

**PCC response to the Culture, Media & Sport Select Committee's post inquiry
recommendations following its inquiry into Privacy and Media Intrusion**

12 January 2004

Introduction

Set out below is the Press Complaints Commission's response to 23 different proposals that were contained in the Select Committee's report. Some of the Committee's proposals reflect announcements on reform of the PCC that had already been made by Sir Christopher Meyer in his inaugural speech as Chairman of the PCC in May 2003, before publication of the Select Committee's report. Others are already carried out by the Commission, while further consideration will be given to others. In some cases, the Commission will not take some of the proposals forward, but where this is the case it has given specific reasons for its decision not to do so.

1. The PCC should co-operate with Ofcom to develop ways of tackling media scums.

The PCC and Ofcom have been in touch to organise a meeting on this subject, which will take place early in the New Year.

2. The PCC should establish a 'twin-track' procedure to offer adjudication in those cases where the complainant did not want mediation. At least it should make an assessment as to the level of demand for such an innovation.

There is general acceptance that the Commission is highly successful as a dispute resolution service – achieving resolutions in almost all cases where there is a breach of the Code. This is done quickly and at no cost to the complainant. The Commission is mindful of the fact that in the absence of compensatory powers – which it does not seek, and for which there is no evidence of a demand by complainants – speed of resolution is of great importance. Extracting early offers from editors to resolve complaints is therefore essential to the Commission's work. This can only be achieved if editors have an incentive to make such offers and not to prevaricate in their responses as they might do if threatened with legal action. Therefore, the Commission has made clear in a number of adjudications that it will take account of any offer that an editor has made to resolve the complaint. This would be undermined if the Commission adopted a twin-track procedure along the lines that the Committee suggested, because an offer to resolve a complaint would not count as mitigation for the original breach of the Code. There would therefore be no incentive for editors to make such offers.

3. The PCC should establish a dedicated pre-publication team to handle inquiries about issues that arise before a story is published. The team should deal with the public and liaise with the relevant editor, and should handle issues relating to harassment.

Members of the Commission's staff already fulfil this function, and are available to speak to members of the public 24 hours a day. In cases of harassment, 'desist' messages are communicated to editors when appropriate, and members of the public are advised about how to deal with unwelcome approaches from journalists.

4. The Code of Practice should be updated to take account of developments in communications and to reflect relevant legislation.

The Commission welcomes this suggestion and as a result has begun a dialogue with the Information Commissioner to talk about a range of issues of mutual concern. Further meetings are planned, and it is anticipated that the Commission will oversee the production of a guidance note early in 2004 outlining to journalists what their responsibilities under the Data Protection Act are.

5. Journalists should be enabled by the Code to refuse an assignment on the grounds that it breaches the Code.

The Commission has no evidence that journalists are asked to undertake such assignments that would breach the Code in the absence of any public interest. This would in any case seem to be a matter for the employer and employee concerned rather than the Commission. Nonetheless, the Commission will ask the Code Committee to consider the proposal.

6. The Code should ban payments to police for information, including through intermediaries such as private detectives.

The government's response to the Select Committee set out in detail why this behaviour would be illegal. It is axiomatic that the Press Complaints Commission condemns lawbreaking. However, it would be for the Code Committee to consider whether it is necessary for the Code of Practice to duplicate the law. The Committee will consider this proposal at its next annual review of the Code, which is due to take place in early 2004. This will also be a topic for discussion with the Information Commissioner.

7. Lay members of the Commission should be openly recruited.

This proposal replicates an announcement made by Sir Christopher Meyer in May 2003. The first Commissioner appointed as a result of open advertisement and interview will be appointed from January 1st, and second from August 1st. The process yielded more than 1,000 applications.

8. Lay members should be appointed for fixed terms.

Once again, the chairman of the PCC had already made this proposal. All lay members will now be appointed for a three year term, renewable for one further term. All current lay members have also had their terms fixed.

9. Press members should be appointed for fixed terms.

This is a matter for the relevant trade bodies concerned.

10. Press members should be ineligible for membership of the Commission and the Code Committee if they persistently offend against the Code. Persistence could be defined as 'three strikes and you're out'.

This proposal would not in fact be practical. Would it apply to all breaches of the Code – no matter how minor and no matter whether or not the editor had resolved the complaint? If so, it would undermine the conciliation process because editors would be more reluctant to admit a breach of the Code – which may in some cases be an implicit acknowledgement when they offer to resolve complaints. On the other hand, were it to apply only to those complaints that were adjudicated and upheld, it would be unfair to those editors who had defended publication in good faith but with whom the Commission ultimately disagreed.

If the Select Committee had in mind editors who deliberately breach the Code, it should be reassured that the Commission already has powers to refer matters to publishers in serious cases. It would certainly do so if it thought that editors were wilfully flouting the rules. However, it does not believe that there is evidence that this is the case. Almost all breaches of the Code are the result of misjudgement or mistake, rather than a cynical contravention of its clauses.

11. The lay majority should be increased by at least one.

This took effect from January 1st 2004, when the new lay member, Eve Salomon, was appointed.

12. The Appointments Commission should appoint an independent figure to implement a procedural appeals process. An external audit of the PCC's processes should also be instituted.

Both of these proposals have been taken forward – as outlined by Sir Christopher Meyer in his first speech as chairman of the Commission. Sir Brian Cubbon, former Permanent Secretary of the Home Office and former member of the Commission, has been appointed as the Commission's first "Charter Commissioner" to investigate any allegations of procedural irregularity. He took up the post on January 1st 2004, at which point a new "Charter Compliance Panel" was created to carry out a regular 'audit' of the PCC's processes and practices. This body will be independent, publish an annual report and make recommendations to the Commission. It will have the power to probe into any aspect of the Commission's work. It will be chaired by Sir Brian Cubbon and also include Dame Ruth Runciman and Charles Wilson, former editor of The Times – and therefore have a clear lay majority.

13. The Code Committee should be re-established with a significant minority of lay members.

This proposal does not take account of the fact that there is already a significant lay input into the Code.

Not only can any member of the public make representations to the Committee, but its meetings are attended by the Chairman and Director of the PCC. Moreover, the Code is ratified by the PCC itself which has a clear lay majority. If there is any suggestion that amendments have been made out of self-interest rather than further to improve standards, the Commission could refuse to ratify the Code.

14. The PCC should do more to act after unexpected disasters have occurred, and to take a more consistent approach to foreseeable events that herald intense media activity.

The Commission set out, in some length in its submission to the Select Committee, details of occasions on which it has issued behind the scenes guidance to editors on coverage of particular stories at times of great grief or shock. This usually relates to the physical presence of reporters, although it should be noted that the broadcasters – over which the PCC has no jurisdiction – are a major contributing factor to ‘intense media activity’ at such times.

The Commission is mindful of the fact that this sort of guidance should only be done occasionally to ensure that it has maximum impact. If it was done regularly, there is a danger that its authority would be undermined. It should certainly not be done simply to remind editors of what the Code says – the Commission already expects editors to be aware of this and indeed to abide by it at all times. Guidance that simply reiterated the Code’s provisions would, in the Commission’s view, be superfluous.

15. The text of a PCC adjudication should be clearly and consistently set out to ensure its visibility and easy identification.

The Commission is consulting with the industry to investigate ways of taking this proposal forward and forging a common industry-wide standard.

16. Any publication which is required to publish an adjudication should publish a ‘taster’ for it on the front page.

Currently the Commission requires that its adjudications are published with ‘due prominence’. This has traditionally been left to the editor – who will be aware that a failure to publish it with due prominence may result in another breach of the Code. The Commission will certainly keep the matter under review, although it should be pointed out that it has never had an objection from a successful complainant that their adjudication was not published sufficiently prominently.

17. The PCC should publish league tables showing how publications have fared in a particular year.

The problem with such a table is that it would almost certainly be entirely misleading. However constituted, it would also be unfair. Would it include all breaches of the Code – even those hundreds of cases where the editor has behaved well and offered to resolve the

complaint? Or would it just be those cases that are adjudicated and upheld, in which case it would catch the editor who has defended publication in the honest belief that there was no breach of the Code.

In any case, the Commission is currently entirely transparent about which publications breach the Code. Details of all such cases – going back to 1996 – are listed on its website, and it mails out a quarterly bulletin and six-monthly report containing the same information.

18. Annotating press archives in cases of inaccuracy should be automatic in all serious cases, and any offending material should be removed from publicly available databases.

Annotating press archives is already one popular form of resolution to a complaint – even in relatively minor cases. The Commission agrees that publications should annotate their archives to reflect the fact that a complaint has been upheld, and understands that this is already the case throughout the industry. It also agrees that publications should remove material that breaches the Code from publicly-available sources of information such as their websites.

19. Pressbof should introduce a gearing between the calculation of the registration fee and the number of adverse adjudications received by a publication in the previous year.

This is a matter for Pressbof to consider.

20. There should be a fixed scale of compensatory awards to be made in serious cases. This could be in the form of a payment to charity.

The government's response has already correctly set out in detail why such a system would be counter-productive, as well as unfair to smaller newspapers. There is no doubt that lawyers would become involved, and that the entire culture of the system – which is effective and fair because of the speed with which resolutions are offered – would change. But there is a further point – there is no evidence that complainants actually want money. The PCC's regular surveys of its complainants' views have revealed little or no appetite for compensation. A desire for money is not what motivates people to complain. If it were, as the government has indicated, it would be up to them to pursue the matter through the courts. What is more, the Commission strongly believes that the critical adjudication is a powerful sanction – a greater deterrent, even, than fines. Having to publish an unedited reprimand in one's own newspaper – advertising to readers, rivals, colleagues and employers that an editor has breached his or her own professional standards – is a forceful penalty that should not be underestimated.

21. The PCC should cover any costs (other than legal fees) incurred by complainants such as the acquisition of a transcript of a trial.

The Commission agrees with the government's objections to this proposal: namely, that it would require a judgement about whether the expenditure was necessary and whether complainants should pay the costs where their complaints were found not to be justified. It may also be open to abuse. Additionally, there should be no need for complainants to

undertake this sort of exercise. The burden is on the newspaper to show that they have not breached the Code – it is they who should provide the evidence.

22. Pressbof should withdraw from the process of ratifying the Code.

As the government has said, there do not appear to be any criticisms of the Code itself. Moreover, the Commission is surprised by the Select Committee's objection to Pressbof's involvement in the ratification (not the writing) of the Code. The fact that publishers have endorsed the Code in this way is a powerful signal to any editor who might wish to transgress it.

23. The PCC should make itself available to give evidence to the Select Committee at regular intervals.

The Commission will respond positively to any invitation to give further briefings.

Conclusion

The Press Complaints Commission is grateful to the Select Committee for the numerous constructive proposals that were contained in the report. Those taken forward will help to buttress the system of self-regulation which is already responsible for improving press standards and delivering efficient and fair redress to members of the public when things do go wrong.

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