

From: Stephen Abell
Sent: 04 January 2011 15:25
To: PCC
Subject: PRIVATE AND CONFIDENTIAL

Dear Commissioners

I have today received an email (below) from Guy Black, the Chairman of PressBof.

As you will see, it confirms that Richmond Desmond has refused to pay his subscription to PressBof, and regards himself as outside of the system. PressBof has proposed that Northern & Shell now be formally excluded, and the PCC cease to deal with complaints about Express Group newspapers and magazines.

It is worth noting the wording of the Governance Review, which states the following in regard to defaulting publishers:

A publisher who persistently withholds funding for the PCC should be considered outside the self-regulatory process. In these circumstances, it would be a matter for the funding body to seek to restore relations with the publisher. It should give every reasonable opportunity for payment to be restored. Should this not happen, the Commission should be informed of the position. Following consultation with the Commission, and only as a last resort, PressBof could then make clear to the publisher that defaulting on payment would mean it was no longer part of the system. The Commission would as a result formally decline to consider complaints about the relevant titles, or offer guidance to their editors

PressBof has not succeeded in obtaining restored payment. Should the Commission be satisfied that the last resort has been reached, then the next step is for the PCC to decline to deal with complaints about the titles.

This will inevitably cause the PCC practical, philosophical and procedural problems.

I attach two papers. The first is an amended version of a text I had previously circulated to PressBof, setting down some of the difficulties occasioned by the loss of Express papers to the system. The second seeks to set down proposed means of handling current and future complaints.

If Commissioners are content (as far as is possible), we will proceed on the basis outlined in the second paper. The full issue can be debated at the next Commission meeting on 19th January. Commissioners should note that PressBof intends to make public the position at the beginning of next week. We will have to issue a statement, which will be circulated for approval to the Commission in advance.

There can be no doubt that this is a serious development for the PCC and self-regulation. It is possible that there will be calls for either the Government or the DCMS Select Committee to examine whether the system is tenable without the involvement of all major publishers. In any case, this issue will impact on all our positive PR work, as it will be raised as evidence of a structural weakness, whatever we might say in other areas. It is to be hoped (rather than expected) that the position is a temporary one, and we will make that clear in

public. However, it is not clear what will be the compelling factor (short of Governmental intervention) to influence the company's return.

All of that said, Richard Desmond has – not for the first time – demonstrated a clear unwillingness to support the PCC, and self-regulation requires clear commitment from its members to succeed. There can be no doubt that such commitment is lacking.

I would welcome any comments by the end of this week, before the decision is made public. Commissioners can debate the matter more fully at the next meeting. As always, I would be grateful if this matter could be kept completely confidential in advance of it being made public.

Very best

Stig

Stephen Abell
Director

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The PCC is an independent self-regulatory body which deals with complaints about the editorial content of newspapers and magazines (and their websites). We keep industry standards high by training journalists and editors, and work pro-actively behind the scenes to prevent harassment and media intrusion. We can also provide pre-publication advice to journalists and the public.

 Follow us on Twitter: www.twitter.com/ukpcc

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Press Complaints Commission, Halton House, 20-23 Holborn, London EC1N 2JD

-----Original Message

From: Guy Black [redacted]

Sent: 04 January 2011 14:42

To: Stephen Abell

Cc: Jim Raeburn

Subject: Northern and Shell

Private and confidential

Dear Stephen,

As we discussed when I attended the Commission meeting - an opportunity for which I was exceptionally grateful - we continued to make strenuous efforts to bring Northern and Shell back on-side before the end of 2010 and to keep them in the system. I met with Richard Desmond and corresponded with him, as did Martin Ellice and Jim Raeburn, until the last possible moment.

Every opportunity has been given to him to restore payment, but I regret to inform you that on 29th December he wrote a final note to me confirming that he would not reverse his earlier decision, and his membership of the system via PressBof has as a result lapsed. Northern and Shell is therefore now outside of the jurisdiction of the PCC and of the Code Committee, and I would be grateful if you could take action to implement this accordingly.

Before too long the industry will need to move to make this public, and it would be useful to liaise on this, as the PCC will obviously need its own statement. I will be in touch on this.

As someone who has been involved with the PCC since the mid 1990s, and knows of its remarkable achievements particularly in recent years, this is a matter of deep regret for me. But Peta, the Commission and you and your staff should all be aware that the commitment of the rest of the industry remains absolutely steadfast.

Very best wishes,

Guy

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Lord Black of Brentwood
Executive Director

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PCC and Express Newspapers

Complaints

1. In 2009, the PCC received 719 complaints about Express titles (Daily Express, Sunday Express, Daily Star, Daily Star Sunday, OK!). It made 140 rulings, including 52 occasions where there was a breach of the Code that required remedial action.
2. These are significant complaints figures (in comparison all News International titles produced 790 complaints, 292 rulings and 90 breaches of the Code). The complaints also tend to focus on controversial issues such as immigration, and often cluster around articles that cause particular and widespread comment.
3. Clearly, it will be difficult for the PCC to have to say to more than 10% of all complainants that their complaint cannot be considered as the papers exist outside the system. This is especially the case as these 10% will often touch upon issues where there is regular public comment about press responsibility.
4. As is stands, there is some cynicism about the effectiveness of the PCC in maintaining standards in some Express titles. The PCC arguably does not enjoy the same high levels of co-operation with these titles, as it does with others. However, the PCC does provide redress to readers directly affected by them, and has been able to offer complainants a generally satisfactory service.

Pre-publication work

5. The PCC sends out around 60-70 advisory notes across the industry every year. These can be divided into two areas: harassment; and privacy pre-publication. Both are predicated on the notion that there is full industry buy-in (from national and regional newspapers and magazines). Editors can be reassured that there is a level playing field (in terms of information shared, and consequences for disregarding genuine concerns) when making judgements about calling off journalists or not running intrusive material.
6. The pre-publication work shows the PCC at its most effective and credible. It is no exaggeration to say that it provides a significant bolster to our continued existence. Clearly it is significantly weakened by major titles not being party to the information. Indeed, those contacting the PCC will have to be informed that our advisories will not even reach a considerable part of the national newspaper industry. Editors will not be able to have confidence that their rivals will be responding to concerns in the same way.
7. There is a further point. There has been some drift towards the courts by complainants seeking injunctions (in both the areas of privacy and harassment). The PCC has acted as some check to that process. However, it is hard to see why those with access to the law will use the PCC system (at no cost to the publications, with no undue restriction on freedom of expression)

ahead of the courts, when there is a legitimate concern about the PCC's limited jurisdiction.

[redacted]

8. To take one example in the news, the PCC may have a role to play in communicating concerns about paparazzi behaviour in regard to [redacted] and [redacted]. Hopefully, this will provide a constructive means by which concerns can be aired to prevent any unacceptable situations arising, and to ensure that the press as a whole can be seen to be acting responsibly. Such a scenario is potentially jeopardised by a major news group not being party to this process.
9. There are two possible consequences that present themselves: editors may face legal action rather than PCC involvement; the high profile nature of the subject matter will ensure that the lack of unity in the system is immediately and publicly exposed.

Standards

10. One of the functions of the PCC is to maintain appropriate standards in the newspaper and magazine industry. This was indeed endorsed by the recent CMS Select Committee investigation into the subject. The application of the Editors' Code (a generally well-regarded document) is the means by which standards are maintained. If a newspaper group is not subject to the Code, then the PCC cannot claim to enforce standards across the industry. One overarching role for organisation is weakened.

Statutory regulation

11. There is the obvious argument (with which everyone will be familiar) that a failure of co-operation within self-regulation can open the door to statutory regulation. That threat is clear and present. Although it may be unlikely that this government will wish to regulate the press, it may face persistent calls to ensure that adherence to the regulatory system becomes compulsory (and may consider following the ASA model, by giving OFCOM back-stop powers). One might imagine that another cause celebre (such as the McCann case, or phone hacking) would provide clear impetus to such a line of thinking.
12. In any case, there are other areas where the existence of the PCC (and its jurisdiction over the full industry) already limits statutory interference. These will come under threat. For example, in the area of financial journalism, newspapers are exempt from sanction under the Market Abuse Directive because of the Editors' Code being enforced by the PCC.
13. There is also a current dispute involving the remit of ATVOD over publications' websites, where the central plank of the argument against overall OFCOM oversight is the publications' adherence to the Code. If the industry as a whole is not united (in regulatory terms) then OFCOM may see there to

be a statutory requirement for it to intervene in the regulation of AV material on newspaper and magazine websites.

14. Recent discussions of libel reform have suggested that relief should be given to the press on the basis of their successful self-regulation. The PCC can clearly provide to complainants a cost-effective means of settling disputes without recourse to litigation. This service also benefits the publications involved. It is hard to see that libel reformers will support the press' interests in this area, should one model for appropriate dispute resolution be endangered by non-co-operation.

PCC PR

15. The central argument that the PCC can use for its own efficacy is the existence of the buy-in of the industry. We are able to contrast ourselves favourably with the confrontational legal system by showing that complaints (or representations pre-publication) to the PCC are successful due to the co-operation of editors. This argument cannot be sustained when the PCC does not have uniform co-operation.
16. The PCC is also able to show how it is reflecting the spirit of the age, in which dissemination of information is so fast-moving and widespread that the statutory model of constraint appears unwieldy and ineffective. In recent weeks, several MPS have called upon other industries to follow the PCC model. The chance to embed the philosophy of self-regulation (weakened by MP expense scandals, and the banking crisis) is very much at hand. But this model is dependent on co-operation, and cannot be seen to succeed without it.

Express Group Withdrawal from PCC

Aside from the communications position, it will be necessary to establish the practical consequences of, and necessary processes for, dealing with complaints about Northern & Shell newspapers and magazines once they have left the system.

I will set down the following proposals for the Commission to consider – and if possible – agree. They can be examined further at the next meeting on 19th January.

Current Active Complaints

This is perhaps the most difficult area. There are two possible routes. One would be immediately to adjudicate on all Northern & Shell cases that are outstanding. Given that they will not have been investigated fully, it is likely that many of these decisions would be contentious and challengeable (whether we uphold them or not).

The preferred option would be – in cases that are being investigated – to follow the procedure that we currently have for publications outside our jurisdiction. We can seek informally to bring them to an amicable resolution. If we fail, we will take them no further. We will send a letter to all complainants informing them of this position.

In cases that are currently being considered by the Commission (i.e. are on recent précis papers), we should still issue the decisions where they are agreed. There are a couple of cases against Express newspapers where there is some disagreement between Commissioners, which ordinarily would mean that complaints would proceed to the next meeting for adjudication. We propose, in these cases, that the decisions reflect the disagreement (and the concerns of some individuals), and an amended wording is sent out on that basis.

If complaints raising no *prima facie* breach of the Code have been received by the office, but not yet circulated to Commissioners, we should treat them as new complaints and decline to deal with them (see below).

New Complaints

We will issue a standard response, making clear that Northern & Shell is currently outside of our jurisdiction. We will provide the complainants with contact details for direct complaints to the papers, and remind them of their option to seek legal advice.

We will keep a record of all contacts (including any follow-up from those who experience the company's direct handling service). They will be recorded as a separate section on the précis.

Pre-publication and harassment work

This is the area where the PCC arguably provides consumer protection in the clearest fashion. The list to which we currently send desist requests includes those who are not formally part of the system: broadcasters, news agencies and photographic agencies.

The purpose of this system is to share information, and enable individuals' concerns to be heard. We believe that we should continue to do so with the Express, so that they can make appropriate decisions.

There are two difficulties: we cannot enforce compliance, and so requests can be ignored (and Northern & Shell titles could act opportunistically if they are informed about the restraint of others); this service can forestall legal action, and so Northern & Shell titles would be receiving a benefit here.

We should bear these difficulties in mind, and recommend that we continue the practice at this stage, but keep it under review.