



HOUSE OF LORDS

Report from the Commissioner for Standards

The conduct of Lord Black of Brentwood

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Commissioner for Standards

The independent Commissioner for Standards is responsible for considering any alleged breaches of the Codes of Conduct.

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Code of Conduct for Members, Guide to the Code of Conduct and Code of Conduct for Members' Staff

The present Code of Conduct for Members of the House of Lords was agreed on 30 November 2009. Amendments to it were agreed by the House on 30 March 2010, 12 June 2014, 25 February 2016, 9 February 2017, 3 April 2017, 30 April 2019 and 18 July 2019.

The Guide to the Code of Conduct was proposed by the Committee for Privileges (2nd Report, Session 2009–10, HL Paper 81) and agreed by the House on 16 March 2010. The Guide was amended on 9 November 2011, 6 March 2014, 13 May 2014, 24 March 2015, 25 February 2016, 9 February 2017, 3 April 2017, 30 April 2019 and 18 July 2019.

The Code of Conduct for House of Lords Members' Staff was agreed on 13 May 2014. Amendments to it were agreed on 24 March 2015, 30 April 2019 and 18 July 2019.

The Codes and Guide are kept under review by the Conduct Committee.

Advice

The Registrar of Lords' Interests advises members of the House and their staff on their obligations under the Codes of Conduct.

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Registers of Interests

A list of interests of members and their staff can be found online: www.parliament.uk/hlregister

Parliamentary helplines

Independent Bullying & Harassment Reporting Helpline: 0800 028 2439 or disclosure@healthassured.co.uk

Independent Sexual Misconduct Advisory Service: 0800 1124 318 or isma@solacewomensaid.org

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REPORT FROM THE COMMISSIONER FOR STANDARDS

Summary of complaint and investigation

1. On 1 April 2019 I received a letter dated 25 March from Nathan Sparkes, on the behalf of the Hacked Off Campaign (see Appendix 1). The letter alleged that Lord Black of Brentwood had breached the Code of Conduct in two respects:
 - that Lord Black’s description of the role of the Regulatory Funding Company (RFC), of which he is a Director, was insufficient; and
 - that Lord Black had failed to declare his interest in the RFC during a debate on the consideration of Commons amendments to the Data Protection Bill on 14 May 2018.
2. As part of my preliminary assessment of the complaint I considered Lord Black’s entry in the Register of Interests, the Articles of Association of the RFC and the debate on 14 May 2018.

Lord Black’s entry in the Register of Interests

3. Lord Black’s entry regarding the RFC was listed under “Category 10: Non-financial interests”. His entry read:

“Board Director, Regulatory Funding Company (funds work of Independent Press Standards Organisation (IPSO))”

Articles of Association of the Regulatory Funding Company

4. Article 2 of the RFC’s Articles of Association¹ sets out the company’s three objects:
 - to “fund the operation of a scheme for the independent, voluntary, self-regulation of publishers of editorial content in printed newspapers and magazines and on electronic services in the United Kingdom, Channel Islands and Isle of Man”—in effect to fund the Independent Press Standards Organisation (IPSO),
 - to convene the Editors’ Code of Practice Committee whose role is to maintain and amend the Code of Practice that IPSO must enforce, and
 - to “exercise any other functions ancillary to the above objects”.
5. Other articles I considered relevant to the complaint were:
 - Article 24.1: which makes provision for the first members of the Company and then provides that thereafter “the only persons entitled to membership shall be Regulated Entities or, if they are unincorporated organisations, their nominated representatives”.

1 http://www.regulatoryfunding.co.uk/write/MediaUploads/15840651-v1-final_rfc_articles.pdf

The “Regulated Entities” are those organisations who have entered into scheme membership agreements with IPSO, namely the publishers regulated by IPSO;

- Article 8.1: “The members may, by special resolution, direct the directors to take, or refrain from taking, specified action”.

This provides a reserve power for the publishers regulated by IPSO to instruct the actions of the directors; and

- Article 10.11: “Any amendment to or replacement of the Editors’ Code proposed by the Editors’ Code of Practice Committee must first be approved by the directors [of the RFC] following consultation with Regulated Entities. The directors shall not approve any amendment to or replacement of the Editors’ Code unless:
 - 10.11.1 they reasonably consider that there is a consensus among Regulated Entities in favour of the amendment or replacement; or
 - 10.11.2 the amendment or replacement has been approved by a Majority Vote.”

This provides the publishers regulated by IPSO a right of consultation by the directors on any changes to the Editors’ Code to which those publishers must adhere.

Debate on consideration of Commons amendments, 14 May 2018

6. On 14 May 2018 the House of Lords debated a group of amendments made in the House of Commons to the Data Protection Bill. The Minister, Lord Keen of Elie, introduced the group of amendments saying they related to “the regulation of the press and the processing of personal data for the purposes of journalism.”²
7. Lord Black’s contribution to the debate was:

“My Lords, standing on one leg will at least ensure my brevity. I declare an interest as deputy chairman of Telegraph Media Group.

I agree entirely with the comments of my noble friend Lord Cormack and the noble Lord, Lord Pannick, about the advisability of sending this amendment back to the House of Commons. Were we to do so, we should remember a few points on the substance of the noble Baroness’s amendment.

First, we should always bear in mind that the amendment would produce yet another inquiry covering the same ground that has been ploughed over not only by the first Leveson inquiry but by three police investigations, at least three Select Committee inquiries, a Joint Committee of this House, the US Department of Justice and, in this country on the question of corporate liability, the DPP. There is little left to uncover.

Secondly since Leveson reported, there has been a genuine, wholesale change in press regulation. We have moved from a voluntary complaints handling service, chaired by my noble friend Lord Wakeham, to a system

of tough, legally enforceable regulation with strong powers of sanction. I say to the noble Lord, Lord Lipsey, that it is those tough legal powers which IPSO possesses that mean there could be no backsliding to the standards of the past.

Thirdly—this an important point we all need to bear in mind—since IPSO introduced a mandatory arbitration scheme in the past few weeks, there are virtually no lawful recommendations of Leveson that have not been introduced. It has produced a sea change in how newspapers are run, managed and deal with complaints, and in how journalists are trained and monitored.

Fourthly, since the first Leveson inquiry, the situation facing the press has changed dramatically. I note the noble Baroness seeks to cut out the local press from this but all publishers, including national ones, are under huge and sustained commercial pressure, which will not abate. It is a struggle for survival on a day-to-day basis, which will be made all the more complicated by having to wind the clock back 10 to 15 years to rake over a world which, frankly, no longer exists.

Fifthly, the biggest threat today to the sustainability of high-quality journalism comes from Google and Facebook, which are not even mentioned in the amendment. If we go down this route, in 20 years' time people will ask why on earth this Parliament insisted on endlessly rerunning the repeats of an ancient black and white drama rather than looking at how journalism could survive in the global digital environment.

I have always been taught that this House must try to understand that, as an unelected Chamber, it needs at least to try to understand the realities of the outside world and take note of the will of the people. During a consultation on what is, in effect, this amendment, the people spoke in huge numbers and, by an overwhelming majority, rejected it. For all the reasons that I set out today, so should we.”³

Relevant aspects of the Code

Registration

8. Paragraph 11(a) of the Code of Conduct requires members to “register in the Register of Lords’ Interests all relevant interests, in order to make clear what are the interests that might reasonably be thought to influence their parliamentary actions”.
9. The Guide to the Code of Conduct gives further details of categories of interest to be registered. Paragraph 81 of the Guide to the Code describes “Category 10: Non-financial interests”:

“Certain non-financial interests may reasonably be thought to affect the way members of the House of Lords discharge their public duties and must therefore be registered in this category. The following non-financial interests are always relevant and therefore must be registered:

- a. unremunerated directorships or other regular employment”.

10. With regard to remunerated directorships and shareholdings, the Guide to the Code requires that as well as the name of the organisation, entries in the Register should also “give a broad indication of the company’s business, where this is not self-evident from its name.”
11. This requirement is not included for entries under Category 10. However, paragraph 9 of the Guide to the Code says that:

“members are required not only to obey the letter of the rules, but to act in accordance with the spirit of those rules and the sense of the House. This includes the rules agreed by the House in respect of financial support for members or the facilities of the House. In addition to the specific rules on registration and declaration of interests, there is a more general obligation upon members to bear in mind the underlying purpose of the Code as set out in paragraph 3(b), namely, to provide “openness and accountability”.”
12. On this basis, I consider it necessary that where a member has included a “broad indication of the company’s business, where this is not self-evident from its name”—as it is desirable in the interest of “openness and accountability” to do—the description must be adequately accurate.

Declaration

13. Paragraph 11(b) of the Code of Conduct says members must “declare when speaking in the House, or communicating with ministers or public servants, any interest which is a relevant interest in the context of the debate or the matter under discussion”.
14. Paragraph 90 of the Guide to the Code says that “Declarations should wherever possible be comprehensible, specific and unambiguous, without either demanding prior knowledge of their audience or requiring reference to other documents.”

Relevance

15. For both registration and declaration, paragraph 12 of the Guide to the Code describes the test of relevance as:

“whether the interest might be thought by a reasonable member of the public to influence the way in which a member of the House of Lords discharges his or her parliamentary duties: in the case of registration, the member’s parliamentary duties in general; in the case of declaration, his or her duties in respect of the particular matter under discussion.”
16. Paragraph 37 of the Guide to the Code defines a reasonable member of the public as meaning “an impartial and well informed person, who judges all the relevant facts in an objective manner”.

Lord Black’s response to the complaint

17. I wrote to Lord Black on 3 April to inform him that I had completed my preliminary assessment and considered an investigation appropriate, and asked him for a written response to the allegations (see Appendix 2).

18. Lord Black replied on 17 April (see Appendix 3). He made several points in his response:
- that he considered the letter a “vexatious complaint from the Press Office of an anti-press lobby group which has campaigned over many years both about press regulation and about me personally”;
 - that, with regard to other interests registered under Category 10, a “cursory glance at the Register of Interests shows that where descriptions are given—and there are none in many cases, even where the organisation is obscure—they are extremely brief” and, as such, his description was in keeping with the practice of others;
 - that the “role of the RFC is clearly to fund the work of IPSO”, as evidenced by the RFC’s website, the RFC’s annual reports and accounts submitted to Companies House, IPSO’s website and a letter Lord Black provided from Director and Company Secretary of the RFC (see Appendix 4);
 - that the website of the Editors’ Code of Practice Committee makes no link between it and the RFC;
 - that the role of the RFC with regard to the Editors’ Code of Practice Committee was a merely clerical one: to convene it and to ratify formally its conclusions;
 - that the text included in the Register was that chosen by the Registrar of Lords’ Interests; and
 - that the amendments in question on 14 May 2018 related to establishing a “Leveson Two” inquiry which “would have related to historic events before 2011” and as “the RFC was only established in 2013” meant that his interest in the RFC was not relevant to the debate.
19. These are broadly the matters I discussed with Lord Black in correspondence and on the phone (see Appendices 5, 6, 7 and 8). For clarity it is worth addressing each briefly here.
20. The Code of Conduct allows me to dismiss complaints which are “clearly trivial or vexatious”. I consider a vexatious complaint to be one which has no merit. My initial research identified a matter that required investigation, and therefore the complaint had merit and was not vexatious.
21. It may be the case that other entries in the Register have brief, possibly insufficient, descriptions of the organisations involved. However, my role, as set out in the Guide to the Code of Conduct, is to “investigate alleged breaches of the Code”. Where a complaint is made, I investigate in accordance with the Code of Conduct. Other than in exceptional circumstances where I become aware of evidence sufficient to establish a *prima facie* case that the Code has been breached, if no complaint has been made, I have no role in investigating members’ compliance with the Code.
22. I agree that the sources Lord Black cited described the RFC’s funding role. However, none of these sources take precedence over the RFC’s Articles of Association which, particularly under articles 8.1 and 10.11, provide for a potentially significant role. For the avoidance of doubt, I should say that I

make no comment on the use the RFC does or does not make of such powers or the policy considerations surrounding the relationship between the RFC and IPSO—these are matters beyond both my remit and the scope of this report.

23. How an interest is included in the Register is the member’s responsibility. Members may take the advice of the Registrar and paragraph 27 of the Code says a member “who acts on the advice of the Registrar in determining what is a relevant interest satisfies fully the requirements of the Code of Conduct in that regard.” However, I do not consider Lord Black’s email to the Registrar on 16 May 2018, included in Lord Black letter to me of 17 April, to constitute Lord Black seeking or receiving advice. The email simply informed the Registrar of the interest, described the RFC in the terms then entered into the Register and explained that the role was unremunerated.
24. The debate on 14 May 2018 covered issues more generally than Lord Black’s written response suggests. This was demonstrated by Lord Black’s own intervention, which included reference to the “genuine, wholesale change in press regulation” since the first Leveson Inquiry.

Finding

25. I think it is reasonable to consider the description including only one of the RFC’s two substantive objectives to be misleading by omission. **A misleading description cannot be considered in accordance with the Code of Conduct and must therefore be considered a breach.**
26. I also consider Lord Black’s interest in the RFC to have been relevant to the debate on the Commons amendments to the Data Protection Bill as the debate, and Lord Black’s intervention, had a broader scope than simply whether events before 2011 would justify a “Leveson Two” inquiry. **Lord Black’s failure to declare the interest during the debate must therefore also be considered a breach.**
27. In neither case do I believe that Lord Black intended to mislead the House.
28. In the light of this, I considered that the case could be resolved by remedial action. Remedial action usually involves “putting the record straight”, for example by amending the Register of Lords’ Interests, and the member making a formal apology to the chairman of the Conduct Committee.
29. Lord Black has therefore amended the description of the RFC in the Register and has written to Lord Mance, the chairman of the Conduct Committee (see Appendix 9).

APPENDIX 1: LETTER FROM NATHAN SPARKES, HACKED OFF CAMPAIGN, DATED 25 MARCH 2019, RECEIVED 1 APRIL 2019

Complaint: Lord Black of Brentwood’s Register of Lords’ Interests entry

The Members’ Code of Conduct Paragraph 10(a) states:

“In order to assist in openness and accountability members shall... register in the Register of Lords’ Interests all relevant interests, in order to make clear what are the interests that might reasonably be thought to influence their parliamentary actions”.

The entry for Lord Black of Brentwood includes the following relevant interest:

“Board Director, Regulatory Funding Company (funds work of Independent Press Standards Organisation (IPSO))”

The description of the Regulatory Funding Company as a body which “funds work of Independent Press Standards Organisation (IPSO)” is incomplete to the point of being misleading. As such it is in violation of Code Paragraph 10(a) (above), in that it fails to “make clear” the nature and significance of the relevant interest declared in respect of influence over parliamentary actions.

IPSO is a newspaper complaints-handler.

In addition to funding it, the Regulatory Funding Company has the following functions in respect of IPSO:

- (1) Owns the standards code which IPSO is required to enforce⁴;
- (2) Has the power to veto any proposed amendments to IPSO’s own regulations⁵;
- (3) Has the power to veto the operation of IPSO’s optional Arbitration Service⁶;
- (4) Must be consulted on industry appointments to the Board of IPSO⁷;
- (5) Must be consulted on industry appoints to the Complaints Committee of IPSO⁸
- (6) Controls the rules around voting for Members Publishers of IPSO⁹;
- (7) Must be consulted on financial sanctions guidance¹⁰.

The context of the debate on press regulation is highly relevant.

In the course of the Leveson Inquiry into the Culture, Ethics and Practices of the Press, Lord Black presented a proposed regulatory model to the Inquiry. It is similar to the model adopted by IPSO/the RFC, in that funds would be collected for the complaints-handler by a separate organisation. In the model proposed by Lord Black, the RFC-type body is named as “the Industry Funding Body”.

4 Para 7.3, IPSO Scheme Membership Agreement

5 Para 7.1, IPSO Scheme Membership Agreement

6 Para 5.4, IPSO Scheme Membership Agreement

7 Para 22.5, IPSO Articles of Association

8 Para 27.4, IPSO Articles of Association

9 Para 6, IPSO Scheme Membership Agreement

10 Para 68, IPSO Rules and Regulations

The Inquiry rejected that model, criticising the fact that although the Industry Funding Body ostensibly only existed to provide funding, it in fact held a number of other powers over the complaints-handler:

I have serious reservations about the independence of the appointment process for the Chair of the Trust, and about the role of the Industry Funding Body throughout this model. I believe that sufficient independence cannot be achieved while the industry has a veto on the appointment of the Chair, has the right to define the standards and has the right to define the sanctions available. All these concerns could be remedied by reducing the IFB's role in the operation of the proposal.¹¹

...

...the model presented by Lord Black fails to offer genuine independence from the industry.

The industry, primarily through the Industry Funding Body (IFB), would have substantial influence over the appointment of the Chair of the Trust, as well as having 'responsibility' for the Code and having to approve any changes in the regulations. The continuation of the Code Committee with a majority of serving editors, acting in more than an advisory role, does not allow for independent setting of standards.¹²

The predecessor body to IPSO was the Press Complaints Commission. It also had a funding body, called "PressBoF". The Inquiry criticised this arrangement on the same basis; that although PressBoF was described as a funding body, in reality it held substantive power over the operation and constitution of the complaints-handler:

The PCC is constrained by serious structural deficiencies which limit what it can do. The power of PressBoF in relation to appointments, the Code Committee and the funding of the PCC means that the PCC is far from being an independent body.¹³

...

The PCC lacks the independence that is critical to building public confidence in a regulator. It has been dominated by the industry, both through the influence of the Press Board of Finance (PressBoF), particularly in relation to appointing the Chair and the press members of the Commission, and through the presence of serving editors in both the Code Committee and on the Commission itself.¹⁴

In his conclusions, Sir Brian Leveson is clear that such a body, to collect funds on behalf of the industry, should not exist or – if it does – its role must be limited to co-ordination:

Practice in the industry has been for an industry body (PressBoF) to set, and levy, the membership fees for self-regulation. In my opinion there is no need for such a body to exist at all: it would be perfectly possible for the regulator to set its own fees and collect them directly from its members, taking account of the financial position of the industry. Equally, however, there is not necessarily any problem of principle with an industry body acting as a coordinator.¹⁵

11 Part K, Para 8.10, Leveson Report

12 Part K, Para 2.4, Leveson Report

13 Part J, Para 8.1, Leveson Report

14 Part K, Chapter 7, Para 1.6, Leveson Report

15 Part K, Chapter 7, Para 4.14, Leveson Report

The Inquiry goes on to set out criteria for independent regulators which would prohibit the involvement of any industry funding body in various elements of the regulator's functions. The question of whether a funding body should in fact have other powers is therefore highly contentious. The Leveson Inquiry made very strong and direct recommendations to the effect that it should not. In the case of IPSO, the RFC does retain those powers, in violation of the Leveson Report's criteria for independence and effectiveness. Yet Lord Black's entry misleadingly describes the RFC only in terms of it being a funding body.

The effect of Lord Black's incomplete entry is that any Member of the House of Lords, or indeed member of the public, with understanding of the press regulation debate (to which Lord Black frequently contributes) could reasonably deduce that the IPSO/RFC system in which Lord Black is involved is compliant with the recommendations of the Leveson Report; and that the system is therefore implicitly certified as independent and effective.

The reality is the opposite. Lord Black's register of interests should state, clearly, that the RFC's role extends both to funding and significant powers over the rules and regulations of IPSO.

APPENDIX 2: LETTER FROM THE COMMISSIONER FOR STANDARDS TO LORD BLACK OF BRENTWOOD, 3 APRIL 2019

I am writing because I have received a complaint from Nathan Sparkes of the Hacked Off Campaign alleging that you have breached the House of Lords Code of Conduct. The complaints relate to your entry in the Register of Lords' Interests as a Board Director, Regulatory Funding Company. A copy of the complaint is enclosed.

I have carried out a preliminary assessment of the complaint. I have decided that there is sufficient *prima facie* evidence to investigate whether the House of Lords Code of Conduct may have been breached.

Paragraph 40 of the Guide to the Code of Conduct says, "Members are responsible for making a full disclosure of their interests". Because of this, entries under categories 1 (directorships), 2 (remunerated employment etc.), 3 (public affairs advice and services to clients) and 4 (shareholdings etc.), require members to describe the nature of the business registered "where this is not self-evident". This provision is not included in the text of category 10 (non-financial interest), under which your role with the Regulatory Funding Company is listed. However, it is clearly within the spirit and meaning of the Code that the same requirement for transparency applies to such entries.

The complaint alleges that the description of the Regulatory Funding Company in the Register—"funds work of Independent Press Standards Organisation (IPSO)—is insufficient as the Company's role is broader than this. The Articles of Association of the Regulatory Funding Company suggest that its role is broader than simply providing funding. Article 2.2 empowers the Company to "convene an Editors' Code of Practice Committee" and Article 10.11 requires that any "amendment to or replacement of the Editors' Code proposed by the Editors' Code of Practice Committee must first be approved by the directors following consultation with Regulated Entities".

I also draw your attention to the seven general principles of conduct identified by the Committee on Standards in Public Life and incorporated into the Code of Conduct.

I therefore invite you to respond in writing with a full and accurate account of the matter in question. Without limiting what you wish to say in your response, I should be grateful if you could cover the following points:

- what the role of the Regulatory Funding Company is in relation to (1) the Editors' Code of Practice Committee, and (2) the Editors' Code;
- whether you sought and took the advice of the Registrar of Lords' Interests before making your entry in the Register to ensure it was sufficient;
- whether you consider there to have been any occasions when any declarations you may have made in the House have been insufficient with regard to your role with the Regulatory Funding Company, in particular whether you considered it an interest relevant to your intervention on the consideration of Commons amendments to the Data Protection Bill on 14 May.

A response by 18 April would greatly assist me in investigating this matter in a timely fashion.

As an investigation is underway there is a requirement for all evidence and correspondence relating to the case to remain confidential unless and until it is published by the Committee for Privileges and Conduct. In accordance with paragraph 122 of the Guide to the Code of Conduct a webpage on the parliamentary website will include basic information about the case.

APPENDIX 3: LETTER FROM LORD BLACK OF BRENTWOOD TO THE COMMISSIONER FOR STANDARDS, DATED 17 APRIL 2019

Thank you for your letter of 3rd April.

While I will, of course, provide in this letter a substantive response to the complaint, I must admit to surprise that you have decided formally to investigate what would appear to be a vexatious complaint from the Press Office of an anti-press lobby group which has campaigned over many years both about press regulation and about me personally. As you will see from the Hacked Off website, this complaint featured in a press release even before you received it, and to my mind is clearly nothing other than a publicity stunt as part of that organisation's continuing campaign. I also note that the complaint about my entry in the Register was made eleven months after it first appeared and must raise the question of why, if the matter was of such public interest to warrant an investigation, it is only being made now.

My candid view is that this is merely an attempt to drag you into what is now an arcane theological debate about the post-Leveson system of self regulation. This is perhaps best illustrated by the crux of the complaint which is summed up by Hacked Off in their penultimate paragraph when they claim that Members of the House of Lords, and indeed the public, could "reasonably deduce that the IPSO/RFC system in which Lord Black is involved is compliant with the recommendations of the Leveson Report; and that the system is therefore implicitly certified as independent and effective." With all due respect, I fail to see how the entry which states that the RFC funds IPSO could possibly be understood or interpreted in any such way. As this is the basis of the complaint – and as it is so clearly mistaken – it seems to me that there is no reasonable ground for investigation. As you will observe also from reading my contributions in debates over many years – in which I have often been roundly attacked by Members linked with this lobby group, and others – there can be no single Member of the House of Lords who is not fully aware of my interests, which nonetheless have been declared on every occasion.

I also note that you are seeking to investigate this complaint under the "spirit of the Code" as this is not a financial interest and falls under Category 10. Even a cursory glance at the Register of Interests shows that where descriptions are given – and there are none in many cases, even where the organisation is obscure – they are extremely brief. It would therefore appear that I need have given no further description of the work of the RFC – given that the nature of its job is spelled out in its title – but that linking it to the work of IPSO, in the way the Registrar did (see below), was the right thing to do. In noting that it appears to be accepted practice not to give descriptions for Category 10 Interests (indeed, as you say, this not demanded by either the Code, or the Guidance), it is therefore ironic that complying with the guidance in s.35 to "make clear what are the interests that might be thought by a reasonable member of the public to influence their actions", by the provision of such a description, has led to a complaint. I wonder if any complaint would have been made at all had I simply listed my interest and left it to the reasonable member of public to access the website of the RFC further to enquire as to its role?

As you are aware, under s.37 of the guidance, a "reasonable member of the public" is taken to mean an impartial and well-informed person, who judges all the relevant facts in an objective manner. I would submit that such a reasonable member of the public would not interpret a brief one line description as being

intended to encompass the entire scope of functions of any company or body, but they would be given a clear impression of how that interest might or would affect my actions. What is more, a reasonable member of the public would clearly have the ability to carry out a simple Google check if they did want to find out more concerning the detail of the company or body.

The role of the RFC is clearly to fund the work of IPSO. You will see this from its own website - <http://www.regulatoryfunding.co.uk/> (about which I notice no complaint has ever been made to the Advertising Standards Authority, so we must presume that Hacked Off, which has made a number of complaints to the ASA in the past, believes it to be accurate).

The following is the description of the purpose of the RFC in its Report and Accounts (a statutory document) submitted to Companies House, and about which there has never been any complaint: “The principal activity of the RFC is to collect funds for the purpose of financing the self-regulatory arrangements for newspapers and magazines in the UK centred on the Independent Press Standards Organisation.”

IPSO’s own website describes its relationship with the RFC in this way: “IPSO is financed by the Regulatory Funding Company (RFC) which is funded by member publishers. IPSO carries out its work separately and completely independently from its members.”

Even Wikipedia states that “IPSO is a self regulator paid for by its member publishers through the Regulatory Funding Company”

It seems to me, therefore, entirely legitimate to characterise the work of the RFC – in a necessarily very short summary – as being to fund the work of IPSO. In this regard, I attach a letter from the Director and Company Secretary of the RFC to confirm that it is wholly appropriate to describe it in this way.

To deal with your specific points; you ask about the Editors’ Code. I would draw your attention to the IPSO website which states that : “The Code is administered by the Editors’ Code of Practice Committee which includes ten editors and five lay members, including the Chairman and Chief Executive of IPSO.”

The Editors’ Code of Practice Committee has its own website, which you can access here -http://www.editorscode.org.uk/about_us.php – and which you will see makes absolutely no link to the work of the RFC.

The role of the RFC in relation to the Code and the work of an independent Code Committee is merely to convene the Committee – which is only an administrative function - and then formally to ratify any changes made to it. These are purely clerical exercises. It does not exercise a policy role in this area. Such functions are far removed from the principal work of the RFC, which is about the funding of IPSO.

You ask if I took the advice of the Registrar of Lords’ interests when making the entry. I e-mailed him on 16th May 2018 as set out below. It was in fact his decision to include the entry in the Register in that way, not my request, as you will see:

From: *Guy Black* [<mailto:guy.black@telegraph.co.uk>]
Sent: 16 May 2018 12:57
To: *Lords Registrar* <LORDSREGISTRAR@parliament.uk>
Subject: *Re: Register update*

Do forgive me coming back with a further amendment, but I have just been appointed a Board Director of the Regulatory Funding Company, which funds the work of the Independent Press Standards Organisation (IPSO). There is a brief explanation of its role on the website here - <http://www.regulatoryfunding.co.uk/>

It is non-remunerated and should, I imagine, go into category 10(a).

Thanks so much

Guy Black

Finally, you ask whether there have been any occasions when any declarations should have been made in the House relating to the work of the RFC, and you highlight in particular consideration of the Commons amendments to the Data Protection Bill on 14th May. The issue debated on that amendment related to the establishment of a Leveson 2 inquiry into relationships between the police and the press. I duly declared an interest as Deputy Chairman of the Telegraph Media Group, because as a publisher it would have expected to be impacted by such an inquiry. As I think I have established above, the RFC has a very narrow remit and the relationship between the police and the press is clearly not one of them. Indeed, as the “Leveson Two” inquiry would have related to historic events before 2011 – and the RFC was only established in 2013 – it is impossible to make any relationship.

I trust that this deals with all of the various points you have raised. If you need any further information, please let me know.

**APPENDIX 4: LETTER FROM DAVID NEWELL, SECRETARY TO
THE REGULATORY FUNDING COMPANY TO THE COMMISSIONER
FOR STANDARDS, DATED 17 APRIL 2019**

Lord Black has shown me a copy of his letter to you dated 17th April in response to your inquiry.

I am writing in my capacity as the Secretary to the Regulatory Funding Company. I can confirm that Lord Black has summarised and referenced entirely accurately the objects, work and role of the Regulatory Funding Company and its Board.

Its work is defined by its title and its Objects. It is to ensure that IPSO is funded by the newspaper and magazine industries at a level which IPSO requires to carry out its role as a Regulator.

APPENDIX 5: LETTER FROM THE COMMISSIONER FOR STANDARDS TO LORD BLACK OF BRENTWOOD, DATED 13 JUNE 2019

Thank you for your letter of 17 April, which I have considered carefully along with other material about the role and powers of the Regulatory Funding Company (RFC).

Registration: description of the Regulatory Funding Company's role

I have considered the Articles of Association of the RFC which give equal weight to its two functions: to fund IPSO (article 2.1) and to convene an Editors' Code of Practice Committee (article 2.2). This equal weighting is reflected in the External IPSO Review carried out by Sir Joseph Pilling which summarises the RFC as having two roles: "to fund IPSO ... and to establish and convene an Editors' Code of Practice Committee".

I have also noted that under article 8.1 members of the RFC (which per article 24.1 must be entities regulated by IPSO) may direct the directors to take, or refrain from taking, specified action. Given that, under article 10.11, the directors of the RFC must approve, following consultation with the regulated entities, any amendment to or replacement of the Editors' Code proposed by the Editors' Code of Practice Committee, this suggests that the RFC's role in relation to the work of the Editors' Code of Practice Committee has the potential to be more than simply a clerical one.

Given the above, I do not think it is unreasonable to consider the description including only one of the RFC's two objectives to be misleading by omission, though I do not wish to suggest at all that this was your intention.

My view is that it would be within the spirit of the Code—the purpose of which is to provide the openness and accountability—for your register entry to describe both aspects of the RFC's role.

A revised entry need not be very long. For example, though the precise wording would remain your responsibility, I expect that the following would suffice:

"Board Director, Regulatory Funding Company (funds work of Independent Press Standards Organisation (IPSO) and convenes an Editors' Code of Practice Committee)"

Declaration during proceedings on the Data Protection Bill

With regard to declaration, the Code of Conduct states that the "test of relevant interest is whether the interest might be thought by a reasonable member of the public to influence the way in which a member of the House of Lords discharges his or her parliamentary duties".

As the debate on amendment to the Data Protection Bill you took part in related to press regulation. I believe that a reasonable member of the public would consider the Regulatory Funding Company—particularly given the powers and responsibilities I describe above—to be relevant to questions of press regulation. I therefore consider that you ought to have made a declaration during that debate.

Next steps

Given the above, my conclusion is that you have breached the Code. However, in both cases I believe remedial action would be a sufficient response.

The Guide to the Code of Conduct says:

“remedial action involves “putting the record straight”, for instance by making an amendment to the Register; the member will also normally be expected to make a formal apology in writing to the chairman of the Conduct Committee.”

In this case I believe both an amendment to the Register (as set out above) and a letter to the Chairman of the Conduct Committee would be appropriate.

If you were content to take such remedial action my report would summarise the case and the remedial action taken. The report would be published only on my pages of the parliamentary website and the matter would go no further.

Should you wish to meet to discuss this further, please let me know and my office will make arrangements.

APPENDIX 6: TRANSCRIPT OF PHONE CALL BETWEEN THE COMMISSIONER FOR STANDARDS AND LORD BLACK OF BRENTWOOD ON 12 AUGUST 2019

Lord Black of Brentwood: Thank you very much for fitting in this call this morning. I think we have a window between when you're away and when I'm away. That's the occupational hazard.

The Commissioner for Standards: Yes.

Lord Black of Brentwood: I am grateful for your letter and for the offer of a call. There are some points that I'd like just to cover for my own information as much as anything else, and for an understanding of how to move forward to a resolution of this matter.

The Commissioner for Standards: Yes.

Lord Black of Brentwood: I'd like to just run over those, if I may.

The Commissioner for Standards: Sure.

Lord Black of Brentwood: You may not necessarily want to deal with them all at this particular moment. I am very happy to pop them in a little letter afterwards, in case you want to come back to me on any of them in writing. Are you happy to proceed on that basis?

The Commissioner for Standards: Yes, I am, Lord Black. The benefit of us recording this is that if I'm very clear about what it is you want to cover, then even if I don't answer during this conversation, I can get back to you by email quite quickly afterwards.

Lord Black of Brentwood: Indeed, which is absolutely fine for me. Just to underline the point of this call, I know that this is in many ways seen as quite a straightforward complaint. For me, it's a very important one, obviously for personal reputational reasons, but I think it does have and could have ramifications for the wider debate over press freedom and regulation. That's why I wanted to make sure that every procedural and policy aspect had been worked through. Forgive me for making that point at the start but that's why this is an important matter for me—just to underline that. I take it very seriously and that's why I'm grateful for this call.

The Commissioner for Standards: That's absolutely fine, Lord Black. You can raise whatever you like and I'm very, very happy to hear it. If there's anything that's not within my area of competency, as it were, I will let you know. But say anything.

Lord Black of Brentwood: Okay. These points are in no particular order. The first is that I have had, as you know, a number of years of complaints-handling experience and regulatory experience and it just struck me, looking at this right at the very start, that this is genuinely a classic example of a vexatious complaint. It was made almost a year after the entry in the register. It was made by a press officer of a lobby group which is known to be hostile to me and to the press in general. It was publicised, contrary to your own guidance, before you even received the letter. It had, in other words, all the classic hallmarks of a campaigning complaint—a vexatious complaint, one done solely for publicity purposes. That's why I was

surprised it was taken up. It's a matter for you which complaints you take up but I was just wondering what consideration was given as to whether or not, or how, vexatious complaints are defined in these circumstances.

The Commissioner for Standards: Well, I'm not sure that they are but I'm very happy to come back to you with my definition of what vexatious is. I think that would be something that I would want to give thought to. I mean, clearly, vexatious is a ground for not investigating a complaint, but I'd want to come back to you with my definition.

Lord Black of Brentwood: Fine. I'm very happy with that. The second point is a procedural one about the requirements for category 10 interests, because it seems to me that the judgment here pushes the window of what the reporting requirements are for category 10 registrations, even allowing for a fairly wide definition of "spirit of the code". I took a look through the category 10 registrations of fellow Peers—just the ones beginning with A and B, only for the reason that they are right at the start of the alphabet—to see what other people put down for these things. In many instances, there is absolutely no description given at all, even where the interest is much, much more obscure than something which is called the Regulatory Funding Company and then has a link to a website. You've got it but I can send you that list. What I'm anxious to know is why I seem to be being singled out in this way, or is this going to be a new policy for all category 10 registrations? If that's the case, how is that going to be communicated to the House so that no other Peers fall foul of that?

The Commissioner for Standards: Yes, that's a very fair point. Once again, I've got some thoughts about that but I think I'd like to give you a comprehensive answer, so I'll come back to you on that.

Lord Black of Brentwood: Of course, I understand. That's absolutely fine with me.

The Commissioner for Standards: Just to say again, there's no new policy that people haven't been made aware of. It's to do with interpretation of the existing policy.

Lord Black of Brentwood: Yes, but of course once a policy has been interpreted on the back of a complaint, it becomes a wider policy.

The Commissioner for Standards: Yes, it becomes an interpretation that people should know about and I will do everything I can. If there's a change in people's perception, as there have been with one or two recent outcomes of complaints, then I do my best to make sure that that is widely known.

Lord Black of Brentwood: I suggest looking at the list of category 10 registrations because it has quite significant ramifications. All I'm asking is for you to think about that and perhaps come back to me.

The Commissioner for Standards: Yes, I'm happy to do that.

Lord Black of Brentwood: The next point: as you know, because I put it in the original correspondence, I never actually suggested the wording for this entry. I put it to the Registrar, who's always been extremely helpful, and he took it and then put it into the entry. He never raised the matter with me. He certainly never raised wider policy issues. I was just wondering whether, as part of this process, you had talked to the Registrar about why he'd chosen to deal with it in that way.

The Commissioner for Standards: Well, I certainly haven't spoken to him and I don't think anyone working with me has spoken to him about it. I don't think that I could get any help from him, actually, because it is up to me to decide on that. But I'll take it away and think about it.

Lord Black of Brentwood: I see it's up to you to decide, obviously, on the complaint—I fully understand that—but presumably he has a role in these circumstances in working with Members of the House on their registrations.

The Commissioner for Standards: Yes, he has, and there is—I can't immediately lay my hands on where it is in the Code of Conduct—information about the responsibility of the Member regardless of any advice that they might be given. So I'll dig that out and I'll send it to you.

Lord Black of Brentwood: Okay. This is a slightly allied point but, again, looking at the vast majority of registrations, isn't the most straightforward way of dealing with this complaint actually to remove the description entirely, leaving ordinary—whatever they're called—reasonable members of the public who are interested in these matters to make their own further investigations into what an organisation is about? That seems to be the policy for the vast majority of them. Is that something that you've considered as to how to deal with this one—simply to take out the description entirely?

The Commissioner for Standards: Well, I can see the attraction of that, Lord Black, but seeing as there is a description, which is accurate as far as it goes—

Lord Black of Brentwood: But which I never asked to be put in,

The Commissioner for Standards: No, but you agreed to it being put in, and seeing as there is a general imperative towards openness and transparency, I think it would be a bit perverse of me to say that the best way of dealing with this is to take out what is already there. That's a conversation that you could have with the Registrar but it wouldn't be something that I could promote.

Lord Black of Brentwood: Right. Okay. That may be something, then, as they say, to park for the time being, but I've raised it because of what appears to be a more general policy about category 10 registrations.

The Commissioner for Standards: Sure.

Lord Black of Brentwood: We're nearly there, you'll be pleased to hear.

The Commissioner for Standards: No, no, it's fine. Carry on, it's interesting.

Lord Black of Brentwood: I was just interested because in my letter I set out to you quite a wide range of references about the work of the RFC, which included something from its director, something from the code committee and something from IPSO, as well as other things that came from Wikipedia and all the rest of it. The vast range of material out there is completely in accordance with what the register currently says. But you're taking a view which is different from them and what I'm really wondering is whether you could be construed as saying, in effect, that these websites, descriptions of organisations, et cetera, are inaccurate. I'm wondering what the implications are, therefore, for those other organisations of a decision in this area.

The Commissioner for Standards: Well, I think that people and organisations—I include Wikipedia in this—will put things in that seem to them to be relevant.

I'm not criticising them for the way that they describe the Regulatory Funding Company's roles but I relied on what seemed to me to be the most authoritative sources of information, one of which is its own articles of association and the other of which was the external IPSO review by Sir Joseph Pilling. That's what I've relied upon. I completely understand that other people have come to different conclusions or said different things, but that's the way that I have made my decision.

Lord Black of Brentwood: I see that and I'm grateful for that. Of course, articles of association sometimes don't exactly mirror what an organisation actually gets up to. I don't think I've ever seen the articles of association of the Telegraph Media Group but goodness knows what sorts of issues and areas they cover. They will cover everything from general policies to who's able to sign cheques. The issue, I suppose, for me is that the word "convene"—I'm sorry, I'm getting into the minutiae of regulatory territory but then that's something you're well used to—as a verb means just that: to convene something. It doesn't imply that there's any further ongoing involvement, interference or anything like that. The Regulatory Funding Company had to have that power because of the way the constitutional overlap happened between the Press Complaints Commission and IPSO—that they were in effect the same company. Lord Hunt of Wirral was the chairman who overlapped the two of them—he was the last chairman of the PCC and the first chairman of IPSO. That was solely for the purposes—I think he was chairman of IPSO for about two hours or something while he signed the new contracts, which bound publishers into IPSO. Similarly, the Regulatory Funding Company, as the successor body to the Press Standards Board of Finance, had to have the power—the legal and constitutional requirement—to convene a committee, which then after that is an independent body. I wasn't on it at the time but I don't think since the RFC was founded in 2013 it has had any involvement in the work of that committee whatever, and it has had no need further to convene it because it now exists. My anxiety here is that the policy judgment that this decision seems to be making is that there is ongoing involvement there because of the use of the word "convene" in the articles of association, when in fact it was just a legal requirement *ab initio*, as our legal friends would say, and there is no further, ongoing involvement since then. It seems to me that that is quite an important point to take on board.

The Commissioner for Standards: Yes. You're right that there is the question of what "convene" means but actually in my letter to you of 13 June I also referred to article 8.1 of the articles of association, where the RFC may "direct the directors to take or refrain from taking specific action", and then I go through a complicated—I can tell you, it was complicated thinking about it—interconnectedness that means, whether or not the RFC is actively involved in the activities of the Editors' Code of Practice Committee, and I completely accept that it is not involved on a day-to-day basis at all, that it does still have power and influence in relation to that committee, at least on paper. I think that is the point that the suggested rewording is intended to make, although rather mildly, because we're not suggesting that the new definition in the register would talk about all these other ways in which the RFC is enmeshed with the committee.

Lord Black of Brentwood: Yes. I take that point but it will be taken by organisations which want to do damage to these other organisations.

The Commissioner for Standards: I do understand. We live in a world of weaponizing opportunities, don't we, and people weaponise things that we wish they wouldn't but that doesn't get away from the point that this is what I

think is a proper description. The obvious corollary of that is that by saying that remedial action by amending the register is sufficient, I'm making it extremely clear that there's no suggestion that there's been any skulduggery lying behind the unamended entry in the register. I'm perfectly happy for anybody to make the point that this is a fairly minor alteration in the interests of accuracy. So, yes, journalists—you know more about journalists, I know more about lawyers—they have their axes to grind and so on, but I'm afraid that's not something I can really take into account.

Lord Black of Brentwood: But it does come back into some of the other areas we've talked about, about whether or not this is a vexatious complaint and whether or not it's being treated in the same way as other Members' interests in this area. While I'm thinking about that, the ramifications of it are considerable. In my entry in the register there is the fact that I am the director of the Advertising Standards Board of Finance. The Advertising Standards Board of Finance funds the work of the ASA and has numbers of powers relating to appointments to other places. The implication, I suspect, of what we're doing here is to say that all that needs now to be set out in the register.

The Commissioner for Standards: I will try to deal with that when I write to you. I don't think that is the implication, but I will deal with that when I write to you, Lord Black.

Lord Black: But it's not—I suppose what I'm getting at ...

The Commissioner for Standards: Hello? Have we been cut off?

Lord Black: Hello.

The Commissioner for Standards: Hi—I thought we'd been cut off for a moment there. I don't know if you've been talking and we couldn't hear you, but the last thing I heard you say was, "I suppose what I'm getting at...".

Lord Black: Yes. I suppose what I'm getting at is that if this is not something that has ramifications for other entries—did you get the bit I was saying?

The Commissioner for Standards: About the Advertising Standards Authority—yes, I did.

Lord Black: So if it isn't the case, therefore, that I need to spell out something like that—which, to be honest, is a bit more obscure even than the Regulatory Funding Company—what I am anxious about is that this seems to be being singled out for some form of special treatment, because it relates to the press and Hacked Off and all those lobby organisations. If it needs to be done for this, why doesn't it need to be done for other things? Why shouldn't I have to spell out what the Commonwealth Press Union Media Trust does and what its powers are? I have considerable executive powers at the Telegraph, but there is no requirement for me to do that. That comes back to the point that this seems to be me being meted out for special treatment.

The Commissioner for Standards: Okay, Lord Black—I will take that away and answer it in detail, because obviously I will want to be careful how I phrase it, so that I am as accurate as possible. But I am very happy to assure you that there is no special treatment here. I have no particular interest in press regulation. I know very little about Hacked Off except what I read in the papers. It is not getting any

special treatment and nor are you. I can confirm that I am dealing with this in exactly the same way as I would deal with any other complaint.

Lord Black: Would you be able to assure me in writing, then, that there is no need for me to amend any of my other registers of interest?

The Commissioner for Standards: I will talk to the Registrar. I don't think I can do that—that's not my job to say that people don't need to look at their other registrations. But I will certainly mention this to the Registrar and I suggest that when you're next in the House, you arrange to meet him and go through them with him. If he says they're fine, then they're fine, as far as taking this into account is concerned.

Lord Black: He said this one was fine.

The Commissioner for Standards: No, and I realise, you see, that's the trouble when I try to be reassuring. I can't say what he will say. He may not say that they're fine, because he will say, "Well, it's up to you to say what you put in there". But I can tell you that I will not be going on a fishing expedition in your other registered interests. It's something that you could discuss with him and I will be very clear—and I will make sure that it's very clear in any report that I write—exactly why it is that I have taken the position that I have in relation to this particular complaint and this particular entry in the register.

Lord Black: Okay.

The Commissioner for Standards: Alex has just referred me to paragraph 14 in the Guide to the Code: "Members are responsible for ensuring that their registered interests are accurate and up-to-date. They should register any change"—and so on and so forth. So I'm afraid it is a personal responsibility, but you've invited me to clarify the difference between this and other entries and I will do so.

Lord Black: Fine, because I think that'll be very important.

The Commissioner for Standards: Yes, and I'll do it.

Lord Black: Good. I think that covers everything I wanted to cover. I will, as I said, just—I know you've got a recorded transcript of this conversation, but I will, if I may, just drop you a note on these points.

The Commissioner for Standards: Please do—that would be very helpful.

Lord Black: If I've forgotten anything, or indeed if thoughts arise from this conversation, I'll let you have that.

The Commissioner for Standards: Yes. No, that would be really helpful. Thank you. I am around for the next couple of weeks, but then I'm away for about a week. Depending on when I get your note and when we get the transcript and so on and so forth, I'll hope to get back to you before I go away, but it's conceivable that it won't be until the beginning of September. Is that all right?

Lord Black: Oh, that's fine. Absolutely fine. I'm away for the next couple of weeks. To be honest, I wouldn't want to be dealing with this in the sunshine, if you see what I mean. So the end of the month or the beginning of September would be absolutely fine with me.

The Commissioner for Standards: Okay, all right, great.

Lord Black: Very good. Thank you both—I'm very grateful. I'm sorry if I seem to be beavering away.

The Commissioner for Standards: No, no, no, it's absolutely fine. It's important that we try to cover all the issues.

Lord Black: And I hope you understand why they are important to me.

The Commissioner for Standards: I do, yes. I absolutely do.

Lord Black: Very good.

The Commissioner for Standards: All right.

Lord Black: Thank you so much, I'm most grateful.

The Commissioner for Standards: Okay, bye.

APPENDIX 7: LETTER FROM LORD BLACK OF BRENTWOOD TO THE COMMISSIONER FOR STANDARDS, DATED 13 AUGUST 2019

Thank you very much for your time on the phone yesterday, following on from your letter of 13th June. I appreciated it greatly.

As I underlined, I take this issue very seriously.

This is not just because of my own reputation – which could be damaged by the inevitable publicity from the Hacked Off lobby group – but because of two other issues.

One is the way in which your thinking seems extensively to change the reporting requirements under Category 10 in a manner which has not been brought to the attention of the House and has very significant policy ramifications. This cannot be (I assume) a case in isolation but one which would produce a substantial precedent for all Peers.

The other – and most fundamental – is the potential impact on press freedom as this ruling would be used by individuals who wish to undermine a free press and used as “evidence” that the Regulatory Funding Company is involved in the work of the Code Committee, which it is not. That could have profound consequences, as I explained on the telephone.

I know you have a transcript of our conversation but I thought it would be useful just to recap in writing the key issues we discussed – including one I forgot to mention - and I would be grateful in due course for your written response to them, at which point we can perhaps discuss how to take matters forward. They are as follows:

- (1) Given that this is clearly a vexatious complaint from a press officer at a lobby group, which has campaigned against me personally for many years, why was it taken up and not struck out at the start as these sorts of vexatious complaints (made entirely for publicity purposes) normally are? It would be useful if you could confirm and set out what form or regulatory procedure was applied to the decision to proceed with the complaint, especially as it came eleven months after the entry was made. Also are there any time limits to such complaints; and what is your definition of “vexatious”? You kindly said you would revert to me on this.
- (2) It seems to me that this a highly significant change to the requirements for Category 10 interests. I have done a short analysis of Category 10 registrations – just, as a sample, for Peers beginning with the letters “A” and “B” – and in many instances no description is given at all (even where the interest is highly obscure). In other cases, the description is extremely brief and much less descriptive than my own entry, which was in any case inserted by the Registrar. I set out in the Appendix to this letter the list for your information. Is there any reason why my entry is being singled out in this way – or is this going to be a new policy for all Category 10 registrations? If the latter, how is this going to be considered by, and communicated to, the House so that Peers can make necessary arrangements, as all these entries will need changing?

- (3) You said that you did not take the opinion of the House of Lords Registrar who inserted the entry in his own words after I e mailed him on 16th May 2018 when making your determination. It seems to me that his view is very important as the custodian of the Register – you said at one point that if he was happy with an entry it was “fine” - and I would be grateful if it was possible (as you kindly said it might be) to get a view from him. I will also try and speak to him when the House returns.
- (4) The “spirit” of the Code, under which these complaints have been investigated, only requires a “reasonable member of the public” to deduce the nature of the interest. The entry in the Register directs any such member of the public with an interest in these issues to the website of the Regulatory Funding Company (which, again, hardly any other registered interests do), from which they can discover any factual material they need to. What makes the work of the RFC so different from other interests that a “reasonable member of the public” could not discern everything they needed to from a website? I neglected to mention this point on the phone – for which my apologies - but would be grateful for your comments.
- (5) In terms of possible remedies to this complaint, I asked whether the most straightforward way to deal with this is to remove the description entirely, putting it in line with the vast majority of Category 10 registrations. This is something I would be very happy to do, and I would be grateful if you would give it your consideration, perhaps in conjunction with the Registrar. I shall also speak to him on the point.
- (6) In my letter of 17th April, I listed a wide range of references – including testimony from the Director of the RFC, and the websites of IPSO and the Editors’ Code Committee – confirming the points I have made, and quite clearly disproving the point made by the Hacked Off press officer. I understand that you have conducted your own investigation into the Articles of Association but could you set out for me your own view as to the validity of these other points because it seems to me rather important for future policy discussions about press regulation matters. If you are saying these are inaccurate, then surely steps would need to be taken to correct them? Would you be writing to the RFC, IPSO and the Code Committee to suggest alterations to their own websites? Or indeed raising complaints with the Advertising Standards Authority?
- (7) Apart from having looked at the Articles of Association and the Pilling Report, I would be grateful if you could let me know if you have any other evidence of RFC involvement in the Code other than in the administrative act of “convening” the Committee back in 2013. As I explained, that was necessary purely as a matter of law, in bridging the gap between the PCC and IPSO. (Indeed, it was for that reason that Lord Hunt of Wirral became the first Chairman of IPSO, but merely for 24 hours or so to allow him to sign the new contracts establishing the body.) It seems to me that this is an important point of evidence if it is to be asserted that matters relating to the Code Committee are equal in weight in the RFC’s work in organising funding. If there is no evidence of RFC involvement in the Code since then, it can hardly have “equal billing” with the raising of funds.

- (8) We discussed the issue of whether this matter was being treated as a special case. I cited my Directorship of the Advertising Standards Board of Finance (ASBOF) which funds the work of the ASA and has powers of appointment and indeed powers in other areas. You said you thought there was no need for me to change my registration in this regard (I have no description) which concerns me because it implies that the RFC interest is being treated on a special basis. As a matter of natural justice, if it needs to be spelled out for the RFC, surely it needs to be spelled out for its sister body – and indeed, as I set out above, for all other Peers' Category 10 interests?
- (9) On the issue of the Data Protection Bill, I underline again that the matters under discussion were about historical issues which pre-date the establishment of the RFC. But given that I sit in any case on the RFC as a representative of Telegraph Media Group (the RFC being a membership body of which TMG is one member), why is that declaration on its own insufficient? TMG has long been a well-known supporter of self regulation and a free press, as a reasonable member of the public would be aware, and its aims and values accord entirely with those of the RFC. Quite how far do declarations have to go in such circumstances? Forgive me that I did not get chance to mention this point on our phone call.

I am grateful again for your time, and for your consideration of these issues. I hope on the basis of our discussion and after looking at these points, which I know you will need time to do, you may reconsider your decision.

I look forward to hearing further from you on in due course.

APPENDIX 8: LETTER FROM THE COMMISSIONER FOR STANDARDS TO LORD BLACK OF BRENTWOOD, DATED 16 SEPTEMBER 2019

Please accept my apologies for not having been able to respond to your letter of 13 August sooner.

Before I respond to the points you raise in your letter, I think it would be useful to note that my role is to investigate allegations of breaches. Other than in exceptional circumstances and with the agreement of the Conduct Committee, my remit is limited to investigations into specific complaints.

In your letter you note that the nature of your entry in the register cannot be a case in isolation and ask whether your entry is being singled out. It may be that other entries from other members would also be found to be insufficient if investigated, but as it is your entry that has been complained about, it is only yours that I am currently considering.

You also mention the impact my determination may have on how the Regulatory Funding Company (RFC) is portrayed by some. My role is to consider whether the allegation amounts to a breach of the Code of Conduct. It would not be appropriate for me to take into account considerations beyond that.

You also asked a number of specific questions to which I now respond.

Vexatious complaints

The Code of Conduct allows me to dismiss complaints which are “clearly trivial or vexatious”. I consider a vexatious complaint to be one which has no merit, and as my initial research identified a matter that required investigation, the complaint had merit and was not vexatious. I do not concern myself with the motives of those making complaints, firstly because I am not required to do so, and secondly because it would usually be an impossible task.

Time limits for complaints

The Guide to the Code of Conduct says that a “complaint must usually be made within four years of the conduct complained of”.

Singling out the RFC entry

As noted above, I have not singled out your register entry. The only reason for my investigation into your register entry is that I have received a complaint about it. Were I to receive complaints about other members’ entries under category 10 I would investigate accordingly.

Registrar’s advice

I have seen the email you sent to the Registrar on 16 May 2018. The wording used in the register entry is drawn from that email. It is not the responsibility of the Registrar to investigate or challenge the details provided by members for the register unless specifically asked for advice. Where a member asks for advice and acts on that advice, they are deemed to have satisfied the Code. However, in this instance you did not seek the Registrar’s advice about the wording and the responsibility for ensuring the requirements of the Code were met remained with you.

Reasonable member of the public

The Guide to the Code of Conduct defines a reasonable member of the public as “an impartial and well informed person, who judges all the relevant facts in an objective manner”. My conclusion is that once informed by, for example, the RFC’s Articles of Association a reasonable member of the public would conclude that the RFC has two objectives and that the current entry in the register, by referring to only one of those objectives, is incomplete.

The same principles would apply to any other entry in the Register but, as above, it is your entry that I am bound to investigate because the complaint has been made.

Removing the description

I could not sanction this as a remedy. My view is that entries in Category 10 ought to include a broad indication of the relevant business.

Other descriptions of the RFC’s role

It is not my role to comment on the accuracy or otherwise of other publications. I am concerned only with the extent to which your entry in the Register complies with the Code of Conduct.

No evidence of the RFC’s involvement in the Editors’ Code

I do not dispute your description of the activities of the RFC. However, this does not take away from the fact that, according to the Articles of Association, the Company has two objectives, only one of which is reflected in your entry in the Register.

Descriptions of other interests in the Register

I have considered your points about how other entries in the Register ought to be described. The requirement is for a broad description of the body’s activities if it is unclear from the name. In the case of the RFC I believe the description ought to cover both of the Company’s objectives as including only one is misleading. For other companies a similar pattern may be necessary. In other cases, where a company has many activities quite a high-level description may be appropriate. Where a company’s business is clear from its name, no description is required. In each case, the Registrar will be able to advise.

Data Protection Bill

I’m afraid I have little to add to what was included in my letter of 13 June. The debate you took part in was concerned with press regulation. While your directorship of the Telegraph Media Group was relevant, and properly declared, your position with the RFC was also relevant and ought to have been declared. They are two separate interests and the declaration of one cannot be considered as encompassing the declaration of the other, no matter how closely connected.

Next steps

I would still be content to resolve this complaint by remedial action, as set out in my letter of 13 June. If this is not your preference, the next step would be for me to report to the Conduct Committee, along with my recommended sanction, for them to consider.

Please do let me know which route you would prefer.

**APPENDIX 9: LETTER FROM LORD BLACK OF BRENTWOOD TO
LORD MANCE, CHAIRMAN OF THE CONDUCT COMMITTEE,
DATED 9 DECEMBER 2019**

The House of Lords Standards Commissioner received a complaint from the Hacked Off lobby group about an entry in my Register of Interests relating to a Directorship of the Regulatory Funding Company and my declaration of interests in a debate on the Data Protection Bill on 14th May 2018.

Following her investigation, I have agreed with the Commissioner the terms of an amendment to the Register and I am asking the Registrar to do that.

In regard to the debate on 14th May, I made a full declaration of interest as Deputy Chairman of the Telegraph Media Group. I did not believe that other interests were relevant to the debate in question and, as I sit on the Board of the Regulatory Funding Company on behalf of the Telegraph, I did not think I needed to do so. I apologise for this error and for omitting to do so on this occasion and will, of course, make sure that I do so in any future debates on these subjects.