took such action to prosecute under the Freedom of the Press Act was over the Swedish daily tabloid *Expressen*'s claims that Swedish actor Mikael Persbrandt had been admitted to a clinic suffering from acute alcohol poisoning. *Expressen* apologised for the claims but the apology was not accepted by Mr Persbrandt. The wide dissemination of the allegations was held to have influenced the decision in 2006 to prosecute and the case resulted in the 'responsible editor' Otto Sjöberg being

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<sup>100</sup> Interview, Jan. 2012.

<sup>101</sup> <http://www.notisum.se/rnp/sls/lag/19490105.HTM>.

<sup>102</sup> The Act dates back to 1766 and granted public access to government documents. All the countries considered here have enacted freedom of information legislation: Australia in 1982, Denmark in 1985, Finland in 1951 (revised 1999), Germany in 2005, Ireland in 1997 (amended 2003).

<sup>103</sup> Interview, Jan. 2012.

<sup>104</sup> While an individual can take a newspaper to court in relation to defamation, Daphne C. Koene in *Press Councils in Western Europe* explains that a claim for damages can only be pursued when it relates to a criminal offence 'against the freedom of the press'; this procedure is rare and even when successful judges are loathe to award significant damages: <http://www.rvdj.nl/rvdj-archive//docs/Research%20report.pdf>.

fined around £7,500 and around £7,000 was awarded in damages (far less than the damages that had been originally sought).<sup>105</sup>

Importantly the Act contains comprehensive provisions not just in relation to defamation liability but also on the public nature of official documents, on the right to anonymity and on the protection of sources. The registration required by the Act provides simple criteria for membership of the self-regulatory system, as well as a link to legislation and the protections it affords. Press Council membership is open to online-only members who have registered and therefore have a certificate of publication and a legally responsible publisher. Seven have so far registered, and joined the Press Council, though no bloggers have so far registered in this way.

The regulatory system is voluntary but compliance with its requirement to publish Press Council decisions, in the event of a breach of the code, is high. Indeed the Swedish Press Ombudsman argued that some publishers view compliance as an advantageous way of differentiating their product from unregulated online 'quasi journalism'. He explained:

*Last time Expressen [a daily tabloid] was criticised they even had it on the newspaper [billboard]: 'Expressen has been criticised by the Press Council. Read about it' because the publisher of Expressen Thomas Mattson . . . his position is that being a good, responsible newspaper, even if you are a tabloid, is the way to the future, is the way to separate from the 'quasi journalism' of the internet. In the past, having to publish that you were wrong was something shameful. Today I would say the culture has changed and to publish that you have got something wrong is to show the public that you strive for correctness.*

**Germany's** Press Council is also a system of voluntary self-regulation which sits within a commitment to freedom of expression that is enshrined in the Basic Law of the Federal Republic and of each of the German Federal states. Like Sweden, Germany too relies on core publisher and union organisations to underpin membership, but has also faced its own 'Desmond question'. The Press Council reports that in 1981 the *Kölner Express*, a regional tabloid based in Cologne, refused to print a public reprimand issued by the Press Council.<sup>106</sup> This resulted in the council suspending its own activities and it was only re-established in 1985 when 90% of publishers agreed to a voluntary undertaking to print Press Council decisions, known as 'public reprimands', when required.

However, the German Press Council cannot determine the prominence of where decisions appear, nor can it prevent editorialising around them. 2007 saw two examples of combative newspaper reactions to public reprimands by the Press Council.

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<sup>105</sup> <http://www.thelocal.se/3842/20060518>.

<sup>106</sup> [http://www.presserat.info/index.php?id=282&no\\_cache=1&type=98](http://www.presserat.info/index.php?id=282&no_cache=1&type=98).

## Publication of German Press Council decisions: challenges in Germany

In May 2007 *Bild* carried a story about German citizen Khalid El-Masri who was kidnapped in Macedonia on suspicion of terrorism, 'rendered' back to Afghanistan, tortured, and held for five months before being released in 2006. The *Bild* story concerned his arrest for arson in 2007 after a row in an electrical store. The Press Council upheld a complaint from Mr al-Masri who was referred to in the article as a 'crazy German-Lebanese' and described as in a 'psycho clinic in Kaufbeuren'. The Press Council accepted that there was considerable public interest in al-Masri and his behaviour, but found that the article had breached the Code in its reporting on the mental health of a patient who may have been traumatised by the kidnapping.

Guidance to the Code highlights sensitivities around 'physical and mental illness' in relation to privacy and *Bild* was required to publish the Press Council's decision. On 29 November 2007 *Bild* published the decision in the form of a further article under the headline: 'Mad! Press Council reprimands *Bild* about this arsonist'.<sup>107</sup> The article repeated the original allegations, reported that it had been reprimanded by the Press Council, but declared it stood by its coverage:

*We stand by our story. A violent arsonist who goes berserk at the slightest opportunity, and who according to the Federal Office for the Protection of the Constitution<sup>108</sup> is closely connected to the Islamic scene, remains for us a violent and mad arsonist. We will not soften our coverage, any more than we would in the case of people preaching hatred, Nazis or other crazy trash.*<sup>109</sup>

*Bild* ended by pledging: 'One thing is certain: we will continue to report.' The Press Council published a press release<sup>110</sup> giving the full decision but could do little more.

Also in 2007 the German Press Council faced civil proceedings from the magazine *Eco-Test* which it had publicly reprimanded over an article linking eczema creams for babies to cancer. *Eco-Test* claimed it had been damaged as a result of the reprimand and the Frankfurt Court ruled the reprimand should not be publicly distributed any further. This was overturned on appeal when the Court decided the Press Council was covered by the Freedom of Information Act and its reprimand did not contain any untrue statements.<sup>111</sup>

These were two particularly notorious examples, though the fact that member publications responded to the Press Council through such actions demonstrated a significant challenge to the council's authority. The problem of compliance persists and has resulted in delays in publishing or repeated failures to publish Press Council decisions.

While 90% of the publishers in Germany have agreed to a voluntary undertaking to print public reprimands, known as the 'voluntary self-declaration', a major publisher, Bauer Media Group, has recently failed to renew its declaration. Of the 13 public reprimands ordered to be published in 2011, at the time of writing eight have still not been published. Press Council chairman Bernd Hilder explained that all but one of the outstanding reprimands are against this one publisher:

<sup>107</sup> 'Irre! Presserat rugt bild wegen dieses Brandstifters': <http://www.bild.de/news/2007/news/el-masri-3095854.bild.html>.

<sup>108</sup> Germany's domestic intelligence service.

<sup>109</sup> 'Wir stehen zu unserer Darstellung. Ein gewalttätiger, bei geringsten Anlässen ausrastender Brandstifter, der sich laut Verfassungsschutz nahe der islamistischen Szene bewegt, bleibt für uns ein gewalttätiger und durchgeknallter Brandstifter. Wir werden unsere Berichterstattung nicht weichspülen – so wenig wie bei Hasspredigern, Nazis oder sonstigem durchgeknallten Gesindel.' <http://www.bild.de/news/2007/news/el-masri-3095854.bild.html>.

<sup>110</sup> <http://www.presserat.info/inhalt/dokumentation/pressemitteilungen/pm/article/presserat-dokumentiert-entscheidung-zum-fall-al-masri.html>.

<sup>111</sup> <http://www.presserat.info/inhalt/dokumentation/pressemitteilungen/pm/article/arbeit-des-presserats-erneut-gerichtlich-bestaetigt.html>.

*About seven reprimands are against one publishing house who have not yet signed our voluntary self-declaration – Bauer – but have agreed to do so soon. So we do hope that they will sign up soon and also publish the reprimands.*<sup>112</sup>

Mr Hilder explained that the Press Council was not happy with the situation and that the full Press Council would be discussing the situation at its next meeting in March 2012. Even if Bauer signs up and publishes the reprimands, such recurrent issues over compliance raise considerable issues for the Press Council over its reputation and credibility. It is, Mr Hilder concedes, a persistent problem:

*Unfortunately there is no standard for the way in which public reprimands should be published. Each reprimanded [publication] can decide itself whether they really want to inform their readers fully on the reprimand or whether they only want to give rudimentary information.*

**Finland** has an entirely voluntary system of self-regulation and one that extends as we have seen across print, broadcast, and associated online media. According to the EU-funded media research project MediaDem:

*An exceptional feature in the Finnish media field is that in practice all of the Finnish media organisations are members of the Council for Mass Media and have committed themselves to self-regulation and accepted the objectives of the Council.*<sup>113</sup>

The strength of the newspaper, magazine, and broadcasting associations is again important. In principle the management group could expel a member (on a unanimous vote) on grounds of 'contract infraction or negligence in regard to the annual fee' or a member could leave following a one-year notice period. In reality it would be very difficult for the mainstream media to sit outside the regulatory system, since individual media companies belong automatically because of their membership of professional organisations. If they were to leave the CMM they could be thrown out of the relevant professional organisation and put the self-regulatory system in jeopardy. As Chairman Risto Uimonen pointed out, self-regulation is preferable to a statutory alternative:

*By being a member [of the Press Council] the media underline their reliability to the public, government and authorities. Media people also understand that the alternative to self regulation is a statutory regulation imposed by government and authorities. That is one of the major incentives to have the self regulation system and to comply with our decisions.*<sup>114</sup>

In Finland freedom of speech is guaranteed in the Finnish Constitution, the Finnish Openness of Government Activities Act which guarantees access to official documents, and the Exercise of Freedom of Expression in Mass Media Act.<sup>115</sup> The latter opens by setting out that interference with the activities of the media is legitimate only insofar as it is unavoidable and subject to the rule of law (this applies to all media regardless of technology). Similar to

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<sup>112</sup> Email Interview, Feb. 2012.

<sup>113</sup> *European Media Policies Revisited: Valuing and Reclaiming Free and Independent Media in Contemporary Democratic Systems*: <http://www.mediadem.eliamep.gr/wp-content/uploads/2010/05/Finland.pdf>.

<sup>114</sup> Interview, Feb. 2012.

<sup>115</sup> <http://www.finlex.fi/en/laki/kaannokset/2003/en20030460.pdf>.

requirements in Sweden (discussed above) and as we shall see in Denmark, the Act also requires responsible editors be designated for publications issued four times a year or more (print and comparable electronic media) and for broadcast programmes. The editor can be sentenced to a fine if found guilty of 'editorial misconduct' but according to Risto Uimonen, himself formerly editor-in-chief of *Kaleva* newspaper, the recognition of responsibility brings with it great independence:

*The powers of the editors-in-chief in Finland are enormous. The editor-in-chief is the only person who can say what can be published or not. Nobody can influence him, basically. Not the Chairman of the media company, or the Managing Director, or President, or anybody else. That is how it is [set out] in Finnish law.*

Recent amendments to the Act provide for responsibility further down the editorial chain which has caused some disquiet among journalists, and concerns that they will be overly cautious in their reporting as they are more vulnerable than chief editors. However Uimonen argues that this new clause is yet to be tested and in any event the editors-in-chief 'usually take responsibility'.

By contrast to the commitment of industry to the self-regulatory system in Finland, the Canadian system is facing enormous challenges from a haemorrhaging of membership. While not a focus of this report, Canada is notable in that the system of voluntary self-regulation through press councils is at the point of collapse. The withdrawal of members sits alongside valuable debate on the functions and purposes of Press Councils in a digital age and merits consideration in some detail.

### **The 'Desmond Problem' writ large: current challenges to Canadian press regulation**

At the time of writing there are press councils in Ontario, Quebec, Atlantic Canada, Alberta, and British Columbia. However, member publications are currently pulling out with such rapidity, and press councils closing down, that the situation in Canada is fluid to say the least. The following examples illustrate current debate in Canada.

#### **Ontario**

In July 2011 Sun Media Corporation pulled its publications (representing 27 out of the 37 daily newspapers in Ontario) out of the Ontario Press Council (OPC) stating:

*We no longer believe there is a common cause here. The editorial direction of our newspapers, especially our urban tabloids, is incompatible with a politically correct mentality that informs OPC thinking, in the selection of cases it hears, and the rulings it renders.*<sup>116</sup>

Ontario Press Council chairman Robert Elgie expressed his regret at the decision particularly at a time when press ethics were the subject of debate following the phone-hacking scandal in the UK.<sup>117</sup>

The move prompted vigorous debate about media ethics and the role of press councils. Professor Larry Cornies, a former journalist and editor who teaches journalism ethics at the University of Western Ontario, reflected that: 'The stampede by newspapers toward membership in press councils occurred largely as a result of

<sup>116</sup> <http://www.torontosun.com/2011/07/13/sun-media-pulls-out-of-ontario-press-council>.

<sup>117</sup> <http://j-source.ca/article/it-disappoints-me-ontario-press-council-chairs-reaction-after-sun-media-pulls-out>.

two government-appointed panels' which in 1970 and in 1981 suggested federal regulation of news media.

*Rather than face that prospect, newspaper owners hoisted their own solution, which already a few years earlier had been born in the imagination of Toronto Star publisher Beland Honderich. They would form press councils to which they would (voluntarily) belong and to which they would appoint adjudicators, which would hear and rule on complaints by readers. The councils would be bought and paid for by the industry. And for a couple decades, it mollified all concerned.*

In 1998 Professor John Miller, a former Toronto Star senior editor and Ryerson University journalism professor, observed in his book *Yesterday's News: Why Canada's Daily Newspapers are Failing Us* that press councils: 'limit themselves to dealing, sometimes not very impartially, with complaints, filed by the relatively few members of the public who have the determination and stamina to wait up to six months for a hearing'. What they did not do also interested him:

*Most councils do not undertake their own investigations . . . none plays a role in training, research or development; nor, judging by the number of complaints and what happens to them does any council serve as much of a conduit for understanding or dialogue between the press and its public.*<sup>118</sup>

For Larry Cornies this conduit between the press and public is finding different, digital, expression which in his view may make press councils (certainly in their current form) redundant:

*Press Councils, like many journalistic traditions of the latter 20th century, are vestiges of another epoch. In an era of collaborative news-gathering, instant audience feedback via commenting, and social media that applaud or deride a reporter's story, in viral fashion, a million times faster than any Press Council can issue a finding, the way news works has changed. The rights of news consumers to be heard and to exercise the right of reply have never been stronger.*<sup>119</sup>

## Manitoba

The Manitoba Press Council was one of those which started life in the 1980s, in order to resist suggestions of a federal watchdog. On 1 January 2012 it closed down after its last participating newspapers withdrew. *The Winnipeg Free Press* (which provided \$14,000 of the \$17,000 annual budget) was one of those whose departure precipitated closure. The paper's publisher said the decision to pull out 'was based in part on the council's declining activity and the fact most news organizations in the province had already either withdrawn their membership or never joined'. One Press Council member responded: 'There seems to be a belief that the council lacks relevance and credibility, yet one could argue that the need for a watchdog over journalism's ethics has never been greater . . . if there is no avenue of redress or recourse for the public, then the public is indeed in dire straits.'<sup>120</sup>

## Quebec

Quebec also faces significant withdrawal of newspapers from its Press Council. Quebecor, the parent company of Sun Media (discussed above in relation to Ontario), pulled out of the Quebec Press Council in 2010,<sup>121</sup> citing what it saw as arbitrary decisions on the part of the Press Council and the council's resistance to reform. More recently, threats of withdrawal by other publications have been prompted by

<sup>118</sup> <http://www.fernwoodpublishing.ca/Yesterdays-News-John-Miller>.

<sup>119</sup> [http://www.lfpress.com/comment/columnists/larry\\_cornies/2011/07/15/18426016.html](http://www.lfpress.com/comment/columnists/larry_cornies/2011/07/15/18426016.html).

<sup>120</sup> <http://www.winnipegfreepress.com/local/manitoba-press-council-ceases-operating-as-papers-withdraw-136722178.html>.

<sup>121</sup> <http://www.guardian.co.uk/media/greenslade/2011/jul/14/canada-newspapers>.

the suggestion that state intervention may attempt to make Press Council membership compulsory.

In 2010 the Quebec Government established a task force, the Working Group on the Future of Journalism and Information in Quebec, to consider the future of journalism in an era of rapid technological change. Its first report, by former journalist Dominique Payette, was published in January 2011.<sup>122</sup> It concluded that legislation was needed to ensure that the public 'continue to benefit from high-quality information, a foundation of democracy and citizen participation' and so that 'the supply of information and the conditions of practicing professional journalism do not deteriorate further'.<sup>123</sup> Payette recommended the adoption of a law on the status of 'professional journalists'. This would distinguish 'professionals' from 'amateurs' (such as bloggers and citizen journalists). Professional status would confer certain privileges, for example, in relation to court reporting and access to information, and eligibility for tax credits or Quebec Government subsidy; membership would be mandatory for all news organisations in the Quebec Press Council;<sup>124</sup> and the Press Council itself would be strengthened with the power to draw up a common code of ethics and impose sanctions.

Quebec's Minister of Culture, Communications and the Status of Women, Christine St-Pierre, launched a public consultation (which ended in January 2012)<sup>125</sup> asking whether the status of professional journalists should be recognised and if so how it would be determined, by whom, and whether it should be linked to privileges including, for example, privileged access to court and government information. While the consultation and the Payette Report on which it is based raise useful notions of incentivising standards for journalism and conferring public recognition on them, they have been immensely controversial: bringing with them associations of licensing of the press and a concern that citizen journalists would be given a 'second-class' status rather than being encouraged to flourish.<sup>126</sup>

During the government's consultation, the Quebec Press Council's president, former judge John Gomery, raised the issue of Quebecor's withdrawal from the council. He said it was 'unacceptable that nearly 40% of [news] information produced in Quebec escapes the accountability mechanisms that other Quebec media undergo'.<sup>127</sup> In light of Quebecor's refusal to reconsider its decision to pull out of the council, he called on Minister St-Pierre 'to seriously consider the possibility of adopting a law requiring all news media to participate' in the Quebec Press Council. He said there was no question of inviting state interference in media regulation and that the council would continue to regulate autonomously but it must rely on the participation of 'all key players'.

In response, English-language daily the *Montreal Gazette* threatened to pull out of the council. In a letter to John Gomery, the *Gazette's* editor-in-chief Alan Allnutt unequivocally opposed mandatory membership, saying Gomery had overstepped his authority by making the proposal without the approval of the council's board of directors. He also opposed the creation of a 'professional journalist' in the strongest possible terms:

*With this letter I would also like to make it clear that we would regard any legislation in Quebec creating different classes of persons, insofar as either journalism or access to public information is concerned, as unconstitutional – as amounting to licensing of the press. We would take immediate legal action against any such legislation.*

<sup>122</sup> <http://www.mcccf.gouv.qc.ca/fileadmin/documents/publications/rapport-Payette-2010.pdf>.

<sup>123</sup> Ibid.

<sup>124</sup> <http://www.conseildepresse.qc.ca>.

<sup>125</sup> [www.mcccf.gouv.qc.ca/consultation](http://www.mcccf.gouv.qc.ca/consultation).

<sup>126</sup> <http://www.nationalpost.com/Quebec+mulls+privileged+professional+journalists/5297817/story.html>.

<sup>127</sup> Translation from French: <http://www.cyberpresse.ca/la-voix-de-lest/opinions/courrier-des-lecteurs/201111/18/01-4469511-le-refus-de-quebecor.php>.

He noted that Gomery proposed that:

*'an eventual disciplinary committee' within the CPQ [Quebec Press Council] would be charged with imposing penalties on members who violate a common code of ethics for journalism in Quebec . . . Penalties for violations, under your plan, would include 'suspension of the title' of professional journalist, or presumably the license to work. The Gazette would not, and could not in good conscience, agree to sit on such a committee.*

He demanded a full airing of these matters at a meeting of all the board of directors where the board could reconsider the direction taken by Gomery and said that 'Failing that *The Gazette* will have no choice but to leave' the council.

### **Newspapers Canada Study**

In response to the furore over possible statutory intervention, falling membership, and lack of funds threatening the viability of the remaining press councils, in December 2011 the national newspaper association launched a study on options for the future of the press councils,<sup>128</sup> which is due to report in April 2012 at the national newspaper conference in Toronto. Coming full circle, funding for the report includes an 'arms-length personal donation' by John Honderich, chair of the board of TorStar, 40 years after his father Beland Honderich (referred to above) was instrumental in launching Ontario's Press Council in 1972.<sup>129</sup>

### **4.2. Voluntary 'independent' regulation with statutory incentives: Ireland (and Australian Press Council proposals)**

**Ireland** operates voluntary, incentivised independent regulation. The Press Council and Press Ombudsman are recognised by Parliament under the provisions of the 2009 Defamation Act.<sup>130</sup> The Act sets out that in court proceedings considering publication of an allegedly defamatory statement:

*the court shall, in determining whether it was fair and reasonable to publish the statement concerned, take into account such matters it considers relevant including . . . in the case of a statement published in a periodical by a person who, at the time of publication, was a member of the Press Council, the extent to which the person adhered to the code of standards of the Press Council and abided by determinations of the Press Ombudsman and determinations of the Press Council.*

There are a number of ways in which this statutory recognition of Press Council membership and compliance works to incentivise, and underpin the effectiveness of, the voluntary system in Ireland.

First, membership of the Press Council is incentivised. In effect membership of the Press Council allows a publication to demonstrate its commitment to ethical standards and accountable journalism and mount a defence to defamation proceedings of 'fair and reasonable' publication (examined further in section 6.2 below). Membership cannot, under the Irish Constitution, be made compulsory. Indeed the Defamation Act also allows the courts to take into account the extent to which the publisher 'adhered to standards equivalent' to those of the Press Council. In practice, however, a commitment to the Press Council system is a readily recognisable

<sup>128</sup> <http://www.newspaperscanada.ca/news/industry/press-council-study-launched>.

<sup>129</sup> <http://j-source.ca/article/study-look-options-future-press-councils>.

<sup>130</sup> <http://www.irishstatutebook.ie/pdf/2009/en.act.2009.0031.pdf>.

demonstration of accountability and standards that can be taken into account by the courts. Press Ombudsman Professor John Horgan argues that: 'We assess the mark fairly high in terms of not just the Code of Practice, but in terms of our procedures dealing with complaints and things like that. And it would be quite difficult for any non-member publication to prove to the satisfaction of the courts that they have used similar conditions.'

Second, as set out in the extract from the Irish Defamation Act above, the extent to which the code of standards has been complied with, and Press Council determinations abided by, is highly incentivised. Thus a track record of compliance, not just the simple fact of membership, becomes important in order for a publication to demonstrate its accountability and responsibility in court. As Professor Horgan explained, this incentivises active compliance day to day, not just when a court case is pending:

*If any of our member publications decided that they didn't want to comply or started to play ducks and drakes with our compliance procedures, they would be very seriously disadvantaged in any civil court action against them by a complainant or by a plaintiff, who could demonstrate in court that, in spite of being a member of the Press Council, this particular publication had not followed its rules. That's a hidden incentive, if you like, for compliance.*

Thirdly, the Defamation Act incentivises the making of an apology. For example, in making an award of damages it sets out that the court shall have regard to 'the offering or making of any apology, correction or retraction by the defendant to the plaintiff in respect of the defamatory statement'. As Professor Horgan explained, this is a 'major change in Defamation Law brought about by the 2009 Act':

*Prior to the passage of the 2009 Act, a newspaper which apologised to anybody for anything, admitted liability and went to court, but the only question that the court was asked to decide was the amount, the quantum, of damages. Now, an early and wholehearted apology acts to mitigate any possible financial sanction by the court or by a jury in a civil case. So the situation has been turned through 180 degrees. It's quite different. It is actually in their interest now to apologise meaningfully when they get something wrong and this helps them in court.<sup>131</sup>*

In addition Press Council Chairman Dáithí O'Ceallaigh<sup>132</sup> notes that this incentive has promoted a wider change in culture, outside of court, in newspapers' approaches to complainants:

*There is some evidence that the newspaper editors and the newspaper managers, particularly at the national level, have changed their method of operation in the sense that they've come to realise that where they make a mistake . . . where their readers might be upset and might complain, they tend now to apologise much more quickly. And a number of the senior national newspaper people have told us that the newspapers themselves are more inclined now to issue an apology very quickly than they might have been in the past.*

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<sup>131</sup> Interview, Feb. 2012.

<sup>132</sup> <http://presscouncil.ie/about-the-press-council/sub-sub-2.20.html>.

The Press Council reports that all large publications are regulated by the Press Council, the chief absences being among regionally published free sheets, and given the incentives set out above compliance among members is good:

*The Press Council relies on the voluntary compliance of its members which has, to date, been forthcoming, so that the issue of requiring powers to ensure compliance has not arisen. Compliance, in effect, means that newspapers against which complaints have been upheld have to publish all such decisions promptly and with due prominence in accordance with the Council's publication Guidelines.*<sup>133</sup>

Ultimately the Press Council could expel a member for non-compliance, which would mean that that publication could not use Press Council membership to demonstrate evidence of their standards and accountability for the courts in relation to defamation proceedings. However, unlike the examples of non-compliance considered above in the case of Germany, the incentivised Irish framework appears to bind its members in. One illustration of this is that while Richard Desmond's Northern and Shell titles withdrew from PCC regulation at the end of 2010, the *Irish Daily Star* which is 50% owned by Northern and Shell is a member of the Irish Press Council. Indeed many titles within the UK press, and their Irish offshoots such as the *Irish Daily Mirror* and the *Irish Daily Mail*, are members of the Irish Press Council.<sup>134</sup>

**Australia** is very much a country in transition in relation to media regulation and Press Council Chairman Professor Julian Disney sees the APC positioned on a spectrum of regulation which may thwart easy definitions. Unlike those countries (examined above) where an industry committee frames the Code of press standards, in Australia the council itself does this, so Professor Disney explained: 'that makes us that bit closer to a regulator, but we don't have the powers of sanction and things like that. So I tend, myself, not to like using the word regulator too much.' He also pointed out that 'only a third of the members of the council are publishers. 40 per cent of the members of the council, plus myself, are not from the industry, so in that sense it is not full self-regulation.'<sup>135</sup>

*We're on the spectrum between self-regulator and independent . . . Not yet an independent regulator, I wouldn't say. We're on the spectrum towards it and we need to move further towards it. I actually liked the description . . . 'independent from the government and independent, sufficiently independent, from the industry to have confidence of the public' and I think that's quite a good test.*<sup>136</sup>

Currently the Australian Press Council reports that all major publishers of newspapers and magazines have agreed to be bound by the Council's Standards of Practice and complaints-handling system, and collectively they publish about 98% of all newspaper and magazine sales in Australia.

<sup>133</sup> Press Council, email information, Jan. 2012.

<sup>134</sup> In the case of UK titles that are not members because they circulate in Ireland only in a UK edn (e.g. *Financial Times* and *Guardian*), the Press Ombudsman says they might be more appropriately dealt with by the UK's PCC and a decision over which body would adjudicate would be made jointly with the PCC (email information, Mar. 2012). In relation to defamation proceedings a publication from another jurisdiction, or an international news provider, could in principle put forward press council membership from that jurisdiction, or a demonstration of adherence to equivalent standards, in order to demonstrate a commitment to accountable and responsible journalism; see also n. 278 below.

<sup>135</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0011/143687/Transcript\\_of\\_Melbourne\\_hearings\\_9\\_November\\_2011.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0011/143687/Transcript_of_Melbourne_hearings_9_November_2011.pdf).

<sup>136</sup> Interview, Feb. 2012.

However its recent past provides salutary lessons for the APC. Like Germany in the early 1980s, and Canada currently (as discussed above), Australia has seen its own 'Desmond' problems.

One of Australia's largest media groups, John Fairfax Ltd, took several years to be convinced of the Press Council's value when it was established in 1976 and only joined in 1982. News Limited withdrew from the Council between 1980 and 1987 after several adverse adjudications. These included an adjudication against its Adelaide papers for biased reporting of the 1979 South Australian election. And in 1986 Rupert Murdoch launched a takeover bid for the *Herald and Weekly Times* which divided the Press Council in relation to press ownership and control. The council's chairman resigned and the media union, the AJA, withdrew for 19 years (before rejoining in 2005) although News Limited rejoined the following year.<sup>137</sup>

With this history in mind, the Australian Press Council remains concerned that:

*publishers can withdraw from the Council at any time without necessarily incurring any adverse consequences. For example, they do not need to remain members in order to retain statutory privileges such as exemption from the Federal Privacy Act. Membership is also not a pre-condition of the non-statutory privileges which media organisations enjoy in relation to access to certain types of information or premises and in other respects.*<sup>138</sup>

The Australian Federal Privacy Act referred to restricts the collection of personal information but provides, as is the case in many countries' data protection provision, an exemption for media organisations in the course of journalism. The exemption in Australia applies if media organisations are publicly committed to published written standards in relation to privacy. Consideration is currently being given in Australia to incentivising Press Council membership more formally through the Privacy Act. The APC proposes that the Press Council would be the organisation to which print and internet publishers would be required to subscribe in order to be eligible for the Privacy Act exemption, thus incentivising membership among both existing and emerging providers.

In addition, the APC has noted non-statutory privileges that could be linked to Press Council membership: for example, access to Parliament House, including the 'Budget lock-up' (where the press are allowed behind locked doors to be briefed on the federal budget before it is presented), court reporting, and sporting events.

In December 2010 the Australian Convergence Review<sup>139</sup> was set up by the Australian government, and an 'emerging issues' paper published in 2011<sup>140</sup> together with specific discussion papers, for example on journalistic standards.<sup>141</sup> The Consultation closed at the end of October 2011 and an interim report was published in December 2011.<sup>142</sup> This includes proposals for an independent, converged regulator within a framework for consistent regulation across the media landscape and includes the proposal to remove

<sup>137</sup> <http://www.presscouncil.org.au/uploads/52321/ufiles/press-files/whither-the-australian-press-council.pdf>.

<sup>138</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0019/142237/Australian-Press-Council-Part-1.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0019/142237/Australian-Press-Council-Part-1.pdf).

<sup>139</sup> [http://www.dbcde.gov.au/digital\\_economy/convergence\\_review](http://www.dbcde.gov.au/digital_economy/convergence_review).

<sup>140</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0020/137270/Convergence\\_Review\\_Emerging\\_Issues\\_paper\\_PDF\\_707\\_KB.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0020/137270/Convergence_Review_Emerging_Issues_paper_PDF_707_KB.pdf).

<sup>141</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0008/139274/Community\\_standards\\_19\\_September\\_web.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0008/139274/Community_standards_19_September_web.pdf).

<sup>142</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0007/143836/Convergence-Review-Interim-Report-web.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0007/143836/Convergence-Review-Interim-Report-web.pdf).

the allocation of licences for broadcasting and instead impose any regulatory obligations 'consistently, irrespective of the delivery platform'. As part of this review an Independent Inquiry into the Media and Media Regulation was established and reported in February 2012; its recommendations are set out in section 4.3.

The final report on regulatory reform is due to be published in March 2012 and the Australian Press Council, as already noted, has played an active part in proposals for radical future reform. The council says its principal objective in the short-to-medium term is to strengthen its existing complaints and standards work, which will help to place it in a position where it is able to evolve into an Independent Council that can deal with complaints about news and comment across all platforms. It is therefore reviewing all existing standards of practice to ensure that they are responsive to community expectations; improving its complaints-handling processes to allow for more effective resolution of complaints prior to adjudication; introducing a fast-track system for significant matters that need to be dealt with immediately; and bringing more online-only publishers under its jurisdiction.

Under proposals to the current Australian Convergence Review, the APC's proposals to make privileges (explored above) *conditional* on membership of the Press Council would mean that any publisher choosing to sit outside its framework would suffer material penalties. Australia's Press Council membership would remain voluntary but its chair Professor Julian Disney hopes that a future introduction of incentives will be so strong 'that the voluntary element of it becomes relatively weak'.<sup>143</sup>

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<sup>143</sup> Interview, Feb. 2012.

#### 4.3. Co-regulation combining a mandatory statutory basis with self-regulatory elements: Denmark (and Australian independent inquiry proposals)

**Denmark** is unique among the countries considered here in having established a co-regulatory system which combines a statutory basis with self-regulatory elements. The Press Council describes itself as an 'independent public tribunal established under the Media Liability Act'. The Act requires that Danish 'mass media shall be in conformity with sound press ethics' and sets out a right of reply (or correction) explored below. It does not however set out an ethical code, instead the code guidelines are the responsibility of the Press Council which, as we have seen, has a significant industry presence. The 'Desmond question' does not arise since registration and regulation is mandatory (and automatic) across Danish broadcast and print media. This does not however appear to raise the spectre of licensing of the press in the Danish context, as RISJ Research Fellow Rasmus Kleis Nielsen explained:

*There is no mechanism by which one can be prevented from registering. So is it licensing in the sense that a licence could be rejected? No, it is not. It is no different from the way in which in this country if you open a company you have to register with Companies House. It's a question of ensuring an element of transparency that's crucial to good corporate governance and, from my point of view, is also a corner stone of media regulation that you can establish chains of responsibility that go beyond the individual reporter.<sup>144</sup>*

Although the Danish system has a legal basis, its primary strength according to its chair Ms Jytte Scharling, a judge in the Danish Supreme Court, is as an alternative to the law:

*The 'Danish model' is a useful alternative to litigation, which allows everyone – even the most vulnerable citizen – an opportunity to get redress if they feel hurt or insulted by a mass media. In many cases the ability to have one's case tried in the press ethical system, that can offer a more formless complaint form and a cost free, faster and more discreet processing, is preferable compared to a judicial review.<sup>145</sup>*

The Media Liability Act establishes the 'chains of responsibility' referred to above by requiring that, like in Sweden and Finland, Danish media specify an editor responsible for final decisions concerning the content of a publication or broadcast. The Act identifies criminal liability for the content of the media and the liability for damages in respect of the media.<sup>146</sup> It also sets out an alternative remedy that is 'free of charge' in the form of an obligation on media covered by the Act to publish or broadcast a reply, or more accurately a correction 'limited to the necessary factual information', where information of a factual nature which might cause 'significant financial or other damage' has been published.

On the face of it Denmark imposes a compulsory regulatory regime and does not need to incentivise membership and compliance. In reality however, the Media Liability Act provides a number of incentives which account for industry's acceptance of the introduction of the statutory

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<sup>144</sup> Interview, Dec. 2011.

<sup>145</sup> Email interview, Feb. 2012.

<sup>146</sup> <http://www.pressnaevnet.dk/Information-in-English/The-Media-Liability-Act.aspx>.

framework in 1991 and online media's desire to join it on a voluntary basis. These include rights in relation to protection of sources, including in relation to searches and seizures; the gathering and storing of personal information as part of journalistic research (which is otherwise strictly regulated); and in addition

*media that are recognised under [the Media Liability Act] also have extended rights to access case files from trials, including the right to see files in cases in which they are not themselves a part, and to use restricted information (names, case details) for research, although not for publication. Under some conditions, journalists may also attend judicial acts that are otherwise closed to the public.<sup>147</sup>*

While regulation of both broadcasting and the printed press is mandatory, the Press Council's role is to adjudicate on specific categories of complaints: in relation to press ethics, and on whether there is an obligation to publish a reply. Rasmus Kleis Nielsen stressed that the Danish Press Council thereby promotes ethical standards in everyday journalism but does not, and should not, replace the law:

*I have a lot of sympathy for the view that [examples of criminal activity including phone hacking and bribery] aren't things that are effectively dealt with through the same kind of system that you would want in place to help journalists do an ethically defensible job in every day reporting.*

Nor, he argued, is the system of press regulation in Denmark, albeit set within a statutory framework, a primary safeguard against criminal activity:

*There might be a whole host of other things in Denmark that mean [phone hacking] would be unlikely, which would be that the tabloid market is less competitive, there might be a different professional culture so there could be a whole string of other reasons why it would be unlikely in Denmark but I'm not sure regulation is one of them.*

The Danish Press Council's statutory basis sets out the sanction, in the event of an upheld complaint, of a direction to publish the Council's decision. The Media Liability Act provides that failure to comply with this direction (and not the breach of press ethics itself) 'shall be punishable by a fine or imprisonment of up to four months'.

In **Australia** a co-regulatory model is, at the time of writing, under discussion. The Australian Independent Inquiry into the Media and Media Regulation presented its recommendations,<sup>148</sup> as part of the Australian government's Convergence Review,<sup>149</sup> on 28 February 2012. Like Denmark, its proposals combine statutory with self-regulatory elements and propose a regulatory body for news media across platforms, though unlike Denmark its funding would come entirely from the government and it appears it would handle a wider scope of complaints.

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<sup>147</sup> <http://www.mediadem.eliamap.gr/wp-content/uploads/2012/01/Denmark.pdf>.

<sup>148</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0006/146994/Report-of-the-Independent-Inquiry-into-the-Media-and-Media-Regulation-web.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0006/146994/Report-of-the-Independent-Inquiry-into-the-Media-and-Media-Regulation-web.pdf).

<sup>149</sup> [http://www.dbcde.gov.au/digital\\_economy/convergence\\_review](http://www.dbcde.gov.au/digital_economy/convergence_review).

## An independent, statutory 'News Media Council': proposals from Australia, February 2012

In September 2011, and following calls for an inquiry in light of the phone-hacking scandal in the UK and resulting inquiry established under Lord Justice Leveson, Ray Finkelstein QC was appointed to conduct an inquiry into the Australian media and its regulation which is to feed into the wider Convergence Review. However, while UK phone hacking was the most immediate trigger for the inquiry, former RISJ Journalism Fellow Peter McEvoy<sup>150</sup> argued<sup>151</sup> that the Press Council 'has long been held in low regard by Australian journalists' and criticised as a 'toothless tiger'. For example, the APC's then chairman Professor Ken McKinnon noted in the Council's 2009 Annual Report:

*substantial concern relates to editorial standards, in the light of instances such as the 'Utegate' incident, which led to a barrage of media attacks from both broadsheets and tabloids on the Prime Minister [Kevin Rudd] on the basis of a single unchecked, forged email; the publication of photographs wrongly claimed to be of [Australian politician] Pauline Hanson in provocative semi-dressed poses . . . The claims made by the newspapers fell short of the standards of probity expected of them. Ethics demand that the press make sufficient enquiries to ensure that what they publish is accurate, fair and balanced.*<sup>152</sup>

The independent inquiry is based on a range of evidence and submissions.<sup>153</sup> The resulting report considers the role of a free press in a democracy, the newspaper industry in Australia and overseas, the role of media standards including privileges and protections afforded to the media, and the regulation of broadcasting and print media.

The report recommends an 'enforceable right of reply' and a new model of regulation under an independent statutory News Media Council to replace both the APC and current regulation of Australian broadcast news and current affairs. The recommendations include:

- **An independent statutory council**, appointed by a committee independent of government, composed of a full-time independent chair (a retired judge or eminent lawyer), 10 independent members and 10 to represent the media.
- **Standards** of conduct developed by the Council including non-binding aspirational principles and more detailed standards including fairness and accuracy and some platform-specific standards.
- **Funding** by government in order to secure independence of the press.
- Its principal **purpose** would be 'to promote the highest ethical and professional standards in journalism' through the standards code, complaint investigation and resolution, reporting on the state of the news media, and educating both the news media and public about the standards.
- **News media** would be subject to the council's jurisdiction, on a mandatory basis, according to a set of criteria that the report suggests might be adapted from the New Zealand Law Commission consultation (discussed in section 3.2), for example, that a significant proportion of its publishing activities involve the generation and/or aggregation of news, information, and opinion of current value regularly disseminated to a public audience. In addition, the proposal is to exclude publishers with small audiences, for example, under 3,000 print copies per issue or a news internet site with under 15,000 hits a year, though non-news

<sup>150</sup> <http://reutersinstitute.politics.ox.ac.uk/fellowships/journalist-fellows/prev-journalist/06-07/mr-peter-mcevoy.html>.

<sup>151</sup> Email interview, Mar. 2012.

<sup>152</sup> [www.abc.net.au/mediawatch/transcripts/0939\\_annual.pdf](http://www.abc.net.au/mediawatch/transcripts/0939_annual.pdf).

<sup>153</sup> [http://www.dbcde.gov.au/digital\\_economy/independent\\_media\\_inquiry/consultation](http://www.dbcde.gov.au/digital_economy/independent_media_inquiry/consultation).

entities could opt in on a voluntary basis. Foreign publishers would be beyond its reach unless they have 'more than a tenuous connection with Australia'.<sup>154</sup>

- **Complainants** would be required to waive future legal action. Resolution would be attempted before adjudication by a complaints panel (composed of members of the council). The process would be subject to a speedy timetable and exclude lawyers. Evidence of a breach of the criminal law could be referred to the appropriate agency and the council could initiate its own investigations.
- **Remedial powers** would be to require a correction; reply (the report argues the right of reply 'ought to extend to any comment about a person or group that is likely to cause wrongful harm and the person or group asserts on reasonable grounds is false or misleading'); adjudication publication; and /or require withdrawal of an article (including online). Publication would be specified by the council and protected from legal proceedings. No powers to fine or award damages are proposed, as 'one of the main advantages of the proposed News Media Council will be lost' namely a fast complaints-handling process.
- **Enforcement powers** would provide that if a regulated media outlet refused to comply with a council determination either the council or the complainant would have the right to apply for a court order compelling compliance (and punishable in the usual way). There would be no appeal mechanism though there would be judicial supervision of enforcement proceedings.

The proposals are likely to prompt vigorous debate in Australia, given that a mandatory system is proposed, as will the final conclusions of the wider Convergence Review. The recommendations provide interesting approaches to identifying 'news media' and to enforcement powers that do not include financial penalties but, like the Danish model, provide an avenue for reply to, or correction of, inaccuracies. Interestingly, the report considers the relative merits of 'governmental regulation vs self-regulation' and explores co-regulation as a background to its proposals but does not explore alternatives of incentivised regulation. It does not set out whether complaints would be narrowed to those from a 'person affected', though this is unlikely as currently complaints are not restricted in this way in Australia as we shall see in Chapter 5.

Peter McEvoy commented that the while former chairman Professor Dennis Pearce, in evidence to the independent inquiry,<sup>155</sup> stressed the APC's lack of independence and noted the Press Council was inclined to hold fire in its judgments to avoid losing Press Council members and their funding, current chairman Professor Disney has used the inquiry 'to push the case for greater independence – and the scrutiny of the inquiry, and rise in public and political concern generated by the . . . Hackgate revelations, seems to provide a new opportunity to strengthen the council's role'.

Interestingly, and just a day after the Australian independent inquiry reported with proposals not dissimilar to the co-regulatory framework in Denmark, Danish MPs fired a shot across the bows of the current Danish regulatory framework. In its statement of 29 February 2012<sup>156</sup> the parliamentary Committee on Legal Affairs and Culture acknowledged the quality of freedom speech in Denmark, and of its media, but expressed great concern at some of the cases brought before the Press Council in the past year: 'a nursery manager wrongly accused of knowledge of paedophile abuse at her

<sup>154</sup> On the issue of jurisdiction the Inquiry Report states 'Foreign publishers who have no connection with Australia will be beyond its reach. However, if an internet news publisher has more than a tenuous connection with Australia then carefully drawn legislation would enable the News Media Council to exercise jurisdiction over it.'

<sup>155</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0011/143687/Transcript\\_of\\_Melbourne\\_hearings\\_9\\_November\\_2011.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0011/143687/Transcript_of_Melbourne_hearings_9_November_2011.pdf).

<sup>156</sup> <http://www.ft.dk/samling/20111/almdel/kuu/bilag/130/1085696/index.htm>.

nursery. A mother accused of having abducted her child abroad without foundation . . . a man declared to be a killer when it was not so.'

The committee has pledged to consider: whether publication of Press Council's decisions should be required to be in the same size and format as the original article; whether the Press Council should be able to issue fines for the most serious violations, and award damages; whether the Council should increasingly take up cases on its own initiative; whether its definition of 'legitimate interest' is too restrictive; and whether the time limit (of four weeks) for lodging a complaint to the Press Council is too narrow. Debate has begun in the Danish press over the relative merits of more punitive powers.<sup>157</sup>

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<sup>157</sup> [http://jp.dk/indland/indland\\_politik/article2658782.ece](http://jp.dk/indland/indland_politik/article2658782.ece)

## 5. Press Council Responsibilities

### *5.1. Primary purposes, who can complain, and wider standards*

The Press Councils examined here have a number of purposes both spoken and unspoken. Some, as we have seen, were set up as a defence against statutory regulation with otherwise competing publishers uniting in the face of potential external interference and continuing to comply in order to avoid statutory interventions. Stated purposes may include defending the freedom of the press, promoting accountability, and providing access to information for the public. How far each is largely a complaint-handling body, and how far each actively promotes wider press standards is significant in understanding the extent to which Press Councils champion the public interest in the press beyond adjudications, and how far they see their primary role as providing effective remedy, free of charge, to those personally affected by media content.

In addition, the issue of who can complain to a Press Council is central not only to the complaint-handling functions of the council but also to its wider relationship with the public. In the case of Sweden, Denmark, and Ireland, only a 'person affected' by the material (or someone acting with their permission) can bring a complaint. Essentially complaints therefore centre around privacy, reputation, and fair dealing and a member of the public concerned about misleading content more generally cannot seek a remedy through the Press Council. In Finland, Germany, and Australia the Councils will accept a complaint from any complainant which could, for example, include complaints about general issues of misleading reporting or the failure to separate fact from opinion. Different approaches are taken in relation to complaints from, for example, pressure groups or potential campaigns against a publication. While none of the Press Councils considered here have a particular mechanism for accepting complaints from (rather than about) journalists, the preamble to the Danish Code explicitly states that 'Journalists should not have tasks imposed on them that are contrary to their conscience or convictions'.

Recent proposals from the PCC's chairman Lord Hunt suggest separating complaint-handling responsibilities from standards auditing and enforcement. He has proposed 'a new credible regulator' be established with 'two arms: one that deals with complaints and mediation and one that audits and, where necessary, enforces standards and compliance with the Editors' Code'. Many Press Councils considered here see complaint handling as the primary mechanism by which they promote and underpin ethical standards of journalism; however, for the Australian Press Council, standards are a distinct and significant issue and it has raised a number of proposals for standards promotion beyond complaint handling. Germany meanwhile has faced issues over freedom of the press, and in particular protection of sources, and the Press Council has articulated concerns in keeping with its role in defending press freedom.

In **Sweden**, like Ireland, the regulatory framework includes both a Press Ombudsman and a Press Council in complementary roles. The Ombudsmen in each country, however, have different responsibilities. In Sweden the Ombudsman's purposes are to provide information and advice, investigate complaints on journalistic practice and contribute to the

development of press ethics. The Ombudsman is, as we have seen, the public face of press regulation. While the chair of the Press Council is a judge whose time is largely spent in the Supreme Court, the Ombudsman actively engages in public debate on media ethics.

The Ombudsman does not have the power to uphold a complaint; only the Press Council can do this. Rather the Ombudsman acts as a first filter for complaints and has powers to dismiss it as out of remit or without merit, or, where he considers there has been a breach of the ethical code, refer it to the Press Council for adjudication.

The purpose of the Press Council explained its chairman, Supreme Court Judge Per Virdesten,<sup>158</sup> is to 'review cases concerning good journalistic practice' which, as he emphasised, 'is not the purpose for the courts'.<sup>159</sup> It is a purpose that is set out in the Press Council's charter which adds that 'The Council shall be entitled to interpret the meaning of this concept as it sees fit'.<sup>160</sup> In practice the council adjudicates on complaints recommended to it by the Ombudsman as being in breach, and considers appeals on those cases the Ombudsman has dismissed.

In Sweden the complainant must be personally affected by the content complained about and this is narrowly interpreted (explained by the Press Council as 'identified in some way'). Complaints must relate to published material not journalistic methods, and must be made about the chief editor (responsible for publication) not about an individual journalist. The Press Ombudsman can proactively investigate a complaint though this is very rare. The last case was in 2008 in relation to a person being named as a murder suspect in a very early stage of a criminal investigation, which was deemed unethical under the Swedish press code.

In **Ireland** the 'principal objects' of the Press Council, set out in its Articles of Association, lie in the investigation, conciliation, adjudication, and resolution of complaints in relation to fairness or privacy complaints, though the primary role in these functions is given to the Press Ombudsman (whose decisions may be appealed to the Press Council). The Press Council is also responsible for maintaining the rights of the press, its independence from state control or regulation and to freedom of expression.<sup>161</sup>

In relation to complaints, a complainant must be 'personally affected' by the material published but, unlike the fairly narrow interpretation applied in Sweden and Denmark, the Irish Press Ombudsman and Press Council have a wider degree of latitude. Either a complainant must be the person written about (or have the permission of that person) or they may complain about any article that 'offends against good journalistic practice' if they can demonstrate they are personally affected even if they were not mentioned in it (and must have the permission of anyone who was mentioned in the article). By way of example the Press Ombudsman Professor John Horgan explained that he accepted a complaint about an article claiming that 'a particular locality in Ireland was reportedly plagued by crime'. The complainant challenged the accuracy of the crime statistics published and, although he was living in the UK, 'He came from the area getting a lot of negative publicity. So that was a

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<sup>158</sup> <http://www.hogstادمستolen.se/DomstolarRoot/Hogsta-domstolen/Justitierad/Per-Virdesten>.

<sup>159</sup> Interview, Feb. 2012.

<sup>160</sup> <http://www.po.se/english/charter-of-the-press-council>.

<sup>161</sup> E.g. in May 2011 the Press Council marked Press Freedom Day with a public lecture by Sri Lankan newspaper publisher Lal Wickrematunge, whose journalist brother Lasantha was assassinated and their investigative newspaper *The Sunday Leader* shut down under emergency regulations, before reappearing with the motto 'Unbowed and Unafraid'.

fairly reasonable assumption to make that he was personally affected by the article.'

The Press Ombudsman also accepts complaints made by organisations, such as charities, campaign, and support groups as demonstrated by the following case study.

### **Latitude in accepting complaints: a case from Ireland**

In February 2011 the *Irish Independent* published an article,<sup>162</sup> headlined 'Sterilising junkies may seem harsh, but it does make sense', in which columnist Ian O'Doherty argued that an initiative by a Dublin doctor and an addiction expert who 'wants to offer junkies €220 to be sterilised . . . might seem harsh at first, but when you think about it the scheme makes perfect sense'. He described witnessing 'trouble . . . between a bunch of junkies' and that 'one of the women – if you can even call these people that – who was kicking a bloke on the ground was also holding her baby in her arms as she was delivering the beating'. He described the group as 'feral, worthless scumbags' and wrote 'if every junkie in this country were to die tomorrow I would cheer'. He ended by asking:

*What chance does a child have if the best meal it can look forward to is a packet of crisps that it finds in the cupboard because Ma and Da have spent their dole and the children's allowance on smack? I'm not exactly one of those will-someone-please-think-about-the-kiddies types, but my heart, hard as it is, went out to that poor kid being held in his scumbag mother's arms as she administered a beating. What sort of future does it have? The answer, sadly, is none.*

The Press Ombudsman accepted a complaint made jointly by the International Harm Reduction Association, the Irish Needle Exchange Forum, and the CityWide Drugs Crisis Campaign, supported by a number of Irish drug service providers and professionals.<sup>163</sup> The complainants said the article breached Principle 8 of the Code on Prejudice which states that:

*Newspapers and magazines shall not publish material intended or likely to cause grave offence or stir up hatred against an individual or group on the basis of their race, religion, nationality, colour, ethnic origin, membership of the travelling community, gender, sexual orientation, marital status, disability, illness or age.*

The newspaper responded that while it

*steadfastly supported the right of its commentators to write robustly and without fear or favour, it recognised that a right of reply would be appropriate, and offered to publish a letter to the editor from the complainants, as it had done in response to a number of other complaints about the article. It subsequently advised the Press Ombudsman that it had also published a major feature about a mother's struggle in coping with her child's drug addiction.*

The complainants turned down the offer to publish a letter from them to the editor and said the feature was not relevant to their complaint. The Press Ombudsman's decision noted that

*the Preamble to the Code of Practice states clearly that publications are entitled to publish what they consider to be news without fear or favour, and to comment on it. This is not an issue as long as the relevant parameters of the Code of Practice – which has been written by editors and which is interpreted and applied by the Press Ombudsman and the Press Council – are also observed. Neither the justification advanced in the article for the comments complained about – an unconvincing distinction between 'junkie' and 'addict' – nor the subsequent publication by the*

<sup>162</sup> [http://www.citywide.ie/download/pdf/sterilising\\_junkies\\_may\\_seem\\_harsh\\_18\\_feb\\_2011\\_2.pdf](http://www.citywide.ie/download/pdf/sterilising_junkies_may_seem_harsh_18_feb_2011_2.pdf).

<sup>163</sup> [http://www.ihra.net/files/2011/06/13/Letter\\_to\\_the\\_Office\\_of\\_the\\_Press\\_Ombudsman\\_7\\_March\\_2011.pdf](http://www.ihra.net/files/2011/06/13/Letter_to_the_Office_of_the_Press_Ombudsman_7_March_2011.pdf).

*newspaper of letters from other complainants, or the publication of a feature reacting to the article, can obviate the need to make it clear that this article represents a breach of Principle 8 of the Code.*

The complaint was upheld on the grounds that it was likely to cause grave offence to or stir up hatred against individuals or groups addicted to drugs on the basis of their illness.<sup>164</sup> The finding was subsequently published by the *Irish Independent*.<sup>165</sup>

Unlike the Press Councils in Finland, Germany, and Australia, the Irish Press Ombudsman and Press Council will not accept complaints from members of the public concerned about, for example, misleading information with which they have no personal connection. Nor can either the Press Council or the Press Ombudsman initiate their own investigations.

In relation to wider standards, Press Ombudsman John Horgan is clear that the primary instruments of media 'regulation' in Ireland are carried out by relevant civil and criminal pieces of legislation, although 'it's not seen as media regulation because this legislation is not media specific, like defamation, contempt of court, obscenity'. By contrast he says:

*Our primary function as we see it is accountability and transparency. And so our regulatory function, as such, is comparatively downplayed. At the same time, we believe very strongly that complaint handling and standards go together. We conduct regular seminars with newspaper staffs and with the NUJ at various locations around the country.*<sup>166</sup>

Anecdotally he says there is evidence that there is a cultural shift as a result of the establishing, and recognition in the Defamation Act, of the Press Ombudsman and Press Council:

*Editors will tell us from time to time that certain stories that might have been written in the past haven't been written now because they are very conscious of the cultural and other changes which have been brought about by the establishment of our organisation. Also, on the plus side is the fact (again there's only anecdotal evidence of this) that newspaper editors will say that the activities of the Ombudsman and the Press Council have obviated or resolved issues that might have otherwise, have involved them in very substantial legal expenses.*

In **Denmark** the Press Council's purposes are to deal with complaints about journalistic ethics; contribute to the development of press ethics; and handle complaints about the legal right of correction. The Danish Media Liability Act<sup>167</sup> sets these purposes out and establishes that the Press Council may reject complaints from people or organisations 'with no cause of action' in these matters. As in Sweden, a complainant must have a 'legitimate interest', i.e. they must be the person or company/organisation named, shown, or identified and a strict interpretation (unlike the degree of latitude displayed in Ireland) is applied.

<sup>164</sup> <http://pressombudsman.ie/decided-by-press-ombudsman/the-international-harm-reduction-association-and-others-and-the-irish-independent-2220.html>.

<sup>165</sup> <http://www.independent.ie/national-news/the-international-harm-reduction-association-and-others-and-the-irish-independent-2806529.html>.

<sup>166</sup> Interview, Feb. 2012.

<sup>167</sup> <http://www.pressenaevnet.dk/Information-in-English/The-Media-Liability-Act.aspx>.

The 1997 annual report explained this position:

*It is not possible to lodge a complaint because of a general interest in a certain subject, or because someone thinks that the media in general, or a certain media, handles a case or subject in a wrong manner. The complaints that have been rejected, for lack of legal interest, concerned discussions etc. in the media where the plaintiff was neither directly nor indirectly mentioned.*<sup>168</sup>

Currently, therefore, while Denmark is unique among the countries considered here in providing statutory regulation of both print and broadcasting, the scope of that statutory regulation is narrowed to providing a remedy for individuals who are the subject of media coverage. When the Danish newspaper *Jyllands-Posten* published the cartoons of the Prophet Muhammad in 2005, creating world-wide debate, this was not a matter for the Press Council as it did not relate to 'correct information' or 'sound press ethics' (set out in the Danish Code of ethics in relation to privacy, suicides, victims of crime, etc.). RISJ Research Fellow Rasmus Kleis Nielsen argues that critics of the Danish system 'who are sceptical of slightly more muscular regulation' miss the fact 'that the system is very light touch around a whole slew of things that many people may consider objectionable in the way in which media behaves [and] the regulatory system in Denmark doesn't actually address any of those'. Instead, providing redress is at the core of Danish regulation:

*Part of the motivation behind the Press Council is to give people a free – instead of very expensive – way of seeking redress if they feel aggrieved. And if they are satisfied with simply setting the record straight, and whatever criticism the Press Council might express, then there is no need for a lawsuit. There is no need for a legal matter . . . It's about facts and the consequences of publishing untruthful assertions or inaccurate reporting essentially. That's the crux of it, that's the core of it.*<sup>169</sup>

In relation to wider standards, the Press Council can also comment on general issues relating to the press and ethical standards and says it uses its annual reports to do so. In principle it can make statements on particular coverage. However, it was criticised for making statements on privacy in relation to photos published of Danish Crown Prince Frederik and his then girlfriend and has not made such proactive pronouncements since. As noted, the Press Council and its functions are to be the subject of scrutiny by Danish MPs in 2012 and one of the areas to be considered is whether the current 'legitimate interest' criterion for complaints is too restrictive.

**Finland**, Germany, and Australia all accept complaints from the wider public. The Finnish Council for Mass Media has three primary duties: first, to further good journalistic practice on the basis of its journalist guidelines (in practice it says this is done through receiving and investigating complaints and adjudicating on whether there has been a breach of the rules); secondly, to issue statements and resolutions about important journalistic matters; and thirdly, to defend freedom of speech and the right to publish.

The council responds to complaints but can also take up important matters as questions of principle on its own initiative. In individual cases it says it may, in addition to its rulings, also prepare statements of a general

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<sup>168</sup> Aarsberetning\_1997.2.pdf.

<sup>169</sup> Interview, Dec. 2011.

nature concerning journalism. The chairman has a responsibility actively to take part in public discussion concerning journalistic ethics and self-regulation. Risto Uimonen, the current chair, a high-profile writer and media commentator, has a public role not unlike the Ombudsman in other countries. He explained:

*Our main task is to handle the complaints. But in addition to that my personal duty as the Chair is to speak out on a wider basis, to speak for a good standard of the press in public. And I am very often interviewed in newspapers, magazines, television, and radio about the good standards of the press. I'm sort of the voice, or the face, of good standards of the press in Finland.*<sup>170</sup>

The council also provides advice to editors and journalists, being frequently invited into newsrooms: 'If they have special problems about how to deal with things they invite us to talk about how they should behave . . . "What kind of decision do we [make] in this case?" They explain the problem and we give advice.'

In Finland the complainant does not have to be 'directly affected' by the material and can request the investigation of a matter concerning breach of good professional practice or freedom of speech and publication. The council says the most common causes of complaint are 'the blurred line between privacy and the right to publish, online journalism and the publication of inaccurate information'. Where appropriate a hearing can be convened and specialist reports obtained. The council will not handle a complaint if a corresponding court case is being brought.

The **German** Press Council defines its purposes as 'Defending press freedom and handling complaints'. The preamble to its Code highlights journalists' responsibility towards the public and the importance of professional ethics. Anyone can bring a complaint to the German Press Council and this is of key importance, its chairman Bernd Hilder argued:

*We believe that it is important that everyone can file a complaint. If a reader thinks that something is unethical he/she should be able to complain about this matter – whether he/she is personally involved or not.*<sup>171</sup>

The Press Council can also institute complaint proceedings itself<sup>172</sup> though rarely does so. As we have seen (in section 4.1) complaints from such online 'watchblogs' as *BildBlog* have been accepted by the Press Council, although it is watchful that the system is not abused by pressure groups targeting a particular publication.

As a board of industry members the German Press Council's role in relation to wider press standards is also interwoven with a lobbying role in defence of press freedom. Bernd Hilder explained: 'we make statements on complaints which raise ethical questions and lobby for, or in other cases against, laws and drafts'. He continued:

*Ethical debates and discussions within the editorial offices and within the industry are being pushed by the German Press Council. The Press Council is the main contact if ethical questions arise. Also the legislative authorities ask the Press Council for its opinion if new laws are being planned. Journalists can contact the office of the Press Council and ask for help or guidance and*

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<sup>170</sup> Interview, Feb. 2012.

<sup>171</sup> Email interview, Feb. 2012.

<sup>172</sup> <http://www.presserat.info/service/english/complaints-procedure.html>.

*also seminars [by] members or staff of the Press Council make the Code of Conduct known to young professionals.*

One area of current concern is what Hilder called 'blending promotion and editorial work' so that the boundaries between paid for advertising and independent editorial journalism become blurred and unrecognisable by the reader. The Press Council also supports proposals for a Freedom of the Press Act which has been under discussion in Germany. Under such an Act Hilder argued: 'the barrier for the intrusion in the protection of sources and informants should be increased. Also confiscations on journalists should only be possible if there is a strong suspicion.'<sup>173</sup>

Concerns in relation to protection of sources<sup>174</sup> are informed by examples the council cites of threats to press freedom. In April 2005 the monthly political magazine *Cicero* published an article on the terrorist Abu Mussab al Sarkawi which was based on a 'classified' police report. Charges were brought against the chief editor and journalist and as part of a security investigation *Cicero's* offices were searched and computer data confiscated. In 2007 the Federal Constitutional Court ruled that the searches and seizures were not justified in relation to investigating a suspected violation of official secrecy, rather their main purpose appeared to be to discover the identity of the police source. The Court therefore declared that both the search and confiscations were unconstitutional. The Press Council applauded the verdict's strengthening of journalists' right to protect sources<sup>175</sup> but cautioned that the episode was an example of threats to press freedom.<sup>176</sup>

More recently the Press Council expressed concern over attempts by former German President Christian Wulff to stifle press coverage of his financial affairs, attempts that were ultimately to hasten his resignation, as the following case study demonstrates.

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<sup>173</sup> Email interview, Feb. 2012.

<sup>174</sup> As with other Press Councils considered here, Germany's Press Code contains a requirement not to reveal the identity of a confidential source of information.

<sup>175</sup> <http://www.presserat.info/inhalt/dokumentation/pressemitteilungen/pm/article/funktion-der-medien-in-der-demokratie-muss-gewahrt-bleiben.html>.

<sup>176</sup> <http://www.presserat.info/service/english/keyfacts-in-english.html>.

### The president and the publisher: an attempt to muzzle *Bild*

In 2007 Mathias Döpfner, the chief executive of *Bild*'s publisher, the Springer group, illustrated the power of his newspaper to make or break celebrities when he remarked: 'whoever takes the elevator up with *Bild* will also take the elevator down with it'. Or as former RISJ Fellow Cornelia Fuchs wryly commented: 'They don't need phone hacking because they are such a massive presence in Germany. Every celebrity has to work with *Bild*.'<sup>177</sup>

German President Christian Wulff recently tried, and failed, to avoid the downward elevator journey and in so doing raised questions over freedom of speech and relationships between the press and those in the public eye. As premier of the German state of Lower Saxony between 2003 and 2010, Wulff courted the media and managed to avoid criticism both of his divorce and of his subsequent marriage to his much younger, seven-month-pregnant, partner. He achieved this largely through his relationship with best-selling tabloid *Bild*. For years Wulff fed *Bild* stories and gave the newspaper access to his private life, which *Bild* repaid with gushing coverage. *Der Spiegel* recounts how instead of dwelling on the 2006 breakup of his marriage, *Bild* was entranced by his new partner's presence at a press ball where she 'shone elegantly in black . . . and smiled radiantly. Wunderbar!' and by the president's new haircut 'with a short fringe, the hair cheekily and trendily tweaked up with gel!'<sup>178</sup>

Such sycophancy was to come to an abrupt end in December 2011 as *Bild* flexed its investigative muscle in pursuing allegations that Wulff, who became President of Germany in 2010, 'had misled the authorities over a cheap £416,000 home loan he got from a businessman friend before becoming president'.<sup>179</sup> Wulff left an angry phone message for *Bild*'s chief editor 'threatening the editor . . . with "war" if he published a story about his private financial affairs'.<sup>180</sup> This provided further fodder for the story as well as concerns about his attempt to suppress press freedom. In January 2012 the German Press Council's director Lutz Tillmans commented that efforts by the President to intervene in this way were 'very questionable' and 'very unfortunate'.<sup>181</sup> On 17 February 2012 in the wake of the scandal, and after losing his immunity from prosecution, the President resigned.<sup>182</sup>

In **Australia** the APC states that it is responsible for promoting good standards of media practice, community access to information of public interest, and freedom of expression through the media. It says it is also the principal body with responsibility for responding to complaints about Australian newspapers, magazines, and associated digital outlets.<sup>183</sup> In Australia, as in Finland and Germany, any person may lodge a complaint, irrespective of whether they are identified in the material or are directly affected by it (though privacy complaints on behalf of the person affected require their permission). Third-party complaints are accepted and, as illustrated in section 6.1, a mental health charity for example can complain about the portrayal of mental health in a publication. The APC says it receives and handles complaints from the outset, rather than only after the complainant has approached the publisher unsuccessfully when a considerable period may have elapsed.

<sup>177</sup> Interview, Feb. 2012.

<sup>178</sup> <http://www.spiegel.de/international/germany/0,1518,806982,00.html#ref=nlint>.

<sup>179</sup> <http://www.telegraph.co.uk/news/worldnews/europe/germany/9088324/Blow-to-Angela-Merkel-as-German-president-Christian-Wulff-resigns.html>.

<sup>180</sup> Ibid.

<sup>181</sup> <http://de.euronews.net/2012/01/02/wuetender-wulff-drohte-bildzeitung>.

<sup>182</sup> <http://www.guardian.co.uk/world/2012/feb/17/german-president-christian-wulff-resigns1>.

<sup>183</sup> <http://www.presscouncil.org.au/about>.

By contrast to other Press Councils considered here, the APC usually agrees to publishers' requests that complainants be required to sign a waiver promising not to take legal action on the articles cited in the complaint. However, it is currently considering whether to abolish the use of waivers or require them only when the publisher has offered remedial action.

For Professor Disney, chair of the APC, it is the promotion of standards rather than complaint-handling that is crucial to the work of the council. A professor of law and former Law Reform Commissioner, his background is also in welfare (he is a former president of the Australian Council of Social Service and of the International Council on Social Welfare, as well as chairing the National Anti-Poverty Week and National Affordable Housing Summit) and this perspective informs his view:

*When I was asked if I wanted to chair [the Australian Press Council] I said, 'Well, okay, but standards are more important than dealing with complaints.' And I've based that on my experience in other professions, and dealing with regulation in other professions, and the fact that much of my life, I've worked with and for disadvantaged people . . . My main concerns are really with making sure that the sort of bottom half of the population, frankly, can have access to these processes, as well as others. And there are a number of reasons why a complaints mechanism will often not work for those people. Also, I think that standards can often be developed in a much more constructive, proactive atmosphere with the industry rather than doing them in the more defensive environment that you get in a complaints structure.*

As we shall see in section 5.5, the APC is introducing a number of activities in relation to broader standards, and as part of a dialogue with both the press and the public about those standards.

## 5.2. Codes of conduct

Each of the Press Councils considered here has established a code of rules, guidelines, or principles reflecting journalistic standards. These codes perform a variety of functions: for example, as a rule book to guide journalists day to day and seeking to prevent unethical, and support ethical, practices; as a set of standards against which complaints (either solely from a person affected by the material or from the wider public) may be assessed; as an acknowledgement of the complexities of potentially competing rights and duties.

All the codes are consistent with the law but go beyond it in relation to ethical standards. Accuracy, fairness, and privacy are the core features of Press Council codes, as they are in the UK's Editors' Code. However, additional features may reflect areas of concern in particular countries, for example, requirements concerning protection of children (as consumers of, rather than participants in, news coverage), balanced reporting, and issues of offence are articulated in some codes but would not be tolerated in others.

**Sweden** operates a 'Code of Ethics' and says its aim is to maintain 'a responsible attitude in the exercise of journalistic duties' supported by the Code. It has rules on accuracy in news, corrections, privacy, use of pictures, the opportunity to reply to criticism, and caution over publishing names. In considerations of privacy (considered below in section 6.1) the Press Council and Press Ombudsman apply distinctions in relation to complaints from public figures.

In **Germany**,<sup>184</sup> in addition to rules on accuracy, fairness, and privacy, there are rules on separation of editorial and advertising, respect for human dignity, the avoidance of sensationalising violence and a rule against discrimination – for example, guidance says in reporting crimes ‘it is not permissible to refer to the suspect’s religious, ethnic or other minority membership unless this information can be justified . . . it must be borne in mind that such references could stir up prejudices against minorities’.

Some provisions of the Press Code are underpinned by legal requirements. These provide for a right to reply: an obligation to publish ‘an opposing point of view by the person or organisation affected by any factual statements in the article’.<sup>185</sup> And in addition rights in relation to data protection are recognised in the Press Code.

The Code also contains a particular rule on the protection of children. Not, as in the UK’s Editors’ Code of Practice in relation to children caught up in press coverage, but rather the protection of children as consumers. It states: ‘The Press shall respect the protection of young people.’<sup>186</sup> A ruling in December 2011 for example, in response to 49 complaints about coverage of the death of Gaddafi upheld complaints about two tabloid newspapers in which there was ‘a photograph of the bloodied face of the dead Gaddafi, zoomed and enlarged, published on the front page’, because this was found to ‘violate youth protection issues’. In other cases photographs of Gaddafi were differently presented and found to be ‘documents of contemporary history’ and the complaints were rejected.<sup>187</sup>

For many journalists working on quality magazines and newspapers, the Press Council Code’s is supplemented by their own publication’s or publisher’s code of conduct which goes further. For example, as Cornelia Fuchs explained:

*The Stern [magazine]<sup>188</sup> Code of Conduct, which is separate from the Gruner & Jahr [publishing house]<sup>189</sup> Code of Conduct . . . prohibits any advantage for a journalist that you get as a representative of the magazine. So, for example, if someone would give you a hotel or travel, then I would need to talk to my editors and chiefs and normally they would say, no we want to pay for this ourselves.<sup>190</sup>*

In **Ireland** the recognition of the Press Council under the Defamation Act is conditional on the council adopting a code of standards to ensure: ethical standards and practices; the accuracy of reporting where a person’s reputation is likely to be affected; that intimidation and harassment of persons does not occur and that the privacy, integrity, and dignity of the person is respected. As we have seen, only those affected by the material (as is also the case in Sweden and Denmark) can bring complaints in relation to a breach of the Code.

The Irish Code of Practice<sup>191</sup> outlines 10 principles which include, among other things, accuracy, separation of fact from opinion, and privacy. Unlike Press Codes (such as that in the UK) that avoid reference to ‘offence’, it

<sup>184</sup> <http://www.presserat.info/service/english/press-code.html>.

<sup>185</sup> E.g. the Berlin Press law <http://www.studienkreis-presserecht.de/main/gesetze-lpg-Berlin.htm>.

<sup>186</sup> <http://www.presserat.info/service/english/press-code.html>.

<sup>187</sup> <http://www.presserat.info/inhalt/dokumentation/pressemitteilungen/pm/article/toter-gaddafi-darf-gezeigt-werden-platzierung-und-groesse-der-darstellung-jedoch-ausschlaggebend.html>.

<sup>188</sup> <http://www.stern.de>.

<sup>189</sup> <http://www.gujmedia.de>.

<sup>190</sup> Interview, Jan. 2012.

<sup>191</sup> <http://www.presscouncil.ie/code-of-practice.150.html>.

also contains, within its Principle on Prejudice, the requirement not to publish material 'intended or likely to cause grave offence' or 'stir up hatred'; the application of this rule is illustrated in the case study in section 5.1 above.

There is no requirement to provide an individual or organisation with prior notification of the publication of critical or private material though Principle 4 in the Code states that publications 'shall not knowingly publish matter based on malicious representation or unfounded accusations, and must take reasonable care in checking facts before publication'.

**Australia's** Press Council has two Statements of Principles.<sup>192</sup> The General Statement of Principles deals with issues such as accuracy and fairness, as well as privacy to a limited extent. The Statement of Privacy Principles deals exclusively with privacy. In addition there are specific standards in relation to suicide (and further specific standards are being drawn up, for example on access to patients in hospitals) as well as advisory guidelines published when particular issues arise.

The Statement of Principles goes further than many other codes would tolerate in relation to freedom of speech. It includes principles in relation to causing offence and that reports should be not just accurate and fair but 'balanced'. Professor Disney explained that the APC is in the process of revising and clarifying the principles, but argued that issues of 'overall balance' were important in relation to debates, for example, on climate change. According to Disney, the principle is rarely invoked but is important in the Australian context where a number of cities have only a single newspaper: 'So, we don't have a lot of diversity in that respect.'<sup>193</sup> The issue of balance in a context of single-newspaper circulations is likely to be increasingly significant according to former RISJ Fellow Peter McEvoy. He argued that some News Limited newspapers, in particular *The Australian* and Sydney's *Daily Telegraph* were moving into

*overt political campaigning against the national Labor government and The Greens party which supports Labor. Media outlets in Australia are generally not so partisan – most take an even handed approach to news and even opinion so the behaviour of these two papers in particular has been remarkable.*<sup>194</sup>

Online material also presents particular issues for the Code of Principles. Professor Disney argued that platform-specific standards may be required for issues raised by online material which have been of more limited concern in the print era. For Professor Disney one of the key pressures on press ethics comes from the 'rush to judgement online' which he sees as forcibly weakening standards between competitor publications:

*The assertion which was made to me a couple of years ago by publishers that 'You can always put it up and change it later,' I think that's completely wrong. And I think that actually the case for making sure you get things right before you publish is actually stronger now than it was in the print-only days. Because now what you publish first up is not actually changeable, it's out in the ether forever in the aggregators. And it's much more accessible than the old print version which ended up mouldering in the corner of the newspaper's own offices or the municipal library. So the need to be fair and accurate first up, in my view, is actually greater now than it ever was before.*

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<sup>192</sup> <http://www.presscouncil.org.au/statements-of-principles>.

<sup>193</sup> Interview, Feb. 2012.

<sup>194</sup> Interview, Feb. 2012.

He identified the related issue of 'reputation management', in relation to internet searches bringing up immediate associations between a name and historic misdeeds, as a significant issue where standards may be helpful:

*We had a meeting of the online editors of the major newspapers recently and they asked us to help them by developing standards on what we call here . . . reputation management. . . people ringing up and saying, 'Look, I did something unwise ten years ago. I've served my time, as it were, but Google my name and it comes up all the time. Please take it off.' . . . And certainly the online editors here are aware that they are playing God in many ways, in whether they decide to take these things off the archives or not, and many of them are uneasy doing that and would welcome some clear industry standards.*

The **Finnish** Guidelines for journalists<sup>195</sup> across mass media contain a combination of principles and requirements in relation to ethical behaviour. These include guidelines on the professional status of journalists and its rights and obligations (for example, the first clause sets out that 'A journalist is primarily responsible to the readers, listeners and viewers, who have the right to know what is happening in society'); obtaining and publishing information; the rights of the interviewer and interviewee; corrections and the right of reply; and clauses on the 'private and public': for example, 'highly delicate matters concerning people's personal lives may only be published with the consent of the person in question, or if such matters are of considerable public interest'.

The right of reply in the Guidelines is underpinned by legal rights to reply and to correction set out in the Act on the Exercise of Freedom of Expression in the Mass Media<sup>196</sup> (covering print, broadcast, and online media) and is consistent with the right of reply in relation to 'incorrect facts in a television programme' set out in the EU Audiovisual Media Services Directive.<sup>197</sup> However, the Council for Mass Media chairman Risto Uimonen emphasised the difference between the Guidelines and the law:

*We are very distinct that we separate the journalist's guide book from the law. We also have paragraphs, where we give the right to reply. But, we don't interpret our rules in the same way as the judges interpret . . . because it's a question of ethics and not law.*

The preamble to the Finnish Guidelines explains that 'the guidelines are not intended to be used as grounds for criminal liability or damages'. Risto Uimonen explained that this is intended

*to safeguard that the courts do not use the decisions of the CMM to justify their verdicts. The verdicts of courts must be based on law and not on the Guidelines, because the Guidelines are more restrictive and tighter than the law.*<sup>198</sup>

The different considerations, and powers, of the Press Council and the law are illustrated by complaints made to the Council by Finnish MPs accused of sexual harassment.

<sup>195</sup> [http://www.jsn.fi/en/journalists\\_instructions](http://www.jsn.fi/en/journalists_instructions).

<sup>196</sup> <http://www.finlex.fi/en/laki/kaannokset/2003/en20030460.pdf>.

<sup>197</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2010:095:0001:0024:EN:PDF>.

<sup>198</sup> Email interview, Feb. 2012.

### Interplay between the law and Press Council regulation: case study from Finland

On 27 January 2008 the Finnish daily *Helsingin Sanomat* ran a story, 'Sexist wannabe alpha-male MP', reporting a survey of women working in the Finnish Parliament and their concerns about sexual harassment. In March 2008 the CMM upheld complaints by four MPs referred to in the article, on the basis that the newspaper did not have sufficient evidence to back up claims that had been made against a backdrop of anonymous sources. The complaints of a fifth MP were rejected given public statements he had made about the charges, including his suggestion that women who could not tolerate such behaviour should 'reconsider their choice of profession'. *Helsingin Sanomat* published the decision as required by the council.<sup>199</sup>

A further MP Lyly Rajala took the newspaper to court but the libel action was dismissed in June 2011 after the court heard testimony from subpoenaed witnesses about Mr Rajala's inappropriate behaviour at public events.<sup>200</sup> The District Court found that the content of the *Helsingin Sanomat* article did not clearly exceed the bounds of what is acceptable, nor did it constitute a libel on Rajala's name and honour.<sup>201</sup> The considerations of the council and the courts were very different, as RISJ Journalist Fellow Laura Saarikoski<sup>202</sup> from *Helsingin Sanomat* commented: 'The council found against our newspaper as it didn't differentiate between different acts by different MPs. But when one MP took the case to court the newspaper won as the article was well-sourced.'<sup>203</sup>

While the Guidelines cover material across platforms, the Finnish regulatory system recognises different media attract different requirements. In relation to broadcasting, YLE (Finland's national public broadcaster) must abide by the Guidelines and it also maintains a separate complementary ethical code including principles on political programming prior to elections.

In relation to online content, the Guidelines are unusual amongst the codes considered here in that they have annexed to them specific guidelines on user-generated material (including text, pictures, graphics, comics, video, and audio) on media websites. Such material must be kept separate from editorial content and monitored particularly carefully when it is aimed at children and young people. The use of an annex to the Guidelines is significant since, the Council argues, the online environment is rapidly changing and the annex can be updated far more quickly than the Guidelines. The current Guidelines came into force in 1992 and are revised only at 6 to 13 year intervals, most recently in 2011 (including a clause on transparency when reporting issues relating to the owners of the media in question).

In **Denmark** the ethical guidelines deal with three areas: first, correct information (including separation of fact and opinion); secondly, conduct contrary to sound press ethics (for example, in relation to privacy, coverage of suicides, separation of advertising and editorial); and thirdly, court reporting. Unusually among the codes considered here, the Danish code includes a

<sup>199</sup>

<http://www.hs.fi/english/article/iHSi+reprimanded+by+media+ethics+watchdog+over+sexual+harassment+story/1135234950376>.

<sup>200</sup>

<http://www.hs.fi/english/article/iHSi+journalists+defend+themselves+against+libel+allegations/1135266058801>.

<sup>201</sup>

<http://www.hs.fi/english/article/iHSi+journalists+acquitted+in+libel+case+brought+by+former+MP+over+sexual+harassment+allegations+/1135267176796>.

<sup>202</sup> <http://reutersinstitute.politics.ox.ac.uk/fellowships/journalist-fellows/journalist/laura-saarikoski.html>.

<sup>203</sup> Interview, Dec. 2011.

requirement to submit material that will criticise a person to them in advance, stating:

*Information which may be prejudicial or insulting or detract from the respect in which individuals should be held, shall be very closely examined before publication, primarily by submission to the person concerned.*

In the view of the chair of the Danish Press Council Judge, Jytte Scharling, this requirement retains its importance even if it is coming under increasing pressure:

*The introduction of internet media has led to news stories being published at an even faster rate. The competition to be first with the news has meant that the media have become less adept at submitting their stories to the relevant parties and obtaining their comments.*<sup>204</sup>

The guidelines are underpinned, as we have seen above in section 4.3, by the Danish Media Liability Act which provides for a mandatory right of reply, or more accurately a right of correction, where information has been published that might cause significant financial or other damage, and sets out the Press Council's duties in ruling on whether there is an obligation to publish such a reply.

### *5.3. Mediation and alternative resolutions*

The use of mediation, or alternative dispute resolution, illuminates how far a Press Council may see itself as a speedy conciliation service and how far a formal adjudicator (discussed below in section 5.4). The UK's Press Complaints Commission has been criticised for the large numbers of complaints informally resolved, as opposed to formal adjudications of a breach of the Code. Questions arise over whether a Press Council that conciliates most complaints is colluding in obscuring the extent of code breaches or providing swift redress and resolution to complaints. Press Councils considered here demonstrate a range of approaches. Denmark, for example, rules out any form of mediation and either dismisses or adjudicates on complaints. Conversely, the Australian Press Council sees adjudications as the Council's 'failures' and alternative dispute resolution is actively pursued.

In **Sweden** the Ombudsman, as we have seen, acts as a gatekeeper and complaints are first received by him. The Ombudsman ascertains whether a complaint can be dealt with by a factual correction or a reply from the affected person in the newspaper concerned, a form of mediation that occurs in around 5% of cases. Otherwise the case will proceed to an adjudication. Newspapers may also attempt to resolve complaints without a formal adjudication.

For example, in April 2011 the Swedish daily *Dagens Nyheter* published a story about a brutal attack on a 15 year old at school, culminating in him being knifed. The article reported that the boy had previously been in trouble with the police. This was found to be untrue and the paper published a correction. However, although boy's father welcomed the correction he did not consider it a sufficient remedy. The newspaper explained that it had been given mistaken information by the police which it had had no reason to disbelieve. The Ombudsman concluded that, against the backdrop of the boy's age and that he was a seriously injured victim at the time of publication,

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<sup>204</sup> Interview, Feb. 2012.

the disclosure that he had been in trouble with the law was very damaging. He recommended that the case be submitted to the Press Council for censure. The Press Council agreed with the Press Ombudsman's judgment and found the newspaper in breach of the Code. *Dagens Nyheter* were required to publish the decision and pay the administrative fee (set out in section 5.4).

In **Germany** some publications have their own ombudsmen or readers' editor and complaints proceed to the Press Council if resolution cannot be reached by them. Of those that are brought to the Press Council, a small number may be formally mediated. The Press Council cites an article that appeared in *Bild* about an elderly lady said to have caused her neighbour to have an accident and after talks between the Press Council and *Bild* a public correction was agreed. Hearings can be held but are very rare. In all appropriate cases the Press Council invites the publication to consider 'reparation' which avoids a formal adjudication. The Finnish Mass Media Council says it can facilitate 'independent resolution' rather than progressing to an adjudication, though formal mediation would be used only rarely.

In the **Irish** system conciliation or, less frequently, mediation is carried out by the Case Officer. Brief details of conciliated complaints are provided on its website.<sup>205</sup> If this is unsuccessful in resolving the issue the Press Ombudsman adjudicates. If publication of an apology or correction is agreed in order to resolve a complaint this is a matter for negotiation between the complainant and the publication concerned.

The Irish Press Ombudsman can decide that an offer made by a newspaper is sufficient to resolve a complaint even if turned down by the complainant. For example, in January 2012 the Electricity Supply Board complained that an article in the *Irish Independent* inferred that ESB policy was responsible for winter deaths because it referred to an Age Action statement including the assertion that there was 'an obvious link between high costs and high death rates'. The Press Ombudsman found that the reference to the statement was reasonable and its offer to publish a letter setting out the ESB's position on the issue 'was sufficient in all the circumstances to resolve the complaint'.<sup>206</sup>

The **Australian** Press Council actively uses alternative dispute resolution as a first response to complaints, through informal contact with the publication and a significant number of complaints are resolved this way (detailed in section 5.4). Professor Julian Disney, the Press Council chairman, explained the philosophy behind this approach to alternative resolutions:

*In a way, our adjudications are almost our failures. They are the ones where we haven't been able to get an acceptable outcome earlier by mediation. They are not always our failures, of course. It may have been that they were just two hopelessly intransigent people, or at least one hopelessly intransigent person. This is our problem: most of our success stories are totally unknown in that our involvement with them is unknown. Sometimes we have played a minor role, other times we have played a crucial role in getting these apologies etc. printed.*<sup>207</sup>

<sup>205</sup> <http://pressombudsman.ie/cases-appeals/resolved-through-conciliation.300.html>.

<sup>206</sup> <http://www.presscouncil.ie/decided-by-press-ombudsman/esb-and-the-irish-independent-2254.html>.

<sup>207</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0011/143687/Transcript\\_of\\_Melbourne\\_hearings\\_9\\_November\\_2011.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0011/143687/Transcript_of_Melbourne_hearings_9_November_2011.pdf).

#### *5.4. Adjudications, appeals, sanctions, and enforcement*

While approaches to mediation and conciliation differ, as demonstrated immediately above, adjudications lie at the core of Press Council business. They are a demonstration of the accountability embodied in the Code being tested and also provide, in the case of an upheld decision, the chief sanction for all Press Councils considered here, namely the requirement to publish the finding.

None of the Press Councils have the power to fine or imprison for a breach of the Code. However, in Denmark, failure to comply with the requirement to publish can in principle result in a fine or prison, and in Sweden a breach of its Code triggers a financial penalty in the form of an administrative fee to contribute to the costs of the investigation and adjudication on a ‘polluter pays’ basis. Compliance with the requirement to publish is generally good in the countries considered here, although Germany faces significant challenges in this respect, and for some of the Press Councils the prominence of publication is an issue.

Numbers of complaints and their outcomes provided here (and in Annexes 1–8) should be treated with particular caution. Different countries have different mechanisms for recording multiple complaints about the same article, for recording complaints received by the Press Council but falling outside its remit, and for recording complaints resolved without a formal adjudication. In addition, different practices, for example a requirement that complaints be first directed to the newspaper or broadcaster, or an expectation that complaints will be handled by the Press Council as a first port of call, will affect complaint numbers. The figures provided here aim to suggest a ball-park guide to different countries’ approaches rather representing any formal comparison.<sup>208</sup>

On the face of it **Denmark** has the most draconian powers of the Press Councils under consideration here, in that failure to comply with its directions can lead to a fine or custody. The reality, however, is rather different. The chief sanction is to direct the editor of the broadcast, print, or online material to publish the council’s decision. The Danish Media Liability Act sets out that failure to comply with a Press Council direction to publish can result in up to four months imprisonment or a fine. In four instances in the early years of the Act, in the mid-1990s, the Press Council reported chief editors to the police for failure to comply and the courts imposed fines of around £300. Only one was successfully appealed on the grounds that a complainant’s reply had been published, although not in the manner and time limit required by the Press Council. In 2011, 157 complaints were received, 50 of which fell outside of the Press Council’s remit. Of the remaining 107, 42 were upheld and 65 dismissed. The council has never exercised its power to convene a hearing.

Denmark is unusual in that there are two different sorts of complaints that a person affected can make and each attracts a different sanction or remedy. In the case of a complaint about inaccurate reporting that may cause significant financial or other damage, the complainant must complain to the provider first, and only to the Press Council if the requirement for a right of correction is refused or considered unsatisfactory. If the Press Council directs that there should be a correction the print, broadcast, or online medium has a mandatory duty to publish it. The adjudication is not published in addition. The purpose underlying this is to provide a mechanism for ‘setting the record

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<sup>208</sup> Basic figures for each country including the UK are provided in Annex 1 and the individual country annexes.

straight' rather than a wider right of reply to an allegation. The published reply must be brief and specifically deal with the inaccuracies previously published. It is not accompanied by an apology or comment from the publisher or broadcaster. The person does not have to demonstrate 'concrete' damage but must demonstrate a risk of significant harm.

In the case of a complaint about press ethics (for example, about privacy) the complaint can be brought first to either the Press Council or the provider, except in the case of *public* broadcasting where it must always be submitted to the broadcaster first. The Press Council can order its decision to be published in a manner it specifies though it cannot detail the prominence of publication. The Danish Council has been criticised for failing to ensure that its decisions are published prominently enough. It has therefore called on the print media to establish a regular correction column either on the second page or in connection with the publication's editorial details. This now appears to be the case according to 2011 surveys by the publisher associations of both newspapers and magazines. Cases deemed to fall out of remit, or to be obviously unfounded, can be dismissed by the chairman. Danish Press Council decisions cannot be appealed and the only option for claimants who remain dissatisfied is to go to court.

In **Sweden** if the matter cannot be settled simply (as discussed above in relation to 'mediation'), the Press Ombudsman can investigate the complaint and ask the newspaper to provide a response. If, in the opinion of the Press Ombudsman, the matter does not warrant formal criticism of the paper he can dismiss it (a dismissal decision can be appealed to the Press Council). Where the Press Ombudsman considers there has been a breach of the Code he will refer the complaint to the Press Council for adjudication; he cannot uphold a complaint himself but sets out a recommendation for the council to do so.

The Swedish Press Council can uphold complaints in three ways: as a 'mild', 'medium', or 'serious' violation. The Ombudsman is empowered to take up matters on his own initiative, provided the person affected consents (one example being in relation to a traffic accident when bodies of victims were shown). However, this is very rare, the last case being from 2008.

The Press Ombudsman receives around 350–400 complaints annually. About 30% of cases reach the Press Council either on appeal or referral from the Ombudsman. The remainder are written off, for example, because they are unsubstantiated or the newspaper has printed a correction or reply. Around 10–15% of all complaints result in formal criticism by the Press Council. In 2011, 243 complaints were dismissed by the Ombudsman, 115 referred to the Press Council (including some appealed from the Press Ombudsman) of which 53 were upheld.

In Sweden the sanctions for all upheld complaints are: first, publication, which must be unabridged, prominent, and without delay (the great majority of publications comply); and secondly, an administrative fee as a contribution to the costs of the Press Council and Ombudsman. For circulation of up to 10,000 copies the fee is around £1,000 and for circulation of above 10,000 copies it is around £3,000. The fine for an internet-only publication is based on the lower circulation rate (on a 'polluter pays' basis).

The Press Council has no enforcement powers. However, non-compliance is 'very rare', according to the Press Ombudsman:

*I became the Press Ombudsman the 1 of April 2011. Since then we have had no cases where the newspaper didn't publish the decision. And actually [if they did not] there is nothing we can do, but talk to the editor about the importance of the system.*<sup>209</sup>

The **German** Press Council has no powers to fine nor do its statutes provide for a member publication to be expelled. Its chief sanction is a published reprimand but there are also three other categories of decisions: a confidential reprimand (to protect identities), a notice of disapproval, and a 'decision noted'. Around 1,200 complaints are received a year, though 2010 was a record year with 1,661 complaints received. In 2011 of the 1,321 complaints received, 968 were in remit (including some multiple complaints about the same article). These resulted in 13 reprimands required to be published, 7 confidential reprimands (to protect identities), 65 notices of disapproval, 102 decisions noted, and 209 not upheld.

The Press Council argues that there is a deterrence effect both from the requirement to publish and also the cost of the complaints process.<sup>210</sup> Principle and practice, however, are very different matters. Unlike the Swedish record of compliance, there are significant problems with publishers refusing to publish decisions although required by the Press Council or, as we have seen above in section 4.1, with publications editorialising when they do publish a reprimand. In 2010, 13 out of 34 public reprimands ordered by the Press Council were not published. Of the 13 public reprimands ordered to be published in 2011, at the time of writing eight have still not been published.

There is an internal appeal mechanism within the German Press Council whereby a committee composed of different members to the initial decision may reconsider the adjudication.

The **Finnish** Press Council's sanction across all the media it regulates is a reprimand which must be published or broadcast without delay and without accompanying comment in a manner specified by the council. In 2011 the CMM received 324 complaints, 27 were adjudicated upon and 20 upheld, the remainder were, for example, out of remit or resolved without the need for a formal adjudication.

The council specifies the appropriate mode of publication: all media with a significant presence on the internet must publish the decision in full online; it can also be published/broadcast in full or as a news item. The chair rules on some complaints and these decisions can be appealed to the council. The decisions of the council are final and can only be appealed if the ruling is based on incorrect information. There is no mechanism to review a council decision via judicial review. The council's chairman, Risto Uimonen, explained that compliance, with the process and with publication, is good because trust in media is commercially valuable:

*It is very important here in Finland that the press is reliable . . . The [media] really think that they cannot afford to have very many [upheld decisions] per year, that's very important. That's why our system functions, in my opinion, quite well without financial punishment.*<sup>211</sup>

In **Ireland** neither the Press Council nor the Press Ombudsman has the power to mount investigations on their own initiative and are purely complaints

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<sup>209</sup> Interview, Jan. 2012.

<sup>210</sup> <http://www.presserat.info/inhalt/beschwerde/anleitung.html>.

<sup>211</sup> Interview, Feb. 2012.

driven. The Ombudsman's role is very different to that of the Ombudsman in Sweden. It is the Ombudsman who adjudicates on a complaint; the Press Council will consider complaints on appeal or, rarely, the Press Ombudsman will refer a case directly to the Press Council for a decision. In 2011 this happened once because of a potential conflict of interest. In principle a Press Council decision could be appealed in court by way of judicial review.

In 2011, of the 343 complaints received 134 were not pursued by the complainant, four did not present evidence of a possible breach of the code, 115 were out of remit (for example, submitted without the permission of the person affected) and 10 related to publications that were not members of the Press Council. Of the remaining 80 complaints the Press Ombudsman decided on 42 and 17 were upheld, 15 not upheld, and in 10 cases sufficient remedial action was deemed to have been taken or offered by the publication. Of the remaining 38 some were either pending the outcome of a court case, were conciliated or informally resolved, and one was directly referred to the Press Council.

The only sanction available is again the requirement to publish a Press Ombudsman or Press Council decision upholding a complaint. Decisions of the Press Ombudsman and Press Council have to be published in accordance with the Code of Practice and the Publication Guidelines of the Press Council. A complainant who feels that the requirements of the Code of Practice in relation to promptness and prominence have not been complied with can make a formal complaint to the Press Ombudsman about this, and it is then investigated.

The Irish Press Council has no powers to fine. Indeed, it is resistant to any such notion, on the basis that it would blur the key distinction between itself and the court system, as Professor John Horgan, the Press Ombudsman, explained:

*I think that in the public mind, generally in Ireland, or to some extent, there would be a feeling that the Council ought to have the power to impose financial sanctions on offending newspapers. The Council and the industry have always set its face against that. Occasionally, there is a financial element in the resolution of the complaint, but we don't have anything to say to that, good, bad, or indifferent, if the parties agree to it, that's a matter for themselves.*

*Our view would very strongly be that if people feel that the only vindication that will satisfy them is financial, then they just have to go to the civil courts. For anything else they come to us, and it's important not to try and mix and match the two systems as the two alternative methods of vindication.<sup>212</sup>*

The **Australian** Press Council does have the power to mount investigations on its own initiative and plans to use this in relation to 'impact monitoring' discussed further below. It can also act in conjunction with other investigations. For example, in July 2011, in the wake of the UK phone-hacking scandal, News Limited announced an internal review of editorial payments to third parties. The Press Council said it clearly lacked the powers and resources to conduct any such review itself but suggested there should be an independent element. The council agreed to nominate independent assessors to report publicly on the conduct of the review and boost public

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<sup>212</sup> Interview, Feb. 2012.

confidence in its thoroughness. The assessors (two senior retired judges) reported in November 2011.<sup>213</sup>

In 2010/11, 570 complaints were received: 53 fell outside of remit and another 76 were dismissed at an initial stage, 222 were not pursued after initial informal contact (and response from) the publisher, 134 were provided a remedy through mediation, 25 were not upheld, and 60 were upheld in full or in part. Adjudications can be appealed back to the council or the complaints subcommittee on grounds of material error of fact or procedural unfairness but cannot be appealed via judicial review.

The chief sanction open to the Australian Press Council is the prompt publication of an adjudication in the relevant publication, on the website homepage, and annotated to archived versions. In 2011 the APC announced that the prominence of publication must be approved by the APC Executive Secretary, although this requirement is still in the process of being implemented. The council has also decided that going forward it will consider whether each case merits a reprimand, and in appropriate cases it will call explicitly for apologies, retractions, corrections, or other specified remedial action to be taken by the publisher.

The APC has no powers to fine, although the possibility of a contractual (rather than statutory) power to fine is being explored. An option raised by the APC is for a referrals panel to have the power to fine which it said would help to 'quarantine' its own processes from the risks of excessive formality and legalism. It suggests that such a panel could comprise a retired judge as chair, a member with high-level experience in the media industry, and an eminent member of the community who has not been employed in the industry.<sup>214</sup> It could levy a fine or require payment of compensation.<sup>215</sup> However, although it is floating these ideas there is also concern that such powers would make the process unduly adversarial and legalistic and be a disincentive to membership.

### *5.5. Wider Press Council engagement: related accountability mechanisms, transparency for consumers, and impact*

The extent to which Press Councils sit within a wider array of accountability mechanisms for journalism – for example, 'watchblogs'; newsroom codes of standards and ombudsmen established by individual publishers; public debates; and discussion of press ethics in the media – reveals the wider scrutiny of journalistic standards. As noted in the Introduction, systems of press regulation also sit within political, historical, and cultural contexts which may include, for example, different degrees of competition between the press, issues of media ownership and plurality, and factors affecting the propensity to complain. Gauging the impact of a Press Council on press standards within this wider context is extremely challenging. Indeed, and as we have seen in sections 5.3 and 5.4 above, even evaluating complaint numbers and outcomes is less than straightforward. Some Press Councils, however, are attempting to gather evidence of consumer and journalists' attitudes in relation to the effectiveness and impact of their work. In Australia 'impact monitoring' of outcomes in relation to press standards is under discussion. Meanwhile debate is emerging over the value both for consumers

<sup>213</sup> <http://media.heraldsun.com.au/111114%20Independent%20Editorial%20Review.pdf>.

<sup>214</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0020/142940/Australian\\_Press\\_Council.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0020/142940/Australian_Press_Council.pdf).

<sup>215</sup> [http://www.dbcde.gov.au/\\_\\_data/assets/pdf\\_file/0004/145759/Transcript\\_of\\_Sydney\\_hearings\\_18\\_November\\_2011.pdf](http://www.dbcde.gov.au/__data/assets/pdf_file/0004/145759/Transcript_of_Sydney_hearings_18_November_2011.pdf).

and the industry in differentiating regulated from unregulated media through a system of kite-marking or badging.

In **Sweden** the Press Council and Ombudsman sit within the context of a range of other accountability instruments, such as newspaper ombudsmen, codes of newsroom ethics, and 'correction corners' published by a growing number of newspapers. For example, *Expressen* publishes an online list of corrections<sup>216</sup> together with an open letter from editor-in-chief Thomas Mattson headed 'Found an error? Please let us know!'<sup>217</sup> There are also online portals that specialise in media criticism and self-criticism, for example, Second Opinion.<sup>218</sup> The Ombudsman commented: 'Many newspapers tell the readers that they can file a complaint to the Press Ombudsman and give [our] address.'

In Sweden, the Press Ombudsman also has an informational role and answers queries from the general public about press ethics and material that has offended them. He explained: 'I regularly lecture at journalist schools and often visit newsrooms to discuss ethical matters with journalists.'

A case from last year demonstrated how a complainant took matters into his own hands in publicising a Press Council decision.

#### **A very public decision: a case from Sweden**

On 21 May 2011 Swedish daily tabloid *Aftonbladet* published a story reporting 'The King's friends were negotiating with the mafia.' The story claimed that friends of the Swedish King Carl Gustaf were involved in negotiations with a former nightclub owner over pictures of the King in 'compromising situations'.<sup>219</sup> Anders Philipson, a friend of the King who was named in the article, complained to the Press Ombudsman. He said he had never participated in such negotiations nor had he had contact with any mafia members. The newspaper responded that it had very reliable sources supporting the allegation that Philipson had attended a meeting with an intermediary in the negotiations. It referred to the recent publication of a book *Carl XVI Gustaf: The Reluctant Monarch*. The book detailed an affair a decade earlier and was reported in the British press as providing 'details of entertaining scantily-clad models in nightclubs run by underworld gangsters' and allegations that 'Swedish secret service agents were sent to . . . confiscate photographs and negatives that could embarrass him.'<sup>220</sup>

The Press Ombudsman's recommendation to uphold Mr Philipson's complaint noted the interest in the publication of the book and acknowledged there was no objection to *Aftonbladet* investigating meetings between alleged royal friends and people identified as belonging to the underworld. However, it noted that very serious allegations had been made about Mr Philipson and that, although the sources had not been revealed by the newspaper, the report had unequivocally claimed Mr Philipson lied about the alleged meeting and that he had played an active role in negotiations. It concluded that to make such unqualified statements without revealing the sources of the information crossed the line in terms of ethical acceptability and the newspaper should be reprimanded. The Press Council agreed with the recommendation and found *Aftonbladet* in breach of the code.<sup>221</sup>

<sup>216</sup> <http://www.expressen.se/omexpressen/1.1494921/expressen-rattar>.

<sup>217</sup> <http://www.expressen.se/omexpressen/1.1494918/har-du-hittat-ett-fel-meddela-oss>.

<sup>218</sup> <http://www.second-opinion.se>.

<sup>219</sup> <http://www.aftonbladet.se/nyheter/article13060255.ab>.

<sup>220</sup> <http://www.telegraph.co.uk/news/worldnews/europe/sweden/8113242/King-of-Sweden-had-affair-with-pop-singer-new-book-claims.html>.

<sup>221</sup> <http://po.se/faellningar/faellda-aerenden/505-anders-philipson-utpekades-som-loegnare>.

On 15 December 2011 *Aftonbladet* ran a front-page article on the Press Council's decision and provided it in full,<sup>222</sup> illustrating the approach in the Swedish press to demonstrating credibility through active compliance with the Press Council (discussed above in section 4.1). Mr Philipson took matters a stage further. He paid for a full one-page ad in another paper, a quality Swedish daily *Svenska Dagbladet*, where he explained his desire to set the record straight and provided the Press Ombudsman's verdict.<sup>223</sup>

Ombudsman Ola Sigvardsson explained:

*I was asked by many reporters if I thought this was OK behaviour by him. And I said this was quite OK. We make our decisions in order to restore credibility for the private person and if the private person would like to make it even more public it's quite OK.*<sup>224</sup>

The **German** Press Council also sits within a vibrant array of wider media accountability instruments, including: 'ombudsmen, codes of newsroom ethics, reader advisory councils, correction corners, online portals that specialise in media criticism and self-criticism, media literacy campaigns to encourage reader interaction, and so on'.<sup>225</sup>

At times it is rival publications that set out to call each other to account. *Stern* magazine, for example, accused celebrity gossip magazine *Bunte* of employing private investigators using illegal recording techniques, in order to research stories about the love lives of politicians. *Bunte* retaliated by taking *Stern* to court, over allegations of specific techniques used, and successfully ensured that *Stern* was prevented from repeating the allegations.<sup>226</sup>

However, the council itself has been criticised for operating 'behind closed doors'; only requiring reprimands to be published and not other records of breaches; and for not providing complainants with a copy of the publisher's statement until they receive the adjudication.<sup>227</sup> In relation to transparency for consumers only a small number of publications carry the German Press Council's symbol to show they are regulated, for example, RLV.de which explains on its website that its publisher, Rhenish Agricultural publishing, has signed up for voluntary self-regulation under the German Press Council.<sup>228</sup> In addition the Press Council publishes a list of its members.

In **Ireland** member publications subscribe to the council's Code and there are not separate codes of newsroom ethics. A small minority of newspapers have correction corners but in general transparency may be achieved through a prominent display of the Press Council's logo and link to its website on a member's website's front page. For example, the *Connaught Telegraph*,<sup>229</sup> *Donegal Democrat*,<sup>230</sup> or the *Nationalist*<sup>231</sup> which states:

*This website and its associated newspaper are full participating members of the Press Council of Ireland and supports the Office of the Press Ombudsman. This scheme in addition to defending the freedom of the press, offers readers a quick, fair and free method of dealing with complaints that they may have in*

<sup>222</sup> <http://www.aftonbladet.se/nyheter/article14080455.ab>.

<sup>223</sup> [http://www.svd.se/multimedia/archive/00812/Anders\\_Philipson\\_vs\\_812365a.pdf](http://www.svd.se/multimedia/archive/00812/Anders_Philipson_vs_812365a.pdf).

<sup>224</sup> Interview, Jan. 2012.

<sup>225</sup> <http://www.levesoninquiry.org.uk/wp-content/uploads/2011/11/Presentation-by-Mark-Tompson.pdf>.

<sup>226</sup> <http://www.faz.net/aktuell/feuilleton/medien/stern-gegen-bunte-im-schatten-der-politiker-1940917.html>.

<sup>227</sup> Survey of complainants, 'Der Deutsche Presserat und seine Beschwerdeführer' (Mar. 2000).

<sup>228</sup> [http://www.rlv.de/rlv\\_dll?pageID=20](http://www.rlv.de/rlv_dll?pageID=20).

<sup>229</sup> <http://www.con-telegraph.ie>.

<sup>230</sup> <http://www.donegaldemocrat.ie>.

<sup>231</sup> <http://www.nationalist.ie>.

*relation to articles that appear on our pages. To contact the Office of the Press Ombudsman go to [www.pressombudsman.ie](http://www.pressombudsman.ie) or [www.presscouncil.ie](http://www.presscouncil.ie).*

In relation to transparency Press Ombudsman John Horgan readily acknowledges that:

*One of the problems or issues if you like is that we don't have a very high public profile. But when people want us, they find us very, very quickly. So, people find us and use us on a 'need to know' basis.<sup>232</sup>*

The Press Council has been working on an action plan: 'to make what we do more widely known [for example] to make sure that our logo and our access details are prominently displayed both on the print and on the websites of all our member publications'. As a result of initial discussions with publishers, the Press Council chairman Dáithí O'Ceallaigh noted that 'our logo is now on page two of the *Irish Times* on a daily basis'.<sup>233</sup> The *Irish Times* also provides an accompanying statement including the declaration that:

*It is a guarantee to readers that the best professional standards will be applied in this publication and that, in an era in which the sources of news and information are becoming ever more diverse, the values of authenticity, reliability and accuracy will continue to be prized and defended.<sup>234</sup>*

Press Ombudsman John Horgan argues that this is part of a cultural shift in how newspapers, and other publications, view the Press Council and is significant

*to turn around a perception of us among our stakeholders, as being something that keeps them out of trouble, if you like, and turn it into, much more positively, something that should form an integral part of their whole ethos, philosophy, and their marketing indeed, as a quality control.*

Professor Horgan also seeks to promote a dialogue between the press and the public which may avoid, or complement, Press Ombudsman adjudications:

*One of our policies really is to try and encourage both complainants and publications to engage in public disputation to the maximum possible degree without coming to us for adjudications unless this proves to be absolutely necessary. Sometimes a complainant, or somebody who is offended or upset by something that they see in a newspaper – rather than go directly to the newspaper, to say write a letter for publication or write an article and say 'I would like our point of view to be put more strongly' and so on – they say, 'We will go to the regulatory agency and they will put the newspaper right.' Whereas, newspapers should [be], and generally are to a considerable extent, fields of free fire where opposing arguments can be made and counteracted as part of public discourse generally. And some of my decisions have kind of said as much to both complainants and the newspapers, such as: promote public debate and don't be running to nanny all the time to solve your differences . . . And most newspapers have reasonable facilities for user-generated content, and so the public space has been enlarged anyway by the new technologies and we would encourage people to utilise that to the maximum possible extent.<sup>235</sup>*

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<sup>232</sup> Interview, Feb. 2012.

<sup>233</sup> Interview, Feb. 2012.

<sup>234</sup> <http://www.irishtimes.com/about/contact/press-ombudsman.html>.

<sup>235</sup> Interview, Feb. 2012.

Of the Press Councils considered here, Ireland was notable in having recently commissioned a survey of a range of stakeholder groups including complainants, newspaper editors, academics, and journalists about the work of the Irish Press Council and Press Ombudsman. This has yet to be finalised and the attitudes of those surveyed who had personal experience of the regulatory process (whether from a complainant or industry perspective) may, as Professor Horgan pointed out, be coloured by the outcome of their case. However, such engagement with the wider community demonstrates the value placed on Press Council accountability, and scrutiny of its work, also discussed in relation to Ireland in section 2.3 above.

In **Finland** the CMM's Guidelines serve as a basis for ethical journalism but all the major newsrooms have additional ethical codes that go further. Most have correction corners and encourage the habit of newspaper reading in consumers at a young age. Each February during 'Newspaper Week' newsrooms give free newspapers to schools and free access to online papers. They encourage pupils to work as journalists and submit news stories which are published in the biggest Finnish daily *Helsingin Sanomat*. Members enjoy the right to use the identifying mark of the CMM in its publication but in reality only a few do so, probably because membership is assumed for Finnish-language print and broadcasting, and online-only providers are only beginning to join. The council engages the public in an annual public meeting held each year in a different part of the country. On 3 May 2012, to mark UNESCO's World Press Freedom Day, the Council is organising a large seminar and training forum on its new online guidelines and a panel discussion on the council's work.

Similarly in **Denmark**, where the Press Council also regulates across broadcasting as well as the press, the public broadcasters Danmarks Radio and TV2, and the daily newspaper *Politiken*, have established in-house complaints bodies. Specially assigned editors handle complaints from listeners, viewers, or readers, and can mount investigations on their own initiatives. A complainant can still bring a complaint to the Press Council if they remain dissatisfied. In terms of transparency, since regulation is required of all print and broadcast services no mark is carried. Registered online services do not currently differentiate themselves from unregistered services, though the Press Council's website lists them.<sup>236</sup>

As new online members join, Danish debate has turned to whether some form of certification is a useful way forward in distinguishing regulated from unregulated new media, and indeed whether press subsidies should extend to quality online content. Lisbeth Knudsen, CEO of Berlingske Media and chief editor of *Berlingske Tidende* (a leading national broadsheet), has publicly set out ideas on credibility, loyalty, and trust.<sup>237</sup> She argued (in translation):

*It has never been easier to check facts and find good stories than now, but there have never been so many hired to try to control and influence opinion and news, and to prevent journalists from finding the truth, as there are now . . . It has never been easier to be in close contact with the audience and to let the audience play a part in researching stories, but handling ethical issues, undocumented tips and rumours has never been more demanding.*

<sup>236</sup> <http://www.pressnaevnet.dk/Klagevejledning/Hvem-kan-man-klage-over.aspx>.

<sup>237</sup> <http://www.b.dk/kronikker/medier-og-politikere-i-demokrati-projekt>.

She argues that the challenge is: 'Getting the right information out to the right people to give our democracy the necessary lifeblood, openness, knowledge and dynamism' and argues that transparency is the key to ensuring that citizens

*know when they are on websites, mobile apps or newspapers produced and edited by professional journalists and editors, respectful of media law and ethical standards. We are asking food manufacturers to declare the ingredients in our food. Why do we not do the same with news products in order to declare our ethical standards and procedures? The professional media must separate themselves from the crowd by displaying a special obligation to credibility, fairness, and independence.*

In **Australia** the APC's chairman is determined to bring the public into the debate about press regulation and to make the system transparent. In August 2011 the APC launched a new website, logo, and brochure. From September 2011 publisher members are required regularly to publish a note showing the council's logo and stating that the publication is bound by the council's standards, together with an explanation that readers can complain to the APC.<sup>238</sup> In late 2011 the council conducted community consultation in four Australian cities, and reports that a common theme was concern about the level of compliance with appropriate standards of practice in the print media. It says it is addressing these issues through a range of initiatives including revisions to the code and the rigour and prominence of adjudications. In December 2011 it started an electronic *APC Update* service, a fortnightly newsletter with information on new adjudications and other complaint outcomes, changes to the Standards of Practice and policy statements by the council.<sup>239</sup>

As discussed in relation to Ireland, few Press Councils conduct or hold research on consumer attitudes to their work and impact. However, research in 2011 (conducted via a weekly online panel of 100,000 Australians) gives an indication in relation to the APC. When asked whether the Press Council was doing a good or poor job of regulating newspapers in Australia, 20% said it was doing a good or very good job, 38% neither good nor poor, 25% a poor or very poor job, and 17% did not know.<sup>240</sup> From 2012 the APC is inaugurating an annual public conference on standards of practice in print and online media which will include community representatives.

These moves represent a sea change away from a Press Council focused on the *press* to one focused on the *public*. As Professor Disney put it:

*The press is a means to an end . . . which is the public's right to information. So that's the underlying driving force, and it is important to always think of that, its ultimate importance from the point of view of democracy.*<sup>241</sup>

In its recent submission to Australia's Independent Media Inquiry, the APC explained that it was not satisfied with relying on complaints in order to gauge standards in the press:

*The Council's recent community consultations confirmed that even when people know of its [the Council's] existence, they may decide not to bring a*

<sup>238</sup> E.g. the *Herald Sun* provides this information <http://www.heraldsun.com.au/news/for-the-record/story-e6frf7jo-1226218222416>.

<sup>239</sup> <http://www.presscouncil.org.au/apc-updates>.

<sup>240</sup> <http://www.essentialmedia.com.au/category/essential-report-111212-12-december-2011>.

<sup>241</sup> Interview, Feb. 2012.

*complaint to it. This may be because they do not want to engage in any form of confrontation with the publication (sometimes for fear of adverse consequences for future coverage), do not believe that the Council has sufficient power to redress their complaint, or cannot spare the time which they believe will be required. The deterrent impacts may be greater where an allegedly major or systemic failing is involved.*<sup>242</sup>

Instead, a key plank of the APC's focus on 'standards' in journalism is 'impact monitoring' which Professor Disney explained involves a dialogue with industry and a periodic examination of how standards actually play out:

*We'll get, let's say, two or three eminent Australians to look at . . . two or three newspapers, to look through them for two or three months, and then to report on what they feel is questionable from the point of view of our standards . . . So, it would be looking at the outcomes of media standards, what's actually being published.*

Such impact monitoring has been adopted by the council in the past, for example in relation to coverage of the case of Mohammed Haneef, an Indian doctor wrongly implicated in the 2007 Glasgow airport attack and detained in Australia as a consequence. The monitoring work, which reviewed press coverage as the case developed, found that while reporters initially relied on official versions of events, investigative journalism changed the 'trajectory' of the story and ultimately called the authorities to account.<sup>243</sup>

For former RISJ Fellow Peter McEvoy a key concern is not that newspapers in Australia will be culpable of significant standards breaches, but rather that they will fail to make a significant impact at all:

*With all newspapers under increasing financial pressure there are constant cost pressures leading to less journalists doing more stories – less reporters on the ground, more wire copy, fewer investigations, more syndications of reporting nationwide rather than serving distinct markets. The lack of competition leads to less pressure to deliver distinctive quality journalism to readers but it also reduces the pressure of cut-throat rivalry between the papers which led to the worst excesses of Hackgate. The pressure is thus mainly to mediocrity rather than criminality.*<sup>244</sup>

Outside of the APC's Statements of Principles a number of publishers have their own internal codes and the journalists' union (the Media, Entertainment and Arts Alliance) issues a Code of Ethics. A prominent source of commentary on media ethics is the ABC television programme, *Media Watch*,<sup>245</sup> as well as *The Drum*<sup>246</sup> (an ABC current affairs programme and news and comment website) and *Crikey*<sup>247</sup> (discussed in section 3.2).

Going forward, Disney is keen to develop contact and discussion between the industry and the public, observing:

*When we developed the suicide standards we had three round tables, which were a mixture of industry and community people, and that worked very well . . . And it got across to me how few journalists really had sat down with sensible members of the community to discuss a lot of these issues in a*

<sup>242</sup> [http://www.presscouncil.org.au/uploads/52321/ufiles/APC\\_submission\\_to\\_Independent\\_Media\\_Inquiry.pdf](http://www.presscouncil.org.au/uploads/52321/ufiles/APC_submission_to_Independent_Media_Inquiry.pdf).

<sup>243</sup> <http://www.presscouncil.org.au/uploads/52321/state-of-the-news-print-media-2008.pdf>.

<sup>244</sup> Email interview, Mar. 2012.

<sup>245</sup> <http://www.abc.net.au/mediawatch>.

<sup>246</sup> <http://www.abc.net.au/news/thedrum>.

<sup>247</sup> <http://www.crikey.com.au>.

*structured way . . . it's part of the insulation from the community, and I've already had agreement from a number of our editors that I'll arrange a lunch with the community leaders, perhaps a couple of times a year, because then, there would be no agenda from my point of view, I would just bring the community leaders in, to just talk to them.*

Although it is not considered in detail in this report, the Norwegian Press Council has taken significant steps towards transparency in decision-making and opening up to the wider community. Council adjudication meetings are videoed and the recordings are made publicly available as video on demand<sup>248</sup> and its approach has received interest and coverage in Australia.<sup>249</sup>

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<sup>248</sup> <http://presse.no/Moeter-i-PFU>.

<sup>249</sup> <http://www.abc.net.au/unleashed/3660378.html>.

## 6. Press Council Approaches to the Public Interest

### 6.1. *The competing rights of privacy and freedom of expression*

The ‘public interest’ is central to Press Councils’ work in weighing competing rights although most Codes do not attempt to define the public interest but rather invoke it in deliberations on a case-by-case basis. In relation to privacy, different countries with distinct traditions and cultural expectations take different starting points in relation to press freedom. The Codes are alike however in recognising that rights to freedom of speech and rights to privacy may conflict, and in codifying that recognition.

The Australian Press Council is unusual in providing a definition for the purposes of its Code, and the Irish Press Council and Press Ombudsman explain the general principle behind their approach to the public interest. A broad distinction may be drawn between Sweden, Denmark, and Finland, where the starting point is a requirement to refrain from any publicity that could infringe privacy unless justified in the public interest, and Germany, Ireland, and Australia, where privacy rights are recognised together with a caution that privacy rights should not prevent publication that is in the public interest.

The **Swedish** Code notes that press, radio, and television ‘shall have the greatest possible degree of freedom’ and that ‘it is important that the individual is protected from unwarranted suffering as a result of publicity’. The rules on respect for privacy explicitly call for restraint unless the public interest ‘obviously’ demands otherwise. Rule 7 of the Swedish Code states:

*Consider carefully any publicity which could violate the privacy of individuals. **Refrain from such publicity unless** the public interest obviously demands public scrutiny.<sup>250</sup>*

Rule 15 states:

*Give careful consideration to the harmful consequences that might ensue for persons if their names are published. **Refrain from publishing names** if it might cause harm **unless** it is **obviously in the public interest**.<sup>251</sup>*

The Swedish Press Ombudsman Ola Sigvardsson explained his criteria in weighing privacy and the public interest:

*In my opinion there are two types of public persons. The first one is a politician, or civil servant or someone of a high level from the army or the police force or entrepreneurs, terrorists and hardened criminals. People who build, or tear down, our society. Their work is connected to the society in a way that may be negative or positive. They may be very closely [scrutinised]. But the other type are people who act in the public arena – artists, football players, journalists, television celebrities and so on. They act in the public arena but they don’t build or tear down the society and therefore the common [public] interest around that person is much lower.<sup>252</sup>*

The application of this approach is illustrated in relation to the coverage of television presenter Ola Lindholm.

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<sup>250</sup> Bold has been added for emphasis in code quotations throughout this chapter.

<sup>251</sup> <http://po.se/english/code-of-ethics>.

<sup>252</sup> Interview, Jan. 2012.

### Sweden's Code of Ethics: an approach to privacy

On 12 April 2011 tabloid *Expressen* ran a front-page headline<sup>253</sup> 'Tv-programledaren OLA LINDHOLM fran Kamratposten TAGEN FOR KNARK' (literally translated as: TV presenter OLA LINDHOLM from [children's magazine] Kamratposten<sup>254</sup> TAKEN FOR DRUGS'), together with a photo of the presenter tagged 'Tagen av polis' (Taken by police). Inside the paper, the article described how Ola Lindholm had been forced to give a urine sample after police at a football match suspected he was under the influence of drugs. It said it would be two weeks before the results of the sample would be known and that Lindholm had declined to comment.

Lindholm complained that the article had caused him enormous personal and professional damage and that at the point of publication only a sample had been taken and the outcome was not known. The newspaper argued that he was an established media figure, host of a children's programme and on the board of a Swedish children's rights society, and that it had reported factually what had happened.

The Press Ombudsman recommended that the complaint be upheld. His starting point was that the press should refrain from publishing names if that might cause harm to a person where there was no obvious public interest requiring that name (the relevant rules are set out above this case study). He accepted that Ola Lindholm worked in the public eye and that his activities were directed towards a child audience but said that this did not justify the publication of his name at such an early stage of a police investigation. The finding said the subsequent conviction for drug ingestion did not justify his naming on 12 April. It held that while the publication satisfied the public's curiosity it was not in the public interest. The Press Council agreed with the recommendation and found the newspaper in breach of good journalistic practice.<sup>255</sup> *Expressen* published the decision<sup>256</sup> and the archived online article contains a link to it.<sup>257</sup>

The **Danish** Code contains cautions in relation to publishing the name of a suspect or accused, saying 'these **should be omitted** if no public interest calls for the publication of the name', and links privacy with reputation:

*Information which may violate the sanctity of private life **shall be avoided** unless an obvious public interest requires public coverage. The individual is entitled to protection of his/her personal reputation.*<sup>258</sup>

In considering boundaries between the public and the private, it has recently adjudicated on complaints of privacy in relation to new media social networks as illustrated by the following case.

<sup>253</sup> <http://blogg.engfors.se/?p=12300>.

<sup>254</sup> Sweden's children's magazine for the over-8s <http://www.bonniermagazines.se/Our-brands/PARENTING/Kamratposten>.

<sup>255</sup> <http://po.se/faellningar/faellda-aerenden/506-ola-lindholm-namngavs-innan-det-fanns-belaegg-foer-hans-skuld>.

<sup>256</sup> <http://www.expressen.se/nyheter/expressen-klandras-av-pressens-opinionsnamd>.

<sup>257</sup> <http://www.expressen.se/administration/barnprogramledaren-ola-lindholm-misstankt-for-narkotikabrott>.

<sup>258</sup> <http://www.pressnaevnet.dk/Information-in-English/The-Press-Ethical-Rules.aspx>.

### Privacy and closed social networks: a case from Denmark

On 12 August *Arhus Stiftstidende* newspaper published an article about a right-wing organisation 'ORG' based on a report from a left-wing group 'Redox'. It was accompanied by photographs which were said to show the president of the organisation burning a 'dark-skinned doll'. The president and the organisation complained to the Press Council about both the article, which drew on quotations taken from the organisation's internal internet forum, and the photos. In relation to the article the Press Council found that:

*the information in closed social networks is reserved for those who have been authorized to have access to the network. Therefore, the media are generally not allowed to use such information, unless the information has so much public interest that the disclosure outweighs the interests of the writer. The Press Council found that the description of right-wing factions and their actions is such an important social issue, that the newspaper was entitled to bring the articles on the club and mention the chairman by name. For the same reason, the council found no basis for criticizing the newspaper for publishing quotations from the club's internal internet forum.*

However, in relation to the photos, the Press Council noted that they were around eight years old, taken at a private social meeting (a Solstice party), and observed that 'Persons in private contexts may well behave in a manner that reflects a "joke" or the like'. It concluded that:

*The Solstice party where the burning of the doll allegedly took place, occurred in a forest, and the photographs were not taken for publication. The Press Council therefore found that there was not such a public interest associated with the actual photographs of the chairman that these could be published without consent. This applies not least because the newspaper did not submit the photographs to the chairman to check whether the photographs actually show the sequence of events described in the paper.<sup>259</sup>*

The newspaper was directed to print a summary of its finding which was duly complied with, together with a link to the full finding on the Press Council's website.<sup>260</sup>

The **Finnish** Guidelines for Journalists state, in respect of privacy, that: 'The human dignity of every individual must be respected' and 'Highly delicate matters concerning people's personal lives may only be published with the consent of the person in question, or if such matters are of considerable public interest.' They also warn:

*The right to privacy also applies when publishing public documents or other public sources. The public availability of information **does not necessarily imply** that it can be freely published.<sup>261</sup>*

In 2010 the Finnish Council for Mass Media upheld a complaint made, unusually, in relation to the violation of a dead person's dignity.

<sup>259</sup> <http://www.pressenaevnet.dk/Default.aspx?M=News&ID=83&NewsID=7426>.

<sup>260</sup> <http://stiften.dk/aarhus/pressenaevnet-kritiserer-stiften.dk-s-omtale-af-org>.

<sup>261</sup> [http://www.jsn.fi/en/journalists\\_instructions](http://www.jsn.fi/en/journalists_instructions).

### Respect for dignity: a case from Finland

The death from a 'self-inflicted gunshot wound' of Tony Halme, a larger-than-life MP from the True Finns party, former professional boxer, wrestler, and TV Gladiator, with drink and drug convictions, provoked widespread press coverage. *Ilta-lehti*,<sup>262</sup> a large daily tabloid, ran a column<sup>263</sup> that referred to him among other things as 'pathetic and pitiful' and a 'harmless animal-shaped chunk' of 'a joke'. One hundred and eight complaints were made and one, from his mother, investigated as representative and upheld. She complained that the piece was malicious, infringed his privacy, and showed no respect for his dignity.

The council found that the requirement to respect human dignity applied to the dead, that the column had violated this requirement, and, published as it was in the immediate aftermath of his death, had caused additional suffering to his friends and family.<sup>264</sup>

Reflecting on wider Finnish coverage of such scandals as sexual harassment by MPs (considered above in section 5.2) and revelations about the private lives of the former Prime Minister Matti Vanhanen<sup>265</sup> and other politicians, RISJ Fellow Laura Saarikoski detects a generational shift amongst journalists which is pushing the boundaries of privacy in relation to political coverage:

*The old political reporters would never have written about any affairs of the Presidents or Prime Ministers. [But] since the 30 year old, 40 year old people have taken over the newsrooms . . . this new generation has become much more Western in exposing private affairs, being much tougher on politicians than the old reporters were even ten years ago. And because of this shift those things that were taken for granted earlier like . . . affairs by politicians are all of a sudden written about, as is sexual harassment in parliament.*

In Germany section 8 of the Code on privacy takes a more permissive approach. It starts with a recognition of privacy rights and then qualifies this in relation to behaviour that is in the public interest:

*The Press shall respect the private life and intimate sphere of persons. If, however, the private behaviour of a person touches upon public interests, then it may be reported on in individual cases.*<sup>266</sup>

Decisions by the Press Council in relation to coverage of the 'Love Parade' deaths illustrate the different approaches the Press Council takes when weighing the public interest in individual cases.

<sup>262</sup> <http://www.iltalehti.fi/etusivu>.

<sup>263</sup> [http://www.iltalehti.fi/kolumnistit/2010011310917932\\_k9.shtml](http://www.iltalehti.fi/kolumnistit/2010011310917932_k9.shtml).

<sup>264</sup> <http://www.jsn.fi/sisalto/4247-sl-10/?year=2011&search=tony+halme>.

<sup>265</sup> Matti Vanhanen was the subject of a 'kiss and tell' book by a former girlfriend and in 2010 awarded damages for a violation of his privacy:

<http://www.hs.fi/english/article/Supreme+Court+upholds+privacy+violation+conviction+against+Susan+Ruusunen+and+publisher+for+kiss-and-tell+book/1135257623302>.

<sup>266</sup> <http://www.presserat.info/service/english/press-code.html>.

### Privacy and the public interest: a case from Germany

In 2010, 21 people died following mass panic at the underpass entrance to the Love Parade music festival in Duisburg. Graphic coverage resulted in hundreds of complaints about sensational and intrusive reporting of death and suffering. In the case of *Bild-online* one photo complained of showed the arm of one of the victims, wearing a distinctive watch, protruding from under a sheet at the scene of the deaths. The headline read 'PANIC AT THE ENTRANCE – RAVER CRUSHED TO DEATH' and under the photo appeared a comment that translates as 'Hand clenched in death. This man was probably crushed in the panic.' The Press Council adjudicated, in relation both to section 8 of the Code on privacy and section 11 which requires that 'The Press will refrain from inappropriately sensational portrayal of violence, brutality and suffering.' The Press Council issued a notice of disapproval stating that 'The picture violates the personal rights. The watch and therefore the dead body might be identified by family and friends. Furthermore the caption . . . is too sensational.'

However, other complaints were not upheld, because of the public interest in coverage of the events. Manfred Protze, chairman of the Press Council's Appeals Board commented: 'The fact that many people find these photos unbearable, does not alter the fact that such an event is of great public interest' and noted that they contributed to documenting the terrible reality of the tragedy.<sup>267</sup>

The decisions are also interesting in that they did not have to rely on complaints from individuals personally affected by the coverage but could respond to complaints from the wider public. Some Press Councils also take third-party complaints from charities or pressure groups.

### Privacy and third-party complaints: a case from Australia

In 2010 the Australian Press Council upheld a complaint brought by the charity SANE-Australia which campaigns on behalf of people affected by mental illness. An article in *Tweed Daily News* had reported the search for what was suspected to be the naked body of a dead man on the banks of the River Tweed. It said the search was ended when a naked man emerged from the bushes near the newspaper's journalist and photographer and explained that the man had gone for a swim and could not find his clothes when he emerged from the river. It also stated he was taken to Tweed Hospital for a mental health assessment. The APC said 'Full frontal photos with the man's genitalia obliterated by the word "Censored" were published in large format on the front page.'<sup>268</sup> It said SANE complained that the paper was fully aware of the man's mental state and exploited his vulnerability.

The APC concluded that, while there was a clear public interest in the report about the missing man and the search for him,

*there was no justification for the publication of photos that clearly identified the man and did not adequately respect his privacy and sensibilities. Because it knew a mental health assessment was being made, the newspaper should have been more cautious in the way it treated the incident.*<sup>269</sup>

<sup>267</sup> <http://www.presserat.info/inhalt/dokumentation/pressemitteilungen/pm/article/loveparade-presserat-ruegt-eingriff-in-die-privatsphaere.html>.

<sup>268</sup> [http://www.abc.net.au/mediawatch/transcripts/0930\\_tweed.pdf](http://www.abc.net.au/mediawatch/transcripts/0930_tweed.pdf).

<sup>269</sup> <http://www.presscouncil.org.au/document-search/adjudication-no-1453-february-2010/?LocatorFormID=0&FromSearch=1>.

Australia is unusual in providing a definition of the 'public interest' which, for the purposes of its Code, it defines as 'involving a matter capable of affecting the people at large so they might be legitimately interested in, or concerned about, what is going on, or what may happen to them or to others'.

On privacy, its general principles (which are accompanied by a statement of principles exclusively on privacy) actively promote 'matters of public record or obvious and significant public interest':

*News and comment should be presented honestly and fairly, and with respect for the privacy and sensibilities of individuals. However, the right to privacy is not to be interpreted as preventing publication of matters of public record or obvious or significant public interest.*

In Ireland the preamble to the Code explains its approach to the public interest:

*In dealing with complaints, the Ombudsman and Press Council will give consideration to what they perceive to be the public interest. It is for them to define the public interest in each case, but the general principle is that the public interest is invoked in relation to a matter capable of affecting the people at large so that they may legitimately be interested in receiving and the press legitimately interested in providing information about it.<sup>270</sup>*

It refers to privacy as a human right, and to its legal basis, but like Australia it makes clear that 'the right to privacy should not prevent publication of matters of public record or in the public interest'. It also has a particular clause on privacy in relation to 'public persons':

*Public persons are entitled to privacy. However, where a person holds public office, deals with public affairs, follows a public career, or has sought or obtained publicity for his activities, publication of relevant details of his private life and circumstances may be justifiable where the information revealed relates to the validity of the person's conduct, the credibility of his public statements, the value of his publicly expressed views or is otherwise in the public interest.*

A case from 2008, however, drew limits in relation to the privacy of a public figure, Irish politician Tony Gregory, who died in 2009.

#### **Interest to the public and the public interest: a case from Ireland**

In 6 January 2008 the *Evening Herald* reported on Deputy Tony Gregory's serious illness based on material previously published and a visit by a reporter to Mr Gregory's home. Mr Gregory complained that the visit (where the reporter had sought information about his illness from his brother) and the article intruded into his privacy at a time of distress and shock. The newspaper argued that

*it was entitled, if not obligated, to follow up on a story which concerned the health of a high profile, elected public representative, and that it was legitimate for a journalist to be able to attempt to make contact with family members or friends in situations such as this.*

The Press Ombudsman found that:

*while it is evident that further details of Deputy Gregory's medical condition and treatment, and information about how his family was coping with the situation, might have been of interest to his constituents, and possibly to other members of the public, the test is not whether the matter complained about was of interest to the public, but whether its publication was in the public interest. This is a crucial distinction in a case*

<sup>270</sup> <http://www.pressombudsman.ie/code-of-practice.150.html>.

*in which a breach of privacy is involved . . . In the circumstances, there would need to be clear evidence that the acquisition and publication of information involving a breach of privacy is in the public interest, in order to satisfy the requirements of the Code of Practice. The article complained of fails to meet this criterion.*<sup>271</sup>

The newspaper appealed the Press Ombudsman's decision to the Press Council, the first case to come before the council involving the 'complex issue of the privacy of a public figure'. The council upheld the Press Ombudsman's decision, finding that

*the intrusion into the complainant's home, especially at a time of illness and anxiety, and when other ways of contacting the complainant were available, was not justified either by the complainant's public position as a Dáil deputy, or by the significance of the information being sought.*

It concluded that 'the practice of so-called "door-stepping", especially when it involves the person's private home, requires a high level of justification'.<sup>272</sup>

Notably, in February 2012 the European Court of Human Rights delivered two judgments which upheld the rights of the media<sup>273</sup> and which touched on many of the issues illustrated in the differing emphases in different Press Codes.

#### **European Court of Human Rights: February 2012 judgments on media coverage of celebrities' private lives**

The first judgment concerned a photo of Princess Caroline of Monaco and her husband taken during a skiing holiday and published to accompany an article about the then poor health of Prince Rainier of Monaco. The article and photo had been published in 2002 in the German publication *Frau im Spiegel* and the German Federal Court had found the press was entitled to report on the manner in which Prince Rainier's children 'reconciled their family obligations with the legitimate needs of their private life, among which was the desire to go on holiday'. The European Court of Human Rights found the German courts had carefully balanced the right of publishing companies to freedom of expression against the right of Princess Caroline and her husband to respect for their private and family life, and held that there had been no violation of Article 8 (right to privacy) of the Convention on Human Rights.

The case was held to represent a rebalancing of the weighing of privacy and freedom of expression in that an earlier judgment by the European Court of Human Rights in 2004 had overruled similar findings in the German Federal Court and Constitutional Court in relation to the publication of photos in 1993 and 1997 and had found that the German courts' decisions had infringed Princess Caroline's right to respect for her private life under Article 8.

The second case related to a front-page article in *Bild* from September 2004. This had reported the arrest of a well-known television actor at the Munich beer festival for possession of cocaine. The actor brought out an injunction to prevent further publication of the article and accompanying photos. In granting the injunction the German courts held that, although the truth of the facts was not in dispute, the case did not concern a serious offence and there was no particular public interest in its publication. A second injunction was granted over an article on his subsequent conviction and fine for the illegal possession of drugs, on the same grounds. The European Court of Human Rights noted that

<sup>271</sup> <http://presscouncil.ie/decided-by-press-ombudsman/gregory-and-evening-herald-.1134.html>.

<sup>272</sup> <http://www.presscouncil.ie/decided-by-the-press-council-on-appeal/gregory-and-evening-herald-.1256.html>.

<sup>273</sup> [http://www.echr.coe.int/ECHR/homepage\\_en](http://www.echr.coe.int/ECHR/homepage_en).

*the articles in question, about the arrest and conviction of the actor, concerned public judicial facts, of which the public had an interest in being informed . . . he was sufficiently well known to qualify as a public figure, which reinforced the public's interest in being informed of his arrest and the proceedings against him.*

The Court accepted that the publisher's 'interest in publishing the articles was solely due precisely to the fact that it was a well known actor who had committed an offence' but it noted that the actor had been arrested in public at the Munich beer festival and said:

*The actor's expectation that his private life would be effectively protected had furthermore been reduced by the fact that he had previously revealed details about his private life in a number of interviews.*

It therefore found that the sanctions imposed on Axel Springer, *Bild's* publisher, 'were capable of having a chilling effect on the company' and that in injuncting the material there had been 'a violation of Article 10 (freedom of expression) of the European Convention on Human Rights'.<sup>274</sup>

It remains to be seen whether these judgments from the European Court of Human Rights will affect similar weighing of the competing rights of privacy and freedom of expression by Press Councils in the future.

## *6.2. Defamation, the Reynolds Defence, and the wider testing of the public interest*

As we have seen throughout this report, Press Councils sit within a wider framework of legislative regulation. It is not the purpose of this report to examine this context in exhaustive detail; however, defamation law is becoming an area of particular interest as defences relating to standards of journalism develop. In the UK a defence of responsible journalism (known as the Reynolds Defence after a case brought by the Taoiseach of Ireland Albert Reynolds) may be tested by a (non-exhaustive) list of matters that can be taken into account by the court in deciding whether a publication has a defence in defamation proceedings.<sup>275</sup> Only one country considered here (Ireland) articulates a link in its Defamation Act between membership of, and compliance with, the Press Council and the ability to demonstrate a commitment to accountable, responsible journalism in relation to defamation.

As we have seen, in **Ireland** membership of the Press Council sits at the heart of a significant defence to defamation called the 'defence of fair and reasonable publication'. The Defamation Act 2009<sup>276</sup> sets out that it shall be a defence (of fair and reasonable publication) to a defamation action for the defendant to prove that publication of the defamatory statement was in good faith, in the public interest, that the manner and extent of publication did not exceed what was reasonable, and in all the circumstances it was 'fair and reasonable' to publish the statement. In determining the latter the court can take into account such matters as the extent to which the statement refers to the performance of a person's public functions; the seriousness of any allegations; the context and content (including of language); distinctions

<sup>274</sup> <http://www.coe.int/t/dghl/standardsetting/media/Article%2010/Springer%20and%20Von%20Hannover%20v.%20Germany.pdf>.

<sup>275</sup> These matters include the seriousness of the allegation, the nature, source, and status of the information, steps taken to verify it, the urgency of the matter, whether comment was sought from the claimant and included in the article, the tone of the article and circumstances of publication including timing:

<http://www.publications.parliament.uk/pa/ld199899/ldjudgmt/jd991028/rej03.htm>.

<sup>276</sup> <http://www.irishstatutebook.ie/pdf/2009/en.act.2009.0031.pdf>.

drawn between fact and opinion; whether the plaintiff's version of events was represented, or attempts made to obtain it; attempts made to verify assertions and allegations; and, as we have seen in section 4.2, membership of and adherence to the Press Council or adherence to equivalent standards.

As Irish Press Ombudsman Professor John Horgan explained:

*It's fair and reasonable publication, but also accompanied by evidence that the newspaper or publication or whatever it is has taken all reasonable steps prior to publication to establish the truth of what they are going to publish. Now, the provision of the Act that relates to us is that, as part of that defence, a publication which could provide evidence that it's a member of good standing of the Press Council, that it always publishes appropriately in accordance with our terms and conditions, decisions on complaints against it that are upheld, that the judge may take this into account in deciding whether the newspaper is entitled to this defence of fair and reasonable publication.*<sup>277</sup>

There is no case law yet in relation to material published after the Act came into force in 2010, since many defamation cases are settled out of court. However, it will be instructive to follow the progress of the first cases where the court is invited to take into account membership (or non-membership) of the Press Council when deciding a case.<sup>278</sup>

Other countries similarly set out defences open to publications that can demonstrate fair and reasonable journalism in the public interest, though none provide a link to the Press Council in the same way. For example, in **Sweden** the Freedom of the Press Act appears to accept a Reynolds-type justification when it describes defamation (an allegation of criminal or other behaviour exposing another to contempt) as an offence, except where 'it is justifiable to communicate information . . . and proof is presented that the information was correct or there were reasonable grounds for the assertion'.

It is interesting to note that wider public interest grounds for journalistic activity are currently being tested in Sweden. In October 2010 *Expressen* newspaper published an article from Malmö, a city in southern Sweden 'plagued' by gun crime. It reported that it took its reporter just five hours to buy a pistol.<sup>279</sup> The story noted that the paper's editor-in-chief Thomas Mattsson had authorised both the investigation into 'how easy it is to come by an illegal weapon' and the illegal purchase. It said the gun had then been immediately handed to the police. In December 2011 charges were brought against the reporter, head of news, and Mattsson, who responded: 'If journalists can't work undercover, investigative journalism is robbed of one of its most important opportunities for unveiling wrongdoing.' The prosecutor, Jörgen Larsson, argued that the charges were justified and said: 'There's a public interest in clarifying whether this is criminal or not.'<sup>280</sup>

In **Australia**, section 30 of the Federal Defamation Act establishes a defence of Qualified Privilege, whereby the court can take into account, for example, the extent to which publication was in the public interest; the integrity of sources; whether the substance of the person's side of the story

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<sup>277</sup> Interview, Feb. 2012.

<sup>278</sup> In the case of a newspaper or publication from another jurisdiction that circulates in Ireland, it could apply to join the Press Council and if successful would be entitled to similar protection in relation to any action for defamation. Whether an international news agency would qualify for membership has yet to be tested though; see also n. 134 (email interview with Professor John Horgan, Mar. 2012).

<sup>279</sup> <http://www.expressen.se/kvp/vi-koper-vapen--pa-fem-timmar>.

<sup>280</sup> <http://www.thelocal.se/38182/20111227>.

was included and whether an attempt was made to contact the person and publish a response.

In **Denmark**, section 269 of the Penal Code holds that the publishing of a statement which tends to lower the claimant in the estimation of members of society is exempt from punishment if the statement's veracity is established or when the person, who has made the statement in good faith, has been duty-bound to make a statement or has acted for the legitimate protection of obvious public interest or for his own or others' interests.

In Denmark, a scandal involving the leaking of confidential defence information raised wider questions over the public interest, as well as concerns over how far the Press Council successfully promotes ethical standards. In 2007 TV2 in Denmark disclosed that a 30-man unit of Danish Special Forces was being sent to Iraq 'to stop an increasing barrage of missiles being lobbed at a Danish camp there – operational information that in the normal run of things would always be kept secret as special forces are high value targets for insurgents'.<sup>281</sup> Whether there was public interest in publishing the leaked information, or whether the lives of Danish soldiers had been recklessly put at risk, has been the subject of continuing debate. RISJ Research Fellow Rasmus Kleis Nielsen observed that questions continue over whether the Danish Press Council ought to have been 'strong enough and corrective enough to deal with these matters'.

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<sup>281</sup> <http://politiken.dk/newsinenglish/article902433.ece>.

## 7. Conclusions

As debate over the future of press regulation in the UK develops through the Leveson Inquiry and beyond, it is surfacing a host of thorny issues such as the very purpose of regulating the press; whether the basis for press regulation should be voluntary or mandatory or some combination; whether compliance should focus on incentives or sanctions; whether a regulatory body should primarily be concerned with complaint-handling or standards auditing, promotion, and enforcement; how it should weigh rights of freedom to impart and receive information on the one hand and privacy and reputation on the other; who can complain; transparency and accountability; the scope of jurisdiction in relation to cross-platform and cross-national providers.

This report does not seek to identify a blueprint for a future system of UK press regulation from the countries examined here, nor has it sought to provide an exhaustive survey of issues and approaches. However, what follow are some broad principles derived from experiences overseas which may inform future considerations in the UK. In some cases Press Council experiences serve as cautionary lessons, while others illustrate interesting approaches that may be developed and tailored to the context of the UK. As we have seen, the countries considered in this report are themselves facing considerable, and often familiar, challenges. Continued monitoring of Press Council debates and developments elsewhere is likely to prove valuable to future considerations in the UK.

### *7.1. A democratic imperative*

The first cautionary lesson for the UK relates to the very process of regulatory reform. The reality of the origins, or reform, of Press Councils considered in Chapter 2 is the galvanising impact on the press industry of the possibility of statutory intervention. While ethical beliefs in accountability and quality journalism may be present, it is the pragmatic goal of guarding against state interference that presents a common theme – even in Denmark (where the media accept mandatory regulation but only in limited areas). Inevitably this reactive approach brings with it the danger that press regulation develops as an expedient accommodation between industry and the state rather than primarily establishing core public purposes. It may also narrow a Press Council's purposes to managing a trade-off between press freedom and individual rights in relation to privacy and reputation, rather than looking at such issues as misleading content and wider ethical standards.

If freedom of the press is seen, as Professor Disney of the Australian Press Council put it, as a 'means to an end' – namely, the freedom of the public – then the debate about its regulation can be reconfigured. In this context the phone-hacking scandal in the UK, and wider allegations in relation to relationships between the press and the police and politicians, is perhaps most significant as a symptom of an industry, or sections of it, that had lost touch with its core purposes. Moreover, this is not just any competitive commercial industry, but one whose privileged place in society is connected to democratic responsibilities.

The opportunity, and challenge, presented in the UK is to break the cycle of statutory threats and industry accommodation, and debate the public interest in press regulation. A useful starting point for reform in the UK may be the recognition that press entitlements are contingent on public

entitlements, and that press freedoms are not an end in themselves but serve a democratic function in the public interest.

## 7.2. *Primary purposes and status of a press regulator*

Clarity around the purpose of press regulation, and the status of a press regulator, are essential to the UK debate. The Press Complaints Commission has, hitherto, been largely a complaint-handling body rather than a regulator with statutory powers (familiar in the context of licensed broadcasters) ultimately to close down a publication. A regulator that polices and enforces a code of statutory standards, imposing fines (and potentially damages), is at a different end of the regulatory spectrum to a body that facilitates complaint resolution on a voluntary basis. The success and credibility of a future regulatory model in the UK will depend on clarity over its purposes and status, so that appropriate expectations are placed on it and, most importantly, delivered.

### 7.2.1. DISTINGUISHING BETWEEN ETHICAL AND LEGAL REGULATION

In defining the purpose and status of UK press regulation it may be useful to recognise that each of the Press Councils considered here separates the aims, objectives, and sanctions available to the Press Council from those of the courts. As we have seen, the Irish Press Ombudsman Professor John Horgan observed that the chief instruments regulating the press are administered under civil and criminal law (in relation, for example, to defamation, privacy, harassment, contempt) and it is in the courts that fines are levied and damages awarded. The Irish Press Council and Press Ombudsman are clear that their roles are in relation to accountability and complaint-handling that are consistent with the law, in some ways go beyond it in expectations placed on journalists, but are secondary to the primary regulatory functions exercised under the law. He cautioned that the two systems should not be ‘mixed and matched’.

Judge Per Virdesten, chairman of the Swedish Press Council, was similarly clear that the Swedish council’s purpose was to promote good journalistic practice and this was not the purpose of the courts and nor he argued, in the interests of ‘the importance of a free press’, should it be. Even in Denmark, where the Press Council has a statutory basis, its chairman Judge Jytte Scharlin emphasised its role as an *alternative* to litigation, providing redress that is not based on financial penalties or awards of damages.

Debate over reform of press regulation in the UK (which has included suggestions for a new press regulator to exercise statutory powers) may wish to take account of this distinction. Under such an approach reformed regulation would ensure that all press content and practices are legal (through the mandatory regulation applied by the law), and that the public has access to an accountable press (or, more accurately, media) which adheres to ethical standards that are consistent with, and go beyond, the law.

### 7.2.2. MANDATORY VERSUS VOLUNTARY REGULATION, AND AN INCENTIVISED MIDDLE WAY

Reformed press regulation in the UK will face decisions over where it will be positioned on the spectrum of press regulation detailed in Chapter 4 of this report. This spectrum ranges (in very broad terms) from mandatory to incentivised to voluntary arrangements which may respectively require, actively promote, or simply encourage compliance with ethical standards.

#### MANDATORY REGULATION

None of the press councils considered is a statutory body with powers to impose fines or suspend a publication, as is the case with a broadcasting regulator. As we have seen, Denmark offers an illustration of a co-regulatory system (for print and broadcasting). However, even with mandatory jurisdiction and requirements (backed by the threat of a fine or imprisonment in the event of non-compliance with a requirement to publish an adjudication or right to reply) the impact of the Press Council, both on press standards and the prominence of published adjudications (discussed in section 4.3), is subject to current criticism. Perhaps more interesting are the numbers of online providers voluntarily *opting for* membership because of the incentives the system provides and it will be instructive to see how far such active choice over membership results in active compliance.

#### VOLUNTARY REGULATION

At the other extreme of those councils considered here, the Canadian model (although not a focus of this report) offers a cautionary demonstration of the prospect of publishers withdrawing from a voluntary system where withdrawal is without consequence. This is also illustrated in Australia's recent past. Likewise the German model illustrates failures to comply with sanctions in a system which again provides no consequences for such non-compliance. Conversely, the Finnish Council for Mass Media, as discussed in section 2.3, appears to offer the example of media organisations committed to supporting the press council system through a voluntary self-regulatory body that provides an alternative to statutory regulation, a cost-effective means of settling complaints, and a means of demonstrating accountability to consumers.

#### INCENTIVISED VOLUNTARY REGULATION

The challenge for any UK reform based on voluntary rather than mandatory regulation, and which takes active compliance rather than enforcement as a starting point, lies in so incentivising such voluntary regulation that it achieves (and maintains) widespread membership, and a culture of accountability. It is an approach that seeks to move regulation from an association with begrudging or token participation, to a commitment that is commercially and legally, as well as ethically, valuable.

This report notes that in the Irish system membership of the regulatory body is not mandatory but provides a demonstration of commitment to accountability and responsibility that is transferable to defences in defamation proceedings and might otherwise be hard to achieve. A measure of the value of this membership is that while Richard Desmond withdrew his titles from the UK's Press Complaints Commission, as we have seen, the title he co-owns in Ireland is a fully fledged member of the Irish system. Active compliance in Ireland is positively associated with legal advantages, rather than with a defensive response to the prospect of statutory interventions, and while it is highly incentivised in statute the objectives of the law and the Press Council are kept entirely separate. The Irish model also provides, as we have seen, multiple lines of accountability: to its own board, to its member publications and funders, and, through parliamentary scrutiny, to the public.

#### EXTENDING INCENTIVES

Reform in the UK may also wish to take account of Press Council proposals that seek to extend the model of incentivised regulation by suggesting a

number of statutory, and non-statutory, incentives that could be linked to a track record of commitment to voluntary ethical regulation. In this regard it will be useful to consider the recommendations of the New Zealand<sup>282</sup> and Australian<sup>283</sup> reviews of media regulation as they report to their respective governments in 2012. Both reviews have included submissions on considerations of how far membership of, and compliance with, a regulatory council as a demonstration of accountable, ethical journalism can be linked to 'Reynolds' style defences in defamation proceedings (considered in Chapter 6) and to privacy proceedings, to court reporting and confidential briefing privileges, and to exemptions from copyright and data protection requirements.<sup>284</sup> In addition, debates over tax subsidies and other financial privileges, for example in Denmark, may be relevant, as well as issues of how far compliance in one area of the media may inform cross-media ownership decisions.

#### SANCTIONS

In the event of a failure to comply with its ethical code, the chief sanction of all the Press Councils here is the publication of an adjudication (or right of correction) with its associated impact on reputation. None have the power to fine although as we have seen in Denmark non-compliance with the requirement to publish can in principle result in a fine or imprisonment. The Swedish model provides an example of a financial penalty through payment of modest costs that avoids the issue of fines with a 'polluter pays' principle incorporated into its funding structure. This may merit consideration, and could be calibrated to address cases that are particularly serious, repeated, or otherwise represent a significant drain on the regulator's resources. However, the ultimate sanction for compliance failure under a model of incentivised compliance would be suspension or expulsion from the regulatory body with its associated advantages and privileges.

#### 7.2.3. STANDARDS AND COMPLAINT-HANDLING

The issue of how far a new press regulator in the UK will, in practice, handle complaints and how far it will be charged with investigating and/or promoting standards more widely has been debated during the Leveson Inquiry. Related questions arise in relation to who can bring complaints and the extent to which complaints result in formal adjudications or informal alternative forms of dispute resolution.

#### COMPLAINT-HANDLING

As we have seen, the stated purposes of Press Councils considered here variously include defending press freedom, promoting its accountability and ethics, and enabling it to provide access to information for the public. All the Press Councils considered here have in common a core role in providing effective remedy, free of charge, to those personally affected by media

<sup>282</sup> [http://www.lawcom.govt.nz/project/review-regulatory-gaps-and-new-media?quicktabs\\_=\\_issues\\_paper#quicktabs-](http://www.lawcom.govt.nz/project/review-regulatory-gaps-and-new-media?quicktabs_=_issues_paper#quicktabs-)

<sup>283</sup> [http://www.dbcde.gov.au/digital\\_economy/independent\\_media\\_inquiry](http://www.dbcde.gov.au/digital_economy/independent_media_inquiry).

<sup>284</sup> In the UK the Data Protection Act 1998 provides an exemption from restrictions on processing personal data for journalistic purpose and allows the court to take compliance of a relevant Code of Practice into account when considering this exemption. The Editors' Code of Practice is relevant for this purpose <http://www.pcc.org.uk/news/index.html?article=ODg>. Similarly, in relation to investment advice, the Investment Recommendation (Media) Regulations 2005, which incorporate into UK law the EU Market Abuse Directive, provides exemptions for media subject to a self-regulatory system such as the PCC whose Code, for example, prohibits journalists from writing about shares in which they have a significant financial interest [http://www.editorscode.org.uk/guidance\\_notes\\_9.html](http://www.editorscode.org.uk/guidance_notes_9.html).

content. Each Press Council may take a different starting point in relation to weighing privacy and freedom of expression, depending on particular contexts and circumstances, but all demonstrate a broad application of public interest criteria in relation to privacy and reputation.

It is notable that in Sweden, Ireland, and Denmark only those 'personally affected' by content can bring a complaint, while the German, Australian, and Finnish systems demonstrate a wider relationship with the public. They consider complaints from the general public about, for example, misleading information, the blurring of fact and opinion, and the blurring of advertising and editorial. This is an approach which may be useful to consider if a future model for the UK aims to support accountability in wider journalism.

While none of the Press Councils considered here have a particular mechanism for accepting complaints from (rather than about) journalists, the preamble to the Danish Code explicitly states that 'Journalists should not have tasks imposed on them that are contrary to their conscience or convictions'. Future UK regulation seeking to promote ethical newsroom cultures may wish to acknowledge a similar principle.

The UK's Press Complaints Commission has been criticised for the large numbers of complaints informally resolved, as opposed to formal adjudications of a breach of the Code. Press Councils considered here demonstrate a variety of approaches. Denmark, as we have seen, places some obligations on complainants to complain to the provider first, rules out any form of mediation, and either dismisses complaints or adjudicates on them. Conversely, the Australian Press Council chairman described adjudications as the council's 'failures' and alternative dispute resolution is a first response to complaints and actively pursued. Germany encourages publishers to consider 'reparation' in each case and only very few complaints result in the publication of an adjudication, while in Ireland details of conciliated complaints are provided on its website as a matter of public record. Reform in the UK may wish to ensure that, while informal mediation and resolution may contribute to appropriate remedy for complainants, such cases are properly accounted for when auditing compliance and monitoring trends.

#### WIDER STANDARDS

A number of the Press Councils considered here are involved in promoting standards through training for journalists and public debate. As we have seen, the German Press Council has been involved in voicing concerns over protection of sources and political interference in press freedom. The Australian Press Council's proposals to promote ethical standards and practices, beyond complaint-handling, through impact monitoring and community dialogue, are arguably the most far-reaching and may merit future consideration in the UK.

Any new model of UK press regulation will seek to promote accountability in the industry and the PCC has surfaced suggestions of strengthening internal compliance by means of a named individual carrying personal responsibility, including an annual compliance audit, at each publisher. Elsewhere, some Press Councils underpin the naming of a responsible (and legally liable) individual with a statutory requirement. This is the case in Sweden where a certificate of publication is required for print media, in Finland where responsible editors must be designated for print and broadcast media, and in Denmark where print and broadcast media are

subject to mandatory Press Council jurisdiction. Such naming of senior individuals is held to provide clarity over the 'chains of responsibility' discussed in Chapter 4 and, as discussed by the respective Ombudsman and Press Council chairmen, to protect journalists particularly when a public interest defence is invoked.

### *7.3. Independence*

The independence of Press Council investigations and adjudications are central to its credibility. In the UK the independence of the Press Complaints Commission has come under enormous scrutiny. Any new regulatory body's reputation and integrity will depend on transparency over how the independence of, for example, its governance, appointments, and adjudications is secured; over how it is funded and the relationship between funding and decision-making; and where responsibility for its code of standards lies.

Press Councils considered here each take different approaches to independence, in relation to responsibility for funding, terms of reference, appointments, adjudication panels, and code rules. As we have seen, the simple arithmetic of council board members tells only part of the story. It is the composition of related panels including management boards, appointment panels, funding bodies, and code committees that is also revealing in any consideration of the issue of independence.

The German and Finnish models resist the notion of an independent majority on their council boards. Germany has no independent representatives on either its council or on the association of sponsors and so industry-only members are responsible for funding, appointments, code drafting, and complaint adjudication. In Finland, either the industry-majority council or industry-only management group have these responsibilities. In both countries this is seen as vitally important in order to secure independence from the state. On the other hand, both accept state funding on a 'no-strings' basis and in Germany the independence of the Press Council from state-funding contributions is guaranteed in law. The Australian Press Council has similarly proposed partial state funding, though the independent inquiry in Australia has gone furthest in recommending full government funding in order to provide security for its proposed News Media Council.

The Swedish and Danish systems each, as we have seen, seek to secure independence through judicial appointments to the chair of the Press Council. While Sweden's council has a non-industry majority, and an independent appointment system, its industry-only management committee is responsible for its charter, code, funding, and standing instructions for the Press Ombudsman. In Australia, the council board is made up of independent, 'independent journalist', and industry members. As with Denmark, the Australian Press Council, rather than an industry-only panel, is responsible for the Code, which thus has independent input. Similarly the Australian adjudication subcommittee must have an independent majority.

The Irish and Danish models (in very different ways) demonstrate how the basic functions of a Press Council, in relation to its funding, organisation, and adjudication responsibilities, can be set out in statute in order to secure independence without dictating the detail of the ethical code of journalism standards. In addition, under the Irish model independent members have core roles: independent members are in the majority on the council's board which in turn appoints the chairman; an independent member chairs the

committee responsible for funding; and an entirely independent committee is charged with responsibility for appointments.

A model of governance and decision-making that draws on industry expertise and funding, and statutory recognition, but secures independence from both the state and industry, may be a useful approach for future discussion in the UK. Recognition in statute, as in Ireland, demonstrates a way of setting out the core purposes, administration, and functions of the regulatory body and securing the independence of governance and appointments from funding. An equitable, sufficient, and secure funding structure would need to be provided, and a system of advance fees (illustrated by the Australian Press Council) levied on providers wishing to secure the benefits of membership, regardless of print or electronic platforms, might be considered. Statute could ensure that while the experience of industry figures informs decision-making, independent public interest members are at the heart of the regulatory body: in the development of a Code and the wider securing of standards; in investigating and adjudicating public (rather than narrowly privacy and reputation) complaints; and in the administering of sanctions and policy responsibilities.

The next Communications Act, arising from the current Communications Review,<sup>285</sup> might provide an appropriate basis for statutory recognition of a new regulatory body. The Act's breadth of remit could provide a secure statutory basis without narrowing the objectives of a reformed body to, for example, defamation proceedings. Instead of a focus on 'the press' and on 'complaints', the promotion and independent regulation of 'ethical standards across media' could be recognised as a democratic imperative, accommodating existing, emerging, and future providers.

#### *7.4. Transparency and kite-marking*

Any future voluntary system of press regulation in the UK requires transparency not just in relation to its internal mechanisms (discussed immediately above) but also in relation to its external dealings with the public. It is currently impossible for the public to differentiate, in any meaningful way, between titles that are members of the UK's PCC and those that are not, whether in print or online. Under a system of incentivised ethical regulation, a system of kite-marking or badging would both provide transparency for consumers and present the opportunity for providers to differentiate their content to competitive advantage.

A voluntary system of ethical regulation recognises that even the strongest web of legal, financial, and commercial incentives and privileges cannot guarantee that all providers will choose ethical regulation, nor, given the context of online, international provision is that necessarily a realistic or meaningful ambition. An alternative approach is to recognise a diversity of content, all of which is subject to the law, which differentiates the regulated from the unregulated, in order to ensure that the public can make informed choices.

A requirement that all regulated providers carry a clearly identifiable standards mark (as the Irish and Australian Press Councils are seeking to introduce), easily visible on the front page of print and online publications, would enable the public to make democratic choices about engagement with regulated (and unregulated) journalism, across print and electronic media.

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<sup>285</sup> [http://www.culture.gov.uk/what\\_we\\_do/telecommunications\\_and\\_online/8109.aspx](http://www.culture.gov.uk/what_we_do/telecommunications_and_online/8109.aspx).

Likewise providers could make choices about where to position their content, and advertisers could decide where the most favourable associations lie.

However, differentiation of content through a transparent standards mark would not assist individuals unable to receive regulatory redress from an unregulated publication. In circumstances where complainants' only recourse would be the courts, a legal safety net might be considered in order to provide affordable legal redress. This is currently up for debate in New Zealand as set out in section 3.2 in relation to its consultation on 'Communications Tribunals'. As discussed in the context of Ireland, in such proceedings the courts could draw their own conclusions about publications that have rejected Press Council membership.

### *7.5. Territorial jurisdiction and convergence readiness*

Reform of press regulation in the UK will face increasing questions over how far the current emphasis on membership by the print industry with additional online services is sustainable, and whether the goal should rather be ethical regulation for journalism irrespective of the media platform on which it is hosted. Reform will also need to reconcile global providers with territorial standards. The press councils considered here provide a useful range of perspectives.

#### 7.5.1. TERRITORIAL JURISDICTION

In relation to territorial jurisdiction, under the Danish and Swedish models, Danish and Swedish print publications (and broadcasting licensees in the case of Denmark) are covered by the system of press regulation and privileges attached to it, and online providers may also apply. The recommendations of the recent Australian Independent Inquiry are more ambitious and, while they acknowledge that foreign publishers with no connection with Australia would be beyond the reach of the proposed mandatory regulator, argue that 'carefully drawn legislation' could bring an internet news publisher with 'more than a tenuous connection with Australia' within its jurisdiction on a mandatory basis.

Ireland takes a different approach, welcoming applications for membership from other jurisdictions (provided they meet the criteria set out in the Irish Defamation Act) and, as we have seen, some UK titles circulating in Ireland are members. However, while the Press Council provides members with a mechanism by which they may demonstrate accountable, responsible journalism for the purposes of the Defamation Act, the Act also allows for publishers to demonstrate that they 'adhered to standards equivalent' to those of the Press Council. So while an Irish court might look askance at an Irish publisher that has rejected Press Council membership, it may also take account of alternative membership or standards demonstrated by an international provider (this has yet to be tested in the Irish courts). The result appears to be an interesting accommodation of domestic and international interests which may merit consideration in the UK.

#### 7.5.2. CONVERGENCE READINESS

In relation to convergence, the Danish and Finnish models, albeit in very different ways, already apply consistency of standards across media platforms including print, broadcasting, and, more recently, other electronic media. Australia currently regulates print and broadcasting separately but the recommendations of its convergence review will address cross-platform

regulation and, like the similar New Zealand review, will be instructive for the UK.

Each of the councils considered here illustrates the challenges of adapting existing funding and governance models to the advent of online and other electronic providers. These challenges suggest that future UK reform may wish to ensure that it is 'convergence-ready' in relation to a number of regulatory features.

UK reform may wish to ensure that expectations of ethical standards are not narrowed to traditional publishers but broadened to encourage and recognise new media providers. Governance and funding structures, incentives, and sanctions would therefore need to provide an equitable framework for providers seeking the benefits, privileges, and opportunities of regulation, irrespective of media platforms and traditions.

A reformed press or, more accurately media, regulator may wish to recognise some essential standards of journalism such as accuracy and fairness, and others that are platform-specific. It might also wish to recognise a potentially wider context of future media standards, for example, in relation to the protection of children, and recognise the ways in which content of broadcast, video-on-demand, print, and user-generated origins increasingly sit alongside each other on 'connected' television and computer screens, requiring a more coherent regulatory framework.<sup>286</sup>

In this way the chief distinction under a reformed regulator would not be between old and new media, nor professional and amateur journalists, but between regulated and unregulated content, promoting the commercial and ethical value of active regulatory compliance.

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<sup>286</sup> Proposals for a wider framework for media regulation across platforms are set out in <http://reutersinstitute.politics.ox.ac.uk/publications/risj-books/regulating-for-trust-in-journalism-standards-regulation-in-the-age-of-blended-media.html>.

## List of Interviewees

JULIAN DISNEY: Chairman, Australian Press Council (Professor of Law with a background in welfare reform and government advisory bodies)

CORNELIA FUCHS: Former RISJ Journalism Fellow (*Stern* magazine, Germany)

BERND HILDER: Chairman ('Speaker'), German Press Council (former journalist and chief editor)

JOHN HORGAN: Press Ombudsman, Ireland (Professor of Journalism, former journalist and politician)

PETER MCEVOY: Former RISJ Journalism Fellow (ABC TV, Australia)

RASMUS KLEIS NIELSEN: RISJ post-doctoral research fellow (political scientist specialising in the media, Denmark)

DAITHI O'CEALLAIGH: Chairman, Irish Press Council (former ambassador and current Director General of the Institute of International and European Affairs, Dublin)

LAURA and SASKA SAARISKOSKI: RISJ Journalism Fellows (*Helsingin Sanomat*, Finland)

JYTTE SCHARLING: Chairman, Danish Press Council (Supreme Court Judge)

OLA SIGVARDSSON: Press Ombudsman, Sweden (former journalist and chief editor)

RISTO UIMONEN: Chairman, Finnish Council for Mass Media (writer and former chief editor)

PER VIRDESTEN: Chairman, Swedish Press Council (Supreme Court Judge)

## ANNEX 1: Comparative press regulation

Country	Budget (date set up)	Staff	Population (complaints)	Funding	Board	Scope	Status	Complainants	Conciliation before adjudication	Chief sanction	Future
<b>Australia</b>	£660K (1976)	4	22m (570 / 60)	Publishers	Industry (majority) and independent	Print / online, online-only	Voluntary self/ independent regulation	Any	Conciliation actively promoted	Publication of decision	Radical convergence consultation
<b>Denmark</b>	£300K (1991)	3	5.6m (157 / 42)	Broadcasters and print publishers	Judge/ lawyers; independent and other half journalists; print and broadcasting management	Print and broadcasting (mandatory). Online (voluntary – incentives: protection of sources, etc.).	Co-regulation (established through statute with mandatory & voluntary elements)	Person affected (Press Council administers legal right to correct factual inaccuracies)	No conciliation; adjudications only	Publication of decision (penalty for failure to comply fine or prison)	Culture committee to consider reform of the Press Council, e.g. complaints criteria
<b>Finland</b>	€250K (1968)	3–4	5.4m (324 / 20)	Industry and 30% state funding	Industry (majority) & Independent	Broadcasting print, news agencies & online	Voluntary self-regulation	Any	Conciliation attempted in a minority of cases	Publication of decision (expulsion)	9% VAT on newspaper subscription from 2012
<b>Germany</b>	€635K (1956) suspended 1982–5	8	82m (1,321 / 187; in 13 publication required)	Industry and 30% state funding	Industry only	Print / online, online-only	Voluntary self-regulation	Any	Conciliation routinely attempted as a first response	Publication of decision	Freedom of the Press Act under discussion; convergence
<b>Ireland</b>	€440K (2007; Ombudsman 2008)	4	4.5m (343 / 17)	Publishers	Independent (majority) and industry	Print / online, online-only	Voluntary independent regulation incentivised in statute	Person affected	Conciliation routinely attempted as a first response	Publication of decision (expulsion)	Attracting remaining non-members and online
<b>Sweden</b>	£507K (1916; Ombudsman 1969)	4.8	9m (288 / 53)	Publishers and token journalists' contribution	Judges and independent (majority) and industry	Print / online, online-only	Voluntary independent self-regulation	Person affected	Conciliation attempted in a minority of cases	Publication of decision; administrat- ive fee	Extension of membership on Twitter and blogs
<b>UK</b>	£1.9m (1991)	17	62m (7,351 / 20)	Publishers	Independent (majority) and editorial members	Print / online, online-only; not Northern & Shell	Voluntary self-regulation	Generally person affected but can be any	Conciliation actively promoted	Publication of decision	Leveson Inquiry and PCC's own reform

**Note:** The Australian and UK press councils are in the process of significant reform, therefore information provided in each of the Annexes to this report is subject to change.

## NOTES ON TERMS USED IN ANNEX 1

**Complaints:** These figures should be treated with caution as complaints and their outcomes are accounted for differently in different countries.

- The first figure in brackets is the number of complaints received in 2011 (which each reported to be a typical year). Not all complaints received will raise issues under the press code, some may not be pursued by the complainant and some may include multiple complaints about the same material.
- The second figure in brackets is the number of complaints upheld. Multiple complaints will result in only one upheld (or not upheld) decision; some countries have a separate category for 'resolved' complaints (see 'Conciliation' below). Upheld decisions must be published, though in Germany this applies only to the most serious. Further details are provided in the individual country annexes.

**Budget:** Estimate based on most recent figures available, however the figures should again be treated with caution as some staff members' salaries are met by industry organisations; some council members are paid and some are not.

**Status:** Each Press Council lies on a spectrum of self-, independent, co- and statutory regulation. The terms used here are indicative of the Press Council's view of its position on that spectrum depending on where responsibility lies for funding, appointments, governance, terms of reference and primary purposes, codes of practice, adjudications. Co-regulation = mandatory/statutory basis with elements of self-regulation.

**Conciliation:** This is used broadly to refer to the use of alternative dispute resolution or, more rarely, formal mediation which may be used by Press Councils to various extents as an alternative to a formal adjudication. Where figures on alternative forms of conciliation/mediation are available these are provided in the individual country grids annexed to this report. In Denmark the Press Council only adjudicates and does not use any form of alternative resolution.

**Print/online, online-only** = print, associated online publications and pure players where journalism is subject to editorial control.

**Industry** = publishers and journalists/ their representative organisations.

### PRESS COUNCIL WEBSITES (ENGLISH LANGUAGE VERSIONS)

Australia: [www.presscouncil.org.au](http://www.presscouncil.org.au); consideration of reform: [www.dbcde.gov.au/digital\\_economy/convergence\\_review](http://www.dbcde.gov.au/digital_economy/convergence_review)

Denmark: [www.pressenaevnet.dk/Information-in-English.aspx](http://www.pressenaevnet.dk/Information-in-English.aspx)

Finland: [www.jsn.fi/en](http://www.jsn.fi/en)

Germany: [www.presserat.info/service/english/keyfacts-in-english.html](http://www.presserat.info/service/english/keyfacts-in-english.html)

Ireland: [www.presscouncil.ie](http://www.presscouncil.ie)

Sweden: [www.po.se/english](http://www.po.se/english)

UK: [www.pcc.org.uk](http://www.pcc.org.uk); consideration of reform: [www.levesoninquiry.org.uk](http://www.levesoninquiry.org.uk)

## ANNEX 2: Sweden – Allmänhetens Pressombudsman (PO) = Press Ombudsman and Pressens Opinionsnämnd (PON) = Press Council

Membership, Composition, and Funding	
Budget	2012 SEK 5,400,000 (£507,000) Staff: 4.8 (Population 9m; 12th on the Reporters without Borders Press Freedom Index 2011–12)
Origins	1916 Press Council was established as a forum to adjudicate conflicts between publishers and editors about the presentation of news; gradually public complaints were accepted but for a high fee. Debate over statutory limits to press freedom led to 1969 reforms under which the Press Ombudsman and lay Council members were introduced and charges to the public were removed.
Funding	The Press Council and Ombudsman are financed by four organisations: <ul style="list-style-type: none"> <li>Swedish Newspaper Publishers' Association (75%); Magazine Publishers' Association (5%); Swedish Union of Journalists (under 1%); and the National Press Club (under 1%) and</li> <li>the balance (around 20%) is provided by two tiers of administrative fees levied in relation to upheld complaints (online-only members the lower rate levy).</li> </ul>
Board composition and appointment responsibility	The Council consists of a chair (a judge), three vice chairmen (judges) and 14 members (eight industry, six independent). <ul style="list-style-type: none"> <li>The four funding organisations (above) appoint two members each (and two deputies) for an eight-year term</li> <li>The Chief Parliamentary Ombudsman and Chairman of the Swedish Bar Association appoint six independent members (and six deputies) for an eight-year term</li> <li>The chair and vice chairs (judges) are appointed by the Committee for Media Cooperation (see below) for a six-year term</li> </ul> The Council is divided into two groups to deal with complaints, each with eight members (four industry, four independent): A chair or vice chair (a judge); one member from each of the above four organisations; three independent members to represent the general public. The Press Ombudsman is appointed by a special committee of the Chief Parliamentary Ombudsman, chair of the Swedish Bar Association and chair of the National Press Club. For many years they were lawyers, now they are commonly former journalists.
Membership	Printed and online press (including online-only). Publications appearing at least four times a year must be registered with the Swedish Patent and Registration Office, and issued with a certificate of Press Act. Subject to registration and designation, online media are eligible for the same rights and can apply to join the Press Council.
Who draws up the rules?	The four funding organisations above are each represented by two members (plus a deputy) on the Committee for Media Cooperation. Its chair is the chair of the National Press Club (similar to the UK's Society of Editors) and each organisation has veto rights. The Committee for Media Cooperation is responsible for: <ul style="list-style-type: none"> <li>the Press Council's charter</li> <li>standing instructions for the Ombudsman</li> <li>drawing up the code</li> <li>funding</li> </ul>
Extent to which industry funders are involved in adjudications and sanctions	Representatives from the funding bodies are on the Council and therefore on the sub-committees that adjudicate on complaints but are not in the majority.
<b>Scope</b>	
New media	Since the beginning of 2011 online-only publications can join the Press Council. They must be issued with a certificate of publication (see above) and designate a responsible editor. Seven online-only providers have done so; no bloggers as yet. Website content is only covered if it moderated (i.e. subject to editorial control). Admission of Twitter and Facebook accounts is currently being discussed.
Cross-media regulation / radio and television journalism?	The Ethical Code applies to radio and television, as well as the press, but the Press Council only adjudicates in relation to the print and online content.
If voluntary membership are there any significant gaps in membership / compliance?	Around 90% of the commercial market and 95% of journalists (around 18,000 members) are represented by the Committee for Media Cooperation. A few newspapers are not members of the Newspaper Publishers' Association but in practice cooperate with the Press Ombudsman and Press Council.

Status	
Statutory, co-, independent or self-regulation	Voluntary independent self-regulation (the Press Ombudsman and Press Council state that they are 'independent self-disciplinary bodies')
Incentives to become/ remain a member/ comply with decisions?	The main incentive is that membership publicly demonstrates trustworthiness and respect for the ethical Code.
Backstop powers to require compliance?	There are no backstop powers.
Penalties if membership withdrawn?	There are no penalties for withdrawal beyond losing the demonstration of trustworthiness.
What it does	
Primary purposes	<p>The purposes of the Ombudsman are:</p> <ul style="list-style-type: none"> <li>To provide information and advice (the Ombudsman has an informational role and answers queries from the general public about press ethics and material that has offended them)</li> <li>To investigate complaints on journalistic practice (the Ombudsman does not adjudicate but sends complaints to the Council with a recommendation to uphold)</li> <li>To contribute to the development of press ethics (the Ombudsman regularly lectures at journalism schools and visits newsrooms to discuss ethical matters)</li> </ul> <p>The charter of the Press Council says it 'shall review cases concerning good journalistic practice. The Council shall be entitled to interpret the meaning of this concept as it sees fit.' In practice it considers Ombudsman recommendations and makes the adjudication decision.</p>
Code of Practice	<p>There is a Code of Ethics for Press, Radio and Television (Complaints about radio and television broadcasts are dealt with by the Authority for Radio and Television).</p> <p>The Code says its aim is to maintain 'a responsible attitude in the exercise of journalistic duties' and that the Code of Ethics supports this. It notes that press, radio and television 'shall have the greatest possible degree of freedom' and that 'it is important that the individual is protected from unwarranted suffering as a result of publicity'.</p> <p>There are rules on accuracy in news, corrections, privacy, use of pictures, opportunity to reply to criticism, caution over publishing names.</p>
Who can complain and the function of mediation	<p>Complainant must be personally affected (explained by the Press Council as identified in some way).</p> <ul style="list-style-type: none"> <li>Ombudsman ascertains whether a complaint can be dealt with by a factual correction or a reply from the affected person in the newspaper concerned (a form of mediation which occurs in around 5% of cases).</li> <li>If the matter cannot be settled in this way the Ombudsman can investigate the complaint and ask the newspaper to provide a response.</li> <li>If the matter does not warrant formal criticism of the paper it is dismissed; or</li> <li>if the evidence obtained is 'weighty enough' the Ombudsman can refer the complaint to the Press Council for adjudication.</li> <li>The Press Council can uphold complaints in three ways: as a 'mild', 'medium' or 'serious' violation.</li> </ul> <p>Complaints must relate to published material not methods; only editors (the legally responsible publishers) are held responsible for complaints.</p>
Proactive investigations	The Ombudsman is empowered to take up matters on his own initiative, provided the person affected consents (though this seldom happens).
Sanctions and enforcement	<p>The sanction for upheld complaints is:</p> <ul style="list-style-type: none"> <li>Publication – unabridged, prominent, and without delay (the great majority of publications comply); and</li> <li>An administrative fine (as a contribution to the costs of the Press Council and Ombudsman): <ul style="list-style-type: none"> <li>Circulation of up to 10,000 copies (and online providers) is 12,000 SEK (£1,100)</li> <li>Circulation of 10,000 copies and over is 30,000 SEK (£2,800)</li> </ul> </li> </ul> <p>There are no powers to enforce except to 'talk to the editor about the importance of the system'; in practice there are no problems with compliance.</p>
Appeal mechanism?	If a complaint is dismissed by the Ombudsman it can be appealed to the press council. Review of a press council decision is also possible (but extremely rare).
Number of complaints a year; record/ proportion of breaches, upholds, resolutions	<p>2011: 288 complaints received; of 115 referred to the Press Council for Decision:</p> <ul style="list-style-type: none"> <li>53 upheld (51 referred by the Press Ombudsman; 2 on appeal after an Ombudsman dismissal)</li> <li>60 not upheld (24 referred by the Press Ombudsman; 36 on appeal after an Ombudsman dismissal)</li> <li>2 discontinued</li> </ul> <p>Others dismissed because out of remit, unsubstantiated, or resolved by the newspaper printing a correction or reply.</p>
Credibility/ public trust/ transparency	Many newspapers provide details of the Press Ombudsman for complaints.

Source: [www.po.se](http://www.po.se) and information provided by the press council for the purposes of this report.

### ANNEX 3: Germany – Deutscher Presserat = German Press Council

Membership, Composition, and Funding	
Budget	2012: € 760,000 (£635,000) Staff: 8 (Population: 82m; 16th on the Reporters without Borders Press Freedom Index 2011–12)
Origins	Established 1956. In the context of a post-Second World War determination to prevent censorship, the Press Council was established by journalists and publishers as a response to plans for a Federal press watchdog under a draft 1952 Federal Press Act.
Funding	Co-financed: <ul style="list-style-type: none"> <li>• by industry: 70% (shared between: publishers (78%) and journalists (22%)) and</li> <li>• government: 30%.</li> </ul> Funding from the government (up to 49%) was established in 1976. It is covered by a legal guarantee of the independence of the Press Council's complaints tribunals from government influence. Funding from industry is organised by the Association of Sponsors (see below).
Board composition and appointment responsibility	28 members: all industry including chairman (14 from publishers', 14 from journalists' associations) <ul style="list-style-type: none"> <li>• Four publisher and journalist/ union organisations sponsor seven members each to the 28-member plenary of the Press Council which meets twice a year.</li> <li>• Members elect the chair which rotates between the four organisations every two years.</li> <li>• Members elect two board committees that meet four times a year – a complaints committee with chambers for complaints and appeals; and an editorial data protection committee.</li> </ul> Two members from each of the four publisher and journalist organisations sit on the Press Council's Association of Sponsors and are concerned with legal, financial, and personnel matters.
Membership	Press (printed and online including online-only) except free local papers
Who draws up the rules?	Industry (the Press Council was established as a 'non-profit association')
Extent to which industry funders involved in adjudications and sanctions	Members of the Press Council plenary, from which the complaints committees are drawn, can also be members of the Association of Sponsors although they are expected to act independently of the interests of their sending organisations.
<b>Scope</b>	
New media	From 2009 the Press Council has handled complaints about 'journalistic and editorial content from the internet' outside broadcasting although it has yet actively to recruit online-only members (while funding and governance issues are settled). The Press Council only deals with complaints on pre-moderated platforms i.e. under journalistic control rather than 'a pin board' where no journalistic activity is involved.
Cross-media regulation /radio and television journalism?	No
If voluntary membership are there any significant gaps in membership /compliance?	All large publications are governed by the Press Council though Bauer Media has delayed its commitment to members' voluntary undertaking to print reprimands. No online-only publications or bloggers have yet joined.
<b>Status</b>	
Statutory, co-, independent or self-regulation	Voluntary self regulation with partial state finance.
Are there any incentives to become /remain a member /comply with decisions?	No formal incentives although membership may be held to demonstrate quality, accountability, and responsibility. A further incentive may be collective resistance to statutory regulation.
Backstop powers to require compliance?	There are no backstop powers. Membership and compliance are voluntary however 90% of publishers have agreed to a voluntary undertaking to print the public reprimands. Members cannot be expelled.
Penalties if membership withdrawn?	There is no penalty if a member withdraws however the Press Council could still deal with a complaint against them even if they were no longer within the system of self-regulation.

What it does	
Primary purposes	Defending press freedom and handling complaints.
Code of Practice	Yes, rules on accuracy and the preservation of human dignity, diligence in checking content, corrections, honesty, confidential sources, credibility, separation of advertising and editorial content, privacy including data protection rights, religion, discrimination, court, medical reporting separation of editorial and advertising, avoidance of sensationalising violence and of preferential treatment including bribes.
Who can complain and the function of mediation	<p>Anyone can bring a complaint.</p> <ul style="list-style-type: none"> <li>Because of the twin goals regarding complaints and freedom of the press the Press Council says it does not apply the criterion that the person lodging a complaint must have a direct interest in the matter.</li> <li>However complaints will not be accepted in cases of misuse 'when, for instance, complaints are raised in the context of organised campaigns against individual media'.</li> <li>Only a small number of complaints are formally mediated, though the Press Council says it invites publications to consider reparation in every case.</li> <li>Some publications have their own ombudsman or readers' editor, and complainants go to the Press Council if resolution cannot be reached.</li> <li>Hearings can be held but are very rare.</li> </ul>
Proactive investigations	<p>The Council can initiate the complaints procedure, or pursue a case if it is withdrawn, but rarely does so.</p> <p>The chief sanction is the publication of a reprimand. The range of sanctions are:</p> <ul style="list-style-type: none"> <li>Public reprimand (with a requirement for the decision to be published);</li> <li>Confidential reprimand (to protect identities);</li> <li>Notice of disapproval;</li> <li>Decision noted.</li> </ul> <p>The press council argues that there is a deterrence effect both from the publication and from the cost of the complaints process. However the Press Council has no powers to require particular prominence, nor to stop editorialising around the decision.</p> <p>No powers to fine or imprison.</p>
Sanctions and Enforcement? Power to fine/imprison?	<p>There is an internal appeal mechanism / chamber which is composed of different board members to those who made the original decision.</p> <p>2011: 1321 received (including multiple complaints resulting in one decision)</p> <ul style="list-style-type: none"> <li>396 decisions: <ul style="list-style-type: none"> <li>Published reprimand: 13</li> <li>Confidential reprimand (to protect identities): 7</li> <li>Notice of disapproval: 65</li> <li>Decision noted: 102</li> <li>Not upheld: 209.</li> </ul> </li> <li>out of remit: 353; plus informal resolutions, etc.</li> </ul> <p>A small number of members display their membership. Press Council publishes lists of members every other year.</p> <p>The Council has been criticised for: operating 'behind closed doors' and only requiring reprimands to be published rather than all records of breaches.</p>
Appeal mechanism?	
Complaints	
Credibility / public trust / transparency	

Source: [www.presserat.info](http://www.presserat.info) and information provided by the press council for the purposes of this report.

#### ANNEX 4: Finland – Julkisen Sanan Neuvosto (JSN) = Council for Mass Media (CMM)

Membership, Composition, and Funding	
Budget	2012: €300,000 (£250,000) Staff: 2 full-time, 2 (including chairman) part-time (Population: 5.4m; Joint 1st (with Norway) on the Reporters without Borders Press Freedom Index 2011–12)
Origins	Established in 1968 by publishers and journalists in the field of mass communication. Covers printed press, radio, tv, news agencies and their web services. Establishment was set against a backdrop of the drafting and introduction of a law on privacy and desire to prevent further statutory measures. Cross-media approach derived from economies of scale and desire for consistency in regulating ethical principles.
Funding	<ul style="list-style-type: none"> <li>70% from annual fees from the Council's Management Group (see immediately below)</li> <li>30% from the Ministry of Justice</li> </ul> <p>The Management Group includes professional publisher organisations (Finnish Associations of Magazines and Periodicals, Association of Newspapers); the Union of Journalists; Association of Commercial Radio; commercial television companies (MTV3, Nelonen, SuomiTV); and the public broadcaster YLE. These 'co-signers' have committed to observe the CMM Agreement, which details its functions and jurisdiction, and to influence their members to do so.</p>
Board composition: industry only or lay members or others Who appoints the chair/board?	<p>The Council has 12 members</p> <ul style="list-style-type: none"> <li>eight including the chair have 'media expertise' (includes journalist, editor and academic backgrounds)</li> <li>four are independent (representing the public)</li> </ul> <p>The Management Group appoints those with media expertise, the Council appoints the independent members after advertising vacancies.</p>
Membership	<p>Printed media, television, radio, Finnish news agencies and their web services.</p> <p>Publications issued four times a year or more (in print and online equivalents), and broadcast programmes, are required under the Exercise of Freedom of Expression in Mass Media Act to designate a 'responsible editor'; the Act sets out the responsibilities and liabilities of the responsible editors, publishers, and broadcasters.</p>
Who draws up the rules?	The Management Group, though revision of Code rules (including a recent additional annex on new media) includes broad external discussion.
Extent to which industry funders involved in adjudications and sanctions	Funder appointees are in the majority on the Council which applies the rules and appoints the independent members.
Scope	
New media	The Council has just begun to accept online-only providers (one so far and another on a trial basis).
Cross-media regulation /radio and television journalism?	The Council regulates broadcast, print as well as news agencies and their online journalism. In the case of YLE (the public service broadcaster) this is an 'ethical complement' to statutory regulation.
If voluntary membership are there any significant gaps in membership/compliance?	Only a few small independent papers and magazines, and most of the trade union publications, are not members.
Status	
Statutory, co-, independent or self- regulation	Voluntary self-regulation. Self-regulation is highly prized and secured through an industry majority on the Council.
Incentives to become/ remain a member /comply with decisions?	The Council says that membership allows the media to demonstrate their reliability to the public, government and other authorities. It says self-regulation as an alternative to statutory regulation is a major incentive for compliance.
Backstop powers to require compliance?	Ultimately the Management Group could expel a member (on a unanimous vote) on grounds of 'contract infraction or negligence in regard to the annual fee'.
Penalties if membership withdrawn?	There would be no direct penalties if a member withdrew. However individual media companies belong automatically to the Council because of their memberships in their professional associations which, in practice, would make it very difficult to leave the Council. A member must give notice of one year in order to resign.

What it does	
Primary purposes	<p>The duties of the Council are to:</p> <ul style="list-style-type: none"> <li>• interpret good journalistic practice on the basis of Journalist Guidelines (in practice, by investigating complaints and determining whether there has been a breach of the rules);</li> <li>• issue statements and resolutions about important journalistic matters;</li> <li>• defend freedom of speech and the right to publish.</li> </ul>
Code of Practice	<p>The 'Guidelines for Journalists' concern:</p> <ul style="list-style-type: none"> <li>• professional status (rights and obligations of journalists e.g. a primary responsibility to 'readers, listeners and viewers, who have the right to know what is happening in society')</li> <li>• obtaining and publishing information (e.g. distinguishing facts from opinion)</li> <li>• rights of the interviewer and interviewee,</li> <li>• corrections and the right of reply,</li> <li>• private and public matters (privacy infringement is weighed against 'considerable' public interest).</li> </ul> <p>In 2011 an annex was added dealing with user-generated material (text, pictures, graphics, comics, video and audio) on media websites. YLE (Finland's national public broadcasting company) maintains a separate complementary ethical code including principles on political programming prior to elections.</p>
Who can complain and the function of mediation	<p>The complainant does not have to be 'directly affected' by the material and can request the investigation of a matter concerning breach of good professional practice or freedom of speech and publication (though they can only complain on behalf of someone directly affected if they have their permission).</p> <p>The Council can facilitate 'independent resolution' rather than an adjudication though this is rare.</p>
Proactive investigations	<p>The Council responds to complaints but can also take up an important matter as question of principle on its own initiative. In individual cases the Council may, in addition to its rulings, also prepare statements of a general nature concerning journalism. The chairperson also has a responsibility actively to take part in public discussion concerning journalistic ethics and self-regulation.</p>
Sanctions and enforcement	<p>The chief sanction is a reprimand which must be published / broadcast without delay and without direct comment in a manner specified by the Council:</p> <ul style="list-style-type: none"> <li>• Every upheld medium with significant editorial content on the web must always publish the whole reprimand on its website.</li> <li>• Print media may publish it as a news item or the reprimand in full in print and online.</li> <li>• Radio and television: may publish the verdict as a news item and in connection with the programme in question.</li> </ul>
Appeal mechanism?	<p>A ruling by the Chairman can be appealed to the Council. The rulings of the Council are final and may not be appealed, unless based on incorrect information or a misunderstanding.</p>
Number of complaints a year; record / proportion of breaches, upholds, resolutions	<p>2011: 324 complaints received</p> <ul style="list-style-type: none"> <li>• 75 decisions (by Chairman or Council) <ul style="list-style-type: none"> <li>◦ 20 upheld (resulted in reprimands / requirement to publish the decision)</li> <li>◦ 55 not upheld</li> </ul> </li> <li>• remainder – not in remit, independent resolution, etc.</li> </ul>
Credibility / public trust / transparency	<p>Members enjoy the right to use the identifying mark of the CMM in their publications although few do.</p> <p>NB: The Exercise of Freedom of Expression in Mass Media Act guarantees freedom of expression and sets out that interference with the activities of the media are legitimate only insofar as it is unavoidable, subject to the rule of law (applies to all media regardless of technology) and sets out a right to reply.</p>

Source: [www.jsn.fi](http://www.jsn.fi) and information provided by the press council for the purposes of this report.

## ANNEX 5: Denmark – Pressenævnet – Press Council

Membership, Composition, and Funding	
Budget	2012: 2.7m DKK (£300,000) 3 staff members (Population: 5.6m; 10th on the Reporters without Borders Press Freedom Index 2011–12)
Origins	<p>1991 Media Liability Act created the legal basis for the Press Council.</p> <ul style="list-style-type: none"> <li>System originates in the 1960s when the linking of the press to political parties came to an end.</li> <li>In 1964 a voluntary self-regulating press council for print media was set up by the association of newspaper publishers in order to monitor compliance with their code on court reporting.</li> <li>The council was not supported by the Danish journalists' association which wanted the code to secure protection of freedom of the press and the integrity of individual journalists, and wanted representation on the council.</li> <li>In 1990 Media Liability Committee (chaired by a justice of the Supreme Court and including representatives from across the media) reported on a proposal for ethical guidelines, a complaints authority for the media and a Media Liability Act to replace the old Press Act (enacted the following year).</li> </ul>
Funding	<ul style="list-style-type: none"> <li>50% from broadcasting: Danmarks Radio (Danish Broadcasting Corporation) (29%), TV2 (21%)</li> <li>50% from print publishers: association of newspaper publishers (41%), association of magazine publishers (3%), representatives of regional and local papers (3%), trade press (3%).</li> </ul>
Board and appointment responsibility	<p>The Council has eight panel members on a four-year term:</p> <ul style="list-style-type: none"> <li>Chair – must be a member of the legal profession (in practice is a member of the Supreme Court) – nominated by the President of the Supreme Court</li> <li>Vice-chair – must be a member of the legal profession (in practice is a lawyer) – nominated by the President of the Supreme Court</li> <li>Six members – two journalists nominated by journalists' associations, two from editorial management nominated by the media, two 'public members' nominated by the Danish Association for Adult Education</li> <li>Plus eight deputies (in the event of a conflict of interest)</li> </ul> <p>Panel members and their deputies are appointed by the Minister of Justice.</p>
Membership	<p>Mandatory, automatic regulation (under the Media Liability Act) of:</p> <ul style="list-style-type: none"> <li>All domestic print media (published twice a year or more) and</li> <li>Broadcasting services that hold a Danish licence.</li> </ul> <p>Voluntary (registered) regulation for:</p> <ul style="list-style-type: none"> <li>Online services that satisfy a number of criteria relating to news content and distribution for registration.</li> </ul>
Who draws up the rules?	The composition and remit of the Council are set out in the Media Liability Act and are the responsibility of the Minister of Justice. The Media Liability Act states that the content and conduct of the mass media shall be in conformity with sound press ethics and sets out a right of reply/correction. The rules/guidelines on press ethics are the responsibility of the Press Council.
Extent to which industry funders involved in adjudications and sanctions	Complaints chambers are made up of chair or deputy chair and one member of each of the other three groups above. Industry members do not participate in cases involving their own media and have no influence in the funding of the Press Council.
<b>Scope</b>	
New media	Internet media subject to editorial control can apply for registration. 350 new media sites are registered (including online versions of newspaper and television provision) and include blogs, Twitter, Facebook, and LinkedIn profiles.
Cross-media regulation/radio and television journalism?	Yes
If voluntary membership are there any significant gaps in membership/compliance?	Membership is mandatory for print and broadcast media (see above). In addition to mandatory print and broadcast regulation all major newspapers and broadcasting services have registered their websites.

Status	
Statutory, co-, independent or self-regulation	Co-regulatory <ul style="list-style-type: none"> <li>statutory basis but combines statutory and self-regulatory elements;</li> <li>the Press Council describes itself as an 'independent public tribunal established under the Media Liability Act'.</li> </ul>
Incentives to become/ remain a member / comply with decisions?	1991 Media Liability Act: <ul style="list-style-type: none"> <li>provides the legal basis for the Press Council and makes clear that neither public authorities nor the government can influence its decisions</li> <li>identifies criminal liability for the content of media including the accountability of a 'responsible chief editor'</li> <li>includes a right to correct factual inaccuracies which might cause significant financial or other damage</li> <li>protects journalistic sources through a link to the Administration of Justice Act and other benefits include rights in relation to storing of data as part of journalistic research, access to otherwise closed courts, case files and restricted information.</li> </ul>
Backstop powers to require compliance?	Print publications (over two copies a year) and Danish licensed broadcasters are subject to compulsory regulation. Any media that fails to comply with the Press Council's sanction (direction to publish its decision) faces a fine or imprisonment (see below).
Penalties if membership withdrawn?	Only voluntary (online) members can withdraw and would lose such privileges as protection of sources and a cheap dispute mechanism as an alternative to law.
<b>What it does</b>	
Primary purposes	The Press Council states its primary purposes are: <ul style="list-style-type: none"> <li>to deal with complaints about journalistic ethics;</li> <li>to contribute to the development of press ethics;</li> <li>to handle complaints about the legal right of correction.</li> </ul>
Code of Practice	The Advisory rules/Guidelines (on which the Press Council bases its decisions) deal with: <ul style="list-style-type: none"> <li>Correct information (including separation of fact and opinion). This includes the requirement that: 'Information which may be prejudicial or insulting or detract from the respect in which individuals should be held shall be very closely examined before publication, primarily by submission to the person concerned'</li> <li>Conduct contrary to sound press ethics (e.g. in relation to privacy, suicides, separation of advertising and editorial)</li> <li>Court reporting</li> </ul>
Who can complain and the function of mediation	A complainant must have a 'legitimate interest', i.e. they must be the person or company/ organisation named, shown, or identified and a strict interpretation is applied. In the case of public broadcasters complaints must be lodged with the broadcaster first (in other cases this is optional); a request to publish a correction must always be made first in writing to the responsible chief editor. There is no scope for mediation.
Proactive investigations	The press council can make statements of its own accord, however, following criticism of its statements on privacy in relation to photos of Crown Prince Frederik and his girlfriend, it has not done so again. The Press Council does use its annual reports to comment on general issues. There are two sanctions depending on the nature of the complaint: <ul style="list-style-type: none"> <li>In the case of a complaint about press ethics the Press Council can order its decision to be published in a manner it specifies (though it cannot specify the prominence of publication).</li> <li>In the case of a right of correction the media have a mandatory duty to publish a correction (and the decision is not published in addition). This is a matter of setting the record straight not providing a general opportunity to reply.</li> </ul> There are no direct fines, however the penalty for non-compliance with a requirement to publish a finding (without added comment) is a fine or up to four months imprisonment. (Occasional fines have been imposed of around £ 300.)
Appeal mechanism?	Cases deemed to fall out of remit, or obviously unfounded, can be dismissed by the Chairman with no appeal mechanism. Decisions cannot be appealed, claimants who remain dissatisfied can go to court.
Number of complaints a year; record/ proportion of breaches, upholds, resolutions	2011: 157 received (50 out of remit). There were 107 decisions: <ul style="list-style-type: none"> <li>42 upheld (in 31 of these decisions were ordered to be published)</li> <li>65 not upheld</li> </ul>
Credibility / public trust/ transparency	There is no sign to differentiate registered online media from the unregistered, but a list of the online media covered by the Media Liability Act can be found on the Press Council's website. The Press Council and its functions may be revised in the coming years. MPs on the Danish Committee of Legal Affairs and Culture will consider its future in spring 2012 including: prominence of published decisions; fines and damages; online media; whether wider complaints should be accepted (beyond complainants with a 'legitimate interest').

Source: [www.pressnaevnet.dk](http://www.pressnaevnet.dk) and information provided by the press council for the purposes of this report.

## ANNEX 6: Ireland – Press Council of Ireland and Office of the Press Ombudsman

Membership, Composition, and Funding	
Budget	2012: €522,000 (£440k) Staff: 3 full-time and 2 part-time (Population: 4.5m; 15th on the Reporters without Borders Press Freedom Index 2011–12)
Origins	Press Council established 2007; Press Ombudsman established 2008, first complaints heard in January 2008. The Press Council was established following calls for statutory regulation: <ul style="list-style-type: none"> <li>• In 2003, a legal advisory group on defamation – established by the Minister for Justice – recommended in its report that the defamation laws be reformed and a statutory press council established.</li> <li>• While the newspaper and magazine industry welcomed news that the defamation laws would be reformed, there was significant opposition to the concept of a statutory press council. Instead the industry agreed a model for an independent press complaints mechanism.</li> </ul>
Funding	The Irish Defamation Act sets out that the Press Council shall be funded from subscriptions paid by its members. The Administrative Committee of the Press Council determines the level of these and administers the collection of subscriptions: <ul style="list-style-type: none"> <li>• members of National Newspapers of Ireland (around 80% of the annual budget)</li> <li>• members of the Regional Newspaper Association of Ireland (15%)</li> <li>• members of Magazines Ireland (flat rate €250.00)</li> <li>• other publications not associated with these trade associations.</li> </ul>
Board composition and appointment responsibility	13 board members: seven independent including chair; six industry (two representatives of indigenous national newspapers, one each representing UK-owned titles, regional press, magazines, the NUJ). An Independent Appointments Committee is responsible for advertising for independent members and chair. It appoints the independent members and also ratifies industry nominations by the funding and other (i.e. NUJ) associations. It is chaired by the chair of the Press Council and the other three members have no connection with the press industry. The Press Council chairman is appointed by the Council. The Press Ombudsman, who is appointed by the Council, is independent in the exercise of his functions, and is not a member of the Council/Board. He receives, conciliates, and adjudicates complaints, and any decision by him in relation to a complaint can be appealed to the Press Council by the complainant or by the publication concerned.
Membership	Printed and online press (including online-only).
Who draws up the rules?	The Press Council of Ireland, a company limited by guarantee and its rules are set out in the company's Memorandum and Articles of Association. The Code of Practice is the responsibility of the Code Committee of the Council, comprising representatives from across the industry including senior editors. Changes, if any, are made by this Committee in consultation with the Council (which can also initiate the process of change if appropriate).
Extent to which industry funders involved in adjudications and sanctions	Total separation is maintained between funding and adjudications and sanctions.
Scope	
New media	Online-only publications can apply for membership; the Council only deals with the blogs and tweets of member publications.
Cross-media regulation /radio and television journalism?	No
If voluntary membership are there any significant gaps in membership/compliance?	All large publications are members, the chief absences are among regionally published free-sheets. One online-only news site has joined.
Status	
Statutory, co-, independent or self-regulation	Voluntary independent regulation, with the Press Council and Press Ombudsman recognised by Parliament in accordance with the provisions of the 2009 Defamation Act.

Incentives to become/ remain a member/ comply with decisions?	<p>The Irish Defamation Act 2009 incentivises membership of, and compliance with, a body recognised under the Act as 'the Press Council', i.e. the Press Council of Ireland, as follows:</p> <ul style="list-style-type: none"> <li>Under Section 26 of the Act the court shall take into account membership of the Press Council, and adherence to the Code of Practice, when weighing freedom of the press and rights of individuals and determining whether 'it was fair and reasonable to publish the statement concerned'.</li> <li>Membership provides evidence of standards and accountability for the courts.</li> <li>It is also intended to encourage apologies for errors without admission of legal liability.</li> </ul>
Backstop powers to require compliance?	<p>Membership is voluntary and compliance has, to date, been forthcoming, so that the issue of requiring powers to ensure compliance has not arisen. Compliance, in effect, means that newspapers against which complaints have been upheld have to publish all such decisions promptly and with due prominence in accordance with the Council's publication guidelines. In principle a member could be expelled for failure to comply.</p>
Penalties if membership withdrawn?	<p>Non-members cannot use membership as evidence of their standards and accountability for the courts. (Though in principle the Defamation Act also allows the courts to take into account alternative evidence of an equivalent Code of Practice and procedures.)</p>
<b>What it does</b>	
Primary purposes	<p>The Memorandum and Articles of Association of the Press Council of Ireland sets out the Council's principal objects:</p> <ul style="list-style-type: none"> <li>To consider, investigate, conciliate, adjudicate, and resolve or settle complaints received from the public of unjust or unfair treatment or unwarranted infringements by Irish newspapers, periodicals or magazines of the Code of Practice (though these functions are primarily carried out by the Press Ombudsman).</li> <li>To maintain the rights of the press to freedom of expression in accordance with the Code of Practice.</li> <li>To maintain the independence of the press from the state and from state control or regulation.</li> <li>To appoint a Press Ombudsman who shall receive and adjudicate on complaints in accordance with the complaints procedure.</li> </ul>
Code of Practice	<p>A condition for recognition of the Press Council of Ireland under the Defamation Act is that the Press Council shall adopt a code of standards on matters including:</p> <ul style="list-style-type: none"> <li>ethical standards and practices;</li> <li>the accuracy of reporting where a person's reputation is likely to be affected;</li> <li>to ensure that there is no intimidation and harassment, and that privacy, integrity and dignity are respected.</li> </ul> <p>The Code of Practice includes ten principles including accuracy, separation of fact from opinion, fairness, reputation, privacy, protection of sources, court reporting, prejudice, and children.</p>
Who can complain and the function of mediation	<p>Complaints are accepted from those personally affected by the content complained about (or those acting on their behalf). Conciliation or, more rarely formal mediation, is arranged by the case officer. If these do not resolve the issue, the Press Ombudsman adjudicates the complaint.</p>
Proactive investigations	<p>Neither the Press Council nor the Ombudsman has the power to mount investigations on their own initiative.</p>
Sanctions and enforcement	<p>The only sanction is the obligatory publication of a Press Ombudsman or Press Council decision upholding a complaint. Publication of apologies or corrections agreed as the resolution of a complaint is a matter for negotiation between the complainant and the publication concerned. There are no powers to fine or imprison though a member could in principle be expelled for non-compliance.</p>
Appeal mechanism?	<p>Complainants can appeal the decision of the Press Ombudsman to the Press Council (22 were referred in 2011, none upheld). Judicial review could be applicable but only if the Council had failed to observe its own procedures.</p> <p>2011: 343 complaints received</p> <ul style="list-style-type: none"> <li>42 decisions: <ul style="list-style-type: none"> <li>17 were upheld</li> <li>15 were not upheld</li> <li>10 resulted in a decision that sufficient remedial action was deemed to have been taken or offered by the publication (even if not deemed acceptable by the complainant)</li> </ul> </li> <li>13 conciliated or in the process of conciliation; 13 resolved informally</li> <li>outside remit: 115; not pursued 134; no evidence of a possible Code breach 4; related to non-member publication 10; 1 referred directly to Press Council; 10 closed or postponed due to related court case).</li> </ul>
Credibility/ public trust/ transparency	<p>Occasionally members display details of their membership. The Press Council's website lists member publications.</p>

Source: [www.presscouncil.ie](http://www.presscouncil.ie); [www.pressombudsman.ie](http://www.pressombudsman.ie) and information provided by the press council for the purposes of this report.

## ANNEX 7: Australia – Australian Press Council (APC)

Membership, Composition, and Funding	
Budget	2012: \$1million AUD (£660,000) Staff: 4 (Population: 22m; 30th on the Reporters without Borders Press Freedom Index 2011–12)
Origins	Established 1976 <ul style="list-style-type: none"> <li>The first moves for a press council came from the New South Wales branch of the Australian Journalists' Association which drafted a code and proposed a standing committee on newspaper ethics able to require publication of decisions in order to make press proprietors as accountable as journalists.</li> <li>In 1945 the Australian Newspaper Publishers Association began negotiations with the AJA which resulted in the Australian Newspaper Board although in the next eight years it met only once.</li> <li>Debate on a press council continued, rejected by such proprietors as Rupert Murdoch, but pushed for by the AJA.</li> <li>In 1975 the Minister for Media set out options for reform including reference to a system of newspaper licences. The response from the Australian Newspapers Council was a rapid move to establish a National Press Council.</li> </ul>
Funding	Publisher and other media organisations (the APC's 'constituent bodies') fund the Council. Includes press associations, News Limited, and Fairfax Media Ltd. Following recent changes funding is secured on a rolling biennial basis.
Board composition and appointment responsibility	22 members: nine independent members including the chair; nine nominees of the constituent media organisations; four independent journalist members. <ul style="list-style-type: none"> <li>The independent public and journalist members (the latter including former editors) are appointed after public advertisement and are nominated by the Chair.</li> <li>A maximum of 15 members attend any given meeting.</li> <li>Future consideration is being given to balance in relation to online members.</li> <li>Chair has always been a judge or university professor and is chosen by the Council.</li> </ul>
Membership	Printed and online press (including online-only). <ul style="list-style-type: none"> <li>All major publishers of newspapers and magazines have agreed to be bound by the Council's Standards of Practice and complaints handling system.</li> <li>Collectively, they publish about 98% of all newspaper and magazine sales in Australia.</li> <li>Their websites are also subject to the Council's jurisdiction and three of these are amongst the top five or so most-visited news and comment websites in Australia.</li> </ul>
Who draws up the rules?	The APC is an incorporated association, its Constitution sets out its administrative framework. The Council drew up, and is responsible for revisions to, the Standards of Practice.
Extent to which industry funders involved in adjudications and sanctions	Since 2010 draft adjudications have been prepared by the Executive Secretary and Chair before being considered by the Complaints Sub-Committee on which the Chair of the Council and public members must comprise the majority. In order to reduce delays the Council has recently decided that adjudications can be finalised by the Sub-Committee without referral to a full Council meeting.
<b>Scope</b>	
New media	One online-only publisher has so far joined. Bloggers will be able to join the Council in a similar way to online-only publishers once an appropriate fee structure has been finalised. Tweets and other communications have not yet been considered.
Cross-media regulation /radio and television journalism?	No, however the Council says it would consider audiovisual material appearing on a member's website (assuming that this was not broadcast content better handled by the broadcast regulator). There are also proposals under a government convergence consultation for a converged cross-platform regulator for news and comment.
If voluntary membership are there any significant gaps in membership / compliance?	There are no current gaps in print membership but online and other electronic media membership only just beginning.
<b>Status</b>	
Statutory, co-, independent or self-regulation	Voluntary independent / self-regulation. The APC comments that only a third of the members of the Council are publishers; 40% of Council member are not from the industry; the Code is the responsibility of the Council not of an industry body; the complaints sub-committee must have a majority of independent members.

Incentives to become/ remain a member / comply with decisions?	The chief current incentive is arguably that membership is preferable to the possibility of the introduction of statutory regulation, and a demonstration of quality and accountability. Consideration is being given to incentivising membership as a requirement for exemption from the Federal Privacy Act (on data protection). Currently this exemption applies to any journalists 'publicly committed to observing published written standards that deal with privacy'. Although in principle a member could be expelled in practice no member has ever been suspended or expelled.
Backstop powers to require compliance?	Currently none. If a publisher withdrew it would still retain statutory privileges such as exemption from the Federal Privacy Act (see above) and non-statutory privileges in relation to access to information and premises such as Budget briefings, courts, sporting events. Consideration is being given to making certain privileges conditional on APC membership.
Penalties if membership withdrawn?	
<b>What it does</b>	
Primary purposes	The APC states that it is responsible for: <ul style="list-style-type: none"> <li>• promoting good standards of media practice;</li> <li>• community access to information of public interest;</li> <li>• freedom of expression through the media;</li> <li>• and it is the principal body with responsibility for responding to complaints about Australian newspapers, magazines and associated digital outlets (and is also involved in training in journalism schools).</li> </ul>
Code of Practice	There are two Statements of Principles. <ul style="list-style-type: none"> <li>• The General Statement of Principles deals with issues such as accuracy and balanced reporting; corrections and responses, privacy, fairness, offence, gratuitous emphasis on characteristics.</li> <li>• The Statement of Privacy Principles deals exclusively with privacy including the collection, disclosure, security and sensitivity of personal information and anonymity of sources.</li> </ul> In addition there are Specific Standards (e.g. in relation to suicide).
Who can complain and the function of mediation	In general, any person may lodge a complaint, irrespective of whether they are identified in the material or are directly affected by it. Privacy complaints on behalf of the person affected require their permission. Complaints by charities, lobby groups etc. are accepted. <ul style="list-style-type: none"> <li>• Informal contact first – a significant number of complaints (that fall within remit) are resolved through Alternative Dispute Resolution (222 in 2012);</li> <li>• Note: the APC says it receives and handles complaints from the outset, rather than only after the complainant has approached the publisher unsuccessfully and a considerable period may have elapsed.</li> </ul>
Proactive investigations	The APC can initiate investigations and there are plans to enhance this with regular 'impact monitoring' by the Council and eminent Australians to assess levels of industry compliance with particular standards.
Sanctions and enforcement	Chief sanction is that adjudications must be published promptly and with due prominence in the relevant publication, as approved by the APC Executive Secretary; and on the website homepage and annotated to archive versions. No powers to fine though the possibility of a contractual (rather than statutory) power to fine / award damages has been surfaced using a separate referrals panel chaired by a retired judge.
Appeal mechanism?	Adjudications can be appealed back to the Council or the Complaints Sub-committee on grounds of material error of fact or procedural unfairness. Press Council decisions cannot be appealed via judicial review.
Complaints	2011: 570 complaints received <ul style="list-style-type: none"> <li>• 85 decisions: <ul style="list-style-type: none"> <li>◦ 60 fully or partly upheld</li> <li>◦ 25 not upheld</li> </ul> </li> <li>• 222 were not pursued following a response from the publisher during ADR; 134 were provided with remedy through ADR, e.g. correction, retraction, apology</li> <li>• 129 were not considered by the Council (because they were out of remit, referred elsewhere, or dismissed at the initial stage)</li> </ul>
Credibility / public trust/transparency	The APC has undertaken a number of reforms in relation to transparency and debate on press standards: <ul style="list-style-type: none"> <li>• August 2011 launch of a new website, logo and brochure; from September 2011 members must display logo.</li> <li>• In late 2011 the Council conducted community consultations in four Australian cities.</li> <li>• December 2011 started an electronic <i>APC Update</i> fortnightly newsletter service on adjudications and standards.</li> <li>• From 2012 the APC is inaugurating an annual public conference on standards of practice in print and online media.</li> <li>• As part of the 2011/12 Australian government's convergence consultation it has proposed eventual transition to a unified system in which an Independent Council would be responsible for setting and monitoring standards of practice for news and comment across all media, and for handling complaints about breaches of those standards.</li> </ul>
<b>Source:</b> <a href="http://www.presscouncil.org.au">www.presscouncil.org.au</a> and information provided by the press council for the purposes of this report.	

## ANNEX 8: UK – Press Complaints Commission (PCC)

Membership, Composition, and Funding	
Budget Staff	2012: £1.9m Staff: 16 (excluding the Chairman) (Population: 62m; 28th on the Reporters without Borders Press Freedom Index 2011–12)
Origins	Established 1991 The PCC was established following the 1990 Calcutt Report which recommended the introduction of a statutory system for handling complaints if non-statutory self-regulation could not be made to work effectively. Self-regulation has since been challenged following successive examples of press impropriety but hitherto ultimately endorsed by parliamentary committees (2007 and 2010). Following the phone hacking scandal, in March 2012 the PCC announced that it would move into a transitional phase, with proposals for a new regulatory body with two arms: one that deals with complaints and mediation; and one that audits and, where necessary, enforces standards and compliance with the Editors' Code. The future of UK press regulation is under consideration by the Leveson Inquiry.
Funding	The PCC is funded by a levy on newspaper and magazine publishers raised by the Press Standards Board of Finance, PressBof (an industry board composed of representatives of publishers and publisher associations) which also approves the PCC's budget.
Board composition and appointment responsibility	17 members: an independent chairman, nine independent (public) commissioners and seven editorial commissioners <ul style="list-style-type: none"> <li>The Chair is appointed by PressBof (see above).</li> <li>Industry members are nominated by PressBof, following information provided by the Nominations Committee about the needs of the Board. The Nominations Committee comprises three public Commissioners (including the Chairman).</li> <li>The Nominations Committee considers the appointment of public commissioners, following public advertisement. An independent, external panel member, with no connection to the PCC, is involved in the recruitment process. At the end of the process, the Committee will make a nomination for ratification by the full Commission.</li> </ul>
Membership	UK printed press (and their websites) and a selection of online-only news sources.
Who draws up the rules?	The PCC is a limited company under the 1985 Companies Act with registered Articles of Association. The Editors' Code of Practice Committee (comprising 13 editors from the national, regional, and magazine industry) draws up and reviews the Code of Practice on an annual basis, following public consultation. Changes to the Code have to be ratified by the Commission.
Extent to which industry funders involved in adjudications and sanctions	The funding Committee (PressBof) appoints the Chairman of the PCC and nominates the editorial commissioners but there is no day-to-day PressBof involvement in their work and lay commissioners are in the majority. Members of the PCC Secretariat have never been employed as journalists.
<b>Scope</b>	
New media	The PCC is open to membership by online-only publications subject to their agreement to comply with the Code and to pay subscription fees to PressBof. The Huffington Post UK has joined the system of self-regulation and now falls under the PCC's remit. The Code applies to editorial content on members' websites and the PCC's remit also covers online audio-visual material on newspaper and magazine websites. Tweets are not covered, though the Commission's Online Working Group has given consideration to regulatory and policy issues related to online publishing.
Cross-media regulation /radio and television journalism?	No
If voluntary membership are there any significant gaps in membership / compliance?	Northern and Shell publications have not been members since December 2010: titles include <i>Daily Express</i> , <i>Sunday Express</i> , <i>Daily Star</i> , <i>OK!</i> , <i>New!</i> Also <i>Private Eye</i> is not a member.
<b>Status</b>	
Statutory, co-, independent or self-regulation	Voluntary self-regulation
Incentives to become/ remain a member / comply with decisions?	No formal incentives although the PCC says membership may be held to demonstrate accountability and responsibility. In addition the Data Protection Act 1998 and the Investment Recommendation (Media) Regulations 2005 recognise adherence to the Editors' Code of Practice when providing exemptions for journalists in relation to processing personal data and financial journalism. A further incentive binding together most broadsheets and tabloids in common membership has arguably been resistance to calls for statutory regulation.
Backstop powers to require compliance?	There are no backstop powers regarding membership and compliance is voluntary.
Penalties if membership is withdrawn?	None (as illustrated by the withdrawal of Northern and Shell from the PCC).

What it does	
Primary purposes	<p>PCC states that its primary functions are:</p> <ul style="list-style-type: none"> <li>to consider, and adjudicate, conciliate and resolve or settle complaints from the public of unjust or unfair treatment and of unwarranted infringements of privacy (through publication or obtaining of material);</li> <li>to pronounce on issues related to the Code when it is in the public interest;</li> <li>to maintain professional standards;</li> <li>to provide redress without the cost of court cases;</li> <li>to provide pre-publication advice and anti-harassment services.</li> </ul> <p>In relation to wider standards, beyond complaint handling and the publication of key rulings, the PCC runs courses and seminars for journalists (e.g. on subterfuge, and with the office of the Information Commissioner). It also runs an active programme of engagement with individuals and organisations likely to have an interest in the Editors' Code.</p>
Code of Practice	<p>The Editors' Code includes rules on accuracy, including distinguishing between comment, conjecture and fact; opportunity to reply; privacy, harassment, intrusion into grief or shock, treatment of children, crime reporting, clandestine devices and subterfuge, discrimination, confidential sources, financial journalism and payment to criminals.</p> <ul style="list-style-type: none"> <li>Public interest exceptions apply to many clauses and the Code includes a reference to there being 'a public interest in freedom of expression itself'.</li> <li>In 2011 the Code rules were amended to require editors believing they have a public interest defence to show how and with whom that belief was established at the time.</li> </ul>
Who can complain and the function of mediation	<p>Complainants are generally the 'person affected' but any members of the public can complain about matters of general fact under Clause 1 (Accuracy) of the Code where there is no obvious first party cited in the article. Generally speaking, the PCC is complainant-led but the PCC regularly contacts individuals who would be the first parties in a particular article or who have been the subject of widespread media attention, to assess whether or not they wish to make a complaint or have concerns about contacts by journalists.</p> <p>The PCC says a high proportion of cases are resolved to the satisfaction of the complainant without the need for a formal ruling by the Commission, e.g. by a published apology or correction. The PCC also sees its restraining influence as significant prior to publication, e.g. in disseminating private advisory notices to editors on behalf of individuals.</p>
Proactive investigations	<p>The PCC has discretion to consider 'any complaint from whatever source that it considers appropriate to the effective discharge of its function' and can raise its own complaints, e.g. in relation to payments to criminals.</p>
Sanctions and enforcement	<p>The chief sanction is the publication of an adjudication (which the PCC says applies moral authority). The 2012 Editors' Code was amended to require editors who breach the Code to publish the adjudication in full and with due prominence agreed with the PCC. The Code is also written into the majority of journalists' contracts.</p> <p>The PCC has no powers to fine or imprison, though discussion of the power to fine has resurfaced during the Leveson Inquiry. Current arrangements do not allow for the expulsion of a member.</p>
Appeal mechanism?	<p>The PCC says it is always willing to reconsider a decision if there is any suggestion that it has significantly misunderstood any aspect of the complaint, or if new evidence comes to light. If a complainant is dissatisfied with the way a complaint has been handled, they can refer it to the Independent Reviewer. However, it is not his role to reconsider the substance of the complaint. PCC decisions can be appealed by way of Judicial Review though in practice this is rare.</p>
Complaints	<p>2011: 7351 complaints received (including 1418 multiple complaints about the same material);</p> <ul style="list-style-type: none"> <li>There were 42 formal adjudications: <ul style="list-style-type: none"> <li>20 upheld</li> <li>8 not upheld</li> <li>14 remedial action considered sufficient by the PCC</li> </ul> </li> <li>1671 further rulings by the Commission under the Code comprising: resolved complaints 597; remedial action considered sufficient without the need for an adjudication 88; no breach of the Code (decision made without formal adjudication) 986.</li> <li>Outside remit / 3rd party / no finding possible / matters of taste 1431; not pursued 2125; disallowed for delay 13; in other cases, decisions are still pending.</li> </ul> <p>Also, numerous interventions are made by the PCC each year to prevent media harassment through the dissemination of 'private advisory notices' and 'desist requests' to the industry, and to broadcast media who normally would not fall under the PCC's remit.</p>
Credibility / public trust / transparency	<p>Some members publish the PCC logo and contact details in the pages of their titles and on their websites. Complainant feedback and public opinion research is conducted. Credibility hugely damaged through the phone hacking scandal: in 2011 the PCC was forced to withdraw its 2009 statement in which it rejected allegations from the <i>Guardian</i> that the PCC had been misled by News International and that phone hacking was widespread. In 2012 its new Chairman Lord Hunt set out proposals for reform. The Leveson Inquiry is charged with investigating the scandal and making recommendations on the future of press regulation.</p>

**Source:** [www.pcc.org.uk](http://www.pcc.org.uk) and information provided by the press council for the purposes of this report.

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## Forthcoming PUBLICATION

Nick Fraser on

**Why Documentaries Matter**

Debate on press regulation in the UK has, so far, been largely inward-looking and focussed on the UK experience. This report is the first comparative study of international press councils designed to inform the Leveson Inquiry and stimulate wider debate on UK press reform. Its aim is not to identify a blueprint for future regulation, rather it seeks to draw together core principles from the experience of overseas regulation. It also explores the challenges shared by regulators in an era marked by the blurring of boundaries between converging media platforms, between 'professional' and 'citizen' journalists and between national and global publication.

In this report Lara Fielden draws on interviews conducted with the Press Council Chairs and Press Ombudsmen in Australia, Denmark, Finland, Germany, Ireland and Sweden, supplemented by case studies from Canada, New Zealand and Norway. She investigates how distinct approaches to press council purposes, membership, funding, codes of ethics and complaints-handling provide thought-provoking points of comparison and contrast. Are press councils mandatory or voluntary and are there merits in a framework of statutory incentivises? What sanctions do press councils have at their disposal and how do they view 'the public interest'? What impact do they have on press standards and what have been their successes and failures?

Press freedoms, the report contends, are not an end in themselves but serve a democratic function in the public interest. The report therefore argues that however press regulation is developed in the UK, the interests of the public should lie at its heart.

*British policy makers seem traditionally reluctant to learn from the experiences of other countries. More often we are told, with imperial nostalgia, that the world is waiting to follow Britain's lead.*

*In the case of press regulation, I suspect that if the world is watching at all it is waiting, slightly sceptically, to see if we can put our house in order. For all those interested in the future of Britain's media Lara Fielden's report provides excellent research into the many different regulatory models that have developed abroad and invaluable analysis of their specific relevance to the British debate.*

Professor Stewart Purvis  
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