

Court Reporting - 1994

A fundamental principle of justice is that it must be seen to be done. It is therefore established in the United Kingdom that with certain exceptions court cases should be heard in public. This principle of open justice is acclaimed on a number of grounds: as a safeguard against judicial error or misbehaviour, as a deterrent to perjury, to enhance public knowledge of the workings of the law, to assist the deterrent function of criminal trials and to permit the revelation of matters of genuine public interest. The principle of open justice is reflected in the European Convention of Human Rights and in the International Covenant on Civil and Political Rights.

The press has a special role in this system of open justice, as indicated by the former Master of the Rolls, Lord Donaldson of Lynton: "It is not because of any special wisdom, interest or status enjoyed by proprietors, editors or journalists. It is because the media are the eyes and ears of the general public. They act on behalf of the general public. Their right to know and their right to publish is neither more nor less than that of the general public. Indeed, it is that of the general public for whom they are trustees".

It is inevitable that in reporting court cases newspapers are attracted to the more sensational stories that emerge in evidence during the course of these proceedings. Another attraction to newspapers is that court reports are privileged against actions for defamation.

An element of chance undoubtedly determines whether or not some minor offence has received publicity as it is simply not economical for newspapers to cover proceedings in magistrates' courts to the extent that was once the case; in 1955 Lord Denning could write, "In every court in England you will, I believe, find a newspaper reporter". In many cases, publicity may still be part of the punishment delivered by these courts but the last Royal Commission on the Press believed that it was "highly undesirable for such a 'sentence' to be imposed not by the court but by chance or because the offender or another member of his family is newsworthy".

There are four main categories of exceptions to the principle of open justice:

- i) The most serious exception is where journalists are neither admitted to the court nor able to report what has happened. This is the case where the court sits in camera such as in family cases or cases involving matters of national security.
- ii) There are occasions where press and public are excluded, but an account obtained from the participants can be published. An example of this is the hearing for an injunction before a judge "in chambers". Such a hearing is private, but it is not generally contempt to report what took place. One exception is wardship hearings where it is contempt of court to publish any information relating to the proceedings.
- iii) The press may be allowed access to the court, but be restricted by law in what it can report. For example, the names of rape and blackmail victims are suppressed in the interests of mitigating their pain and to encourage other such victims to come forward.

iv) The press may be allowed to be present but subject to a temporary ban on publication. Most committal proceedings (the preliminary enquiry by magistrates into whether there is enough evidence to justify a jury trial) are of this type. The 1981 Contempt of Court Act has also given courts the power to make an order postponing publication where this is necessary in the "interest of justice".

In summary, the press has an express right to publish in good faith a fair, accurate and contemporaneous report of public legal proceedings. A report is held to be accurate if its essence is correct even if not word perfect. Reports are contemporaneous if they are published as soon as practicable.

COMPLAINTS TO THE COMMISSION

The Commission receives three types of complaint about court reporting:

i) Complaints that newspapers have intruded upon privacy by printing a report of a court case in which the complainant has been involved, usually as a defendant. In these cases the Commission uphold the right of newspapers to publish fair, accurate and contemporaneous reports of proceedings. Unless the complainant can demonstrate a breach of this principle the Commission will not take any such complaint further.

ii) Complaints that newspapers have inaccurately reported some aspects of either a completed court case or one which is concurrently under way. If any significant inaccuracy is demonstrated in such cases the Commission raises the complaint with the editor as a prima facie breach of Clause 1 of the Code of Practice with the request that it be resolved by a printed correction. All such complaints have been resolved or disproved. In ongoing court cases the printed correction is included either in reports of subsequent evidence or occasionally in the report of the verdict.

iii) From time to time the Commission receives complaints that in reporting a court case the press have not reported prosecution and defence cases with balance but have highlighted the prosecution case, with very little space being devoted to either the defence case or an acquittal verdict. No such complaint to the PCC has ever been of sufficient gravity as to warrant its investigation.

Reporting of Information Given off the Record

In considering a complaint that a journalist has breached an understanding with a source of information, the Commission believes that it is important to distinguish cases involving those experienced in dealing with the media from those concerning interviewees with little or no knowledge of how the press operates.

With regard to those with experience of speaking to journalists, discussions are often based on private and possibly well established arrangements between the parties. Such a person wishing to be reported in a non-attributable manner will know how to make clear at the start of a discussion that what they are saying is "off the record". There may be grounds for taking to task a journalist who blatantly disregards this agreement, although the particular circumstances would have to be taken into account. Clause 14 of the Code of Practice would cover such a complaint.

The other category of complaint would be most likely to come from those unused to dealing with journalists. If a journalist were to entice information out of such an ordinary member of the public on the basis that it would be "off the record" comment and then this comment was printed "on the record" there could be a case to answer under the Code.

This would relate not only to Clause 14 but also to the general ethical principles embodied in the spirit of the Code if it could be shown that a journalist acted deliberately to mislead the interviewee by giving false assurances of confidentiality.