Media payments to witnesses

Response to the Lord Chancellor's consultation paper
(CP 02/02) issued on 5 March 2002

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1. Summary

1.01 The media ethics charity PressWise believes that if information is in the public interest it should not have a price tag. Payment to witnesses in criminal cases is a form of cheque-book journalism which itself is an abnegation of press freedom - the purchase of exclusives is a marketing device designed to gain a competitive advantage over rivals. The practice runs counter to the NUJ Code of Conduct, and puts pressure on freelances and agencies to produce the stories that major print and broadcast publishers believe will 'sell'.

1.02 PressWise advises people not to 'sell their stories', or to seek professional advice before signing contracts which are unfair and unequal, with all the power in the hands of the editors. Those who sell 'exclusives' are likely to be browbeaten into giving information and may find their reputations damaged by 'spoiling copy' published by rival papers.

1.03 Offering inducements to witnesses in criminal cases puts at risk the course of justice, and is tantamount to bribery. Protecting public confidence that citizens arraigned under the criminal justice system will obtain a fair trial is a paramount consideration.

1.04 While there may be instances where the offer or payment of money has brought to light evidence of crimes or which has led to successful criminal conviction, it is also the case that genuine 'whistle blowers' do not supply information for financial gain. It cheapens the justice system if evidence is regarded as a commodity to be sold to the highest bidder.

1.05 Relying upon a system of self-regulation funded entirely by and administered in the interests of the newspaper industry itself is an insufficient safeguard that commercial inducements to witnesses or potential witnesses in criminal trials will not put the principle of a fair trial at risk. Self-regulation has not prevented payments to witnesses, despite express rejection of the practice in what is now Clause 16 of the industry's Code of Practice.

1.06 PressWise acknowledges that there are strong arguments for making payments to witnesses a criminal offence like any other interference with a trial. However, it is concerned about the precedent caused by creating a specific criminal offence directed solely at the press. We regard it as an unhealthy development to set journalists apart from the public they serve. Like other citizens they should be subject simply to the law of the land.

1.07 The preferred option outlined by PressWise in our response to an earlier consultation paper issued by the Lord Chancellor's Department in 1996, was that the terms of the Contempt of Court Act 1981 could be broadened to outlaw the offering of inducements to witnesses and others connected with a case. Amendments might include allowing individuals to institute contempt proceedings if they felt that the outcome of a trial might have been influenced by media pressures.

1.08 PressWise recognised at the time a perceived reluctance to use Contempt of Court as a remedy since, as a political appointee, the Attorney General is subject to the same pressures from the print and broadcast media as the Government and political parties.

1.09 Under all circumstances in which payments are made to informants, witnesses, criminals or their associates the sums involved should be a matter of public record and should be subject to the appropriate level of taxation.

1.10 If the offence is created it should apply equally to UK and foreign media, and the offence should be one of strict liability applying to those who seek payment for information as well as those who offer payments.

1.11 The general practice of collecting background information in advance of a trial should not be an offence. It is a perfectly legitimate and important journalistic practice. Only when offers of financial inducements are made would the practice be covered.

1.12 Whether the decision is to extend the contempt laws or to create a new crime, the period covered by the offence should extend from the point at which a hearing is 'imminent or pending' to the conclusion of the time limit for lodging an appeal.

1.13 In the event that payments to witnesses is made a crime, editors should always be able to rely upon a 'public interest' defence if they believe that there was no other option than to pay for such information, but their decision to offer payments should always be circumscribed by the knowledge that it may court prosecution.

2. The PressWise Trust

2.01 PressWise was set up in 1993 by 'victims of media abuse', supported by concerned journalists and media lawyers. It is now a registered charity, funded by voluntary donations, grants, and commissions. The Trustees include respected journalists, academics and members of the public who have experience of the media. The Chair is Sir Louis Blom-Cooper QC, who chaired the Press Council before it was replaced by the Press Complaints Commission (PCC).

2.02 PressWise has a national office in Bristol with four full and part-time staff. It runs a 24-hour help-line and provides free advice and support to complainants on matters concerning the print and broadcast media, and is accepted as an advocate for complainants by the media regulators. The Trust also conducts research and delivers low-cost media training to the voluntary sector, and ethics training for journalists in the UK and overseas. Its clients range from individual members of the public to the British Council, the International Federation of Journalists (IFJ), UNICEF and the WHO.

2.03 The Trust's full-time Director and part-time Associate Director are both experienced journalists who between them have over 80 years experience in all aspects of the profession, and who regularly comment on issues of media law, policy and practice. The Trust also employs a network of professional journalists to conduct research and deliver training in over 20 countries.

2.04 The Trust has devised guidelines on reporting children's issues which have been adopted by the International Federation of Journalists, and on health communications which have been adopted by the WHO (Europe), produced training programmes on children's rights coverage for UNICEF and the EC Daphne programme, and contributed to a wide range of public events concerned with media ethics and regulation.

2.05 PressWise has organised national forums on Child Exploitation and the Media (1997), Ethnic Minorities and the Media (1997), Access to the Information Society (1998) and Refugees, Asylum-seekers and the Media (2001). More details about the full range of the Trust's activities can be obtained on its website: www.presswise.org.uk.

3. Cheque-book journalism

3.01 Payments to witnesses in court cases, or to criminals, suspects and their associates, is one of the more offensive aspects of a phenomenon known as 'cheque-book journalism', by which media outlets gain exclusive rights to the publication of information from key players in a story which is usually the focus of most criticism.

3.02 Even paying victims of crime or catastrophes, or their relatives, to obtain an 'exclusive' may be considered distasteful. Following the Hillsborough tragedy in 1989 many relatives of the dead and injured were offered money to tell their stories - something that is now likely to be regarded as a breach of Clause 5 of the newspaper industry's Code of Practice against unwarranted intrusion into grief or shock.

3.03 Newspaper editors or programme producers are willing to 'invest' often large sums of money to obtain the rights to a person's version of events because they believe it will increase their circulation/ratings. These are primarily commercial rather than journalistic decisions. The main reason for drawing up such contracts is to prevent other papers or broadcasters from obtaining access to information that may be in the public interest or, more accurately, of interest to the public.

3.04 Although some will argue that this competitive approach to news-gathering is appropriate in the free market, 'press freedom' is a more noble concept than 'a licence to print money' or to make money out of others' misfortune. PressWise regards press freedom as a responsibility exercised by journalists on behalf of the public, to research and disseminate information of direct relevance to people's lives that might otherwise remain hidden from the public domain.

3.05 However, a blanket ban on cheque-book journalism would put many quite legitimate journalistic practices at risk. It would be very difficult to devise appropriate legislation to outlaw abuses of the cheque-book, especially since there will be conflicting views about which stories are 'in the public interest' and which are merely 'of interest to the public'. And occasionally the use of the cheque-book may indeed be a means of eliciting information that might otherwise not be available to the public.

3.06 Our general advice to those tempted to seek payment for revelations to the press, whether in connection with a court case or not, is 'DON'T'. In our view cheque-book journalism is an abnegation of the principle of press freedom.

3.07 We advise those who go ahead with such deals to seek a written contract and obtain professional advice about the terms. We warn them that they are entering into an unequal contract. Such contracts as we have had sight of usually offer a substantial financial 'consideration' in return for exclusive supply of information, documents and/or photographs, and specify the type of coverage to which the contract applies.

3.08 Typically someone may be offered a substantial sum for a 'Splash and spread' - meaning a display on the front page lead and a story covering at least two inside pages. However, it is the newspaper that decides whether and how to use the information gathered. If the story is not presented in the way specified by the contract the newspaper is at liberty to vary the amount paid.

3.09 Informants may find themselves being interrogated for more intimate or sensational details, and even information they have already said they are unwilling to supply, under the implied or actual threat of forfeiting the promised payment. It is very easy for the gullible to be persuaded that since they have signed a contract they are obliged to supply extra detail.

3.10 In the West case some people who had agreed to tell their side of the story to either the print or broadcast media subsequently went into hiding themselves because they were unhappy about they way they were being 'hounded' for more detail. In other cases informants have had to threaten legal action to obtain what they were promised.

3.11 One of our main concerns is that such contracts are offered as a means of obtaining exclusive access to information - indeed, sometimes informants are kept away from other papers by virtual incarceration, guarded by 'minders' who continue to pump them for information. 'Exclusives' are essentially marketing devices to provide one newspaper with a competitive advantage over rivals in a 'circulation war'. It is difficult to see how the public interest is served by such exclusive deals, since they are designed to limit rather than increase access to the information supplied.

3.12 There is much hypocrisy about the practice within the industry. Often the public only learns that stories have been paid for when a rival publication exposes the transaction in an attempt to rubbish the opposition. Tabloid newspapers that brandish the cheque-book most liberally are the ones most likely to criticise people who sell their story to a rival paper.

3.13 The battle for increased circulation, and so increased advertising revenue, inevitably leads to the publication of 'spoilers' by rival papers. These are stories designed to undermine the competitive advantage of a rival either by publishing the same information but with a different slant, or more usually by publishing material that challenges the credibility of the original informant. The many derogatory stories published about Mandy Allwood and her partner are a case in point.

3.14 One other disturbing feature of the current use of the cheque-book by newspapers is that having generated an appetite for payment, newspapers then criticise those who demand money for information and sometimes blame them for the practice. This happened in the West case, when some papers named individuals who requested payment for interviews after the verdict, ignoring the fact that reporters had been chasing potential informants with open chequebooks in the months before charges were laid or the date for the trial set. It was also cited by the PCC as part of its justification for exonerating the *News of the World, Mail on Sunday* and the *Daily Mail* in the Amy Gehring case - offers of payment had been made because the parents of juvenile witnesses stipulated that they would not allow interviews without financial compensation.

3.15 Freelances and news agencies earn their living by supplying material to national newspapers. Their paymasters want original and exclusive material, and that simple commercial fact makes a mockery of any suggestion that they are not under pressure to 'produce the goods' by whatever means. Any journalist seeking to invoke Clause 5 of the 60-year-old NUJ Code of Conduct (which allows conscientious objection if required to obtain information by other than straightforward means) is likely to get short shrift from an editor.

3.16 The degree to which one instance of cheque-book journalism is more distasteful than another is also open to argument. However, in an audience poll of 14,000 people conducted by Central TV in the wake of the West trial in the autumn of 1995, 82% of viewers called for the banning of cheque-book journalism following a mock trial on the *CrimeStalker* programme in which PressWise took part.

4. Background to the debate

4.01 It has been argued that there have been few instances over the past 50 years where the issue of payments to witnesses has caused controversy - Brady & Hindley (1965), Thorpe (1979), Sutcliffe (1980), West (1995), Gadd (1999) and Gehring (2002) - and that self-regulation is a sufficient safeguard against media interference with the course of justice.

4.02 However we cannot know how many other trials may or may not have been affected by inducements since. Until the PCC changed its rules in 1996, there was no obligation to disclose this information, nor was it standard practice until fairly recently for perspicacious defence or prosecution counsel to elicit this information from those in the witness box.

4.03 The Attorney General conducted an investigation into the problems associated with cheque-book journalism after the Moors Murder trial in 1968. Yet soon after, during the Jeremy Thorpe trial in 1979 it became clear that the main prosecution witness, Peter Bessell, would receive double the fee offered by a newspaper for his story if the defendant was found guilty. This discovery clearly undermined his credibility as a witness. And in 1983 the old Press Council produced a damning report on the practice of cheque-book journalism following the 'Yorkshire Ripper' trial.

4.04 In 1988 *The Sun* was fined for contempt after declaring the guilt of a doctor accused of raping a child. It had agreed to fund a private prosecution after entering into an agreement with the mother which gave it exclusive access to interviews and pictures.

4.05 Several trials were halted during 1995 after prejudicial press coverage, and in 1997 the Attorney General issued contempt proceedings against *The Sun, Daily Mirror, Sunday Mirror, Daily Express, Daily Star, People, Today* and *Daily Mail* over reports described as 'unlawful, misleading, scandalous and malicious' by Judge Roger Sanders when he halted the trial of Geoff Knights, boyfriend of *EastEnders* star Gillian Taylforth. It is understood that payments had been made for information used in at least one of the offending articles.

4.06 The Lord Chancellor's Consultation Paper on payments to witnesses in 1996 followed widespread concern caused by revelations that 19 witnesses in the trial of Rose West had received payments or promises of payments by the print or broadcast media. They were cited by the defence in an (eventually unsuccessful) challenge to the verdict.

4.07 Immediately prior to the trial PressWise alerted the PCC and the BBC to concerns expressed by witnesses and relatives of victims about approaches made to them by print and broadcast journalists with offers of financial inducements. Several had begun to realise the implications of agreeing to sell their story. Quite apart from their own peace of mind, there was a risk that a miscarriage of justice might occur if their testimony was considered tainted. Some had even moved home or gone into hiding to avoid further press/media attention.

4.08 As a direct result of our intervention, Lord Wakeham, then Chair of the PCC, issued a confidential Memo to newspaper editors on 27 September 1995:
'...PressWise (has) received a number of calls from relatives of victims involved in the Gloucester murder case which comes to court on 3 October (1995). Callers are apparently concerned about the behaviour and persistence of some journalists seeking background information. PressWise have discussed the matter with Victim Support, the investigating police officers, representatives of both Gloucestershire County Council and Gloucester City Council, and the Lord Chancellor's Department.

'Other than the above the PCC has received no information suggesting any breach of the Code of Practice. Nevertheless, in view of the concern that has been expressed the Commission reminds editors to be especially mindful of the Code of Practice in dealing with this entire matter. It is of course particularly important to ensure that relatives of the accused and witnesses are not harassed or caused unnecessary anxiety by otherwise legitimate news-gathering activities.'

4.09 Following West's conviction, however, we noted with disquiet that some people who had earlier been pursued with offers of cash for their stories were criticised for continuing to expect payment for information or opinions by the very people who had made them aware of the 'market value' of their story in the first place.

4.10 The 'Gary Glitter' case in 1999 again highlighted the risks attached to paying witnesses. Paul Gadd was acquitted of sexual abuse of a young girl after the *News of the World* had paid the alleged victim for her story on several occasions over a period of years.

4.11 In 2001 the conviction of Michael Stone was set aside and a new trial reordered after doubts were cast about the reliability of evidence against him at his original trial for the murder of the mother and sister of Josie Lawrence. Among those who gave evidence against him was a criminal who had been paid £5,000 by *The Sun*, with an offer of £10,000 if Stone was convicted.

4.12 Even in cases where the precise details of financial arrangements are not known, the increasingly pecuniary relationship between newspapers and their informants has given rise for concern. In April 2002, for example, the *Sunday Mirror* was fined £75,000 for contempt of court (plus costs) for publishing an interview with the victim's father during the trial of two Leeds footballers charged with assault. The trial had had to be abandoned at considerable cost to the public purse.

5. Is self-regulation enough?
5.01 The preamble to the more recent Code of Practice devised by the industry to stave off statutory control of the press, and policed by the Press Complaints Commission, makes it clear that:
'Editors are responsible for the actions of journalists employed by their publication. They should satisfy themselves as far as possible that material accepted from non-staff members was obtained in accordance with this Code. While recognising that this involves a substantial element of self-restraint by editors and journalists, it is designed to be acceptable in the context of a system of self-regulation. The Code applies in the spirit as well as the letter.'

5.02 Clause 6(iv) makes it clear that payments must not be made to minors for information nor to parents or guardians for information about their children or wards 'unless it is demonstrably in the child's interest'.

5.03 The latest version of Clause 16(i) of the Code, dealing with payments to other informants, offers no 'conscience clause' but states:
'Payment or offers of payment for stories or information should not be made directly or through agents to witnesses or potential witnesses in current criminal proceedings except where the material concerned ought to be published in the public interest and there is an over-riding need to make or promise to make a payment for this to be done.

'Journalists must take every possible step to ensure that no financial dealings have influence on the evidence that those witnesses may give. (An editor authorising such a payment must be prepared to demonstrate that there is a legitimate public interest at stake involving matters that the public has a right to know. The payment or, where accepted, the offer of payment to any witness who is actually cited to give evidence should be disclosed to the prosecution and the defence and the witness should be advised of this.)'

5.04 This rather cumbersome attempt to divert criticism of weaknesses in previous versions of the Code and the PCC's failure to restrain chequebook journalism in criminal cases begs many questions, not least how journalists are to ensure that financial deals do not influence the evidence eventually delivered in court. Prompting of a person, which is how any journalistic enquiry will be represented in court, risks changing emphasis or indicating the likely significance of one piece of information over another.

5.05 The insertion of this new clause (then numbered 9(i)) was announced by the late Sir David English, then Chair of the industry's Code of Practice Committee, on the morning of 27 November 1996, just as he and PCC Chair Lord Wakeham were to give evidence alongside PressWise to a National Heritage Select Committee hearing on the topic.

5.06 Sir David, who was also Editor-in-Chief of the Mail group, had commented that it might be time to revise or revoke the original, softer version of the clause following public criticism of the *Daily Mirror* for offering cash to convicted fraudster Darius Guppy, and the *Daily Mail* for paying £300,000 to publicise a book by gaoled Barings' trader Nick Leeson. He admitted that the Code Committee had not considered the 'out-of-date' clause for 3 years, and claimed that it owed its origin to 'some grandiose announcement of the old Press Council around the time of the (Yorkshire) Ripper trial'.

5.07 It is hard to believe that Sir David was not aware that the newspaper castigated by the then Press Council was the *Daily Mail*, of which he had been editor when payments were made to relatives of Peter Sutcliffe. In 1983 he had described the Press Council's finding on the issue as 'short-term, short-sighted and smug (proving) yet again that the Press Council does not truly understand the concept of a free press.'

5.08 In our view this attitude towards regulation remains common within the trade. Self-regulation works only insofar as it does not interfere with what newspapers want to do. The pragmatism of the PCC is self-serving. Its primary purpose is to protect the industry from the imposition of statutory

controls. It has yet to convince the public (and many journalists) that self-regulation alone is sufficient safeguard against excesses committed in pursuit of commercial self-interest.

5.09 The public have become increasingly cynical about the motives of newspapers which hype stories to sell rather than to inform. Despite or perhaps because of its adjudications in cases involving payments to witnesses, the PCC is seen as a convenient fig leaf protecting the vulnerabilities of the press, rather than the press being seen as the protectors of the most vulnerable in society. Editors do not lose their jobs for breaches of the industry Code.

5.10 This has an unfortunate knock-on effect. Public confidence in journalists remains low, which is more the fault of the way of which the press operates than a comment about the function of journalism. Suspicion about the motives for publishing stories makes it more difficult for journalists to earn respect for their work, and that weakens the vital contribution they can make to keeping society open and democratic.

5.11 Public confidence that the judicial system can deliver a fair trial is paramount. One of the important functions of journalism is to keep an eye on the effectiveness and probity of public administration and in particular the workings of the courts and the judicial process, and to alert the public to miscarriages of justice. It has only taken a few notorious cases to create a perception that newspapers are more interested in sensation and circulation than in pursuit of accuracy and accountability. They have fallen foul of a self-generated syndrome which might be described as the 'Byers' effect' - where perception overrides all other considerations.

5.12 It is now more common for stories to be tagged to indicate when payment has been made to an informant, but it should be standard practice for all newspaper editors who make payments for exclusive rights to stories to declare the terms of the transaction on the same page as the story. That would at least allow readers to make up their minds about the credibility of the material, in much the same way as the jury must when such contracts become known in a trial.

5.13 However, given the cavalier attitude of some newspapers, we reject the notion that self-regulation alone is sufficient to defend the principle of a fair trial. Unless and until there is a joint declaration from editors and proprietors that the practice of paying witnesses is unacceptable and will cease, suspicions will remain about the motives behind cheque-book journalism in criminal cases and the integrity of the courts will be undermined.

6. A crime or a contempt?

6.01 It is not a criminal offence to sell or buy 'a story'. However, there can be a very serious risk to the judicial process when witnesses in criminal cases, or suspects and their associates, receive payments for telling their story. It allows both prosecution and defence lawyers to challenge the validity of the testimony of those who have been paid, and by discrediting their evidence generate sufficient uncertainty in the minds of a jury that a guilty person might walk free or an innocent person might end up in gaol.

6.02 Anyone offering financial inducements to witnesses in criminal trials already risks penalties ranging from fines to imprisonment under the Contempt of Court Act 1981. If there is sufficient evidence to suggest that the result of a trial may be prejudiced by the actions of a newspaper, a trial judge may halt the proceedings and the Attorney General may take action under the Contempt of Court Act 1981, Section 2(3) which says that an offence is committed if a publication 'creates a substantial risk that the course of justice in particular proceedings will be seriously impeded or prejudiced'.

6.03 The Contempt of Court Act 1981 was drafted at a time of controversy about payments to relatives of serial killer Peter Sutcliffe. It gave the Attorney General powers to issue proceedings against a newspaper if its coverage or actions in respect of a witness or potential witness might contaminate the evidence they give and so prejudice the outcome of a trial.

6.04 One difficulty for editors is that they are not to know who might eventually be called as a witness in a trial. Indeed, journalistic enquiries may lead to the discovery of important evidence and the calling of their informant as a witness. And an editor would be perfectly justified in publishing material to prevent or rectify a miscarriage of justice.

6.05 Nonetheless the credibility of witnesses who have been paid or promised payments can easily be undermined, especially if they try to deny having such a contract - as happened to a key witness in the West trial. Both the payment of witnesses (especially where a bonus is offered on conviction) and challenges as to their reliability could lead to a miscarriage of justice. It should be anathema to responsible journalism to take such a risk.

6.06 A witness who has been paid or promised payment may be tempted to embellish evidence, hold back information, or even stick to an inaccurate story under oath which had originally been given outside the court, in a misguided attempt fulfil a contractual obligation to a publication.

6.07 The person most likely to complain would be someone convicted on evidence supplied by witnesses who admitted a vested interest in obtaining a conviction. The most appropriate forum for such a complaint would be the Court of Appeal not the Press Complaints Commission. And were a jury to acquit solely because of doubts raised by such 'tainted' evidence, a ruling by the PCC would be insufficient compensation for such a miscarriage of justice.

6.08 The necessity of ensuring that an accused person receives a fair trial should be the over-riding concern when considering the use of the cheque-book in criminal cases. In our 1996 submission to the Lord Chancellor we argued that an action for contempt is the most appropriate means of adjusting the balance in favour of a fair trial.

6.09 It would be necessary to prove that payments to witnesses had been offered with the intention of prejudicing the outcome of a trial. No editor would admit to such a base motive. Nonetheless, financial benefit is acknowledged as a motive in many crimes. Editors who buy stories may not deliberately set out to pervert the course of justice, but it has yet to be established whether a commercial transaction which hangs upon a specific verdict might lay an editor or a witness open to a charge of conduct likely to prejudice the outcome of a trial.

6.10 PressWise recognises that there are strong arguments for making it a criminal offence to offer or receive payments in respect of information about alleged crimes which are in the process of

scrutiny by the courts. Where the amount is dependent upon a specific result, it could be considered tantamount to bribery.

6.11 As we saw in the West case, the suggestion that a lawyer or a police officer might have been open to payment for supplying information to the press was sufficient to have them removed from the case. And, of course, any member of the public and especially anyone with criminal connections who sought to influence the outcome of a trial by offering inducements or threats to witnesses or jurors would be committing a criminal offence.

6.12 We have highlighted some of the dangers of allowing the cheque-book to influence criminal cases. Public safety and the liberty of individuals may be put at risk because evidence may have been tainted by exposure to the influence of journalists seeking headlines. Doubts about the validity of witness statements could form the basis of a successful appeal against an otherwise valid conviction. Cases have been abandoned and convictions overturned because of prejudicial media coverage in advance of or even during a trial. Nonetheless we would prefer the Attorney General to use his powers under the Contempt of Court Act rather than see a specific ban or a criminal offence introduced.

6.13 In our view it would be preferable to make the offence one of contempt since in the first instance it is appropriate that a judge should decide whether or not offers or inducements to a witness have invalidated the evidence supplied. One of the advantages of the adversarial system used in British courts is that cross examination can be an effective means of uncovering inconsistencies in statements made to the police or in the witness box.

6.14 However, it may be that the law on contempt needs to be widened to allow individuals to seek an action for contempt, rather than require the Attorney General who is also a political appointee to exercise his prerogative to initiate such actions. As the law officer who must give consent for contempt actions against the press it is vital that he should be politically independent and not subject to the same pressures and anxieties as the Government or his political party in their relationship with the 'Fourth Estate'.

6.15 Were the Attorney General to be less circumspect about his powers under the Act, and make it abundantly clear that any attempt to interfere with the course of justice will result in an action for contempt, journalists are themselves more likely to be cautious when legitimately seeking background information about a case. In Scotland the Procurator Fiscal has made it abundantly clear that any behaviour likely to constitute an interference with due process of law will be sternly dealt with. All that is required in rest of the United Kingdom is for the Attorney General to be similarly forthright with the press and media.

6.16 Journalists already accept some legal constraints in the interests of justice and the Rule of Law, especially where they relate to sexual offences and offences involving children. Breaches of those constraints lay them open to contempt proceedings. PressWise sees no reason why similar action should not be taken against any newspaper, magazine or broadcaster that offers inducements to witnesses in any court case, whether criminal or civil.

6.17 Were a new offence to be introduced it is vital that it is applied in an even-handed way. It should apply equally to UK-based and overseas media, especially since dual publication on the internet has done away with the distinction of separate publication between material formally published in one jurisdiction by making it immediately available to everyone on the world wide web.

6.18 If the offence is to be an effective deterrent it should be one of 'strict liability' and should cover those who seek payment as well as those who offer payment for information in criminal cases.

6.19 If there is to be a real guarantee of the protection of the right to a fair trial, the period covered by the offence or any extension of the contempt laws should extend from the point at which a criminal trial might reasonably considered to be 'imminent or pending' until the conclusion of the

time limit set for the lodging of an appeal. Once a date is set for the hearing of an appeal the same constraints should apply as would for the original trial.

7. The 'public interest' defence

7.01 As we have said, PressWise believes that press freedom is a responsibility exercised by journalists and editors on behalf of the public. Members of the public have a right to know about events and issues which could affect their lives or influence the decisions they take about their lives.

7.02 One danger of the more controversial form of cheque-book journalism is that it becomes a form of restrictive practice. Any practice, such as the purchase of an 'exclusive', which seeks to restrict immediate access to important information, or limits the choice of the public, should be avoided. If something is in the public interest, it should not have a price tag.

7.03 Salacious stories may sell newspapers, but that does not make them the stuff of good journalism. Many journalists would prefer to invoke a 'conscience clause' when told to produce material they find offensive, intrusive or inaccurate.

7.04 Nonetheless, it is important that newspapers and broadcasters should be entitled to offer a public interest defence when they stand accused of impeding or prejudicing the course of justice by offering inducements to witnesses.

7.05 However, on past evidence it may be hard to prove that the public interest has been served by payments to witnesses or the publication of potentially prejudicial statements. To what extent was justice or the public interest served by payments to relatives of Peter Sutcliffe or to Peter Bessell in the trial of Jeremy Thorpe; or when the Geoff Knights, Paul Gadd, Leeds footballers and Amy Gehring cases collapsed?

7.06 In an open democracy it is vital and legitimate for journalists to investigate wrong-doing and to expose miscarriages of justice. They cannot know for certain that somebody may be called as a witness, especially in a trial for which no date has been set, or indeed where charges have yet to be laid. Journalists should not be frightened off their role by the threat of a criminal conviction.

7.07 The Press should be proud enough of their reputation to avoid the risk of charges that their activities might interfere with the course of justice. However it is clear that in this instance, as in so many others, the current system of self-regulation has not worked.

7.08 The public interest defence needs to be defined clearly, whether by convention or by law, in order that the public can be sure that it is not a flag of convenience under which irresponsible journalistic activity is allowed to sail unchallenged. A public interest defence should not override the right of person to