Editors' Code of Practice Committee

Response to the Culture, Media and Sport Select Committee's Report on Press Standards, Privacy and Libel

From the Editors' Code of Practice Committee

Introduction

The Editors' Code of Practice Committee is the industry body that writes, reviews and revises the Code, which is at the heart of the UK system of press self-regulation administered by the PCC. It has considered the Select Committee's Report and, in particular, the comments relating to the Code's part in the self-regulatory process.

The Code Committee fully acknowledges the Report's scale and scope, and very much applauds its reiterated commitment to self-regulation of the press. However, we are concerned that the exceptional breadth of the inquiry may, occasionally, have resulted in mischaracterisation of key issues. The Report fails, for example, to recognise some of the balancing principles of self-regulation in general, and goes on to perpetuate some popular misconceptions about the UK system in particular. (In the interests of accuracy, it is not the '*PCC Code*', nor the '*PCC's Codebook*': both are produced by the industry - independently of the PCC - as part of its commitment to self-regulation.) Perhaps another symptom of this very broad remit was the lack of consultation on some far-reaching proposals for change. We are, therefore, glad of this opportunity to comment.

The issues raised by the Report of direct concern to the Code Committee fall under two headings:

- Constitutional changes – lay membership and an extension to the sanctions regime; and -
- Changes to the Code of Practice and to *The Editors' Codebook.*

This response is, therefore, confined largely to considering recommendations in those areas.

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1. Constitutional issues

1.1 **Lay membership of the Code Committee:** The Select Committee recommends that the Code Committee should admit lay members, including a lay chairman. This is related to matters being considered by the PCC Governance Review panel and we would not wish to anticipate those outcomes. However, it would be fair to state that it is an established tenet of most self-regulatory systems that there should be a proper balance between the roles of the industry itself and lay representatives. In the case of press self-regulation, the very substantial lay input into the administration of the Press Complaints Commission gives it authority and credibility with the public.

1.2 One of the balancing principles is that the industry should have ownership of the Code. It is this that gives the Code authority and respect in the industry, ensuring high levels of compliance. Editors, who are responsible for ensuring that compliance, could not (and do not) challenge a Code that they themselves have written. Any dilution of this principle risks endangering those levels of industry buy-in and compliance. This should not be dismissed lightly. In the 20 years that the Code has been in operation, no newspaper found to have breached the rules has ever failed to honour its obligation to print the PCC's critical adjudication. That is a record rarely matched internationally.

1.3 The Code Committee has always acknowledged the importance of the lay membership of the PCC in this balance and the Code deliberately gives very wide discretion to the adjudicating Commissioners. Their views are also represented at Code Committee meetings by the presence – and full participation in proceedings – of the PCC's Chairman and Director. We, of course, await the Governance Review panel's thoughts, but the Code Committee is already exploring ways in which this interchange of views might be improved.

1.4 **Financial penalties and suspension of publication:** Any decision on an extension of sanctions is outside the Code Committee's immediate remit. However, it would be remiss not to alert the Select Committee to the negative impact such changes would have on the Code itself. Currently, the Code sets out to be non-legalistic in approach and tone, which makes it accessible to ordinary members of the public. It relies heavily on a feature unique to self-regulation: the *spirit of the Code*, its underpinning philosophy, which is the antithesis of a legalistic approach. It does not permit an editor to take refuge in a thicket of small print. It takes a broader, more balanced and more open stance. It states, at the very outset:

> *It is essential that an agreed Code be honoured not only to the letter but in the full spirit. It should not be interpreted so narrowly as to compromise its commitment to respect the rights of the individual, nor so broadly that it constitutes an unnecessary interference with freedom of expression or prevents publication in the public interest.*

1.5 The introduction of fines – let alone Draconian powers to suspend publication – would radically alter the nature of self-regulation. Inevitably, the commercial threat would mean the system would become increasingly the preserve of lawyers and the Code would be forced to adapt to reflect that. It would become legalistic, abstruse, less accessible to the public, and the central philosophy of acting within the spirit, rather than to the letter, would inevitably be lost, to the great detriment of the system. The PCC prides itself on providing a free, speedy service that is open to all, regardless of their income. If fines were introduced, both sides would be forced to involve lawyers – leading to considerable delay and costs for all concerned.

1.6 The issue of suspension of publication raised in the Report appears to have come from nowhere. It was not put to senior editorial figures giving evidence to the inquiry, even though it would be almost universally condemned as dangerous and inimical to press freedom. It is also incompatible with the Select Committee's own sound reasoning, elsewhere.

1.7 The Report rightly commends the Government for abolishing criminal libel because of its negative influence on press freedom abroad. But that same impeccable logic would have equal force when applied to suspension of publication – a proposal that, by its example, would give a bogus legitimacy to the activities of some of the most tyrannical regimes on the planet. Neither the British Parliament nor the UK press should be in such company.

2. Changes to the Code of Practice

2.1 **Prior notification:** The Code Committee welcomes the Report's acceptance that 'clearly pre-notification, in the form of giving opportunity to comment, is the norm across the industry', which is certainly the case. The PCC has considered that, in certain circumstances, failure to put uncorroborated allegations to the subject can amount to taking insufficient care to establish the truth. The Code Committee takes the view (as did the previous Government) that such notification - for substantially the same reasons as those identified by the Select Committee - is not always either possible or, for reasons of public policy, desirable and therefore could not be obligatory.

2.2 Our Committee had already scheduled improved guidance on this to be included in an update to the online version of *The Editors' Codebook* later this year. However, any guidance or codification, as suggested by the Select Committee, could be influenced by the Max Mosley case at the European Court of Human Rights. Since this is now being fast-tracked and could be heard later this year, or early next, it would be inappropriate to take any course that might have to be re-considered in the light of an imminent ECtHR decision.

2.3 **Headlines:** It is a popular myth that headlines are not covered by the Code. They are an integral part of a story and, as such, are subject to the normal rules that care should be taken not to publish inaccurate, misleading or distorted information. The PCC had adjudicated on misleading headlines and, indeed, there are four such examples in *The Editors' Codebook*.

2.4 However, the Code Committee is drafting new guidance for inclusion in the *Codebook*, which will cite cases where headlines have been found to be in breach by being inaccurate, misleading or distorting.

2.5 **Reporting suicide:** The Code Committee has gone to some lengths to meet public concerns about coverage of suicide - engaging with support groups such as the Samaritans and Papyrus, updating the Code to include coverage of suicide, and producing a full-page briefing in the *Codebook*, applauded by them. We are pleased that the Select Committee also accepts the Code's effectiveness on this issue.

2.6 But the Report's suggestion that newspapers should proactively monitor their websites, to prevent offensive user-generated content relating to suicide and personal tragedies, raises wider issues. Most user-generated content on newspaper sites, as elsewhere, is reader-moderated: when a reader complains about offensive material, it is dealt with. Pre-moderation would be against the Internet's core concept of unrestricted access; would be prohibitively costly for most newspapers and magazines in a particularly difficult commercial environment; and has complex ramifications that could increase publishers' liability in the event of legal action. The Code Committee is investigating its options in this area, but they may be very limited.

2.7 **Prominence of corrections and apologies:** Another common myth about self-regulation is that apologies and corrections are routinely squirreled away in an obscure part of the newspaper, without due prominence. In fact, the PCC already monitors prominence. It has found that 84% of corrections appear on the same page or earlier, or in a designated corrections column. In many cases, prominence is discussed with editors prior to publication.

2.8 That being so, the Select Committee's concerns on this have largely been met: the great majority of corrections and apologies *do* appear on the same page or earlier and editors *do* routinely consult the PCC on positioning. Indeed, the positioning has very often been decided informally in conjunction with PCC staff. However, to underline the importance of this, the Code Committee is to explore with the industry and the PCC on the mechanics of a Code change which would require that, in complaints involving the Commission, the prominence of apologies or corrections should be agreed with the PCC in advance.

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