

VOLUME II (HC 294-II)

LIST OF WITNESSES

LIST OF MEMORANDA INCLUDED IN THE MINUTES OF EVIDENCE

LIST OF MEMORANDA REPORTED TO THE HOUSE BUT NOT PRINTED

LIST OF APPENDICES TO THE MINUTES OF EVIDENCE

MINUTES OF EVIDENCE

VOLUME III (HC 294-III)

LIST OF WITNESSES

LIST OF MEMORANDA INCLUDED IN THE MINUTES OF EVIDENCE

LIST OF MEMORANDA REPORTED TO THE HOUSE BUT NOT PRINTED

LIST OF APPENDICES TO THE MINUTES OF EVIDENCE

APPENDICES TO THE MINUTES OF EVIDENCE

FOURTH REPORT

PRIVACY AND MEDIA INTRUSION

The National Heritage Committee has agreed to the following Report:

I. THE DILEMMA

1. A free and democratic society must be an open society. A society cannot be open unless there is complete freedom of speech -- subject only to the very minimum of restraints relating, for example, to defamation, the stirring up of racial and religious hatred, obscenity and considerations of national security. That freedom of speech must be available to individuals, to organisations, and to publications. There cannot be a free society without a free press.

2. Freedom to say and print whatever we like does not, of course, mean that we must all necessarily avail ourselves of unbridled licence to say or write whatever comes into our heads, regardless of the offence it may give to fellow-citizens. Most of us exercise some self-restraint in what we say and write, even though we know that (subject to the legal limits cited above) we need not do so. A free society should not be a society which, in order to exhibit its freedom, dispenses with civilised discourse.

3. Nevertheless, a free society requires the freedom to say or print things that are inconvenient to those in authority, whether they be members of the royal family, Ministers, Members of Parliament, local councillors, or public officials. While continual antagonism between the press and persons in authority is unnecessary, critical tension between them is an essential ingredient of a democratic society and far preferable to collusion between the press and public figures.

4. At the same time, in a democratic society there must be a right to privacy as well. That right must not be exploited to prevent the public being given information which is necessary for making democratic judgements. Yet it must not be ignored by those who claim that everything that everybody does is fair game, so long as it provides a saucy story to be published in the diary column of a broadsheet newspaper or across the front page of a tabloid.

5. The Committee's concern, in conducting this inquiry, has been mainly with the ordinary citizen who in the normal course of his or her life will never come into contact with the broadcast or written media except as a viewer, listener or reader; but who suddenly becomes of interest to the media, due often to circumstances beyond his or her control, such as becoming a crime victim or being related to the victim of a crime or terrorist act. Such people, as a result of injudicious, thoughtless or malicious reporting, can suffer additional distress at what is already a time of trauma and shock. Their family relationships, their jobs, their businesses and their careers can all be seriously damaged. The Committee does not believe that anyone has the right to inflict such harm on innocent persons.

6. Yet one cannot dodge the implications for persons prominent in public life, too. Those whose roles and occupations attract publicity in the media, whether they are members of the royal family, politicians, churchmen, leading figures in the media or the world of business, entertainers or prominent sporting figures, cannot expect the identical right to privacy as entirely private persons. At the same time, as the Committee asserts in this Report, everyone, whatever his or her occupation or calling, must be entitled to a zone of privacy. Even the Queen and the Prime Minister must have the right to keep some aspects of their lives away from the public gaze.

7. In February of this year Mr Mark Fisher put before the House of Commons a Bill entitled the Right to Know. The Committee does not in this Report involve itself in the merits or otherwise of Mr Fisher's Bill, but it does believe that the phrase "the right to know" is a useful test in establishing that zone of privacy which it believes to be necessary. So while the Committee believes that the public does have the right to know that the Chancellor of the Exchequer had legal advice partly financed by the taxpayer, it does not believe that the public has the right to know details of the Chancellor's credit card transactions. While it is a matter for argument whether the public has the right to know that a member of the royal family or a cabinet minister is involved in an adulterous affair, the Committee does not believe that the

public has the right to know the contents of such a person's intimate conversations or the details of his or her sexual activity.

8. A balance is needed between the right of free speech and the right to privacy. The Committee's view is that at present that necessary balance does not exist, and in this Report it recommends action to achieve it. The Committee does not believe that this balance can or should be achieved by legislation which imprisons the press in a cage of legal restraint, and for that reason rejects those proposals in the recent report by Sir David Calcutt which could create such a cage. The Committee would be deeply reluctant to see the creation of any system of legal restraints aimed solely and specifically at the press or the broadcast media. It believes that self-restraint or, as the Committee prefers to call it, voluntary restraint, is by far the better way.

9. The Committee's proposals for safeguarding and, indeed, where necessary enhancing, the right of the media to speak and write freely are part of a set of recommendations which come as a package; if any of them is to be implemented, then in the Committee's view all of them should be implemented.

10. In this Report the Committee sets out these recommendations, with its arguments for them:

- (i) Government action to extend the right of access to information.
- (ii) Enactment of a Protection of Privacy Bill.
- (iii) Enhancement of voluntary regulation by the press through the strengthening of the Press Commission (which the Committee recommends should succeed the Press Complaints Commission) and its Code, and expansion of the Commission's scope.
- (iv) The creation of a statutory Press Ombudsman, as a back-up to the Commission's role.

11. The Committee does not claim that these recommendations will of themselves entirely, and once and for all, solve the problems of freedom of speech and protection of privacy in an open society. The Committee does believe that its proposals offer the best chance possible to create the kind of balance that should be achieved in a society that fosters controversy and debate.

II. THE INQUIRY

12. The National Heritage Committee was set up in July 1992 to examine the expenditure, administration and policy of the Department of National Heritage and associated public bodies and similar matters within the responsibility of the Northern Ireland Office. Its remit is wide, including broadcasting, film, the arts, museums and galleries, libraries, sport, tourism, heritage, the National Lottery and regulation of the press. The Committee has already produced two Reports on the Export of Works of Art¹ and one on the National Lottery² and has announced inquiries into the Price of Compact Discs, English Heritage and the Future of the BBC. It has also conducted a long and very detailed inquiry into the subject of this current Report — Privacy and Media Intrusion.

13. In October 1992 the Committee announced its decision to undertake an inquiry into Privacy and Media Intrusion and invited written submissions. As the Committee's inquiry developed, it found that the main concerns expressed by witnesses and in public debate related to the conduct and regulation of the press. Accordingly, this Report from paragraph 61 onwards deals mainly with matters relating to the press.

¹First and Second Reports from the National Heritage Committee, Session 1992-93, HC 249.

²Third Report from the National Heritage Committee, Session 1992-93, HC 389.

14. In announcing its inquiry, the Committee emphasised that its first and fundamental concern was on behalf of private citizens and that it would therefore particularly welcome submissions from individuals affected by media intrusion. The Committee also stressed that it would be giving specific consideration to the use of invasive technology.

15. The Committee has received over 120 responses to its invitation to submit written evidence. These have included submissions from organisations representing people who, because they have been affected by crime, accident or illness, have sometimes also become victims of the media and most, helpfully of all, letters from individuals who have themselves had direct experience of excessive media interest or intrusion. The Committee acknowledges with gratitude the contribution which all these submissions have made to its inquiry.

16. Many of the written memoranda which the Committee has received, including all those to which direct reference is made in this Report, are published as Appendices to the Minutes of Evidence in Volume III.³ Others have been reported to the House and will be available for inspection by Members in the House of Commons Library and by non-Members in the Committee Office.⁴ In due course, the papers will be deposited in the House of Lords Record Office where they will remain available for inspection.

17. The Committee has also held eleven sessions of oral evidence during which it has taken evidence from twenty-two separate groups of witnesses including representatives of both the newspaper and broadcasting media. In addition to the private meetings which often preceded the Committee's formal sessions of oral evidence, the Committee has held a further 10 deliberative meetings in connection with its Report.⁵ A complete list of witnesses is given on pages xlviii and xlix. The Committee is grateful to everyone who submitted oral evidence but wishes in particular to thank the Lord Chancellor, the Rt Hon the Lord Mackay of Clashfern, for the evidence he gave and M. Jacques Vistel, a member of the Conseil d'État in France. The Committee also wishes to express its special thanks to those witnesses who had been directly affected by media intrusion for giving evidence about their experiences. Their readiness to relive their traumatic experiences in order to help to ensure that others did not suffer in a similar way deeply impressed the Committee.

VISIT TO THE UNITED STATES

18. In February, members of the Committee visited Washington DC and New York City to examine the remedies available in the USA to deal with intrusions into individual privacy and to discuss how the balance is achieved between the provisions of the First Amendment, which lays down a right to free speech and freedom of the press, and the various torts of infringement of privacy.

19. In Washington DC, the Committee held discussions with the Freedom Forum First Amendment Center, the Reporters Committee for Freedom of the Press, the Federal Communications Commission, the Transactional Records Clearinghouse, the National Organization for Victim Assistance, and the National Security Archive. The Committee also met Ms Elder Witt, the author of the Congressional Quarterly's Guide to the US Supreme Court, Mr Bruce Sanford, Counsellor at Law and author of 'Sanford's Synopsis of Libel and Privacy', Ms Joanne Bird, Ombudsman of the *Washington Post*, and Mr Jurek Martin from the *Financial Times*. The Committee then went to New York City where it participated in discussions with Mr Floyd Abrams, a partner in Cahill, Gordon and Reindel, Dr Leonard Sussman, Senior scholar in international communications, Freedom House, and Mr Allan Siegal and Mr George Freeman of the *New York Times*. The Committee's final meeting was held at the Freedom Forum Media Studies Center at Columbia University.

³For the list of Appendices, see page lii.

⁴For the list of Memoranda reported to the House but not printed, see p li.

⁵For Minutes of Proceedings relating to the Report, see page xlv. The full Minutes of Proceedings will be published at the end of the Session.

20. The Committee would like to record its gratitude to everyone who gave so generously of their time, experience and expertise in arranging and implementing its programme. Thanks to them, the Committee gathered a great deal of information about, as well as some less tangible, though no less valuable, insights into, the situation in the USA. These have been of great value to the Committee in drawing up its Report.

BACKGROUND TO THE INQUIRY

21. In July 1989, the then Home Secretary announced the establishment of an inquiry into Privacy and Related Matters (hereafter referred to as the Calcutt Committee). The Committee, which sat under the Chairmanship of Mr (now Sir) David Calcutt QC, was given the following terms of reference:

"In the light of the recent public concern about intrusions into the private lives of individuals by certain sections of the press, to consider what measures (whether legislative or otherwise) are needed to give further protection to individual privacy from the activities of the press and improve recourse against the press for the individual citizen, taking account of existing remedies, including the law on defamation and breach of confidence; and to make recommendations."⁶

22. The Calcutt Committee reported in June 1990.⁷ In essence it recommended:

- (i) three related criminal offences of unwarranted journalistic intrusion;
- (ii) more extensive court reporting restrictions in criminal cases;
- (iii) that a statutory right of reply should not be introduced at all and that a tort of infringement of privacy should not at present be introduced;
- (iv) the establishment of a non-statutory Press Complaints Commission to replace the old Press Council; and
- (v) that if non-statutory press self-regulation failed to work, a statutory system for handling complaints should be introduced.⁸

23. The Government welcomed the proposed criminal offences in principle, subject to further consideration of the formulation of the offences and the scope of any defence. The Home Office subsequently informed this Committee that this consideration had identified several difficulties and that Ministers had therefore concluded that, before it was decided whether statutory regulation was necessary, it would be more appropriate to defer final consideration of the matter until the end of the period which the Calcutt Committee had recommended should be given to the press.⁹

24. The principal thrust of the report's recommendations was the establishment of a Press Complaints Commission (PCC). In response the Home Secretary said that "If a non-statutory commission is established, the Government will review its performance after 18 months of operation to determine whether a statutory underpinning is required. If no steps are taken to set up such a commission, the Government, albeit with some regret, will proceed to establish a statutory framework."¹⁰ The press accepted the report's recommendation and the PCC was established to take effect from 1 January 1991.

⁶HC Official Report, 5 July 1989, col 195.

⁷Report of the Committee on Privacy and Related Matters, Cm 1102.

⁸Appendix 1.

⁹Appendix 2.

¹⁰HC Official Report, 21 June 1990, col 1126.

25. In accordance with the undertaking given in June 1990, the Government announced in July 1992 that Sir David Calcutt was to conduct an assessment of the effectiveness of press self-regulation. He would consider whether:

"the present arrangements for self-regulation should be modified or placed on a statutory basis;

any further measures may be needed to deal with intrusions into personal privacy by the press."¹¹

26. Sir David published his Review of Press Self-Regulation,¹² hereafter referred to as the Calcutt Review, in January of this year. His overall conclusion was that press self-regulation under the Press Complaints Commission had not been effective and that the press would not be willing to make the changes which would be needed to make the Commission the truly independent body, commanding the confidence of the public as well as the press, that it should be. He therefore recommended that the Government should now introduce a statutory press complaints tribunal on the model of that described in the original Calcutt Report.

27. Sir David also recommended that the three criminal offences proposed by the Calcutt Committee to deal with specific forms of physical intrusion should (with modifications) be enacted together with a civil remedy designed among other things to enable action to be taken to restrain publication. He recommended, as well, that further consideration should be given to the introduction of a new tort of infringement of privacy and to the use or amendment of legislation in the fields of data protection, interception of communications and non-identification of minors. The full summary of his recommendations is published with his oral evidence.¹³

28. The Secretary of State for National Heritage, in a statement to the House responding to Sir David's recommendations,¹⁴ accepted the case for new criminal offences to deal with specific types of physical intrusion and covert surveillance and agreed to give further consideration to some of his other recommendations on privacy and the use or amendment of specific legislation. With regard to his main recommendation -- that a statutory press complaints tribunal should now be established -- the Government took the view that this raised separate and more difficult issues which needed to be weighed carefully. In coming to a final view, it intended to take account of the conclusions of this Committee's inquiry into Privacy and Media Intrusion as well as the debate surrounding Mr Clive Soley's Freedom and Responsibility of the Press Bill.

29. Although the National Heritage Committee's inquiry ran parallel for several weeks with Sir David Calcutt's review, its remit, as explained above, was somewhat wider. The Committee was concerned with all forms of media -- not just the press -- as can be seen from the oral and written evidence it received. The Committee also had two fundamental and overriding concerns: the privacy of private citizens and the use of invasive technology.

30. As part of its inquiry into media intrusion as it affects private citizens the Committee took oral evidence from victims of media intrusion which, though resulting from very different causes, had been similar in its effects.¹⁵ The Committee also received several written submissions from other victims. The evidence at times proved revealing and very disturbing.

31. Among those from whom the Committee received evidence were the widows of two servicemen who had been murdered by terrorists in Northern Ireland. One of these murders had occurred before the press Code of Practice had been drawn up and implemented. The second murder took place after the Code had been implemented, but there appeared to have

¹¹Department of National Heritage News Release, 9 July 1992.

¹²Cm 2135.

¹³Evidence, pp 206-8.

¹⁴HC Official Report, 14 January 1993, cols 1067-9.

¹⁵QQ 158-255; 353-8; 580-625; 626-686.

been no improvement in the conduct of some of the press representatives with whom the soldiers' families had to deal. Despite the provision in the Code which states that "In cases involving personal grief or shock, enquiries should be carried out and approaches made with sympathy and discretion",¹⁶ the press started telephoning at 11 o'clock at night and kept the phone going all night.¹⁷ The family was also subjected to persistent doorstepping.¹⁸ And in what seemed to the Committee to be a callous and totally unacceptable breach of the Code, as well as more general canons of decency and compassion, the new widow, having been persuaded to give an interview in order to reduce press pressure, was asked by the accompanying photographer to "look like a grieving widow".¹⁹ Lord McGregor, the Chairman of the Press Complaints Commission, later referred to other complaints of press harassment made by the wives of RAF personnel who were serving during the Iraq war; the PCC, he said, had put a stop to these incidents.²⁰ In another case of which the Committee was told, a victim of a civilian bombing incident had had journalists poking cameras through his letterbox.²¹ From other submissions, the Committee received complaints of harassment by photographers, persistent telephoning and doorstepping.²²

32. One matter which has been very much in the Committee's mind during its inquiry is the difficulty for people faced with an unprecedented and traumatic situation in dealing with the press. From one of the servicemen's widows, the Committee learned of the immense contribution made by her visiting officer in shielding her from at any rate some of the intrusive actions of certain journalists.²³ From the Metropolitan Police, the Committee learned of the steps taken, when a police officer is killed or injured on duty, to give all possible support and guidance to the relatives.²⁴ The Committee believes that these are very useful initiatives and that they should serve as an example to be followed as widely as possible.

33. The Committee also received considerable evidence²⁵ about the intrusive and distressing effect of constant telephoning by the press. The Committee notes the readiness of the telecommunication services to provide service interception or to change numbers where such intrusion occurs and believes this facility should be brought to the attention of people who might need it, perhaps through a prominent note in telephone directories and in the routine procedures of the emergency services.

34. The Press Complaints Commission,²⁶ as well as the individual newspaper editors from whom the Committee took evidence, referred to the small number of complaints they had received about press behaviour. In the eighteen months from January 1991 to June 1992 the PCC received a total of 2069 complaints of which 148 alleged infringement of the Code on privacy,²⁷ 27 of the Code on harassment and 42 of the Code on intrusion into grief or shock.

35. The Committee is far from convinced that the number of complaints made is an accurate reflection of the number of breaches of the Code. Many people probably remain unaware of the existence of the PCC or the industry's Code of Practice. Others may feel inhibited at having to make a complaint in writing and the absence of a hot-line may make it difficult in practical terms for private citizens to make their complaints at the most effective moment. In addition many people, as our witnesses made clear, will feel reluctant to prolong their trauma

¹⁶Evidence, p 73.

¹⁷QQ 163; 216.

¹⁸QQ 216; 218.

¹⁹Q 183.

²⁰Q 392.

²¹Q 240.

²²See also QQ 725; 657; 604.

²³Q 166.

²⁴Appendix 26.

²⁵See, eg, QQ 657; 163; 216;

²⁶Evidence, p.54.

²⁷...

by making a complaint and they may also consider that as the PCC has no power to award compensation, however heinous the offence, there is no point in adding to their stress by pursuing a complaint.

36. A further factor which may contribute to the relatively low number of complaints is that the PCC, unlike the Press Council which preceded it, is generally unwilling to deal with third-party complaints.²⁸ Nor, despite the Calcutt Committee's recommendation that the PCC should monitor the Code of Practice, has it been sufficiently assiduous in conducting such monitoring. A PCC which neither accepts the generality of third-party complaints nor fills the lacuna by conducting its own press monitoring does not seem to the Committee to be entitled to claim that "there is unequivocal evidence that self-regulation is now working effectively."²⁹ The Committee believes that the body of potential justified complaints is considerably greater than the actual number. Even if it were not, just one case of a photographer climbing a tree at a private funeral in order to get a picture or one instance of journalists besieging a school and its pupils following a rape would be unacceptable. As the Committee has learned to its regret these have not been isolated incidents.³⁰

37. In this context, the Committee was impressed by a statement made to it on its visit to New York by Dr Leonard Sussman.³¹ "A new element should be added to all the older ethical standards. Call it compassion. Many journalists argue that this is not their concern -- just delivering the facts is their responsibility, they say. But public rejection of some American news reporting stems from just such criticism, however expressed in public discourse. Lack of compassion is at the base of many journalistic problems with privacy, uncouth methods and similar complaints. Failure to recognize or sympathize with the plight of news subjects can produce unsophisticated and misleading journalism."³²

STATUTORY TRIBUNAL OR VOLUNTARY REGULATION?

38. Although agreeing with Sir David that the Press Complaints Commission as at present constituted is not an effective regulator of the press, the Committee rejects his conclusion that a statutory tribunal is now inevitable. The response of the PCC³³ and the Newspaper Publishers Association³⁴ in now supporting a majority of lay members on the PCC suggests that Sir David is perhaps premature in concluding that the industry, in setting up the PCC, had gone as far as it was prepared to go. The Committee welcomes this indication that the industry retains some flexibility in developing the concept of voluntary regulation.

39. The Committee is most reluctant to support the introduction of a statutory press complaints tribunal. Unless future events show such a tribunal to be utterly unavoidable, the Committee believes that it would be far preferable to rely initially on voluntary regulation by the press. The Committee does not therefore recommend that a statutory press complaints tribunal should be established. Its alternative proposals are set out below. The Committee wishes to emphasise, however, that it will be monitoring the effectiveness of the system it recommends and that, if it concludes that this system is not being operated effectively, appropriately and fairly, it will return to the subject during this Parliament.

40. Many of the submissions which the Committee has received about the proposed new criminal offences relating to specified types of physical intrusion and covert surveillance³⁵ raised objections on the grounds that the offences would be directed exclusively against the media and that it was wrong to direct legislation against a particular group. The Committee

²⁸See, eg, Mr Borzello's Evidence, pp 186-199.

²⁹Evidence, p 53.

³⁰QQ 221; 392; 628 and Appendix 56.

³¹Senior scholar in international communication, Freedom House; Adjunct professor, journalism and mass communication, New York University.

³²Appendix 57.

³³Appendix 31.

³⁴Appendix 35.

³⁵See, eg, Evidence, p.54.

agrees. The Committee is against legislation that would apply to the media exclusively and, with one exception, against legislation that would restrict the press alone. Its conclusions and recommendations on these matters are discussed in detail below.

III. THE WAY FORWARD

41. In the Committee's view, press regulation has three aspects. The Committee's approach to the situation, and its proposals to deal with it, similarly are in three parts. The first aspect concerns access to information.

i Access to information

42. The Committee believes that in a democracy everyone, including the press, should have the right of access to information. The Committee's proposals in part seek to make self-regulation of the press more effective and in part recommend legislation -- not aimed at the press or the electronic media, specifically, but applying to every person in the land -- to provide protection for individual privacy and to prevent, and where necessary, punish, unacceptable use of surveillance devices.

43. The Committee is aware that such measures, which it regards as desirable in themselves, would be even more welcome in a society that had become more open. In questioning people, particularly in the United States, the Committee has been persuaded that the provision of more information to the media would assist those sections of the press, radio and television which argue that they would prefer to cover more serious topics but are denied sufficient information to do so.

44. The Committee does not delude itself that any journals which serve to their readers a diet that includes a disproportionate amount of triviality and malice would suddenly be transformed overnight into serious investigative publications. Nevertheless, it believes that access by the media to more information, at present restricted or withheld, would of itself be beneficial to society.

45. During the debate on 19 February 1993 on the Second Reading of Mr Mark Fisher's Right to Know Bill, the Chancellor of the Duchy of Lancaster listed a series of measures and actions by the present Government which have widened the channels of information. The Committee welcomes such progress but urges the Government to go considerably further in extending the public's right of access to information. Any steps taken should of course have due regard to national security, defence, law enforcement, commercial confidentiality and personal privacy.

46. The Committee welcomes the announcement by the Chancellor of the Duchy of Lancaster that there will be a Government White Paper before the summer recess.³⁶ It believes that effective action to extend the public's right of access to information should be taken as quickly as possible and certainly no later than the implementation of the Committee's other recommendations.

ii Protection of Privacy

47. The second aspect of the Committee's approach concerns protection of privacy. The Committee recommends that a Protection of Privacy Bill, which will provide protection for all citizens and whose provisions similarly will apply to all citizens, should now be introduced. The Committee envisages a two-part Bill: the first part listing various civil offences leading to a tort of infringement of privacy; the second part specifying criminal offences resulting from unauthorised use of invasive technology and harassment.

48. Infringement of privacy will be the main civil offence in the Protection of Privacy Bill. This offence will include:

- obtaining and/or publishing harmful or embarrassing personal material or photographs; or
- obtaining and/or publishing private information (eg. medical records) or photographs without the permission of the person concerned or, where that person is not in a position to give permission, by his next of kin; or
- publishing inaccurate or misleading personal information; or
- violating the peace of another by intruding upon him, or persistently communicating with him.

Courts will have discretion to award compensation where an offence has been proved. It will be a defence to any of the civil offences that the act had been done in the public interest.

49. Related to the Committee's proposed civil offence of infringement of privacy is the existing law of confidentiality. In 1973 the law relating to breach of confidence was referred to the Law Commission. The Commission reported in 1982.³⁷ Attached to its report was a proposed draft Breach of Confidence Bill "to impose obligations of confidence giving rise to liability in tort on persons acquiring information in certain circumstances and otherwise to amend the law in England and Wales as to civil liability for the disclosure or use of information and for connected purposes." The Government expressed support for the Commission's proposals³⁸ but no legislative action has yet been taken.

50. The Working Party of the Bar Council emphasised that the law of confidence already goes a long way towards providing protection against the misuse of personal information and is fertile ground for being further developed on a case by case basis.³⁹ As Mr Desmond Browne QC later clarified in oral evidence to this Committee it would "restrain the disclosure of confidential information by way of a leak and ... restrain the publication of the contents of private telephone calls."⁴⁰ The Committee believes that the scope of the current law of confidence and the potential value of the Law Commission's proposed Breach of Confidence Bill has not been appreciated fully. It accordingly recommends that further consideration be now given to the introduction of legislation on breach of confidence as a valuable part of the Committee's proposed Protection of Privacy Bill.

51. The main criminal offences in the Protection of Privacy Bill will be directed at the unauthorised use of invasive technology and at harassment. In the former category, the Committee recommends that the offences should be basically as set out in the Calcutt Review but that, in order to emphasise that the Bill is intended to apply to all citizens, the qualification of "with a view to publication" should not be included.

52. The Bill will make the following acts criminal offences:

- placing a surveillance device on private property without the consent of the lawful occupant, with intent to obtain personal information;
- using a surveillance device (whether on private property or elsewhere) in relation to an individual who is on private property, without the consent of the individual to such use, with intent to obtain personal information about that individual;
- taking a photograph, or recording the voice, of an individual who is on private property, without his consent to the taking or recording, with intent that the individual shall be identifiable;

³⁷Law Commission Report No 110, 1981, Cmnd. 8388.

³⁸Appendix 6 and HC Official Report, 2 March 1989, col 257.

³⁹Evidence, pp 2-3.

⁴⁰Q 21.

³⁶HC Official Report, 19 February 1993, col 606.

- publishing of a recording or an intimate photograph of an individual taken without consent;
- entering private property without the consent of the lawful occupant with intent to obtain personal information;
- the buying, selling or retention of any recording without the permission of the person on the tape; or of any material obtained through eavesdropping or use of long-range cameras where any of the parties was aware that the material was procured through illegal means or suspected it to be so obtained; and publication of any recording or material so obtained even where no financial transaction was involved;

with the addition of a further offence of the deliberate interception of calls made on mobile 'phones.

53. The Committee also recommends the enactment of a criminal offence to prohibit harassment or besetting. The Calcutt Report drew attention to the potential of Section 7 of the Conspiracy and Protection of Property Act 1875 in this regard.⁴¹ This makes it an offence persistently to follow someone about, to watch or beset a person's house, business or workplace or the approach to it, or to hinder a person in the use of his property wrongfully and without legal authority, with a view to compelling him to do something he does not wish to do. The original intention of the provision was to prohibit harassment in the course of an industrial dispute, but in the Calcutt Committee's view it need not necessarily be so limited. It suggests that the offence could also cover besieging a person's house or following him from place to place with the aim of making him give an interview when he does not wish to.

54. The Committee believes that this is a matter which deserves further consideration. It accordingly recommends that the Government examine Section 7 of the 1875 Act with a view to incorporating into the Protection of Privacy Bill comparable provisions as they relate to besetting and harassment in the context of unreasonable invasion of privacy and changing its terms to reflect altered circumstances since that date. These changes possibly could include the need to curtail sexual harassment, noise pollution, etc. The penalty should also be appropriately updated.

55. It will be a defence to any of the criminal offences that the act had been done in the public interest which would include:

- for the purpose of preventing, detecting or exposing the commission of any crime; or
- for the purpose of preventing the public from being harmfully misled by some public statement or action of the individual concerned; or
- for the purpose of informing the public about matters directly affecting the discharge of any public functions of the individual concerned; or
- for the protection of health or safety; or
- under any lawful authority.

A prosecution for any of these criminal offences will be brought only with the consent of the Director of Public Prosecutions or the Crown Agent in Scotland.

56. In proposing its Protection of Privacy Bill the Committee recognises the essential differences in approach between both criminal and civil jurisdictions in Scotland on the one hand and England and Wales on the other. The Committee nevertheless recommends that

a Protection of Privacy Bill, taking account of these differences where necessary, should apply to Scotland as well as to England and Wales.

57. Associated with the Committee's concern about infringements of privacy and the use of surveillance devices is its concern about the easy availability of such devices. A wide range of surveillance devices is advertised and catalogues are easily obtained. The Committee recognises that many of the devices that can be used for illegal eavesdropping can also be used perfectly properly for legitimate and innocuous purposes and that the selling of such devices is legal. The Committee remains concerned, however, about their general availability. The Committee recommends that the Government should draw up a definition to cover the most potentially intrusive surveillance devices and should give urgent consideration to the desirability of either licensing or registering such devices. In the Committee's view it would also be appropriate to consider how to restrict the sale of any item marketed as "for law enforcement only". The Committee also notes that certain devices which are available for sale in this country as "for law enforcement" are banned from sale to the general public in the USA.⁴² It recommends that comparable restrictions should apply in this country.

58. The Committee, in recommending the introduction of a Protection of Privacy Bill, is keen to ensure that no-one is prevented by lack of resources from taking action under it. The Committee therefore recommends that legal aid be extended to cover proceedings taken under the Bill. The Committee is conscious however that there is a tort of particular relevance to the area of its inquiry which uniquely is not eligible for legal aid -- that is, defamation. The Lord Chancellor pointed out that defamation had never been covered by legal aid and that no-one had yet felt able to provide the necessary resources to finance legal aid in defamation cases.⁴³ The Committee recognises that there is pressure on resources but believes that it is unjust to prevent people from having access to justice solely because of lack of means. It therefore recommends that legal aid be extended to cases of defamation.

59. During its visit to the United States, the Committee discussed the content and application of various State laws relating to privacy. Several of the laws are reprinted as Annex 1 to this Report. As stated, above, the Committee also received evidence about the position in France with regard to protection of privacy. Article 9 of France's 1970 law admirably expresses the Committee's view on privacy, namely that "Everyone has the right of respect for his private life."⁴⁴ This is a matter to which the Committee will be returning in later paragraphs.

III Voluntary Regulation

60. In the recommendations which follow the Committee deals with voluntary regulation of the press. This is because a voluntary system of press regulation already exists and the Committee is making proposals to strengthen it. A number of the recommendations refers to the conduct of journalists, for example, in identifying themselves to those whom they seek to interview. While their own forms of regulation for television and radio already exist, the Committee nevertheless believes that the standards and modes of conduct which the Committee recommends for journalists writing for the press should be observed also by those working for television and radio.

61. The Committee has already rejected the idea of a statutory press complaints tribunal. In its view, the best way to proceed in dealing with the problems related to the press is through voluntary regulation. It is by means of such voluntary regulation carried out fairly and effectively that the press can acknowledge its responsibility to its readers and the public at large.

⁴¹See Annex 4.
⁴²QQ 1297-8.
⁴³Q 1342.

I EDITORIAL RESPONSIBILITY

62. Voluntary regulation involves several strata of responsibility. The first is editorial responsibility. As a further recognition of this responsibility the Committee recommends that editors' contracts of employment should specifically require them to enforce the industry's Code of Practice⁴⁵ and to accept the consequences of any fundamental breaches.

II READERS' REPRESENTATIVES

63. The second level of responsibility rests with the newspapers own readers' representatives. Following publication of the Calcutt Committee report, many newspapers appointed their own ombudsmen or readers' representatives to take up the grievances of their readers. The Matthew Trust conducted a survey into the responsiveness and effectiveness of this voluntary system which demonstrated the difficulty of obtaining information about the newspaper ombudsmen.⁴⁶ Although some editors responded positively to the Trust's comments, many others did not. "The Mirror Group of Newspapers decided to dispense with the services of an ombudsman. In other cases, editors thought it was sufficient to have a member of the newspaper's staff, rather than an independent and unbiased individual not directly connected with the newspaper, dealing with complaints."⁴⁷

64. During its visit to the USA, the Committee was interested to learn about how the *Washington Post's* Ombudsman operates. She is appointed on a two-year contract which is renewable once. The contract provides for her salary to be placed in escrow and includes a provision prohibiting her future employment at the end of that term by the *Washington Post* or its divisions. The Ombudsman has a reserved space on the editorial page every Sunday on which she can write about any *Post* or media issue. The column is not subject to editorial control.

65. The Committee does not believe that the full potential of an effective system of readers' representatives has yet been realised. Although the Committee does not wish to recommend that every newspaper should be required to appoint a readers' representative, it does recommend that all papers without one, and particularly those with substantial circulations, should consider appointing an independent readers' representative. The Committee also suggests that the newspapers which do appoint such representatives should consider following the practice of the *Washington Post* and give their representative a weekly column free of editorial control.

III THE PRESS COMMISSION

66. The third tier of voluntary regulation relates to the functions currently performed by the Press Complaints Commission. As the Committee discusses below, it recommends a much wider role for the new body than that currently performed by the PCC. In some respects this role mirrors that which the Calcutt Committee recommended the PCC should perform, for example with regard to monitoring the Code of Practice, operation of a hot-line and initiation of inquiries, but which the PCC signally failed to carry out. In others, and in particular with regard to powers to compensate and fine, it extends the role somewhat further than that originally envisaged by the Calcutt Committee. Further the Committee believes that to include the word 'complaints' in the title of a body suggests too restrictive a role and that there is a need to draw a clear distinction between the current regime and that which the Committee recommends should be adopted. The Committee accordingly recommends that the PCC be replaced by the Press Commission.

67. The first decision to be made in establishing the Press Commission concerns its responsibilities. The Calcutt Committee concluded that the PCC would be serving press freedom better if it concentrated on the maintenance of proper standards than if it also acted as

a body campaigning overtly for press freedom.⁴⁸ The Committee does not agree. Lord McGregor too argued "that the best contribution that anyone can make at the moment to the maintenance of the freedom of the press is to deal effectively with complaints about it to the satisfaction of complainants."⁴⁹ The Committee believes that it is essential that the Press Commission should be charged specifically with the task of upholding press freedom.

68. A further responsibility which ought to be accepted by the Press Commission is the maintenance of ethical standards. Success in discharging this responsibility can be measured both by the content of the Code which the industry adopts, and to which the Committee expects the Press Commission to make a substantial input, and by the degree of compliance with it. Associated with this responsibility is the duty to adjudicate on complaints. For this responsibility to be fulfilled adequately, it is essential that access to the Press Commission should be easy, that adjudications should not be delayed and that any redress should be effective. The Committee noted the steps which the PCC had taken to make itself better known and how much more quickly it had reached decisions than had its predecessor Press Council.⁵⁰ The Committee hopes that the new Press Commission will continue to maintain these improved standards. It recommends that the address and telephone number of the Press Commission and a note describing the Commission's operation should be published by newspapers at regular intervals. The Committee also recognises the importance of ensuring that people who wish to complain feel that the body to which they complain is geographically accessible. It therefore recommends that the Press Commission should set up offices in Wales and Scotland to handle complaints emanating from those areas as well as such regional offices as it considers appropriate.

69. Connected with the need to respond quickly to complaints, is the requirement to ensure that editors are alerted speedily to any possible breaches of the Code. The Committee accordingly recommends that the Press Commission should operate a hot-line. The Committee does not expect, and would not wish, this hot-line to be turned into a substitute for legal recourse to prior restraint. It would, however, enable an editor to be alerted to a possible problem and to take a more informed decision on publication.

70. Another responsibility which the Committee considers would fall suitably within the remit of the Press Commission concerns training. The National Union of Journalists has argued that "Journalists are inadequately trained in respect of ethical standards ... More and more training is now in-house and geared to the needs of particular employers rather than the profession in general."⁵¹ Properly conducted training could reduce the need in the future for the Press Commission to adjudicate on complaints of press misconduct. The Committee believes that the Commission could play a valuable role in ensuring that journalists are fully trained in the Code and in wider press ethics.

71. Two further responsibilities which the Committee believes should be specifically placed upon the Press Commission reflect its responsibility to the public as well as the press. The Committee recommends that the Press Commission should conduct research periodically into public attitudes to the press, the effectiveness of the revised Code of Practice, the press's wider role in society and the freedom of the press. The Committee recommends also that the Press Commission should initiate inquiries into issues of general public concern or into specific incidents and, where necessary, give advice on the principles to be applied. An additional responsibility which the Committee believes the Press Commission should have is that of monitoring the press on a continuing basis. Only in this way will the Press Commission be able to judge whether voluntary regulation really is working effectively.

72. Related to this latter requirement is another responsibility which the Committee believes the new Press Commission should accept. This is a willingness to receive and examine general third-party complaints. Mr Robert Borzello, in evidence to this Committee, attributed the major

⁴⁸Cm 2135, para 2.11.

⁴⁹Q 486.

⁵⁰Evidence, p 65 and QQ 454-5.

⁵¹Am...

⁴⁵See paras 82-93 below and Annex 2.

⁴⁶...

reason for what he claims to be the failure of the PCC to its refusal in practice to accept third-party complaints even when these involved clear breaches of the PCC's published Code of Practice.⁵² This refusal by the PCC to accept third-party complaints effectively excludes all newspaper readers from the process of self-regulation. The Committee believes that newspaper readers have a valid locus in making complaints about perceived breaches of the Code. It therefore recommends that the new Press Commission should receive and examine third-party complaints which will allow for the public interest in a press of high quality to be accommodated.

73. By initiating inquiries, monitoring and adjudicating on third-party complaints, the Press Commission will put itself in a strong position to develop a body of case law which can provide guidance to the press and be used when considering similar complaints. The Committee attaches importance to this and hopes that this will lead ultimately to an absolute reduction in the number of breaches of the Code.

74. A further responsibility of the Press Commission again relates to its duty to complainants. It is essential that, where factual errors or breaches of the Code have occurred, the Commission should be able to order the publication with due prominence of its adjudications and of a correction and appropriate apology.

75. The two final responsibilities which the Committee believes ought to be given to the Press Commission have a financial impact. The first of these relates to the payment of compensation. It seems to the Committee unfair that where a complaint has been upheld there is nothing available to the complainant between an apology and expensive recourse to the Courts. The Committee accordingly recommends that the industry should increase the powers of the new Press Commission to allow it to require the payment of compensation. The press is of course *sui generis* and cannot be compared precisely with any other institution in the realm. Nevertheless, payment of compensation to an aggrieved person whose grievance has been confirmed after investigation would not be a unique or unprecedented step. The Solicitors Complaints Bureau, for example, can order an individual solicitor to pay compensation of up to £1,000.⁵³ In the area of non-statutory Ombudsmen, the Banking Ombudsman⁵⁴, and the Insurance Ombudsman,⁵⁵ can order the payment of compensation of up to £100,000.

76. The second of these responsibilities relates to the power to fine. Where a particularly blatant abuse of the Code has taken place, it seems inappropriate that the body charged with examining and adjudicating on the case should have no powers to fine the offending publication. The Committee gave serious consideration to the established methods of self-regulation in other professions where fines are levied on associate groups or even individuals who have been judged to have brought their profession into disrepute. Bar disciplining tribunals, for example, already have the power to fine barristers up to £5,000 which is payable to their Inn; the Lloyd's byelaws give a Lloyd's disciplinary tribunal the power to fine;⁵⁶ and a Family Health Service Authority may withhold up to £500 from a practitioner's salary without reference to the Secretary of State.

77. The Committee can see circumstances in which the Press Commission itself might feel that a newspaper or journalist could be alleged to have reduced public confidence in newspaper publishing and might wish to impose a fine on such a publication. If the Press Commission is to exercise as much voluntary regulation as possible, it should be able to pre-empt the need for complainants to resort to the Ombudsman, and have the power to impose its own financial penalties on those newspapers which it judges have brought journalism into disrepute. The decision on whether to take such action should of course be a matter for the Press Commission. The Committee therefore recommends that the industry should increase the powers of the

⁵²Evidence, p 187.

⁵³Appendix 51.

⁵⁴Appendix 50.

⁵⁵Appendix 45.

⁵⁶Q 1241.

new Press Commission to allow it to impose fines where it judges that a breach of the Code of Practice is such as to have brought journalism into disrepute.

78. The Committee recognises that any imposition of a financial penalty must carry with it the possibility of seeking alleviation from that penalty. The Committee is therefore proposing that where any of the parties involved is not satisfied with the outcome they should have the right to seek a re-examination of the case by the Press Ombudsman, see paragraphs 94 to 107 below.

79. The Press Commission's composition is crucial to its effective operation. The Committee noted above the acceptance by the PCC of the idea that an absolute majority of independent lay members is desirable to underline to the public that the PCC is independent.⁵⁷ The Committee believes that it is equally desirable for the new Press Commission to have a majority of lay members. Members of the current PCC are appointed by a Commission of three comprising its Chairman, the Chairman of Pressbof⁵⁸ and an independent Public Nominee, nominated by the PCC Chairman.⁵⁹ The Committee recommends that appointments to the Press Commission should be entrusted to the appropriate representative bodies of the industry but hopes that, in making such appointments, they will have regard to the need for appropriate representation of women and the ethnic minorities on the Commission as a whole and for the Commission to provide an accurate reflection of the nature of the industry.

80. Appointment of its Chairman should be a matter for the Press Commission. The Committee would expect, however, that the choice would rest on a widely respected public figure with considerable experience of media and public affairs.

81. On funding, beyond emphasising that it is essential that the Press Commission should be adequately funded to perform its tasks, the Committee does not recommend any change to the present system.⁶⁰

Code of Practice

82. The Code of Practice lies at the heart of the operation of the Press Commission. In the Committee's view it must also lie at the heart of all journalistic activities. The Committee recommends therefore that compliance with the Code of Practice should be made part of every journalist's contract of employment and that every freelance should be told that his or her work will not be accepted unless the material has been obtained in compliance with the Code.

83. Several witnesses have suggested to the Committee that there is a need for journalists to provide identification when seeking an interview and that it would be helpful if copies of the Code could be made available at the time that an interview or photograph was being sought.⁶¹ The Committee agrees. It recommends that all journalists should be required to provide proof of identity and a copy of the Code to those they seek to interview and photograph. The Committee also recommends that consideration be given to printing copies of the Code in other languages that are used by significant groups in this country.

84. The Committee has considered in parallel the Code originally recommended by the Calcutt Committee and that subsequently adopted by the industry. Both Codes are reproduced in Annex 2 to this Report, together with the Committee's preferred Code of Practice.

85. The Committee does not intend to discuss in detail all the amendments which it has suggested in its preferred Code but will concentrate on those areas in which it believes the Code requires amplification. The first of these concerns the need to recognise a zone of privacy.

⁵⁷Appendix 31.

⁵⁸Press Standards Board of Finance Ltd.

⁵⁹Evidence, p 58.

⁶⁰Evidence, p 59.

⁶¹See, eg, QQ 242-3;359-61.

99. The office of the Press Ombudsman should be funded by the Exchequer in a like manner to that of the Legal Services Ombudsman, who operates in many respects in relation to the legal profession as the Committee would expect the Press Ombudsman to operate in relation to journalism. It will be for the Press Ombudsman to decide how many staff he needs properly to fulfil his functions and it is essential that he be given the funds he requires to employ that number of staff and to operate as he judges necessary.

100. The Ombudsman's primary responsibility will be investigation of complaints submitted to the Press Commission whose outcome was not satisfactory to one of the parties involved. The Ombudsman will also have the right to consider complaints which the Commission had declined *ab initio* to investigate and to institute investigations where no complaint had been made. In this he will operate with the same discretion as is enjoyed by the Audit Commission to undertake or promote the studies or investigations it considers appropriate. The Committee recommends that a suitable early investigation would be an examination of what responsibilities a proprietor has in relation to the newspapers over which he has control.

101. The Committee recommends that the Press Commission should make it its practice, when informing the parties to a complaint of its decision, also to inform them of their right to appeal to the Ombudsman if they are not satisfied with an adjudication or a recommendation about compensation or the level of a fine. The Committee also hopes that newspapers will regularly publish information about the Ombudsman and how to contact his Office and of the circumstances in which he will deal with a complaint.

102. In order fully to discharge his functions the Ombudsman will require certain powers. These are not greater than those which the Committee has already recommended should be exercised on a voluntary basis by the Press Commission. The first of these concerns the power to require the publication of corrections, retractions or apologies and, where appropriate, to supervise their wording. The Ombudsman should also have the power to require that their position in a newspaper should have the prominence he considers necessary. The Committee accordingly recommends that the Press Ombudsman be given the statutory powers to supervise the wording, position and format of corrections, apologies and retractions.

103. Associated with the power to order corrections and apologies is the right to identify all those involved with a breach of the Code. Mr Borzello suggested that the people who are involved should be mentioned every time.⁷³ The Committee agrees that responsibility for a serious breach of the Code extends beyond the journalist or photographer, to the editor and ultimately the proprietor. The Committee accordingly recommends that the Press Ombudsmen should have statutory authority to publish with an adjudication whenever he thinks it appropriate, the names of those responsible for a serious breach of the Code.

104. The Ombudsman's next statutory power relates to the payment of compensation where appropriate to those affected by breaches of the Code or to re-enforce the Press Commission's recommendations with regard to compensation where the offending newspaper has declined to pay. The Committee recommends that the Press Ombudsman be given statutory authority to order the payment of compensation.

105. The fourth power concerns the right to fine publications responsible for flagrant or persistent breaches of the Code of Practice. The Committee believes that the same right to impose a financial penalty should rest with the Press Ombudsman, as it would with the Press Commission. The Committee accordingly recommends that the Press Ombudsman be given statutory authority to impose a fine.

106. Nothing in the Committee's proposals is intended to abrogate the right of individuals to seek legal redress. Nor did the Lord Chancellor think that a waiver of their right to other legal recourse was necessary. "I would have thought it might be possible to get a quality of Ombudsman whom the organs of the press would be prepared to respect and hope that his

investigations ... would give satisfaction to both sides and, therefore, that the cause of action would disappear. I would not have thought it was essential to have an arrangement under which that was necessarily agreed in respect of cases at the outset."⁷⁴

107. Finally, the Committee recommends that the Press Ombudsman should be required to make an Annual Report to Parliament which, like the Committee for the Parliamentary Commissioner for Administration and his reports, the Committee intends formally to consider. The Committee recommends consequentially an amendment to its terms of reference to include a provision similar to that for the Select Committee on the Parliamentary Commissioner for Administration.

V THE HIGH COURT

108. The final element in the Committee's proposed system of regulation is the High Court. The Committee recommends that where a newspaper refuses to pay a fine or compensation which has been ordered by the Press Ombudsman, the Ombudsman should be able to seek a Court order requiring it to be paid. Similarly, where a newspaper dissents from the Ombudsman's decision, it should be entitled to ask the Court to discharge the order.

IV. CONCLUSION AND SUMMARY OF RECOMMENDATIONS

109. In opening its Report, the Committee re-affirmed its belief that there cannot be a free society without a free press but stressed also its conviction that a free society should not be one which, in order to exhibit its freedom, dispenses with civilised discourse. The Committee recognised the need for a balance between the right of free speech and the right of privacy and in this Report has recommended action to achieve such a balance.

110. The Committee's recommendations are summarised below:

- (i) The steps taken by the army and police when a serviceman or police officer is killed or wounded on duty to give support and guidance to the relatives are very useful initiatives and should serve as an example to be followed as widely as possible. (Para 32)
- (ii) A statutory press complaints tribunal should not be established. (Para 39)
- (iii) Effective action to extend the public's right of access to information should be taken as quickly as possible and certainly no later than the implementation of the Committee's other recommendations. (Para 46)
- (iv) A Protection of Privacy Bill, which will provide protection for all citizens and whose provisions similarly will apply to all citizens, should now be introduced. (Para 47)
- (v) It will be a defence to any of the civil offences in the Protection of Privacy Bill that the act had been done in the public interest. (Para 48)
- (vi) Further consideration now be given to the introduction of legislation on breach of confidence as a valuable part of the Committee's proposed Protection of Privacy Bill. (Para 50)
- (vii) The Government examine Section 7 of the 1875 Conspiracy and Protection of Property Act with a view to incorporating into the Protection of Privacy Bill comparable provision as they relate to besetting and harassment in the context of unreasonable invasion of privacy and changing its terms to reflect altered circumstances since that date. These changes possibly could include the need to

⁷³O 1089. See also Evidence, p 190

⁷⁴Q 1323.

- curtail sexual harassment, noise pollution, etc. The penalty should also be appropriately updated. (Para 54)
- (vii) It will be a defence to any of the criminal offences in the Protection of Privacy Bill that the act had been done in the public interest. (Para 55)
- (ix) A Protection of Privacy Bill, taking account where necessary of the essential differences in approach between the criminal and civil jurisdiction in Scotland and in England and Wales, should apply to Scotland as well as to England and Wales. (Para 56)
- (x) The Government should draw up a definition to cover the most potentially intrusive surveillance devices and should give urgent consideration to the desirability of either licensing or registering such devices. (Para 57)
- (xi) Certain surveillance devices which are available for sale in the UK as "for law enforcement" are banned from sale to the general public in the USA. Comparable restrictions should apply in this country. (Para 57)
- (xii) Legal aid be extended to cover proceedings taken under the Protection of Privacy Bill. (Para 58)
- (xiii) Legal aid be extended to cases of defamation. (Para 58)
- (xiv) Editors' contracts of employment should specifically require them to enforce the industry's Code of Practice and to accept the consequences of any fundamental breaches. (Para 62)
- (xv) Although the Committee does not wish to recommend that every newspaper should be required to appoint a readers' representative, it does recommend that all papers without one, and particularly those with substantial circulations, should consider appointing an independent readers' representative. (Para 65)
- (xvi) The Press Complaints Commission be replaced by the Press Commission. (Para 66)
- (xvii) The Press Commission should be charged specifically with the task of upholding press freedom. (Para 67)
- (xviii) The address and telephone number of the Press Commission and a note describing the Commission's operation should be published by newspapers at regular intervals. (Para 68)
- (xix) The Press Commission should set up offices in Wales and Scotland to handle complaints emanating from those areas as well as such regional offices as it considers appropriate. (Para 68)
- (xx) The Press Commission should operate a hot-line. (Para 69)
- (xxi) The Press Commission should conduct research periodically into public attitudes to the press, the effectiveness of the revised Code of Practice, the press's wider role in society and the freedom of the press. The Press Commission should initiate inquiries into issues of general public concern or into specific incidents and, where necessary, give advice on the principles to be applied. The Commission should have the additional responsibility of monitoring the press on a continuing basis. (Para 71)
- (xxii) The new Press Commission should receive and examine third-party complaints which will allow for the public interest in a press of high quality to be accommodated. (Para 71)

- (xxiii) Where factual errors or breaches of the Code have occurred, the Commission should be able to order the publication with due prominence of its adjudications and of a correction and appropriate apology. (Para 74)
- (xxiv) The industry should increase the powers of the new Press Commission to allow it to require the payment of compensation. (Para 75)
- (xxv) The industry should increase the powers of the new Press Commission to allow it to impose fines where it judges that a breach of the Code of Practice is such as to have brought journalism into disrepute. (Para 77)
- (xxvi) Appointments to the Press Commission should be entrusted to the appropriate representative bodies of the industry (Para 79)
- (xxvii) Compliance with the Code of Practice should be made part of every journalist's contract of employment and every freelance should be told that his or her work will not be accepted unless the material has been obtained in compliance with the Code. (Para 82)
- (xxviii) All journalists should be required to provide proof of identity and a copy of the Code to those they seek to interview and photograph. Consideration should also be given to printing copies of the Code in other languages that are used by significant groups in this country. (Para 83)
- (xxix) Recognition of an individual's fundamental right to an area of privacy should be inserted after the introduction to the Code of Practice. (Para 86)
- (xxx) All references in the Code to 'anti-social conduct' should be deleted because of the difficulty of definition. (Para 87)
- (xxxi) Neither victims of sexual offences nor their relatives should be identified, nor anything done to enable "jigsaw" identifications to be made. (Para 92)
- (xxxi) The press should not identify relatives of an accused person when identification is likely to put at risk their physical or mental health or security. (Para 92)
- (xxxiii) The Press Commission should assist in the training of journalists in use of the Code of Practice. (Para 93)
- (xxxiv) A statutory Press Ombudsman should be appointed. (Para 97)
- (xxxv) The Press Ombudsman be appointed by the Lord Chancellor in consultation with the Lord Advocate. (Para 98)
- (xxxvi) A suitable early investigation by the Press Ombudsman would be an examination of what responsibilities a proprietor has in relation to the newspapers over which he has control. (Para 100)
- (xxxvii) The Press Commission should make it its practice, when informing the parties to a complaint of its decision, also to inform them of their right to appeal to the Ombudsman if they are not satisfied with an adjudication or a recommendation about compensation or the level of a fine. (Para 101)
- (xxxviii) The Press Ombudsmen be given statutory powers to supervise the wording, position and format of corrections, apologies and retractions. (Para 102)
- (xxxix) The Press Ombudsmen should have statutory authority to publish with an adjudication whenever he thinks it appropriate, the names of those responsible for a serious breach of the Code. (Para 103)

- (xl) The Press Ombudsman be given statutory authority to order the payment of compensation. (Para 104)
- (xli) The Press Ombudsman be given statutory authority to impose a fine. (Para 105)
- (xlii) The Press Ombudsman should be required to make an Annual Report to Parliament which, like the Committee for the Parliamentary Commissioner for Administration and his reports, this Committee intends formally to consider. The Committee recommends consequentially an amendment be made to its terms of reference to include a provision similar to that for the Select Committee on the Parliamentary Commissioner for Administration. (Para 107)
- (xlili) Where a newspaper refuses to pay a fine or compensation which has been ordered by the Ombudsman, the Ombudsman should be able to seek a Court order requiring it to be paid. Similarly, where a newspaper dissents from the Ombudsman's decision, it should be entitled to ask the Court to discharge the order. (Para 108)

ANNEX 1EXAMPLES OF AMERICAN STATE LAWS
ON PRIVACY1. MAINE, 1976§ 511 Violation of Privacy

1. A person is guilty of violation of privacy if, except in the execution of a public duty or as authorized by law, he intentionally:
 - a. Commits a civil trespass on property with the intent to overhear or observe any person in a private place; or
 - b. Installs or uses in a private place without the consent of the person or persons entitled to privacy therein, any device for observing, photographing, recording, amplifying or broadcasting sounds or events in that place; or
 - c. Installs or uses outside a private place without the consent of the person or persons entitled to privacy therein, any device for hearing, recording, amplifying or broadcasting sounds originating in that place which would not ordinarily be audible or comprehensible outside that place.
2. As used in this section, "private place" means a place where one may reasonably expect to be safe from surveillance but does not include a place to which the public or a substantial group has access.
3. Violation of privacy is a Class D crime.

2. NEBRASKA, 1979

§ 20-201 Right of privacy; legislative intent. It is the intention of the Legislature to provide a right of privacy as described and limited by sections 20-201 to 20-211 and 25-840.01, and to give to any natural person a legal remedy in the event of violation of the right.

§ 20-202 Invasion of privacy; exploitation of a person for advertising or commercial purposes; situations; not applicable. Any person, firm, or corporation that exploits a natural person, name, picture, portrait, or personality for advertising or commercial purposes shall be liable for invasion of privacy. The provisions of this section shall not apply to:

1. The publication, printing, display, or use of the name or likeness of any person in any printed, broadcast, telecast, other news medium or publication as part of any bona fide news report or presentation or non-commercial advertisement having a current or historical public interest and when such name or likeness is not used for commercial advertising purposes;
2. The use of such name, portrait, photograph, or other likeness in connection with the resale or other distribution of literary, musical, or artistic productions or other articles of merchandise or property when such person has consented to the use of his or her name, portrait, photograph, or likeness on or in connection with the initial sale or distribution thereof so long as such use does not differ materially in kind, extent, or duration from that authorized by the consent as fairly construed; or
3. Any photograph of a person solely as a member of the public when such person is not named or otherwise identified in or in connection with the use of such photograph.

86. The Committee was told in the USA that in that country there is a general recognition of an individual's right to an area of privacy. This point was also made by Mr James Michael.⁶² The Committee agrees that an individual does have such a right. It therefore recommends that recognition of this fundamental right should be inserted after the introduction to its suggested Code of Practice.

87. The other main area in which the Committee considers that the Code ought to be amended is that relating to anti-social conduct. The Committee recommends that all references in the Code to 'anti-social conduct' should be deleted because of the difficulty of definition. The concept of anti-social conduct opens too wide a loophole to subjective decisions by the press as to what such conduct comprises.

88. One area about which the Committee holds strong views is that of cheque book journalism. The Committee is concerned about payments made for tipoffs and information at any level and believes that this practice should be discouraged. It believes that it would be useful if newspapers made it their practice to indicate the stories for which payment for information had been made.

89. Payments for information may also lead to an invasion of privacy. In a House of Lords debate on NHS Patients: Privacy and the Media,⁶³ one of the issues raised concerned the giving or selling of confidential information to the press. The Parliamentary Under-Secretary of State at the Department of Health, in replying to that debate, agreed it was necessary to ensure that both employees and journalists who bought or divulged confidential information were brought to account.⁶⁴ The Committee hopes that similar restraint will be observed in other sensitive occupations and that stricter observance of the Code and its new Protection of Privacy Bill will help to achieve this.

90. While recognising that there may be many occasions on which it is understandable that a newspaper will wish to approach people suffering personal grief or shock and that for some people speaking of their experiences is cathartic, the Committee is very concerned that such approaches should not be intrusive and that any refusal to talk or be photographed is accepted. The Committee was impressed in the USA by the National Organization for Victim Assistance's proposed media Code of ethics for dealing with victims of crime or trauma to encourage contacts to be conducted with sensitivity and discretion. The Committee is aware of the efforts made by the police to reduce the trauma of rape victims by using specially trained officers. In the Committee's view, journalists' approach to people in extreme distress should be equally careful. The Committee believes that newspapers should make every effort to have at least one reporter who has been specifically trained in this area.

91. The Committee is also very aware of the distress that can be caused to victims or their families when sensational cases are re-enacted or crime stories retold, either on the electronic media or in print. The Committee agrees with the views of Victim Support⁶⁵ and others that at the very least the families or individuals concerned should be warned in advance.

92. In the section relating to victims of crime, the Committee has recommended that neither victims of sexual offences nor their relatives should be identified, nor should anything be done to enable "jigsaw" identifications to be made. The Committee also recommends that the press should not identify relatives of an accused person when identification is likely to put at risk their physical or mental health or security.

93. As the Committee acknowledges above, the content of the Code and its implementation lie at the heart of the satisfactory operation of the Press Commission. Much of the success of the implementation depends on the whole industry's commitment to it. Part of this commitment can be encouraged by a fuller understanding of the meaning and importance of the Code. The

⁶²Evidence, p 15 and QQ 79-80.

⁶³HL *Official Report*, 29 June 1992, cols 624-638.

⁶⁴*Ibid.*, cols 636-7.

⁶⁵Appendix 24.

Committee accordingly recommends that the Press Commission should assist in the training of journalists in its use.

IV STATUTORY OMBUDSMAN

94. In giving evidence to the Committee the former director of the Press Council argued that "voluntary regulation of the press has to be and be seen to be, a partnership of the press and the public".⁶⁶ The Committee agrees. The preceding paragraphs of this Report emphasise the Committee's firm conviction that voluntary regulation of the press is the best way to proceed. But it is equally important to ensure that the voluntary regulation the Committee recommends does work. The Committee believes a bulwark should be provided against any inadequacies in the way the Press Commission operates or in which newspapers and periodicals respond to its adjudications.

95. The Committee has sought information about the Ombudsman systems established by statute. These cover areas both of the public sector and the private sector, and include the Parliamentary Commissioner for Administration and the Health Service Commissioners,⁶⁷ the Local Government Ombudsmen,⁶⁸ the Pensions Ombudsman⁶⁹ and the Legal Services Ombudsman.⁷⁰ Its investigations convinced the Committee the Ombudsman system had a valuable part to play in the context of press regulation; the Committee was thus interested to discover that the Lord Chancellor had also been attracted by this idea. He described the Ombudsman system which had now been developed in a number of different industries as "a good one for investigating particular cases, particular occurrences."⁷¹

96. The Committee has decided that a regulatory level is needed beyond that of the Press Commission. Anyone dissatisfied with the outcome of an investigation, or whose complaint had been rejected without investigation, needs some further accessible and effective recourse. In the Committee's view this could best be provided by an Ombudsman. The weight of his or her work would be in direct proportion to the success or failure of voluntary regulation. The more successful that voluntary regulation turns out to be, the less the need for recourse to the Ombudsman. Nothing would please the Committee more than that self-regulation by the Press Commission should be so successful as to render the role of the Press Ombudsman a sinecure, at any rate so far as response to complaints is concerned.

97. Once the Committee had decided that the appointment of a Press Ombudsman would best meet the need to ensure that voluntary regulation worked, it gave thought as to whether the position should be statutory or non-statutory. The Lord Chancellor did not make any recommendation in this area but he did concede that "If it is a voluntary one, it would be effective only if the organs of the media were willing to give access to some of their documents and perhaps some of their information ... [they] would be required to be willing to co-operate with the Ombudsman".⁷² As the Press Ombudsman would be called upon in general only when voluntary regulation had proved ineffective, this for the Committee proved a convincing argument in favour of a statutory Ombudsman. The Committee therefore recommends that a statutory Press Ombudsman be appointed.

98. For any statutory Ombudsman, the first decision to be taken is how he or she should be appointed. The Committee recommends that the Press Ombudsman be appointed by the Lord Chancellor in consultation with the Lord Advocate. The right of nomination should be open to anyone including the Press Commission, journalists, their unions, their editors and their proprietors.

⁶⁶Q 1425.

⁶⁷Appendix 40.

⁶⁸Appendix 41.

⁶⁹Appendix 43.

⁷⁰Appendix 52.

⁷¹Q 1304.

⁷²Q 1319.

DOCUMENT TWO
Brooke Witness Statement

DOCUMENT TWO
Brooke Witness
Statement