

RECEIVED SUBMISSIONS

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PCC Governance Review

The Campaign for Press and Broadcasting Freedom is an independent organisation which campaigns for greater diversity and accountability in the media. We have intervened on a range of important policy issues in media and communications since our foundation in 1979. We have a longstanding interest in the issue of media regulation in general, and press regulation in particular.

1.0. The PCC Board

1.1 The PCC's Articles of Association state that:

The primary function of the Commission shall be to consider, and adjudicate, conciliate and resolve or settle by reference to the Press Code of Practice promulgated by PRESSBOF for the time being in force complaints from the public of unjust or unfair treatment by newspapers, periodicals or magazines and of unwarranted infringements of privacy through material published in newspapers, periodicals or magazines (in each case excluding advertising by third parties) or in connection with the obtaining of such material but shall not consider complaints of any other nature.

It shall also be the function of Commission to consider and pronounce on issues relating to the Code of Practice which the Commission, in its absolute discretion considers to be in the public interests.

1.2. The PCC was established, on the recommendation of the Calcutt Inquiry, as a body 'specifically charged with adjudicating on complaints of press malpractice'. And this is indeed how it frequently presents itself. Thus on its website the PCC states that it is 'an independent body which deals with complaints from members of the public about the editorial content of newspapers and magazines', and in the Commission's review of its activities in 2008 Sir Christopher Meyer described it as a 'mediation service'. Furthermore, when the Campaign argued that the PCC should be regarded as a public body for the purposes of the Freedom of Information Act, the Commission told the Ministry of Justice that its 'main function is to conciliate and adjudicate complaints ... It is not a "regulator" in the licensing or legal sense of the term'.

1.3. However, the PCC constantly slips between describing itself as a mediator and a regulator. It is particularly prone to stress its 'regulatory' function at times of heightened public and political concern over press standards, but by no means only at such times. So, for example, in his contribution to the 2008 review quoted above, Meyer seamlessly segues into referring to 'the self regulatory system' and arguing that 'self-regulation is the only way to go', and the page of the PCC's website headed 'What is the PCC?' moves rather more abruptly from discussing its role as a complaints mediator to stating that 'the success of the PCC continues to underline the strength of effective and independent self regulation over any form of legal or statutory control'. The reader is then directed to a page detailing 'the benefits of self- regulation'.

1.4. As the PCC has endlessly reminded us over the years, it regards self-regulation as preferable to any other kind of regulation, especially statutory regulation. As the Commission is financed by the very publications which it is supposed to be regulating, this is hardly surprising. However, it is unacceptable for the PCC to present itself as any form of regulator given that (a) it was not established as a regulator and consequently (b) nothing in its Articles of Association suggest that it is meant to perform a regulatory function. In this respect we would remind the PCC that the 2008 report on The Ownership of the News from the House Of Lords Select Committee on Communications clearly stated that the PCC 'was never designed or established to proactively promote journalistic standards or ethics'. Furthermore, in his evidence to the Department of Culture, Media and Sport Select Committee in July 2009, the PCC's own Tim Toulmin stated, quite correctly, that 'we are a complaints body; we are not statutory; we are like an ombudsman, really. People want us to be more like a general regulator with statutory powers and so on. That is a separate argument; the fact is we are not that body'. Precisely.

1.5. Recommendation: The PCC should either cease forthwith to refer to itself as a regulator in any of its public pronouncements, or it should very considerably widen its remit and reconstitute itself in order explicitly to include specific regulatory functions. In the latter case, it should rename itself the Press Standards Authority

2.0. The PCC's handling of complaints

2.1. In our view, however, there is not the slightest chance of the press industry paying for such a body. When the last chairman of the Press Council, Louis Blom-Cooper QC, attempted, in his words, 'to construct a Press Council that responds more actively to social conditions in which the public is increasingly hostile to some of the outpourings of some sections of the press' (quoted in *Regulating the Press*, Tom O'Malley and Clive Soley, 2000), he was bitterly resisted by those selfsame sections of the press which had given rise to the public hostility in the first place. Indeed, it's striking that when the Council was replaced, it was by a body with an even narrower remit than its predecessor, and we have not the slightest doubt that intense political lobbying by the press industry played a major part in this outcome.

2.2. Thus, rather than waste time outlining what a properly constituted press self-regulatory body should look like, we will confine ourselves in this and the following sections to outlining some of the more glaring problems with the ways in which the PCC as currently constituted handles complaints, and suggest a number of remedies.

2.3. **Third Party Complaints.** The PCC refuses, for the most part, to accept third party complaints, and normally accepts complaints only from those who have been named or otherwise identified in press articles. Particularly given that many of those who are victims of the kind of demagogic and hate-filled reporting which frequently gives rise to such complaints are, for one reason or another, unable to complain, this is unacceptable.

2.4. After its 2003 hearings into privacy and media intrusion, the Culture, Media and Sport Select Committee noted that Friends, Families and Travellers, a national voluntary organization serving the travelling community, had reported that it had submitted over 600 complaints to the PCC regarding discriminatory references to gypsies and travellers in the press. The majority of these had not been accepted and none had been upheld. 'Perhaps the PCC would concede', the Committee suggested, 'that this is evidence, despite its efforts, of a problem that just will not produce a technically valid complainant, i.e. one related to a named individual – with regard to

discrimination and racism this is often the whole point'. The Committee concluded that: 'A new and more explicit approach to the acceptance of third party complaints' would be a beneficial reform as 'this is as important in issues of prejudicial and pejorative references to minority groups as it is on privacy matters'.

2.5. The issue of third party complaints has also been taken up, in a rather wider context, by the campaigning body MediaWise:

Any refugee, black person or homosexual might reasonably object if a newspaper published inaccurate or prejudicial material about refugees, black people or homosexuals, even if they themselves are not mentioned by name. After all, they are the ones most likely to bear the brunt of any public displeasure that ensues. To argue that this is unlikely to happen flies in the face of reason, since there have been innumerable instances of outbursts of public rage against paedophiles (during the News of the World's 'name and shame' campaign), Travellers and asylum seekers. Nor is it unreasonable for readers who are not members of the group under attack to complain if they feel that inaccurate or prejudicial material is likely to distort perceptions, cause harm to others, or skew the responses of policy-makers. We are all equal members of an open democracy, so public misperceptions generated by inaccurate or sensational stories matter to us all. Furthermore, they argue, third party complaints should be permissible on the grounds that 'we are all diminished when community relations break down as a result of inaccurate or sensational coverage' (Satisfaction Guaranteed, MediaWise 2004). We would strongly concur with the above views.

2.6. Recommendations: the PCC should entertain third party complaints as a matter the press must avoid of course. Furthermore, in Clause 12, which states that 'prejudicial or pejorative reference to an individual's race, colour, religion, gender, sexual orientation or to any physical or mental illness or disability', the words 'an individual's' should be dropped.

3.0. The PCC and Transparency

3.1. In our experience, both as very occasional complainants to the PCC and, far more frequently, as analysts of its modus operandi, the Commission is a really quite remarkably opaque organisation. As complainants, it is our experience that one's complaint disappears inside the PCC maw and one hears little or nothing more until one is told that one's complaint has been rejected, for which one is given a peremptory, specious and entirely inadequate explanation. In a significant number of cases, complainants who have been offered a form of redress from the PCC with which they have been dissatisfied have testified to the Campaign, to MediaWise and to the DCMS Select Committee that what they found especially disagreeable about dealing with the PCC was the way in which they were kept out of the loop, unsatisfactory deals with publications were stitched up behind their backs, and they were then offered these on a take-it-or-leave-it basis. What was a particularly striking feature of the cases in which dissatisfied complainants had the temerity to complain to the PCC about the way in which the Commission was handling their complaint was the rapidity in which these unfortunates found themselves in a battle on two fronts – with the PCC as well as with the publication which was the subject of the original complaint. (For a detailed account of a number of such cases see 'A modern day Circumlocution Office', in Satisfaction Guaranteed, MediaWise 2004).

3.2. Given the above, it is hardly surprising that, where appropriate, many complainants simply by-pass the PCC and take their case to the courts. At least in this situation they are able to engage publications in an open contest and, particularly importantly, to be represented by advocates of

their own choosing rather than by those whose abilities, not to mention independence, they have every cause to doubt. (See the final paragraph of this response).

3.3. As analysts of the PCC's operations, we find ourselves constantly impeded by the paucity of complaints data which it publishes. Indeed, as the PCC Annual Review becomes ever glossier so it becomes ever thinner in terms of usable statistics. The PCC rightly complains when critics make mistakes about the numbers of complaints which it rejects, but the opaque way in which it frequently presents its figures is at least partly to blame. Particularly given that it possesses a website, there is no reason why the PCC should not list all the complaints which it receives, name the publications concerned, indicate which of the complaints fall outside its remit, explain why, and show how the remaining complaints have been handled, with what result and in what time frame. Like Ofcom it could also publish a fortnightly bulletin highlighting particularly significant complaints and the manner in which they have been dealt with. The data needs to be published in such a fashion that it is easily and accurately comparable over time, and the Annual Report should contain a far fuller and more detailed account of the year's complaints than it does at present. Obviously, however, in complaints concerning privacy (which account for only a small minority of the complaints received), the PCC may have to withhold certain details of the complaint at the complainant's request.

3.5 Recommendation: the PCC should publish comprehensive and consistent data about all complaints received, doing so (in different forms) on its website, in fortnightly bulletins, and in its Annual Reviews.

3.6 One of the most effective ways in which the operations of the PCC could be rendered considerably more transparent would be for it to be recognised as a public body for the purposes of the Freedom of Information Act. Newspapers habitually demand maximum openness from the institutions which they scrutinise, but are themselves notoriously hostile to external scrutiny. Exactly the same attitude extends to the body which they pay to regulate them. Thus when we urged the Ministry of Justice to bring the PCC under the Freedom of Information Act as a body performing a public function, the PCC objected on the grounds that 'a significant percentage of the complaints handled by the Commission are about intrusions into individuals' privacy. The whole point about making such a complaint is to protect oneself from further scrutiny about private facts. The threat of disclosure of such information and objections to third parties would make the Commission's important work in this area impossible'. However, this argument is severely weakened by the fact that in 2008 only 23.8 per cent of possible breaches of the PCC code concerned privacy, whilst the vast majority (71.9 per cent) concerned accuracy and opportunity to reply. Furthermore, were the PCC a public authority for the purposes of FOI, the minority of privacy complaints could explicitly be excluded from scrutiny under the terms of the Act.

3.7 Recommendation: the PCC should be regarded as a public body for the purposes of the Freedom of Information Act. 4

4.0. The PCC and Independence

4.1. The essence of all self-regulatory systems is their ability to demonstrate their independence of those whom they are supposed to be regulating. This is not a test which the PCC passes. In its 2008 report noted above, the House of Lords Select Committee on Communications noted the PCC's 'lack of independence from the industry it regulates'. This manifests itself in a number of ways, not least in the matter of appointments.

4.2. In this respect, we cannot improve upon the description of the most unsatisfactory situation offered by the Media Standards Trust in its 2009 report *A More Accountable Press*:

Appointments to the Press Board of Finance [which collects the funding for the PCC from the press, and distributes it] are made by the industry. Appointments to the Editorial Code Committee are made by the industry. The Chair of the PCC is appointed by the Press Board of Finance, which is comprised entirely of senior figures from the industry. The appointments processes for the Chair, for the Press Board of Finance, and for the Editorial Code Committee are not overseen by any independent bodies, and it is unclear what criteria are applied to the process. Appointments to the PCC itself (not including the Chair) are made by the Appointments Commission. The Chair of the PCC heads the Appointments Commission. The Chairman of PressBoF also sits on the Commission.

4.3. Furthermore, individuals regularly move between the different bodies which comprise the Commission, and sometimes are members of more than one body simultaneously. 4.4. However, the most disturbing manifestation of the PCC's lack of independence from the industry which it is supposed to be regulating concerns the membership of the Editorial Code Committee. It is understandable that the PCC Code of Practice should be drawn up, reviewed and revised by practising journalists, but it is surely unacceptable that its membership should be wholly comprised of editors. As an organisation whose members include many practising journalists, the Campaign is particularly acutely aware that unacceptable journalism all too frequently results from intense pressure applied by editors to journalists – almost always in the interests of the bottom line, maintaining the health of which of which, in the interests of the publication's owners, is one of the editor's key tasks (the Express furnishing a particularly glaring case in point). Thus this is the journalistic equivalent of putting the fox in charge of the henhouse. It is also one of the aspects of the PCC which members of the public, once they are appraised of the facts, find least easy to understand or accept.

4.5. Recommendation: the Editorial Code Committee should consist primarily of highly experienced senior journalists; editors should be in the minority. The PCC should also support the NUJ's demand that journalists' contracts should include a conscience clause.

5.0. Conclusion

5.1. Based on our own and others' previous experiences of dealing with the PCC we do not expect for one moment any of our recommendations to be taken on board. It is, however, perhaps worth pointing out that the consequence of an unreformed PCC is that those whose complaints can be dealt with by the courts will simply have increasing recourse to the law. This will then be developed by judges rather than by Parliament. There is not the slightest point in either the press or the PCC complaining about this situation – had the press not managed to terrorise the major political parties into silence over what newspapers insist on referring to as 'press freedom' (which, in this context, is actually nothing more than the freedom of newspaper owners to do exactly as they will with their property), Parliament itself would have been able to develop appropriate laws in a democratically accountable fashion.

5.2. Just how the PCC virtually sits up and begs complainants to ignore it is nicely illustrated by the recent Peaches Geldof case. On 29 September 2008 the Star ran a story headed 'Peaches: Spend the Night With Me For £5k' and stated that 'glamour girl Peaches Geldof is bagging thousands of pounds a night from people desperate for her company Peaches and her girlie pals rake in the mega-bucks fees for providing their services at A-list parties'. The article, which clearly implies that Peaches was selling sexual services, was published by the paper in the knowledge that it was untrue. After Peaches had complained to the PCC the paper agreed to print a retraction, but refused to do so on the front page because 'the subject matter of the apology and of the complaint is not proportionate with a front page apology. The headline on page one was a taster for the article as a whole, which appeared on page 5'. A very small 2, thus appeared on page 2. Piling pusillanimity upon sophistry, apology, about 30 cm the PCC meekly endorsed the Star's refusal on the grounds that 'while the front page may have been open to a certain interpretation, it did not contain any specific claims about the "services" offered by the complainant'. Thus insulted, Peaches went straight to court, where on 12 January 2009 the Star was forced to withdraw the allegations unreservedly and publicly apologise to Peaches, who was awarded substantial undisclosed libel damages and her costs.

5.3. Need we say more?

This response was written on behalf of the Campaign for Press and Broadcasting Freedom by Julian Petley, who is Professor of Screen Media and Journalism at Brunel University, a member of the board of Index on Censorship, and a member of the editorial board of the British Journalism Review.