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cc: Lord Astor
Mr Phillips
Mr Edwards (o/r)

Ms MacLean
Mr Stevens

Secretary of State

PRESS SELF-REGULATION

I understand that you are seeing Lord Wakeham at 6.00pm on Wednesday 23 November, and that you are having a briefing meeting with officials on Tuesday, 22 November (the day on which his appointment is due officially to be announced). I am afraid that I will be in Strasbourg on both days, but I hope that Mr Edwards and Mr Stevens will be able to attend the briefing meeting.

2. For the briefing meeting on 22 November, I attach a short paper which sets out some of the self-regulatory improvements which you might wish to suggest to Lord Wakeham for consideration by the Press Complaints Commission and the newspaper industry. I should say that the list of improvements recommended in the draft White Paper (listed in paragraph 2 of the attached paper) is the product of Ministerial discussion over a long period and is, to some extent, a compromise. Thus, for example, the hotline and the incorporation of the privacy tort into the industry's Code were very much the ideas of the Lord Chancellor, the independence of the Privacy Commissioner and compensation the concerns of your predecessor.

3. But we are not convinced that, even if the industry implemented all four White Paper recommendations - and we know they are strongly opposed to compensation and sceptical about the "hotline" - this would make the PCC fully effective. We consider that its abiding weaknesses are:

- i. the fact that many people do not complain to it (because they do not know of its existence, because they think it is ineffective or, in privacy cases, because they fear the further publicity which PCC involvement would bring);
- ii. its lack of perceived independence from the industry;
- iii. its rather vague and weak Code;
- iv. its somewhat perfunctory procedures;
- v. its lack of real sanctions.

4. Some of these weaknesses cannot be laid at the door of the PCC itself. For example, they cannot be blamed if victims of intrusion do not want to complain, nor can they be held responsible, as a voluntary body, for lack of real sanctions. But we do think that there is some room for manoeuvre on the issues of independence, the contents of the Code, procedures and publicity. Furthermore, the appointment of Lord Wakeham gives us a valuable window of opportunity for making further suggestions to the industry.

5. In summary, the improvements which might be suggested are:

Appointments

- i. more independence for the Privacy Commissioner

Procedures

- ii. the "hotline"
- iii. third party complaints
- iv. general enquiries
- v. oral hearings
- vi. more thorough investigations

Content of the Code

- vii. amendments to give better protection for the individual, including elaboration in detail of some of its vaguer requirements
- viii. incorporation of elements of tort into Code

Sanctions

- ix. incorporation of Code into newspapermen's contracts
- x. compensation

Publicity

- xi. Any steps which bring the PCC to a wider public.

6. These are in no order of importance, and there may be other self-regulatory improvements which could be suggested. Subject to the conclusions of the briefing meeting on 22 November, we will prepare briefing for your meeting with Lord Wakeham next day, which will set out the improvements you wish to suggest, and our arguments for them and (if known) any PCC/industry reasons against them.

LPW

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PRESS SELF-REGULATION

The Government has publicly urged the newspaper industry to make the self-regulatory improvements listed in paragraph 5.30 of Sir David Calcutt's Review of Press Self-Regulation (first column in the attached Annex). Some of these recommendations were repeated by the National Heritage Committee (second column in the Annex), and thus implicitly have the Government's support, but the Government has not commented on other Heritage Committee recommendations for self-regulatory improvements.

Improvements recommended in draft White Paper.

2. The draft White Paper makes four recommendations for better self-regulation, adoption of which by the industry would make the Government less likely to support or implement legislation providing for intrusion offences or a tort. These Government recommendations are:

- i. a more independent mechanism for appointing the Privacy Commissioner (paragraph 2.27; Calcutt recommended a more independent means of appointing the PCC)
- ii. installation of a "hotline" by which the PCC or the Privacy Commissioner might warn editors thought likely to breach the Code (paragraph 2.29; also recommended by Calcutt and the Heritage Committee)
- iii. financial compensation for those whose privacy has been invaded (paragraph 2.30; the Heritage Committee recommended compensation and fines) and
- iv. incorporation of the main elements of the privacy tort into the Code (paragraph 3.46).

Other possible self-regulatory improvements

3. There is also a strong case for giving further consideration to self-regulatory improvements, recommended by Calcutt or the Select Committee, which the industry has not implemented, and for looking at other improvements which have suggested themselves to officials dealing with Ministers' cases. The more important recommendations are discussed below.

Content of Code

4. Calcutt noted significant ways in which the industry Code of Practice fell short of what had been recommended by the Privacy Committee in 1990 (paragraphs 3.48 - 3.62 of his report). Among these are provisions relating to the right of reply, public interest defences, privacy, misrepresentation, trespass, intrusion into grief or shock, identification of innocent friends and relatives, and victims of crime, publication of criminal convictions and stories about the recently dead, and the interviewing and photographing of children. Calcutt concluded that in every case the effect has been to weaken the protection which the Privacy Committee's proposed code would have given to individuals, and to do it in a way that does not hold the balance fairly. It is true that the industry has made some improvements to the code - on the use of bugging devices and long-range cameras, on jigsaw identification and on editors' personal responsibility for unjustifiable harassment by their journalists - but Calcutt's criticism of the Code retains its force.

5. In addition, officials have noted weaknesses which stem from the vagueness of the Code. The preamble to the Code requires the press to maintain the highest professional and ethical standards, and says that the Code applies in the spirit as well as in the letter, but a recent PCC adjudication found no breach by a newspaper which published topless photographs of a young woman, Sarah Parkinson, who had just been murdered. The PCC said that this was a matter of taste and decency which was outside their remit. This may well have been an untypical and perverse adjudication, but it suggests that the PCC are ignoring the preamble and sticking to the letter of the code. They might be asked to spell out, in their code, the implications of the highest professional and ethical standards for taste and decency (and all other matters). (Adjudications on taste and decency are part of the statutory remit of the Broadcasting Standards Council.)

6. The industry might also be asked to particularise the requirement in Article 10 that, in cases involving personal grief and shock, enquiries should be made with sympathy and discretion, a stipulation which, according to Ministerial correspondence, is frequently honoured in the breach. In the case of Andrew Nickell, whose daughter was murdered on Wimbledon Common, the press seems to have subjected him and his neighbours to unacceptable intrusion, and the PCC seems to have been very dilatory in warning newspapers not to publish photographs of Mr Nickell's grandson who had witnessed the murder.

7. Officials have also noted complaints that the press gives addresses of those involved in a story, even when their involvement is peripheral and the address is completely irrelevant. The Code already requires newspapers to avoid publishing sensitive personal matters (comprising race, colour, religion, sex or sexual orientation)

unless these are directly relevant to the story. There is a case for adding names and addresses, and perhaps other personal data, to this list.

Procedures

8. Calcutt and the Heritage Committee recommended that the PCC should be prepared to take third party complaints, and to conduct general enquiries without any complaint. The PCC says that it is not prevented from taking third party complaints, and might do so with the consent and co-operation of those directly affected; but in practice it does not. Nor does it carry out general enquiries. Calcutt also recommended oral hearings. The PCC says that its rules of procedure allow for oral hearings "where appropriate", but we are not aware that any such hearing has taken place.

9. Officials have noted a Ministers' case in which a complaint of flagrant intrusion into a hospital ward was found inadmissible when the editor of the Cambridge Evening News told the PCC that his reporters would never do such a thing. In another case, the PCC did not uphold a complaint from a widow whose husband's death had been broken to her by a reporter from the Nottingham Evening Post, on the grounds that there was no evidence that the reporter worked for the paper, and that the editor had questioned his reporters "and none had made the call". In these cases, investigation by the PCC seems to be very perfunctory, and to rely on an equally casual enquiry by the editor. There is a case for a more vigorous pursuit by the PCC, perhaps even involving cross-questioning.

Newspapermen's contracts

10. The Heritage Committee recommended that editors, journalists and freelancers should have compliance with the Code written into their contracts. The PCC have accepted this in principle, and have agreed a timetable for inclusion of compliance with the Code in editors' contracts. It would be valuable to know what is proposed for journalists and freelancers.

Publicity

11. Often those who complain about press abuses do not make a formal complaint to the PCC, not because they do not know of it, but because they think it is ineffective. The PCC, in turn, will say that they cannot be expected to deal with alleged abuses without a complaint. This creates a vicious spiral which might be partly counteracted by the PCC giving itself more publicity. It would be valuable to know what steps the PCC proposes to take in this regard.

NEWSPAPER INDUSTRY RESPONSE TO THE CALCUTT AND NATIONAL HERITAGE SELECT COMMITTEE (NHSC)

CALCUTT

NHSC

PRESSBOF/PCC

Appointment to the PCC

Government and industry to choose an independent person to appoint an Appointments Commission; that person to appoint an independent Appointments Commission; the Appointments Commission in turn to appoint the PCC.

Appointment by representatives of the industry.

Two out of the three Calcutt points rejected. Appointments Commission increased to ensure lay (non-press) majority and Commission now has lay majority.

Freedom of the Press

PCC to have no function positively to promote press freedom.

New Press Commission to be charged with upholding press freedom.

Rejected Calcutt, accepted NHSC.

Drafting of Code

Code of practice to be drawn up by the PCC itself.

Rejected, but PCC to discuss differences with industry and has now ratified code.

Content of Code

Needs to be amended to reflect proposals in Privacy Committee report. In particular, needs to spell our justifiable "public interest".

Recognition in the code of an individual's fundamental right to privacy; delete references to "anti-social" conduct; neither victims of sexual offences nor their relatives

Calcutt partially accepted. Changes covering the use of "bugging" devices and long-range cameras; "jigsaw" identification made; new consolidated definition of public

to be identified; no "jigsaw" identifications.

interest; emphasis on editorial responsibility for harassment.

'Hotline' (PCC intercedes with newspaper

To be introduced.

To be introduced.

Rejected. Agreed to implement "helpline" (putting complainant in touch with newspaper instead).

Third Party Complaints

The PCC should receive third party complaints more widely.

The new Press Commission should receive and examine third party complaints.

Rejected. Claims that PCC already take some third party complaints, but will not do so without consent and co-operation of those directly affected.

Oral Hearings

The PCC should be more read to hold oral hearings.

Rejected. PCC already allows for oral hearings "where appropriate".

General Enquiries

PCC to initiate enquiries where prima facie breach of code but no complaint made.

The Press Commission should initiate enquiries into issues of general public concern or into specific incidents.

Silent.

Role of Pressbof

To be limited to provision of finance for Commission.

Rejected, but Pressbof role reduced.

Employment Contracts

Editor's contracts should require them to enforce the Code of Practice; compliance with code to be made a part of every journalist's contract; freelancers also to comply.

Accept in principle. Have agreed timetable for application to editor's contracts.

Readers
Representatives

Newspapers should consider appointing an independent readers' representative if they have not already done so.

Accept in principle the need to encourage this trend.

Publicity

Details including address and telephone number of the Press Commission to be published in newspapers at regular intervals.

Already implemented.

Regional Offices

The Press Commission should set up offices in Wales and Scotland and other areas where appropriate.

Silent.

Research and
Monitoring

The Press Commission should research periodically into public attitudes towards the Press, the effectiveness of the revised Code of Practice; it should also monitor the Press.

Silent.

Corrections and Apologies

Where factual errors or breaches of the Code have occurred, the Commission should be able to order the publication with due prominence and of a correction and appropriate apology.

Claims that PCC already gives guidance on prominence.

Compensation and Fines

New Press Commission to be able to impose fines and order compensation.

Rejected.

Identification of Journalists

All journalists to provide proof of identity and a copy of the Code to those they seek to interview or photograph.

Accept in principle.

Translation of the Code

Translation of the Code in other languages used by major ethnic groups in the UK.

Agreed to implement.

Training of journalists

Press Commission to assist in the training of journalists in the use of the Code Practice.

Agreed to implement.