

**APPENDIX A**

Extracts from "A Press Free and Responsible", by  
Professor Richard Shannon relating to the  
establishment of PressBof

## CHAPTER ONE

*'An industry in a panic': from Press Council to Press Complaints Commission, 1990*

'What matters in the Calcutt debate is that the case for self-regulation was considered and won the day.'

Simon Jenkins, *UK Press Gazette*, 2 July 1990

'The minority view, that editors should have nothing to do with Calcutt and defy the Government to legislate, has considerable bravado appeal but it has lost the day and it is time that everyone made the best of what we all accept is a bad job.'

*UK Press Gazette*, 2 October 1990

At the beginning of 1990 the British newspaper industry was disquieted and apprehensive. Calcutt and his Committee on Privacy and Related Matters had been taking evidence for several months. The Committee consisted of one Social Democrat MP, one former member of the Press Council, three lawyers and two journalists, one of whom was Simon Jenkins, then editor of *The Times*. It was known that they were seeking information from France, Germany, Canada and the United States. Would they opt for something drastic in the way of privacy legislation? Or, even worse, a regulatory tribunal with powers to discipline the press? There were MPs demanding that newspapers deemed guilty of repeating 'untrue' allegations be subject to punitive suspension. The Labour party policy review envisaging statutory press supervision was in preparation. Mellor's quip about drinking in the last chance saloon took on a life and notoriety of its own, much bandied about in newsrooms and pubs in the spirit of black comedy and *absit omen*.

It was not beyond conjecture that the government might use Calcutt's forthcoming report to clear away the Press Council and absorb press regulation into an inclusive statutory media complaints body. Observers of David Mellor's handling of the new Broadcasting Bill felt they had reason

to suspect that the statutory Broadcasting Complaints Commission (BCC), established in 1980, was being promoted as a model for the press; that indeed Mellor seemed to have in mind the advantages of co-ordinating media regulation in both press and radio and television. This, Mellor seemed to be saying, was preferable to a privacy law. And if the Calcutt Committee was minded to take the statutory option either by proposing a transformed Press Council or an entirely new body, they would find the Home Office in support.

To the newspaper industry the BCC model was a dangerous one. The BCC dealt with programme-makers who were already guided and regulated by strict codes. The print medium was an entirely different breed. Rather than start down this slippery slope, press interests urged, it would surely be better to give the Press Council a chance and let the ombudsmen being appointed by newspapers have time to prove themselves. The Press Council, after all, had just published its tough Code of Practice. 'A statutory complaints commission sounds like a modest step', *The Times* pointed out, 'but it is more like crossing the Rubicon.'<sup>1</sup>

To many in the industry the Council's Code was itself quite enough of a crossed Rubicon to be going on with. Blom-Cooper proposed that the Council commence operations on the basis of its Code as from 1 March. In *The Press and the People: the 36th Annual Report of the Press Council, 1989*, Blom-Cooper argued his case with an accomplished barrister's skills. On the one hand he stuck to his guns on the theme of the Council's unique vocation to integrate defence of press freedom with rebuke of press excesses. None of the three Royal Commissions, he pointed out, had given the 'slightest hint' that there was any incompatibility. This was the burden, of course, of Blom-Cooper's evidence on behalf of the Council to Calcutt. And he now had his Code to display as an earnest of good faith. His main failure in the Council review was not to get the waiver of legal redress past James Evans and Bernard Shrimmsley.

On the other hand, as a result of that Council review, Blom-Cooper now was armed with 'several radical proposals which have concerned newspaper editors and proprietors'.<sup>2</sup> The sixteen-point Code of Practice was not in itself at the head of this industry agenda of concern about Blom-Cooper's doings. The NPA editors' group under Whittam Smith were gearing up to formulate their own version. What an unmollified industry was looking at was a series of disciplinary procedures with which the Council proposed to arm itself and which was designed to put editors invidiously on the spot. The Council now expected its censure to 'discredit

editors and journalists at whom it is aimed and to be weighed by their employers'. One proposal in particular was eventually, after various permutations, to have interesting repercussions. 'That in appropriate, serious cases where the Council itself rather than a complaints committee adjudicates against the conduct of an editor, it should invite the proprietor or publisher to recall the commitment he has given to uphold the Council's principles, and ask what he intends to do about the conduct of his paper in the future.' Blom-Cooper's strategy was to woo Calcutt with this strong medicine for the industry while trusting that Calcutt would not follow the Geoffrey Robertson line that a press freedom body could no longer be a convincing press rebuke body. In the end, by trying to have it both ways, Blom-Cooper failed to have it either way.

Meanwhile, having not endeared himself to the industry by prescribing nasty medicine, Blom-Cooper then endeared himself even less to his paymasters by asking for more staff and a budget of a round £1 million for 1991. The Council was facing charges of £850,000 with an income of £574,000. The industry was reluctant to pay up. Edward Pickering recalled how he and his fellow Times Newspapers executive Denis Hamilton used to make the rounds of press offices on Friday nights with a begging bowl to cadge money for the Council.<sup>3</sup> Industry people, it appeared, responded to the new financial demands with 'barely concealed fury'. The Newspaper Society stumped up to save self-regulation, not to save Blom-Cooper. The chairman, indeed, was thought 'now likely to have to listen even more carefully to criticism' of his Council's review. That the NUJ chose this moment to return to the Council they had flounced out of in 1980 probably did little to boost Blom-Cooper's sagging credit. It looked too much like a case of the hacks rejoining the sinking ship.

Then, as Calcutt loomed, the industry scored a spectacular own goal. A popular television actor, Gordon Kaye, badly injured in a freak accident, lay desperately ill in Charing Cross Hospital. A reporter and a photographer from the *Sunday Sport* contrived access and subjected the stricken man to their attentions. The *Sunday Sport* editor thought this exploit a 'great old-fashioned scoop'. Even for what was disdained as an entertainment sleaze-sheet rather than a newspaper, this was held to be a scandal too far. The Committee on Privacy and Related Matters naturally took note of what instantly became a landmark in atrocious intrusiveness.

Defence of the press was now pushed on to the back foot. The Press Council's solemnly proclaimed principles evidently were floutable with impunity.<sup>4</sup> At the Guild of British Newspaper Editors' conference at

Nottingham the theme was 'Has the Press gone far enough in its attempts at self-regulation?' Brian MacArthur at *The Times* extolled the *Washington Post's* Code of Practice as a model which would 'hinder not one jot our ability to report and investigate but would raise us significantly in the eyes of the public. . . . I can vouch from my own experience that even editors most guilty of previous excesses now read the writing on the wall.' Editors must make the Press Council work. The 'stark truth' was that for journalists who believe in extending the freedom of the press, 'the Editors' Code and the Press Council are our last options if we are not to get government regulation of the Press'.<sup>5</sup>

In truth the writing was already on the wall. The Press Council's status as any kind of option was fading fast. Its embroilment in the case of a tabloid referring to homosexuals as 'poofters' exposed it to mockery and ridicule as a body of 'pompous laymen and self-important journalists' straying 'too far into the jungles of taste and discretion'. The *Sun* insulted the Council as a 'bunch of loonies'. It was true that the industry often found Blom-Cooper's pronouncements baffling and wayward, reflecting growing sentiment that his appointment in 1988 had been a mistake. The *Press Gazette*, the weekly trade paper, complained of 'hectoring encyclicals'. Peter Preston, editor of the *Guardian*, dismayed at 'dotty' and 'infantile' squabbles in the shadow of Calcutt, issued a call to order and advised Blom-Cooper that his 'new Council will not succeed because it is nurse (in place of something worse) but because it argues its corner with ferocity and verve'.<sup>6</sup>

Ferocity and verve were qualities not in ready supply at the Council. Blom-Cooper had shot all the bolts he had to shoot. But among those giving evidence to Calcutt, oddly enough, were none other than Kelvin MacKenzie, fabled rogue editor of the *Sun*, and his even more fabled rogue proprietor, Rupert Murdoch. MacKenzie, who had been one of the national editors subscribing to the projected Whittam Smith code, assured Calcutt that statutory regulation was superfluous 'now the tabloids have reformed themselves'. With a certain verve he produced thirty recent copies of his paper. 'These days, he said, there was nothing in it he could not show to his maiden aunt.'<sup>7</sup> Whether the Committee (which had a reputation in the industry for being grim) took this stunt in good part is not clear. No doubt they took Murdoch's presence more seriously. That presence was stage-managed by Sir Edward Pickering, a veteran journalist who interpreted Murdoch to his editors, and was reputed to be the 'wisest man in Fleet Street'. Now, seconded by the New Zealander Andrew

Knight, who had recently come across from Conrad Black's Telegraph Group, Pickering interpreted Murdoch to the Calcutt Committee. Their purpose was to sustain press self-regulation. Between them Pickering and Knight smoothed 'ruffled feathers in the corridors of power'.<sup>8</sup>

How successful they were in smoothing Calcutt's feathers remains conjectural. One of the members of the Committee, the Liberal Democrat MP John Cartwright, told the House of Commons how evidence was given by a long succession of prominent proprietors and editors 'who came before us to repent of past sins and assure us that they had all now turned over a new leaf'. But of course every inquiry into the press for the past forty years 'has heard the same pleas and has been persuaded to grant one last chance'.

## 2

That was precisely, in the end, what the Committee on Privacy and Related Matters did. 'Our first main recommendation is that the press should be given one final chance to demonstrate that it can put its house in order.' Calcutt's report was in the Home Secretary's hands by 16 May. It was published on 21 June. Calcutt's own preference from the start was for a tough privacy law. He was thwarted in his hope for unanimity on that score. 'Nowhere', the Committee concluded, 'have we found a wholly satisfactory statutory definition of privacy.' A tort of infringement of privacy should not, therefore, presently be introduced. Nor should there be any extension of the law of defamation. Nor should a statutory right of reply be introduced. However, in the light of the Gordon Kaye case, three new criminal offences involving intrusion by journalists should be created, all concerning varieties of trespass on private property. There should also be further restrictions on press reporting of court proceedings.

So far, from the industry's point of view, a mixed bag, mostly good; but the proposal to criminalize acts of a specific social group was thought both offensive and undesirable in principle. 'We have no evidence of a golden age of media responsibility', the Committee further declared, 'and anecdotal evidence to the contrary is probably tinged with nostalgia.' But the past two decades had seen a new degree of tabloid competition. And it was clear that the Press Council had failed to exert a self-regulatory authority adequate to cope with the problems ensuing. There was need for a 'fundamental overhaul of the present structure and a complete review of the assumptions upon which it depends'. The Press Council's own review did not go far enough to expunge the image of ineffectiveness that it suffered from. 'In our

view the two distinct functions of defending the freedom of the press and adjudicating on complaints sit uneasily together, and only an independent body can effectively carry out that second task.' Calcutt specified that the uneasiness he referred to arose out of the Council's being 'an overtly campaigning body' for press freedom. He therefore recommended that the Press Council be abolished and replaced by a Press Complaints Commission, which would apply itself to providing an effective means of redress for complainants. Revealingly, Calcutt cited the statutorily based Broadcasting Complaints Commission as a model in point, not the self-regulatory Advertising Standards Authority.<sup>9</sup>

Calcutt recommended that the press industry be given a year to establish the new Commission. He specifically advised that the existing Council secretariat not be transferred to staff the Commission, even on an interim, transitional basis. The evidence, then and later, suggests that Calcutt thought of the Commission as an interim transitional body, halfway to his ultimate objective of a statutory press tribunal. He stipulated that, should the industry fail to demonstrate that self-regulation could be made to work effectively, a statutory system for handling complaints should forthwith be introduced. He was careful to offer a model for that. The Calcutt report was as much concerned with the machinery of a potential Press Complaints Tribunal as with the machinery of the proposed Press Complaints Commission. There seems little doubt that Calcutt expected that 'maverick publications' would prove as impossible for the PCC to discipline as they had been for the Council. Giving the industry a period of 'probation' in which to demonstrate the efficacy of its new apparatus – this was eventually set at eighteen months – had the tactical advantage of giving the government a breathing-space timetable in which it could nerve itself to jump through the statutory hoop of flames.

The Committee proposed detailed specifications for the designated Press Complaints Commission. It should publish, monitor and implement a Code of Practice. Calcutt thought the Press Council's version 'too vague'. His own example, decidedly stiff, eschewed any 'public interest' qualifiers to which editors might appeal. The PCC should operate a 'hotline' (much as the Council had already advocated) on a 24-hour basis by which editors could be alerted before publication of potentially objectionable matter. The waiver of legal redress by complainants would be abolished. The Commission should have a chairman independent of the industry and no more than twelve members in sub-committees adjudicating on complaints under delegated powers. Members of the Commission should not be

nominated by industry bodies, though a majority of them should have 'experience at the highest level of the press'. Editors, in other words, would be obliged to monitor each other. Nor did the Council's lay majority seem now a particularly persuasive precedent. Appointments to the Commission should be made by an Appointments Commission, itself independently appointed, possibly by the Lord Chancellor.

In sum: if the newspaper industry wished to maintain self-regulation it should manifest its commitment by providing the money to set up the new machinery within twelve months. 'It must now demonstrate that it can discharge its responsibility and that, through its own conduct and self-regulation, it can command the confidence of the public.' If it was not prepared to put and keep its own house in order, 'further legislation must follow'.<sup>10</sup>

3

The Home Secretary, David Waddington, welcomed the Calcutt report. He confirmed that this was 'positively the last chance for the industry to establish an effective non-statutory system of regulation'. Ministers at large welcomed it, as well they might. It let them off several awkward legislative hooks – privacy, defamation, right of reply – which were inconveniently popular in both Houses of Parliament. Best of all, it postponed having to attend to the most awkward hook of all, subjecting the press, most of it Tory, to statutory regulation. To Calcutt's initial grace of a year to the industry, add eighteen months of probation, and you are at the beginning of 1993; and in any case there would have to be a general election by 1992. As for the recommended legislation against journalistic intrusion, that would be 'carefully considered'. Waddington concurred in the new Commission's being modelled on the Broadcasting Complaints Commission. Ministers recognized that the press industry had made some attempt in the past year to respond to public concern about abuses, and high tribute was due to the chairman of the Press Council for his valiant efforts to modernize and make effective the existing system of self-regulation; but ministers could not offer a reprieve against Calcutt's verdict and sentence of death. For the Labour party Roy Hattersley gave the report's recommendations an 'unqualified welcome' and undertook to 'happily co-operate in their implementation'. He was particularly concerned to endorse Calcutt's stiff definition of what would constitute demonstrative failure on the industry's part: a 'single maverick paper ignoring the proposed new code of conduct' would trigger statutory regulation.<sup>11</sup>

For Blom-Cooper and his Council, Calcutt's verdict and sentence, and the government's refusal of reprieve, was a horrifying shock. Even more shocking, in its way, was the failure of the industry to rally to the Council's defence. The industry disliked Calcutt; but that dislike was not translated into any better liking for the Council. That the NUJ rallied to the Council's support only confirmed the inevitability of non-reprieve.

Of journalism's luminaries, Charles Wintour, ombudsman for *The Times* and the *Sunday Times*, was one of the few with a kind word to say for the doomed Council. He thought Waddington 'unnecessarily brusque'. But of course the press could not expect sympathy. Still, 'in view of his extraordinary failure so far to consult the industry he is so close to confining in a statutory strait-jacket he might yet be persuaded that reform of the Press Council along the lines recommended . . . would be far more sensible than his current plan'. Surely, Wintour urged, the Press Council, with the spur of this report behind it, could reform itself far more rapidly and effectively than a commission could be established. 'It is half-way there already. An office is manned; a chairman whose reforming zeal is fully acknowledged by Calcutt sits already in place.'<sup>12</sup>

It would be that zealously reforming chairman's fate to sit vainly in place. For the most part reaction from the industry shared the government's relief but not the government's satisfaction. Statutory regulation had not been summarily imposed; but the reading of Calcutt prevalent among journalists was that, in the words of Ian Beales, chairman of the parliamentary and legal committee of the Guild of British Newspaper Editors, its 'great danger' was that it appeared 'to open the way to statutory control'. The Guild announced that it looked as if the aim was 'to fit the press out with a strait-jacket and invite us to do up the straps'. The Association of British Editors, a lobby group of senior media figures, accused Calcutt of being 'another turn of the screw against the free working of the press in Britain'. There were aggrieved protests against the invidious anti-intrusion proposals and the abolition of the waiver of legal redress. Proprietors contributed their thoughts. Robert Maxwell at the Mirror Group was rather bland and non-committal, perhaps reflecting the suspicion the *Mirror* people nursed that Murdoch's espousal of self-regulation was manipulatively self-interested. Lord Rothermere, on the other hand, on behalf of his Associated Newspapers empire denounced Calcutt's line of reasoning as illogical and unjust: 'that if just one of our number – even if a sleaze sheet rather than a proper newspaper – steps out of line, then the whole lot of us will have statutory fetters clamped on us'.<sup>13</sup>

For the regional press, the Newspaper Society was inclined at first to resist. The fate of the Press Council, insisted the Society's director, Dugal Nisbet-Smith, was not up to outsiders. 'The Press Council is thankfully not a creature of the state. It is not for Mr Calcutt, or the Government, to determine its fate without legislation.' The Society was seeking urgent meetings with the Home Office and other newspaper industry bodies to explore the implications for press freedom.<sup>14</sup> Nicholas Herbert, editorial director of the Westminster Press regional group, advocated telling Calcutt to do his worst. Talk among the regionals about setting up their own regulatory arrangements uninfected by the tabloid nationals had faded in the face of the practical difficulties involved. There were too many structural links with the metropolitan press to make divorce feasible. The NS had in fact already proposed the formation of a Press Council Board of Finance, advised by George Bogle, who had set up the model, Asbof, the Advertising Standards Board of Finance, which levied its constituent bodies.<sup>15</sup> Here indeed was the origin of Pressbof, the Press Standards Board of Finance, established in 1990, with Nisbet-Smith as its prime begetter; but the Press Council was not to be the beneficiary of it.

From the nationals, meanwhile, responses were no less doubtful. At the *Daily Telegraph* the editor Max Hastings felt it remained to be seen 'whether the most serious betrayers of press standards take Calcutt's warnings seriously. I still believe that the difficulties of defining offences against acceptable behaviour in a form that can be codified are somewhere between very great and insuperable.'<sup>16</sup> Peter Preston at the *Guardian* explored the theme of 'heavy boots on a slippery slope'. Calcutt, having abolished the Press Council, 'thereupon creates the most curious quango known to political man'. The report's 123 pages were wholly lacking in evidence of an overwhelming 'public demand'. There was irony in the Press Council's having made a sweeping refurbishment just as its death warrant is signed. Calcutt creates a 'painstaking sort of half-way house' and calls it the Press Complaints Commission. 'That is the curious quango.' Its membership, Preston foresaw, was to be 'handed down from Whitehall via the corridors of London clubland. . . . One awaits, heart in boots, for the emergence of Lord Rees-Mogg as chairman designate.' Calcutt was an 'alpine vista of slippery slopes'.<sup>17</sup>

At *The Times*, Simon Jenkins, one of Calcutt's colleagues, decided that some calling to order would be salutary. There was no clear or conclusive evidence, he insisted, that press behaviour had worsened or that self-regulation could not work. The press was always unpopular when passing

through phases of intense competition. The Calcutt Committee, 'after prolonged debate', decided that self-regulation in the matter of privacy should be given a last chance. Most witnesses agreed that the press was behaving better than it had been just a year ago. 'But we had to accept that a wide range of public and political opinion felt that the Press Council had insufficient authority.' Some new body was needed specifically to investigate complaints, independent of the industry and with more staff and money to act swiftly. Publishers, Jenkins urged, should back the new Commission, and ensure that editors make it work. What was the alternative? A law against intrusive journalism would become a shambles. Either it would not protect the weaker, or poorer, victims of press intrusion, or it would lead to the litigation virus infecting American newspapers. There privacy laws had become a surrogate for libel. 'The freedom to search out news is worth keeping outside the courts or the control of the state. A framework for such freedom is on offer. The press should seize it.'<sup>18</sup>

As dire prognostication about Calcutt followed upon dire prognostication, Jenkins returned to his unapologetic defence. The press was 'too gloomy about Calcutt'. Notions that there was a threat to press freedom were 'absurd'. 'Press freedom grows ever more fragile when the press reacts to criticism with the same cry as do lawyers and doctors: "A great profession at work, public keep out."' What mattered in the Calcutt debate was that 'the case for self-regulation was considered and won the day'. Of course the industry could sit tight on its dignity and tell the 'get tough with the press' lobby that it was right all along. That would put the clock back a year, a year in which the press had largely neutralized the 'get tough' lobby. 'The dogs are sleeping', Jenkins urged. 'They will never go away, but at least we have a chance to let them lie.'<sup>19</sup>

At the *Sunday Telegraph* a different order of question was being asked. If the Home Secretary 'gave every sign of being genuinely outraged' by the excesses of the tabloid press, what of the Prime Minister herself? For not only did Mrs Thatcher regularly invite Mr Murdoch, owner of the *Sun* and the *News of the World*, to Chequers; she also knighted Larry Lamb, 'the creative editorial genius who launched the *Sun* on its triumphantly successful muddy path'. A barony was conferred as well on the owner of the *Daily Star*, David Stevens.

The reason Mrs Thatcher favours Mr Murdoch and the other offending tabloid proprietors and editors . . . is because she draws great political benefit from their editorial support. It is said, probably rightly, that the support of *The Sun* can

make or break the fortunes of the Tory Party. On the one hand, the Prime Minister honours and encourages these invaluable political partners; and on the other, her Home Secretary threatens to prosecute them for vile intrusions of privacy. A certain hypocrisy here.

The question that really ought to be asked, thought the *Sunday Telegraph*, was 'why these offending newspapers, the nastiness of which is not equalled anywhere else in Europe and North America, are so enormously popular'. People 'love to read the muck'. That was the real problem, which Calcutt will do little to solve. All that will be done will 'amount to brushing the dirt under the carpet'; and sacrificing press freedom 'seems to be a heavy price for doing that'. Why does not the Prime Minister set an example by herself 'ostracising and publicly attacking the offending proprietors in the vastly effective manner of Stanley Baldwin, her brave predecessor, who compared them . . . to prostitutes exercising power without responsibility?'<sup>20</sup>

The short answer to that question was that, for all the fame of his execration of hostile proprietors, Baldwin cultivated friends in the press as assiduously as any other political leader. The larger question about the relationship of a political party to its invaluable partners in the press vis-à-vis policy on press regulation would echo, unanswered, for years to come.

4

The Press Council reacted naturally with dismay. After all the labour of its review, after all the evidence it had contributed, Calcutt's verdict seemed ungrateful as well as cruel. The Council was a going concern. Its offices at Salisbury Square were indeed manned. Its reforming chairman indeed sat ready in place. A six-hour crisis meeting on 26 June produced a defiant response: 'neither the Calcutt Committee nor the Government has the right or power to wind up the Press Council'. It vowed to resist abolition rather than submit weakly to the death sentence.<sup>21</sup> Defiance was applauded by the NUJ. The general secretary, Harry Conway, denounced Calcutt as a charter for the protection of the establishment against an inquiring press. The chairman of the Australian Press Council, Professor David Flint, extended fraternal solidarity. As befitted one leading a movement for a World Association of Press Councils, he advised a more cautious response to Calcutt by British government and press industry. 'Britain is still seen as a model for many countries. Throughout the centuries, the freedoms that

the British people have enjoyed have made her a beacon, a land where, at times almost totally surrounded by tyranny, freedom of speech and a free Press have flourished.'<sup>22</sup>

But the game was up. Sir Frank Rogers, the national industry chief, took Calcutt in his stride – or rather, had already taken Calcutt in his stride. He called his Newspaper Publishers Association Council together on 26 June to give 'full support' to the setting up of the Press Complaints Commission. The NPA would 'seek consultation on the means of supporting it and wanted to ensure that its costs were controllable'.<sup>23</sup> Not the least extraordinary thing about this crucial NPA Council meeting was that Rogers had in his pocket a 'personal view' from Louis Blom-Cooper that, in the interests of preserving press self-regulation, it was expedient to set up the PCC as quickly as possible, and that the Press Council would best reconcile itself to extinction and not spend time in futile and possibly damaging resistance. Blom-Cooper communicated in the same terms with the Newspaper Society and the other constituent bodies of the Council. He was convinced that Calcutt was not a first step on a slippery slope leading to statutory regulation. He saw it as a genuine last chance to make self-regulation work. He was encouraged by Roy Hattersley's endorsement of Calcutt, which he interpreted as a significant shift away from the Labour party's hitherto entrenched partiality for statutory controls.

The problem for Blom-Cooper was that his Press Council by no means shared his noble instinct for self-sacrifice. Its chairman went off to the 'crisis' meeting on 26 June, having already conveyed his personal capitulation to Rogers's NPA meeting the same day. Not even Blom-Cooper's best friends would extol him as a faithful team-worker or a dutiful committee man. He arrived at Salisbury Square expecting to persuade the Council that surrender was the best policy. On apprehending the Council's defiant mood, he quickly abandoned his intention and found himself swept along in the emotional current of resistance. As he put it, he could see that his own view 'would not be helpful in the circumstances'.<sup>24</sup> Blom-Cooper's initial personal embarrassment soon became a collective embarrassment for the Council once the confusion came out into the open. 'He sabotaged any chance we had of keeping the Council alive', one of its members grumbled. 'Some Press Council members are critical of Mr Blom-Cooper's conduct', it was reported. 'Some members have been urged by national and provincial newspaper representatives to call for his resignation.' That drastic recourse was not pressed: it seemed better to let the Council depart with dignity.<sup>25</sup>

That the game was truly up was signalled publicly by Rothermere at an Institute of Journalists reception. 'Some no doubt would like us to cling on to nurse – in the unlikely form of Louis Blom-Cooper – for fear of something worse. For my part, I recognise that we will have to untie ourselves from those now somewhat frayed apron strings and strive to make the best, for the public and the profession, of the new proposed Press Complaints Commission.'<sup>26</sup> Rothermere, head of a press group of which the *Daily Mail* was flagship, spoke from inside knowledge both of proceedings at the NPA and of meetings of editors who formulated guardedly positive responses to Calcutt. 'While in public they may have broadly welcomed it', commented *Private Eye*, 'many strongly disagreed with aspects of the report. In one matter only were they united and cheerful: the abolition of the Press Council was a very popular recommendation if for no other reason than that it gets Louis Blom-Cooper out of the way.'<sup>27</sup>

Rothermere, however, was not in a position to speak so boldly as he did until the Newspaper Society, the other major player in the industry game, came into line with the NPA. There had been a time when it seemed that a 'significant gulf' was opening up within the industry over who should police the press. Rapprochement came only on 4 July, when the NS decided 'reluctantly and conditionally' to accept Calcutt. Dugal Nisbet-Smith, the Society's director, reflected the resentment among the regionals and locals at being tarred with the metropolitan tabloid brush. What was being given to the NPA as a punishment was being given to the NS as a reward. But it was conceded that going it alone with the Press Council was not a feasible option. Nisbet-Smith made it clear that the NS decision was more a recognition of the reality of the threats accompanying the government's acceptance of the Calcutt Committee's report than a full acquiescence. 'If we don't oblige the government by abandoning genuine self-determination for imposed regulation, we will get statutory regulation.' Doubtless this was the message conveyed with relish at the Home Office. 'The tone of the statement', commented the *Guardian's* media correspondent Georgina Henry, 'was less accommodating than that of the Newspaper Publishers Association. . . . But it spells the end of the Press Council which now has neither of its two most important constituent bodies supporting it.'<sup>28</sup>

Blom-Cooper was now the embarrassed captive of his Council. It summoned him back from Antigua, where he was professionally engaged, to attend to its now desperate affairs. He had already declared that he would not be a candidate to head the new Commission which for him embodied the industry's ignoble abdication of its role of defending press freedom. But

even at the eleventh hour the Council envisaged saving something from the wreckage. A working party was set up to 'consult constituent bodies and others' about the 'viability of continued self-regulation'. And what of the Council's 'continuing with its role of defending press freedom'?<sup>29</sup> Senior figures in the industry, however, were known to rate the Council's chances of even residual survival as 'none whatsoever'. 'They have been critical of Blom-Cooper and will refuse any longer to fund the Council.' The Commission would need a budget of at least £1 million a year. This was where the new era of press regulation would take shape. The NS's earlier proposal to apply Asbof arrangements as practised by the Advertising Standards Authority to the Press Council were now diverted into setting up a Press Standards Board of Finance applied to the Press Complaints Commission. 'Pressbof' would co-ordinate the industry's actions on self-regulation; and would comprise representatives of the NPA, the NS, the Periodical Publishers Association, the Scottish Daily Newspaper Society, and the Scottish NPA. Initially it was hoped that James Evans, one of the senior men in the Thomson Organization, would take the chair. It was Harry Roche of the Guardian Group who took it on.

'So farewell then, the Press Council', wrote Charles Wintour elegiacally of its last, spurned struggles to stay alive. 'There could scarcely be a more blatant demonstration of the contempt with which the council is now regarded by senior figures in the industry.'<sup>30</sup>

## 5

Wintour had other insights to offer. Calcutt's recommendation had been that the PCC should be constituted by an Appointments Commission, itself constituted by preference by the Lord Chancellor. That was Calcutt's mode of securing the Commission's independence from the industry. Wintour could see, however, that in the interests of speed and simplicity it was likely that the industry chiefs would 'leapfrog' that stage by themselves appointing a chairman 'of acknowledged stature and independence who would be agreeable to the Home Office'. In this Wintour was precisely correct. The chiefs were not going to accept supinely every jot and tittle of Calcutt. Wintour could see a heavy burden bearing on Sir Frank Rogers, chairman of the NPA. Together with Rogers were Nisbet-Smith of the NS, James Evans, and the patriarchal Sir Edward Pickering. Wintour fretted at the 'terrifying prospect' that the chiefs were setting in being a body that could far too easily be transformed into a statutory body. 'With Roy



Hattersley as Home Secretary in waiting, the publishers must be well aware of the risks.' The state, thought Wintour, 'is becoming far too enmeshed with the future regulation of the press'.<sup>31</sup>

The chiefs were no doubt well aware of the risks. They had no intention of taking the Broadcasting Complaints Commission as their model. They would have shared Wintour's assessment of Hattersley rather than Blom-Cooper's. Their strategy, in essence, was to create a genuine system of press self-regulation out of the somewhat ambiguous, or 'half-way house', elements of Calcutt by sheer rapidity of movement. For what was most remarkable about the response of the industry chiefs to this crisis was their astonishing turn of speed. Calcutt had allowed them a year to get things up and running. What became clear very soon after June 1990 is that they aimed to have the Press Complaints Commission in being and in operation by 1 January 1991. Pressbof was soon in formation. It would effectively be the powerhouse of the whole machine. With Roche in the chair it would include Rogers, Evans and Nisbet-Smith. George Bogle of Asbof would work out for it an efficient financial equation for levying the industry. Scotland's contribution, courtesy of the Scottish Daily Newspaper Society, was to provide managerial headquarters and staff in Glasgow, under the care of Grahame Thomson. Harry Roche and his team were in place by October.

## 6

At this moment the industry was in a most curious state. As the chiefs hastened purposefully to their objectives, the Indians danced their ritual dances. The NUJ had the Trades Union Conference debating Calcutt's failings and deficiencies. The *British Journalism Review* lamented the 'fateful day' when editors and publishers agreed to a code of practice.<sup>32</sup> The Association of British Editors organized a poll to assess reaction to Calcutt, the results to be available for a seminar in London in October run by ABE and the International Press Institute. Their necks, as they saw it, were 'in the noose'; they wondered that the 'powers that be' in the industry seemed to be so little galvanized at the 'sinister' prospect before them.<sup>33</sup>

The powers that be were in fact much more galvanized than ABE or the Institute knew. There was the question now of who would head the new Commission. Rogers had been cultivating Lord McGregor at the Advertising Standards Authority since at least November 1989. There appeared to be no hint of any serious alternative. Pressbof now had him

in focus. McGregor's contract with the Authority would lapse in December 1990. He was perfectly placed. His credentials were impeccable. He had demolished UNESCO's pretensions. He was the author of the unsurpassed 1977 Royal Commission report. He had scholarly expertise as an economic historian. 'I've read a lot of Victorian newspapers which printed court news verbatim', he declared. 'There's no real evidence that there has been any decline in standards between then and now. The agitation we see for a proper complaints body is the product not of declining standards but an improvement. The public has come to demand more from newspapers.' That sort of thing was music to the industry's ears. As for self-regulation, McGregor's reputation as its champion was such that it was widely acknowledged that there could 'hardly be a fiercer defender of the freedom of the press to regulate its own affairs'.<sup>34</sup>

To all appearances an 'affable and soft-spoken man', McGregor had followed his time at Aberdeen University and the London School of Economics with a spell of farming, following his father, in Yorkshire before 'choosing the route of poverty, academia'. After a distinguished university career in Hull, Manchester, Oxford and London, McGregor took over the Royal Commission in 1975. He took his seat as a Labour peer in 1978, having been a member of the party since 1937. He moved to the Social Democrat benches and then to the cross benches in the 1980s when chairman of the ASA. His 1991 paper on *Self-regulation in Britain: the Cases of the Advertising Standards Authority and the Press Complaints Commission* offers valuable insights into his understanding of the British self-regulatory tradition, stemming from the Factory Acts of the first half of the nineteenth century.

But after his experience with the Press Council in 1988, would he take the Commission on? He was now 69, but his energy seemed unimpaired. Pressbof delegated Dugal Nisbet-Smith to seek McGregor out at his Hampstead home. Nisbet-Smith recalls McGregor's responding to his offer of a three-year contract at £60,000 a year with such enthusiasm as almost to shake his hand off.<sup>35</sup> Not becoming Press Council chairman in 1988 now seemed the most fortunate of all contingencies. Thus it was announced by Harry Roche on behalf of Pressbof on 10 October that the first chairman of the PCC would be Oliver, Professor Lord McGregor of Durris. And thus was Calcutt's prescription as to the procedure of appointments decisively 'leapfrogged'.

On his appointment McGregor announced himself confident that the newspaper industry could get its house in order, with the help of the

PCC, within the eighteen months allotted. 'The Advertising Standards Authority has been able to secure obedience to its adjudications and effectively handle complaints on misleading and offensive advertisements without a single legal sanction in its armoury.' Those newspaper editors who agreed in November 1989 on a declaration of principle and a code of practice in the wake of the mounting public concern over press standards, McGregor pointed out, were now showing willingness to make self-regulation work. McGregor confided that he first became convinced of the dangers of statutory regulation while Royal Commission chairman. 'A large number of people on that occasion wanted the Press Council to have power of legal sanction. I remember going home and sitting down to sketch out what such sanctions would be like. After three hours' work, I recognised that one would create a body which was a Frankenstein [monster] available to any government ill-disposed to the press, all or some of the time.'<sup>36</sup>

Another consequence of the speed with which the industry chiefs were driving the process was that a bold short-cut sliced through Calcutt's prohibition against bringing Council staff over to the Commission. Recruiting anew would hold things up. Kenneth Morgan, the Council's director, and his senior assistants Raymond Swingler and Bill Field, the complaints secretary, had in any case recently been given substantial salary increases by the Council to help them negotiate better redundancy terms if not taken on, or good terms if they were. Even *Private Eye* conceded that Morgan was a 'sensible' director of the Council; and his general repute was as 'one of the more amiable adornments of the journalistic profession'.<sup>37</sup> It was understood that Press Council staff would join the Commission 'in an interim capacity to aid the transition'. Lord McGregor would determine how long their employment would be extended.

Further details emerged of the new machinery. The Commission would have a budget of £1.5 million, and would be a 'streamlined' body of sixteen members, nine of whom would be editors, serving for mandatory six-month terms. As Andreas Whittam Smith later remarked, 'journalists don't respect the opinions of lay people'. Editors should be judged 'only by their peers and not by Mr and Mrs Great and Good'.<sup>38</sup>

Calcutt's purpose was to prevent editors fobbing off the Commission with substitutes, as had been the practice with the Press Council. In view of earlier developments in the Council and later developments in the Commission on this question of the industry/lay equation, Calcutt's prescription for an industry majority was one of his recommendations to

which there was no demur. Nor was there demur about ending the waiver of legal recourse by complainants, though there was foreboding in the industry on the press's liability to double jeopardy. It was thought expedient also not to challenge Calcutt's prescribing a 'hotline' telephone and fax arrangement. A plan was announced to install one on a 21-hours a day, seven days a week basis; but nothing ever came of it. There was always too much resistance to it as 'prior restraint' censorship.

Another of the streamlining design decisions for the Commission pressed for by Whittam Smith was that it would not follow the Council's practice of accepting 'third-party' complaints. Thus would a heavy burden be lifted. About half the complaints dealt with by the Council were from people not directly concerned. The activities of 'people like Bob Borzello' would be avoided. This fabled scourge of the press, from Chicago, had lodged some 220 mostly successful complaints with the Council, mainly on race issues. Borzello protested: 'If the Whittam Smith rule had been in force none of these complaints would have been heard although they were obviously based on newspaper stories which violated Press Council and national newspaper guidelines.'<sup>39</sup> Whittam Smith was unrepentant. 'It is a waste of time and money if the Commission gets sidetracked into general complaints when it should be handling the real complaints.' Newspapers would be allowed a week to resolve the complaint internally before the Commission would be called in to take over. Most complaints, it was assumed, would be so resolved. There would be no time-consuming hearings as had sometimes been the case with the Council. All the PCC's business would be conducted swiftly on paper.

Meanwhile, at the unlikely offices of the *News of the World*, an editors' committee assembled by Pressbof continued the work of the earlier Whittam Smith NPA committee in drafting a Code of Practice to be circulated to industry bodies. Tactfully, the Calcutt code was used as a matrix. The *Mirror* editor Roy Greenslade, 'motivated by mischief', as he later confessed,<sup>40</sup> nominated Patricia 'Patsy' Chapman, editor of the *News of the World*, to become the first head of the Code Committee, the third constituted organ of the new self-regulatory apparatus, after Pressbof and the PCC itself. The Code Committee would be responsible for drawing up and amending the Code of Practice which the Commission would administer. The point was that it would be the industry's code, not the Commission's. That was at McGregor's insistence, and would become his most important legacy to press self-regulation. The Code Committee would be autonomous of both Pressbof and the Commission. It cost nothing and would

meet as convenient either at the NPA's offices in Southwark Bridge Road or at the Newspaper Society's offices in Great Russell Street, Bloomsbury. Its chairman would be a member ex officio of the Commission, not subject to the six-month rule for editors. Patsy Chapman thus became one of the first two tabloid editors to serve on the PCC (the other being Brian Hitchen, editor of the *Daily Star*). There were initial fears that tabloid editors waging circulation wars could not be trusted fairly to adjudicate disputes involving each other's papers. And, for that matter, would the public accept the editor of the *News of the World* as a reassuring guardian of press ethics? McGregor insisted on gambling on the opportunity of training poachers to be gamekeepers.

Final touches to the code were completed by the end of October. Chapman's colleagues included Roy Greenslade of the *Daily Mirror*, Brian Vine, managing editor of the *Daily Mail*, Geoffrey Elliott of the *Portsmouth News*, Ian Beales of the *Western Daily Press*, and Jeremy Deedes, executive editor of the *Daily Telegraph*. They grappled with the difficult task of drawing up a code which would 'not be seen as too soft by the politicians, while being acceptable to the industry'. The key thing was just the right degree of flexibility to prevent constant fracture. The Code Committee's version was stiffer than the NPA editors' but more relaxed than Calcutt's. A 'public interest' defence was included in the manner of the now upstaged Press Council code. McGregor ratified it as 'a proper basis from which his commission can start to work'.<sup>41\*</sup>

Peter Preston, editor of the *Guardian* and one of the leading editorial figures pushing movement forward, declared on BBC Television his conviction that the new self-regulatory system was sound and would be workable. 'We have made swift strides towards a clearer, better system for the reader.' Roy Greenslade at the *Mirror*, however, had doubts as to how tabloid editors could find time to devote to the Commission. Simon Jenkins of *The Times* called it 'a ghastly sentence on our time', but newspapers would have to agree to it. Whittam Smith informed a seminar of editors on 16 October that there had to be 'substantial peer-pressure' among editors, not their deputies or associates. Regional and local editors still had misgivings. Although they provided a good half of the Press Council's business, the Council was not being wound up because of their misdemeanours.<sup>42</sup> There were queries also as to where the proprietors were. 'It is high time', complained the industry's organ, the *UK Press Gazette*,

\* See Appendix.

'that whatever authority they were wielding internally should have a public face.' If the new system was to succeed, it must have the unreserved support of the industry and its opponents must be brought into line.

If editors are required to take a turn on the commission for periods of time it is vital that all editors take a turn and not just . . . quality editors. There is already a feeling growing that national tabloid editors won't want to. Proprietors must ensure they do . . . The minority view, that editors should have nothing to do with Calcutt and defy the Government to legislate, has considerable bravado appeal but it has lost the day and it is time that everyone made the best of what we all accept is a bad job.<sup>43</sup>

There were plenty of Indians still dancing their ritual dances of protest at the bad job. The Association of British Editors and Geneva-based International Press Institute preferred to see Calcutt as a 'position paper' rather than tablets of stone. There were calls for lobby groups to 'fight Calcutt'. The Guild of British Editors protested to the Home Secretary. The NPA came under attack as 'absolutely spineless'. There was high anxiety about Calcutt's recommending legislation against press intrusion. At the beginning of November the Press Council's swansong, *The Press and the People: the 37th Annual Report of the Press Council, 1990*, included 'Epitaph: a Critique on Calcutt, a Personal View by Louis Blom-Cooper'. This was, unsurprisingly, a sustained polemic on Calcutt's 'seriously flawed' report: 'unless great care is taken, the outcome may be a complaints system which is more readily convertible into statutory control and stands in closer relationship to newspaper and magazine publishers than the Press Council has done'.<sup>44</sup> Blom-Cooper drew attention to a crucial ambiguity in Calcutt: wanting a body independent of the industry, but with a majority of members drawn from the 'highest level of the press'. This ambiguity would cost the Commission dear in critical times ahead. The Council had indeed, in the words of the *Press Gazette*, 'hit back from its deathbed'.<sup>45</sup> The new self-regulatory system had by no means heard the last from Louis Blom-Cooper.

The *Press Gazette* wavered back to the Press Council's line: 'PCC - final solution or lame duck?' There were persistent doubts as to whether the Commission would be effective in seeing off the Calcutt threat. 'That being so, perhaps the fingers-up approach might have been better!'<sup>46</sup> All this provoked Simon Jenkins once more to denounce the 'hysterical outcry' in the press. Calcutt, he assured the Media Society, was 'something of a triumph for those who gave evidence' and 'argued against what, just 18

months ago, was the near certainty that there would be statutory legislation to control the Press'. The new PCC, Jenkins argued, was not a step towards statutory legislation; it was the old Press Council 'to all intents and purposes'.<sup>47</sup> The Pressbof heavyweights rebuked the *Press Gazette* for its faintheartedness. For his part, McGregor expressed 'pleasure and relief' that the recent Queen's Speech at the opening of the new parliamentary session made no mention of Calcutt's proposed legislation to criminalize press intrusion. He also conceded that the PCC might use its discretion to allow third-party complaints in certain exceptional cases. It was a matter he would raise with his colleagues when appointed.<sup>48</sup>

McGregor himself had been appointed by leapfrogging Calcutt's proposed appointments procedure. Pressbof squared the Home Office about that. An appointments commission for the PCC would in due course be formed: the fourth of the organs of the new self-regulatory apparatus. It would consist of the chairman of Pressbof, the chairman of the Commission, and one independent member. But that was not yet. For the present McGregor, in consultation with Pressbof, leapfrogged his own Commission into being. He already had the tabloid editors Chapman and Hitchen. He made up the rest of his industry contingent with Max Hastings of the *Daily Telegraph*, Michael Clayton of *Horse and Hound*, Robert Ridley of the Manchester *Metro News*, William Anderson, managing editor of the Dundee *Sunday Post*, and Andrew Hughes of the *Sunderland Echo*. Instead of fulfilling Calcutt's formula with two further editorial appointments, McGregor decided to temper the active industry presence by recruiting veterans who would reflect journalistic experience at the highest level while yet remaining at a strategic distance from the day-to-day trade. In this way he hoped to neutralize the flaw noticed by Blom-Cooper: the ambiguity between independence and an industry majority. His two neutralizers were Sir Edward Pickering, vice-chairman of Murdoch's Times Newspapers, and David Chipp, former editor-in-chief of the Press Association. The 'great and the good' were represented by Lord Colnbrook, who as Humphrey Atkins was a former Conservative Cabinet minister, Dame Mary Donaldson, former Lord Mayor of London and an eminent quangoist, Professor Lesley Rees of St Bart's Hospital, and Sir Richard Francis of the British Council.

McGregor, it might be noted, included no lawyers. He thought the Press Council had been disadvantaged in 'having as its Chairman for many years a succession of brilliant lawyers' who had discountenanced a code of practice. He thought lawyers made bad members of self-regulatory bodies

because they focused attention on the language of rules and statutes, and excluded the spirit. Calcutt, he felt, had been lawyer-dominated.<sup>49</sup>

From the ASA McGregor brought across two highly valued colleagues: Lady Elizabeth Cavendish, with royal connections and valuable experience as a magistrate, and Robert Pinker, Professor of Social Work at the LSE. These appointments, designed to reflect 'broad views', were announced on 28 December. The Press Complaints Commission would be ready to open for business at Salisbury Square on 1 January 1991. Technically, like Pressbof, it was a public company limited by guarantee, with articles of association. In summary, these were to handle speedily and judge fairly complaints which raised prima facie a breach of the industry's Code of Practice; to give advice to editors about both the interpretation of the Code and journalistic ethics; to report to Pressbof any apparent ambiguities and shortcomings in the Code disclosed in the course of the Commission's work or by public and parliamentary comment; to secure support from the public, Parliament and the press by achieving recognition that the Commission was accessible to complainants and independent of press interests in its judgments; and to promote generally established freedoms, including freedom of expression and the public's right to know, and defence of the press against improper pressure from government or elsewhere.

The PCC was grudgingly welcomed by the press industry pretty much as the Press Council had been in 1953: making the best of a 'bad job'. There was, however, one big difference: the industry understood well in 1990 what it had not well understood in 1953. The best really had to be made of a bad job. But would the PCC, even so, enjoy any better fortune than the Press Council?