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From: [REDACTED]
Media Division
Department of National Heritage

Tel: 211 6432

Date: 22 January 1997

cc

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Secretary of State

LETTER FROM LORD WAKEHAM ON PRESS SELF-REGULATION

Lord Wakeham wrote to you on 6 January, responding to yours of 16 September 1996 which asked for a progress report on some of your earlier recommendations for better press self-regulation.

2. You discussed the exchange with officials on 9 January. It was concluded that the Government should, within the context of self-regulation, demand more of the Press Complaints Commission, and that your reply to Lord Wakeham should seek assurance on two specific points: action on breaches without a complaint, and incorporation into the Code of his seven-point guidance on the public interest.

3. You should note that this will be a change of approach to the Press Complaints Commission. The two previous exchanges with Lord Wakeham (i.e. the letters published in July 1995 in *Privacy and Media Intrusion*, and those referred to in paragraph 1 above) were agreed in draft by the recipient before they were sent, so that, for example, your letters to Lord Wakeham tended to be limited to recommendations which he personally favoured, which he thought the industry would accept, or which he felt he could reject or defer in a plausible way. Equally, we could ensure that his letters to you were less evasive than they might otherwise have been. I think that the difficulty with this method is that your letters push mostly at open doors, whereas it is the closed ones on which he has not been very

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forthcoming and which are at the root of the present failures of self-regulation.

4. I attach a review of press self-regulation for May-December 1996, which shows that in certain crucial respects, and as shown by a series of unremedied press abuses, the weaknesses of self-regulation identified in the first review (covering July 1995 - April 1996) have not been addressed, largely because the industry and Commission have not implemented various recommendations which you made. I think that a further "sanitised" exchange would only prolong the situation in which the Government might appear to be condoning self-regulatory failures.

5. This suggests that your reply should not first be shown in draft to Lord Wakeham (though we could forewarn Commission staff of its contents), that it should break with the past by mentioning cases in which a prima facie abuse seems to have gone unremedied, and that it should emphasise your concern about various procedural shortcomings which seem to be responsible for these self-regulatory failures. At the same time, the letter should not alienate Lord Wakeham who has, after all, to take the industry with him, and it should not be in terms which suggest that self-regulation cannot work as this would undermine Government policy. We should also remember that your letter might find its way into the public domain; indeed, there may be something to be said for making it public, though this would have to be handled carefully with the Press Complaints Commission.

6. The central failures of self-regulation seem to be:

- i. the Code is too brief, vague and weak, especially when it comes to privacy (clause 4) and the public interest defences (clause 18)
- ii. the Commission does not investigate prima facie abuses without a complaint
- iii. when it does investigate and find a breach, its only sanction is the requirement to publish the adjudication, and
- iv. it will not adopt a "hotline" by which editors, thought likely to breach the Code, could be warned by the Commission of the consequences of doing so.

I suggest that the letter, while welcoming the improvements recently made by the Commission, should concentrate on these failures.

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7. We have considered very carefully your points about the treatment of children. We think that Commission failures here are illustrative of, rather than additional to, their failures in protecting (adult) privacy. In addition, only about half a percent of complaints concern children. The draft refers to the particular need to protect the privacy of children, mentioning press treatment of HRH Prince William.

8. [REDACTED] has suggested that your draft reply should first be shown to Sir Robert Fellowes and to Sir Robin Butler in case they have any comments. I attach a draft letter for [REDACTED] to send to them, and a draft of your reply to Lord Wakeham for your consideration.

[REDACTED]
[REDACTED]

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LETTER FOR SIGNATURE BY [REDACTED]

The Rt. Hon. Sir Robert Fellowes KCB KCVO
Buckingham Palace
London SW1A 1AA

The Secretary of State for National Heritage has asked me to send you the attached copy of a letter which she proposes to send to Lord Wakeham, the Chairman of the Press Complaints Commission.

It might be helpful if I gave a brief background to this correspondence. In July 1995, the Secretary of State published a document, *Privacy and Media Intrusion*, which set out the Government's position on press regulation and self-regulation. In brief, the Government rejected, with qualifications, the case for statutory intervention, but made clear that it looked to the newspaper industry and to the Press Complaints Commission to vindicate their claim that press self-regulation could be effective. An exchange of letters between the Secretary of State and Lord Wakeham was published as an annex to the document. In his letter, Lord Wakeham reported on his achievements and his aspirations for self-regulation, and the Secretary of State replied welcoming these changes and pressing for further improvements. Following a meeting between the Secretary of State and Lord Wakeham, he wrote to her on 6 January 1997 (attached), reporting further progress.

The draft reply which I now attach would respond to that letter. The draft marks a change of approach to the Press Complaints Commission in that hitherto the Secretary of State has merely suggested improvements to the Code of Practice, and to the Commission's procedures, while the new draft expresses dissatisfaction with

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the Commission's apparent failure to come to grips with press intrusion into privacy (naming some of the blatant cases), and suggests ways in which this failure might be remedied.

As some of the cases concern members of the Royal Family, my Secretary of State thought that you might wish to comment. I should stress that she is not suggesting in the letter that the Commission should have a fully-blown investigation and adjudication in cases where the victim of the intrusion, for whatever reason, does wish it, but rather that the Commission should do more than it is doing at present to bring prima facie but blatant cases of unjustified press intrusion back to the editor or proprietor concerned. Of course, Lord Wakeham is paid by the industry and cannot easily make procedural changes without the industry's agreement, but we understand that he is concerned that the self-regulation is not effective in these sorts of cases, and the main purpose of the letter is to put pressure on him to try to speed up changes: it is, after all, 18 months since *Privacy and Media Intrusion* was published.

I am copy this letter to [REDACTED] in case Sir Robin Butler wishes to comment.

LETTER FOR SIGNATURE BY THE SECRETARY OF STATE

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

Thank you for your letter of 6 January, which responded to mine of 16 September 1996, and for the various attachments which you sent with it.

I was pleased to learn of the various steps taken by the Commission to make its procedures more transparent, particularly the matters covered by the Complainants' Charter, and the steps taken to bring the Commission's work and powers to the attention of a wider public. I was pleased also to see that the Code has been incorporated into the contracts of virtually every editor of national and local newspapers. Your public statements on such issues as the proper use of the public interest defence by editors, and the changes to the Code agreed by the Commission are to be welcomed. My strong impression is that editors and journalists, and indeed members of the public, are more aware than they were of the position of the Commission on what is and is not acceptable journalism. From the published summary of complaints which are adjudicated or otherwise resolved, I am sure that the Commission's handling of the majority of complaints, of which inaccuracy complaints are the most numerous, gives general satisfaction.

But I remain concerned about a series of prima facie breaches of the Code which do not seem to have been brought back to the editor or journalist concerned in any way. Most of these cases involve alleged intrusions into privacy, but some also involve harassment. Equally, I am concerned that some central recommendations for better self-regulation which I have made have not been implemented. I set out these concerns in more detail below and some suggested procedural and other changes

which might improve matters for the future.

Specific concerns

In drawing on a sample of cases which appear to be breaches of the Code, but which do not appear to have been remedied in any way, I rely mostly on reports in newspapers, and I am not, of course, purporting to show that there necessarily has been a breach. Only the Commission, following an investigation and an adjudication, could determine that. But in the absence of any publicised reaction of the Commission, they do raise concern that a wholly unremedied breach may have occurred.

First, there is a sort of intrusive behaviour which seems unjustified in the public interest. I am thinking, for example, of pursuit of the Princess of Wales by cars and motorbicycles on 13 July, and the fact that she had to obtain an injunction on 15 August against Mr Martin Stenning, preventing him approaching her. It could be argued that newspapers cannot be responsible for the behaviour of freelance photographers and journalists, but it is clear that papers create the demand, and the Code says that editors should satisfy themselves as far as possible that material accepted from non-staff members was obtained in accordance with the Code. In addition, as you have noted, the Code now makes it clear that intrusion, even without publication of the result, can be justified only if in the public interest.

Secondly, there have been several cases where publication of pictures or stories suggest that the Code has been breached. I am thinking, for example, of the article in *the Daily Mirror* of 20 July on the holiday of the Princess of Wales and the Duchess of York in France, the photograph of HRH The Prince of Wales and Mrs Parker Bowles in *The News of the World* of 25 August, transcripts of conversations between the Duke and Duchess of York and Madame Vasso Kortesis in *The Daily Mirror* of

30 September, and photographs of the Prime Minister's family and their friends in France in *The Sunday Express* in September. This sort of behaviour is particularly reprehensible when it involves children. Here I am thinking, for example, of the fabricated story connecting HRH Prince William with Lady Lucy Gordon in *The Daily Express* of 8 October. It is true that *The Express* published a retraction, but it was brief, without apology, and buried at the end of an article on the "hoax video" story.

In fact, the two Press Complaints Commission reports covering April to September show only two privacy complaints upheld, those of Mr Mark Gardiner and of Mrs Wicks. It is, of course, very important that the Commission should provide remedies for ordinary people who are not, or not permanently, in the public eye, but I gain the strong impression that it is unable to provide remedies for many of those whose privacy is invaded precisely because they are well-known, but where the intrusion is unjustified in the public interest.

It seems to me that more appropriate and effective remedies could be provided if various procedural and other changes were made. They are as follows.

Possible procedural and other changes

a. The Code

In my letter to you which was published in Annex A of *Privacy and Media Intrusion*, and again in my letter of 16 September, I made a number of suggestions for tightening and extending the Code. I am, of course, pleased to see that the Commission has adopted my recommendations for amending clauses 11 and 12. But the single change to clause 4, applying the public interest defence to intrusion which does not lead to publication, while a step in the right direction, falls far short of my

recommendation that clause 4 should incorporate the main elements of the hypothetical privacy tort which was published in *Privacy and Media Intrusion*. It is difficult to discern, relying solely on the summaries dealing with the few findings of breach of clause 4, where the Commission draws the line between privacy and the public interest and why, for example, Selina Scott's complaint was upheld while Julia Carling's was not. That brings me to clause 18 on the public interest defence which still, I think, tilts too far in the direction of the public's "right to know". You have noted that, since the Spencer adjudication, editors have always sought to justify an intrusion by reference to the public interest, and you helpfully set out in your speech of 21 November seven "public interest" questions which editors should ask themselves before printing a story. I wonder whether you would reconsider my recommendation that your guidance should be incorporated into the Code.

b. Investigation without a complaint

I know, from personal experience, why those who think their privacy has been unjustifiably breached by the press may nevertheless not wish to make a formal complaint to the Commission, but I fear that this very unwillingness to complain may embolden journalists and editors to make unjustified intrusions. I see that, in your letter to *The Times* of 10 October, you said that the Commission would not hesitate to raise its own complaints when it needs to. This seems a very promising approach, and I hope that you will be able to use these powers as soon as a suitable case comes up.

c. Sanctions

In a purely self-regulatory system, the Commission clearly cannot have sanctions as commonly understood. But I am concerned that, in the great majority of cases, the only consequence for a newspaper which has breached the Code is a requirement

to print the adjudication. I am not aware of any case, apart from the public reprimand of Piers Morgan by Rupert Murdoch following the Spencer adjudication, of a more severe penalty than the requirement to print the adjudication. Even this does not seem to have satisfied the Spencers who have taken their case to Strasbourg; and I note that Selina Scott has called for a law of privacy notwithstanding her successful complaint. It seems to me that, in more serious cases, and now that the Code is incorporated in virtually all editors' contracts, the Commission could, following more serious or blatant abuses, recommend more severe penalties to proprietors, including disciplinary action.

d. Hotline

I note that you are making further improvements to the helpline, connecting aggrieved parties with editors, but I feel that the helpline can never have the authority of a hotline connecting the Commission with the editor. And I still do not understand the industry's argument that the hotline amounts to prior restraint. The Commission does not have the power to stop publication, and the point of the hotline would be to seek information from editors thought likely to breach the Code and then, if appropriate, to warn them that publication might do so.

Overall, I feel that if the Code were extended, if the Commission were able to investigate without a complaint and to warn editors thought likely to breach the Code, and if sanctions were tougher, many of the prima facie abuses which seem to have gone unremedied might never have occurred or might have led to more serious consequences for editors and journalists responsible. I realise that this is not in your or the Commission's hands alone, as you have to take the industry with you, but I hope that you might seek to do so. I have to say that, 18 months after publication of *Privacy and Media Intrusion*, I feel that there is still quite a lot of unfinished business.

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SECRETARY OF STATE	
OF NATIONAL HERITAGE	
IN	MS [REDACTED]
	21 January
ADVICE DRAFT REPLY (If Appropriate) Official Reply	COPIES TO: MOS PUS [REDACTED]
DNH (DF)	

From the Chairman

Rt Hon Virginia Bottomley, JP, MP,
 Secretary of State for National Heritage,
 2-4 Cockspur Street,
 London,
 SW1Y 5DH

6th January 1997

Dear Virginia

Thank you for your letter of 16th September 1996 which followed our meeting in June. As you will have seen, I made a number of announcements during the course of the autumn aimed at strengthening self regulation, and I thought it would therefore be appropriate to wait until the start of this year to let you have an update on developments at the Press Complaints Commission.

Transparency and publicity

Let me deal first of all with the question of transparency and publicity. As you may have noted, I have now published a *Complainants' Charter* which came into effect at the Commission on 1st January this year. It covers a number of areas - including speed of service, new commitments on helping the disabled and those from ethnic minorities to make complaints, and annual publication of statistics on the time it takes to deal with complaints. A copy is attached as Appendix A to this letter for your information.

The Commission's literature has been updated to make it more accessible, and was relaunched in the autumn. Again, for your records I attach at Appendix B a copy of the revised How to Complain leaflet, the new Code of Practice (both of which are now also available in Welsh, Urdu and Bengali) and of our quarterly report.

I am currently working on proposals, as you note, to upgrade our Helpline service; and I hope, too, to make information about our services available on the Internet during the course of this year.

I believe the combination of these initiatives - combined with the continuing high level of donated space in publications advertising the work of the Commission - will help to ensure that our service is increasingly well known to all those who read newspapers and periodicals.

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This is certainly borne out by the level of complaints we receive. The numbers of them have now nearly doubled in three years - which strongly suggests to me that people genuinely do now know who to complain to when something goes wrong

Sanctions

I note your comments about the range of sanctions available to the PCC. As a result of the incorporation of the Code into the contracts of virtually every editor, at national and local level, the Commission does of course have the sanction - which it deployed last year - of drawing to the attention of a publisher any flagrant breach of the Code. We will continue to consider on a case by case basis when and whether we need to take such a course of action.

As far as the establishment of a compensation fund is concerned, you know that I have my own considerable concerns about both the desirability and practicality of such a step - although I can of course see that the idea is a superficially attractive one. Along with other aspects of self regulation, it is a matter which remains under constant review by the industry - and I will update you from time to time on the latest position.

It is, I think, worth noting again the degree and strength of support we receive from the industry. Every critical adjudication from the Commission has been printed by the newspaper concerned, and there is growing evidence of increasing levels of prominence for them.

Privacy and public interest

Since we met there have, as you will know, been a number of changes to the Code of Practice. The two most significant changes were to Clause 4 on privacy and to Clause 9 on payments for articles. (The other minor changes included: Clause 11, where the word 'generally' was dropped; Clause 12, which was extended to include the welfare of 'any other child'; Clause 13, where the sentence relating to incest was reworded; Clause 14, which was reheaded 'Victims of sexual assault'; and Clause 15, where 'disability' was substituted for 'handicap.' A number of these changes arose at the suggestion of members of the public.)

The revisions to Clause 4, which are set out in the attached copy of the Code, differentiate for the first time between enquiry and publication. This is an important change to the Code, and follows on from the publication of the White Paper.

In a number of statements at the end of last year as well as in my evidence to the Select Committee, I made clear that I am firmly of the view that the main difficulty in this area lies with the deployment by editors of the public interest defence. Since I took up the Chairmanship of the PCC, no complaint has been brought before us under Clause 4 in which the editor has not at least attempted to mount a defence of public interest.

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The Code does contain a definition of public interest under Clause 18 - and I have not sought in any way to change that. However, in order to tighten up in this area, I have issued a number of guidelines which I believe editors ought to be able to demonstrate that they have satisfied when making a defence of public interest. I hope that, over time, this will meet many of your legitimate concerns that too much emphasis is placed on the 'right to know' and too little on the public's expectation of privacy. I attach as Appendix C to this letter a copy of my guidelines for your information.

As you know, after the publication of the White Paper I acted to introduce a lay element into the Code Committee structure by establishing a Code Sub Committee of the PCC. This arrangement is working well and the two Code Committees will certainly continue to keep this area in particular under review; I will endeavour to report at regular intervals to you on their progress.

On a slightly separate point, you will recall that I referred in my letter in *The Times* in October - a copy of which I attach as Appendix D for ease of reference - to the problems posed where somebody whose privacy has on the face of it been invaded is unwilling to complain. There is a certain amount which can be done here which flows from the incorporation of the Code into editors' contracts. Whereas interpretation of the Code is rightly a matter for good editorial judgement, serious breaches which do not produce a complaint are a matter for good management. Drawing on that premise, I hope to be able to report in due course on how I think self regulation can work better in this area.

Payments to witnesses

I referred above to the changes to Clause 9. I believe that they are an important part of the strengthening of self regulation. I have some concerns, of which you will be aware, about the proposals from the Lord Chancellor in this area - and I am taking the opportunity of sending you as Appendix E a copy of my article in *The Guardian* at the end of last year in which I set them out, and a copy of our response to the Consultation Paper.

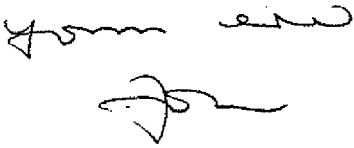
Judicial review

While reporting on developments at the PCC, I thought you would also like to see a copy of the recent judgement in the High Court in the case of Ian Brady against the PCC, which is attached as Appendix F. As you will know, Ian Brady was seeking leave for judicial review of our decision on a complaint he had made. A number of the comments made by the Master of the Rolls in rejecting the appeal are of great significance to the PCC and to self regulation.

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Finally, can I say that I have noted your concerns about the speed of change, quite rightly set against the background both of our achievements to date and of our ability to build consensus? I am satisfied that a good deal has happened here since we met to continue the strengthening of self regulation which I embarked on when I arrived at the PCC two years ago. I am not content with every aspect of our work, and there is much that remains to be done. I will continue with this work in 1997 and look forward to reporting further progress in due course.

A handwritten signature in cursive script, appearing to read "John ...".

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SECOND REVIEW OF PRESS SELF-REGULATION

May - December 1996

The first review of press self-regulation covered the period from the publication of *Privacy and Media Intrusion* (17 July 1995) to the end of April 1996. It looked at the implementation of the Secretary of State's recommendations by the Press Complaints Commission and the newspaper industry, surveyed cases which had raised issues under the industry's Code, and concluded that the failure to implement these recommendations had weakened self-regulation. In particular, it concluded that the system of self-regulation had failed to address the problem of intrusion into privacy by newspapers.

2. The conclusion of this paper, which covers the period from 1 May to 31 December 1996, is very similar. It therefore raises the question whether self-regulation can ever deal with unjustified intrusion into privacy in a competitive newspaper market seeking to satisfy an apparently insatiable public appetite for details of others' private lives.

3. The framework of this paper is formed by two exchanges of letters between the Secretary of State and the Chairman of the Press Complaints Commission, Lord Wakeham. The first comprised a letter from Lord Wakeham of 19 June 1995 and the Secretary of State's reply (both published as Annex A of *Privacy and Media Intrusion*), the second a letter from the Secretary of State dated 16 September 1996 and Lord Wakeham's reply of 6 January 1997.

4. Like the first review, and for the reasons stated in paragraph 8 of that review, this second review is mainly concerned with intrusion into privacy. It is common ground that the system of self-regulation deals well or at least adequately with most other types of complaint, particularly the most numerous which is of inaccuracy. This paper also looks at the treatment of children by the press.

Recommended reforms of the Press Complaints Commission

5. The cumulative response of the industry and the Commission to the recommendations made by the Secretary of State in the first exchange is summarised below.

- a. **The Code should be progressively incorporated in contracts of editors and journalists, including freelance journalists.**

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Reaction

This recommendation is not aimed at the Press Complaints Commission, but at proprietors and editors. Lord Wakeham has stated that there are virtually no editors who have not got the Press Code of Conduct in their contracts. The Guardian reports that the Code is incorporated in the contracts of all News International's four national titles.

b. A lay element should be introduced into the committee which amends the Code of Practice, which should also have some input from the public, and the Director of the Commission should be secretary to this committee.

Reaction

A Code sub-committee, drawn from the independent members of the Commission with the Director as secretary, now works with the editors' Code Committee to consider amendments to the Code. Changes to the Code have been minimal (see j. below) which suggests that the influence of the new independent committee has been nugatory.

c. An editor, or editors in general, thought likely to be about to breach the Code should be warned of the possible consequences, if necessary on a telephone "hotline", and the hotline should be publicised and available inside and outside office hours.

Reaction

Lord Wakeham has stated publicly that he has ruled out a hotline (connecting the Commission with editors) lest it act as a 'prior restraint' on newspapers. He is working on proposals to upgrade the Helpline service (which connects complainants with editors) but this falls far short of the recommendation.

d. The Commission should adopt Citizen's Charter style performance targets, for example the time taken to resolve complaints, and consider adopting other Charter principles

Reaction

The PCC has produced a Complainant's Charter which took effect from 1 January 1997. The charter contains 12 "key commitments" to the public covering standards of service, accessibility and publishing performance tables.

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e. The powers and remedies of the Commission should be given more publicity.

Reaction

The Code of Practice is now available in Urdu, Welsh and Bengali, and Lord Wakeham hopes to make information about the Commission available on the Internet. The PCC has produced the text of their leaflets on audio-cassette and textphone, and claims that adjudications are being given greater prominence in newspapers.

f. The published summaries of adjudications should be fuller and more detailed, allowing journalists and editors, members of the public and members of the Press Complaints Commission itself a clearer idea of the reasons for the Commission's decisions

Reaction

The adjudication summaries in Reports 31 -33(covering August 1995 - March 1996) were not appreciably fuller or more detailed than before, while Reports 34-35 (covering April - September 1996) are if anything retrograde in that they now record judgements of the Commission that a newspaper has, to some extent, breached the code but not sufficiently to uphold a complaint fully.

g. The Commission should consider greater use of oral hearings.

Reaction

It is not apparent that the Commission has ever conducted an oral hearing. This issue has not been raised since the Secretary of State's letter in July 1995.

h. In appropriate cases, the Commission should recommend sanctions beyond a reprimand which a proprietor should take against an editor found in blatant breach of the Code

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Reaction

It is not apparent that the Commission has recommended any sanctions against an editor found in breach of the Code, apart from the single case of the editor of The News of the World, who was publicly reprimanded by his proprietor for breach of the privacy of Countess Spencer (but has since acquired a better job as editor of The Daily Mirror).

In his evidence to the National Heritage Select Committee in November 1996, Lord Wakeham said that he would prefer to see more frequent reprimands of, rather than any stronger sanctions against, errant editors. In his most recent letter to the Secretary of State, he says that breaches not leading to a complaint are matters for "good management", which suggests that the Commission would limit itself to recommending a reprimand of an editor only following a finding of breach.

i. The industry should set up a compensation fund for those whose privacy has been unjustifiably infringed by the press.

Reaction

There is no evidence that the industry has even discussed this proposal. Lord Wakeham has restated his concerns about the "desirability and practicality" of such a step, adding that the industry keeps the matter "under constant review".

j. Clause 4 of the Code (on privacy) should be amended to incorporate the main elements of the hypothetical privacy tort (in Annex of *Privacy and Media Intrusion*); clauses 2,8,10,11,12,14 and 18 should be strengthened; and there should be new clauses on reporting of criminal convictions and on stories about the recently dead.

Reaction

*Clause 4 (privacy) has been slightly reworded to extend the public interest test to enquiries and intrusions which do not result in publication, where previously such intrusions and enquiries were deemed "not generally acceptable". This probably makes clause 4 clearer, but it is arguably no strengthening of the clause and falls very far short of the recommendation that the "main elements" of the tort (covering five pages of *Privacy and Media Intrusion*) should be incorporated into clause 4.*

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Clause 9 (payments to witnesses) has been extended to allow greater transparency of deals made between newspapers and witnesses or potential witnesses in criminal proceedings. The new clause, first mentioned by Lord Wakeham in December 1995, was published on the day (7 November) that he appeared before the National Heritage Select Committee to give evidence on payments to witnesses, and when the Government had already announced proposals to legislate in this field.

Other, minor, changes comprise Clause 11 (innocent relatives and friends) where the word 'generally' has been removed from the sentence "...the press should generally avoid identifying relatives or friends...", Clause 12 (interviewing or photographing children) where the phrase 'any other child' has been added to prevent children being asked about friends, and Clause 15 which substitutes 'disability' for 'handicap'.

Clause 8 (harassment) has not been amended, and Lord Wakeham indicated to the Select Committee that the PCC do not believe that change is necessary.

Also in evidence to the Committee, Lord Wakeham defended the current definition of the public interest in clause 18, which he paraphrased as follows:

- (a) detecting or exposing serious crimes or misdemeanours;
- (b) protecting the public health and safety;
- (c) preventing the public from being misled by some statement or action by an individual or an organisation, or
- (d) any other overriding need in the public interest demonstrated by the editor.

At a reception in London on 21 November, Lord Wakeham asked editors to consider seven questions before publishing stories which might not be in the public interest:

1. Is there a genuine public interest involved in invading someone's privacy as defined by the code?
2. If there is a genuine public interest, have you considered whether there are ways to disclose it which minimise the invasion of privacy?
3. If using clandestinely obtained pictures, does the public interest require them or are they merely illustrative?
4. If there is a genuine public interest which cannot be exposed except by intrusion, is there any way to minimise the impact on innocent and vulnerable relatives, especially children?

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- 5 *If you are intending to run a story about someone connected to a public figure to illustrate a story about him/her, are you satisfied that the connection is not too remote and that there is a genuine public interest in mentioning it?*
- 6 *When publishing a story seeking to contrast what a public figure has said or done in the past with his/her current statements or behaviour, have you satisfied yourself that it's fair to make the comparison and that the original statement or behaviour was recent enough to justify publication in the public interest?*
- 7 *If you intend to run a story about the private life of an individual where there used to be a public interest, have you applied each of these questions afresh in case such a defence no longer exists?*

k. The main points in the guidance issued from time to time by the Commission should be incorporated in the Code.

Reaction

No guidance from the Press Complaints Commission, or from Lord Wakeham, has yet been incorporated into the Code.

Statements and warnings from Lord Wakeham

6. In addition to the (limited) reforms of the self-regulatory machinery which he has achieved, Lord Wakeham has made several public statements and warnings to the press.

i. Intrusion into privacy

Despite his warning in August 1995 to newspapers not to intrude on Prince William and another school-boy in Accrington, on 2 May 1996 Lord Wakeham was forced to issue a further warning that newspaper editors and photographers should not invade Prince William's privacy following attempts to photograph him at Eton.

Following the hoax video story in *The Sun* (see below), Lord Wakeham wrote to *The Times* on 11 October warning the press about the consequences for self-regulation of unwarranted intrusions into the privacy of members of the Royal family, and announced his intention to meet editors and repeat this warning.

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ii. Racial minorities

Speaking at the Commission for Racial Equality on 23 April, Lord Wakeham warned that offensive treatment of racial minorities would not be tolerated. In fact, very few, if any, complaints under clause 15 (which proscribes prejudicial, pejorative or irrelevant reference to a person's race, colour, religion, sex or sexual orientation, physical or mental illness or disability), have been upheld. Furthermore, the Commission made no statement during *The Mirror's* xenophobic campaign against the Spanish and Germans during the World Cup and, having received more than 300 complaints, refused to censure the paper, although the Select Committee blamed it for inflaming anti-German riots.

iii. Investigations without a complaint

In the same letter, Lord Wakeham stated that the PCC would not hesitate to raise a complaint of its own and investigate, and that he was considering ways of dealing with intrusions even where the aggrieved party did want to co-operate with the Commission.

iv. Public interest test

As noted above, Lord Wakeham has clarified the public interest test in two public statements.

Conclusion on Press Complaints Commission reforms

7. In conclusion, though Lord Wakeham has brought forward his proposals for adding an independent element to the Code Committee (to some extent), for introducing a Complainant's Charter, and a new protocol on payments to witnesses, none of the Government's other recommendations have been implemented. He has continued to re-state the PCC's Code and aims to editors and journalists, but this falls short of a fully effective self-regulatory system. This is shown by the failure of that system to get to grips with intrusion into privacy which is the subject of the next section.

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Privacy cases: reactions of the Press Complaints Commission

8. Since 1 May 1996 the following prima facie press infringements of privacy have occurred:

a. On 13 July, the **Princess of Wales** was persistently followed by seven press motorbicycles and two press cars, trying to get photographs of her following announcement of the divorce settlement with the Prince of Wales. On 14 July she appealed to the newspapers to leave her alone, and several complied.

Press Complaints Commission reaction

None

Comment

It is likely that this sort of behaviour will be caught by legislation on harassment (stalking).

b. On 20 July, *The Daily Mirror* had ten pictures of the **Princess of Wales and the Duchess of York** in swimming costumes with their children beside a pool of a villa near Cannes. They had been pestered by photographers, some hovering in a helicopter above. Some were arrested and charged by the French police.

Press Complaints Commission reaction

The Commission said that the Privacy Commissioner was investigating the matter "in the normal way", but the complaint was withdrawn in October. It was speculated that this was because the Princess did not object to the techniques used by the *Mirror* photographer, Kent Gavin, whose pictures were used in the paper. The Princess told the editor, Piers Morgan, only that she was "less than happy" with the publication of the pictures.

Comment

It is doubtful whether the complaint would have succeeded. On 18 November, Lord Wakeham warned the Princess that her *Panorama* interview would make intrusions into her privacy inevitable, and that those who seek publicity "may place themselves beyond the Press Complaints Commission's protection, and must bear the consequences of their action".

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The Duchess was also said to be pursuing an action against *The Mirror* for trespass on private property and invasion of privacy. It is likely that this action has also been dropped.

It is just possible that press behaviour like this, if carried out in this country, and persistently, will be caught by any new legislation on stalking.

c. In August, it was reported that **HM The Queen** had written to four of the most intrusive photographers who were covering her family holiday at Balmoral to ask them to "desist". It was claimed that The Queen particularly objected to intrusions such as photographs of one of the Princes with Tiggy Legge-Bourke on private land near Loch Muick, and was concerned that this made her grandsons increasingly reluctant to travel to Balmoral.

Press Complaints Commission reaction

None.

Comment

It was later reported that The Queen's lawyers had recommended against legal action to follow up the letters because the odds on winning were slim.

d. On 15 August, the **Princess of Wales** obtained an injunction preventing Martin Stenning, a freelance photographer with a motor-bicycle, going within 300 metres of her or attempting to communicate with her. She complained that Stenning (who has a history of violent behaviour and several convictions) had abused her, pushed her and driven her to tears. Stenning denied it, claimed he was being used by the Princess in her campaign for women's rights, and applied for legal aid to challenge the injunction.

Press Complaints Commission reaction

None.

Comment

The Press Complaints Commission would not normally become involved in any case which are *sub judice*, and it seems that only one photograph by Stenning has been published in a British newspaper (*The Sun*), but it is

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undoubtedly newspapers which create the demand for snatched photographs and the Commission might have issued a warning about this sort of behaviour. It is possible that harassment of the sort alleged against Stenning will be caught by new legislation on stalking (see paragraph 13 below).

e. On 25 August 1996, *The News of the World* published a photograph of the **Prince of Wales and Mrs Parker-Bowles** together at a country house. The paper said it had been tipped off by a "well-spoken" woman who later added that there would be no trouble if the photographs were published. The paper suggested that the tip-off was part of a royal public relations exercise, to seek public acceptance for the "illicit romance", but this was categorically denied by the Palace. *The Mirror*, on the other hand, reported that Mrs Parker-Bowles was sure she had been set up as part of a campaign to damage her.

Press Complaints Commission reaction

The Palace was said to be taking legal action or making a complaint, but did not do so. There were some complaints from members of the public but they were not pursued.

Comment

The withdrawal of third party complaints seems to have been used by the Commission as the ostensible reason for not investigating a fairly blatant abuse.

f. On 30 September, *The Daily Mirror* published verbatim transcripts of private telephone calls between the Duke of York, the **Duchess of York** and her therapist, Madame Vasso Kortesis, "the clairvoyant from Islington". The transcripts had already been made public on 0891 telephone lines. They contained details, allegedly from the Duchess, about her relationships with Steve Wyatt and John Bryan, and about the Princess of Wales's private life.

Press Complaints Commission reaction

The Commission was considering the Palace's representations, which fell short of being a formal complaint. (The fact that the Palace no longer normally represents the Duchess, since her divorce in May, was understood to be a factor in the decision not to make a formal complaint.) The Commission exchanged correspondence with the editor of *The Daily Mirror*.

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Comment

The fact that these transcripts had been put in the public domain by telephone is little justification for not investigating; and it would have helped transparency to publish the correspondence with the editor.

g. On 8 October, *The Sun* published five pages about a video purporting to show the **Princess of Wales** "cavorting" with James Hewitt, and for which the paper paid £100,000. The leader explained that publication was justified as it supported claims in the Princess's *Panorama* interview that she had been under surveillance by Special Branch and MI5. Next day, the editor of *The Daily Mirror* was told that the video, which had been shown on ITN, was a hoax filmed with lookalikes. Mr Murdoch was reported to be "furious". The editor of *The Sun*, Stuart Higgins, professing bewilderment at "one of the most elaborate hoaxes of the decade", said he was "deeply sorry".

Press Complaints Commission reaction

In a letter to *The Times* dated 10 October, Lord Wakeham criticised the "stream of injudicious stories centring on the private lives of public individuals, backed up only by the flimsiest of public interest defences", but did not single out this case. Graham Thomson, secretary of the editors' committee, said that the part of the Code which deals with privacy was going to be "restated". Following the apology, the Commission did not investigate.

Comment

This prompted only four complaints, all from members of the public. Commission was said to be investigating a complaint. The Princess accepted an apology, and Hewitt said he was satisfied with it .

h. On 8 May, *The Daily Mirror* claimed that **Rupert Allason**, M.P., who is separated from his wife, had shared a hotel room in St Tropez with Jane Burgess for five nights. Ms Burgess did not deny this, but claimed that she had never had a sexual relationship with Mr Allason. It is obvious that *The Mirror* had been keeping the pair under constant surveillance. This seems to have been part of a vendetta against Allason who had won a libel case against *The Mirror* earlier that day.

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Press Complaints Commission reaction

Mr Allason's complaint is still being investigated by the Press Complaints Commission, which expects to adjudicate it in January.

Comment

There does not seem to be any public interest justification for this sort of intrusion.

i. On September , *The Sunday Express* had three pages headed "The Majors' holiday snaps". They included photographs of the **Prime Minister's son and daughter**, James and Elizabeth, "canoodling" with their respective girl- and boy-friends with captions such as "full cuddling is underway.."

Press Complaints Commission reaction

No complaint was received from any of those involved, and the Commission did not investigate.

Comment

This incident led Mrs Major, in an interview on the Frost programme on 15 September, to demand protection for those who are doing something which is obviously private.

j. On 2 June, *The News of the World* alleged that **Rod Richards**, a junior Minister, had committed adultery, under the headline "Minister's bondage romp with divorcee". The leader accused him of failing to concentrate on his job, preferring to "slope off to canoodle the hours away with his floozy". Mr Richards promptly resigned.

Press Complaints Commission reaction

None.

Comment

If the case had come to adjudication, the newspaper would no doubt have claimed, probably successfully, that the very fact of Mr Richards's resignation showed that its story was in the public interest.

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k. On 12 August, Professor Nicolaides, who took over the case of **Mandy Allwood**, warned the media that excessive interest could harm her and her unborn children. Stuart Kuttner, managing editor of *The News of the World*, told Sky TV that it was completely and utterly false to suggest that the size of the paper's offer to her depended on how many of her octuplets were born alive (a figure of £125,000 per baby had been mentioned), but he later admitted that: "If she decides not to have the babies, there is an element of the contract whereby, if you like, payment depends on publication of stories"

Press Complaints Commission reaction

No complaint was received from those directly involved, although the Chairman received a letter about cheque-book journalism from Roger Gale M.P.

Comment

It seems that a case like this would not have been covered by substantive articles of the Code, even if a complaint had been made. But it is doubtful whether the newspaper's interference with the judgements which had to be made by Ms Allwood and Professor Nicolaides was an example of the "highest professional and ethical standards" enjoined by the Code.

l. In November 1995, *The Daily Mail* published an account of a friendship between **Myra Hindley and Rosemary West** in Durham Prison. Hindley, supported by a deputy-governor of the Prison, denied it.

Press Complaints Commission reaction

The Commission "reluctantly" upheld the complaint from Hindley, while adding that the *Mail* had acted in good faith. The finding was published on 8 November 1996. The *Mail* claims that its story was based on information from "four highly respectable and confidential sources" who could not be named because Article 17 of the Code states that journalists have a moral obligation to protect confidential sources of information, and the paper presented new evidence from a new source to the Commission. The Commission expects to adjudicate again in February.

Comment

The final adjudication will have to address the question whether, even with

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evidence from these "reliable sources" the story was in the public interest.

m. On 7 June, **Polly Toynbee** reported that various friends, neighbours and colleagues had been contacted by a *Daily Mail* journalist who was "digging for dirt" about her private life, including her relationship with a married man. One neighbour was asked when any men had been seen going to or leaving her house.

Press Complaints Commission reaction

None.

Comment

There seems no public interest justification for these intrusions. The wife of the man she lives with may well be wronged, but Ms Toynbee cannot be accused of hypocrisy as she has not professed beliefs at variance with her way of life.

n. On 23 October, *The Daily Mirror* boasted that it had tracked down a **couple who had won the lottery** 17 months before, but had not told their children to prevent them becoming spoilt. The *Mail* gave the couple pseudonyms, but published a lot of circumstantial detail about them, and gave a telephone number inviting readers to betray secrets about lottery winners.

Press Complaints Commission reaction

None.

Comment

As was shown with the first jackpot winner, providing circumstantial detail can help others to identify winners.

o. In May, *The People* reported that the former judge, **James Pickles**, had had a "sex romp" with a soap opera star.

Press Complaints Commission reaction

None.

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Comment

No public interest justification appears.

9. In none of these cases did the Press Complaints Commission investigate. In the period from April to September, however, the Press Complaints Commission did achieve a resolution of some privacy complaints through apology, and did adjudicate on a further six privacy complaints not involving children (some of which arose before April). Of these six complaints, two were upheld. These were as follows:

a. **Mark Gardiner**, a lottery winner, complained about the publication in *The Daily Star* of a photograph of his house. The Commission concluded that *The Star* had not demonstrated a public interest in this identification, and it upheld the complaint.

b. **Mrs Wicks** complained about publication in *The News of the World* of a story from her ex-husband who claimed that they had started a sexual relationship when he was in police custody and she was his probation officer. The Commission noted that the publication of the transcript of a telephone conversation between them did not support this allegation and was not justified in the public interest.

10. The remaining four adjudicated cases, which were not upheld, can be summarised as follows:

a. **Bill Wyman** complained about a piece in *The Times* in March which identified the street where he lived. The Commission concluded that newspapers should not gratuitously publish the addresses of people with a public profile, but that reference to the street was not a breach of Clause 4.

b. **Fraser Hay** complained about an article in *The Sunday Mail* on 31 December 1995 on a slimming pill company he represented. He had asked that it did not include his photograph. The paper said that he had posed quite happily for the photograph.

c. **James Skelton** complained about the publication of his address in *The Belshills Speaker* in connection with his appearance in court. The Commission noted that this information was included in the court proceedings.

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d. **Vincent Hill** complained about the publication of his address by *The Yorkshire Evening Post*. The Commission concluded that he should have asked the court if he did not wish his name to enter the public domain.

Cases involving children: reactions of the Press Complaints Commission

11. There have been several recent cases where the self-regulatory regime has been ineffective in protecting children of school age, despite Lord Wakeham's reiteration of the need to leave children alone. Prima facie, these involve intrusions into privacy (clause 4), misrepresentation (clause 7), harassment (clause 8), and interviewing or photographing children under 16 without parental consent (clause 12).

a. In May, *The Sun* reported that **Aaron Jones**, the four-year old son of the soccer-player Vinnie Jones, had been suspended from school.

Press Complaints Commission reaction

None

Comment

There is no obvious public interest in this story.

b. On 8 October, *The Daily Express* claimed, in a full-page story, that **Prince William** was having a relationship with a 17 year-old girl, Lady Lucy Gordon. This was a complete fabrication. The Palace asked *The Express* for a retraction but this was published without apology the next day in only eight lines buried in the paper.

Press Complaints Commission reaction

None.

Comment

The paper's retraction without apology seems inadequate cause for the Commission to ignore this blatant breach.

b. On 19 October, *The Daily Mirror* revealed that the Secretary of State's daughter, **Adela Bottomley**, had been suspended from school for a week for drinking beer near the school. The paper tried to justify publication because Mrs Bottomley, when Secretary of State for Health, had launched a campaign against under-age drinking, and she had "sought publicity" for her daughter. This referred to a visit by the

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Secretary of State and her daughter to Segaworld where they were photographed without agreement by a freelance, and is attempt by *The Mirror* to use the "fair game" argument deployed by *The News of the World* in the Spencer case and rejected by the Commission.

Press Complaints Commission reaction

None. The Secretary of State and her husband decided not to make a formal complaint.

Comment

There is no obvious public interest justification for this story (though the paper argued that it bore on the Secretary of State's previous ministry), and certainly no justification for the deployment of the "fair game" argument.

12. A single complaint involving children has been upheld. A reporter representing *The News of the World* admitted that she had not obtained permission from the authorities at **Abraham Darby School, Telford**, before talking to school-children about an alleged relationship between a female pupil and a teacher. Clause 12 does not have a public interest defence, and the Commission could hardly have rejected the complaint.

13. Three complaints were rejected:

a. On 28 April 1996, *The Sunday Express* advertised for school-children "interested in journalism" to contact the paper as "**schools correspondents**". The editor admitted that the paper was seeking information which might help investigative journalism. The Commission concluded that this was not an approach to children while at school, since the newspaper had not returned any call made by a child, but added that this sort of notice might lead to breaches of clauses 7 and 12.

b. Reporters from *The News (Portsmouth)* made several attempts to interview children at **Oaklands RC School, Waterlooville**, about allegations that a teacher had taken drugs into the school. They made only half-hearted attempts to seek permission of the authorities, and asked two boys of 14 of 15 to confirm that a photograph was of the accused teacher. The Commission concluded that while clause 12 should be strictly followed, it was not necessary to censure the newspaper.

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c. Sue Foley complained that an article in *The Daily Star* on 15 February, about the gender dysphoria of her son **Fredd**, intruded into his privacy by naming his school and the town where they lived. It was common ground that the article was based on a television interview given by Ms Foley and her son, but her concern was that the article added his name and address which lead to further media attention and might have endangered his safety. The Commission concluded "on the basis of the material submitted" - which was presumably fuller than what was published in the adjudication - that there had been no breach of clause 12.

11. Cases involving children, where there is a prima facie breach of clause 12, are rather less serious and frequent than intrusions into adult privacy. Although Lord Wakeham is at pains to say how important it is to protect children, it could be argued that the Commission is adopting a very narrow interpretation of clause 12. This would suggest that the clause itself might be further tightened, but this would represent a new policy initiative from Government.

Conclusion

12. The weaknesses of self-regulation are, as in the first Review, thrown into sharp relief by a succession of cases, usually involving intrusion into the privacy of public figures, where the Commission seems unable or unwilling to act. Of the unimplemented recommendations of the Secretary of State, some have only an indirect bearing on provision of an adequate remedy to aggrieved parties, but there are five present weaknesses that seem to be crucial:

- i. **clause 4 (privacy)** is very brief and vague, and this gives the Commission latitude, in those few cases where it does decide to investigate, to hand down decisions which tilt far too much in favour of the supposed "public right to know". **The Secretary of State** recommended incorporating the main elements of a hypothetical tort (covering five pages in *Privacy and Media Intrusion*) into the Code
- ii. **clause 18 (public interest)** has a let-out provision which allows editors to plead justification for a story on the basis of some undefined over-riding public interest. Lord Wakeham has published public interest guidelines for editors, but has said that he does not wish to see clause 18 amended. **The Secretary of State** recommended an exhaustive list of public interest defences, and that Press Complaints Commission guidance should be incorporated into the Code

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- iii. although the Commission is said to have the power to **investigate without a complaint**, and Lord Wakeham has said that he will look at what can be done even in cases where the aggrieved party does not want to co-operate with the Commission, it is still entirely complaints-driven. In privacy cases, the aggrieved party often does not want to make a formal complaint.
- iv. virtually the only **sanction** deployed by the Commission is the requirement to publish adverse adjudications. This is always honoured, though grudgingly: the adjudications are often buried in the paper, without apology and, in any case, very few cases result in a finding of breach. To be precise, only two privacy complaints in the eight months from May - December resulted in a finding of breach, and they were not high-profile or particularly serious. The Commission only once prompted a reprimand from the proprietor to the editor, and Lord Wakeham has said that, in cases where there is no complaint, it is for the proprietor to decide what to do. **The Secretary of State** recommended that the Commission should suggest sanctions to the proprietor, and that proprietors might consider dismissal in appropriate cases.
- v. the Commission will not set up a formal hotline, connecting the Commission and an editor thought likely to breach the Code. Instead they have a helpline, which puts the complainant in touch with the editor. The authority of the Chairman, or of the Commission, is clearly essential in warning the editor, but this does not, as Lord Wakeham claims, amount to "prior restraint" as the function of the hotline could not be to injunct, but to warn and advise. **The Secretary of State** recommended a formal hotline, noting that the Commission had already issued informal warnings to editors.

Forward look

13. There has been little Parliamentary interest in privacy, as shown by the lack of PQs, EDMs, and Ministers' cases. The National Heritage Committee, in its report of 22 January 1997, has criticised the Commission's handling of chequebook journalism, and suggested that it should assume powers to fine, order compensation and name delinquent journalists.

14. The Government has moved to stop some grosser abuses, for example in its proposals to curb payments to witnesses in criminal trials, and harassment, particularly

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stalking. But the central gap of protection of privacy is still exposed. This has led Earl Spencer, in spite of a favourable adjudication, to take his wife's case to Strasbourg, and he may well be successful. High Court judges are saying that the Courts could, or should, or will, take the matter into their own hands and develop a tort of privacy. Further, the United Kingdom has to implement the EU Data Protection Directive in national law by 1998. In addition, the Opposition parties are discussing constitutional reform, including incorporation of the European Convention on Human Rights. It seems likely, therefore, that the main avenue of redress for press intrusion into privacy will come from the Courts, rather than from the Press Complaints Commission before long, at least for those who can afford litigation or qualify for legal aid.