



95/2538

2-4 Cockspur Street
London SW1Y 5DH
Telephone: 0171-211 6238
Facsimile: 0171-211 6249

cc Lord Alton
Mr. Williams
Mr. Wright
Mr. Edwards
Mr. Jackson
Mr. Stevens
Vanessa Young
Mr. Langman

From the Secretary of State for National Heritage

The Rt. Hon. Stephen Dorrell MP

PERSONAL AND CONFIDENTIAL

The Rt Hon the Lord Wakeham
Chairman
Press Complaints Commission
1 Salisbury Square
London EC4Y 8AE

2 June 1995

Dear Lord Wakeham

PRESS SELF-REGULATION

As you know, Sir David Calcutt's Review of Press Self-Regulation, published on 14 January 1993, recommended a statutory regime for dealing with complaints against the press. The report of the National Heritage Committee, published two months later, recommended a statutory ombudsman as an avenue of appeal against decisions of a new voluntary Press Commission which it recommended.

My predecessor, Peter Brooke, made clear in publishing Sir David's review that the Government was very reluctant to see statutory regulation of the press. At the same time, he added that the Government's final response to Sir David's recommendations would take into account any response that the press might make to Sir David's detailed criticisms of the Press Complaints Commission.

This remains our position. We have welcomed, and will continue to welcome, those improvements to self-regulation which the industry has decided to implement. Even with these improvements, however, the practice of self-regulation by the PCC still falls short both of Sir David's recommendations and of the level of effectiveness which will be necessary to command long-term public confidence.

I thought it might be helpful to the PCC, Pressbof and the Code Committee, if I were to set out some proposals for self-regulatory improvements which the Government and, in my opinion, Parliament and the public, might reasonably expect to see the industry implement. Clearly, not all these recommendations apply equally to the three bodies but, for completeness, I am including them all in letters which I am sending to you, to Mr Harry Roche and to Sir David English.

Appointments

The Press Complaints Commission should be, and be seen to be, independent of the press. This argues for a system by which each panel which appoints a new member to the Commission should have a quorum of at least five members, and a lay majority. The Commission itself, and any panel conducting an adjudication, should also have a lay majority, but also strong press representation. An insistence on a lay majority both for appointment panels and for adjudications would ensure that the PCC is not, and does not appear to be, the press sitting in judgement on itself. Strong press representation at adjudications will however ensure that the Commission is able to count on the experience of its press members, who will be contributing to adjudications on their peers.

It also seems inequitable that the Code Committee should be composed only of editors. The present Code falls short of what Sir David Calcutt recommended. Although it is true that the Press Complaints Commission has to ratify the Code and any changes to it, it may be that the voice of editors is too strong, and that of the Commission too weak. I would suggest that the Appointments Committee, with a quorum and lay majority as described above, should also make appointments to the Code Committee. The Chairman and the majority of members of the Code Committee might be from the industry, but there should also be strong lay representation. Alternatively, the Code Committee and the Press Complaints Commission might jointly amend the Code.

Procedures

I am particularly concerned about those press abuses which, it seems to me, may be preventable. This occurs when the Press Complaints Commission or the Privacy Commissioner gets to know, perhaps from the aggrieved party, that a story or photographs, obtained in breach of the Code, are being or are likely to be touted to newspapers. In appropriate cases, it seems to me, an editor or editors in general might be warned, if necessary on a telephone "hotline", that publication might compound any breach of the Code, and that, if an ensuing complaint were upheld, the adjudication would be the more strongly worded. This would not be prior restraint because the Press Complaints Commission does not have sanctions. I understand that the Commission has informally issued such warnings already, for example in connection with clause 9 of the Code.

I can see no harm, and much good, in publicising this facility, while making it clear that the Press Complaints Commission reserves the right to exercise its discretion about whether to issue warnings in any particular case. Any telephone hotline could be advertised free in the press, giving the telephone number and address of the PCC and Privacy Commissioner and making clear that they are prepared to warn editors in appropriate cases. It is important that the hotline should be available inside and outside business hours.

I think it also important that Press Complaints Commission adjudicatory procedures should be as transparent as possible. This argues for greater use of oral hearings, although I accept that in some cases such hearings may delay or unnecessarily complicate the resolution of complaints. It would also be useful if the summary of adjudications published in the reports of the Press Complaints Commission were rather fuller. At present, it is often difficult to discern which elements of a clause have and have not been breached by a journalist or editor, and why. If the adjudication summaries were rather fuller, they would help to establish case-law jurisprudence which would be of great value to journalists and editors, members of the public, and future adjudicatory panels of the PCC.

I receive a number of complaints from members of the public who claim to have suffered from press abuses, but who do not seem to know about the Press Complaints Commission or who feel, rightly or wrongly, that it is not worth complaining to the Commission. I know that you are concerned to publicise the achievements of the Commission, and this might be combined with efforts to publicise its powers and remedies.

It would be helpful if the PCC were to set out some Citizen's Charter-type principles which defined the type of service which the Commission sets out to offer to the citizen. In particular, it should consider setting targets for initial action and final resolution of complaints.

Public perception of the effectiveness of the Press Complaints Commission is undermined by the absence of effective sanctions. Newspapers criticised by the PCC under its Code are already bound to print the adjudication which follows in full and "with due prominence", but in the eyes of many of the public, this does not go far enough and some might feel that the adjudication ought to be printed in the same place and with the same prominence as the original story. I should be glad to have your reactions.

In the same context, I am attracted to the idea of a compensation fund for those whose privacy has been unjustifiably infringed by the press. This would enable the industry to acknowledge, in tangible form, that a newspaper had wronged a member of the public. It would represent a form of insurance - there are no doubt ways in which contributions of the different papers could be equitably assessed. It would also be helpful if the Code were written into the contracts not only of editors, but also of journalists including, where possible, freelance journalists.

The Code

The Government very much welcomes the improvements to the Code which the industry has agreed, for example, on jigsaw identification and on use of surveillance devices. But I think the balance of Code still seems to tilt towards the "right to know" (mentioned, but not defined, in the Preamble and in clause 11) and away from the legitimate rights and expectations of members of the public who are subject to press attention. Furthermore, there are several points in the code where its effectiveness is undermined by excessively imprecise language. I also suggested earlier that perceived weaknesses of the Code might be partly attributable to lack of lay representation on the Code Committee.

The following clauses are those where these problems principally arise:

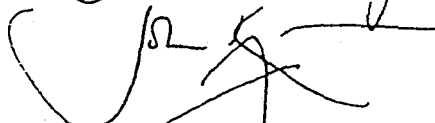
- i. Clause 2 allows for an opportunity to reply only in response to inaccuracy. It is not clear whether this means inaccuracy as determined in a PCC adjudication or, as perhaps it should be, alleged inaccuracy. While I would not press for an unqualified right to reply, there should surely be a fair opportunity to reply to criticism, particularly for those who (unlike politicians) do not have ready personal access to the media.
- ii. Clause 4 is still inadequately precise on the all-important issue of privacy.
- iii. Clause 8 requires that journalists should not remain on private property after being asked to leave. This seems a suitable provision as applying to private curtilages like a garden path, but where the private property is, for example, an inhabited house it is arguable that journalists should not intrude in the first place, unless, of course, they are acting in the public interest. Once again, greater precision of language would be helpful.
- iv. Clause 10 requires journalists to make any intrusion into grief and shock with sympathy and discretion. But this assumes that they have a right to intrude, which is very questionable. Like intrusion into privacy, surely intrusion into grief and shock can be justified only with consent or in the public interest.
- v. Clause 11 says that "unless it is contrary to the public's right to know" the press should "generally" avoid identifying innocent relatives and friends of those convicted or accused of crime. It is not clear what these qualifications mean in practice, or how they relate to the general public interest test, and they may nullify the effect of the clause. There may be a case for removing at least one of them.

- vi. Clause 12 appears to allow journalists to interview minors, without parental consent, about each other's welfare, as it proscribes only interviewing a child about his or her own welfare. This provision seems to lack a rationale, and it is further weakened by the undefined qualification "not normally".
- vii. Clause 14, dealing with identification of victims of crime, seems to require only that journalists should obey the law. Is it intended to have any further effect?
- viii. In clause 18, the public interest defences are not exhaustive and allow for a public interest defence beyond those listed. The published summaries of adjudications do not make clear whether this residual defence has been invoked in an adjudication and, if so, how. But the effect of this provision must be to weaken the Code.
- ix. There are no provisions in the Code on reporting of criminal convictions. The Rehabilitation of Offenders Act prohibits the publication of spent convictions, subject to some exemptions, but the Code does not say anything about the reporting of unspent, but irrelevant convictions. An obvious place for a provision on irrelevant reference to convictions would be in clause 15(ii), which deals with irrelevant reference to race, colour, religion etc.
- x. There are no provisions on stories about the recently dead. As we have seen in recent cases, insensitive reporting of such cases can cause great distress to surviving relatives and friends.
- xi. Finally, I wonder whether it would be possible to incorporate the main points in the useful guidance, which appears from time to time in the reports of the Press Complaints Commission, into the Code which, being widely distributed, is more accessible than the reports.

Conclusion

I hope you will find it useful to have this statement of some proposed changes. Of the various recommendations for improvements, I think that redefinition of the Code to achieve a fairer balance between press and individuals, and the provision of better remedies, are perhaps the most important. I should of course welcome any reaction which you may have to these proposals.

Yours sincerely,



for STEPHEN DORRELL

Approved by the Secretary of State and signed in his absence from London