

## Press Regulation in the UK: summary

1947-49	First Royal Commission on the Press. Looks at press ethics, recommends a self-regulatory body of the press
1953	The General Council of the Press is created by the press
1962	Second Royal Commission of the Press. Looks at media ownership and economic issues. General Council of the Press is replaced by the new Press Council
1972	Younger Committee report on Privacy is critical of the Press Council
1974-77	Third Royal Commission on the Press. Looks at editorial standards and freedom of choice for consumers. Suggests a new written Code of Practice. Press Council reject this.
1990	Government commission Sir David Calcutt to Chair a Privacy Committee looking into press intrusion. The Privacy Committee recommends replacing the Press Council with a new Press Complaints Committee underpinned by a new Code of Practice. The press is given 18 months to implement an improved self-regulatory regime.
1991	Press Complaints Commission is set up with a Code of Practice.
1993	Calcutt reports on the progress of the PCC. Though progress made he does not think it sufficiently in line with his original recommendations and recommends introduction of a Statutory Press Complaints Tribunal. Government does not act on this recommendation.
1993-95	National Heritage Select Committee publish a report on privacy and press intrusion. It makes recommendations on a new Statutory Press Ombudsman. Government reject these.
1997	Death of Princess Diana leads to a substantial re-writing of the Code of Practice
2003	Culture, Media and Sport Select Committee publish a report on privacy and media intrusion. It acknowledges on-going improvements at the PCC, but makes some suggested changes to the Code on new technology and subterfuge, as well as more transparency on appointments  Information Commissioner's Office (ICO) launch <i>Operation Motorman</i> looking into data protection offences. The press found to be recipients of illegally obtained information.
2006	ICO publish <i>What Price Privacy? and What Price Privacy Now?</i> , the latter listing the newspaper titles implicated in <i>Motorman</i>
2007	Goodman/Mulcaire are convicted. PCC publish a report on the issue: <i>Subterfuge and Newsgathering</i>
2009	The Guardian phone hacking investigation. PCC publish a further report in response: <i>Phone Message Tapping Allegations</i> (this is subsequently withdrawn on 6 <sup>th</sup> July 2011)
Jan 2011	Operating Weeting is launched
July 2011	Leveson Inquiry is announced. NOTW closes
Oct 2011	Baroness Buscombe resigns as Chair of the PCC
Jan 2012	Leveson hears evidence from PCC and previous PCC staff, commissioners and chairs. Lord Hunt presents his proposals for a reformed PCC
Mar 2012	Lord Hunt announces the PCC is disbanding, its Director, Stephen Abell departs

## History of Press Regulation in the UK

The press in the UK is not subject to specific state regulation. This has been the case, in peace time, since newspaper licensing was abolished in 1695.

Whilst public, parliamentary, as well as some industry concerns about press standards have arisen at notable moments in the decades between the birth of the first General Council in 1953 and the present day, and there have been calls at some of these times for a statutory form of regulation of the press, this has never come to pass. The consensus at these times has been that further regulation would erode the freedom of the press - the promise of improved self-regulation has, instead, been favoured at each of these moments.

Calls for stronger privacy laws have often accompanied calls for the reform of press regulation, but again, although at certain moments the Government of the day has gone as far as agreeing with the *in-principle* case for a privacy law, concerns about the practicality of enacting it have meant that such a general measure has equally not, to date, been put in place.

Below is a summary of the key milestones in the history of press regulation.

### Recent History

Since the 2<sup>nd</sup> World War there have been 3 Royal Commissions on the press. The first of these suggested the introduction of a new self-regulatory press body, and it was on this basis that the first General Council of the Press was created in 1953. This approach to self-regulation has continued since this time. The General Council was replaced by the Press Council in 1962 until 1991, and the Press Complaints Commission (PCC) took up the baton 1991 until 2012. The below summary concentrates on events which led to the creation of the PCC, and then through to the present day Leveson Inquiry.

#### 1990                      Privacy Committee Report

The Privacy Committee's report was commissioned in response to growing parliamentary concern over intrusion into privacy which built in the public domain during the 1980's, and which had in turn led to the introduction of a number of parliamentary Private Members Bill's in parliament which were, towards the end of the decade, beginning to attract support from parliamentarians across the parties. These bills focused on two areas –greater protection of privacy (from Conservatives); attempts at a legal right of reply (from Labour).

The Privacy Committee's terms of reference were:

*'In light of the recent public concern about intrusions into the private lives of individuals by certain sections of the press, to consider what measures (whether legislative or otherwise) are needed to give further protection to individual privacy from the activities of the press and improve recourse against the press for the individual citizen'.*

The Committee reported in June 1990 concluding that the Press Council was 'ineffective as an adjudicating body' and did not possess the necessary independence. It suggested the newspaper industry were given 18 months to make non-statutory self-regulation work. (See Appendix A for more details).

On accepting the recommendations, the then Home Office Minister with responsibility for the press, the Rt Hon David Mellor MP, commented that the press were now '*drinking in the last-chance saloon*'.

The Government agreed *in-principle* with the criminal offences on privacy suggested in the Committee's report, although these reforms did not see the light of day in the end.

Around the same time as the Privacy Committee, Louis Blom-Cooper (PC Chair) instigated an internal review of the PCC including looking at the written Code of Practice, as well as proposals to improve funding, transferring its funding to a new body, which later became the Press Standards Board of Finance (Pressbof).

#### 1991      Creation of the Press Complaints Commission

In response to the Privacy Committee's report, the press set up the Press Complaints Commission, consisting of national, regional and periodical editors and a group of lay members. Lord McGregor of Durris, who had chaired the third Royal Commission on the Press in 1977, was appointed Chair.

Led by Patsy Chapman, the then editor of the 'News of the World', a committee of national and regional editors (now known as the Code of Practice Committee of Editors) produced the first Code of Practice. All publishers and editors committed themselves to upholding the Code and to ensuring secure funding for the Commission to oversee it effectively.

The PCC was set up as an independent body to deal with complaints from members of the public about the editorial content of newspapers and magazines. It was charged with maintaining and enforcing the Code of Practice and saw its principle role as one of mediation to help complainants and newspapers reach an outcome that satisfies both parties. Where complaints were not resolved in this way, the Commission had powers to adjudicate.

As a voluntary self-regulatory body with no statutory footing, the PCC was not able to compel newspapers to sign up to the PCC Code. However, at the time of its formulation, all the editors of significant national titles signed up.

Pressbof, the finance body, set an initial £1.5m target for funding the PCC in 1991.

#### 1993      Calcutt Report on the progress of the PCC

18 months after his first report, Sir David Calcutt was again asked by David Mellor (now Secretary of State at the Department of National Heritage), to review progress. He reported in January 1993.

Whilst the report acknowledged progress made, it was critical of the way in which the PCC had been instituted in a number of respects. Calcutt found the press had failed to implement the substance of the Privacy Committee's first report and was neither set up in a way, or operating a Code of Practice which enabled it to command either press or public confidence. He viewed the 1990 report as a package of measures that would only work together, and the PCC had 'picked and chosen' aspects of these recommendations. (See Appendix B for more details).

Calcutt's overall view was that the PCC should take on a statutory footing, given the press' failure to develop appropriate regulation voluntarily.

In response to Parliament on the report, the Secretary of State for National Heritage, Peter Brooke, agreed that the PCC was not an effective regulator, but rejected the move to statutory regulation.

On the question of revised privacy law, the government agreed in-principle with the three elements of criminal reform, and suggested it would bring forward legislation in due course, and would also give further consideration to a general tort of infringement of privacy.

Sir David English was installed as the new Chair of the PCC in April 1993, and a number of key changes to the Code were made around this time. These included new guidance on the use of clandestine listening devices and the interception of private phone conversations; as well as additional clarification on the definition of private property.

1993      National Heritage Select Committee report on privacy and media intrusion

This report also concluded that self-regulation was not working. It made a series of recommendations to the Government including the creation of a Statutory Press Ombudsman as an alternative to Calcutt's Tribunal. It also suggested the introduction of a new privacy law, both criminal and civil.

1995      Government response

In response to the report the Secretary of State for National Heritage, the Rt Hon Virginia Bottomley MP, again rejected the idea of a Statutory Tribunal or Ombudsman.

On the question of introducing a new general privacy law, the Government again recognised the case for measures, but concluded that the definition of the proposed offences and the necessary defences made it too difficult to implement. The Government similarly rejected the recommendation on a civil measure.

Though the Government had again stopped short of legislation, it did acknowledge weaknesses in the PCC's approach.

The Secretary of State wrote a letter to the newly appointed Chair of the PCC, Lord Wakeman, setting out suggested reforms of the PCC<sup>1</sup>, including to the Code. Changes to the Code in 1995 included a clarification about the definition of private property, and a change to the way in which child victims were referred to.

1997                    Changes to the Code resulting from the death of Princess Diana

Following the death of the Princess of Wales in September 1997 there were numerous calls for better protections against privacy and harassment. The PCC Code of Practice was substantially revised at this time in light of the public debate that ensued.

The Code was revised in numerous ways, and was, in particular, extended to deal with photo manipulation<sup>2</sup>.

2003                    Culture Media and Sport Select Committee Report on Privacy and Media Intrusion

In 2003 a further Select Committee Inquiry took place looking at privacy and media intrusion. This report judged that there had been on-going improvements the PCC.

It made some recommendations for improvements within the current self-regulatory system, including updating the Code to reflect changes in technology, as well as other changes around the more transparent appointment of lay and industry members. Suggested changes to the Code included:

- making clear rules around information received by intercepting e-mail and between mobile devices other than telephones;
- a new clause allowing journalists to refuse an assignment on the grounds it would breach the Code;
- a ban on payments to the police for information, and the use and payment of intermediaries, such as private detectives, to obtain private information about individuals from public and private sources

According to the PCC's website, no changes were made in line with these recommendations in 2003, although in 2004 the Code was updated with respect to technology, including new wording on clandestine devices and subterfuge:

*"the press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photos; and engaging in misrepresentation or subterfuge, can generally be justified only in the public interest and then only when the material cannot be obtained by other means".*

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<sup>1</sup> It suggested: weighting the Code more clearly towards the individual right of privacy; introduction of a compensation fund which could make payments to victims of press intrusion, made out of a fund set up by the industry.

<sup>2</sup> Other changes to the Code included: new wording on privacy, drawing directly on the Convention on Human Rights for the first time; definition of a private place clarified; harassment provisions amended to include ban on information or pictures obtained through 'persistent pursuit'; changes made to protection of children clauses; revisions to rules on publication at time of grief and shock; in the entire code, 'should not' was replaced with 'must not'.

The Select Committee report amendments were made at around the same time as the Information Commissioner's Office was conducting Operation Motorman (covered below).

## Phone Hacking and the Illegal Trade in Personal Data

### 2003      The Information Commissioner's Office (ICO) Operation Motorman

In 2003 the Information Commissioner's Office (ICO) commissioned an investigation into allegations of data protection offences. Operation Motorman looked into the misuse of data sourced from the Police National Computer, and was conducted alongside a Police investigation, Operation Glade. Motorman investigated the conduct of a small number of private investigators including John Boyall and Steve Whittamore.

A seizure of documents from Whittamore's home in 2003 revealed evidence of the sale of public information to private investigators, and that this information had been passed to up to 305 journalists amongst other recipients.

In February 2004 Whittamore and Boyall, alongside 2 police officers, were found guilty of conspiring to commit misconduct in public office. The four convicted men were given conditional discharges. Others in the Whittamore network were due to go on trial, but it collapsed.

### 2006      Information Commissioner's Office (ICO) What Price Privacy reports

In May 2006 the ICO published "What Price Privacy?", and 6 months later, "What Price Privacy Now?". These reports looked at the trade in personal information, exposing what the ICO office described as: *'an extensive illegal trade in confidential personal information'*.

Much of the information in What Price Privacy? drew on Motorman, stating that journalists were among the buyers of such information. It made recommendations to change the law – in particular to introduce custodial penalties for offences committed under the Data Protection Act 1998 (DPA).

The report also suggested action on behalf of other relevant bodies, including suggesting that: *"the Press Complaints Commission (and its associated Code of Practice Committee of Editors) should take a much stronger line to tackle any involvement by the press in the illegal trade in personal information"*.<sup>3</sup>

What Price Privacy Now?, published on 13 December 2006, contained some further information from the Motorman investigation. This included naming the titles found

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<sup>3</sup> The Information Commissioner approached the Chairman and Secretary of the Code of Practice Committee of Editors directly suggesting the Code be changed to make clear it is not acceptable *'to obtain, without consent, information about a person's private life by bribery, impersonation, subterfuge or payment for information clearly obtained by other means, unless evidence of this behaviour in line with the public interest exemption in this area could be proven'*.

to have been involved as well as the number of transactions positively identified by each. This list included many mainstream newspaper and magazine titles<sup>4</sup>.

2006-07

Goodman/Mulcaire and the PCC report "Subterfuge And Newsgathering", 2007

In August 2006, Glenn Mulcaire and Clive Goodman were arrested in relation to allegedly tapping the voicemails of members of the Royal Household. In January 2007 they were found guilty of illegal interception of communications and conspiracy offences under the Regulation of Investigatory Powers Act 2000 and the Criminal Law Act 1977.

Following their convictions, the PCC announced it would make an investigation into the use of subterfuge by the press, with particular reference to phone message tapping and compliance with the PCC's Editor's Code of Practice and the Data Protection Act. It published findings in its 2007 "Subterfuge and Newsgathering" report.

As part of its inquiries, the PCC interviewed the newly appointed Editor of the News of the World (NOTW), Colin Myler. They did not interview Andy Coulson, the Editor at the time the offences took place, as he had stepped down from the paper following court findings.

Myler described the Mucaire/Goodman instance as *"an exceptional and unhappy event in the 163 year history of the News of the World, involving one journalist"*, urging the PCC to see the incident in this light. He also described action taken at NOTW to ensure it would not happen again.

As part of the same investigation the PCC wrote to all Editors asking about the extent of internal controls in this area.

In the 2007 report, the PCC summarises the responses received from Editors, concluding that illegal practice was not widespread. It made six best practice recommendations in the light of Goodman/Mulcaire, including that press establishments should make compliance with the PCC Code of Practice a contractual obligation for journalists and for sub-contractors.

2009

Guardian phone hacking investigation

On 9<sup>th</sup> July 2009, The Guardian published a story, "Revealed: Murdoch's £1m bill for hiding dirty tricks", suggesting phone hacking was more widespread at NOTW, revealing it had privately settled a legal action brought by Gordon Taylor which suggested broader practice of this sort.

The "For Neville" email, and an NOTW contract suggesting Mulcaire would be paid a bonus if he delivered a story on Gordon Taylor, were its key evidence. The Guardian

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<sup>4</sup> In order of the number of positive transactions: Daily Mail; Sunday People; Daily Mirror; Mail on Sunday; News of the World; Sunday Mirror; Best Magazine; Evening Standard; The Observer; Daily Sport; The People; Daily Express; Weekend Magazine (Daily Mail); Sunday Express; The Sun; Closer Magazine; Sunday Sport; Night and Day (Mail on Sunday); Sunday Business News; Daily Record; Saturday (Express); Sunday Mirror Magazine; Real Magazine; Woman's Own; The Sunday Times; Daily Mirror Magazine; Mail in Ireland; Daily Star; The Times; Marie Claire; Personal Magazine; Sunday World.

also made reference to Motorman in its investigation, including that all the main News International titles had been named in "What Price Privacy Now?".

PCC report "Phone Message Tapping Allegations"

The PCC responded to The Guardian investigation stating its concern on two counts: that NOTW appeared to have misled it by saying the Goodman case was a one-off; and whether the six recommendations it made to the industry in "Subterfuge and Newsgathering" had failed. It undertook to look at the issues again.

After some further investigations, the PCC's 2009 "Phone Message Tapping Allegations" concluded it had not been substantially misled by the NOTW and stated that The Guardian had potentially overblown its allegations. The report appears to make this conclusion based on a further statement submitted by Colin Myler, as well as other evidence given to the concurrent Culture, Media and Sport Select Committee investigation on the NOTW affair.

The PCC also looked more broadly at whether there was evidence of phone tapping at other publications. It sent a further round robin letter to Editors, and requested to see more detailed papers on Motorman from the Information Commission's Office.

On wider practice, based on responses to its letter to Editors, the 2009 report concludes that it found no widespread malpractice, stating that an improvement in best practice had, in fact, taken place in line with its six 2007 recommendations.

In terms of the ICO, the PCC note it was not prepared to disclose details of Motorman and that it had also apparently ceased investigating the matter, concluding an improvement from a Data Protection perspective.

2011

PCC and Leveson

Until 2011 allegations of illegal phone hacking at the News of the World had been limited to those of celebrities, politicians and the Royal Family.

Jan 2011

The Metropolitan Police launch Operation Weeting, looking into conduct over phone hacking at the NOTW. It is commissioned alongside Operation Elveden, investigation allegations of inappropriate payments to the police, and Operation Tuleta, investigating alleged computer hacking. All three are investigations are led by Deputy Assistant Commissioner Sue Akers. At the invitation of the MPS Commissioner, Durham Police are currently conducting an independent review of these investigations to ensure that they are appropriately focused and resourced.

July 2011

In July 2011 it was revealed that the phones of murdered schoolgirl Milly Dowler, relatives of deceased British soldiers, and victims of the 7/7 London bombings had also been accessed. This resulted in a public outcry and the closure of the News of the World on 10<sup>th</sup> July 2011, ending 168 years of publication.



On 6<sup>th</sup> July 2011 the Prime Minister announced a Public Inquiry would look into the affair. The Prime Minister says at the time that the Press Complaints Commission would be replaced "entirely". On the same day of the announcement, the PCC withdraws its "Phone Message Tapping Allegations" report.

On 13<sup>th</sup> July 2011 Lord Justice Leveson was named as Chair with a remit to look into phone hacking and police bribery by NOTW, whilst a separate Inquiry would consider the culture and ethics of the wider British media.

Since the full scale of the phone hacking scandal came to light the PCC came under increasing pressure. It was criticised for its handling of the phone hacking affair, including the attitude and approach it took in the reports it produced, but also that it was not properly set up to investigate the claims meaningfully.

Oct 2011

The Chair of the PCC, Baroness Buscombe, resigned amid growing criticism. She said in a statement that she equally regretted being "clearly misled" by News International, as well as in what editors had told her, adding later that she had been "lied to" over the phone hacking.

Dec 2011

In December 2011 the Media Trust, in its report "Did the PCC Fail when it came to phone hacking" suggested the PCC failed in the phone hacking affair because it:

- *claimed responsibility for regulating newsgathering – including phone hacking – without the resources or the powers to do so;*
- *gave the deliberate – and misleading – impression that it was investigating phone hacking and associated problems; and*
- *consistently claimed there were no serious problems and no signs of malpractice beyond one rogue reporter, without having any evidence to show whether there were or were not (there was)*

Jan 2012

PCC Evidence to the Leveson Inquiry

Evidence to Module I of the Inquiry has been heard from: Tim Toulmin, previous Director of the PCC 2004-2009; Stephen Abell, Director of the PCC 2009-2012 (who has stepped down since giving evidence); Sir Christopher Meyer, Chair of the PCC 2003-2009; Lord Grade, Commissioner at the PCC; Lord Hunt, Chair of the PCC 2009-present; and Lord Black, Chair of Pressbof.

Amongst other things, Leveson asked their view on the strengths and weaknesses of the current self-regulatory approach, as well as their view on what impact a statutory approach might have.

On the benefits of self-regulation, comments were made that:

- it allowed flexibility to make changes to the Code quickly, in line with events;

- the PCC worked by building up “case law” around the Code which had organically developed a consensus on the acceptable behaviour of the press;
- the PCC was operating a quick and easy complaints service for the public which should not be lost;
- Adjudication - requiring Editors to publish apologies - was an effective deterrent

On problems with the current function of the PCC, comments included that:

- there was on-going confusion about the role of the PCC. It was referred to as a regulator, but acted as a complaints arbitrator. It had no legal powers of redress or investigation;
- on Goodman/Mulcaire, the PCC did not possess strong enough powers to investigate;
- Lay representation was still a problem;
- The influence of Pressbof was too strong:
  - Code of Practice Committee was a sub-Committee of Pressbof and consisted mainly of serving industry professionals;
  - Pressbof also oversaw sub-committees charged with appointments – subject to conflict of interest;
  - As its funder, Pressbof had too much sway. The funding body and adjudicator roles should be independent of each other;
- How to incentivise the whole industry to sign-up was a problem - in January the Richard Desmond owned group of publications, including the Daily and Sunday Express newspapers, withdrew from the PCC;
- Third party complaints and interest groups could not always complain and should be able to;
- PCC inquiries were often hampered when legal disputes on the same issue took precedence

### Select Committee on Communications report on Future of Investigative Journalism

On 16<sup>th</sup> February 2012 the Lords Select Committee on Communications published a report on the Future of Investigative Journalism. Signalling the Leveson Inquiry as a backdrop, and highlighting the importance of responsible investigative journalism, it argues that any changes should not be rooted in the past but should seek to enable responsible investigative journalism to flourish in the future. The report’s main recommendations include:

- Clarification from the judiciary around which cases should be prosecuted or otherwise in cases where illegal activity may have been undertaken by journalists in the course of an investigations;
- The instigation by media organisations of a two stage internal management process for the tracking and recording of decisions with regard to investigations, which regulators could then take into account when evaluating the responsibility with which an investigation has been undertaken; and

- The introduction of a new investigative journalism fund which could be paid for by fines levied for transgression of journalistic codes which could be introduced as part of reform of the PCC

The Government is seeking an extension to responding to this report until Leveson has reported, so as to provide a meaningful response without pre-empting Leveson's recommendations.

#### March 2012    Publication of the Joint Committee on Privacy and Injunctions Report

On 12<sup>th</sup> March 2012 the Joint Commons and Lords Committee on Privacy and Injunctions published its report. This report was commissioned on 23<sup>rd</sup> May 2011 by the Attorney General at a time when privacy injunctions were the focus of widespread media coverage. It looks at the evolution of privacy law since the introduction of the Human Rights Act 1998, examines whether the current laws are working, as well as considering some specific issues relating to on-line enforcement, prior notification, damages and access to justice. The main recommendations from the report include:

- The Courts are now striking a better balance between conflicting rights set out in Articles 8 and 10 of the European Convention of Human Rights
- Rules out a privacy law
- Definition of public interest should be left to the regulators
- But, legal powers should be bolstered by stronger independent regulation (and makes a range of recommendations on how to achieve this)
- No changes to the laws on issuing injunctions, but recommends that interim injunctions issued in one part of the UK should be enforceable in the other two jurisdictions
- Courts should be able to award exemplary damages for breaches of privacy
- Comments on the application of injunctions in the online world, including possible legislation if the industry cannot police itself
- Press regulator's Code should include a requirement for prior notification, and publications would have to justify not giving prior notification. Court could then take account if legal action arose
- The judiciary should manage costs more effectively
- Clarity for the media on what they may report on in Parliament, a qualified privilege for them

#### Disbanding of the PCC

Lord Hunt has announced that the PCC is to be disbanded in its current form. Michael McManus has been appointed Director for Transition.

To date the PCC's Code of Practice has been revised 30 times. Attached at Appendix C is the current version of the Code, and at Appendix D, a summary of the main changes made since 1991, taken from the PCC's website.

For more information about the 3 earlier Royal Commissions on the press, and other earlier events in the evolution of press regulation in the UK, please see Appendix E.

**Appendix A: Recommendations in the 1990 Privacy Committee Report**

In its 1990 report, the Privacy Committee, chaired by Sir David Calcutt, made a package of recommendations. These are summarised by Sir David Calcutt as follows:

- (i) *Any new means of redress needed to be carefully targeted and should not range more widely than was necessary to meet existing gaps in protection;*
- (ii) *In the light of that, the introduction of any new wide-ranging statutory civil right of 'infringement of privacy', although practicable, would not then be appropriate;*
- (iii) *The most blatant forms of physical intrusion – practices involving door-stepping, bugging and the use of long range cameras – should be outlawed;*
- (iv) *The existing statutory restrictions on reporting should be strengthened so as to provide added protection for children and the victims of sexual offences;*
- (v) *The press' own arrangements for voluntary self-regulation should be revised, and strengthened as greatly as possible by the introduction of a new Press Complaints Commission; and*
- (vi) *If the press failed to demonstrate that non-statutory self-regulation could be made to work effectively, a statutory press tribunal for handling complaints should be introduced.*

The Privacy Committee made more detailed recommendations about how the new Press Complaints Committee should be organised including that:

- the new Commission should concentrate on providing effective means of redress for complaints against the press, rather than concentrating on the promotion of the freedom of the press;
- it should publish, monitor and implement a comprehensive Code of Practice;
- it should be given specific duties to consider complaints;
- it should introduce a 24 hour complaints hotline;
- it should in certain circumstances be able to require that an apology is made and given due prominence;
- it should have an independent Chair and up to 12 members, appointments to be made in an independent manner;
- it should have a clear conciliation and adjudication procedure; it should instigate a fast-track procedure for the correction of factual evidence;
- it should have a specific responsibility and procedure for initiating inquiries when necessary;
- it should not operate a waiver of legal rights; and the industry should demonstrate its commitment to self-regulation by providing the means to self-fund the new Commission properly;
- The Committee also published a suggested draft Code of Practice for wider consideration

The Committee's report also made a number of recommendations to change the law. Whilst it did not recommend, at that time, the introduction of a 'tort of infringement of privacy', it suggested some more specific changes to deal with '*the most blatant infringements of individual privacy*'. These were legal powers to deal with:

- trespass on private property to obtain personal information with a view to its publication;
- planting a surveillance device on private property to secure information with a view to its publication; and

- taking a photograph, or recording a voice, of someone on private property with a view to publication and with the intention that he or she should be identifiable

All three would be subject to defences of the public right to know.

**Appendix B: Concerns and recommendations in the 1993 Calcutt report**

In his 1993 report, Calcutt indicated particular concern that:

- the PCC appointments were not being made by a public body;
- that the Code of Conduct reduced in critical areas the protection initially suggested in the 1990 report, including weighting too far in the favour of public interest rather than the interests of the private individual;
- that signs were appearing of the PCC asserting a positive role in the assertion of press freedom rather than concentrating on complaints;
- that it did not set up and did not appear to be willing to set up a hotline;
- nor would it initiate General Inquiries

In light of this, Calcutt's report makes a series of recommendations which he felt would improve the PCC as a regulator, although his overall view was that the PCC should now be replaced with a statutory body.

The Privacy Committee's 1990 report had set out a possible approach towards creating a Statutory Press Complaints Tribunal, and it was this approach which he recommended now. The Tribunal would have powers to:

- restrain publication of material in breach of the PCC's code of practice;
- require the printing of apologies, corrections and replies; and
- award compensation, impose fines and award costs.

Calcutt also recommended that the three specific legal changes put forward by the Privacy Committee now be enacted, alongside a new civil privacy law. He stopped short of recommending a new 'tort on the infringement of privacy', but recommended the Government give this further consideration.

**Appendix D: Changes to the PCC Code of Practice since 1991 (taken from the PCC website)**

**THE EVOLVING CODE OF PRACTICE**

The Code of Practice is written by a committee of editors and ratified by the Press Complaints Commission. It is not a legal document and, as such, it can swiftly be amended to take account if necessary of parliamentary comment, suggestions from the PCC, editors and members of the public, and changes in technology.

There have been nearly 30 such changes since the original Code was published in 1991.

<b>DATE</b>	<b>CHANGE</b>
<b>January 1991</b>	A 16 Clause Code of Practice was established covering areas such as accuracy, privacy and discrimination under a committee chaired by Mrs Patsy Chapman (then editor of the News of the World).
<b>May 1992</b>	<p>The following paragraph was inserted in the preamble relating to the obligation of editors to publish the Commission's critical adjudications.</p> <p><i>Any publication which is criticised by the PCC under one of the following clauses is duty bound to print the adjudication which follows in full and with due prominence.</i></p>
<b>March 1993</b>	<p>Following concerns about the manner in which some material was being obtained by journalists a new clause was added which became Clause (5) Listening Devices. The Clause read:</p> <p><i>Unless justified by public interest, journalists should not obtain or publish material obtained by using clandestine listening devices or by intercepting private telephone conversations.</i></p>
<b>April 1993</b>	Sir David English, Editor-in-Chief of Associated Newspapers, became Chairman of the Code Committee.
<b>June 1993</b>	The preamble was again altered to enshrine in the Code the requirement for swift co-operation by editors with PCC. The preamble now included the words: <i>It is the responsibility of editors to co-operate as swiftly as possible in PCC enquiries.</i>
<b>October 1993</b>	<p>The following note defining private property was included at the foot of Clause 4 (Privacy):</p> <p><i>Private property is defined as any private residence, together with its garden and outbuildings, but excluding any adjacent fields or parkland. In addition, hotel bedrooms (but not other areas in a hotel) and those parts of a hospital or nursing home where patients are treated or accommodated.</i></p> <p>Clause 8 (Harassment) was amended to refer to the above definition of private property with regard to the taking of long lens photographs.</p>
<b>April 1994</b>	Clause 6 (Hospitals) was amended to clarify to whom journalists should identify themselves when making enquiries at hospitals. This was changed



from a 'responsible official' to a 'responsible executive'.

**May 1995**

The definition of private property included in Clauses 4 (Privacy) and 8 (Harassment) was amended to make clear that privately-owned land which could easily be seen by passers-by would not be considered a private place. It now read:

*Note Private property is defined as (i) any private residence, together with its garden and outbuildings, but excluding any adjacent fields or parkland and the surrounding parts of the property within the unaided view of passers-by, (ii) hotel bedrooms (but not other areas in a hotel) and (iii) those parts of a hospital or nursing home where patients are treated or accommodated.*

**September 1995**

Section (ii) of Clause 13 (Children in sex cases) was amended. Where it had previously read the term incest where applicable should not be used it now said the word incest should be avoided where a child victim might be identified. At the same time, after consultation with the Code Committee, the Codes of the Broadcasting Standards Commission and Independent Television Commission were similarly amended in order to ensure that the 'jigsaw identification' of such vulnerable children did not occur accidentally across the whole media.

**December 1996**

Following concerns expressed at the time of the trial of Rosemary West, when a number of witnesses sold their stories to newspapers, Clause 9 (Payment for articles) was amended. The Code now distinguished between payments to criminals and payments to witnesses, and introduced transparency into such payments by requiring that they be disclosed to both prosecution and defence. The Clause now read:

*i) Payment or offers of payment for stories or information must not be made directly or through agents to witnesses or potential witnesses in current criminal proceedings except where the material concerned ought to be published in the public interest and there is an overriding need to make or promise to make a payment for this to be done. Journalists must take every possible step to ensure that no financial dealings have influence on the evidence that those witnesses may give.*

*(An editor authorising such a payment must be prepared to demonstrate that there is a legitimate public interest at stake involving matters that the public has a right to know. The payment or, where accepted, the offer of payment to any witness who is actually cited to give evidence should be disclosed to the prosecution and the defence and the witness should be advised of this).*

*ii) Payment or offers of payment for stories, pictures or information, must not be made directly or through agents to convicted or confessed criminals or to their associates - who may include family, friends and colleagues - except where the material concerned ought to be published in the public interest and payment is necessary for this to be done.*

Following the death of Diana, Princess of Wales, in September 1997, there were numerous calls for revisions to be made to the Code particularly as it

related to privacy and harassment. The most substantial rewriting of the Code in its six year history took place over the next three months and the new Code was ratified by the Commission in time for it to become operational from January 1998.

## January 1998

Clause 1 (Accuracy) was extended to deal with photo manipulation. It also absorbed the clause relating to comment, conjecture and fact.

The new wording for the privacy clause, which became Clause 3, was for the first time drawn largely from the European Convention on Human Rights, which the government had by this time pledged to incorporate into British law. It also significantly altered the definition of a private place, which now included both public and private places 'where there is a reasonable expectation of privacy'. There had been concern that the previous Code had been far too tight in its definition of privacy and would not have protected someone from intrusion who was, for example, in a church or at a discreet table in a restaurant.

One of the chief concerns at the time of Princess Diana's death was about the role of the paparazzi and the manner in which some photographs were sought. To address this concern, the provisions on Harassment which became Clause 4 were revised to include a ban on information or pictures obtained through 'persistent pursuit'. The new Clause 4 also made explicit an editor's responsibility not to publish material that had been obtained in breach of this clause regardless of whether the material had been obtained by the newspaper's staff or by freelancers.

One of the strictest clauses in the Code was introduced to protect the rights of children to privacy. The new clause number 6 in the revised Code extended the protection of the Code to children while they are at school. Previously it had referred only to the under 16s. It also added two new elements a ban on payments to minors or the parents or guardians of children for information involving the welfare of the child (unless demonstrably in the child's interest) and a requirement that there had to be a justification for the publication of information about the private life of a child other than the fame, notoriety or position of his or her parents or guardian.

The clause on intrusion into grief and shock had previously related only to enquiries made by journalists at such times. The Code Committee took the opportunity to extend this to include publication. The following sentence was therefore added:

*Publication must be handled sensitively at such times, but this should not be interpreted as restricting the right to report judicial proceedings.*

Throughout the entire Code, the phrase 'should not' was replaced by 'must not'. In addition, the section on the public interest which details occasions when an editor might argue that a breach of the Code was justified in order to protect the public's right to know was turned into a separate section without a clause number. It included a key addition: that in cases involving children the editor must demonstrate an exceptional public interest to override the normally paramount interests of the child.

**January 1999**

Following the death of Sir David English, Les Hinton, Executive Chairman of News International, became Chairman of the Code Committee.

**December 1999**

Following discussions with the government about the implementation of a new Youth Justice Act, Clause 10 was renamed 'Reporting of Crime' and contained the following addition:

*Particular regard should be paid to the potentially vulnerable position of children who are witnesses to, or victims of crime. This should not be interpreted as restricting the right to report judicial proceedings.*

At the same time the public interest defence was expanded, once again mirroring the Human Rights legislation. The following section on the right of freedom of expression was added:

*There is a public interest in freedom of expression itself. The Commission will therefore have regard to the extent to which material has, or is about to, become available to the public.*

**March 2003**

Following consultation with the Lord Chancellor's Department important changes were made regarding payment for articles. Clause 16 was renamed 'Witness payments in criminal trials' and now reads as follows:

*16. Witness payments in criminal trials*

*i) No payment or offer of payment to a witness - or any person who may reasonably be expected to be called as a witness - should be made in any case once proceedings are active as defined by the Contempt of Court Act 1981.*

*This prohibition lasts until the suspect has been freed unconditionally by police without charge or bail or the proceedings are otherwise discontinued; or has entered a guilty plea to the court; or, in the event of a not guilty plea, the court has announced its verdict.*

*\*ii) Where proceedings are not yet active but are likely and foreseeable, editors must not make or offer payment to any person who may reasonably be expected to be called as a witness, unless the information concerned ought demonstrably to be published in the public interest and there is an over-riding need to make or promise payment for this to be done; and all reasonable steps have been taken to ensure no financial dealings influence the evidence those witnesses give. In no circumstances should such payment be conditional on the outcome of a trial.*

*\*iii) Any payment or offer of payment made to a person later cited to give evidence in proceedings must be disclosed to the prosecution and defence. The witness must be advised of this requirement.*

A new Clause 17 'Payment to criminals' was also created:

*\*17. Payment to criminals Payment or offers of payment for stories, pictures or information, must not be made directly or through agents to convicted or confessed criminals or to their associates - who may include*

*family, friends and colleagues - except where the material concerned ought to be published in the public interest and payment is necessary for this to be done.*

**June 2004**

In accordance with a proposal made by Sir Christopher Meyer, as part of his programme of 'permanent evolution' for the PCC, it was decided that the Code Committee should conduct an annual 'audit' or 'health check' of the Code. Following submissions made during the first part of 2004 by - amongst others - the industry, members of the public and the Commission itself, the Code Committee released its first annual revision of the Code to take effect on 1st June 2004.

Throughout, the wording of the Code was comprehensively subbed in order to make it shorter, crisper and ultimately more accessible. At the same time its provisions were broadened in important areas.

The preamble to the Code was expanded in order to re-emphasise that editors and publishers have the ultimate duty of care to implement the Code; to stress that its rules apply to all editorial contributors, including non-journalists; to make clear that it covers online versions of publications as well as printed copies; and to insist that publications which are criticised in adverse adjudications include a reference to the PCC in the headline. The preamble now read as follows:

*All members of the press have a duty to maintain the highest professional standards. This Code sets the benchmark for those ethical standards, protecting both the rights of the individual and the public's right to know. It is the cornerstone of the system of self-regulation to which the industry has made a binding commitment.*

*It is essential that an agreed code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest.*

*It is the responsibility of editors and publishers to implement the Code and they should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists, in printed and online versions of publications.*

*Editors should co-operate swiftly with the PCC in the resolution of complaints. Any publication judged to have breached the Code must print the adjudication in full and with due prominence, including headline reference to the PCC.*

Perhaps the most notable amendment to the Code itself reflected the need for it to respond to changes in technology. Clause 3 (Privacy) was amended to state that 'everyone is entitled to respect for his or her private...correspondence, including digital communications'. The Clause was further tightened to prevent all photography of people in private

places, irrespective of whether a long-lens had been used.

Clause 8 (Listening Devices) of the previous Code was subsumed into the previous Clause 11 (Misrepresentation) and its provisions expanded to prevent the interception of 'private or mobile telephone calls, messages or emails'. The Clause - which became Clause 10 (Clandestine devices and subterfuge) - read:

*10. \* Clandestine devices and subterfuge*  
*i) The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; or by the unauthorised removal of documents or photographs.*  
*ii) Engaging in misrepresentation or subterfuge, can generally be justified only in the public interest and then only when the material cannot be obtained by other means.*

Other Clauses were tightened in order to allow them better to respond to the particular ethical issues at their heart. Clause 9 (Reporting of Crime) now made specific the central point that relatives or friends of persons convicted or accused of crime should not generally be identified, 'unless they are genuinely relevant to the story'. Clause 16 (Payment to criminals) was amended to make clear that payment was unacceptable to those convicted or accused of crime for material that seeks 'to exploit a particular crime or to glorify or glamorise crime in general'.

Clause 16 was further changed in order to respond to an issue raised by a complaint during 2003, regarding the fact that a newspaper had paid a convicted criminal for an interview during which it had hoped to elicit information as to the previously-unknown whereabouts of the body of a victim of a notorious murder. The newspaper's public interest argument did not succeed as the interview had not revealed such information, but was published in any case. However, given that the previous Code gave no specific guidance regarding payment made in the belief that the public interest would be served, the Commission did not censure the newspaper on this occasion. A new sub-section to Clause 16 was incorporated to clarify the position for the future:

*ii) Editors invoking the public interest to justify payment or offers would need to demonstrate that there was good reason to believe the public interest would be served. If, despite payment, no public interest emerged, then the material should not be published.*

In general, as the provisions of the Clauses were made more specific, the Code was intended to become more user-friendly both for complainants and editors. So, Clause 5 (Intrusion into grief or shock) now stated that the requirement for sensitive reporting should not restrict a newspaper's right to report 'legal proceedings, such as inquests'. Clause 12 (Discrimination) now emphasised that pejorative, prejudicial or irrelevant reference to 'an individual's race, colour, religion, sex, sexual orientation, physical or mental illness or disability' was unacceptable.

Such changes ensured that both the rights of a complainant and the responsibility of a newspaper were now more apparent.

**May 2005**

Clause 12 (Discrimination) of the Code was expanded to cover discriminatory press reporting of transgender people. While the Commission had always considered that the Discrimination clause, in its previous form, gave protection to trans individuals, it was accepted that - following the Gender Recognition Act of 2004 - more specific cover should be given.

It was decided that the word 'gender' would replace 'sex' in sub-clause 12i, thus widening its scope to include transgender individuals. It now read:

*12i) The press must avoid prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability.*

No change was made to the accompanying sub-clause 12ii, which covers publication of discriminatory details that aren't relevant to a story, because trans individuals would be covered under the existing rules.

**August 2006**

Clause 5 (Intrusion into grief or shock) of the Code was expanded to cover the way in which suicide is reported. The new sub-clause reads:

*\*ii) When reporting suicide, care should be taken to avoid excessive detail about the method used.*

**August 2007**

The preamble's first paragraph has been revised to state:

*"All members of the press have a duty to maintain the highest professional standards. The Code, which includes this preamble and the public interest exceptions below, sets the benchmark for those ethical standards, protecting both the rights of the individual and the public's right to know ..."*

Following guidance on online publications issued earlier this year by the Press Standards Board of Finance Ltd (PressBoF), which specifically excluded user-generated and non-edited material from the Code's remit in online publications. The preamble's third paragraph was revised to make clear that the Code applies only to editorial material. It will now say:

*"It is the responsibility of editors and publishers to apply the Code to editorial material in both printed and online versions of publications. They should take care to ensure it is observed rigorously by all editorial staff and external contributors, including non-journalists."*

Clause 10 is revised to state:

i ). The press must not seek to obtain or publish material acquired by using hidden cameras or clandestine listening devices; or by intercepting private or mobile telephone calls, messages or emails; **or by the unauthorized removal of documents, or photographs; or by accessing digitally-held private information without consent.**

ii). Engaging in misrepresentation or subterfuge, **including by agents or intermediaries**, can generally be justified only in the public interest, and

then only when the material cannot be obtained by other means.

October 2009

Clause 3 (Privacy) was amended to make clear that the PCC will take into account relevant previous disclosures made by the complainant:

i) Everyone is entitled to respect for his or her private and family life, home, health and correspondence, including digital communications.

ii) Editors will be expected to justify intrusions into any individual's private life without consent. **Account will be taken of the complainant's own public disclosures of information.**

iii) It is unacceptable to photograph individuals in private places without their consent.

Clause 4 (Harassment) was revised to require journalists in situations where harassment could become an issue to identify themselves if requested to do so:

i) Journalists must not engage in intimidation, harassment or persistent pursuit.

ii) They must not persist in questioning, telephoning, pursuing or photographing individuals once asked to desist; nor remain on their property when asked to leave and must not follow them. **If requested, they must identify themselves and whom they represent.**

iii) Editors must ensure these principles are observed by those working for them and take care not to use non-compliant material from other sources.

The public interest section has been amended to make clear that, when the public interest is invoked, editors will be required to demonstrate fully that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest:

### **THE PUBLIC INTEREST**

There may be exceptions to the clauses marked\* where they can be demonstrated to be in the public interest

1. The public interest includes, but is not confined to:

i) Detecting or exposing crime or serious impropriety.

ii) Protecting public health and safety.

iii) Preventing the public from being misled by an action or statement of an individual or organisation.

2. There is a public interest in freedom of expression itself.

3. Whenever the public interest is invoked, the PCC will require editors to

demonstrate fully **that they reasonably believed that publication, or journalistic activity undertaken with a view to publication, would be in the public interest.**

4. The PCC will consider the extent to which material is already in the public domain, or will become so.

5. In cases involving children under 16, editors must demonstrate an exceptional public interest to over-ride the normally paramount interest of the child.

**January 2011**

Clause 1 (Accuracy) part ii is amended to read as follows (new section in bold):

A significant inaccuracy, misleading statement or distortion once recognised must be corrected, promptly and with due prominence, and - where appropriate - an apology published. **In cases involving the Commission, prominence should be agreed with the PCC in advance.**



**Appendix E: More detail on the earlier history of press regulation in the 20<sup>th</sup> century**

1947- 1949     First Royal Commission on the Press 1947

Under pressure from the NUJ, the first Royal Commission on the Press was appointed by Royal Warrant on 14 April 1947: *“with the object of furthering the free expression of opinion through the Press and the greatest practicable accuracy in the presentation of the news to inquire into the control, management and ownership of the newspaper and periodical press and the news agencies, including the financial structure and the monopolistic tendencies in control, and to make recommendations thereon.”*

The Commission focused on allegations of newspapers’ inaccuracy and political bias. The freedom of the press was described by the Commission as a political ideal that was under increasing threat from concentration of ownership power. On media ownership, the report warned that increased concentration would deliver "a progressive decline in the calibre of editors and in the quality of British journalism" which would in turn endanger the freedom of the press and ultimately the welfare of the country, if left unchecked. This framework, according to the Commission, set the future role of the press "not to safeguard its own liberty, as many Press Union delegates continued to advocate, but to “save the press from itself” by intervention and legislation, if necessary.

The Royal Commission proposed self-regulation by the industry itself through the establishment of a "General Council of the Press" which would act as a watchdog on irresponsible journalism and contribute to the "freedom and prestige of the Press" by speaking with a unified voice on its behalf.

1953             Whilst these recommendations were made in 1949, it was only after the threat of statutory regulation – suggested in a private members bill around this time - that the industry eventually set up the General Council in 1953, funded by newspaper proprietors.

1962             Second Royal Commission on the Press 1962

In 1962, amidst considerable criticism of the General Council, a second Royal Commission on the Press was appointed: *"to examine the economic and financial factors affecting the production and sale of newspapers, magazines and other periodicals in the United Kingdom, including (a) manufacturing, printing, distribution and other costs, (b) efficiency of production, and (c) advertising and other revenue, including any revenue derived from interests in television; to consider whether these factors tend to diminish diversity of ownership and control or the number or variety of such publications, having regard to the importance, in the public interest, of the accurate presentation of news and the free expression of opinion."*

Unlike the first Royal Commission, this was not concerned with the performance of the Press or general ethical questions. However, its findings demanded an

improvement in the General Council's performance, as well as criticising its lack of lay members.

Around this time the General Council is reformed into the Press Council. The Press Council aimed to maintain high ethical standards of journalism and to promote press freedom, bringing with it a new approach to membership which included 20% lay members and a lay Chairperson, in response to recommendations in the Commission's report.

1972

Younger Committee report on Privacy 1972

Although the Press Council took a more active approach, issuing more authoritative rulings on press misconduct and publishing a series of guidance booklets, it was still criticised in the Younger Committee report on Privacy in 1973 which recommended that the Press Council needed at the least an equal number of lay members on its board if it were to successfully demand public confidence.

1974 – 77

Third Royal Commission on the Press 1977

The third Royal Commission on the Press was established in 1974: *"To inquire into the factors affecting the maintenance of the independence, diversity and editorial standards of newspapers and periodicals and the public freedom of choice of newspapers and periodicals, nationally, regionally and locally"*. Lord MacGregor of Durris replaced Sir Morris Finer in the role of Chair after the latter's death in the middle of the inquiry.

The report, which was not published until 1977, recommended the development of a written Code of Practice, saying *"it is unhappily certain that the Council has so far failed to persuade the knowledgeable public that it deals satisfactorily with complaints against newspapers"*. The Commission suggesting the only alternative to this approach was the introduction of a legal right of privacy, and possibly even a statutory Press Council.

The suggestion of a written Code of Practice was, however, rejected by the Press Council and the Commission's recommendations were only partially implemented.

1980s

In the early 1980s, the National Union of Journalists withdrew from membership of the Press Council, saying it was incapable of reform. During the rest of that decade there was a general view that a small number of publications failed to observe the basic ethics of journalism. An iconic example of this behaviour was the invasion of the actor Gordon Kaye's hospital bedside.

There was also evidence of increasing disrespect for the Press Council coming from the press itself. There had been instances of Press Council rulings having been ridiculed and dealt with in a contemptuous fashion. There was also concern about whether the press was providing the Press Council with proper funding.

These instances in turn reinforced a belief among many members of Parliament that the Press Council was not a sufficiently effective body. In 1990, the Government, under pressure from numerous private members bills in parliament on the subject, commissioned Sir David Calcutt to chair a Home Office Committee looking at privacy and press intrusion.

