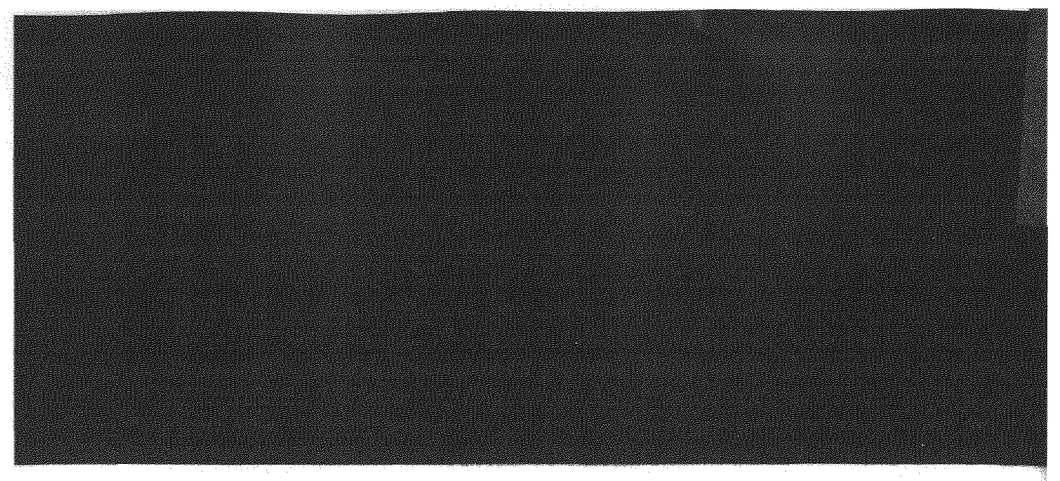

have written recently or about which they intend to write in the near future.

14–034 These rules, in fact, reflect the law relating to "insider dealings", which financial journalists should always bear in mind. Some newspapers insist on a much more rigid code, which requires that their financial journalists should not own shares or securities at all. Other newspapers, however, have connived for many years at share dealing by their tipsters, who sometimes tip off their editors. An insider-dealing scandal engulfed *The Daily Mirror* in 2000 when it emerged that the writers of its "City Slicker" column had been dealing extensively in the shares they tipped: they were dismissed for gross misconduct by the management and later prosecuted. But they claimed to have passed on advance information about their next "tip of the day" to both the editor Piers Morgan and the deputy editor, who were proved to have dealt at the time in these very shares, although they denied the allegations that they had done so as a result of a tip. The PCC tried to restore public confidence with an "investigation": a pathetic affair in which it made no attempt to cross-examine the editor over his dealings in shares, or to discover whether the journalist's allegations were true or false. ("The Commission does not find it necessary to choose between the conflicting versions.") The PCC condemned the two journalists (who had admitted misbehaviour and been dismissed) and made no finding against the editor other than that he had "failed to take sufficient care" to supervise them.[79] The incompetence and inefficiency of its investigation was exposed when the men were put on trial, and evidence emerged that the PCC had not discovered at the time of its enquiry. The scandal—and the PCC's inability to a proper inquiry—led to a proposal to bring business and city journalists within the statutory regulation of the Financial Services Authority.

Confidential sources

14–035 Clause 14 of the Code of Practice reads simply:

> **Journalists have a moral obligation to protect confidential sources of information.**

Although the Code is binding only on editors, this provision may be useful to journalists who seek editorial support to defy court orders requiring disclosure. An editor who disciplined or dismissed a journalist for refusing to disclose a source, even in disobedience to a court order, would thus be deserving of PCC censure.

Does the PCC work?

14–036 The PCC is a public relations exercise. It was established by newspaper interests as a means of convincing politicians and opinion formers that self-regulation can guarantee privacy and rights of reply

[79] PCC Report No. 50, July 26, 2000, pp.5–11 (*The Mirror*).

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better than statutory provisions. The Press Council, established to serve the same purpose, was abandoned when it lost public confidence and had its pretensions to both discipline and defend the press derided by Calcutt. If the PCC suffers the same fate, the statutory tribunal recommended by Calcutt waits in the Westminster wings, as does the draft statute prepared by the Law Commission to enable victims of media infringement of privacy to recover damages. It has been the danger apprehended from these developments which spurred proprietors and editors to co-operate with the PCC through its first decade, obeying its dictates over coverage of the Royal princes and publishing its adjudications without complaint (although also without prominence). The Code continues to be breached as often as ever, but few victims complain (since they can achieve nothing) and the PCC does not accept complaints from unaffected parties or do any monitoring itself (except to keep an eye on coverage of the Royal Family). With the PCC as its fig leaf, the newspaper industry has used its considerable political clout to scupper efforts under both Tory and Labour Governments to introduce privacy laws: political leaders, desperate for tabloid support, praise "self-regulation" because that is a pre-condition for obtaining it. The wild card in this arrangement is the judiciary, armed with new powers under the Human Rights Act 1998. Unafraid of tabloid pressure, some judges are minded to develop a tort of privacy, or to extend breach of confidence to the same effect, and they may do so by using the PCC code provisions as the test (since they are drafted by editors, the press can hardly object if the courts take them seriously). Editors would then have fashioned a noose for their own necks, with (for example) the code prohibition on photographing people in places where they have "a reasonable expectation of privacy" being used as a basis not for another meaningless adjudication, but for an award of damages against the photographer and the newspaper, and an injunction on further publication.

The PCC was modelled on the Advertising Standards Authority, which had achieved considerable success in persuading Parliament that self-regulation worked better (and more cheaply) than statutory regulation of advertising content. However, the analogy falters:

- The ASA works because its rulings are backed by a severe sanction (advertisements held to breach of code will not be published again). The PCC has no sanction; it does not offer to compensate any victim, or require a censured editor to publish its censure with any degree of prominence, or to refrain from repeating the breach.
- The PCC has not solved the intractable problem that tabloids are entertainment-based and will continue to publish circulation-boosting stories irrespective of adverse adjudications. Calcutt recognised that the improbability of

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all sections of the print media following PCC adjudications was the factor that would be most likely to fuel demands for statutory regulation.

- The PCC's refusal to monitor compliance with its code or even responses to its own adjudications is a fatal mistake. The ASA is the more respected precisely because it engages in monitoring and may act against breaches without the need to await a complaint from an interested member of the public. As Calcutt recognised, a monitoring exercise is essential to any code that purports to regulate intrusions into privacy, as victims (other than of notorious infringements) will be reluctant to give the matter further publicity by making a complaint.
- The PCC will face problems over its procedures in the event that it becomes judicially reviewable. Its evident desire to exclude lawyers and to operate informally, with nudges and winks transmitted along a network of editors, is not calculated to satisfy complainants or (inevitably) their legal advisers. Unsuccessful complainants feel that they have not been given a fair hearing when they are given no hearing at all, especially when disputed issues of fact are decided against them on the strength of written communications with newspaper representatives.

A problem once the PCC is perceived by the courts as having quasi-judicial status is the bias which might be apprehended from its membership. Its part-time chairman receives a large salary (reported to be £150,000 a year for working one day a week), paid for by a levy on the companies which own the newspapers complained against. His presence on an adjudicative panel might on this basis be challenged. More serious is the widespread frustration at the PCC's powerlessness. A report in 2003 from the Culture, Media and Sport Select Committee recommended that it should offer compensation to victims of press abuse and should increase the membership fees of regular transgressors. Without something resembling a sanction, it will remain widely perceived as ineffective.

14–037 The PCC does valuable but unpublicised work in mediating between "non-celebrity" complainants and newspapers, obtaining acknowledgments of error, corrections and apologies which provide some satisfaction to falsely maligned individuals. They could for the most part obtain this redress by contacting the editor (but they lack confidence) or having a lawyer contact the editor (but they lack money to retain one). The PCC serves a valuable function as an informal conciliator, leaning on newspapers to admit mistakes or oversights, and there is no reason why this service should not continue irrespective of whether a privacy law becomes available for victims of more serious intrusions. Regrettably, the PCC devotes much of its "annual review" to shrill propagandistic claims of the kind:

> "the application and observance of the Code are part of the culture of every news room and every editorial office . . . (the PCC) has clearly raised standards of reporting . . . most activities which brought newspapers and magazines into disrepute in the 1980s have long since vanished—and the PCC continues to ratchet up standards on the back of adjudications".[80]

On the contrary, privacy invasions of the 1980s have continued, and a vicious new development—the newspaper as vigilante, encouraging the lynch mob to visit alleged paedophiles at their published addresses and whipping up hatred against the youths who killed Jamie Bulger (putting their security at risk when they are released) makes it arguable that British press ethics are at their lowest ebb. There is no evidence that the PCC's self-regulation has been any more successful than the Press Council's. The only difference is that while the Press Council decisions—and the Press Council—were often vigorously condemned by the press itself, Lord Wakeham succeeded in persuading proprietors and editors that it is in their interests to support—i.e. not to criticise—the PCC. There is a queasy irony here for a British press which trumpets its commitment to free speech, because this wider public interest aspect of the PCC's relationship with the industry it affects to regulate has gone unremarked. That the PCC gets a "good press" is unsurprising, but an example of media hypocrisy nonetheless. Do editors and journalists, so quick to find fault with the performance of other public bodies, turn a blind eye to PCC failings because they have an economic and political interest in fostering a public perception of its success? The fact is that national newspapers report favourable adjudications as if they were as meaningful as court cases, and have never published a serious critical analysis of the organisation. After *The Sun* enraged public feeling (as whipped up by *The Mirror* and other competitors) by publishing an old photo of Sophie Rhys-Jones, bare at one breast, before her marriage to Edward Windsor, the PCC issued an immediate and overblown condemnation: "The decision to publish these pictures was reprehensible and such a mistake must not happen again." This was repeated as "news" by all newspapers, under portentous headlines ("Lord Wakeham's Statement") which presented it as a ruling which was bound to deter further privacy invasions.[81] Only the *Guardian* permitted itself a touch of editorial

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[80] PCC Annual Review 2000.

[81] Even a respected commentator like Roy Greenslade could proclaim, nonsensically, that this adjudication left the *Sun* editor "bleeding . . . the wounds might well prove fatal": "Bring Me Your Woes", the *Guardian*, June 7, 1999. However, there are occasional signs that a columnist realises that the emperor has no clothes: see Catherine Bennett, "The Waste of Space that is Lord Wakeham", the *Guardian G2*, July 5, 2001.

candour over this "smack on the wrist", and hinted at the truth: "The only time the PCC jumps is when Royalty complains".

The PCC has so far failed to raise the tone or the profile of debate over media ethics, although it has encouraged the development of procedures within newspaper offices (including the appointment of ombudsmen and "readers' representatives") that enable complaints to be answered quickly. Its adjudications are short and usually over-simple, reflecting only on editors, who do not appear discomforted by its statements that they have breached a code of practice. One fateful decision made in its first year was to take the *Sunday Sport* seriously and to treat it as a newspaper. The PCC embarked upon a solemn investigation into a front-page story entitled: "THIS NUN IS ABOUT TO BE EATEN. She's soaked in sauce, barbecued then carved up like a chicken . . . turn to pages 15, 16 and 17 if you dare." The editor of the *Sport* relished the complaint, describing his article as "pioneering investigative journalism at its best", which he was proud to have published. He dared the PCC to condemn him for exposing necrophilia in a Buddhist monastery in Thailand, "a country regularly visited by British tourists". The PCC rose to the bait, describing the story as "an extreme breach of the spirit of the Code of Practice" although it was outside its letter, since the Code does not purport to regulate matters of taste.[82] *Private Eye* is the only print journal which refuses to recognise the PCC, on the basis (says Ian Hislop) that certain editor-members of the Commission are themselves so morally questionable that no ethical judgment they make deserves to be recognised.

NUJ CODE OF CONDUCT

14–038 The National Union of Journalists has a code with which all members are expected to comply. The code itself is impressive, although attempts to enforce it have been less so. No journalist has been expelled for breach of the code, and disciplinary hearings tend to be unsatisfactory for all concerned in that victims of unethical behaviour can only complain to the NUJ branch of which the offending journalist is a member. If any branch member is impressed by the complaint, he or she could formally begin disciplinary proceedings on behalf of the victim. This procedure is not satisfactory: it relies upon journalists to take up cudgels against their colleagues, and provides no assurance that the complaint will be dealt with either independently or impartially.

THE ADVERTISING STANDARDS AUTHORITY

14–039 In the United States, that bastion of freedom of expression as a result of the First Amendment, advertising—"commercial speech"—is accorded less protection and is regulated by a statutory body, the

[82] PCC Report, No. 2, July—September 1991, p.23.

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